

Ontario Municipal Board
Commission des affaires municipales
de l'Ontario



ISSUE DATE: November 17, 2016

CASE NO(S): PL160530

PROCEEDING COMMENCED UNDER subsection 45(12) of the *Planning Act*, R.S.O. 1990, c. P.13, as amended

Applicant and Appellant:	Andriy Budnyy and Irina Kashina
Subject:	Minor Variance
Variance from By-law No.:	0225-2007
Property Address/Description:	582 Hyacinthe Blvd.
Municipality:	City of Mississauga
Municipal File No.:	A119/16
OMB Case No.:	PL160530
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OMB Case Name:	Budnyy v. Mississauga (City)

Board Rule 107 states:

107. Effective Date of Board Decision A Board decision is effective on the date that the decision or order is issued in hard copy, unless it states otherwise.

Pursuant to Board Rule 107, this decision takes effect on the date that it is e-mailed by Board administrative staff to the clerk of the municipality where the property is located.

Heard: October 11, 2016 in Mississauga, Ontario

APPEARANCES:

Parties

Andriy Budnyy and Irina Kashina
City of Mississauga

Counsel*/Representative

Pavlo Tourko
Marcia Taggart*

**DECISION OF THE BOARD DELIVERED BY STEFAN KRZECZUNOWICZ AND
JASON CHEE-HING AND ORDER OF THE BOARD**

MATTER BEFORE THE BOARD

[1] Andriy Budnyy and Irina Kashina (the “Applicants”) own a single-detached dwelling, located at 582 Hyacinthe Boulevard, on the corner of Hyacinthe Boulevard and Mississauga Valley Boulevard (the “subject property”). They recently converted the attached garage in the dwelling into living space and got what had been a non-conforming second unit in the basement legalized to allow for a tenancy. They now want to construct a new detached garage in the subject property’s rear yard together with an additional driveway fronting on Mississauga Valley Boulevard. The existing driveway, which fronts onto Hyacinthe Boulevard, would be maintained under this proposal (though the width of this driveway would be reduced by two feet to bring it into zoning compliance). This arrangement would provide the Applicants with six parking spaces: two in the new detached garage; two in the new driveway; and two in the existing driveway.

[2] The City of Mississauga (the “City”) Zoning By-law No. 0225-2007 (the “Zoning By-law”) permits only one driveway on the subject property. In February 2016, the Applicants applied to the Committee of Adjustment (the “Committee”) for a variance to permit the second driveway. The Committee denied the variance on May 5, 2016.

[3] On May 25, 2016, the Applicants appealed the Committee’s decision to the Ontario Municipal Board (the “Board”).

[4] At the hearing, the Board allowed evidence from Pavlo Tourko, a professional architect, in support of the application, notwithstanding that, pursuant to rule eight of the Board’s *Rules of Practice and Procedure*, Mr. Tourko did not provide written confirmation of authorization to represent the Applicants. The Board ordered Mr. Tourko to file such written confirmation with the Board and the City as soon as possible after the hearing.

[5] Robert Ruggiero, a candidate member of the Ontario Professional Planning Institute and Canadian Institute of Planners, was qualified by the Board to give expert opinion evidence in land use planning.

ANALYSIS AND FINDINGS

[6] The authority to approve variances is given under s. 45(1) of the *Planning Act* (the “Act”). This section has given rise to what are commonly referred to as the “four tests” for granting a variance. The tests must be applied by the Committee when considering a variance application and by the Board when making its decision on a variance appeal.

[7] In reviewing the Applicant’s proposal against the four tests, the Board accepts the expert and uncontroverted planning evidence of Mr. Ruggiero and denies the appeal for the reasons set out below.

[8] The variance does not maintain the general purpose and intent of the City’s Official Plan (“OP”). The subject property is designated “Residential Low Density I” in a “Neighbourhood” in the OP (Exhibit 2, p. 53). The Applicants’ proposal for two driveways does not preserve the stability and existing character of the neighbourhood, where large lots with one driveway predominate. As such, the proposal is not in keeping with policy 5.3.5.1 of the OP.

[9] The subject property is zoned R3, which allows residential detached dwellings, under the City’s Zoning By-law. In 2013, the Zoning By-Law was amended to restrict lots in a number of residential zones (including R3) to a maximum of one driveway, even when a second unit is present. Provision 4.1.20.11 of the Zoning By-Law is unequivocal in this regard:

A lot with a second unit shall have one (1) and not more than one (1) driveway.

[10] Mr. Ruggiero's testimony was that the purpose of the 2013 amendments was to preserve the character of residential areas, in particular the streetscape aesthetic, and to limit the amount of hard surfaces in those areas as a means to control stormwater runoff. In light of Mr. Ruggiero's testimony, which was uncontested, the Board is persuaded that the Applicants' proposed second driveway does not maintain the general purpose and intent of the Zoning By-Law.

[11] Mr. Ruggiero noted that the Zoning By-Law balances the above driveway restrictions with provisions that recognize that dwellings need hard surfaces for parking. In this respect, the Zoning By-Law requires that detached dwellings with second units have a minimum of three parking spaces. This minimum standard is far less than the six parking spaces that would result from the Applicants' proposal.

[12] The proposal is not desirable for the appropriate development of the land and building. Photographic evidence provided to the Board shows that the subject property is indeed large, even in a neighbourhood characterized by large lots, and could comfortably accommodate a second driveway in the rear yard (Exhibit 2, Tab 10). However, there are legitimate concerns about the new driveway access limiting opportunities for street visitor parking on Mississauga Valley Boulevard and adversely affecting the Boulevard streetscape.

[13] In assessing desirability, the Board understands Mr. Tourko's argument that the second driveway should be allowed primarily because it is needed by the Applicant. However, a property owner's need for an improvement is not a valid land use planning criterion in considering a variance under s. 45(1) of the Act.

[14] Drawing on the above analysis, the Board finds that the proposal is not minor. Second driveways are decidedly uncharacteristic of the neighbourhood. Granting the variance would therefore undermine the goals of the OP and would directly contravene the purpose and intent of the Zoning By-Law. The City's concern that an approval would set an undesirable precedent is valid. The only other property with two driveways in the surrounding area had its second driveway approved in 1961, long before the 2013

Zoning By-Law amendments came into force. Since 2013, no variance applications for second driveways have been filed in the immediate area.

[15] The Board notes that the Applicants have a straightforward remedy should they wish to increase the amount of parking on the subject property without a variance. They could demolish the existing driveway and apply to construct a new detached garage and new driveway in the rear yard. If approved, this would create for them four parking spaces—two more than what they currently have.

ORDER

[16] The Board orders that the appeal is dismissed and the variance is not authorized.

“Stefan Krzeczunowicz”

STEFAN KRZECZUNOWICZ
MEMBER

“Jason Chee-Hing”

JASON CHEE-HING
MEMBER

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Ontario Municipal Board

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