

Ontario Municipal Board
Commission des affaires municipales
de l'Ontario



ISSUE DATE: April 04, 2017

CASE NO(S): PL160894

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

Applicant and Appellant:	Jamal Ahmed
Subject:	Minor Variance
Variance from By-law No.:	0225-2007
Property Address/Description:	3245 Escada Dr.
Municipality:	City of Mississauga
Municipal File No.:	A322/16
OMB Case No.:	PL160894
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OMB Case Name:	Ahmed v. Mississauga (City)

Heard: March 24, 2017 in Mississauga, Ontario

APPEARANCES:

Parties

Representative

Jamal Ahmed

Self-represented

**MEMORANDUM OF ORAL DECISION DELIVERED BY GERALD S. SWINKIN ON
MARCH 24, 2017 AND ORDER OF THE BOARD**

[1] Jamal Ahmed (the "Appellant") owns 3245 Escada Drive (the "Property"), in the City of Mississauga (the "City"). He acquired the Property in June 2014.

[2] Under the second unit rules in the City's Zoning By-law No. 0225-2007, as amended (the "Zoning By-law"), the Appellant received a permit to create a second unit in the basement of the dwelling. The unit has not, to date, been rented out but is used primarily by visiting family.

[3] The Appellant's mother lives with the family at the Property. She is 82 years old. She had an accident, which has resulted in her now requiring the use of a wheelchair to enable her mobility, and according to the Appellant, this will likely be the circumstance going forward.

[4] The Appellant was having difficulty in maneuvering the wheelchair from the car into the house. Seeing that others in the neighbourhood had widened their driveways, he resolved to do so as well in order to create a travelable surface from the car to the house.

[5] The Appellant retained a contractor to do the work. As no building or structure was involved, the Appellant did not believe that a permit was necessary and the contractor never alerted him to any potential zoning issues.

[6] The work was completed in the summer of 2016. After the work was complete, the Appellant was advised by the City that his widened driveway did not conform to the maximum driveway width stipulated under the Zoning By-law.

[7] The maximum width of driveway under the Zoning By-law for this size of lot is 6.1 metres ("m"). The widened driveway on the Property measures 10.38 m.

[8] As the widened driveway was important to the Appellant, he learned that he could seek relief from the Committee of Adjustment (the "COA") and he applied for that relief.

[9] The Appellant's application to the COA was refused. The Appellant appealed.

[10] In the hearing before the Ontario Municipal Board (the "Board"), only the Appellant was present. The City did not appear. No neighbours or other interested persons appeared.

[11] The Board determined from the decision of the COA that the COA was in possession of five communications from neighbours, four in support of the application

and one opposed. The Appellant confirmed his knowledge of these communications and that they were filed as part of the original submission before the COA.

[12] The Appellant advised the Board, and provided photographs of, various properties in the neighbourhood of the Property, on Escada Drive, Alpaca Avenue and Rochelle Way (which are neighbourhood streets) of similar, if not wider, driveways.

[13] The Appellant confirmed to the Board that the driveway was deliberately constructed to drain properly to the street and not upon the neighbours' properties. He also advised the Board that the material used for the surface has porosity in order to allow infiltration of rainwater into the soil.

[14] The Board is of the view that the Appellant undertook this work in utter good faith and for the purpose of facilitating access to his dwelling by persons in wheelchairs.

[15] In keeping with the purpose of the *Accessibility for Ontarians with Disabilities Act, 2005*, the City has incorporated s. 9.4.3, regarding Accessibility, into its official plan. The policy in that section explicitly says that the owners of existing buildings will be encouraged to retrofit them to be universally accessible.

[16] The Board finds that the actions of the Appellant are in keeping with the intent of the official plan in this regard and are not inconsistent with the designated residential use of the Property.

[17] The alteration has been effected entirely on the Property and has not impinged upon the planting area in the road allowance or affected the availability of street parking along the curb as the curb cut has not been extended.

[18] As there is apparently some porosity to the surface material and the site plan shows a modest strip of landscape area remaining, the Board finds the application to be in keeping with the intent of the Zoning By-law.

[19] Based on the Appellant's testimony, the Board is convinced that the modification is desirable for the appropriate use of the land and building.

[20] And with respect to whether the requested variance is minor, in light of the other examples of similar driveway treatment in the area and the absence of any apparent impact on the City road allowance or the adjacent properties, the Board determines this test to also be satisfied.

ORDER

[21] In the result, the Board finds the four tests of s. 45(1) of the *Planning Act* to be satisfied in this instance and will allow the Appellant's appeal. Consequently, the permission requested to maintain the existing driveway with a width of 10.38 m is approved, and the variance is authorized.

[22] So Orders the Board.

"Gerald S. Swinkin"

GERALD S. SWINKIN
MEMBER

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Ontario Municipal Board

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