

ISSUE DATE:

**October 24, 2013**



PL130612

Ontario  
Ontario Municipal Board  
Commission des affaires municipales de l'Ontario

IN THE MATTER OF subsection 45(12) of the *Planning Act*, R.S.O. 1990, c. P.13, as amended

Applicant and Appellant:	Alan Perry
Subject:	Minor Variance
Variance from By-law No.:	North York Zoning By-law 7625
Property Address/Description:	15 Clyde Avenue
Municipality:	City of Toronto
Municipal File No.:	A388/11NY
OMB Case No.:	PL130612
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**APPEARANCES:**

**Parties**

**Agent**

Alan Perry

William Swentizki

Barry Rubinoff (absent)  
Laura Wiseman (absent)

Kenneth Chow (changed from Agent  
to witness)

**DECISION DELIVERED BY J. V. ZUIDEMA AND ORDER OF THE BOARD**

[1] Alan Perry, the Applicant and Appellant (“Appellant”), on this matter made an application to the City of Toronto for a minor variance. The purpose of the application was to construct an attached single car garage at the front (west side) of the existing dwelling. His property is located at 15 Clyde Avenue (“subject property”), in the City of Toronto. It is a mature area with many large homes and lots having been developed in the late 1980’s.

[2] The variances that he was seeking to the North York Zoning By-Law No. 7625 were as follows:

1. Proposed front yard setback of 4.23m to the proposed garage only whereas the minimum required front yard setback is 5m;
2. Proposed building length of 29.26m whereas the maximum permitted building length is 15.3m;
3. Proposed lot coverage of 40.07% whereas the maximum permitted lot coverage is 30%; and
4. Proposed front yard soft landscaping of 44.88% whereas the minimum required front yard soft landscaping is 75%.

[3] The Committee of Adjustment refused the variances and as such, Mr. Perry appealed to this Board.

[4] Mr. Perry represented himself and called one witness, Sander Gladstone, who was qualified with an expertise in architecture. While Mr. Gladstone was not qualified as an expert in land use planning, he provided some commentary to justify the variances and recommended that the Board allow the appeal and authorize the variances.

[5] Next door neighbours, Barry Rubinoff and Laura Wiseman, retained Kenneth Chow, also qualified with an expertise in architecture, to provide testimony in opposition to the appeal. Mr. Rubinoff and Ms. Wiseman were not in attendance but filed an authorization to permit Mr. Chow to provide evidence on their behalf.

[6] Neighbour, William Swentizki, attended and he provided evidence also in opposition. Mr. Swentizki has owned property in the neighbourhood for a long time and was able to provide some history of the subject property. He also testified on how he believed the variances would negatively impact him.

[7] No one else was in attendance.

[8] In the end, the onus rests with the Appellant to satisfy the Board that all of the four tests under the *Planning Act* have been met. That was not accomplished and as such, my decision is to not grant the appeal. Therefore, the variances are not authorized and my reasons follow.

[9] Quite candidly, Mr. Gladstone's evidence associated with the four tests was superficial and it was clear to the Board that he had not actually looked at the relevant policies to come to his conclusions. For example, he stated that the variances met the intent and purpose of the Official Plan ("OP") and to justify that opinion he indicated:

"Land Use Map 17 of the OP defines the subject property as within a "Neighbourhood". Evcerything [sic] about this garage enclosure is consistent with a well-designed, Jane Jacobs'-ish, sensitively-sited, house and well-integrated "appendage". [see Exhibit 1 Section 2.0 Opinion para. 3]

[10] This was the extent of his written evidence concerning the OP test. Neither in his written evidence nor in his oral testimony did Mr. Gladstone even mention any policy of the OP. The fact that he has recognized that the subject property is designated "Neighbourhood" is not sufficient to explain if the variances meet the intent and purpose of the OP. Under the Neighbourhood designation, there are specific policies which needed to be assessed. No such assessment was done and that in itself was fatal to the Appellant's case.

[11] Mr. Gladstone was methodical to provide details on how Mr. Perry removed the driveway to his three-car garage and how much he had spent to date. When he purchased the property in 1999, there was a reverse slope driveway. Mr. Perry felt the angle of the slope was too extreme and hazardous, so he constructed a lift in the front yard which would lower his car, which he then could manoeuvre into the garage.

[12] He had to construct a cover because water and debris were finding their way into the lift. The variances before the Board were to permit him to enclose the area of the lift so that the lift was protected from the elements.

[13] It was clear from Mr. Gladstone's evidence that the proposed enclosure would be of high-quality design and construction. The various drawings submitted, which depicted what the finished product would look like, were certainly attractive. I have no doubt of the calibre of the enclosure to be constructed but unfortunately, that does not equate to satisfying the proper analysis required under the four tests.

[14] Also, what was of concern to the Board throughout the proceedings was that Mr. Gladstone had to be reminded on numerous occasions that he was appearing as a witness and not as an advocate. Although he said he would file an Acknowledgement of Expert's Duty after the fact, he did attest to its contents orally prior to his testimony.

[15] However, his testimony contained hyperbole and statements such as “this case is a slam-dunk” which had the effect of undermining his credibility as an objective, impartial expert witness. During cross-examination by Mr. Perry of Mr. Chow, Mr. Gladstone had to be told to stop providing direction and trying to control the cross-examination.

[16] This type of conduct is unacceptable of an expert witness who is required to provide evidence which is objective, non-partisan and impartial and by not adhering to the requirements of an expert witness, the credibility and preference for that witness’ evidence is seriously jeopardized.

### **ORDER**

[17] As such, I do not accept the evidence provided by Mr. Gladstone. The onus rested with the Appellant and that was not discharged. Therefore, the Board orders that the appeal is not granted and the variances are not authorized.

“J. V. Zuidema”

J. V. ZUIDEMA  
VICE-CHAIR