Varying Zoning Bylaw Use Provisions Through the Minor Variance Process. A Legal Impossibility?

A professional adviser to a property owner seeking to make changes to his property (new buildings, additions, alterations) and \ or change it's use in whole or in part (and in this article 'land use' and 'use' mean use of either or both of land and buildings or structures) will consider controls imposed by applicable zoning regulations. If a conflict exists between an owner's intent and such regulations, the ability to obtain regulation changes, and the disadvantages (including uncertainty, time, and expense) presented by the pursuit of same, will be a matter of consideration.

In general, of two (if not only) alternatives avenues available to obtain such changes (being through a bylaw amendment dealt with by the municipal council, or, alternatively, through the granting of variance by the committee of adjustment) the minor variance process is likely to be the preferred route, if it is available. In this regard, the time frame for decision making is a major advantage of the variance process; however, simplicity of the application process up to and including the hearing and decision (and on appeal if necessary) as well as cost (typically a fraction of the cost of the zoning amendment process) are attractions as well.

The variance route however, is not available in all situations. An owner's application for a variance must, in all cases, satisfy what are referred to as the 'four tests', namely:

1. The variance sought must be 'minor' [an undefined term];

2. The variance must be desirable for the appropriate development or use of the land, building or structure;

3. The variance must maintain the general intent and purpose of the official plan;

4. The variance must maintain the general intent and purpose of the bylaw being varied.

The committee of adjustment (or OMB on appeal) must be satisfied that each and all of these tests are satisfied, failing which the application must be denied.

While the best opinion on whether the tests will be found to be satisfied in any particular case will always be that of the committee (or OMB as the case may be), an adviser experienced in the process should be able to identify zoning conflicts that are unlikely to be successfully resolved through a variance process (for a specific example, when official plan and zoning controls specify that every residential property shall maintain 25% of it's area in open space, an application to cover the lot with a building while offering no substitute for the lost amenity could almost certainly be recognized as failing test 3 and 4 above, and probably 1). On the other hand, some situations are decidedly less predictable.

One gray area which remains so despite numerous administrative and judicial decisions on the subject (not to say several overhauls of the Planning Act generally, during which the legislature may have attempted, but did not, to clear away the fog) is the scope of the committee's ability to grant variances to regulations governing use.

Although section 45 of the Planning Act is clear in stating that 'use' may be the subject of a minor variance (see Appendix B), for a variety of reasons the school of thought has taken root that no variance which creates a new use permission can be the subject of a minor variance application. The rationale has it that since zoning bylaws permit, by expression or exception, specified uses, then it follows a variance which adds to the list of permitted uses (or overrides a prohibition) is by it's very nature a major change, out of keeping with the intent of the bylaw, and properly a matter to be accomplished only by bylaw amendment.

This point of view can lead to summary (without hearing evidence) rejection of a variance application. For example, in City of Toronto v. Truprop Ltd. (1995) 32 O.M.B.R. 490 (OMB) an application under appeal to the OMB was dismissed without a hearing on the merits on the basis that the application sought to permit a use (commercial parking lot) that was specifically prohibited in the zoning bylaw (see also City of Toronto v. City of Toronto Committeee of Adjustment (1997) 35 O.M.B.R. 374 (OMB) in which. is stated "there is a long line of Board cases that conclude that to permit a prohibited use cannot be said to maintain the intent and purpose of the by-law...I concur...". On the other hand, developing caselaw has shown that there is room for greater consideration in accommodating variances as to use, and that a hard principle does not exist that must be applied to all cases.

The purpose of this article is to review and comment on ten cases, administrative and judicial, which together serve to define the opposing views as to the ability and extent by which the minor variance process can accommodate new uses and which to illustrate the rationale for each view, and to provide conclusions for practical use.

Introduction to the Cases Reviewed

Of the ten cases reviewed two cases (Re: Convenience Services Ltd. and Barrie Committee of Adjustment (1982) 14 O.M.B.R. (High Court)), (MBS Developments v. City of North York Committee of Adjustment (1984) 16 O.M.B.R. 142 (OMB)) support the argument that a "new use" cannot be the subject of a minor variance approval.

The other eight, including one decided by the Court of Appeal (Re: City of London Bylaw (1960) 23 D.L.R. (2nd) 175 (C.A.)) and one decided recently by the Divisional Court (three judges) (Re: Fred Doucette Holdings Ltd. and City of Waterloo (1997) 32 O.R. (3rd) 502 (Ont. Div. Ct.)) clearly demonstrate that "new uses" can be accommodated through the minor variance process. They further demonstrate that an approach that narrows the consideration to a simple analysis of "newness" neither serves the purpose and intent of Section 45 nor addresses the bases upon which a decision should be made.

Review of the Cases

1. Re: City of London Bylaw (1960) 23 D.L.R. (2nd) 175 (C.A.)

Re: City of London Bylaw (1960) 23 D.L.R. (2nd) 175 (C.A.) is the fountainhead of much misunderstanding in the ongoing maturation of the debate over "new uses" through Section 45.

Reliance has been placed on the Court's statement that what is now Section 45 "does not give the Committee any power to establish a use...". This statement has been misinterpreted to mean that "new uses" cannot be accommodated through the variance process.

Clearly (as the Divisional Court noted in Re: Fred Doucette Holdings Ltd. and City of Waterloo (1997) 32 O.R. (3rd) 502 (Ont. Div. Ct.)), this was not the Court's conclusion. It was taking issue with the choice of language adopted by the committee. The committee's jurisdiction was to "...authorize or permit a minor variance in respect of the use of land..." not to "...establish a use...".

The Court's fundamental, indeed only, reason for setting aside the committee's decision was because, in referencing the permission to the undefined "...purposes of the Goodwill Rescue Mission...", it failed to characterize the use it was permitting with the clarity required by the Act. In doing so, however, the Court allowed that the committee might well have permitted the use had it been precise. It did so even though it recognized (page 176 of the decision) that "The bylaw, which specifies in some detail both permitted and forbidden uses, does not mention hostels or any use which would comprise the activities now carried on by the Goodwill Rescue Mission".

2. Victor v. City of Toronto Committee of Adjustment (1983) 16 O.M.B.R. 109 (OMB)

In Victor v. City of Toronto Committee of Adjustment (1983) 16 O.M.B.R. 109 (OMB) the OMB approved a variance to allow an office use in a garage in a residential zone which "...does not allow any commercial use".

After addressing the fact that the use would have no undue adverse effect on the residential character of the neighbourhood it dispensed with the jurisdictional argument (variance vs. rezoning) citing a well-known case (Macnamara v. Colekin (1977) 15 O.R. (2d) 718) in which the Divisional Court found an OMB decision in error for concluding a variance that wiped out a bylaw requirement could not be a minor variance.

3. Re: Convenience Services Ltd. and Barrie Committee of Adjustment (1982) 14 O.M.B.R. (High Court)

Re: Convenience Services Ltd. and Barrie Committee of Adjustment (1982) 14 O.M.B.R. (High Court) was a decision of a High Court Judge that quashed a committee decision that authorized a variance to permit a supermarket in a zone which allowed retail stores that offered "...for sale a more restricted range of goods, wares, merchandise, substances, articles and things than a retail store known as a supermarket...".

In reaching the decision the judge stated "I cannot think of circumstances where to permit the right to a use which is not permitted under a zoning bylaw can be considered a minor variation of that zoning bylaw". This statement can well be misinterpreted to extend beyond the facts of the case. A use was being permitted which was expressly excluded. It was not a case of a use being sought which was not directly addressed by the permissions\prohibitions.

The Divisional Court in Re: Fred Doucette Holdings Ltd. and City of Waterloo (1997) 32 O.R. (3rd) 502 (Ont. Div. Ct.), in considering the thrust of this case, noted that there were issues of notice and conduct bordering on fraud by the applicant, that the city planner viewed the variance as "major" and that a zoning change would not likely be approved by the council, and that the difference in use was considerable.

4. MBS Developments v. City of North York Committee of Adjustment (1984) 16 O.M.B.R. 142 (OMB)

MBS Developments v. City of North York Committee of Adjustment (1984) 16 O.M.B.R. 142 (OMB) illustrates the narrow, and now discounted, view that if a use is not permitted in the bylaw it cannot be accommodated by variance.

The facts were a property was zoned to permit professional medical offices. A variance was sought to allow a pharmacy dispensary.

In dismissing the application the simply took account of the fact the use sought was not permitted (an inevitable conclusion since otherwise no variance would be required). The decision does not address the surrounding factors which the cases reviewed below considered, correctly, to be relevant to the question.

5. Dziuryn v. Halton United Church Extension Council (1984) 16 O.M.B.R. 271 (OMB)

In Dziuryn v. Halton United Church Extension Council (1984) 16 O.M.B.R. 271 (OMB) the OMB authorized a church use on lands that had previously, as part of a single family zoning, had zoning which allowed such use. However, the lands had subsequently been rezoned to allow apartments and the church use was deleted at that time. The variance was limited to a 5 year time frame.

In allowing the variance the Board noted that the relevant factors were the restricted time period, the small scale of development, and the insignificant impact on surrounding uses.

6. City of Burlington v. Michael Weinberg and Associates Ltd. (1985) 17 O.M.B.R. 271 9 (OMB)

In City of Burlington v. Michael Weinberg and Associates Ltd. (1985) 17 O.M.B.R. 271 9 (OMB) a variance was sought for a "convenience-variety store" which was described as a smoke shop offering smoking supplies, magazines, stationery and limited amount of convenience food items for sale. The zoning permitted only three retail uses (book, stationery, and tobacconists).

The use sought was found by the Board to accommodate the type of stores which operate into the late evening or 24 hours a day and which generate a high level of vehicular and pedestrian activity on site, sometimes become a young peoples hangout, and can result in noise often lasting into the evening hours. The latter type of outlet was, by the bylaw, restricted to the opposite side of the street, away from a single family area.

Accepting the applicant's statement that this was not the intended intensity of use, the Board adjourned the hearing to allow the parties to arrive at a description of the use which would avoid the danger of a too-wide permission. In doing so, the Board dismissed

the notion that the issue was permitting a new use. The issue was avoiding the wider use which the official plan sought to direct elsewhere.

7. Westwood Mall Ltd. V. Mississauga Committee of Adjustment (1992) 28 O.M.B.R. 441 (OMB)

Westwood Mall Ltd. V. Mississauga Committee of Adjustment (1992) 28 O.M.B.R. 441 (OMB) involved a request to rehear and reverse a decision of another panel of the OMB which approved a variance to add three uses (two retail uses - fabric shops under 190 square metres, jewelry shops under 100 square metres - and a banquet hall) to a list of uses permitted by a site specific bylaw.

The site specific bylaw effected a modification of a certain general zoning category. The site specific bylaw deleted various uses generally permitted in the particular zone (including "shop in which new goods are sold at retail"), retained an extensive list of uses which were generally permitted, and added certain other uses.

The argument that the previous decision had gone beyond what Section 45 allowed was not supported. The board noted such things as similarity of uses, compatibility, functional relationships, etc., may be relevant in determining the minor nature of the variance, as well as the impact on adjacent uses and the established official plan and bylaw policies. The matter could not rest on a simple rote exercise.

8. City of London v. City of London Committee of Adjustment (1994) 30 O.M.B.R. 494 (OMB)

City of London v. City of London Committee of Adjustment (1994) 30 O.M.B.R. 494 (OMB) was an OMB decision which approved a variance to allow a former service station site to be used for a car sales lot (up to 25 cars).

The lands were located in a zone which permitted the sale of up to 6 cars when such was accessory to a primary auto repair use. Other zones allowed car sales as primary uses.

The Board cited a large number of cases dealing with the "new use" question, breaking them down into three categories (no jurisdiction to allow a new use / new use allowed because on the facts the new use was found to be minor / question not framed as "new" use or "use not permitted by the bylaw").

The Member's conclusion on the technical issue was that "...a synthesis of the case law seems to suggest that while the proposition that a variance cannot be given for a new use, this is only shorthand for saying that in overall context, the variance is not minor. In assessing whether it is minor, the relevant categories set out in the zoning bylaw help frame what is the intent of the zoning and official plan, and how far the new use strays outside that intent".

While acknowledging the key differences between the sought after use and that which was permitted in the zone, the Board noted that "...the categories in the zoning bylaw are only one aspect of the case..." and turned to the O.P. policies applicable to the land. These stated the "...Zoning bylaw will consider the appropriateness of the uses on specific sites or areas based on lot sizes, compatibility and traffic impacts as well as other criteria set out in Section 4.7 - Planning Impact Analysis...". The Board then compared this directive to the raw facts and found that the lot size was favourable compared to others in the area, compatibility and traffic impacts were also favourable, and there was

no adjacent residential uses. The Board also found there was an economic benefit to the use and this was relevant to the test of "desirability" of the use.

The Board concluded by noting "...the board is required to interpret the official plan broadly and purposefully and once the criteria in s. 4.5.7 (lot sizes etc.) are considered, this case merits a minor variance...".

9. Franco v. Town of Innisfil Committee of Adjustment (1996) 34 O.M.B.R. 184 (OMB)

In Franco v. Town of Innisfil Committee of Adjustment (1996) 34 O.M.B.R. 184 (OMB) the OMB approved a variance to allow a plaster casting operation to be run from a 560 sq. foot detached building behind the operator's 657 sq. foot house. The variance was opposed by the municipality which contended it should proceed by way of rezoning only.

Three variances were required: to allow an ancillary home occupation use, to allow that use in a building was more than 25% of the area of the house, and to allow that use in a detached structure.

The board noted that a home occupation was permitted in another residential zone, but was silent on such permission in the pertinent zone, and that the official plan specifically allowed a home occupation in an adjacent residential designation but was silent on the permission for the designation applying to the subject property. Nonetheless, the official plan designation was not for "pristine' residential development and the proposed use was not precluded by the policies. Likewise, in relation to the zoning, the prime permitted use would remain a single family detached dwelling. The intent of the bylaw standards were found to ensure that the proposed use was non-intrusive and maintained the residential character of the area. On that basis the variance was allowed. It was noted the bylaw amendment procedure could not be justified when the lot size is so generous, the use of no negative impact, and the structure non-intrusive in the residential area.

10. Re: Fred Doucette Holdings Ltd. and City of Waterloo (1997) 32 O.R. (3rd) 502 (Ont. Div. Ct.)

The tenth case, Re: Fred Doucette Holdings Ltd. and City of Waterloo (1997) 32 O.R. (3rd) 502 (Ont. Div. Ct.) concerned a Divisional Court challenge of a committee approval which allowed 50% of the permitted retail floor area of a building to be used for the retail of food products that are not processed on site whereas the bylaw only permitted the retail of products that are processed on the site.

The familiar argument was that the decision established a new use rather than varied an exiting use. As cited above the court correctly analyzed the thrust of the 1960 City of London case as addressing the need to particularize the use sought, rather than standing for the proposition that a variance cannot accommodate a new use.

In dismissing the challenge, the court stated "...the predominant theme from what emerges is the need to maintain a flexible approach, always relating the assessment of the significance of the variance to the surrounding circumstances and to the terms of the existing bylaw". The question "...is not helpfully described as whether a "new use" has been authorized, but rather whether the use permitted by the decision can be described as a "minor variance" in light of the bylaw and other factors specified by s. 45".

The dissenting opinion is also instructive in it's emphasis on tracking the policies of the official plan (which, like the bylaw, restricted retail sales to products produced on the premises) through to the zoning bylaw and noting that, in such background, a "...use which has been considered and excluded is not simply a 'not permitted' use. It is more akin to a 'prohibited use'".

The dissenting opinion cited, by way of distinction, the London case (City of London v. City of London Committee of Adjustment (1994) 30 O.M.B.R. 494 (OMB)) with acceptance, noting that "none of the elements which permitted the proposed use to be considered a minor variance in that case are present in this case. There are no planning criteria, area characteristics, zoning amendments or economic considerations which would permit a finding that the general intent and purpose of [the official plan and zoning bylaw] are maintained".

CONCLUSION

While there are decisions which boil debate over the jurisdiction to vary uses down to 'there is no jurisdiction of the use is new' the issue is far more subjective. Taking such a simplistic approach does not accommodate the range of considerations that should be brought to bear on the question. That question is one which, in general, must be dealt with on a case by case basis. Any variance as to use is ripe for criticism that it creates permission for a new use, but the fact of the matter is that being, or not being, a 'new use' is not a test that is expressed in section 45. While it may be a factor in assessing whether one or more of the specified tests are met, it should not be decisive. The existence of this gray area brings an undesirable uncertainty into the Planning Act process but is, in the context of the present legislation, unavoidable. The demands of expedience may require or promote the use of the variance process to resolve a particular zoning or other bylaw conflict. While the risk of failure may be present if use permissions are involved, there is no absolute rule. Each case depends on it's particular facts and, in the end, the committee's or OMB's view of their application to the four tests.

APPENDICES:

'A' Excerpts from sections 34 and 38 of the Planning Act

'B' Excerpts from section 45 of the Planning Act

'C' List of cases reviewed/digested

'D' List of other cases

APPENDIX 'B'

EXCERPTS FROM SECTION 34 AND 38 OF THE PLANNING ACT

Zoning by-laws

34.(1) Zoning by-laws may be passed by the councils of local municipalities:

Restricting use of land

1. For prohibiting the use of land, for or except for such purposes as may be set out in the by-law within the municipality or within any defined area or areas or abutting on any defined highway or part of a highway.

Restricting erecting, locating or using of buildings

2. For prohibiting the erecting, locating or using of buildings or structures for or except for such purposes as may be set out in the by-law within the municipality or within any defined area or areas or upon land abutting on any defined highway or part of a highway.

Marshy lands, etc.

3. For prohibiting the erection of any class or classes of buildings or structures on land that is subject to flooding or on land with steep slopes, or that is rocky, low-lying, marshy, unstable, hazardous, subject to erosion or to natural or artificial perils.

Contaminated lands or sensitive areas

3.1 For prohibiting any use of land and the erecting, locating or using of any class or classes of buildings or structures on land that is contaminated, that is a sensitive ground water recharge area or head-water area or on land that contains a sensitive aquifer.

Natural features and areas

3.2 For prohibiting any use of land and the erecting, locating or using of any class or classes of buildings or structures within any defined area or areas,
i. that is a significant wildlife habitat, wetland, woodland, ravine, valley or area of natural and scientific interest,
ii. that is a significant corridor or shoreline of a lake, river or stream, or
iii. that is a significant natural corridor, feature or area.
Significant archaeological resources

3.3 For prohibiting any use of land and the erecting, locating or using of any class or classes of buildings or structures on land that is the site of a significant archaeological resource.

Construction of buildings or structures

4. For regulating the type of construction and the height, bulk, location, size, floor area, spacing, character and use of buildings or structures to be erected or located within the municipality or within any defined area or areas or upon land abutting on any defined highway or part of a highway, and the minimum frontage and depth of the parcel of land and the proportion of the area thereof that any building or structure may occupy.

Minimum elevation of doors, etc.

5. For regulating the minimum elevation of doors, windows or other openings in buildings or structures or in any class or classes of buildings or structures to be erected or located within the municipality or within any defined area or areas of the municipality.

Loading or parking facilities

6. For requiring the owners or occupants of buildings or structures to be erected or used for a purpose named in the by-law to provide and maintain loading or parking facilities on land that is not part of a highway.

Pits and quarries

34.(2) The making, establishment or operation of a pit or quarry shall be deemed to be a use of land for the purposes of paragraph 1 of subsection (1).

Minimum area and density provisions

34.(3) The authority to regulate provided in paragraph 4 of subsection (1) includes and, despite the decision of any court, shall be deemed always to have included the authority to regulate the minimum area of the parcel of land mentioned therein and to regulate the density of development in the municipality or in the area or areas defined in the by-law.

Interpretation

34.(4) A trailer as defined in clause (a) of paragraph 101 of section 210 of the Municipal Act and a mobile home as defined in subsection 46 (1) of this Act shall be deemed to be a building or structure for the purposes of this section.

Prohibition of use of land, etc., availability of municipal services

34.(5) A by-law passed under paragraph 1 or 2 of subsection (1) or a predecessor of that paragraph may prohibit the use of land or the erection or use of buildings or structures unless such municipal services as may be set out in the by-law are available to service the land, buildings or structures, as the case may be.

Certificates of occupancy

34.(6) A by-law passed under this section may provide for the issue of certificates of occupancy without which no change may be made in the type of use of any land covered by the by-law or of any building or structure on any such land, but no such certificate shall be refused if the proposed use is not prohibited by the by-law.

Use of maps

34.(7) Land within any area or areas or abutting on any highway or part of a highway may be defined by the use of maps to be attached to the by-law and the information shown on such maps shall form part of the by-law to the same extent as if included therein.

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Interim control by-law

38.(1) Where the council of a local municipality has, by by-law or resolution, directed that a review or study be undertaken in respect of land use planning policies in the municipality or in any defined area or areas thereof, the council of the municipality may pass a by-law (hereinafter referred to as an interim control by-law) to be in effect for a period of time specified in the by-law, which period shall not exceed one year from the date of the passing thereof, prohibiting the use of land, buildings or structures within the municipality or within the defined area or areas thereof for, or except for, such purposes as are set out in the by-law.

Extension of period by-law in effect

38.(2) The council of the municipality may amend an interim control by-law to extend the period of time during which it will be in effect, provided the total period of time does not exceed two years from the date of the passing of the interim control by-law.

APPENDIX 'B'

EXCERPT FROM SECTION 45 OF THE PLANNING ACT

Powers of committee; general

45.(1) The committee of adjustment, upon the application of the owner of any land, building or structure affected by any by-law that is passed under section 34 or 38, or a predecessor of such sections, or any person authorized in writing by the owner, may, despite any other Act, authorize such minor variance from the provisions of the by-law, in respect of the land, building or structure or the use thereof, as in its opinion is desirable for the appropriate development or use of the land, building or structure, if in the opinion of the committee the general intent and purpose of the by-law and of the official plan, if any, are maintained.

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Powers of the committee to grant minor variances

45.(3) A council that has constituted a committee of adjustment may by by-law empower the committee of adjustment to grant minor variances from the provisions of any by-law of the municipality that implements an official plan, or from such by-laws of the municipality as are specified and that implement an official plan, and when a committee of adjustment is so empowered subsection (1) applies with necessary modifications.

APPENDIX C
CASES REFERENCED / DIGESTED

1. Re: City of London Bylaw (1960) 23 D.L.R. (2nd) 175 (C.A.)

2. Victor v. City of Toronto Committee of Adjustment (1983) 16 O.M.B.R. 109 (OMB)

3. Re: Convenience Services Ltd. and Barrie Committee of Adjustment (1982) 14 O.M.B.R. (High Court)

4. MBS Developments v. City of North York Committee of Adjustment (1984) 16 O.M.B.R. 142 (OMB)

5. Dziuryn v. Halton United Church Extension Council (1984) 16 O.M.B.R. 271 (OMB)

6. City of Burlington v. Michael Weinberg and Associates Ltd. (1985) 17 O.M.B.R. 271 9 (OMB)

7. Westwood Mall Ltd. V. Mississauga Committee of Adjustment (1992) 28 O.M.B.R. 441 (OMB)

8. City of London v. City of London Committee of Adjustment (1994) 30 O.M.B.R. 494 (OMB)

9. Franco v. Town of Innisfil Committee of Adjustment (1996) 34 O.M.B.R. 184 (OMB)

10. Re: Fred Doucette Holdings Ltd. and City of Waterloo (1997) 32 O.R. (3rd) 502 (Ont. Div. Ct.)

11. City of Toronto v. Truprop Ltd. (1995) 32 O.M.B.R. 490 (OMB)

12. City of Toronto v. City of Toronto Committeee of Adjustment (1997) 35 O.M.B.R. 374 (OMB)

APPENDIX D

ADDITIONAL CASES [NOT DIGESTED IN ARTICLE]

1. Cochi v. Borough of York Committee of Adjustment (1983) 15 O.M.B.R. 209 (OMB)

-Variance refused as use sought would be a new use [gas station with accessory used car sales allowed, variance sought permission to sell new cars.

2. Rally Holdings Ltd. v. Town of Midland (1975) 5 O.M.B.R. 255

- variance denied for lack of authority to 'legislate a new use into the bylaw'.

3. Deem Management Services v. City of Mississauga (no. 1) (1979) O.M.B.R. 455 (OMB)

-variance sought to permit residentially zoned property to be used as administrative office for a nursing home; application should not be disposed of summarily; evidence on merits should be heard before decision is made on jurisdiction.

4. Deem Management Services v. City of Mississauga (no. 2) (1980) 12 O.M.B.R. 348 (OMB)

-variance sought to permit residentially zoned property to be used as administrative office for a nursing home denied as not meeting any of the four tests set out in section 45.

5. City of Brampton v. City of Brampton Committee of Adjustment (1987) 36 M.P.L.R. 262 (OMB)

- freestanding restaurant use not listed as permitted use in industrial zone; permission would be major departure from uses permitted; therefore, variance not minor.

6. Sochaczewdki v. City of Scarborough Committee of Adjustment (1996) 34 O.M.B.R. 125 (OMB)

-variance sought to allow donut shop with seating; zone permitted takeout restaurants; restaurant (sit down) not listed as a permitted use; no jurisdiction to establish new use; variance cannot be considered minor; application denied.