

Issue Date:

May 21, 2009



PL081508

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: Phu Chan Lao
Subject: Minor Variance
Variance from By-law No.: 0225-2007
Property Address/Description: 596 Amesbury Avenue
Municipality: City of Mississauga
OMB Case No.: PL081508
OMB File No.: PL081508
Municipal No.: A-362/08

APPEARANCES:

Parties

Counsel*/Agent

Phu Chan Lao and La Ngoc Lao (not present)

C. Relf

City of Mississauga

A. Wilson-Peebles*

MEMORANDUM OF ORAL DECISION DELIVERED BY M. A. SILLS ON MARCH 4, 2009 AND ORDER OF THE BOARD

La Ngoc and Phu Chan Lao (Applicants/Appellants) have appealed the decision of the City of Mississauga (City) Committee of Adjustment (COA) which refused their application for a minor variance for their property located at 596 Amesbury Avenue in the City of Mississauga.

The Applicants/Appellants have constructed a paved driveway without permission, which exceeds the maximum driveway width permitted by Zoning By-law No. 0225-2007 and are now seeking authorization of the following variance:

- to legalize the existing driveway having a width of 7.3 metres where the maximum width permitted is 50 per cent of the lot frontage, which in this instance, is 6.1 metres.

Municipal planner, Ms Krystina Collins gave evidence on behalf of the City. Ms Collins explained the intent of the Official Plan and planning rationale used to determine the standards set out in the Driveway Controls By-law. She told the Board that although there are a number of non-compliant driveways in this neighbourhood, enforcement is complaint-driven and to date, this is the only driveway for which a complaint has been launched. She said the City is concerned that if this application is approved, it will set a precedent for all others.

The Applicants/Appellants did not attend the hearing, but were represented by Mr. Clifford Relf who is a friend of the family. Mr. Relf told the Board there were several non-compliant driveways in this neighbourhood so the Applicants/Appellants were unaware that constructing their driveway to the present width exceeded the maximum permitted. He said they had not intended to contravene the City's By-law and were prepared to remove a portion of the driveway, but were requesting permission to return it to the 6.3 metres width as it existed prior to the re-construction. The Board was told that prior to the enactment of Driveway Control By-law No. 226-92, the standard respecting driveway width was 6.5 metres. The new by-law passed in 1992 changed the standard to only permit driveway widths which were proportionate to the lot frontage, but contained a provision which effectively deemed driveways that existed on or before the day that the by-law came into force, to be legal and in compliance with the by-law. Under existing By-law No. 0225-2007, the Applicants/Appellants are permitted a maximum driveway width of 6.1 metres.

At the request of the parties, the Board stood down for thirty minutes to allow for further discussion with respect to the Applicants/Appellants' request. When the hearing re-convened, the Board was advised that a settlement had been reached between the parties.

The settlement results from the parties agreeing to an amended application, which permits a driveway width of 6.3 metres, subject to the conditions set out in the Minutes of Settlement. This settlement effectively achieves compliance with the

provisions of the by-law and returns the Applicants/Appellants' to the same position they were in prior to the re-construction of the driveway.

THE BOARD ORDERS the appeal is allowed in part, and the variance to By-law No. 0225-2007 is authorized subject to the conditions set out in Attachment "1" to this Decision. In all other respects, the appeal is dismissed.

So Orders the Board.

"M. A. Sills"

M. A. SILLS
MEMBER

Ontario Municipal Board

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

Applicant and Appellant:	La Ngoc Lao and Phu Chan Lao
Subject:	Minor Variance
Variance from By-law No.:	0225-2007, as amended
Property Address/Description:	596 Amesbury Avenue
Municipality:	City of Mississauga
OMB Case and File No.:	PL081508
Municipal No.:	A362/08

MINUTES OF SETTLEMENT

BETWEEN:

LA NGOC LAO and PHU CHAN LAO

and

THE CORPORATION OF THE CITY OF MISSISSAUGA

WHEREAS La Ngoc Lao and Phu Chan Lao are the owners of a residential property known municipally as 596 Amesbury Avenue in the City of Mississauga (the "Lands");

AND WHEREAS La Ngoc Lao and Phu Chan Lao (the "Owners") applied to the Committee of Adjustment for the City of Mississauga (the "COA") for approval of a minor variance to permit an existing driveway having a width of 7.30m (23.95 ft.) to remain, whereas By-law 0225-2007, as amended, permits a maximum driveway width of 50% of the lot frontage, being 6.10m (19.68 ft.) in this instance;

AND WHEREAS the COA refused to grant the variance as applied for;

AND WHEREAS the Owners appealed the refusal of the COA to the Ontario Municipal Board (the "OMB");

AND WHEREAS the City of Mississauga (the "City") and the Owners as represented by their authorized agent attended before the OMB on March 4, 2009;

AND WHEREAS at the hearing the City and the Owners' agent agreed that the variance as applied for did not constitute good planning;

AND WHEREAS prior to the construction of the extended driveway, the Owners' driveway was 6.30m (20.67 ft.) wide and deemed legal non-compliant pursuant to By-law 0225-2007;

AND WHEREAS the parties determined that they are prepared to resolve the dispute on terms they wish to set out in Minutes of Settlement;

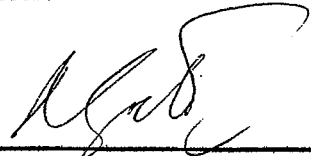
AND WHEREAS the OMB issued an oral approval of the settlement at the OMB hearing;

NOW THEREFORE these Minutes of Settlement witnesseth that the Owners and the City agree as follows:

1. The Owners and the City agree that the Owners will amend their minor variance application to authorize a driveway having a width of 6.30m (20.67 ft.), whereas By-law 0225-2007, as amended, permits a maximum driveway width of 50% of the lot frontage, being 6.10m (19.68 ft.) in this instance.
2. The approval of the variance to permit a driveway having a width of 6.30m (20.67 ft.) will be subject to the following conditions:
 - a. The driveway shall be constructed with a width of no more than 6.30 m (20.67 ft.), except that a walkway from the driveway to the front entrance of the house, measuring no more than 1.21 m (4.0 ft.) from the front face of the garage shall be permitted.
 - b. The asphalt currently in place on the remainder of the front lawn in excess of the 6.3 m (20.67 ft.) driveway, shall be removed and the area shall be sodded or planted with soft landscaping materials.
 - c. The Owners shall comply with the site plan drawing attached hereto as schedule 1.

- d. A letter shall be received from the City of Mississauga, Planning and Building Department, indicating that the driveway has been satisfactorily constructed in accordance with schedule 1 hereto.

Dated: APR 30, 2009



La Ngoc Lao


Dated: APR 30, 2009



Phu Chan Lao


The Corporation of the City of Mississauga

Dated: May 1, 2009



Andrea Wilson-Peebles
Legal Counsel

Dated: May 1, 2009



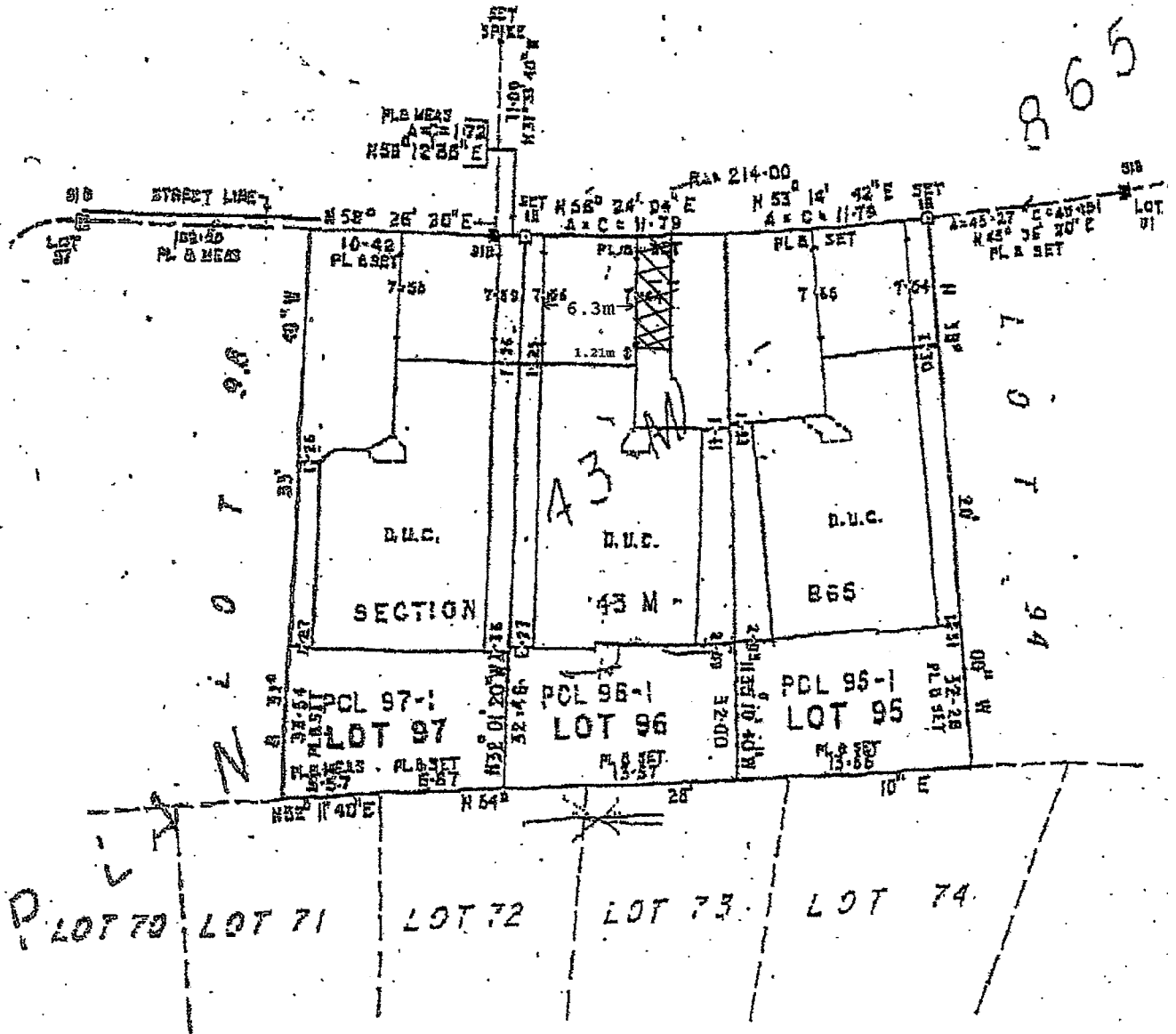
Krystina Collins
Planner

I/We have authority to bind the Corporation

SCHEDULE I

AMESBURY AVENUE
(BY PLAN 43M-865)

865



SECTION 10 T 9 S

LOT 94

P LOT 70 LOT 71 LOT 72 LOT 73 LOT 74

Legend



Area to be reinstated with so