

ISSUE DATE:

Mar. 26, 2009



PL090034

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:	Mike Santaluce
Subject:	Minor Variance
Property Address/Description:	51 Lancer Drive
Variance from By-law:	1-88
Municipality:	City of Vaughan
OMB Case No.:	PL090034
OMB File No.:	PL090034
Municipal File No.:	A331/08

APPEARANCES:

Parties

Mike Santaluce

City of Vaughan

Counsel

Claudia Storto

DECISION DELIVERED BY R. ROSSI AND ORDER OF THE BOARD

Mike Santaluce (the Applicant) seeks to build a new residential dwelling in place of an existing bungalow in the City of Vaughan and has requested a variance to permit lot coverage of 25.98% whereas the By-law requires maximum lot coverage of 20%.

Since the time of the Committee of Adjustment's failure to approve the variance, the Applicant has amended his original application for slightly reduced lot coverage of 25.98% whereas the original application before the Board sought lot coverage of 26.5%. On consent, the Board determines the amendment to be minor and amends the application and in accordance with subsection 45(18) 1.1 of the *Planning Act*, the Board determines that no further notice is required.

Planner Rosemarie Humphries spoke in support of the application. The subject site is located in the Old Village of Maple. The area is designated Low Density Residential in the Maple Community Plan (OPA No. 350).

In her opinion, policies 1.1 a and d of this Plan apply to the application and are met: that single-detached housing is permitted and that development within existing neighbourhoods shall be compatible with the existing neighbourhood character in terms of physical form and scale.

The planner provided photographs that depict area dwellings that were the subject of variance applications as they related to lot coverage. Both in scale and form, there are a variety of homes and Ms Humphries opined that the proposed development is compatible both in scale and form with houses in the neighbourhood. The houses on either side of the subject lands exceed the coverage, with the westerly bungalow having approximately 30% lot coverage and the 1-2-storey component dwelling on the easterly side having approximately 26% lot coverage.

Zoning By-law 1-88 zones the area as R1V (Old Village Residential). The Board notes that the proposed design complies with all other requirements of the By-law. The planner considered the Applicant's situation to be 'unique' as two houses surround it with greater lot coverage while abutting the southerly R2 zone that permits maximum lot coverage of 40% for residential dwellings.

Ms Humphries said that the City has been applying a 23% lot coverage standard recently – a figure that exceeds the traditional 20% standard. She presented a table to the Board that indicated that the Applicant's actual living space in the proposed design represents 155.7 square metres or 18.19% lot coverage. The By-law standard of 20% is exceeded only when the three-car garage and portico are included in the calculation that caused the lot coverage to climb to 25.98%. She added that the Applicant would not be at the Board if the third garage space had been removed from the design, but as a matter of his personal choice, the Applicant wants all of the usable space contained under one roof. She noted that one would not see the third garage space at the rear of the house. The Applicant provided a rendering of the as-of-right allowance for a two-storey dwelling that could be built on the subject lands that would comply with the 23% lot coverage that City

Council regularly approves for two-storey dwellings. Instead, he said that he sought to create a more appealing design but one that requires the greater lot coverage.

Ms Humphries opined that the proposed new dwelling would fit within the character of the existing neighbourhood and would be similar to the homes on either side of the subject land that enjoy higher lot coverage.

While Ms Humphries opined that the application meets the four tests for a minor variance as outlined in subsection 45(1) of the *Planning Act*, her evidence did not address two of the four tests; specifically, whether the variance maintains the general intent and purpose of the Zoning By-law and whether the proposed variance is minor in nature. She offered however, that the application maintains the general intent and purpose of the Official Plan and that it is 'appropriate' (that is, that it is desirable for the appropriate development of the subject lands) by virtue of its 'unique' position as a property situated between two previously approved applications that enjoy larger lot coverage.

The Board notes that approvals for redevelopment of the houses on either side of the subject dwelling were received some years prior to City Council's adoption of the amended lot coverage figure. It is noteworthy that 53 Lancer Drive (beside the Applicant's existing bungalow) had its expansion approved for the rear of the house and while continuing to present to the street in very similar appearance to the bungalow beside it at 55 Lancer Drive. The Board notes that the subdivision, created in 1959 and originally comprised exclusively of bungalows, many of which exist today as the prominent residential dwelling type, has a rural feel with its mature landscape, lack of sidewalks and lots that are larger than the type of urban lots being created elsewhere in the City.

Appearing before the Board on her first occasion, City Planner Mary Serino spoke in opposition to the application. Ms Serino's evidence was more comprehensive and more persuasive than that offered in support of the application. Further, Ms Serino was the only planner to provide evidence on all four tests for a minor variance.

Ms Serino advised the Board that through its Official Plan Amendments and Zoning By-laws, the City is attempting to protect these R1V residential zones of which there are very few left. These large lots are scarce within the City of Vaughan and they are now threatened with redevelopment applications for larger houses that are creating a more

urban feel as the larger homes can overpower the existing bungalows and in some cases, remove them for replacement as new, larger, urban dwelling forms that are so prevalent outside of the few remaining R1V zones. The Board was told that the City's heritage district (designated under the *Heritage Act*) includes some of these R1V (Old Village Residential Zone) areas. The fact that this R1V is in close proximity to (and indeed, is partly encompassed by the heritage district) is an established fact and was unchallenged by the Applicant.

Ms Serino offered to the Board a comprehensive review of the City's thinking regarding bungalows and the increase in development applications in mature and established areas such as Maple by recognizing and protecting the historical pattern of lot sizes in the community. The December 2002 Council meeting noted the Council's desire to put in place policies that "recognize and protect the historical pattern of lot sizes in these neighbourhoods." Section 1.5(b) (ii) of OPA #350 – Maple Community Plan – states that "All development in older established residential areas of historic, architectural or landscape value shall be consistent with the overall character of the area." Council recognized however, that this section did not address the "purpose or intended future for this portion of the Maple community." Accordingly, the section was revised as follows:

Older established core residential areas characterized by original large lots, or having historical, architectural or landscape value, shall be recognized as unique enclaves to be protected within the broader community, and any development shall protect the integrity of the area and be consistent with its overall character.

This resulted in Zoning By-law Amendment 51-2003 that amended OPA 588 to the Official Plan of the Vaughan Planning Area whose purpose is to "...have the effect of recognizing and protecting the historical pattern of large residential lot sizes in the Maple Core."

In its review of the R1V Old Village Residential Zones in 2003, Council determined that 20% lot coverage standard would permit a new bungalow or expansion of an existing bungalow home. The purpose was to facilitate bungalows as a housing form "by enabling the scale of the dwelling to be commensurate with the size of the lot and the surrounding redeveloped units." In 2004, City Planning Staff provided its report to Council and suggested that a revised standard for lot coverage be made to Zoning By-law 1-88 to permit an increase in the maximum lot coverage for one-storey (bungalow) dwelling units

only to 26% on a lot, provided that the maximum building height on the same lot shall be 7.0 metres. Subsequently, Council revised downward and approved a final figure of 23% lot coverage. Zoning By-law 121-2004 was passed on April 26, 2004, and amended the provisions of R1V Old Village Residential zone requirements of By-law 1-88 by permitting an increase in the maximum lot coverage for one-storey (bungalow) dwelling units only, to 23%, provided that the maximum height did not exceed one storey with a loft and 7.0 metres.

Ms Serino told the Board that the intent of the By-law is to maintain two-storey dwellings at 20% lot coverage and approvals have been made up to a maximum of 23%. She added that the Committee of Adjustment is adamant that all applications for increased lot coverage in the few remaining R1V zones after 2004 should not exceed 23%. The only manner in which greater lot coverage can be granted is if a covered, unenclosed porch is included in the total calculation. Examples of "Lot Coverage Minor Variance" applications post-By-law 2004 appear in Exhibit 4, Tab 15.

Ms Serino addressed all four tests for a minor variance. She opined that while the proposed development meets the general intent of OPA #350 (low density, single-family dwellings are permitted), the variance requested does not maintain the general intent and purpose of OPA #588 as the character is not maintained and the proposal does nothing to protect the historical recognition attributed to this area of the Maple community.

The general intent and purpose of the Zoning By-law is not maintained as the intent has been always to maintain 20% lot coverage for a dwelling such as the one proposed and an increase to 23% lot coverage is permitted only for bungalows and a maximum height of 7.0 metres. What is proposed is not a bungalow and it exceeds significantly the 7.0-metre height standard as contained in the By-law.

The variance is not desirable for the appropriate development of the subject lands as a result of the impact the larger home and lot coverage would create on the adjacent one-storey dwelling and the proposal is not consistent or in keeping with the R1V area in which the subject lands are located. Lastly, the variance is not minor by virtue of the impact it creates on the surrounding R1V area. In this regard, Ms Serino pointed to the two-storey dwelling at 46 Lancer Drive that, although approved at 23% lot coverage, still looms over the surrounding bungalows.

As for the Applicant's chart depicting approvals for higher Gross Floor Area (GFA) calculations in the surrounding neighbourhood, Ms Serino noted that the City does not base its application reviews on house size or a maximum GFA for the simple reason that there are so many different lot sizes. Rather, planning staff reviews are made more appropriately on lot coverage and in this regard, the planning instruments are clear as to the standard and the cases in which an increase is permissible. The Applicant's proposal and the variance do not meet these. Ms Serino was also quick to point out for the Board's reference the far smaller lot coverage approvals for bungalows in the immediate area. And, where homes of larger size and scale have been approved, these have been permitted at 23% lot coverage or exceeding that only where the covered, unenclosed porch provision has been included to cause the coverage figure to be exceeded. In this case, the Applicant is proposing to enclose everything under one roof, creating a need for a variance nearly 30% above what the By-law permits. The Board found also persuasive Ms Serino's evidence that even though the as-of-right allowance for a home that is larger in scale would be possible on the subject property, it is the lot coverage that most concerns the City and the matter with which the Board must concern itself in determining whether the four tests have been met.

An Interested Participant spoke in opposition to the application, complaining that the neighbourhood is under siege from people asking for applications with higher variances in this old neighbourhood with its distinctly rural feel. Area resident Jean Geddes provided the Board with a comprehensive list of City of Vaughan Committee of Adjustment rulings between the years 2002-2007 (pre-dating and post-dating the relevant By-laws) in respect of the R1V subdivisions in Maple. Most telling was the fact that no applicant received more than 23% lot coverage in cases where higher lot coverage was sought. And, in respect of Ms Serino's charted examples, anyone receiving a higher variance for lot coverage in this area received approval with the porch included in the calculation.

Another resident who also opposed the application noted that the existing lot coverage standard gives the neighbourhood its character and the proposed development affects negatively the ambiance of the community and is incompatible in physical form and scale. As Gerhard Schiller noted, there are other lots in the larger neighbourhood that could accommodate a house of the size the Applicant has proposed but it is inappropriate

for this smaller lot and as stated, requires a variance for increased lot coverage not provided for either by the City nor the Board to date.

One resident spoke in support of the application and he said two-storey homes are situated on either side of his old bungalow. He said the proposed design is nicer than what could be built as-of-right. The Board notes that this resident is in fact involved in building, subject to the City's building permit and approvals processes, homes that are as large or larger than what the Applicant proposes. In the case of his statement, the Board could not but consider his economic motivation for appearing in support of this application in light of his vocation as a builder. Anecdotal evidence was also furnished from one of the opposing participants that this resident is building a house on Lancer that proposes lot coverage even greater than what the Applicant has sought at this hearing.

The Board has considered carefully all of the evidence presented and is persuaded that the City of Vaughan has approached the subject of lot coverage with considerable thought and effort and community involvement, dating back several years and resulting in its informed decision as contained in its various planning instruments that preserves the historical and older residential features of these R1V and heritage district zones by setting appropriate lot coverage standards. This fact was supported by Planner Serino's comprehensive planning evidence and as the only planner to review all four tests for a minor variance. The Board has preferred Ms Serino's evidence in the case at hand to that of Ms Humphries as being more comprehensive and founded upon the planning history and evolution of the R1V lot coverage standard in the City of Vaughan. Neither the Applicant nor his planner were able to provide sufficient or persuasive planning justification to seek lot coverage of nearly 30% where the evidence demonstrates overwhelmingly that the City's approach has been entirely consistent since the enactment of the relevant planning instruments put before the Board. The Board determines there is no good planning reason to grant the minor variance in the case at hand.

In this regard, the Board determines the Applicant's proposed lot coverage of 25.98% to be excessive and not to be minor. While meeting the requirement of OPA #350 in proposing a single-family home, the resulting lot coverage does not meet the general intent and purpose in the context of the permitted lot coverage in the Zoning By-law and is not desirable for the appropriate development of the subject lands by virtue of the property's location in an area that the City seeks to protect the prevailing bungalow house

form and neighbourhood ambiance. As he is at the design stage of his application, the Board notes that the Applicant can elect to revise his drawings to create a design that would meet the 20% lot coverage standard or by extension, a design with 23% lot coverage that the City would, based on its approval history for similar applications, regard more favourably.

In any event, the Board determines that the variance is not minor and does not meet the four tests for a minor variance as set out in section 45(1) of the *Planning Act*. The Board dismisses the appeal and does not authorize the requested variance.

So Orders the Board.

"R. Rossi"

R. ROSSI
MEMBER