

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



**ISSUE DATE:** June 27, 2014

**CASE NO(S):** PL130483

Applicant and Appellant: Alexandra Mouzitchka  
Subject: Consent  
Legislative Authority: Subsection 53(19) of the Planning Act, R.S.O.  
1990, c. P.13, as amended  
Property: 2532 Glengarry Road  
Address/Description:  
Municipality: City of Mississauga  
Municipal File No.: B-032/13  
OMB Case No.: PL130483  
OMB File No.: PL130483

Applicant and Appellant: Alexandra Mouzitchka  
Subject: Minor Variance  
Legislative Authority: Subsection 45(12) of the Planning Act, R.S.O.  
1990, c. P.13, as amended  
Variance from By-law No.: 0225-2007  
Property: 2532 Glengarry Road  
Address/Description:  
Municipality: City of Mississauga  
Municipal File No.: A132/13  
OMB Case No.: PL130483  
OMB File No.: PL130485

Applicant and Appellant: Alexandra Mouzitchka  
Subject: Minor Variance  
Legislative Authority: Subsection 45(12) of the Planning Act, R.S.O.  
1990, c. P.13, as amended  
Variance from By-law No.: 0225-2007  
Property: 2532 Glengarry Road  
Address/Description:  
Municipality: City of Mississauga  
Municipal File No.: A131/13  
OMB Case No.: PL130483  
OMB File No.: PL130484

**APPEARANCES:****Parties**

Alexandra Mouzitchka

City of Mississauga

**Counsel**

R. Jarvis

R. Kehar

**Participants**

Lily Marcinek

Orazio Valente

**HEARING EVENT INFORMATION:**

Hearing: Held in Mississauga, Ontario on March 26, 2014

**DECISION DELIVERED BY M. A. SILLS AND ORDER OF THE BOARD**

[1] Alexandra Mouzitchka (“Applicant/Appellant”) has appealed the decision of the City of Mississauga (“City”) Committee of Adjustment (“COA”) to refuse applications for consent and minor variances for the property located at 2532 Glengarry Road (“subject property”).

**CONTEXT**

[2] The subject property is designated Neighbourhoods, Residential Low Density 1, by the City of Mississauga Official Plan (“local OP”), and zoned Residential (R1-9) by Zoning By-law No. 0225-2007 (“ZBL”).

[3] The Applicant/Appellant is proposing to divide the property into two parcels and to construct a new two-storey home on each lot. The retained and severed parcels would each have a frontage of approximately 15.24 meters (“m”) and lot area of 812.14 square m. An existing vacant L-shaped bungalow is to be demolished.

[4] The severance would result in both parcels requiring a minor variance for lot frontage, as follows:

1. To permit a lot frontage of 15.24 m, whereas a minimum lot frontage of 22.50 m is required.

[5] Local residents Lily Marcinek (2509 Glengarry Road) and Orazio Valente (2542 Glengarry Road) were granted participant status. They are opposed to the applications.

### **PLANNING EVIDENCE**

[6] Ben Quan is a retired member of the Ontario Provincial Planners Institute, with almost 40 years of experience in land use planning, including 25 years in various capacities within municipal planning departments. He provided contextual and expert opinion evidence in support of the applications and proposal.

[7] The subject property is located within the Erindale Neighbourhood, a fully-serviced (including transit), stable residential neighbourhood which is experiencing a great deal of regeneration in the form of additions and new builds. Glengarry Road serves as the connecting corridor through this neighbourhood.

[8] The subject site is on the west side of Glengarry Road and is approximately 100 feet ("ft..") wide by 175 ft. deep. The two properties to the north and three properties to the south all have 100 ft. frontages; the properties on the east side of the street within the immediate block all have 50 ft. frontages.

[9] Mr. Quan takes the position that the severance proposal is consistent with the objectives of the Provincial Policy Statement ("PPS") and the directives of the Growth Plan for the Greater Golden Horseshoe ("GP"), and conforms to the local planning instruments. In this regard, he referenced a number of the provisions of the Provincial and local planning policies which he contends support the proposal.

[10] Specifically, the proposal is consistent with Provincial planning policies intended to promote intensification in built-up areas, the efficient use of lands and existing infrastructure, promoting efficient development patterns and compact building forms, the utilization of cost-effective development standards, and the provision of a range and mix of housing types.

[11] The proposal represents minor intensification within a settlement area by the addition of one single family home to the current housing stock and makes better use of an underutilized lot within a fully serviced area.

[12] In the same vein, the proposal is consistent with the intensification policies of the Region of Peel OP (ROP") which "directs a significant portion of new growth to built-up areas, and promotes compact urban form, intensification and redevelopment" (s. 5.5.3). In his opinion, the proposal is consistent with all of the express objectives as set out in s. 5.5.3.1.

[13] The ROP further commits to "achieving a supply of accessible, adequate and appropriate housing of all types, sizes, densities and tenures to meet the existing and projected demographic and housing market requirements of current and future residents" (s. 5.8). Notably, the Region of Peel ("Region") indicated it has no concerns with respect to the severance of the property or the minor variances for reduced frontage.

[14] Similarly, the Housing Policies of the local OP sets out that "when making planning decisions, Mississauga will ensure that housing is provided in a manner that fully implements the intent of the Provincial and Regional housing policies" (s. 7.2.3).

[15] Albeit, Mr. Quan acknowledges that the local OP establishes that Neighbourhoods "will not to be the focus for intensification and should be regarded as stable residential areas where the existing character is to be preserved" (s. 5.3.5.1), it is his opinion that all appropriate areas should be considered for intensification.

[16] In support of this, the Board was referred to s. 5.3.5.5 which sets out that “intensification within Neighbourhoods may be considered where the proposed development is compatible in built form and scale to surrounding development, enhances the existing and planned development and is consistent with the policies of the Plan”.

[17] Moreover, the Housing policies of the local OP commit to ensuring “that housing is provided in a manner that maximizes the use of community infrastructure and engineering services, while meeting the housing needs and preferences of Mississauga residents” (s. 7.2.1). While Mr. Quan noted that there are special policy areas within the Erindale neighbourhood which should be subject to greater scrutiny, the subject property is not in one of these areas.

[18] In summary, it was his professional opinion that the severance application meets all of the applicable criteria established by s. 51(24) of the *Planning Act* (“Act”), has appropriate regard to the matters of Provincial interest, and is in the public interest. In his view, this is exactly the kind of area where the type of development should be occurring.

[19] Mr. Quan then turned his attention to the planning merits of the minor variance applications. In this regard, it was his professional opinion that the applications satisfy the criteria established by s. 45(1) of the Act.

[20] Mr. Quan submitted that the general intent and purpose of the local OP is to express the municipality’s vision in respect to how the City and its neighbourhoods are to develop. In the case of the Low Density 1 designation, the OP envisions a neighbourhood of detached dwellings.

[21] The local OP also directs that “when making planning decisions, Mississauga will ensure that housing is provided in a manner that fully implements the intent of the Provincial and Regional housing policies” (s. 7.2.3). As previously noted, the objectives of the ROP include many policies that promote intensification and the achievement of compact and efficient urban forms. It was his opinion that

the variances maintain the general intent and purpose of both the ROP and the local OP.

[22] The general intent and purpose of the ZBL is to create conditions whereby land uses can co-exist harmoniously with adjacent properties and the neighbourhood as a whole. The two new proposed homes will be attractive, modern two-storey detached dwellings that will meet all other standards of the ZBL; in particular, building setback, building height and maximum lot coverage.

[23] In his view, these are the performance standards which inherently address the issue of harmony, regardless of what the lot frontages are in this diverse neighbourhood. It was his opinion that the variances maintain the general intent and purpose of the ZBL.

[24] Mr. Quan submitted that the critical issue in determining whether a variance is desirable for the appropriate development of a property amounts to the “compatibility” of the development in relation to its surroundings. In this regard, the neighbourhood, and indeed the immediate area, is clearly not homogeneous.

[25] Rather, this is a diverse neighbourhood consisting of a mix of older and newer, one and two-storey dwellings, on various sized lots; in particular, there is a mix of lot frontages, including within the immediate area.

[26] This is a neighbourhood which is in transition and undergoing significant rejuvenation. Many of the older homes are being replaced with new houses as the neighbourhood strives to re-invent itself. In his opinion, the variance for reduced lot frontage is desirable and appropriate because it will facilitate the development of two new modern homes which will be compatible with other dwellings in this diverse neighbourhood.

[27] Mr. Quan takes the position that the test of “minor” is largely premised on the issue of “adverse impact”. In other words, would approval of the variance

result in the creation of any unacceptable “adverse” impacts for nearby neighbours?

[28] In this regard, as previously noted, the ZBL regulations are being met with respect to building setbacks, height and lot area. Accordingly, there would not be any difference in impact on neighbouring properties regardless of whether the lot frontage is 70 ft. or 50 ft..

[29] Given that the interface with the adjacent properties would not change, the neighbours’ enjoyment of their property would not be affected in any material way. It was his opinion that the variance does not result in the creation of adverse impacts, and is minor in nature.

[30] In conclusion, it was his professional opinion that the development proposal is consistent with, and supports the vision of the PPS (2005 and 2014) with respect to building strong, sustainable communities, and a strong economy by achieving development standards to optimize the use of under-utilized land and oversized lots. In this regard, the overall proposal represents good land use planning and is in the best interests of the City, the Erindale Neighbourhood and the immediate area.

[31] David Ferro testified on behalf of the City. He obtained a Bachelor of Urban and Regional Planning at Ryerson University (2012) and is a candidate Member of the Ontario Professional Planners Institute. This was his first time giving evidence before the Ontario Municipal Board.

[32] It was Mr. Ferro’s professional opinion that the proposed severance is not consistent with the PPS and the GP, and does not meet the intent of the ROP and local OP, or the ZBL. The consent application does not have the appropriate regard for the provisions set out in s. 51(24) of the Act, and the variance applications do not satisfy the criteria established in s. 45(1).

[33] Principally, Mr. Ferro's argument in opposition was premised on the issue of compatibility as it relates to the proposed reduced lot frontage and area. In this regard, he submitted that in order to satisfy compatibility concerns, any proposed development is required to recognize and enhance the scale and character of the existing residential areas by, among other things, having regard to lot frontages and areas.

[34] The local OP encourages development in neighbourhoods to be context sensitive and to respect the existing or planned character and scale of development. In his professional opinion, the requested severance fails to either recognize or enhance the scale and character of the existing residential area or streetscape with respect to lot frontage, and therefore, does not satisfy compatibility concerns as outlined in the local OP.

[35] In support of his opinion, Mr. Ferro relies on a policy of the local OP (s. 16.1.2.1) which sets out that in order to preserve the character of lands designated Residential Low Density I and Residential Low Density II, the minimum frontage and area of new proposed lots will generally represent the greater of the average lot frontage and area within 120 m ("120 m rule"), or the requirement of the ZBL.

[36] Based on his calculations (Exhibit 2, Tab 19) the minimum lot frontage requirement under the 120 m rule is 20.365 m, while the ZBL standard is 22.5 m.; the minimum lot area requirement is 880.749 sq m under the 120 m rule, while the ZBL standard is 750 sq m. Accordingly, the severance of the property would result in lots that are less than the average lot frontage and area within 120 m of the subject property.

[37] Notably, Mr. Ferro confirmed that he has not included, and does not consider the properties on the east side of Glengarry Road (all of which have 50 ft. frontages) to be part of the neighbourhood for the purpose of his establishing the "character" of the neighbourhood. He contends that these lots are of a different character and contain a built form that is suitable for smaller lot dimensions.



[38] Albeit, it is his opinion that the property is not within the intensification corridor, Mr. Ferro outlined that which he considers to be the applicable City-wide intensification policies, as follows:

- s. 2.2.2.3: To maintain a distinct identity for each local community by encouraging common design themes and compatibility in scale and character of the built environment.
- s. 2.2.2.4: To maintain the established historic character, living environment, and sense of community through the preservation and protection of existing residential neighbourhoods.
- s. 2.4.2.4: To encourage compatible residential intensification.
- s. 3.2.3.1: Residential lands will be developed to achieve a compact, orderly urban form generally characterized by lower densities in the interior of communities and higher densities along major roads and near concentrations of retail commercial, community and transportation facilities.
- s. 3.2.3.2: High quality and innovative residential design will be promoted in a form which reinforces and enhances the local community character, respects its immediate context and creates a high quality living environment. Innovative housing types and zoning standards will be encouraged. Design issues related to built form, scale, massing, orientation, parking, overshadowing, and the quantity and quality of open space will be priorities in assessing the merits of residential development. Broader urban design issues related to the creation of an urban street character, developing a sense of gateway into a community and highlighting district focal points will also be considered in assessing residential development.

[39] He pointed out that the OP establishes policies for achieving a desirable urban form, and requires that “infill and redevelopment within Neighbourhoods will respect the existing and planned character” (s. 9.1.3).

[40] Mr. Ferro contended that the resulting variances for reduced lot frontages are reflective of the inappropriateness of the proposed severance. He maintains that “the difference [in lot frontage] would be very noticeable”; “the proposed lots, having reduced frontages, do not maintain the general intent of the ZBL”.

[41] As well, a report to the COA indicated that the Planning Department “has serious concerns with the requested consent as approval would set an undesirable precedent for lots that are not in keeping with the established character of the streetscape”.

[42] Based on the foregoing, and given the large deficiency in lot frontage, it is his opinion that the proposal does not represent an appropriate development of the property. The intent of the 120 m rule is to maintain the character of the area. The intent of the ZBL is not being met. Therefore, the variance for lot frontage is not minor.

### **CONCERNS OF THE PARTICIPANTS**

[43] Orazio Valente owns the property immediately north of the subject property. He is a long-time resident of this neighbourhood, having lived there since 1998. His current home is a 5,000 sq. ft., 92 ft. wide bungalow built new in 2008. He maintains that he will suffer financially if the proposed development is allowed to proceed because his property will be de-valued as a result of the smaller lot frontages.

[44] Mr. Valente contended that the proposed development is not consistent with the character of the neighbourhood. For the purpose of establishing character, he told the Board that he defines the “neighbourhood” as the west side of Glengarry Road and Sharon Crescent only.

[45] In this regard, he told the Board that the properties on the west side of Glengarry Road have been 100 ft. lots since 1950, while the properties on the east side have always been 50 ft. lots. Moreover, he said, “it’s not as if no one has

ever thought of severing their property in the past; but none [severances] have been approved”.

[46] Lily Marcinek told the Board she has lived in this area for 30 years. Her property is on the east side of Glengarry Road and has a frontage of 50 ft.. Her concerns included increased traffic, the integrity of the neighbourhood character, and the setting of a precedent whereby there will end up being fewer larger lots in this neighbourhood.

### **ANALYSIS AND DISPOSITION**

[47] The Board has considered the concerns of the participants along with the documentary and *viva voce* evidence of both planners. In this respect, the Board found the planning rationale of Mr. Quan to be more comprehensive and more objective.

[48] Based on the evidence presented, the Board finds that the development proposal is consistent with the growth management policies established by Provincial planning legislation, it has appropriate regard for the public interest, and it is grounded in the principles of good land use planning. The Board is further satisfied that the applications meet the relevant criteria established by s. 51(24), and s. 45(1) of the Act.

[49] Principally, Mr. Ferro’s arguments in opposition to the proposal focused on the issue of lot frontage; the thrust of which was that as the lots do not meet the lot frontage requirements established by the OP (120 m rule), the overall proposal is not in keeping with and/or is not compatible with the character of the area. His express opinion was that “the requested severance does not recognize or enhance the scale and character of the existing residential area or streetscape with respect to lot frontage and area, and therefore, does not satisfy compatibility concerns” as outlined in the local OP.

[50] The Board finds this rationale to be flawed for a couple of reasons. First and foremost, he appears to have assessed the planning merits of the proposal based on his interpretation of a single policy of the OP. In my view, in doing so he has failed to acknowledge the hierarchy of planning policy. More specifically, he has failed to give appropriate regard and weight to the guiding principles, objectives, and directives of the Provincial Policy Statement (“PPS”) and the Growth Plan for the Greater Golden Horseshoe (“GP”). Local municipalities must adopt these and local OP’s must conform to these.

[51] Secondly, and equally fatal, is Mr. Ferro’s choice of defined study area for the purpose of establishing the “character” of the neighbourhood. In this case, the severance will result in two lots having frontages equal to the lots on the opposite (east) side of the street within the immediate block, which by the Board’s count, is eighteen. In comparison, there are six properties on the west side of the street within the immediate block which have frontages of 100 ft.; the subject property is at approximately midblock.

[52] Mr. Ferro takes the position that the homes across the street (east side of Glengarry Road) are not in the character area and therefore, should not be considered for the purpose of defining the character of the neighbourhood.

[53] Notwithstanding that the Board does not agree that “compatibility” and “neighbourhood character” can be solely defined by lot frontage and/or lot area, it is inconceivable that the opposite side of a residential street can be excluded or completely ignored when determining the physical character and/or the planning context of a neighbourhood.

[54] That being said, in my view, the character of this neighbourhood is more appropriately defined by the prevailing physical form of development occurring, which in this case can be described as an eclectic mix of single detached dwellings. The evidence was, and the photographs provided confirm, that this is a neighbourhood which is experiencing regeneration in the form of home improvements, additions, and new builds. As such, it is comprised of a range of

older and newer homes of different sizes, featuring a mix of architectural forms and designs.

[55] The Applicant/Appellant is proposing to replace an aged and somewhat derelict bungalow with two new, two-storey homes, which based on the conceptual drawings provided to the Board, will feature architectural form and design elements similar to several of the newer homes in the neighbourhood. Notably, there was no evidence before the Board which would indicate there were any concerns about the physical form of the proposed homes; nor was it suggested that the proposed development of these homes would result in the creation of legitimate adverse impacts to neighbouring properties.

[56] Albeit, the smaller sized lots (50 ft.) will result in the homes generally extending across the width of the lot, this is not an uncommon development feature within this neighborhood. Case in point, abutting property owner Orazio Valente told the Board that his home extends 92 ft. across his 100 ft. wide lot. More importantly, the evidence was that the proposed new homes will meet all other provisions of the ZBL, including, building setback, building height and lot coverage.

[57] Mr. Ferro provided the Board with the list of intensification policies which he believes to be applicable, but offered no explanation or opinion about how he had assessed the current proposal in accordance with these. However, in having reviewed these, the Board finds that the current development proposal is precisely consistent with all relevant portions of these policies.

[58] Other concerns about the proposal included increased traffic, reduced property values, and the setting of an “undesirable” precedent. In this regard, the Board finds there is no basis for the concern about increased traffic, and property values are not a factor which the Board can consider in the assessment of a planning application.

[59] Notwithstanding that each individual planning application is to be assessed on its' own merits, if the approval of the current application were to set a precedent, the Board cannot agree that it could be considered an "undesirable" precedent.

[60] The Board heard that the subject property was created by plan of subdivision in 1949, at which time municipal water and sewer servicing was not available in this area. It is believed that the lots within this subdivision were consigned by the Department of Veterans Affairs.

[61] During the course of cross-examination Mr. Ferro conceded that from a planning perspective, "the world had changed a lot over the past 60+ years". Generally, homes are now closer together and not as wide as in the past. However, he stated that in as far as the current proposal is concerned, "he wants to maintain what has been there".

[62] The Board found Mr. Ferro's latter comment to be both surprising and troublesome given the reality of the GP's projected population increases in the Greater Toronto Area ("GTA"), and the current planning regime. Notably, while the local OP acknowledges that Neighbourhoods are to be stable areas, they are not expected to remain static; new growth is expected to be accommodated through redevelopment and intensification within developed areas (s. 5.1).

[63] In my view, "maintaining what has been there" is neither a realistic nor a feasible planning expectation going forward. That in mind, the Board would suggest that in order to effectively manage the future housing needs of current and future residents of this municipality (as is intended by the OP), planning officials need to be prepared to adopt a more liberal and fulsome approach to assessing planning applications, than what occurred in this case.

[64] Also notable, the local OP contains a provision which sets out that "appropriate infill in both Intensification Areas and Non-Intensification Areas will help to revitalize existing communities by replacing aged buildings, developing

vacant and underutilized lots and by adding to the variety of building forms and tenures” (s. 9.1).

[65] The current proposal makes a more efficient and effective use of a fully serviced, underutilized parcel of land within a well-established and stable neighbourhood; consistent with growth management strategies prescribed by the GP and PPS, and as adopted by the ROP and local OP.

[66] The development proposal will result in the local housing stock being increased by one, and a derelict property at the centre of an otherwise well-kept residential area will be rejuvenated by the development of two modern-style, attractive homes. In effect, the addition of these homes will contribute to the stability of this residential neighbourhood.

[67] Moreover, the proposal does not result in the creation of any palpable unacceptable adverse impacts for neighbouring property owners or the neighbourhood as a whole. Given the Board’s findings with respect to the merits of the severance application, the minor variance for reduced lot frontages is technical in nature, and therefore, is minor.

[68] In view of the foregoing, the Board is satisfied that the proposal is consistent with, and/or in conformity with the applicable policy directions established by the Provincial, Regional and local planning documents. The matters of public interest have been appropriately considered and safeguarded, and the proposal is an appropriate and desirable development of the property.

## **ORDER**

[69] The Board orders that the appeal is allowed and provisional consent is to be given subject to the conditions requested by the City, and as set out in Exhibit 1, Tab 5.

[70] And further, the Board orders that the variances to Zoning By-law No. 0225-2007 are authorized.

*"M. A. Sills"*

M. A. SILLS  
MEMBER

**Ontario Municipal Board**

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