

Ontario Municipal Board
Commission des affaires municipales
de l'Ontario



ISSUE DATE: September 10, 2014

CASE NO(S): PL140464

PROCEEDING COMMENCED UNDER subsection 45(12) of the *Planning Act*, R.S.O. 1990, c.P.13, as amended

Appellant:	John Zoppas
Applicant:	Talal Issawi
Subject:	Minor Variance
Variance from By-law No.:	0225-2007
Property Address/Description:	844 Meadow Wood Road
Municipality:	City of Mississauga
Municipal File No.:	A 133/14
OMB Case No.:	PL140464
OMB File No.:	PL140464

PROCEEDING COMMENCED UNDER subsection 45(17) of the *Planning Act*, R.S.O. 1990, c. P.13, as amended

Motion By:	Talal Issawi
Purpose of Motion:	Request for an Order Dismissing the Appeal
Appellant:	John Zoppas
Subject:	Minor Variance
Property Address/Description:	844 Meadow Wood Road
Municipality:	City of Mississauga
Municipal File No.:	A 133/14
OMB Case No.:	PL140464
OMB File No.:	PL140464

Heard: August 19, 2014 in Mississauga, Ontario.

APPEARANCES:

Parties

Talal Issawi
John Zoppas

Counsel*/Representative

Gerald Swinkin*
Self-represented

City of Mississauga

Marcia Taggart*

DECISION DELIVERED BY H. JACKSON AND ORDER OF THE BOARD

[1] Talal Issawi (“Applicant” and “Moving Party”) gave notice on August 6, 2014, of a motion seeking an Order of the Board to dismiss, without a full hearing, the appeal by John Zoppas (“Appellant”) against the decision of the City of Mississauga (“City”) Committee of Adjustment (“COA”) which granted an application for minor variances with respect to property at 844 Meadow Wood Road. In the event the motion is allowed, the Applicant seeks the costs of the motion.

PROPOSED DEVELOPMENT

[2] The proposal is to demolish the existing home and construct a new two storey dwelling. The lot is unusually large at 1.54 hectares. It is crossed by Sheridan Creek and, as a result, the topographic relief on the lot varies from an elevation of about 95 metres above sea level (“masl”) at the north end of the lot to about 83.5 masl at the location of the creek on the property. As was described to the Board, the wide range in elevation is an issue, as the height of the dwelling is measured against “average grade” as opposed to “established grade”. The new dwelling is to be located generally in the same location as the existing dwelling.

APPEAL

[3] The Appellant lists as reasons for the appeal that the height of the building is excessive, and that the City planning staff have the same concerns as the neighbours. The Appellant also refers to the height as not being consistent with a heritage community. He states that the house is a “monster house” and that the roofing should be in keeping with the community. He asks that the house be modified to conform to the zoning by-law.

MOTION

[4] The Applicant brought this motion on the following grounds:

1. The Appellant's Notice of Appeal does not disclose any apparent land use planning ground upon which the Board could allow all or part of the appeal.
2. The Appellant misapprehends the position of the City and the relevant policies applicable to the application.
3. The Appellant has not demonstrated that the variances would have any impact upon the Appellant's lands.

[5] The Applicant served the motion on the Appellant on August 6, 2014. By email of August 13, 2014, the City indicated to the Board case coordinator that they wished to be granted party status in the appeal, and requested that the motion to dismiss be deferred. The deferral was denied. Prior to the commencement of the hearing of the motion the Board heard submissions on the question of whether the City should be permitted to participate in the motion.

[6] The Applicant's position is that the City is not an appellant, and therefore has no entitlement to make submissions in regard to the merits of the appeal. The Applicant submits that s. 17 of the *Planning Act* clearly lays out the criteria by which the Board may dismiss all or part of an appeal, and that this is supplemented by the Board's Rules of Practice and Procedure (the "Rules") 34 to 43 that are related to motions. The Applicant submits that on the basis of these Rules the Board provides the list of who is to be served in regards to the motion and in this case correctly indicated that it was only the Appellant to be served.

[7] The City's position is that it is entirely appropriate for the City to participate in the motion. The City explained that Council directed that legal services seek party status on June 11, 2014, however the City had not taken that step as it was awaiting the

Board's Acknowledgement or a hearing date. The City submits that upon hearing of the motion, the City requested party status and to respond to the motion. The City submits that Rule 6 of the Board's Rules of Practice and Procedure (Board May Exempt from Rules) applies in this situation to ensure that the real questions at issue are determined.

[8] The Board allowed the City to have standing for the purposes of the motion to present submissions on the merits of the appeal. The Board was persuaded this status should be granted since the City planning staff previously commented on the application and to ensure that the real questions at issue are determined.

ISSUE

[9] Pursuant to s. 45(17) of the *Planning Act*, the Board may dismiss all or part of an appeal without holding a hearing on its own initiative or on the motion of any party if it is of the opinion that:

- (i) the reasons set out in the notice of appeal do not disclose any apparent land use planning ground upon which the Board could allow all or part of the appeal;
- (ii) the appeal is not made in good faith or is frivolous or vexatious;
- (iii) the appeal is made only for the purposes of delay; or
- (iv) the appellant has persistently and without reasonable grounds commenced before the Board proceedings that constitute an abuse of process.

[10] The question before the Board is whether there is a land use planning ground set out in the notice of appeal that is sufficient for which an appeal could be granted.

EVIDENCE AND ARGUMENT

[11] The Applicant relied on the affidavit evidence of David Brown, Development and Land Use Planning Consultant. The City relied on the affidavit evidence of David Ferro, Planner for the City. The Appellant did not provide any evidence from a professional planner.

[12] Relying on the affidavit evidence of David Brown, the Applicant argues that the Appellant, through his designer, has a proposed dwelling that is proportionally balanced with respect to width and height, and that the perceived height is reasonably close to the prescribed by-law. The gross floor area of the home is well within the zoning by-law permission.

[13] The Applicant argues that the reasons advanced by the Appellant lack proper planning grounds and are an insufficient basis upon which to set aside the favourable decision of the COA. The Applicant argues that the Appellant has failed to provide proper planning grounds upon which a hearing could proceed. He has not consulted any experts and has not grounded his concerns in any fact or policy and has not made a clear commitment to do so for a hearing.

[14] In his response to the motion, the Appellant indicated that his sole issue is the height of the proposed new dwelling. He stated that the City supports his concern as do other neighbours. He stated that he was surprised that the application was approved at the COA as he expected that it would be deferred as that was the recommendation by planning staff. He indicated that he intends to have either a lawyer or a planner for the hearing.

[15] The City submits that the issue of height has been raised by the Appellant and that this is a valid planning issue for a hearing. Additionally, the City submits that the authenticity of the concern is supported by Mr. Ferro's affidavit evidence and the comments of the planning department that recommended that the decision of the COA be deferred.

FINDINGS

[16] The Board has reviewed the motion material and the submissions. The Board is satisfied that the Appellant's concern regarding height is a valid planning ground raised in this appeal and is worthy of adjudication.

[17] The Board orders the motion is dismissed.

"H. Jackson"

H. JACKSON
MEMBER

Ontario Municipal Board

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