

Ontario Municipal Board
Commission des affaires municipales
de l'Ontario



ISSUE DATE: April 8, 2015

CASE NO(S): PL141308

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

Appellant:	The Gordon Woods Association
Applicant:	John David Ross
Subject:	Minor Variance
Variance from By-law No.:	0225-2007
Property Address/Description:	2126 Parker Drive
Municipality:	City of Mississauga
Municipal File No.:	A 285/14
OMB Case No.:	PL141308
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Heard: February 13, 2015 in Mississauga, Ontario

APPEARANCES:

Parties

Counsel*/Representative

Neil Maher

Self-represented

John David Ross (Tony Ferkul)

G. Swinkin*

DECISION DELIVERED BY H. JACKSON AND ORDER OF THE BOARD

[1] John David Ross (the “Applicant”) applied for minor variances that would permit the construction of a new two-storey detached dwelling and detached garage at his property at 2126 Parker Drive. The City of Mississauga (the “City”) Committee of Adjustment (the “COA”) approved the minor variance application on September 11, 2014. Neil Maher (the “Appellant”) appealed the COA decision on the basis that the

notice was not proper and that the house is too large. Tony Ferkul has since purchased the property and taken over the appeal.

[2] David Brown provided land use planning evidence on behalf of the Applicant. Diane Wolf, who resides at 2220 Parker Drive, spoke in support of the Appellant's position. The Appellant did not call any expert witnesses.

[3] Mr. Brown testified that the application originally went to the COA at a meeting of August 14, 2014; however, the City planners requested clarification to the requested variances and therefore deferred the COA hearing until September 11, 2014. At the September meeting, the variances were amended to what is before the Board at this hearing.

REQUESTED VARIANCES

[4] The application requests relief from the Zoning By-law No. 0225-2007, as amended, as follows:

1. A lot coverage of 32.90% of the lot area; whereas By-law No. 0225-2007, as amended, permits a maximum lot coverage of 25% of the lot area in this instance;
2. A northerly side yard of 0.89 metres ("m") (2.91 feet ("ft")) measured from eaves projection; whereas By-law No. 0225-2007, as amended, requires a minimum side yard of 1.81 m (5.93 ft) in this instance;
3. Two garages on the subject property; whereas By-law No. 0225-2007, as amended, permits only one (1) attached garage or one (1) detached garage on a property in this instance;

4. To permit a detached garage having an eave height of 6.03 m (19.78 ft); whereas By-law No. 0225-2007, as amended, permits a maximum height to the underside of eaves of 3.00 m (9.84 ft) in this instance; and,
5. To permit a detached garage having a second floor loft area; whereas By-law 0225-2007, as amended, does not make provisions for a loft area in this instance.

ISSUE

[5] Section 45(1) of the *Planning Act* ("Act") allows the Board to authorize variances to a zoning by-law where the variance is minor; is desirable for the appropriate development or use of the land, building or structure; maintains the general intent and purpose of the Official Plan; and maintains the general intent and purpose of the zoning by-law. The Board must be satisfied that all four tests are met in order to authorize the requested variances.

EVIDENCE

[6] The property is in the Gordon Woods neighbourhood, bounded by the Queensway to the north, the QEW to the south, the Credit River to the west and Hurontario Street to the east. The Board heard that this stretch of Parker Drive is not serviced with sanitary sewers; rather, the homes in this area have private septic systems. This is a reason for the large size of the lots. The proposal will have a sanitary sewer connection that is supplied from the rear, off of Lynchmere Avenue. The Region of Peel has jurisdiction over the provision of sanitary sewers.

[7] Mr. Brown described the proposal and went through the requested variances.

[8] The Applicant wishes to construct a new dwelling of a modern design, inspired by the architecture of a new home in the vicinity. Mr. Brown provided photographs of the

home on Gordon Drive that inspired the current proposal (Exhibit 1, Tab 4) as well as the site plan drawings for the proposed new home.

[9] The home is to have an attached side-loaded garage, but also a second detached garage that is to be off of the same driveway as the integral garage, but to the rear of the house. The Board heard that the second garage, which is also to have a mezzanine for storage, is intended to store the Applicant's work van and tools.

[10] The Board heard that the modern design of the house has eave overhangs that have a length of 0.9 m which is longer than conventional eaves. There is also to be a back covered patio and a front covered porch. The eave overhangs and the patios are included in the lot coverage, and Mr. Brown said that if these areas were not included in the lot coverage calculation, the coverage would be only just over 26%.

[11] Mr. Brown said that the side yard setback of 0.89 m is measured from the eaves; however, if measured from the main wall, the setback is 1.8 m, which is the minimum requirement of the zoning by-law.

[12] Variances 3, 4, 5 and 6 relate to the detached garage, as a second garage is not permitted. The Applicant wishes a second garage for aesthetics and for security. The second garage is to have a height of 7.41 m and an eaves height of 6.03 m, to allow for the loft area / mezzanine. The Applicant wishes to store his work materials in the garage, and this would allow him the space to do so. Variance 6 was recommended by the City planners to clarify that there is to be a loft area in the garage.

[13] Mr. Brown said that the comments of the planning department were favourable, and that the planning department noted that the mature vegetation would act to screen the detached garage and therefore they expressed no concern in relation to the variances to permit the second garage. Mr. Brown testified that he shared this view and, in his opinion, the variances are minor in nature and appropriate for the development of the site.

[14] Mr. Brown spoke to the planning context of the proposal. He indicated that the property is designated Residential Low Density 1, subject to Special Site Policies No. 4 for the Cooksville Neighbourhood. Section 16.6.5.4 outlines these policies. Mr. Brown testified that the proposal has generous setbacks, and the north side yard meets the setback with the exception of the eaves. He said that the property is subject to site plan approval, and that this will allow the City the opportunity to review the site servicing and drainage plans and a tree replacement plan. He indicated that this property was part of a consent application and therefore had a drainage plan done as part of that process.

[15] Mr. Brown testified that the mass and the setbacks respect the zoning by-law and the relationship to the diverse properties to the north and south. He said this proposal is interesting and appropriate in this situation. He testified that this proposal meets the general intent and purpose of the official plan policies.

[16] He said that the property is zoned R1 Exception 7, and that the zoning provisions require a minimum lot area of 1,140 square metres ("sq m") and a minimum lot frontage of 30 m. The lot is 1,791 sq m and has a frontage of 33.57 m and therefore complies with these provisions.

[17] Mr. Brown testified that the variances for lot coverage, side yard setback and for the second garage are minor individually and cumulatively. He said the relief will facilitate the development of a custom home that is in keeping with the scale and character of the area and therefore, in this instance, the variances are desirable and appropriate.

[18] Due to the site plan process, Mr. Brown recommends that this be approved without any conditions.

Appellant's Concerns

[19] The Appellant expressed concern that there was inadequate posting of Notice of the second COA meeting dealing with these variances. The Board is satisfied that this

has not resulted in undue prejudice to the Appellant as this did not impact his ability to appeal the COA decision and bring the matter before the Board.

[20] The Appellant explained that the neighbourhood residents do not wish to have sanitary sewer service to homes along Parker Drive and other nearby roads. He referenced a letter dated September 25, 1975, from the Region of Peel Public Works Committee, entered as Exhibit 4, which indicated that Regional Council had received a letter from the Gordon Woods Homeowners Association (“GWHA”) that indicated that the majority of owners in the area were against the construction of sanitary sewers. The letter goes on to state that the construction is to be removed from the 1976 capital works programme and is only to be reconsidered when the property owners petition Council for sewers to be constructed. It is on this basis that the Appellant believes that sewer service should not be provided at the proposed new home. The Board also heard that the GWHA has not taken an active role in preventing the provision of sanitary sewers in this area.

[21] The participant who testified supports the position of the Appellant that sewers are the gateway for the future development of the area and that this is not desired by the residents.

[22] The Appellant also spoke to issues that he thought aligned with the concerns regarding the provision of sanitary sewers. He said that there is no need for sanitary sewers here as the current wooded area functions well for effluent treatment from the existing septic systems; that, in his view, sewers are less acceptable environmentally; and sewers will result in extra cost. He also stated that the increase in development in this area results in a greater need for sump pumps, because the groundwater table is naturally high here. He said the sump pumps disrupt the groundwater – surface water regime by removing groundwater and discharging it as surface water, and in his view, this is unnecessary.

ANALYSIS AND FINDINGS

[23] As noted by the Applicant, the Region of Peel is responsible for the provision of sanitary sewer services in the area. The current matter before the Board deals specifically with the question of whether the requested variances meet the four tests of the *Planning Act*. The issue that the Appellant has raised in this matter regarding the provision of sewer services falls outside the Board's jurisdiction.

[24] The Appellant has failed to provide sufficient land use planning evidence to refute the planning merits of this case.

[25] Mr. Brown's opinion is that the variances individually and cumulatively meet the four tests of the *Planning Act*. The Board accepts the uncontroverted expert evidence of Mr. Brown and finds that the variances are minor, are desirable for the appropriate development of the lands, and meet the general intent and purpose of both the official plan and the zoning by-law.

ORDER

[26] The Board orders that the appeal is dismissed. The Board authorizes the requested variances against Zoning By-law No. 0225-2007.

"H. Jackson"

H. JACKSON
MEMBER

If there is an attachment referred to in this document,
please visit www.elto.gov.on.ca to view the attachment in PDF format.

Ontario Municipal Board

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