

Ontario Municipal Board
Commission des affaires municipales
de l'Ontario



ISSUE DATE: April 4, 2016

CASE NO(S): PL150702

PROCEEDING COMMENCED UNDER subsection 34(19) of the *Planning Act*, R.S.O. 1990, c. P.13, as amended

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|----------------------|--------------------------------|
| Appellant (jointly): | Anthony & Debra Martucci |
| Subject: | By-Law No. 0171-2015 |
| Municipality: | City of Mississauga |
| OMB Case No.: | PL150702 |
| OMB File No.: | PL150702 |
| OMB Case Name: | Martucci v. Mississauga (City) |

Heard: February 22, 2016 in Mississauga, Ontario

APPEARANCES:

Parties

Counsel

Anthony and Debra Martucci

Chris Tonks

City of Mississauga

Raj Kehar

DECISION DELIVERED BY ANNE MILCHBERG AND ORDER OF THE BOARD

INTRODUCTION

[1] This was a pre-hearing conference (“PHC”) with respect to the appeal of Zoning By-law No. 0171-2015 (the “ZBLA”), which amends the City of Mississauga (“City”) General Zoning By-law No. 0225-2007 to prohibit new detached and semi-detached

dwellings (“dwellings”) with flat roofs from being taller than 7.5 metres (“m”) in areas of Ward 1 that were not previously subject to infill housing regulations. The ZBLA affects approximately 5,000 properties in the City. The purpose of the PHC was to deal with a motion brought by the City, seeking three separate grounds of relief.

[2] In July 2015, Anthony and Debra Martucci (the “Appellants”) appealed the entire ZBLA relating to those 5,000 properties. In an email message dated February 18, 2016, the Appellants’ counsel indicated that his clients would agree to scope their appeal to their properties at 39 and 41 Maple Avenue (the “Maple Properties”), provided that the City were to consent to a “without prejudice” clause and an adjournment of the hearing of the scoped appeal.

[3] The City agreed to this, on condition that, if the scoped appeal proceeds to a hearing,

...the City will not take the position that the Board ought not to approve any specific modifications to the ZBLA as it applies to the Maple Properties because such modifications deviate from any approved portion of the ZBLA. However, this does not affect the City’s right to assert that the ZBLA should be applied to the Maple Properties without amendment on the basis that it constitutes good planning. [Exhibit 1, Tab 2]

THE MOTION

[4] The Motion brought by the City of Mississauga (“Applicant” and “Moving Party”) seeks:

1. an Order of the Board to bring into force the un-appealed portions of the ZBLA no longer at issue, as identified in Exhibit 1, Tab 8, while maintaining s.18, s. 31 and Schedule A17 of the ZBLA under appeal only as these sections and schedule apply to the Maple Properties, pursuant to s. 34(32) of the *Planning Act* (“Act”) [“Motion Paragraph 1”]

2. an Order of the Board providing that the un-appealed portions of the ZBLA no longer at issue, as described in (1) above, are deemed to have come into force on the day the ZBLA was passed, pursuant to s. 34(31) of the Act ["Motion Paragraph 2"]
3. an Order of the Board abridging the timeline for the City to serve this Notice of Motion, pursuant to Rules 6 and 38 of the Board's *Rules of Practice and Procedure* ["Motion Paragraph 3"].

ABRIDGED TIME FOR SERVICE

[5] At the request of the parties (in Motion Paragraph 3) and with their consent, the time for service of the Motion is abridged.

REQUEST FOR PARTY STATUS

[6] At the commencement of the PHC, Michael Crechiolo requested Party status and a scoping of the appeal to include his property at 667 Byngmount Avenue. He submitted that he had not received any public meeting notice on the proposed ZBLA in the mail, nor any questionnaire from City staff or from any ward councillor, and that had been caught unawares by the passage of the ZBLA. Mr. Crechiolo submitted that he was concerned about the impact of the ZBLA on his property. This PHC appeared to be the first instance in which the City learned that he had an interest in the matter.

[7] The Board denied Mr. Crechiolo's request for Party status on the grounds that the appeal had already been scoped down to the Maple Properties by prior agreement in writing between the Applicant and the Appellant (on February 18, 2016), and that, as a consequence, there was no longer any appeal for him to perfect under.

[8] Mr. Crechiolo then requested Participant status in any continuation that would, if the City's motion were to succeed, focus only on the Maple Properties. The Board granted him this status.

PLANNING EVIDENCE, ANALYSIS AND DISPOSITION ON THE MOTION

[9] In requesting the Board to bring into force the un-appealed portions of the ZBLA no longer at issue, Lisa Christie, a qualified land use planner employed by the City, provided professional planning opinion evidence on the planning rationale for the ZBLA before the Board.

[10] Ms. Christie gave opinion evidence that the ZBLA is consistent with the Provincial Policy Statement, 2014 ("PPS"); conforms to the Growth Plan for the Greater Golden Horseshoe, 2006; conforms to the Region of Peel Official Plan; conforms to the City of Mississauga Official Plan ("City OP"); and that it represents good planning. Her testimony was uncontroverted.

[11] The planning evidence was that a 7.5 metres ("m") height limit for dwellings with flat roofs has been in force since 1990 for much of Mississauga, covering R1, R2 and R3 zones. The new lands to be subject to the ZBLA before the Board are located in Ward 1, and include the Clarkson-Lorne Park, Lakeview and Port Credit neighbourhoods [Exhibit 1, Tab 2]. These areas are latecomers to a standard which predominates in the City.

[12] According to Ms. Christie, the impetus for the ZBLA is to preserve the character of neighbourhoods, a goal which is mentioned no less than 24 times in the City OP. Up until the introduction of the ZBLA, new flat roofed homes had proven to be "a stark contrast especially on streets where the homes are one-storey or have not been built to the maximum allowable standards". [Exhibit 2, Tab 9]

In Ward 1, there are a number of flat roofed homes. These can appear more imposing than a peaked roof house, even when built under the same zoning regulations... The height of a flat roofed house is measured to the roof line. For a house with a peaked roof, it is measured to the mid-point from the eaves to the peak, and sometimes to the eaves themselves. This means that the highest point of a peaked roof house is only the peak, while for a flat roofed house it is the entire breadth of the roof. Further, for a house with a sloped roof, the eaves tend to be at a lower height than the parapet of a flat roofed house, thereby giving the appearance of a lower wall. [Exhibit 2, Tab 9].

[13] In the Board's view, the photographic evidence in Exhibit 2, Tab 29 compellingly demonstrate the merits of setting a 7.5 m height limit for new flat roof detached and semi-detached dwellings in Ward 1. The submitted photographs were of a number of newly built flat roof infill dwellings in Ward 1, many of which were built to a height of 10.7 m, as their construction predates the ZBLA. They all dwarf the neighbouring dwellings in scale and massing.

[14] Ms. Christie gave evidence that 7.5 m is the standard dimension limiting the height of flat roof dwellings elsewhere in the City, and that it is an effective standard.

[15] Based on the submitted evidence, the Board finds that better built form in new flat roof single and semi-detached dwellings will be achieved through the 7.5 m height limit proposed by the ZBLA.

[16] The Board finds that the new ZBLA has merit in regulating built form, is consistent with the PPS, conforms to the Regional and City's OPs and is good planning. On this basis, the Board will allow the un-appealed portions of the ZBLA no longer at issue to be brought into force. Further, they will be deemed to have come into force on the day the ZBLA was passed, pursuant to s. 34(31) of the Act.

[17] The relief requested in Motion Paragraphs 1 and 2 is granted.

[18] The Board finds that it is in the public interest to allow the ZBLA with the exception of the Maple Properties in the manner requested by Motion Paragraph 1, since an appeal over the entire ZBLA would preclude the City from implementing a planning policy which pertains to many properties and has merit.

[19] Over 5,000 properties would be covered by the ZBLA, and, if this zoning control is not put in place now (in the manner requested by Motion Paragraph 2), there is a risk that over-scaled dwellings would continue to be added to the neighbourhoods of Ward 1.

[20] Even so, the Board is very mindful of the right to a fair hearing of the scoped-down appeal of the ZBLA as it impacts the Maple Properties. The request for an adjournment is allowed. The parties shall contact the Case Coordinator and arrange for a mutually convenient hearing date.

ORDER

[21] The Board orders the abridging of the timeline for the City to serve this Notice of Motion.

[22] The Board orders the bringing into force the un-appealed portions of the ZBLA no longer at issue, as identified in Exhibit 1, Tab 8, while maintaining s. 18, s. 31 and Schedule A17 of the ZBLA under appeal only as these sections and schedule apply to the Maple Properties, pursuant to s. 34(32) of the Act.

[23] The Board orders that the un-appealed portions of the ZBLA no longer at issue, as described in Order 1 above, are deemed to have come into force on the day the ZBLA was passed, pursuant to s. 34(31) of the Act.

“Anne Milchberg”

ANNE MILCHBERG
MEMBER

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Ontario Municipal Board

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