

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



**ISSUE DATE:** July 5, 2016

**CASE NO(S):** PL150795

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

Applicant and Appellant:	Sharitu Inc. 1891309
Subject:	Minor Variance
Variance from By-law No.:	0225-2007
Property Address/Description:	199 Riel Drive
Municipality:	City of Mississauga
Municipal File No.:	A 297/15
OMB Case No.:	PL150795
OMB File No.:	PL150795
OMB Case Name:	Sharitu Inc. 1891309 v. Mississauga (City)

**Heard:** January 6, 2016 in Mississauga, Ontario

**APPEARANCES:**

**Parties**

**Counsel\*/Representative**

Sharitu Inc. 1891309 (Shahabuddin  
Shahabuddin)

Shajan Ahmed

City of Mississauga

Husein Panju\* and Nicholas Fitz\* (Student-at-  
law)

**DECISION DELIVERED BY H. JACKSON AND ORDER OF THE BOARD**

---

**INTRODUCTION**

[1] Sharitu Inc. 1891309 (Mr. Shahabuddin Shahabuddin; the “Applicant”) applied for minor variances to permit the existing driveway to remain on his property at 199 Riel

Drive (the “subject property”). According to the Applicant, the driveway was constructed at this width when the dwelling was built in 1998. The need for variance relief for the existing driveway condition was identified when the Applicant was in the process of obtaining an occupancy permit for a basement dwelling unit on the subject property.

[2] The City of Mississauga (the “City”) Committee of Adjustment (the “COA”) denied the minor variance application on July 9, 2015, which led to this appeal.

[3] Franco Romano, retained by the Applicant, provided land use planning evidence in support of the requested variances. Jordan Lee, planner for the City, gave evidence in opposition to the requested variances. No residents attended to provide evidence either in support or opposition to the request.

## **REQUESTED VARIANCES**

[4] The application requests relief from Zoning By-law No. 0225-2007, as amended, to permit the existing driveway to remain on the subject property proposing:

1. A driveway width of 8.80 (28.87 ft.); whereas the by-law permits a maximum driveway width of 6.00 m (19.69 ft) in this instance;
2. A setback of 0.00 m (“m”) to the side lot line; whereas the by-law requires a minimum setback of 0.60 m (1.97 ft) to the side lot line in this instance; and
3. A front yard landscaped soft area coverage of 39.00%; whereas the by-law requires a front yard landscaped soft area coverage of 40.00% in this instance.

[5] The Board heard that there is some confusion as to the correct existing width of the driveway due to the reference of a width of 9.14 m on the plans submitted with the

occupancy permit application. Mr. Romano indicated that he is satisfied that the correct value is 8.8 m and did not request that the application be amended.

## **ISSUE**

[6] 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**

[7] The subject property is within the Fairview Neighbourhood Character Area, and is designated Residential Low Density II. Under Zoning By-law No. 0225-2007, the subject property is zoned R4-14, Residential.

[8] The City Planning and Building Department prepared a report dated July 7, 2015 that recommended refusal of the application when it came forward at the COA meeting. The report states:

“The intent of the By-law restriction on driveway widths is to maximize opportunities for front yard landscaping while providing for a reasonable amount of parking; thereby, minimizing the effects of hard surfaced areas on the streetscape. The current driveway results in a front-yard that consists of hard surface area which over emphasizes motor vehicle parking, which does not reinforce nor enhance the character of the neighbourhood.”

[9] Mr. Romano provided evidence that the existing character of the area is of homes where the driveways are quite wide and prominent. His opinion is that this existing condition establishes a neighbourhood character of prominent garages. The streetscape consists of driveways wider than permitted with numerous cars parked in

the front. Mr. Romano testified that this neighbourhood is one of only a few where parking on the City boulevard is permitted, and this contributes to the number of cars parked at the front of the houses.

[10] Mr. Romano provided numerous photographic examples of nearby properties that have what appear to be quite wide driveways, and indeed, the home adjacent to the subject property appears to have a widened driveway. The photographic evidence shows three parked cars at this location with ample space between the vehicles. There is no landscaping between the subject property and this adjacent home, though there is a curb to delineate the two properties and their respective parking areas. As is shown here, there is the appearance of a wide vista of paved surface that provides three car parking for the subject property and three car parking for the adjacent property with no landscaping in between.

[11] Mr. Romano said that the existing driveway has been in place since the late 1990's and provides parking for the residents and casual visitors. He said that the existing curb on the property line is appropriate and provides the setback required to reduce the conflict between the properties. He said that this curb has been in place for considerable time without any issue. He said there is no evidence of any impact, concern, or complaint regarding the wide driveways and motor vehicle parking in the front yard in this neighbourhood.

[12] The requirement for landscaping is to ensure that there is a reasonable proportion of area to perform aesthetic and storm water functions. It is Mr. Romano's opinion that the existing mature landscaping that is present is appropriate and balances a reasonable amount of hard and soft surfaces.

[13] The evidence provided at the hearing indicates that the driveway was built at the existing width, either at the time of initial construction or shortly thereafter. The existing driveway does not benefit from having a non-conforming use, as it was not constructed in accordance with the provisions of the by-law at the time of construction. Mr. Romano

contends that this long standing use indicates that it has existed in this condition without impact or issue with conformity.

[14] Mr. Romano's opinion is that the requested variances meet the four tests of the Act. There are numerous properties that have widened driveways to accommodate three cars in the driveway. His view is that the widened driveway at the subject location is one of many in the neighbourhood and reflects the character of the neighbourhood.

[15] In contrast, Mr. Lee's position is that many of the properties that have existing wide driveways are in contravention of the by-law, and this illegal condition should not be used to establish the defining character of the neighbourhood. His opinion is that the character of the neighbourhood is reflected by homes with a two car garage, two-car parking in front, and landscaping between the driveways. He provided photographic evidence of homes that showed this condition.

[16] Mr. Lee described the evolution of the by-law provisions as they relate to the driveway width, setback of the driveway, and the soft landscaping requirements. As described, the provision for driveway width that applied at the time of construction of this house was 8.5 m. There was no requirement at that time for soft landscaping or driveway setback. Mr. Lee testified that the City has since amended the by-law provisions. The driveway width currently is considered to be any area that can be used for parking. He described how the City has had difficulty in the past as numerous residents have illegally widened their driveways. The intent of the current provisions are to limit driveway width to accommodate only two cars at the front for aesthetic reasons, and to permit sufficient width to allow for three cars in locations where the minimum frontage is 22.5 m, such as the R1 zone. Mr. Lee testified that this lot is only 14.5 m frontage is simply too small to allow for a three car driveway.

[17] Mr. Lee testified that the setback provision provides for some landscaping between properties and prevents the presence of a continuous hard surface that spreads across properties. The driveway width and soft landscaping requirements

taken together provide for a desirable condition that consists of more front landscaping and less car storage. He said it is not desirable to have cars dominate the streetscape.

## **FINDINGS**

[18] The Board has reviewed the evidence and submissions, and the cases put to it in coming to this decision. The Board prefers the evidence of Mr. Lee who clearly explained the evolution of the by-law provisions, and the desire of the City to curtail the proliferation of widened driveways in the neighbourhood contrary to the zoning by-law provisions. To authorize the requested variances would provide an undesirable precedent and undermine the intent of the by-law which is to avoid the over emphasis of parking in a residential area.

[19] The Board is not persuaded that the existence of numerous apparent contraventions of the by-law in many other locations in the neighbourhood provide justification for permitting variance relief for this situation.

[20] The Board finds that the existing condition does not meet the general intent and purpose of the zoning by-law as the existing condition promotes the over emphasis of car parking in the front of the home at the expense of soft landscaping. This does not promote the residential feel or look of the neighbourhood.

[21] On the basis that the requested relief does not meet the general intent and purpose of the zoning by-law there is no need to address the remaining tests. The Board finds that the requested variances have failed one of the tests and therefore does not meet s. 45 (1) of the Act.

[22] The Board does not authorize the requested variances.

**ORDER**

[23] The Board dismisses the appeal. The requested variances are not authorized.

[24] Notwithstanding Rule 107, this decision takes effect on the day it is emailed by Board administrative staff to the clerk of the municipality where the property is located.

*"H. Jackson"*

H. JACKSON  
MEMBER

If there is an attachment referred to in this document,  
please visit [www.elto.gov.on.ca](http://www.elto.gov.on.ca) to view the attachment in PDF format.

**Ontario Municipal Board**

A constituent tribunal of Environment and Land Tribunals Ontario  
Website: [www.elto.gov.on.ca](http://www.elto.gov.on.ca) Telephone: 416-212-6349 Toll Free: 1-866-448-2248