

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



**ISSUE DATE:** August 05, 2016

**CASE NO(S):** PL151026

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

Appellant:	Stefan Wodzinski
Applicant:	Paulo Esteves
Subject:	Minor Variance
Variance from By-law No.:	0225-2007
Property Address/Description:	3265 Flynn Crescent
Municipality:	City of Mississauga
Municipal File No.:	A396/15
OMB Case No.:	PL151026
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OMB Case Name:	Wodzinski v. Mississauga (City)

**Heard:** July 5, 2016 in Mississauga, Ontario

**APPEARANCES:**

**Parties**

**Counsel\*/Representative**

Stefan Wodzinski

Self-represented

Paulo Esteves

James A. Kay\*

**MEMORANDUM OF ORAL DECISION DELIVERED BY ANNE MILCHBERG ON  
JULY 5, 2016**

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[1] Stefan Wodzinski (“Appellant”) has appealed the September, 2015 decision of the Committee of Adjustment (“CoA”) of the City of Mississauga (the “City”) to approve an application for four minor variances for the property at 3265 Flynn Crescent (“subject

property”). The Applicant, Paulo Esteves, requires the variances to permit an existing accessory structure (“shed”) to remain in his back yard.

[2] Mr. Esteves testified in support of the Application. Mr. Wodzinski, whose home abuts the subject property at the rear lot line, testified in support of his Appeal. The City took no position and did not appear at the hearing, and there were no other participants.

[3] Neither Mr. Esteves nor Mr. Wodzinski are planners, and neither of them analyzed the variances against the four tests specified in the *Planning Act* (“Act”). Even so, the Board was able to rely on their lay evidence to understand the planning dispute issues and to arrive at a decision in this matter, while also taking into account the planning evidence contained in the CoA decision [Exhibit 1].

## **BACKGROUND**

[4] The subject property is located on a crescent in the Erindale area, north-east of Dundas Street and Mississauga Road. The CoA decision [Exhibit 1] indicates that the zoning designation is R2. Documents filed with the Board state that the Official Plan (“OP”) designation is “Residential Low Density 1”.

[5] The lands are an irregular quadrilateral shape, with a frontage of 17.82 metres (“m”), side lot lines measuring 39.15 m and 47.81 m, and a rear lot line that is 33.24 m in length. The shed is wedged into the northern corner of the lot, where the rear lot line and the longer of the two side lot lines converge at an acute angle. The lot area is 1,003.06 square metres (“sq m”), while the floor area of the shed is 46.03 sq m. [Exhibit 2]

[6] In 2014, the Applicant constructed the foundations, floor, and walls for the storage shed without having obtained relief from the City’s Zoning By-law No. 0225-2007, as amended (the “ZBL”). The planned flat roof has not yet been constructed. After being contacted by the City with regards to the illegal construction, Mr. Esteves

applied for a building permit, and also applied to the CoA for variances for the shed. The CoA granted the following variances, which are the subject of this appeal:

1. a height of 3.53m, whereas the ZBL permits a maximum height of 3.00m (“Variance 1”)
2. a floor area of 46.03m<sup>2</sup>, whereas the ZBL permits a maximum floor area of 10.00 m<sup>2</sup> (“Variance 2”)
3. a side yard of 0.90m, whereas the ZBL requires a minimum side yard of 1.20m (“Variance 3”)
4. a rear yard of 0.90m, whereas the ZBL requires a minimum rear yard of 1.20m (“Variance 4”)

## **PLANNING COMMENTS**

[7] The CoA decision [Exhibit 1] included comments from the Planning and Building Department (“Planning”), and it noted that Planning staff had no objection to the requested variances. Planning staff had reasoned that the height increase requested through Variance 1:

...is mitigated by a slight change in elevation near the rear of the subject property. The adjacent property to the rear has a higher grade along the lot line which would give the appearance of a lesser height of the accessory structure. [Exhibit 1]

[8] In the Planning comments incorporated into the CoA decision, Planning staff stated that they would not typically support the magnitude of floor area increase requested through Variance 2, but they took the view that the location of the shed, tucked into the corner of the subject property, would result in no negative impacts. Further, they noted that the combined lot coverage for the shed and the existing dwelling was 23% whereas the ZBL permits up to 30%.

[9] Planning staff appeared to take no issue with Variances 3 and 4, required as a result of the larger lot size of the subject property, with this reasoning:

A 1.2 m (3.94 ft.) setback is required for lots over 750 sq m (8072.93 sq. ft.) whereas most properties in the neighbourhood would require half of that, which the proposal would comply with. We are of the opinion that the decrease in setback of approximately 0.3 m (1 ft.) would not have a significant impact on adjacent properties and maintains the general character of accessory structure setbacks in the neighbourhood. Based on the preceding information the Planning and Building Department are of the opinion that the proposal meets the general intent of the Zoning By-law and we have no objection to the requested variances, as amended. [Exhibit 1]

## **IMPACTS**

[10] Contrary to the comments of Planning staff, it was the Appellant's position that the shed built by the Applicant at the back of his property had an undue negative visual impact on his yard without any buffering.

[11] The shed is almost five times the area permitted by the ZBL, and will be 0.53 m taller than permitted. The Appellant testified that his rear lot line is between 15.24 and 18.29 m in length, and that more than half of it would be visually impacted and overshadowed by the shed's 9.14 m long wall located 0.90 m from the mutual lot line. At a total finished height of 3.53 m once the roof of the shed is constructed, the wall will loom over the 2.0 m high wooden fence that separates the two properties.

[12] The Board found that Exhibit 5, a photograph of the Appellant's yard looking toward the shed and the fence, effectively depicted the scale of the shed and its overlook over the Appellant's property. Built at 0.90 m from the lot line and with a gap to the fence filled with drainage gravel, it appeared that there was no room for any landscape/visual buffer on the Applicant's property.

[13] It was the Appellant's position that the undue impacts could be mitigated and remediated by landscaping, and only on that basis could the appeal be resolved. With no room to plant an adequate buffer on the Applicant's property, it would have to occur on the Appellant's property.

[14] After a break in the hearing, the Board was advised by the Parties that they had resolved the appeal in a way that secures the planting of shrubs and/or cedars on the Appellant's property to address fully the impact of the shed. The Minutes of Settlement are set out in Exhibit 8.

## **ANALYSIS AND DISPOSITION**

### **Are the variances minor?**

[15] Variances can be deemed "minor" if there is no undue impact arising. In the absence of the buffering, the Board would be of the opinion that the proposed variances are not minor, given the scale of the shed and its visual impact. However, tucked away into the northern corner of the property, and with adequate landscape buffering on the Appellant's land as proposed by the settlement, it would have an acceptable interface with the neighbouring properties. The Board is satisfied that the proposed settlement mitigates the impacts in a way that allows the variances to be considered minor.

### **Is the proposal desirable for the appropriate development of the land?**

[16] The Applicant proposes to use the shed to store bicycles, kayaks and a lawn tractor, a use which is appropriate on the subject property. The proposed use was never at issue; the visual impact of its size on the Appellant's property was. The Board finds that the buffering proposed by the settlement mitigates the impact of the proposal's scale, and renders the proposal desirable.

### **Do the proposed variances maintain the general intent and purpose of the Zoning By-law?**

[17] Though the shed on the Subject Property is almost five times the floor area of an as-of-right shed, the combined lot coverage of the dwelling and the shed is 23%, less than the 30% allowed by the ZBL. The Planning staff comments in the CoA decision

[Exhibit 1] indicate that the Applicant's lot is relatively large and can acceptably accommodate both the dwelling and the shed.

[18] Any concerns that the Board might have had about the height of the shed and about the adequacy of the setbacks to shield the neighbouring properties from the massing of the shed have been put to rest by the landscape buffering in the proposed settlement.

**Do the proposed variances maintain the general intent and purpose of the OP?**

[19] Neither of the witnesses were planners, and neither gave any testimony about the relationship between the proposed variances and the OP. The CoA decision [Exhibit 1], which included Planning comments, was completely silent on whether the proposed variances maintained the general intent and purpose of the OP.

[20] The City's lack of objection to the proposal was predicated on its meeting all four tests of the Act, including that regarding the OP. Accordingly, the Board will find that the proposed variances maintain the general intent and purpose of the OP.

**CONCLUSION AND ORDER**

[21] Based on the evidence before it, the Board finds that all four tests have been satisfied, primarily as a result of the terms of settlement that will create a landscaped buffer on the Appellant's property to remediate any undue visual impacts related to the scale of the shed.

[22] The Board orders that the appeal is dismissed and the variances are authorized, subject to the following conditions:

- (a) that, in accordance with the Minutes of Settlement set out in Exhibit 8, the Applicant agrees to remediate the visual impact of the wall and roof of the

- Applicant's shed facing the Appellant's property through the planting of a sufficient number of trees and/or shrubs on the Appellant's property
- (b) the Parties agree that the planting is to be undertaken by the Appellant or an agent of the Appellant

[23] Board Rule 107 states:

**107. Effective Date of Board Decision** A Board decision is effective on the date that the decision or order is issued in hard copy, unless it states otherwise.

[24] Pursuant to Board Rule 107, this decision takes effect on the date that it is e-mailed by Board administrative staff to the clerk of the municipality where the property is located.

*"Anne Milchberg"*

ANNE MILCHBERG  
MEMBER

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please visit [www.elto.gov.on.ca](http://www.elto.gov.on.ca) to view the attachment in PDF format.

**Ontario Municipal Board**

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