

Ontario Municipal Board
Commission des affaires municipales
de l'Ontario



ISSUE DATE: January 24, 2017

CASE NO(S): PL151125

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

Applicant and Appellant:	Kaneff Homes Compass Creek Inc.
Subject:	Minor Variance
Variance from By-law No.:	0225-2007
Property Address/Description:	202-204 Burnhamthorpe Road East
Municipality:	City of Mississauga
Municipal File No.:	A303/15
OMB Case No.:	PL151125
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OMB Case Name:	Kaneff Homes Compass Creek Inc. v. Mississauga (City)

Heard: October 17 to 19, 2016 in Mississauga, Ontario

APPEARANCES:

Parties

Counsel

Kaneff Homes Compass Creek Inc.	P. J. Patterson A. Baker
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City of Mississauga	R. Kehar
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DECISION DELIVERED BY M. CARTER-WHITNEY AND ORDER OF THE BOARD

BACKGROUND

[1] Kaneff Homes Compass Creek Inc. ("Applicant") applied for minor variances to the City of Mississauga ("City") Zoning By-law No. 0225-2007 ("ZBL") to permit a

proposed development of lands located at 202 and 204 Burnhamthorpe Road East (“subject property”), east of Robert Speck Parkway. The subject property, which has an area of 0.95 hectares (“ha”), is the eastern portion of a larger 1.55 ha parcel of land (“entire parcel”) that was planned historically as one phased development site. The western portion of the parcel (“Phase One”), which has an area of 0.6 ha, was developed in 1999 as a 17 storey condominium building with 149 units, now known as Peel Condominium Corporation No. 613 (“PCC 613”), at 200 Burnhamthorpe Road East.

[2] The Applicant requests the following variances:

1. To permit two 20 storey and 23 storey apartment buildings and a 4 storey podium building element above an underground and aboveground parking structure not in accordance with schedule RA4-12; whereas, By-law 02252007, as amended; whereas By-law 0225-2007, as amendment, requires the development on the subject property to be in accordance with Schedule RA4-12 in this instance.
2. Resident parking be provided at a rate of 1.15 parking spaces per unit for one-bedroom units and two-bedroom units; whereas, By-law 0225-2007, as amended, requires resident parking at rate of 1.25 parking spaces per one-bedroom unit and 1.4 parking spaces per two-bedroom unit in this instance.
3. Visitor parking be provided at a rate of 0.15 parking spaces per unit; whereas, By-law 0225-2007, as amended, requires visitor parking at a rate of 0.20 parking spaces per unit in this instance.
4. Tandem parking be permitted; whereas, By-law 0225-2007, as amended, makes no provision for tandem parking spaces in this instance.
5. A maximum number of 555 dwelling units within the subject zone boundary RA4-12; whereas, By-law 0225-2007, as amended, permits a maximum number of 450 dwelling units within the subject zone boundary RA4-12 in this instance.
6. A minimum landscape area of 54% of the lot area; whereas, By-law 0225-2007, as amended, requires a minimum landscape area of 60% in this instance.

7. A depth of a landscape buffer along the lot line abutting Burnhamthorpe Road East of 2.50 m (8.20 ft.); whereas, By-law 0225-2007, as amended, requires a minimum depth of a landscape buffer of 4.50 m (14.8 ft.), in this instance.

[3] After the City's Committee of Adjustment refused the minor variance application, the Applicant appealed the decision to the Ontario Municipal Board ("Board") under s. 45(12) of the *Planning Act* ("Act").

[4] During the first pre-hearing conference in this proceeding, the Board granted status to a number of participants, including PCC 613. Subsequently, PCC 613 sought to elevate its status to that of a party, and there were no objections from the parties in the matter. In a decision issued July 8, 2016, the Board recognized PCC 613 as a party. Prior to the commencement of the hearing, PCC 613 withdrew as a party but continued to be involved as a participant, represented by Marie Pereira-Crockett.

[5] Another participant, Eva Ereneos did not provide a participant statement by September 16, 2016, pursuant to the requirements of the Procedural Order in this proceeding. The Board notes that a Procedural Order is an important part of the hearing process to ensure that everyone is prepared and ready to go forward at the beginning of a hearing, and to ensure that no one is caught by surprise. Ms. Ereneos did not provide a participant statement nor did she communicate with the parties before or after September 16, 2016 during the time prior to the beginning of the hearing. As a result, the Board did not permit Ms. Ereneos to testify as a participant at the hearing. However, the Board noted that her concerns could be addressed by the other participants, who had complied with the Procedural Order and were scheduled to testify the next day. Similarly, Mir Ali, who did testify as a participant, sought to rely on certain visual evidence at the hearing that had not been submitted by the proper deadline established in the Procedural Order. For the reasons noted, the Board did not take in the visual evidence that had not been disclosed under the terms of the Procedural Order. However, the Board permitted Mr. Ali to describe this evidence orally in the course of his testimony.

[6] In advance of the hearing, the Applicant and the City reached a settlement agreement, which introduced the following proposed conditions of approval for the requested variances:

1. Maximum two tandem parking spaces in a row;
2. Each unit to be assigned a minimum of one standard parking or one pair of parking spaces in tandem configuration;
3. The variances to be subject to the schedule attached hereto as Schedule "A" (appended to this Decision as Attachment 1).

[7] In support of the settlement, the Board received evidence from a number of witnesses who were qualified as experts: Glenn Broll, a land use planner retained by the Applicant; Michael Hynes, a City planner; Russell Fleischer, an architect retained by the Applicant; Tim Arnott, a transportation planner and engineer retained by the Applicant; and Nick Mocan, an engineer retained by the Applicant, who was qualified to provide evidence on water resources, flood plain management, stormwater management and municipal services. In addition, the following participants testified at the hearing: Oksana Hlodan, on behalf of Peel Condominium Corporation No. 85 ("PCC 85"); Mr. Ali, the owner of a condominium unit to the east of the subject property; Yvonne Bienko, a resident of the PCC 613 condominium; and Ms. Pereira-Crockett on behalf of PCC 613. Teresa Donnelly, who also had been granted participant status, was not in attendance at the hearing but the parties did not object to marking her participant statement as an exhibit.

SITE CONTEXT

[8] The subject property is located on the south side of Burnhamthorpe Road East. As noted above, PCC 613 abuts the subject property to the west, and there are additional apartment buildings west of Robert Speck Parkway on the north side of Burnhamthorpe Road East and west of Arista Way on the south side. Stacked

townhouses and multi-storey residential buildings exist to the east of the subject property and there is low density development, including townhouses and semi-detached homes, on the north side of Burnhamthorpe Road East. The entire parcel is situated north of and adjacent to the confluence of the east and west tributaries of Cooksville Creek, which is a protected natural area in the City.

[9] The subject property is designated Urban Area in the Region of Peel Official Plan, with a Core Area Greenlands designation applying to the east and west branches of Cooksville Creek. In the City of Mississauga Official Plan ("City OP"), the subject property is designated Residential High Density, with a Natural Hazard designation applying to the creek valley lands. In the Urban System mapping (Schedule 1 of the City's OP), the subject property is within the Neighbourhood area of the City Structure and the lands to the west of Robert Speck Parkway and Arista Way are within the City's Downtown area. The subject property is located in the Mississauga Valleys Neighbourhood Character Area, one of the neighbourhood character areas identified in the City OP.

[10] In 1995, the entire parcel was rezoned on a site-specific basis, through Zoning By-law No. 317-95 ("1995 ZBLA"), to permit apartment house uses with a maximum of 450 total dwelling units within three buildings of 22, 16 and 14 storeys (from west to east) for which building envelopes were set out in a schedule to the 1995 ZBLA. Subsequently, the City's 2007 comprehensive Zoning By-law No. 0225-2007 ("2007 ZBL") zoned the subject property Residential Apartment Exception (RA4-12) and Greenbelt Exception (G2-4(15)). A Greenbelt Overlay is shown on a portion of the subject property on the zoning map, indicating where approval by the City and the conservation authority, Credit Valley Conservation ("CVC"), is required to construct structures. The 2007 ZBL includes a schedule identifying the buildable areas and heights for three apartment buildings and areas for natural protection.

PROPOSED DEVELOPMENT AND PARTICIPANT CONCERNS

[11] The Applicant proposes the development of two apartment buildings, of 20 and 23 storeys, and a four storey podium building element above an underground and aboveground parking structure. The Applicant recently provided a revised site plan to all parties and participants, which addresses many of the concerns that have been raised about the proposal. The Board was provided with detailed evidence concerning the specifics of the proposed development. It is noteworthy that the zoning schedules attached to the 1995 ZBLA and the 2007 ZBL set out buildable areas with large footprints suitable for slab buildings. Mr. Broll noted that the buildings now proposed would be tall and slender, with smaller footprints, resulting in the need for many of the variances sought. Mr. Fleischer further explained the architectural details of the proposed development. He noted that two slab buildings, as originally proposed in 1995, would be close to each other and would create a lengthy wall with few views through the development compared to two slender towers. Mr. Fleischer stated that the proposed smaller floor plates would allow for greater distance between the towers and to the PCC 613 building, providing more air, space and views. Mr. Hynes confirmed that the City prefers slender towers to slab buildings from an urban design perspective, noting that they result in reduced shadow.

[12] A number of the participants, including Ms. Hlodan, Mr. Ali, Ms. Bienko and Ms. Pereira-Crockett on behalf of PCC 613, objected to the proposed height of the towers and put forward a range of concerns including neighbourhood character and shadow. It was noted that the proposed buildings would be the tallest in the immediate area and would not be sensitive to the existing and planned context of the Mississauga Valleys District, as set out in the applicable policies of the City OP. Ms. Hlodan suggested that the proposed development would make the edge of the neighbourhood look like the Downtown area, reducing the size of the neighbourhood. In response, Mr. Broll provided detailed evidence on the applicable policies of the City OP, summarized below under the heading "Analysis and Findings".

[13] The Board heard a great deal of evidence with respect to concerns that the proposed development would cast shadows, which would adversely affect adjacent properties by reducing the sunlight on buildings to the east of the subject property. Mr. Ali, in particular, testified extensively about shadow impacts, having prepared a table comparing the City's Standards for Shadow Studies ("Shadow Standards") to the Shadow Impact Study ("SIS") prepared by Mr. Fleischer. Mr. Ali said there were serious flaws in the SIS, noting that the Shadow Standards are not entirely met on the September 21 study date and the SIS did not account for the no-impact zone encompassing the outdoor amenity spaces of nearby buildings. He also stated that the SIS did not meet the requirement that the author's name and qualifications be set out. Mr. Ali indicated specific criteria in the Shadow Standards that he said were not satisfied.

[14] In response, Mr. Fleischer testified that the Shadow Standards require that shadows and their implications on adjoining properties be studied at multiple times on multiple days. He took the Board through the most recent version of the SIS and addressed the concerns raised by Mr. Ali. The SIS states that the shadows of the proposed buildings do not impact the defined no-impact zone for more than two consecutive hourly test times on September 21. The SIS further states that, while most of the criteria in the Shadow Standards are met, certain criteria are not met in relation to shading on portions of the multi-use trail on the north side of Burnhamthorpe Road East. The SIS indicates that the as-of-right massing also would not meet these requirements and would be wider, resulting in a greater impact than the proposed development. Mr. Fleischer stated that the requirement regarding the author's name and qualifications was satisfied through the inclusion of the name of his licensed, incorporated architectural firm. He concluded that all of the required criteria in the Shadow Standards had been met with the exception of a brief period of time, which he said was minor in nature. In Mr. Fleischer's opinion, the proposed development will have no material impact off-site from a sun-shadow perspective and generally complies with the City's guidelines. Mr. Hynes confirmed that SIS had been reviewed and approved by City staff.

[15] Other areas of concern raised by the participants, including Ms. Hlodan, Ms. Donnelly, Ms. Bienko and Ms. Pereira-Crockett, related to access to the proposed development, traffic and parking. The initial 2014 draft of the site plan proposed an interconnected driveway with access to the proposed development from Robert Speck Parkway across the PCC 613 driveway. In the revised site plan dated September 13, 2016 ("revised site plan"), submitted following discussions with the City and consultation with the community, the proposed access through the PCC 613 lands was revised to provide direct access to the proposed development at a signalized "T" intersection with Burnhamthorpe Road East. Due to this revision, there is no proposed vehicular or pedestrian access to the PCC 613 lands from the subject property.

[16] Notwithstanding the revised approach to access, the participants continued to express concern that traffic congestion on Burnhamthorpe Road East, which is already heavy during rush hour, would worsen due to the proposal. There were concerns that this increased traffic would affect the residents of PCC 613. There were also concerns that traffic would enter the PCC 85 property in order to avoid the proposed traffic signal at the subject property, creating safety and liability issues.

[17] Mr. Arnott responded to these concerns, noting that the timing of the traffic signals on Burnhamthorpe Road East would be coordinated to minimize delays. His analysis indicated that the proposed new intersection would not have a material impact on traffic flow on Burnhamthorpe Road East. The City reviewed and accepted Mr. Arnott's analysis. It was Mr. Arnott's opinion that the proposed separate and distinct system for vehicular access and on-site circulation of traffic on the subject property would not pose any safety issues to PCC 613. He testified that the current proposal would adequately accommodate vehicle, pedestrian and cycling traffic.

[18] The participants raised concerns that there would not be sufficient parking for the proposed development, and representatives of both PCC 613 and PCC 85 were concerned about impacts from overflow parking. Mr. Arnott provided his opinion that the proposed rate of 1.15 parking spaces per unit is appropriate and consistent with the

City's investments in transit infrastructure, given the location of the subject property near the Downtown area. He stated that there would be an adequate amount of conveniently located parking on site to accommodate tenants and visitors without creating impacts on adjacent properties.

[19] Ms. Hlodan, Ms. Donnelly, Ms. Bienko and Ms. Pereira-Crockett raised concerns about the potential impacts of flooding from Cooksville Creek and bank erosion in relation to the proposed development, noting floods in this area in the past. Mr. Mocan provided detailed evidence concerning the elements of the proposed site design that had been introduced to address floodproofing requirements. He noted that the Applicant's consultants had met with the CVC and agreed to adopt more conservative floodproofing elevations than initially proposed. The CVC indicated in correspondence to the Committee of Adjustment that, subject to its comments on the Applicant's site plan application, it had no concerns or objections to the proposed development. It was Mr. Mocan's opinion that the concerns regarding the flood hazard for the subject property have been appropriately reviewed and addressed in accordance with the CVC's Watershed Planning and Regulation Policies.

[20] Ms. Hlodan raised a concern about the protection of wildlife species in the Cooksville Creek area, including species of concern, and Ms. Bienko was concerned that the proposed development might have negative impacts on trees, vegetation and the enjoyment of trails in the natural area. Mr. Hynes noted, in response, that the City looked to the CVC, which has the authority to advise the City on environmental impacts, and the CVC had no concerns or objections, as noted above.

[21] Ms. Hlodan also asked whether wind safety studies had been conducted. Mr. Broll noted that wind safety studies are done in conjunction with the site plan process and had not yet been completed because the built form must be established and modeled prior to conducting a wind study.

[22] Finally, concerns were raised by some participants in relation to whether the proposed new phase of development would not be in compliance with provisions in the *Condominium Act* and a shared facilities agreement regarding the use of the PCC 613 grounds and common elements. Mr. Broll stated his understanding that this would be considered a new, and not a phased, condominium. However, the Board was persuaded by the submissions of counsel for the Applicant and the City that these were not appropriate considerations before it in this matter.

ANALYSIS AND FINDINGS

[23] For a minor variance to be authorized, it must satisfy all four of the tests set out in s. 45(1) of the Act. It must:

- maintain the general intent and purpose of the official plan
- maintain the general intent and purpose of the zoning by-law
- be minor
- be desirable for the appropriate development or use of the land, building or structure.

[24] The Board has considered all of the evidence provided at the hearing, including the expert opinion evidence summarized above. In addition, Mr. Broll and Mr. Hynes provided land use planning opinion evidence specific to the four tests under s. 45(1).

[25] Mr. Broll provided detailed evidence regarding the relevant policies of the City OP, including the policies raised by Ms. Pereira-Crockett. In particular, Mr. Broll testified that there are site-specific policies in s. 16 of the City OP's Neighbourhood policies, which establish the evaluation criteria to be used within this neighbourhood because the subject property has been identified as a special site. It was Mr. Broll's opinion that the requested variances maintain the general intent and purpose of the City OP. Mr. Hynes concurred with Mr. Broll's opinion.

[26] Mr. Broll and Mr. Hynes were also of the opinion that the requested variances maintain the general intent and purpose of the 2007 ZBL. Mr. Broll explained in detail how the variances for height, parking, number of dwelling units, landscape area and landscape buffer relate to the existing zoning by-law requirements. He testified that the intent of what the zoning by-law is trying to bring forward on the subject property is being implemented through the requested variances using current designs and reflecting current conditions.

[27] It was the opinion of both Mr. Broll and Mr. Hynes that the requested variances are desirable for the appropriate development or use of the land based on the overall evidence, much of which is summarized above. They also agreed that the requested variances are minor, again based on the evidence provided to the Board and summarized above.

[28] Having reviewed all of the evidence, the Board accepts the opinion evidence of Mr. Broll and Mr. Hynes. No planning opinion evidence was called to contradict their opinion evidence. The Board finds that, subject to the conditions set out in paragraph 6, the requested variances satisfy the four tests in s. 45(1) of the Act, individually and cumulatively. The Board further finds that concerns expressed by the participants have been considered and adequately addressed in the proposed development.

ORDER

[29] The Board orders that the appeal is allowed and the variances to By-law No. 0225-2007, set out in paragraph 2 above, are authorized subject to the conditions set out in paragraph 6.

"M. Carter-Whitney"

M. CARTER-WHITNEY
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.

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C. Schedule "A" per Condition of Approval #3

