

Ontario Municipal Board
Commission des affaires municipales
de l'Ontario



ISSUE DATE: November 22, 2016

CASE NO(S): PL160570

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

Applicant and Appellant:	Tan Jing
Subject:	Minor Variance
Variance from By-law No.:	0225-2007
Property Address/Description:	594 Curzon Avenue
Municipality:	City of Mississauga
Municipal File No.:	A177/16
OMB Case No.:	PL160570
OMB File No.:	PL160570
OMB Case Name:	Jing v. Mississauga (City)

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.

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.

Heard: October 13, 2016 in Mississauga, Ontario

APPEARANCES:

Parties

Tan Jing
City of Mississauga

Counsel*/Representative

Z. Cao
B. Ruddick*

**DECISION OF THE BOARD DELIVERED BY STEFAN KRZECZUNOWICZ AND
JASON CHEE-HING AND ORDER OF THE BOARD**

MATTER BEFORE THE BOARD

[1] Tan Jing (the “Applicant”) wants to rebuild and enlarge his two storey bungalow, located at 594 Curzon Avenue (the “subject property”). His purpose is threefold: to address the state of disrepair in the current dwelling; to create more living space for his family of seven; and to maximize the property value.

[2] In 2013, the Applicant retained Zhinqiang Cao, a civil engineer, to design the new dwelling. Mr. Cao’s design was for a 4,900 square feet threestorey flat roof dwelling with a height of 9.75 metres (“m”), side yard setbacks of 1.20 m on the first and second storeys, and a setback of 1.57 m on the south-west side yard of the third storey. The City of Mississauga (the “City”) Zoning By-Law No. 0225-2007 (the “Zoning By-Law”) requires a minimum setback of 1.20 m for a first storey, an additional 0.61 m setback for each subsequent storey and restricts the height of flat roof dwellings to 7.50 m.

[3] On April 4, 2016, the Applicant applied for variances for height and for second and third storey setbacks to accommodate Mr. Cao’s design. The Committee of Adjustment (“Committee”) denied the application on May 12, 2016.

[4] On June 22, 2016, the Applicant appealed the Committee’s decision to the Ontario Municipal Board (the “Board”).

[5] At the hearing, Mr. Cao presented details about his design proposal and gave his reasons why the variances should be allowed.

[6] The Board also heard evidence from Lisa Christie, member of the Ontario Professional Planning Institute and Canadian Institute of Planners and Greg Kirton, pre-candidate member of the same. Mr. Kirton was responsible for processing all aspects of the Applicant’s zoning application. Ms. Christie was instrumental in preparing the height restriction in the Zoning By-Law from which the Applicant is seeking a variance. Both

were qualified by the Board to give expert opinion evidence in land use planning and both testified in opposition to the application.

THE PROPOSAL IN CONTEXT

[7] The subject property is designated “Residential Low Density II” in the City’s Official Plan (“OP”) and is located in a self-contained residential “pocket” within the Lakeview Neighbourhood Character Area (“Lakeview Neighbourhood”). The pocket is generally bounded by Lakeshore Road to the north-west, the Humber River to the south-west and parkland to the south-east and north-east. For the purposes of analyzing the proposal in context, both Mr. Cao and Mr. Kirton selected the pocket as an appropriate study area (the “study area”).

[8] The study area contains almost 250 detached dwellings. The predominant built form is original war-time and post-war one-storey and one and a half storey bungalows with peaked roofs. The area has witnessed a steadily increasing amount of redevelopment in the last 10 years such that about eight per cent of the dwellings have been rebuilt as two-storey or three-storey flat roof houses. The house at 588 Curzon Avenue, adjoining the subject property to the south-west, is an example of the latter; it was built in 2014 at a height of 9.92 m (see Exhibit 3, Tab 35).

[9] Like 588 Curzon Avenue, much of the recent redevelopment in the study area exceeds the 7.50 m flat roof height limit in the Zoning By-Law. This is because the limit is relatively recent, having only been introduced in 2015 through a by-law amendment. The amendment arose out of concerns from local residents about the proliferation of three-storey flat roof houses. In response to these concerns, City Council requested staff to examine and report back on the issue. Three reports were prepared for Council, all by Ms. Christie, with the final report in June 2015 recommending the 7.50 m height limit because it:

...will contribute to infill housing development that is more compatible with the surrounding low density housing stock in areas in Ward 1 [containing the study area], where there is currently pressure for redevelopment, due to gentrification and increasing land values. (**Exhibit 3, p.79-80**)

[10] The Amending By-law No. 0171-2015 was passed on June 24, 2015 and was appealed to the Board. On April 4, 2016, the Board upheld the amending by-law noting that the 7.50 m height limit “has merit in regulating built form” and “is good planning” (Exhibit 3, p.127).

[11] Several variances for flat roof height within the study area have been applied for since the by-law amendment was passed. Only one has been approved, for a three storey house at 872 Hampton Crescent. In approving this variance, Mr. Kirton testified that the Committee considered the river and park, which bound the south-west and south-east sides of the property, to be mitigating factors.

ANALYSIS AND FINDINGS

[12] The authority to grant or deny variances is given under s. 45(1) of the *Planning Act*. This section has given rise to what are commonly referred to as the “four tests” for variance approval. The tests must be applied by the Committee when considering a variance application and by the Board when making its decision on a variance appeal. In reviewing the Applicant’s proposal against the four tests, the Board accepts the expert planning evidence of Ms. Christie and Mr. Kirton and denies the appeal for the reasons set out below.

[13] The variances do not maintain the general purpose and intent of the City’s Official Plan (“OP”). Ms. Christie highlighted numerous instances where the vision and guiding principles of the OP speak of protecting and enhancing the stability of residential areas. In her view, OP policy 5.1.7 is particularly relevant to this appeal:

[In directing growth] Mississauga will protect and conserve the character of stable residential Neighbourhoods. **(Exhibit 3, p.157)**

[14] The OP’s purpose in preserving stability is reinforced by the redevelopment policies in the Lakeshore Local Area Plan (the “Lakeview Plan”), which apply more directly to the study area. In this regard, Mr. Kirton testified that the Applicant’s proposal is not in keeping with s. 5.2.3 of the Lakeview Plan which requires that:

Development in Neighbourhoods should fit into the existing character, respecting the existing low density and *one to two storey building heights in Lakeview* [emphasis added]. **(Exhibit 3, p.173)**

[15] Mr. Kirton also noted that an objective of the Neighbourhood policies in the Lakeview Plan is to “reinforce the planned character of the area” (Exhibit 3, p.174). In his view, the planned character of the study area is addressed directly by Zoning By-Law provisions that regulate setbacks and height (see below).

[16] Notwithstanding the recent redevelopment in the study area, the Board agrees with Mr. Kirton that the area’s prevailing and planned character is of one and two-storey peaked roof dwellings and that the Applicant’s proposal for a three-storey flat roof dwelling contravenes a principal goal of the OP and Lakeview Plan to preserve this character. As such, the Board finds that the variance application fails the first of the four tests.

[17] The Board finds that the application also fails the second test because it does not maintain the general purpose and intent of the City’s Zoning By-Law. The subject property is zoned R3-75: the “R3” permits single-detached dwellings; the “75” was added to the designation when the flat roof height limit took effect in 2015. Ms. Christie testified that the height limit was a longstanding and widespread zoning standard in the City when it was introduced in the study area. In her view, the express purpose of the limit is to restrict flat roof dwellings to a maximum of two storeys, thereby preserving neighbourhood character. She testified that flat roofs need to be lower than peaked roofs because the adverse massing and scaling impacts are greater. Photos provided by the City of three-storey flat roof dwellings in the Lakeshore Neighbourhood support Ms. Christie’s position (Exhibit 3, Tab 31). The photos clearly show how these dwellings can cause detrimental massing, shadowing and overlook to neighbouring properties and the streetscape and contrast sharply with the scale and character of the original homes.

[18] Mr. Kirton testified that the setback provisions of the Zoning By-Law work in tandem with the height limit in that reduced setbacks for additional storeys temper the adverse shadowing and overlook impacts of building mass. Reduced setbacks for

additional storeys also preserve the streetscape aesthetic and maintain reasonable separation distances between houses.

[19] The Board finds that the variance application fails the third test because it is not desirable for the appropriate development or use of the subject property. The Applicant's design is for a house that is out of proportion with the lot and the neighbourhood. It represents a built form that has been carefully considered by the City in recent years and has been deemed inappropriate for the Lakeview Neighbourhood. The Board accepts the uncontested expert evidence of Ms. Christie and Mr. Kirton that the proposal represents an overdevelopment of the subject property.

[20] In assessing desirability, the Board has also considered the statement of Pat Farrell, a participant to the proceeding, in opposition to the application. Mr. Farrell grew up in the study area and has resided at 608 Montbeck Crescent, one street south-east of the subject property, since 1995. He has monitored redevelopment in the area and informed the Board that, in his view, three-storey flat roof homes create massing, shadowing and drainage issues for neighbouring properties. He gave the example of an elderly neighbour whose sideyard ice does not melt as quickly in the winter as a result of the larger shadow cast by a recent three storey flat roof dwelling next door. Mr. Farrell also highlighted a petition signed by 18 residents that live near the subject property in opposition to the application (Exhibit 3, p. 308).

[21] Drawing on the above analysis, the Board finds the variances are not minor. The proposed three storey flat roof dwelling represents a substantial deviation from the built form that the OP and Lakeview Plan seek to promote in the study area. The proposal also directly contravenes the intent of the Zoning By-Law to preserve neighbourhood character through restricting flat roof height and by extension, prohibiting three-storey flat roof homes. The requested setback variances would exacerbate the adverse impacts arising from the height variance.

[22] In conclusion, the variances are unsuitable and contrary to the good planning principles that apply to the study area. They are not in the public interest.

ORDER

[23] The Board orders that the appeal be dismissed and the variances are not authorized.

“Stefan Krzeczunowicz”

STEFAN KRZECZUNOWICZ
MEMBER

“Jason Chee-Hing”

JASON CHEE-HING
MEMBER

If there is an attachment referred to in this document,
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Ontario Municipal Board

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