

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



**ISSUE DATE:** May 11, 2017

**CASE NO(S):** PL160933

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

Applicant and Appellant:	Sharon Bogart
Subject:	Minor Variance
Variance from By-law No.:	0225 - 2007
Property Address/Description:	918 Goodwin Rd.
Municipality:	City of Mississauga
Municipal File No.:	A 260/16
OMB Case No.:	PL160933
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OMB Case Name:	Bogart v. Mississauga (City)

**Heard:** January 17 and April 21, 2017 in Mississauga, Ontario

**APPEARANCES:**

**Parties**

**Counsel**

Sharon Bogart ("Applicant")

B. Ketcheson

City of Mississauga ("City")

M. Kemerer/L. Magi

**DECISION OF THE BOARD DELIVERED BY BLAIR S. TAYLOR AND ORDER OF THE BOARD**

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**INTRODUCTION**

[1] On or about May 19, 2016, the Applicant prepared a minor variance application for the property known municipally as 918 Goodwin Road ("Subject Lands") seeking to

demolish the existing dwelling and replace it with a new two-storey flat roofed dwelling with an elevator, and a reverse grade driveway. To facilitate this, the minor variance sought relief for a number of variances including height of 11.76 meters (“m”) whereas 7.5 m was permitted, lot coverage, side yard setback, etc.

[2] At the Committee of Adjustment (“Committee”) meeting of June 23, 2016, the application was deferred.

[3] On August 4, 2016, the Transportation and Works Department indicated that they had no objection to the reverse grade driveway.

[4] At the Committee meeting of August 11, 2016, the application was amended to lot coverage and height as the elevator had been eliminated. The application was again deferred. The Committee minutes note that the Planning Department included a comment that the two requested variances for dwelling height and lot coverage may be appropriate given the context of the neighbourhood, but there were a number of outstanding items that needed to be addressed.

[5] Returning to the Committee on September 8, 2016, the two variances were found by the Planning Department to satisfy the requirements of s. 45(1) of the *Planning Act*.

[6] The Committee, upon hearing, from the local residents denied the requested variances as not meeting the intent of the flat roof by-law to minimize the height of the dwelling and that a more modest dwelling could be achieved with slight modifications to ceiling heights.

[7] The Applicant appealed to the Board.

[8] In the lead up to the hearing, the development application was further revised. Exhibit 2 Tab 7 contains the revised plans which depict reduced lot coverage of 34.94% and a reduced height of 8.44 m. Accordingly the Applicant sought to amend her

application to withdraw the lot coverage variance as it now complied with the Zoning By-law and reduce the height relief sought to 8.44 m.

[9] Pursuant to s. 45(18.1.1) of the *Planning Act*, the Board considered the amendments to be minor in nature, and that no further notice was required.

## **DECISION**

[10] The Board will allow the appeal in part, and authorize the amended height variance of 8.44 m for the reason set out below.

## **THE HEARING**

[11] The Board heard this appeal over the course of two days commencing on January 17, 2017, and completed on April 21, 2017.

[12] Giving expert land use planning evidence on behalf of the Applicant was Franco Romano. Giving expert land use planning evidence on behalf of the City was Allan Ramsay of Allan Ramsay Planning Associates Inc.

[13] John Danahy of 917 Goodwin Road, Carmen Panico of 914 Goodwin Road, and Patrick Farrell of 608 Montbeck Crescent also gave evidence in support of the City position.

## **FLAT ROOF BY-LAW**

[14] In February 2015, City Planning Staff reported to City Council with regard to a concern raised by the Ward Councillor with regard to height of new homes in Ward 1 with flat roofs. The report notes that there were a number of flat roofed homes in the ward and that home owners had been choosing to take advantage of the zoning regulations to maximize the size of homes, which could be in stark contrast to some of

the existing development which had not been built to the maximum allowable standards. To address this issue, staff proposed a new height limit of 7.5 m.

[15] This recommendation proceeded to City Council and it adopted the staff recommendation and passed Zoning By-law Amendment No. 0171-2015 (“ZBA 0171-2015”), which was appealed to the Board by a third party.

[16] The Board approved ZBA 0171-2015 in its decision issued April 4, 2016. The Board in its decision stated in paragraph 13 the following:

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.

## **CONTEXT**

[17] The Subject Lands are found in a neighbourhood generally bounded by the Cooksville Creek to the west, south of the C4 zone on the south side of Lakeshore Road East, west of Montbeck Crescent, and north of Lakeside Avenue, and Beach Street.

[18] The Official Plan designates the Subject Lands as Residential Low Density II, and they are zoned R3-75.

[19] The Subject Lands are on the west side of Goodwin Road and have a frontage of 13.41 m, a depth of 45.22 m and an area of about 606.52 square meters (“sq m”).

[20] Within the neighbourhood, there are about 250 improved lots, of which there are about 25 dwellings which have flat roofs, and are scattered throughout the neighbourhood. Those flat roofed dwellings range in height from 7.5 m to 10.69 m.

[21] The photographic exhibits produced by the Applicant's land use planner and the City's land use planner both document the prevalence of flat roofed dwellings in the neighbourhood. Mr. Ramsay's Exhibit 10, on behalf of the City, often showed flat roof dwellings in juxtaposition to the likely original dwellings of the 1950s.

[22] With regard to Goodwin Road based on Exhibit 11, there are seven flat roofed dwellings:

- a. at the south east corner of Byngmount Avenue and Goodwin Road is 684 Byngmount, a three storey dwelling at 10.49 m.
- b. 930 Goodwin Road is a two storey dwelling at 9.68 m,
- c. 914 Goodwin Road which abuts the Subject Lands and will be dealt with below separately,
- d. 909 Goodwin Road is a three storey dwelling at 9.68 m,
- e. 864 Goodwin Road is a two storey dwelling at 9.25 m,
- f. 860 Goodwin Road is a two storey dwelling at 8.01 m, and
- g. 852 Goodwin Road is a three storey dwelling at 10.66 m.

[23] There is no agreed upon height with regard to the flat roofed dwelling at 914 Goodwin Road that abuts the Subject Lands to the south. The City staff report to the Committee referenced the highest roof element as being 9.5 m and the height to its main second storey element at 8.28 m. This is disputed by Mr. Ramsay on behalf of the City. He said that the correct height (which he obtained from the City's Building Department) is 7.67 m and which is based on the Zoning By-law's definition of "height" which utilizes an "average grade" calculation. Mr. Romano took a different approach. He retained an Ontario Land Surveyor who surveyed the heights of all the flat roofed dwellings in the neighbourhood as they would appear to a passerby on the street, (and not in accordance with the Zoning By-law). His Exhibit 6 depicts that the height for 914 Goodwin Road from the surveyor is 9.59 m.

[24] The Board would observe from the photographic evidence that 914 Goodwin Road is a two-storey, flat roofed dwelling with a vertical architectural feature in the middle of the roof. City Planning Staff, in their report to the Committee noted above, was of the opinion that the highest roof element of 914 Goodwin Road was 9.5 m and the height to the main second-storey element was 8.28 m. That is at least partially corroborated by Exhibit 6 which has the height of that vertical element at 9.59 m.

[25] The Board makes no finding as to the actual height of 914 Goodwin Road in accordance with the Zoning By-law based on the evidence before it. Rather it would appear to the Board that the range of height in accordance with the Zoning By-law would be from 7.67 m to 8.28 m and for the highest roof element at 9.5 m to 9.59 m.

## **POLICY REGIME**

[26] The land use planners agree that this is a matter of local interest and does not involve matters of provincial interests, the Provincial Policy Statement, the Growth Plan for the Greater Golden Horseshoe, nor the Regional Official Plan, as it is strictly a consideration of height for a detached dwelling in a Residential Low Density 2 designation and zoned R3 which permits detached dwellings.

## **OFFICIAL PLAN**

[27] The City's Official Plan in section 5.17.7 indicates that the City will protect and conserve the character of stable residential neighbourhoods.

[28] Neighbourhoods are one of the components of the City Structure and the City Structure provisions provide in section 5.3 that neighbourhoods and employment areas will accommodate the lowest densities and building heights, and the maximum building height is four storeys. Section 5.3.5 of the Official Plan states that:

Neighbourhoods are characterized as physically stable areas which add character that is to be protected. Therefore Mississauga's neighbourhoods are not appropriate areas for significant intensification.

This does not mean that they will remain static or that new development must imitate previous development patterns, but rather that when development does occur it should be sensitive to the neighbourhood's existing and planned character.

[29] This narrative is borne out in section 5.3.5.6: that development will be sensitive to the existing and planned context and will include appropriate transitions in use, built form, density, and scale.

[30] In section 9 of the Official Plan titled 'Build a Desirable Urban Form' the Official Plan states that:

Established residential neighbourhoods, the natural heritage system and valuable cultural heritage resources will be protected and strengthened with infill and redevelopment, compatible with the existing or planned character.

[31] Further, it states that:

Appropriate infill in both intensification areas and non-intensification areas will help to revitalize existing communities by replacing the aged buildings, developing vacant or under-utilized lots, and by adding to the variety of building forms and tenures. It is important that infill "fits" within the existing urban context and minimizes undue impacts on adjacent properties ... Redevelopment must also be sensitive to the existing urban context and minimize undue impacts on adjacent properties.

[32] This narrative is borne out in section 9.1.3 which states that infill and redevelopment within neighbourhoods will respect the existing and planned character.

[33] Non-intensification areas are dealt with in section 9.2.2 which includes Neighbourhoods. There, Neighbourhoods are described as being stable areas where limited growth is anticipated and development in neighbourhoods will be required to be context sensitive and respect the existing or planned character and scale of development.

[34] In section 9.2.2.3 the policy provisions state:

While new development need not mirror existing development, new development in neighbourhoods will:

- (a) Respect existing lotting patterns;
- (b) Respect the continuity of front, rear and side yard setbacks;
- (c) Respect the scale and character of the surrounding area;
- (d) Minimize overshadowing and overlook on adjacent neighbours;  
and
- (e) Be designed to respect the existing scale, massing character and grades of the surrounding area.

[35] At section 9.512 under 'Context', it is noted that developments should be compatible and provide appropriate transition to existing and planned development by having regard to (g) the size and distribution of building mass and height.

[36] In section 11 of the Official Plan under 'General Land Use Designations', Neighbourhoods is one of the listed elements and the Neighbourhoods also have Character Areas of which Lakeview is one such Character Area.

[37] The Neighbourhoods are dealt with in section 16 of the Official Plan which in 16.1.1 under 'General' provides that the maximum building height of four storeys will apply unless Character Area policies specify alternative building heights.

[38] Under section 16.13, the Official Plan policies for lands within the Lakeview Neighbourhood Character Area are contained within the Lakeview Local Area Plan.

[39] The Board has advised that the term "compatible" is defined in the Official Plan (although it was not contained within the extracts of the City's Official Plan found in Exhibit 2). The Board is advised that the Official Plan defines "compatible" as meaning:

Development which may not necessarily be the same as, or similar to, the existing or desired development, but nonetheless enhances an established community and co-exists with existing development without unacceptable adverse impact on the surrounding area.



## LAKEVIEW LOCAL AREA PLAN

[40] In section 3 'Current Context', the Lakeview Neighbourhood is described as being made up of stable residential neighbourhoods characterized by detached and semi-detached housing many of which homes were built in the 1950s and 1960s and are being renovated today or replaced largely with new detached housing, with some assembly for town housing. The vision for Lakeview is described as:

Neighbourhoods in Lakeview are stable and offer a variety of housing choices. It is recognized that some change will occur and development should provide appropriate transition to the existing stable areas, and protect the existing character and heritage features.

[41] The guiding principles provide in section 5.1.2 that distinct neighbourhoods should be strengthened by preserving heritage features, protecting established stable neighbourhoods and ensuring appropriate built form transitions for development.

[42] In section 5.2.3, the Lakeview Local Area Plan discusses the neighbourhoods within the Neighbourhood Character Area. There it states:

Infill and redevelopment in neighbourhoods will be facilitated and be encouraged in a manner consistent with existing land uses in the surrounding area. Neighbourhoods are considered to be primarily stable residential areas that may include a commercial centre to serve the surrounding area.

[43] Section 6.2, under the subtitle 'Neighbourhood Character Areas' provides in section 6.2.2 that neighbourhoods are encouraged to provide a variety of housing forms to meet the needs of a range of household types.

[44] Section 8.0 under the heading 'Complete Communities', notes that Lakeview contains many of the attributes associated with complete communities including a range of housing options with a mixture of housing forms and densities including rental housing.

[45] Section 10.0 'Desirable Urban Form' states that development will be guided by the Lakeview built form standards that are in Appendix 1 but that development will be in accordance with the minimum and maximum heights shown on Map 3 and Map 3 shows for the lakeside area a minimum and maximum height of one-storey to three-storeys.

[46] Section 10.1 under 'Neighbourhoods' reiterates that neighbourhoods are stable residential areas where the existing character is to be preserved and enhanced and that development is to be sensitive to the existing low-rise context and reinforce the planned character of the area.

[47] Section 10.1.1 states that development should reflect one to two-storey residential building heights and will not exceed three storeys.

[48] Section 10.5 'Built Form Types' provides in paragraph (a) that new housing within Lakeview should maintain the existing character of the area; and (b) development will fit the scale of the surrounding area and take advantage of the features of the particular site such as topography, contours and mature vegetation.

## **LAKEVIEW BUILT FORM STANDARDS**

[49] The Introduction provides that the Lakeview Built Form Standards are to be read in conjunction with the policies of the City of Mississauga Official Plan and the Lakeview Local Area Plan but the standards are not to be considered part of the Area Plan. In section 2.0, the Lakeview Character Areas provides in section 2.1:

That lands identified as Neighbourhood Areas are considered to be generally stable residential areas where the existing character is to be preserved and enhanced. These areas will be maintained while allowing for infill which is compatible and enhances the character of the area.

[50] With regard to detached dwellings, section 2.2.1 provides that:

new detached dwellings will maintain the existing character of the area and apply the following criteria:

- (a) The maximum height of any dwelling should be 10.7 meters;
- (b) New development will fit the scale and character of the surrounding area;
- (c) New development will have minimal impact on its adjacent neighbours with respect to overshadow and overlook;
- (d) New house designs which fit the scale and character of the local area are encouraged; and
- (e) The building mass side yards and rear yards will respect and relate to those of adjacent yards.

## PLANNING STAFF REPORT

[51] The final Planning Staff report to the Committee is dated September 7, 2016 and its recommendation was that it had no objection to the requested variances (lot coverage and height).

[52] In arriving at its recommendation, the Planning Report noted the following:

... the authorized agent has confirmed that he will not be seeking further amendments to the proposed variances and will be proceeding on the basis of what was indicated in the notice, being a proposed dwelling height of 8.48 m (27.82 ft.) and proposed lot coverage of 36.92%

The Lakeview Local Area Plan has policy related to the development of new single detached dwellings that encourages new housing to fit the scale and character of the area. The proposed flat roof dwelling is similar to other dwellings within the neighbourhood and is a part of the diverse character of dwellings within the Lakeview neighbourhood. The scale of the proposal is also consistent with similar built form in the neighbourhood. There is a recently constructed flat-roof dwelling immediately next door to the subject lands; its highest roof element is 9.5 m (31.17 ft.) high and the height to its main second-storey level element is 8.28 m (27.17 ft.).

We recognize that many of the other dwellings were built prior to the by-law amendment altering the permitted flat roof dwelling height. This amendment was intended to restrict very large flat roof dwellings that were permitted to a height of 10.7 m (35.10 ft.) and could accommodate a three-storey dwelling. The Applicant's proposal is a two-storey

dwelling without the massing impact of the undesirable types of flat roof designs which triggered the by-law changes.

In light of both the immediate and general context we are of the opinion that the proposed increase in height of 0.98 m (3.22 ft.) beyond what the Zoning By-law currently allows is not a significant increase, maintains the intent of the Zoning By-law, and will not undermine the general character of the Lakeview neighbourhood.

## COMMENTARY

[53] The evidence presented to the Board in this matter shows a clear and sharp divergence of opinion with regard to the only variance before the Board: height.

[54] The Applicant's land use planner opines that the amended development application:

- (a) conforms to the general intent and purpose of the Official Plan which allows heights up to four storeys,
- (b) respects the existing and planned context, and it is context sensitive as there is an existing two storey flat-roofed building that immediately abuts to the south,
- (c) it conforms to the Lakeview Local Area Plan where heights will not exceed three storeys and this is a two storey development,
- (d) it conforms to the Built Form Standards which although not part of the Area Plan technically but allows compatible development to a maximum height of 10.7 meters,
- (e) it fits the scale and character of the surrounding area including the property immediately adjacent and other flat-roofed buildings in the neighbourhood, and
- (f) it meets the general intent and purpose of the Zoning By-law which if approved will allow a low rise grade oriented dwelling which is context sensitive.

[55] The Applicant's land use planner submits that the variance requested of 8.44 m is virtually imperceptible to a passerby on the street from the 7.5 m regulation in the by-

law, and it is in keeping with the existing building heights on Goodwin Road and in other areas similarly zoned.

[56] Mr. Romano points to the Staff Report of the City's Planning Department to the Committee indicating that the then sought variance and lot coverage variance in the City Staff's planning opinion met the intent and purpose of the new flat-roof by-law and that his evidence is corroborated by that.

[57] As to whether the matter is minor in nature, he opines that there is no excessive height, that the order of magnitude is modest and certainly not unique to the area, and that there are no unacceptable adverse impacts that arise.

[58] Turning to the final test of being desirable for the appropriate development or use of the property, he had told the Board that the building design has been sculpted, that the mass is broken up into a number of features, it maintains the two-storey low rise built form, and that all other zoning regulations (excepting the increase in height from 7.5 m to 8.44 m) comply with the Zoning By-law.

[59] In opposition, the Board heard from Mr. Ramsay who had been retained by the City for the purpose of this Hearing. In his opinion, the height of the development proposal was at a scale that was neither complimentary nor compatible with the surrounding neighbourhood and represented an over development of the site. He opined that there were issues with regard to privacy and overlook arising from the second-storey balcony. He further submitted that approval of this development would result in a building that would stand out rather than be an integral component of the neighbourhood and therefore not be integrated into the neighbourhood. He stated that the reverse driveway gave the appearance of a three-storey dwelling and would contribute to the perception of a taller building, that the development application was not in compliance with the new zoning standards that were completed in 2015 and approved by the Board in 2016, and finally that the development proposal did not comply with several of the design criteria found in the Lakeview Built Form Standards.

He thus concluded that the proposal was not in keeping with the character of the area and should be denied.

[60] Supporting that view of the City's planning consultant were three neighbours who were of the view that the development application would be out of keeping with the character of the area, that the house would stand out and that the Applicant should develop within the parameters of the existing Zoning By-law.

## **FINDINGS**

[61] Firstly, the Board finds that the Subject Lands are found within a neighbourhood that is a neighbourhood in transition. The photographic evidence clearly shows a diversity of house styles ranging from the original circa 1950s bungalow, to one and a half-storeys, to two-storey peak roofed houses, to the three-storey flat roofed dwellings up to or about 10.7 m in height.

[62] The stark juxtaposition of the one and half-storey original structures to the three-storey 10.7 m flat roof dwellings resulted in the City's Planning Staff review of the height standards for flat roofed dwellings and ultimately the passage of ZBA 0171-2015 to reduce the height for flat roof dwellings to 7.5 m.

[63] The Board finds that the existing character of the neighbourhood includes flat roof dwellings up to three-storeys in height and a maximum of 10.7 m in height.

[64] The Board finds the Goodwin Road context includes seven existing flat roof dwellings ranging in height up to 10.66 m.

[65] The Board finds that the abutting property to the south at 914 Goodwin Road is a two-storey, flat roof structure with a zoning by-law height ranging from 7.67 m to 8.28 m with its highest roof element at or about 9.5 m.

[66] The Board finds that the Official Plan contemplates development that is “compatible”; i.e. meaning “not the same as” or “identical thereto” but rather development that can co-exist in harmony with the surrounding area.

[67] The Board prefers the evidence of Mr. Romano as supported by the City’s own Planning Department.

[68] The Board finds in these circumstances and for this location, that the proposed development at a height of 8.44 m can co-exist in harmony with the surrounding neighbourhood.

[69] The Board does not agree that: the proposed scale of development is out of character with the neighbourhood, that there are issues of privacy and overlook, that the reverse driveway is an issue at all, and that there is an issue with regard to the compliance of the Built Form Standards or compliance with any other zoning standard.

[70] The Board finds that this is an urban area, where some neighbour to neighbour interface is to be expected.

[71] The Board finds it incongruous that the City would argue that its own Planning Department (that studied and brought forward the new zoning standards for the flat-roofed by-law for dwellings in Ward 1), somehow “got it wrong” when evaluating this development proposal within the context of that new zoning by-law, when it had no objection to the requested variance.

[72] The Board finds Mr. Romano’s opinion with regard to the development application is corroborated by the land use planning opinion of the City’s Planning Department in its comments to the Committee where it said:

In light of both the immediate and general context we are of the opinion that the proposed increase in height of 0.98 meters (3.22 feet) beyond what the Zoning By-law currently allows is not a significant increase, maintains the intent of the Zoning By-law, and will not undermine the general character of the Lakeview Neighbourhood.

[73] The Board concurs.

[74] The Board finds that all four tests of s. 45(1) of the *Planning Act* have been met.

[75] Thus the Board will allow the appeal in part, authorize the requested height variance at 8.44 m, and directs that the plans to be submitted to the City of Mississauga for a Building Permit shall be in substantial conformity with the plans found in Exhibit 5.

[76] This is the Order of the Board.

*“Blair S. Taylor”*

BLAIR S. TAYLOR  
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**

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