

Ontario Municipal Board
Commission des affaires municipales
de l'Ontario



ISSUE DATE: July 26, 2017

CASE NO(S): PL161033

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

Applicant and Appellant:	Chengliang Zhang
Subject:	Minor Variance
Variance from By-law No.:	0225-2007
Property Address/Description:	111 Glenview Drive
Municipality:	City of Mississauga
Municipal File No.:	A 389/16
OMB Case No.:	PL161033
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OMB Case Name:	Zhang V. Mississauga (City)

Heard: April 11 and 25, 2017 in Mississauga, Ontario

APPEARANCES:

Parties

Counsel

Chengliang Zhang

Amber Stewart

City of Mississauga

Lia Magi

DECISION DELIVERED BY J. V. ZUIDEMA AND ORDER OF THE BOARD

[1] Chengliang Zhang (“Appellant”) made an application for a minor variance from the City of Mississauga (“City”) Zoning By-Law No. 0225-2007 (“ZBL”). The Appellant required this variance in order to legalize the construction of a ground floor addition and a second storey addition including an expanded porch and balcony at property located at 111 Glenview Avenue (“subject property”).

[2] The Appellant sought the following variances:

- i. A total lot coverage of 28% of lot area; whereas the ZBL permits a maximum lot coverage of 25%; and
- ii. A total gross floor area (“GFA”) - infill residential of 450.50 square metres (“sq m”) or 4849.30 square feet (“sq ft”) whereas the ZBL permits a maximum GFA - infill residential of 366.14 sq m or 3941.22 sq ft.

[3] The Appellant contended that the enclosed two-storey solarium did not impact rear neighbours because no residential properties abut the rear of the subject property. There is a school yard adjacent to the rear of the subject property. Further, no one from the neighbouring properties voiced any objection.

[4] The Committee of Adjustment (“C of A”) refused the variance and as such, the Appellant appealed to this Board. At the hearing, the City appeared in opposition to the variance. No other person attended either in support or opposition.

[5] On behalf of the Appellant, who was represented by counsel, I heard from Mr. Theodore Cieciora, who was qualified and accepted as an expert in land use planning.

[6] On behalf of the City, which was also represented by in-house counsel, I heard from Mr. Greg Kirton, who was qualified and accepted as an expert in land use planning. Mr. Kirton is the in-house Planner at the City and wrote the planning report which was before the C of A when it made its decision.

[7] The central issue for the City which prompted its participation in this appeal was that the City maintained that the intensification proposed must be measured from the performance standard contained in the ZBL and not against an earlier permission granted by the C of A for this property back in 2014. That application was made by the

homeowner at that time, Mr. Lawrence Collymore.

[8] Back then, an earlier application had been made for increased GFA bringing the total GFA for the dwelling to 409.50 sq m or 4,407.96 sq. ft. and lot coverage of 26.95%, which were both granted. The maximum GFA permitted at the time was 366.14 sq m or 3,941.22 sq. ft. and the maximum lot coverage permitted was 25%. These maximum figures apply to the variances being sought through this application as well.

[9] On that occasion, the City did not oppose the application before the C of A. The Planning Department had suggested that the application be deferred so that Mr. Collymore could provide further details concerning the Site Plan application.

[10] Now with the variances being sought, an additional GFA of 41sq m or 441.34 sq. ft. and 1.05% lot coverage were being sought. The City was concerned about incremental rises resulting in a 23% increase from the almost 4000 sq. ft. as of right size for this home. The City was concerned that allowing this massing would create an undesirable precedent for this area.

[11] The construction did not proceed in compliance with the earlier approval. The ground level porch was enclosed which resulted in additional GFA. This in turn required a further approval which necessitated the minor variance application and this appeal.

[12] In the end, I prefer the evidence from the Appellant's Planner and determine that the appeal is allowed and the variance is authorized. My reasoning and analysis follow.

[13] To address the heart of the City's concern, namely that what was really being sought was an increase in massing of about 23% for an already large home and that was excessive and did not represent good planning, did not accord with the City's earlier position wherein the City did not object to an increase in massing of almost 12%.

[14] The City would ask that I simply ignore the earlier application and assess this

application against the performance standards in the ZBL and not against the permissions which were granted earlier. With respect, these two are not necessarily connected.

[15] The earlier permissions and the City's position to not object to that earlier application are historical facts. I cannot pretend that they do not exist.

[16] However, in assessing this application, the variances being sought are from the performance standards set out in the ZBL and not incremental to the earlier permissions. In authorizing the variances, I have applied the four tests against the variances which were before the C of A and these are variances from the in-force ZBL for the City.

[17] The other fact which I cannot ignore is that no one from the surrounding neighbourhood appeared to object to the application. In fact, a letter was provided from the next door neighbor indicating that they were aware of the proposal and had no concerns. The Board places little weight on such evidence given that these individuals did not attend to speak to their letter or be cross-examined. However, given that no one appeared in opposition, what that does suggest is that as far as the adjacent properties and neighbours are concerned, they do not view the proposed variance to cause any significant negative impacts.

[18] Another factor in my preference for Mr. Cieciora's evidence is that Mr. Kirton testified that he thought the original variance and the increase which had been permitted was excessive. It seemed to me that the City might have been looking to revisit what had occurred with the 2014 variance. There was no evidence provided by Mr. Kirton as to why an increase in GFA of 12% was acceptable whereas 23% was not. To use the vernacular, where was the "tipping point" for the City? There was no evidence provided to reconcile the City's earlier position with that taken at this hearing.

[19] Also, there was a difference in the study areas used by the two Planners. Mr.

Cieciura used a larger study area [Exhibit 1, Tab 19] whereas Mr. Kirton used a large study area and a smaller study area [Exhibit 7, Tab 14]. Pursuant to Chapter 16 of the City's Official Plan ("OP"), there are 22 Neighbourhood Character Areas in the City. The subject property is in the Mineola Neighbourhood.

[20] The Mineola Neighbourhood is located south of the Queen Elizabeth Way ("QEW"), north of the Canadian National Railway ("CNR"), east of the Credit River and west of Cawthra Road. Hurontario Street runs north-south and almost bisects the Mineola Neighbourhood. Hurontario is a major thoroughfare connecting to the QEW.

[21] Mr. Kirton's smaller study area was a subset of his larger study area and essentially captured the area surrounding the subject property including those properties facing onto Glenview Drive but ending where Glenview meets Crestview. He also included a small portion of Maplewood but not the entirety of that road. The larger study area included properties along the entirety of Glenview, Crestview, Radley Road, Broadmoor Ave. to where it meets Pinewood Trail but not the length of Pinewood, Maplewood, Briarhill Drive and Weaver Ave.

[22] Mr. Cieciura's study area included Mr. Kirton's larger study area but also included six lots along South Service Road just east of Crestview and north of Radley. His study area also was further south to Pinewood Trail and further east to include Lochlin Trail.

[23] Both study areas were east of Hurontario in the Mineola Neighbourhood. In assessing Mr. Kirton's larger study area and Mr. Cieciura's study area, and reviewing the photographic evidence provided by both Planners, it is clear that this area of the City is experiencing rejuvenation. There were a number of photos showing older smaller, one-storey homes likely built during the 1960's and 1970's which are being replaced by much larger, newer, two-storey homes with attached two and three-car garages.

[24] The home on the subject property is similarly a newer home and larger than the older home immediately next door. The enclosure of the porch which can be described

now as a solarium fits with the character and style of the new housing being constructed in this area.

[25] I accept Mr. Cieciora's opinions that the proposed variances meet the test of maintaining the general intent and purpose of the City's OP. Specifically, when reviewing policy 16.18.1 which sets out the Urban Design Policies for Infill Housing, there are certain criteria which are identified:

- a. Preserve and enhance the generous front, rear and side yard setbacks – no variance is sought to reduce the setbacks.
- b. Ensure that existing grades and drainage conditions are preserved – there is no change proposed to the existing grade or drainage conditions.
- c. Encourage new housing to fit the scale and character of the surrounding area, and take advantage of the features of a particular site, i.e. topography, contours, mature vegetation – the proposed enclosure fits with the character and style of the area and no removal of vegetation is contemplated.
- d. Garages should be recessed or located behind the main face of the house ... or located in the rear – the application does not change the garage.
- e. Ensure that new development has minimal impact on its adjacent neighbours with respect to overshadowing and overlook – as noted earlier, no one from the neighbourhood appeared and the adjacent neighbour wrote to say they had no concerns.
- f. Encourage buildings to be one to two storeys ... the design of the building should de-emphasize the height... – the enclosure is two storeys to match with the house.
- g. Reduce the hard surface areas in the front yard – the enclosure is in the rear.
- h. Existing trees, large groupings or areas of vegetation and landscape features ... should be enhanced and preserved – as noted earlier, loss of vegetation is not contemplated.

- i. Large accessory structure will be discouraged, and any accessory structure will be located in side and rear yards only – as noted, the solarium is in the rear.
- j. House designs which fit with the scale and character of the local area, and take advantage of the particular site are encouraged. The use of standard, repeat designs is strongly discouraged – photographs were filed to show the solarium and its design is in keeping with the style of the house and the character of the area.
- k. The building mass, side yards and rear yards should respect and relate to those of adjacent lots – in this instance, no variance for side or rear yards is sought and the building mass relates to the newer construction nearby. The owner of the adjacent lot expressed no concern as one can forecast that this neighbouring property will likely also be redeveloped sometime in the future.

[26] With respect to the test of maintaining the intent and purpose of the ZBL, the maximum lot coverage in the R1 Zone is 25% but an exception exists as set out under Table 4.2.2 which addresses infill. Here the GFA calculation permits 190 sq m as a base with an addition of 20% of the lot area. The subject property has a lot area of 880.7 sq m which calculates to an addition of 176.14 sq m to the 190 sq m base resulting in the 366.14 sq m against which the variance is sought.

[27] The ZBL provides for a graduated system through such a calculation. No hard fixed threshold is set out. I agree with Mr. Kirton's characterization of how massing is to be assessed, namely that one looks at the deployment of the structure against the lot area along with the use of architectural treatments.

[28] In this instance, flexibility exists concerning the calculation of the maximum lot coverage and the increase is 3%. As noted earlier, the approximately 2% increase per the 2014 application did not result in any objection. I accept Mr. Cieciora's opinion that the increase being proposed is within the parameters of the ZBL given that no other

variances for setbacks or height are sought.

[29] Finally with respect to the tests of minor and desirable, I accept Mr. Cieciora's opinions that the proposed variance meets these tests also. No objections were raised by any neighbouring property owners and as such, one can conclude that no significant negative impacts were created by the enclosure. The solarium's design fits within the neighbourhood context and is an efficient use of existing infrastructure, which is desirable from the broader public interest.

[30] I also accept Mr. Cieciora's opinions that there are no concerns in relation to the broader policy objectives of the Provincial Policy Statement, the Growth Plan for the Greater Golden Horseshoe or the Regional Official Plan.

[31] For the foregoing reasons, the Board orders that the appeal is allowed and the variance is authorized.

"J. V. Zuidema"

J. V. ZUIDEMA
VICE-CHAIR

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

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