

Ontario Municipal Board
Commission des affaires municipales
de l'Ontario



ISSUE DATE: January 10, 2018

CASE NO(S): PL161056

PROCEEDING COMMENCED UNDER subsection 34(19) of the *Planning Act*, R.S.O. 1990, c. P.13, as amended

Appellant: 2095295 Ontario Inc. et al
Appellant: Horst Albert Benoit
Appellant: Maisa Hadid and Issa Bulbul
Appellant: Michael Kake and Dorothy Kake; and others
Subject: By-law No. BL 0193-2016
Municipality: City of Mississauga
OMB Case No.: PL161056
OMB File No.: PL161056
OMB Case Name: Benoit v. Mississauga (City)

Heard: November 1, 2017 in Mississauga, Ontario

APPEARANCES:

Parties

Counsel

2095295 Ontario Inc., Marcin
Wroblewski, Cindy Wennerstrom,
Tibor Urac, Wanda Urac, and Horst
Albert Benoit

M. Connell

City of Mississauga

L. Magi

**MEMORANDUM OF ORAL DECISION DELIVERED BY HUGH S. WILKINS ON
NOVEMBER 1, 2017 AND ORDER OF THE BOARD**

[1] This decision arises from a settlement conference held in Mississauga regarding appeals brought by 2095295 Ontario Inc., Marcin Wroblewski, Cindy Wennerstrom, Tibor Urac and Wanda Urac (the "Lakeside Appeals") with respect to the passing of

Zoning By-law No. 0193-2016 (the “Zoning By-law”) by the City of Mississauga (the “City”).

[2] The Zoning By-law amends the City’s Comprehensive Zoning By-law No. 0225-2007 to restrict the height of sloped roof houses and eaves and add a maximum house depth regulation for residential properties in low density residential zones in the City’s Ward 1. The Zoning By-law, also known as the “Sloped Roof By-law”, was enacted following passage of an earlier by-law known as the “Flat Roof By-law” (By-law No. 0171-2015), which reduces the height of flat roofs for new dwellings within certain residential zones.

[3] Several appeals were filed with the Board. On May 15, 2017, the Board convened a Pre-hearing Conference at which an appeal brought by Horst Albert Benoit was dismissed. Other appeals, including the Lakeside Appeals, were scoped and organized, party status was granted to Mr. Benoit, and participant status was granted to Fiona Campbell. At the PHC, the Board noted that appeals brought by Michael Kake and Dorothy Kake had been withdrawn.

[4] On October 26, 2017, the City notified the Board that the issues in dispute in the Lakeside Appeals had been resolved and on November 1, 2017 a settlement conference was held at which the Parties jointly requested the Board to allow the appeals, in part.

[5] At the settlement conference, the Board heard opinion evidence from David Ferro on behalf of the City. He was qualified by the Board to provide opinion evidence in the area of land use planning. Ken Riddell, who owns property in the area, requested and was granted participant status by the Board on consent. He and Ms. Campbell object to the proposed settlement.

[6] Mr. Ferro described the background to the appeals. He said the subject properties are located in the Lakeside neighbourhood of Ward 1 and are designated under the City’s Official Plan as Low Density Residential. Ward 1 has experienced

increased residential infill housing development, which has at times resulted in new dwellings being built to the maximum allowable height and depth under By-law No. 0225-2007 with some height, overlook, shadowing, massing and shadowing impacts on existing homes. The aim of the Zoning By-law is to restrict the height of sloped roofs in the area in order to ensure that the height, depth and massing of infill development is compatible with existing dwellings. Mr. Ferro stated that the Zoning By-law addresses built form issues and does not impact intensification.

[7] Mr. Ferro explained that the proposed settlement proposes site-specific amendments to the Zoning By-law in relation to the following properties:

- 522 Richey Crescent;
- 597 Curzon Avenue; and
- 790 Montbeck Crescent

The proposed amendments would alter the maximum eaves height for each of the three properties and the maximum height for one of them, while maintaining the regulations in the Zoning By-law's "R3-75" zone (Detached Dwellings – Typical Lot – Exception). With the proposed amendments, three new exception zones ("R3-77", "R3-78" and "R3-79") would apply.

[8] Mr. Ferro described each property and the proposed amendments. For 522 Richey Crescent, he stated that the proposed amendment would change the maximum height of eaves from 6.4 metres ("m") to 8.5 m. He stated that this change would be compatible with the height of adjacent and neighbouring dwellings and would not impact the streetscape. For 597 Curzon Avenue, Mr. Ferro stated that the proposed amendment would change the maximum eaves height from 6.4 m to 7.4 m. He described the height of neighbouring dwellings and stated that allowing 1 m more of height for eaves at 597 Curzon Avenue would have minor impacts and would not

undermine the intent of the Zoning By-law. Regarding 790 Montbeck Crescent, Mr. Ferro stated that the proposed amendment would change the maximum height of the roof from 9.5 m to 10 m and the maximum height of the eaves from 6.4 m to 7.4 m. He described new dwellings in the area and stated that the proposed changes would allow for transition and would have only minor impacts.

[9] Mr. Ferro opined that the proposed amendments conform with the principles and goals of the City's Official Plan in that they protect the character of the neighbourhoods in question by ensuring compatible scale and massing for new dwellings and address urban design concerns, while allowing sensitive infill development. He stated that the proposed amendments are consistent with the Provincial Policy Statement, 2014 (the "PPS"), and conform with the Growth Plan for the Greater Golden Horseshoe, 2017 (the "Growth Plan"), the Regional Official Plan, and the City's Official Plan. He opined that they represent good planning and are in the public interest.

[10] In opposition to the proposed settlement, Mr. Riddell stated that there have been several new dwellings recently built on small lots in the area and that the restrictions in the Zoning By-law should be maintained. He stated that the area is unique and that the proposed changes are not minor. He said that each new zoning variance in the area has subsequently been used to justify variances on other properties in the area.

[11] Ms. Campbell stated that there is a disconnect between what is in the zoning regulations and what is approved. She said the area is graceful with modest homes, but that its character is changing with new homes built to maximum form. She said they do not fit in. She said there needs to be greater transparency and the proper public process must be used for zoning decisions. She said the Zoning By-law's restrictions should be applied to everyone.

[12] The Board recognises the importance of ensuring that new development is compatible with the existing streetscape and character of a neighbourhood. Upon hearing Mr. Ferro's evidence, the Board finds that the Participants' concerns have been

considered by the City and that the proposed amendments aim to protect the character of the areas in question by ensuring compatible scale and massing for new dwellings and by addressing urban design concerns.

[13] Based on Mr. Ferro's uncontradicted opinion evidence, the Board finds that the proposed amendments are consistent with the PPS, and conform with the Growth Plan, the Regional Official Plan, and the City's Official Plan. Based on this evidence and given the consent of the parties, the Board allows the appeals, in part.

ORDER

[14] The Board orders that the appeals are allowed, in part, for the properties located at 522 Richey Crescent, 597 Curzon Avenue and 790 Montbeck Crescent, in accordance with the site-specific zoning set out in Schedule A to this Decision. The appeal of the Zoning By-law to the lands zoned R3-75 in the Lakeside Sub-Area of the Lakeview Local Area Plan is withdrawn. Section 19 of the Zoning By-law regarding lands zoned "R3-75" is deemed to have come into force on the day it was passed, pursuant to s. 34(30) of the *Planning Act*.

"Hugh S. Wilkins"

HUGH S. WILKINS
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.

Ontario Municipal Board

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SCHEDULE A

SCHEDULE "A" TO
 ONTARIO MUNICIPAL BOARD
 ORDER DATED _____

OMB Case No. PL161056

OMB File No. PL161056

City of Mississauga
 (790 Montbeck Crescent, 597 Curzon Avenue and 522 Richey Crescent)

1. By-law Number 0225-2007, as amended, being a City of Mississauga Zoning By-law, is amended by adding the following Exception Table:

4.2.4.77	Exception: R3-77	Map # 01	By-law:
In a R3-77 zone the permitted uses and applicable regulations shall be as specified for a R3 zone except that the following uses/regulations shall apply:			
Regulations			
4.2.4.77.1	Maximum height - highest ridge: sloped roof	10.0 m	
4.2.4.77.2	Maximum height: flat roof	7.5 m	
4.2.4.77.3	Maximum height of eaves: from average grade to lower edge of eaves	7.4 m	
4.2.4.77.4	Maximum dwelling unit depth	20.0 m	

2. By-law Number 0225-2007, as amended, is further amended by adding the following Exception Table:

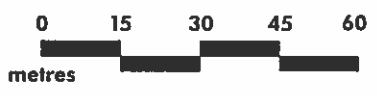
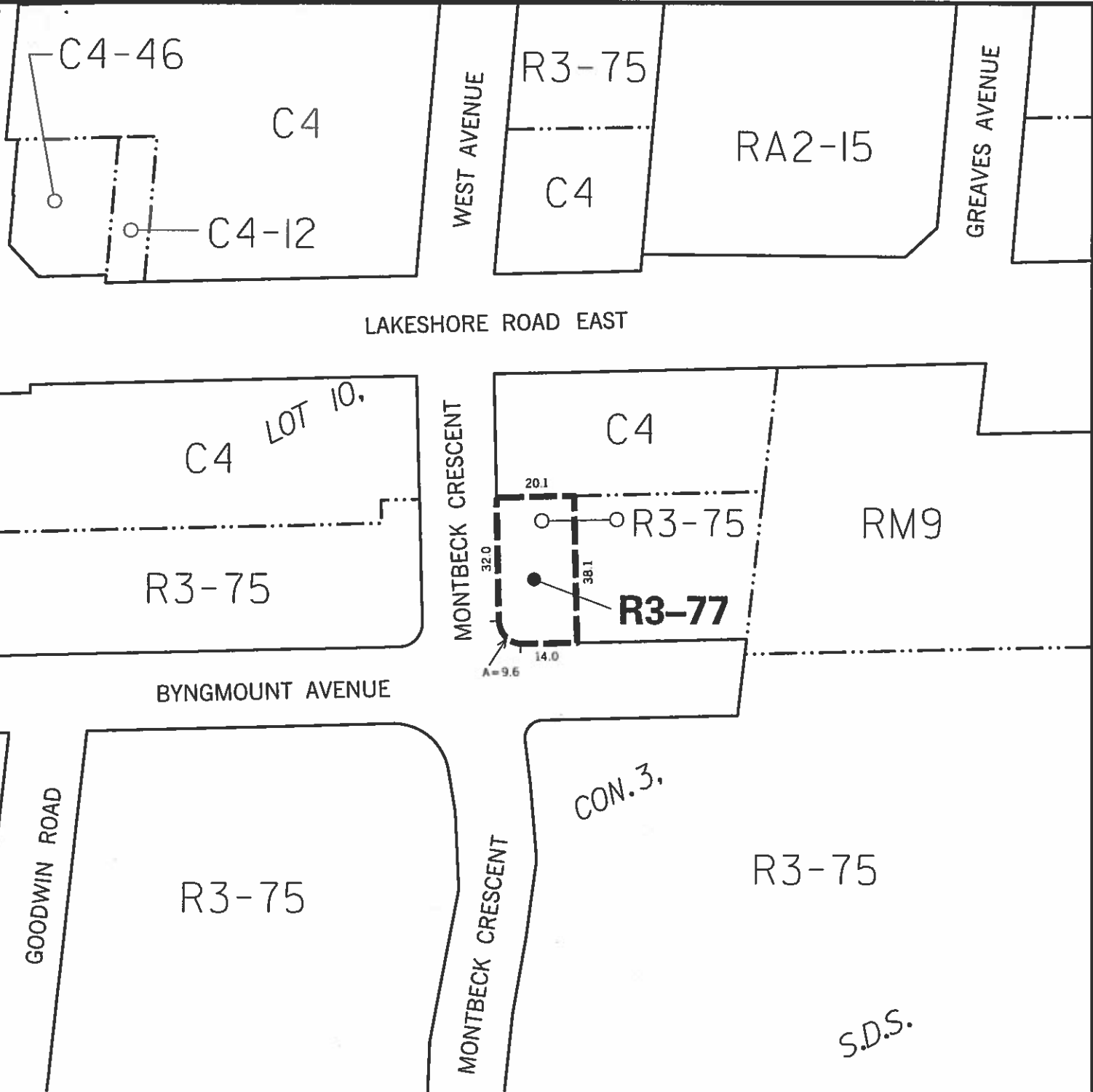
4.2.4.78	Exception: R3-78	Map # 07	By-law:
In a R3-78 zone the permitted uses and applicable regulations shall be as specified for a R3 zone except that the following uses/regulations shall apply:			
Regulations			
4.2.4.78.1	Maximum height - highest ridge: sloped roof		9.5 m
4.2.4.78.2	Maximum height: flat roof		7.5 m
4.2.4.78.3	Maximum height of eaves: from average grade to lower edge of eaves		7.4 m
4.2.4.78.4	Maximum dwelling unit depth		20.0 m

3. By-law Number 0225-2007, as amended, is further amended by adding the following Exception Table:

4.2.4.79	Exception: R3-79	Map # 07	By-law:
In a R3-79 zone the permitted uses and applicable regulations shall be as specified for a R3 zone except that the following uses/regulations shall apply:			
Regulations			
4.2.4.79.1	Maximum height - highest ridge: sloped roof		9.5 m
4.2.4.79.2	Maximum height: flat roof		7.5 m
4.2.4.79.3	Maximum height of eaves: from average grade to lower edge of eaves		8.5 m
4.2.4.79.4	Maximum dwelling unit depth		20.0 m

2. Map Number 01 of Schedule "B" to By-law Number 0225-2007, as amended, being a City of Mississauga Zoning By-law, is amended by changing thereon from "R3-75" to "R3-77", the zoning of Part of Lot 10, Concession 3, South of Dundas Street, in the City of Mississauga, PROVIDED HOWEVER THAT the "R3-77" zoning shall only apply to the lands which are shown on the attached Schedule "A1", which is deemed to be an integral part of this By-law, outlined in the heaviest broken line with the "R3-77" zoning indicated thereon.

3. Map Number 07 of Schedule "B" to By-law Number 0225-2007, as amended, being a City of Mississauga Zoning By-law, is amended by changing thereon from "R3-75" to "R3-78" and "R3-79", the zoning of Parts of Lot 11, Concession 3, South of Dundas Street, in the City of Mississauga, PROVIDED HOWEVER THAT the "R3-78" and "R3-79" zoning shall only apply to the lands which are shown on the attached Schedules "A2" and "A3", which is deemed to be an integral part of this By-law, outlined in the heaviest broken line with the "R3-78" and "R3-79" zoning indicated thereon.



This is not a Plan of Survey. For accurate boundary information refer to Registered Plan A-26.

THIS IS SCHEDULE "A1" TO
SCHEDULE "A" OF O.M.B.

ORDER DATED _____
O.M.B. CASE NO. PL161056
O.M.B. FILE NO. PL161056

CITY OF MISSISSAUGA

C4

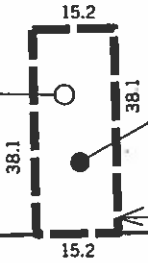
LOT II,

R3-75

BYNGMOUNT AVENUE

R3-75

R3-78



Approximately 887m from Aviation Road

CURZON AVENUE

CON. 3,

R3-75

HAMPTON CRESCENT

AVIATION ROAD

R3-75

R3-75

MONTBECK CRESCENT

R3-75

S.D.S.



GREENLANDS OVERLAY

This is not a Plan of Survey. For accurate boundary information refer to Registered Plan C-19.

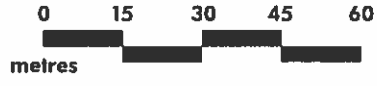
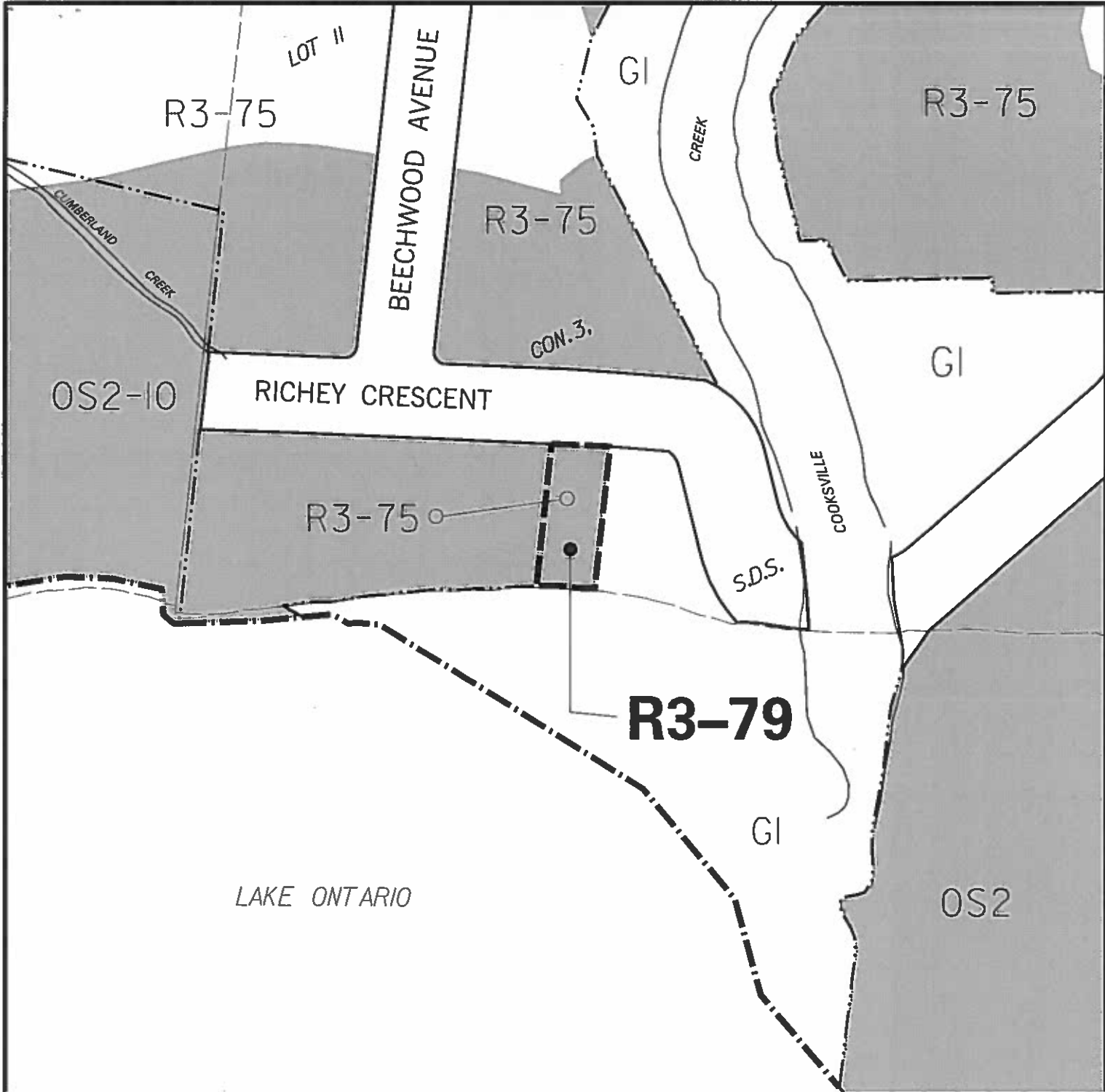
**THIS IS SCHEDULE "A2" TO
SCHEDULE "A" OF O.M.B.**

ORDER DATED _____

O.M.B. CASE NO. PL161056

O.M.B. FILE NO. PL161056

CITY OF MISSISSAUGA



GREENLANDS OVERLAY

This is not a Plan of Survey.

THIS IS SCHEDULE "A3" TO
SCHEDULE "A" OF O.M.B.

ORDER DATED _____

O.M.B. CASE NO. PL161056

O.M.B. FILE NO. PL161056

CITY OF MISSISSAUGA

APPENDIX "A" TO SCHEDULE "A" OF

OMB ORDER DATED _____

OMB Case No. PL161056

OMB File No. PL161056

Explanation of the Purpose and Effect of the By-law

The purpose of this By-law is to amend the maximum eaves height for three properties, and the maximum height for one property in Ward 1, while maintaining the previously approved regulations in the "R3-75" zone (Detached Dwellings - Typical Lot - Exception). To achieve this, three new exceptions zones, "R3-77", "R3-78" and "R3-79", will apply to the subject properties.

Location of Lands Affected

Three properties in the Lakeside neighbourhood, in the City of Mississauga, as shown on the attached Maps designated as Schedules "A1", A2 and "A3".

[http://teamsites.mississauga.ca/sites/18/Bylaws/CD.06-REP\(0193-2016\).sloped roof OMB by-law.df.jmcc.docx](http://teamsites.mississauga.ca/sites/18/Bylaws/CD.06-REP(0193-2016).sloped%20roof%20OMB%20by-law.df.jmcc.docx)