

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



**ISSUE DATE:** May 25, 2017

**CASE NO(S):** PL161276

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

Appellant:	Estate of the late Eva Franceschini
Applicant:	Maria Finelli
Subject:	Minor Variance
Variance from By-law No.:	0225-2007
Property Address/Description:	2222 Doulton Drive
Municipality:	City of Mississauga
Municipal File No.:	A 227/16
OMB Case No.:	PL161276
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OMB Case Name:	Franceschini (Estate) v. Mississauga (City)

**Heard:** April 4, 2017 in Mississauga, Ontario

**APPEARANCES:**

**Parties**

**Counsel**

Estate of the Late Eva Franceschini	Ronald Webb Hannah Bahmanpour
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Maria Finelli ("Applicant")	Ira Kagan
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**DECISION DELIVERED BY RICHARD JONES AND ORDER OF THE BOARD**

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[1] The Board heard an appeal of a decision by the Committee of Adjustment ("COA") of the City of Mississauga ("City") granting approval of two variances for lands

described as the retained lands regarding consent applications B 62/15 and B 63/15 for property known municipally as 2222 Doulton Drive in the City of Mississauga (“subject property”).

[2] The variances were:

1. A front yard of 26.0 metres (“m”) was permitted, whereas, Zoning By-law No. 0225-2007 (“ZB”) requires a minimum front yard of 40.6 m.

and

2. A 24.13 m front yard setback to the covered porch

[3] The condition pertinent to the COA approval required the Applicant to submit all outstanding deferral fees to the COA office.

[4] That decision was appealed by the Estate of the Late Franceschini, (“Appellant”) which owns the property next door, 2230 Doulton Drive.

[5] The subject property was divided into three parts by the COA in 2014 and that approval was appealed by this same Appellant. In an Ontario Municipal Board (“Board”) decision (PL140446) issued later that same year, the appeal was dismissed and the consents were allowed. Following that decision, the existing home was demolished and a new home is now proposed for Part 3 of the subject lands incurring as noted in the aforementioned variances.

[6] The subject property is located at the northwest corner of Doulton Drive and Mississauga Road within a neighbourhood described in the City’s Official Plan as the Sheridan Neighbourhood. This area is comprised of very large, privately serviced lots improved with very substantial homes.

[7] The ZB zones the property R1-5 (Residential) which requires, in relationship to front yards, that where a detached dwelling is to be constructed adjacent to a lot with an existing dwelling, a front yard setback equal to the front yard of the existing dwelling on

the adjacent lot is required. The Appellant's property is that adjacent lot, which has a front yard of 40.6 m.

[8] As noted, the COA reduced that setback to 26 m.

[9] The ZB further requires that where a detached dwelling is to be constructed on a lot between two lots with existing dwellings, the average of the two setbacks shall establish the required minimum setback. But where there is no adjacency to an existing home, the front yard is permitted to be a minimum setback of 12 m.

[10] The planning considerations arising from these very particular standards gave rise in part to the City's Planning Department's favourable view of the 26 m setback which observed that if Part 2, rather than Part 3 was proposed for a home, the required front yard on Doulton Drive would only be 12 m minimum setback as Part 2 is not an adjacent parcel to an existing home. Further, if a home was constructed on Part 2, assuming a reversal in building intentions, and realized a setback of 12 m as permitted by the ZB, the required front yard of a new home proposed for Part 3, would require a 26.3 m setback (which constitutes the average of the front yard setback of the Appellant's property of 40.6 m and the setback of Part 2, 12 m) and that dimension equates with the proposed front yard setback variance before the Board. Moreover, by pursuing this matter still further, in the event Part 3 was approved for a setback of 26 m, the front yard requirement for Part 2 would also be 26 m, not 12 m because Part 3 is the adjacent lot.

[11] These standards were devised to provide for a measure of flexibility within a subdivision context of exceedingly large lots, but their influence within the considerably tighter precinct of the subject lands where the Parts are perhaps one third to one half the size of many of the lots in the Sheridan Neighbourhood amplifies this zoning influence. The City's Planning Department in their report to the COA (Exhibit 1) understood these implications which in part informed their favourable recommendation to the COA.

[12] There was no representation from the City at the hearing.

[13] The Board heard from two experienced planning consultants who were both qualified to provide planning evidence: Paul Johnson on behalf of the Applicant, and N. Edward Davidson for the Appellant. Both planners agreed from the onset of their testimony, that the variance regarding the front porch was not a material concern from a planning perspective, involving as it did a minor extension of a covered porch into the front yard.

[14] Mr. Johnson opined that the reduced setback was sought in order to create a more balanced situation for the new home. A reduced 26 m front yard setback would allow for a rear yard setback of 27 m; thereby, providing space for the usual back yard amenities whereas, the imposition of a front yard setback of 40.6 m would unnecessarily squeeze the rear yard within a large property envelope of 3,026 square metres. The planner testified that the new home, to be controlled under site plan, would not intrude upon the privacy of the Appellant's property, which is shielded in part by existence of mature tree plantings along the common boundary line. Further, the proposed windows along the north side of the new home, which were described in testimony as "secondary", would simply overlook the front yard area of the Appellant's property rather than the Appellant's residence.

[15] The planner described that the front yards of other properties along the street did not rigidly adhere to a regular or consistent pattern but were instead more variable in a pattern Mr. Johnson depicted as "weaving".

[16] In relationship to s. 45 (1) of the *Planning Act*, the planner was of the opinion that the City's Official Plan, which encouraged new development to respect the stability of neighbourhoods, did not anticipate static or identical adherence to prevailing setback conditions. Moreover, by permitting the new home to occupy the mid portion of the lot, the application realized conformity with the prevailing pattern of housing-placement

within the broader neighbourhood. A squeezed back yard would not conform to that existing condition.

[17] The planner opined that the general intent and purpose of the ZB would be met as that document allowed a minimum front yard setback of 12 m in the absence of an adjacent, existing condition, but in any event recognized the merit of variable setbacks on a lot by lot basis.

[18] He was of the view that the variances were desirable for the appropriate development of the lands because it was functionally advantageous for the new home to occupy the mid section of the lot and further, that the consequences of the variances were minor because there was no anticipated adverse impact on the Appellant's property.

[19] Mr. Davidson, who had also appeared on behalf of the Appellant in opposition to the consent application, expressed the opinion that the prospect for a 12 m setback for Part 2 was invalidated by his presumption that the ZB would instead require the front yard setback to assume the same setback of the demolished home, because that home existed on the date the ZB was approved. The planner was also of the view that Part 2's frontage was actually Mississauga Road rather than Doulton Drive, because the ZB required that the smaller of two street flankages serve as the frontage, which he affirmed was Mississauga Road following a consultation with an official of the City. The Doulton Drive flankage would then assume the role of a side lot line rather than a front line.

[20] Mr. Davidson's testimony, although interesting in relationship to those two aspects, was not apparently shared by the City, or by Mr. Johnson in testimony, and the Board accordingly relies on the determination of the aforementioned variances for Part 3 which had been scrutinized earlier by City officials pertinent to the COA application. Although the zoning regime does admittedly reflect a certain complexity, the Board's

considerations are primarily focused on the variances, not potential setback outcomes derived from alternative interpretations of the ZB.

[21] With regard to the four tests of s. 45 (1) of the Act, Mr. Davidson opined that the application fails to achieve a setback pattern in line with the prevailing setbacks along the street pursuant to policies of the OP which are not met as a consequence. The planner testified that the character of an area is determined primarily from a street view perspective, which in his opinion informs a sense of character more comprehensively than the provision of a larger rear yard which is largely unseen from the street. .

[22] The general intent and purpose of the ZB was not met in Mr. Davidson's opinion.(Test 2) because the proposed new home can comply with the setback provisions of the ZB and by complying, pushes the proposed home deeper into the lot (Part 3) where the prospects of overlook and impact are reduced. Zoning compliance ensures a more appropriate situation for the new home (Test 3) and a less impactful outcome (Test 4) for his client's property according to the planner.

[23] Mr. Davidson believed that the development of the three parts should have been controlled, originally, under the umbrella of a rezoning by-law ("ZBA") which would have properly coordinated building setbacks from the onset of the ZBA's approval in tandem with the property's division into three separate parts/lots.

## **FINDINGS**

[24] Although the Board does appreciate Mr. Davidson's perspective on these broader planning issues, their potential relevance is blunted as previously noted by the narrower circumstances of the appeal which involves consideration for two variances initially determined by experienced City officials in preparation of the COA application. The Board's findings accordingly focus on the variances pertinent to s. 45 (1) of the *Planning Act*.

[25] In this regard the Board's is more persuaded by the evidence of Mr. Johnson.

[26] The Board agrees with Mr. Johnson's testimony that there is merit in balancing a home with equitable rear and front yard areas from the perspective of function. A larger rear yard does afford more amenity space opportunities for the homeowner in line with other lots in the neighbourhood. The photo exhibits clearly describe a neighbourhood with expansive rear yards as well as comparatively generous front yards confirming in the Board's view, that prevailing conditions of balance and proportionality are typical of the neighbourhood. In this regard too, that same balance also distinguishes the Appellant's property (Exhibit 10), which illustrates a rear yard setback at least as large as the front yard setback.

[27] Furthermore, the variance for Part 3 will additionally and positively influence the placement of new homes on Parts 1 and 2 pursuant to the standards of the ZB which will require identical front yard setbacks for adjacent lots.

[28] Finally, the Board is not persuaded by the evidence that adverse impact arises from the proposed variances. The separation distances remain expansive along the common side lot line which is also shielded with existing mature vegetation. Moreover, the new home will be designed and controlled under site plan and the evidence provided to the Board indicated that the prospects for overlook would be limited by the provision of reasonably sized secondary windows on the north side yard. Pushing the new home back in compliance with the ZB would not materially change the prospect for overview, but would merely shift the available view plane from the front yard to the sidewall of the Appellant's home.

## **ORDER**

[29] The Board orders that the appeal is dismissed and the variances to By-law No. 0225-2007 are provisionally authorized for the lands described as Part 3, of 2222 Doulton Drive in the City of Mississauga subject to the payment of outstanding deferral fees to the COA.

*“Richard Jones”*

RICHARD JONES  
MEMBER

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**Ontario Municipal Board**

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