

Ontario Municipal Board
Commission des affaires municipales
de l'Ontario



ISSUE DATE: July 4, 2017

CASE NO(S): PL161277

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

Applicant and Appellant:	Jack and Josie Bonofiglio
Subject:	Minor Variance
Variance from By-law No.:	0225-2007
Property Address/Description:	1158 Meander Court
Municipality:	City of Mississauga
Municipal File No.:	A 453/16
OMB Case No.:	PL161277
OMB File No.:	PL161277
OMB Case Name:	Bonofiglio v. Mississauga (City)

Heard: June 15, 2017, in Mississauga, Ontario

APPEARANCES:

Parties

Counsel*/Representative

Jack and Josie Bonofiglio

Self-represented

City of Mississauga

C. Yi*

DECISION DELIVERED BY STEFAN KRZECZUNOWICZ AND ORDER OF THE BOARD

MATTER BEFORE THE BOARD

[1] Mr. and Mrs. Bonofiglio (the “Applicants”) own a two storey semi-detached house at 1158 Meander Court (the “subject property”). In the last fifteen years they have built a large stone fireplace and wood-frame pergola in the rear yard without building permits

and in contravention of Zoning By-law No. 0225-2007 (the “By-law”). They now want to build a deck at the rear second storey of the house with stairs leading down to the rear yard. Their stated purpose is to create a space where they can sit outside in comfort and enjoy the view of the yard and the greenery beyond.

[2] The Applicants are seeking variances to legalize the existing rear yard setbacks of the fireplace and pergola and the area of the pergola. A variance is also required for lot coverage to accommodate these existing structures, the existing dwelling, and the deck.

[3] The Committee of Adjustment (the “Committee”), in its decision of November 17, 2016, granted the setback and pergola area variances as well as the lot coverage variance insofar as “to permit the existing fireplace and pergola to remain”. The Committee refused any lot coverage “for the proposed porch/deck” (Exhibit 1, p.28).

Witnesses

[4] Christine Cebula testified as a Participant on behalf of her mother, Stefania Cebula (“Mrs. Cebula”). Mrs. Cebula’s house is attached to the Applicants’ house as a semi-detached dwelling.

[5] The Board also heard evidence from Ted Davidson, a professional Planner.

[6] The City of Mississauga (the “City”) did not object to Mr. Bonofiglio acting both as a witness and as his own advocate during the hearing.

THE PROPOSAL IN CONTEXT

[7] The subject property is designated “Residential Low Density I” in the City’s Official Plan (“OP”) and is located in a neighbourhood south of Queensway East, west of Dixie Road, and north of a hydro corridor. The neighbourhood was subdivided in the 1970s and contains a number of semi-detached houses. The hydro corridor runs

parallel to the rear yard of the subject property and provides much of the open space that the Applicants are keen to enjoy from the proposed deck.

[8] The subject property is located in the Lakeview Neighbourhood Character Area (“Lakeview Neighbourhood”) under the OP.

ANALYSIS AND FINDINGS

[9] The Board’s 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 order to meet the tests the variances must:

- a. maintain the general intent and purpose of the official plan;
- b. maintain the general intent and purpose of the zoning by-law;
- c. be desirable for the appropriate development or use of the land, building or structure; and
- d. be minor.

[10] The Board must also consider whether the variances have sufficient regard to the Provincial interests listed in s. 2 of the Act, whether they are consistent with the Provincial Policy Statement 2014 (“PPS”), and whether they conform to the Provincial Growth Plan for the Greater Golden Horseshoe (the “Growth Plan”).

[11] In reviewing the Applicant’s proposal against the four tests the Board accepts the expert planning evidence of Mr. Davidson and confirms the decision of the Committee for the reasons set out below.

Fireplace and Pergola Setbacks and Area

[12] The fireplace and pergola are defined as “accessory structures” under the By-law. Minimum rear yard setbacks of 0.61 metres (“m”) are imposed on these structures to ensure they can be accessed on all sides and to limit the effects of massing and scale on neighbouring properties. The area of a pergola is limited to 10 square metres (“sq m”) for similar reasons.

[13] The existing pergola is 12.3 sq m. It is setback from the rear lot line by 0.46 m; the equivalent setback for the fireplace is 0.22 m.

[14] The Board finds that granting the setback and pergola area variances would maintain the overall intent of the By-law. Both structures can be accessed and maintained under the current setbacks. The massing of the structures is tempered by the gradual tapering of the fireplace as it rises and the absence of walls and the trellised roof of the pergola. Importantly, there are no residential properties abutting the rear lot line that would be affected by the variances.

[15] The Board finds the fireplace and pergola to be desirable improvements to the suburban character of rear yards in the area; moreover, their size and configuration are minor deviations from the By-law standards. The structures uphold the general purpose of the OP to preserve the stability of Neighbourhoods through development that is sensitive to the existing and planned physical character of the surrounding area.

[16] Mr. Davidson recommended approving the setback and pergola area variances on condition that the location and dimensions of the structures be confirmed by an “as built survey”. He noted that the plans on which the variances were determined were not drawn up by a licensed architect and, based on his site visit and laser measurements, was of the view that the fireplace exceeds the 3 m height limit imposed by the By-law and might be encroaching into an easement (the “Part 17 easement”) along the west lot line (see Exhibit 5, Photo 6, and Exhibit 2).

[17] The Board finds Mr. Davidson's condition to be unnecessary and an unreasonable burden on the Applicants and will approve the setback and pergola area variances unconditionally. The Board notes that the plans were prepared by a qualified designer (Exhibit 3, p.1). They were used by City staff in assessing the merits of the variances in a report of November 8, 2016. The plans show that the fireplace does not extend west of the line of the exterior side wall of the dwelling, which is itself setback from the Part 17 easement. Moreover, the Board finds that even if the fireplace were to be higher than 3 m the additional height would be minimal and would not result in any adverse impacts on neighbouring properties beyond those arising from a 3 m structure.

Lot Coverage and Deck

[18] Lot coverage is the ratio of lot area covered by all buildings and structures, including accessory structures, at or above grade (Exhibit 1, p.115). The By-law regulates lot coverage to control the impacts of the density, mass and scale of buildings and structures on neighbouring properties as well as on the broader built environment. Coverage standards also help ensure that sufficient open space is provided so that a lot is not dominated by its buildings and structures.

[19] The Applicants are seeking a variance that would permit lot coverage of 44.6%. The permitted maximum is 35% under the By-law. The current dwelling has lot coverage of 35.8%. The coverage of the fireplace and pergola are 1.3% and 2.9% respectively.

[20] The deck platform would be 160 square feet and would extend eight feet into the rear yard. The stairs would extend a further ten feet into the yard, parallel to and roughly two feet from the property line shared with Mrs. Cebula. Altogether, the deck would have lot coverage of 4.1%.

[21] The height and disposition of the deck prompts close attention to privacy, overlook, and security issues. Moreover, the size and massing of the deck call for a

review of its impact on views, light, shadows, and general “crowding”, particularly in Mrs. Cebula’s yard.

[22] Provincial planning interests are silent on decks. As such, the OP is the key policy document in assessing consistency and conformity with Provincial plans and policies (see PPS Policy 4.7).

[23] The OP requires that development in Neighbourhoods be sensitive to the “existing and planned context” (Policy 5.3.5.6), including in its design (Policy 9.1.3). In this way the stability of Neighbourhoods can be preserved. More specifically, the OP directs that development have regard to rear yards, views, privacy and overlook, and the size and distribution of building mass with a view to “ensuring that adequate privacy, sunlight and sky views are maintained” (Policies 9.5.1.2 and 9.5.1.9).

[24] The OP development criteria are reinforced by the Built Form Standards that apply to the Lakeview Neighbourhood under the Lakeview Local Area Plan (“Lakeview Plan”). Under these standards, new development is to have *minimal impact* on its adjacent neighbours and is to respect the building mass of adjacent lots (Exhibit 1, p.101).

[25] The proposed deck does not meet the general purpose and intent of these policies. It does not reflect the existing character of the neighbourhood where, according to Mr. Davidson, there are no examples of second storey in semi-detached houses. The deck would support an unobstructed view of Ms. Cebula’s rear yard for much of the year and from a considerable height (see Exhibit 5, Photo 5). Moreover, it would create a direct line of sight into Ms. Cebula’s bedroom from a distance of several feet. The Board is not convinced that this makes Mrs. Cebula’s home any less secure, a view supported by Mr. Davidson. However, the Board is in no doubt that the result would be detrimental to Ms. Cebula’s privacy and would create unacceptable overlook conditions.

[26] The By-law implements the OP policies in part by imposing specific performance standards on decks. Decks greater than 10 sq m and higher than 0.61 m above grade

are included as part of lot coverage calculations so as to control massing. And decks of any type are not permitted on accessory buildings or structures because they cannot be appropriately scaled to these structures. Mr. Davidson noted that limits on deck setbacks and encroachments in the By-law refer only to decks located at and accessible from the first storey or below the first storey. He inferred from this that the By-law does not contemplate large second storey decks, even though it does not explicitly prohibit them. The Board tends to agree. In reviewing the definitions and standards in the By-law in totality, it is clear that the intent is to impose more restrictive standards on decks that are elevated above the first storey.

[27] In assessing the general purpose of the By-law, the Board finds the massing and scale of the deck to be too great to justify granting the lot coverage variance. The visual evidence shows that the impact, particularly on Mrs. Cebula's rear yard views (from both floors) and the amount of light and shadow Mrs. Cebula currently enjoys, would be substantial (Exhibit 4a-4d; Exhibit 5, Photos 2-5). The Board's finding in this respect is tempered by the dearth of information on light and shadowing entered into evidence.

[28] The proposed deck is not desirable for the appropriate use of the house. The Applicants testified that their main purpose in installing the deck is to enjoy the view of their rear yard and beyond amidst some flower pots and a cup of coffee. The Board finds that a 160 sq m deck with stairway access to the rear yard is not needed for this purpose. The structure is more conducive to larger gatherings—such as a barbeque with extended family and friends—that could lead to excessive noise, food odours, and related nuisances spilling over into adjacent properties.

[29] The Board agrees with Mr. Davidson that semi-detached houses in the neighbourhood were designed to have rear yard access only from the first floor where kitchens, recreation rooms, and other common spaces are generally located. As such, the Board finds that, in this neighbourhood, facilitating direct access from a rear yard to second storey bedrooms is not an appropriate use of the building or the land.

[30] Drawing on the above analysis, the Board finds the lot coverage variance, as it relates to the deck, is not minor. The deck would contribute to a loss to Mrs. Cebula of enjoyment of the normal use of her property. It represents a substantial deviation from the built form the OP and Lakeview Plan seek to promote, particularly with respect to the minimal massing impact new development is required to have on adjacent neighbours.

Privacy Screen

[31] The Applicant proposed a screen around the deck to alleviate privacy and overlook concerns (see Exhibit 1, p. 44). However, the Board finds that such a screen would only exacerbate the adverse impacts created by the massing and scale of the deck set out above.

ORDER

[32] The Board orders that the appeal be dismissed. Pursuant to the Committee's decision of November 17, 2016, the following variances to By-law No. 0225-2007 are authorized:

- a. Lot coverage of 40.5% of the lot area for the sole purpose of accommodating the existing dwelling, fireplace, and pergola.
- b. An area occupied by the pergola of 12.3 sq m.
- c. A setback of 0.22 m from the fireplace to the rear property line.
- d. A setback of 0.46 m from the pergola to the rear property line.

"Stefan Krzeczunowicz"

STEFAN KRZECZUNOWICZ
MEMBER

If there is an attachment referred to in this document,
please visit www.elfto.gov.on.ca to view the attachment in PDF format.

Ontario Municipal Board

A constituent tribunal of Environment and Land Tribunals Ontario
Website: www.elfto.gov.on.ca Telephone: 416-212-6349 Toll Free: 1-866-448-2248