

Ontario Municipal Board
Commission des affaires municipales
de l'Ontario



ISSUE DATE: July 21, 2017

CASE NO(S): PL170121

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

Appellant:	Sunita Singh
Applicant:	Irene Gankevitch
Subject:	Minor Variance
Variance from By-law No.:	0225-2007
Property Address/Description:	99 Veronica Drive
Municipality:	City of Mississauga
Municipal File No.:	A023/17
OMB Case No.:	PL170121
OMB File No.:	PL170121
OMB Case Name:	Singh V. Mississauga (City)

Heard: July 7, 2017 in Mississauga. Ontario

APPEARANCES:

Parties

Counsel

Sunita Singh

Andy Margaritis

Irene Gankevitch

Russell Cheeseman

**MEMORANDUM OF ORAL DECISION DELIVERED BY PAULA BOUTIS AND
HUGH WILKINS ON JULY 7, 2017 AND ORDER OF THE BOARD**

INTRODUCTION

[1] The Applicant, Irene Gankevitch, sought and obtained authorization from Mississauga's Committee of Adjustment ("Committee") for four minor variances. These are required for the purposes of constructing a proposed new home at 99 Veronica

Drive, in Mississauga (“Subject Property”).

[2] The Subject Property is located in a unique part of the City of Mississauga (the “City”). It is one of only two areas in the City with a “Residential Woodlands” designation in the City’s Official Plan. The area is known as the Mineola Neighbourhood. It is bounded by the Credit River to the west, the railway to the south, Cawthra Road to the east, and the Queen Elizabeth Way to the north. The Applicant’s planner testified that the trees in the area are mature, in the range of 130 to 150 years old. Special policies apply to the area, as well as specific zoning by-law requirements [Exhibit 7 and 8].

[3] The Appellant, Sunita Singh, attended at the Committee hearing in opposition to the requested minor variances. According to the Committee reasons [Exhibit 5], Ms. Singh, a resident of 107 Veronica Drive, was concerned about the negative overlook condition over her backyard and a reduction of privacy.

[4] At the outset of the appeal hearing, counsel for the Applicant confirmed that the Applicant and the Appellant had achieved a settlement. The settlement, among other things, required that conditions be imposed on the Applicant. The Minutes of Settlement, including the proposed conditions, were filed as Exhibit 1.

[5] At the appeal, the Board qualified James Levac to give opinion evidence in land use planning. He gave evidence on behalf of the Applicant in support of the authorization of the minor variances with the conditions agreed to between the Applicant and Appellant. No one else testified at the hearing.

[6] For the reasons below, the Board allows the appeal, and authorizes the minor variances requested with conditions.

MINOR VARIANCES

[7] For the variances to be considered minor, four tests must be met under section 45(1) of the *Planning Act*, which are the following:

- a. The general intent and purpose of the official plan is maintained;
- b. The general intent and purpose of the zoning by-law is maintained;
- c. The development is desirable for the appropriate development or use of the land; and
- d. The variance(s) is minor.

[8] The variances requested, subject to conditions, are the following, as indicated in Exhibit 5:

- a. A driveway width of 10 metres ("m") (32.08 feet ("ft")); whereas By-law No. 0225-2007, as amended, permits a maximum driveway width of 6 m (19.68 ft) in this instance;
- b. A combined width of side yards of 5.06 m (16.60 ft); whereas By-law No. 0225-2007, as amended, requires a minimum combined width of side yards of 6.17 m (20.24 ft) in this instance;
- c. A height to the underside of eaves of 6.98 m (22.90 ft); whereas By-law No. 0225-2007, as amended, permits a maximum height to the underside of eaves of 6.40 m (20.99 ft) in this instance; and
- d. A dwelling depth of 27.90 m (91.53 ft); whereas By-law No. 0225-2007, as amended, permits a maximum dwelling depth of 20 m (65.61ft) in this instance.

[9] The conditions, along with the authorized minor variances, are listed in Attachment 1. In summary, they require the development to be constructed substantially in accordance with the plans filed at the hearing [Exhibit 4], and include requirements that specified windows be opaque or frosted, that a privacy screen be installed, and that a cedar hedge be planted and maintained.

[10] At the hearing, Mr. Levac carefully reviewed with the Board the development proposal at the Subject Property. He described the proposal and the required variances, which arise, in the main, from the desire to protect the mature trees at the Subject Property. All trees at the Subject Property will remain. For three of the mature trees, the plans show that the proposed new house will be built around them to avoid their removal. Protection measures include a cantilever structure as part of the design to protect root systems of the trees.

[11] Mr. Levac reviewed the City planner's recommendations to the Committee, which the Committee adopted in authorizing the proposed variances. City staff commented that while some of the variances seemed excessive initially, the dwelling was designed in a way that mitigates impacts or only requires the variance for a specific portion of the feature [Exhibit 6].

[12] Mr. Levac stated that the driveway meets the requirements of Zoning By-law No. 0225-2007, as amended ("ZBL"), at the driveway entrance, but then widens to 10 m. Otherwise it is 3 m wide. According to the evidence of Mr. Levac, this was done to preserve trees 5 and 9 as noted on Site Plan A1 [Exhibit 4]. The garage entrance is tucked partially behind the front portion of the dwelling, so the non-compliant portion is not wholly visible from the street [Exhibit 6 and Site Plan A1, Exhibit 4], mitigating the visual impact of that part of the driveway.

[13] Regarding the side yard setbacks, the measurements are required to be from the eave projections, which results in combined side yard setbacks of 5.06 m. Mr. Levac stated that if the side yard setbacks were measured from the walls, the ZBL standard would be met (6.48 m compared to the required 6.17 m) [Site Plan A1, Exhibit 4]. The overhang of the eaves is 0.71 m. Mr. Levac opined that the eaves do not create significant massing, which is what the setbacks are intended to address.

[14] Mr. Levac stated that while there is an increase in height for the eaves to 6.98 m from 6.4 m, the overall height to the top of the proposed dwelling complies with the ZBL, so that massing is managed in that way.

[15] Regarding building depth, the permitted depth is 20 m, while the requested depth is 27.90 m. Mr. Levac testified that the actual depth needed is 27.85 m. He said the proposed covered porches alone account for 5.70 m, and would not normally be included in the measurement. The porches are included in this case because they have foundations and allow for underground storage. He opined that they do not add significant massing and said they are centrally located on the site. Mr. Levac stated that excluding the porches, the actual building depth exceeds the ZBL by 2.15 m.

[16] It was the opinion of Mr. Levac that the general intent of the Official Plan was maintained. Mr. Levac reviewed the policies found at 16.18.1 [Infill Housing] and 6.3.17 [Residential Woodlands] of the Official Plan and determined that the general intent is maintained, including as it relates to the protection of the existing trees, by the building design itself and other features, like the permeable driveway to facilitate ground water recharge. In addition, with the proposed conditions, including the installation of the cedar hedge, opaque glass window and privacy screen, the Board finds that the proposed development will have minimal impacts on adjacent neighbours with respect to overlook.

[17] It was also Mr. Levac's opinion that the general intent and purpose of the ZBL is met. He opined that the requested variances are technical in nature, triggered by the way the proposed building is designed into various sections to avoid impact on the trees. The Board agrees, and as described above, the massing and visual impacts are appropriately managed so as to meet the general intent and purpose of the ZBL.

[18] Mr. Levac also was of the opinion that the development was appropriate for the desirable development of the property, in particular because of the preservation of the mature trees. In his opinion, this is exactly the type of redevelopment that the City wishes to see.

[19] He was also of the opinion that the variances were minor both individually and cumulatively. The Board agrees. Mr. Levac supported the conditions which minimize any potential overlook concerns.

[20] Mr. Levac confirmed that the proposal was consistent with the Provincial Policy Statement, 2014, and is consistent with the Growth Plan for the Greater Golden Horseshoe, 2017. The Board adopts his opinion.

[21] In summary, the Board adopts the opinion of Mr. Levac and finds that the variances fit with the character of the neighbourhood, and the proposed development has an appropriate scale and massing, with a particular emphasis on preserving the mature trees on the site, and constitutes good planning.

ORDER

[22] The Board allows the appeal and authorizes the minor variances, with conditions, all of which are set out in Attachment 1.

“Paula Boutis”

PAULA BOUTIS
MEMBER

“Hugh S. Wilkins”

HUGH S. WILKINS
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

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ATTACHMENT 1

OMB Case No. PL170121 Authorized Variances and Conditions

MINOR VARIANCES

1. A driveway width of 10.00m (32.08ft); whereas By-law 0225-2007, as amended, permits a maximum driveway width of 6.00 m (19.68 ft) in this instance;
2. A combined width of side yards of 5.06m (16.60ft); whereas By-law 0225-2007, as amended, requires a minimum combined width of side yards of 6.17 m (20.24ft) in this instance;
3. A height to the underside of eaves of 6.98m (22.90ft); whereas By-law 0225-2007, as amended, permits a maximum height to the underside of eaves of 6.40m (20.99ft) in this instances; and
4. A dwelling depth of 27.90m (91.53ft); whereas By-law 0225-2007, as amended, permits a maximum dwelling depth of 20.00m (65.61ft) in this instance.

CONDITIONS

1. The proposed development being the subject of the Appeal (the "New Dwelling") shall be constructed substantially in accordance with the drawings prepared by Richard Mann Architects Inc., dated revised June 30, 2017 which were filed with the OMB as an Exhibit 4 (the "Plans").
2. Notwithstanding the above, the two windows on the west elevation drawing "A7" at the rear of the dwelling facing 107 Veronica Drive shall be constructed and maintained with opaque or frosted glass as identified in the Plans.
3. No balcony or extension to the dwelling over the rear porch shall be constructed at the rear of the New Dwelling.
4. The owner shall install and maintain a five (5) foot privacy screen as measured from the floor of the rear patio that will face 107 Veronica Drive (as depicted on the Plans) and that extends from the rear wall of the New Dwelling to the rear of the covered porch on top of the retaining wall. This screening will be constructed and maintained with materials commensurate with the design and finishings of the proposed house.
5. Prior to occupying the New Dwelling, the owner shall plant and thereafter maintain a cedar hedge forming a continuous evergreen wall straddling the boundary between the owner's lands and 107 Veronica Drive (the "Hedge"). The Hedge shall be planted with an initial height of a minimum of eight (8) feet and shall commence at a point along said boundary parallel to the front corner of the New Dwelling, and continue to the rear boundary of the Lands. The Hedge shall be permitted to grow taller than eight (8) feet and shall not be cut shorter than its natural height until it reaches a height of fifteen (15) feet, at which point it may be cut to maintain a height of no less than 15 feet.

6. The owner shall preserve the existing trees as identified on the site plan drawing "A1".