

Ontario Municipal Board
Commission des affaires municipales
de l'Ontario



ISSUE DATE: September 21, 2017

CASE NO(S): PL170504

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

| | |
|-------------------------------|----------------------------|
| Appellant: | Suzanne Bond |
| Applicant: | Rosemary Naemsch |
| Subject: | Minor Variance |
| Variance from By-law No.: | 0225-2007 |
| Property Address/Description: | 749 Montbeck Cres. |
| Municipality: | City of Mississauga |
| Municipal File No.: | A066/17 |
| OMB Case No.: | PL170504 |
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| OMB Case Name: | Bond V. Mississauga (City) |

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| Appellant: | Suzanne Bond |
| Applicant: | Michael Naemsch |
| Subject: | Minor Variance |
| Variance from By-law No.: | 0225-2007 |
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Heard: August 30, 2017 in Mississauga, Ontario

APPEARANCES:

Parties

Suzanne Bond

Counsel*/Representative

Self-represented

Rosemary Naemsch
Michael Naemsch

Russell Cheeseman*

**MEMORANDUM OF ORAL DECISION DELIVERED BY PAULA BOUTIS ON
AUGUST 30, 2017 AND ORDER OF THE BOARD**

INTRODUCTION

[1] This was an appeal by Suzanne Bond (“Appellant”) from a decision of the Committee of Adjustment (“Committee”) of the City of Mississauga (“City”) relating to two minor variance applications for properties owned by Rosemary and Michael Naemsch (“Applicants”). The Applicants own 749 Montbeck Crescent and 751 Montbeck Crescent, respectively (“Subject Sites”). The Applicants sought these variances for the purposes of constructing a new two-storey detached dwelling at each of the properties.

[2] The Subject Sites are just south of Lakeshore Road, and north of Lake Ontario. They are within an area known as the Lakeview Neighbourhood Character Area under the City’s Official Plan (“OP”).

[3] Prior Committee decisions in 2015 (“2015 Decisions”) gave a severance relating to the Subject Sites and authorized certain minor variances for each of the then proposed three-storey dwellings on the retained lot and the conveyed lot. The property was then owned by David Buckingham.

[4] At the start of the hearing, the Applicants asked the Board to dismiss the appeal under s. 45(17) of the *Planning Act* (“Act”) on the basis that the Appellants’ concerns related to a boundary line dispute, which dispute the Board could not adjudicate, and because Ms. Bond had not raised any planning issues. However, Ms. Bond did reference in her appeal letter her concerns with the dwelling depth in particular (Exhibit 1, Tab 10, page 56), a concern echoed by the City’s own Planning and Development Department. It had recommended refusal on this variance, though the Committee did not agree and authorized this variance along with the others. In any event, as the

dismissal was sought without notice, the Board concluded the appeal should proceed to be heard on the merits.

[5] Upon hearing submissions and evidence from the parties, the Board issued an oral order granting the appeal in part, to address the condition imposed by the Committee. This change was requested by the Applicants. The minor variances authorized at the appeal were unchanged from those authorized by the Committee.

COSTS

[6] At the conclusion of the hearing Mr. Cheeseman rose to seek costs. The Board directed Mr. Cheeseman to bring that motion, should his client wish to pursue it, following the issuance of the written reasons. In accordance with the Board's *Rules of Practice and Procedure* ("Rules"), any party is entitled to seek costs. The Board directs that any party seeking costs do so in accordance with Rule 98(ii).

EVIDENCE

Evidence of the Applicants

[7] As noted, the Applicants put forward David Brown to provide planning evidence. Though he is not a member of a recognized professional planning body, such as the Ontario Professional Planners Institute, and does not seek membership with, nor qualification from such a body, he has been qualified before the Board on numerous occasions related to this type of planning matter.

[8] At the Board appeal hearing involving Ms. Bond's property, Mr. Brown testified as a development and land use consultant, though he was not the planner qualified for the purpose of giving expert planning opinion evidence. A planner also testified at that hearing. Ms. Bond did not object to the Board qualifying Mr. Brown to provide opinion evidence in the area of land use planning, though commented it was typical for those seeking to be qualified as experts to be members within their appropriate professional associations.

[9] Ultimately, given Mr. Brown's experience and prior qualification as an expert by the Board in other hearings, the Board qualified Mr. Brown for the purposes of giving opinion evidence on the planning matters before the Board.

Evidence of Ms. Bond

[10] Ms. Bond did not proffer a planning witness. She had suggested at the hearing that she understood the respondents were not planning to call any witnesses. She commented that the Case Co-ordinator had suggested to her that "none had been confirmed" when she asked about this issue. She further expressed concern that the document book presented at the hearing by the Applicants' counsel had not been previously provided to her.

[11] As the Board explained, neither documents nor witnesses need to be confirmed or disclosed to opposing parties absent a procedural order. The Board explained that there are generally no procedural orders in the context of this type of hearing, and certainly there was no procedural order here. As a result, there was no obligation on the part of any party to disclose documents in advance or advise if there will be witnesses.

[12] The Board notes that Ms. Bond had prepared her own document book, ultimately entered as Exhibit 2. This book was also not provided in advance of the hearing to the Applicants' counsel. The Board notes that Ms. Bond is not unfamiliar with Board appeal process, given her own appeal in 2001, in which Mr. Brown and a land use planner testified on her behalf.

[13] Ms. Bond did cross-examine Mr. Brown on his evidence. At the conclusion of his examination, the Board invited Ms. Bond be sworn or affirmed to give her own evidence and have her document book formally entered as an exhibit.

[14] Ms. Bond expressed concerns that she did not wish to testify as she felt that she had been disrespected by opposing counsel in the proceedings and did not wish to provide further opportunity for this. Given Ms. Bond's discomfort, the Board suggested it simply file the document as an exhibit.

[15] Mr. Cheeseman opposed the filing of the document book without an opportunity to cross-examine Ms. Bond. He further commented that he did not intend to disrespect Ms. Bond and did not think he had, but that he would conduct himself appropriately.

[16] Ultimately, after further discussion with Ms. Bond, Ms. Bond did not swear an oath or make an affirmation for the purposes of giving evidence, nor was she subjected to cross-examination. Rather, the Board determined it would simply review Ms. Bond's document book. As the Board proceeded to do so, Mr. Cheeseman also took the opportunity to review her book.

[17] Subsequently, the Board discussed the issues with her to better understand her concerns and the documents in her book and afforded her the opportunity to make any submissions she wished to make. This largely revolved around the boundary dispute issues. However, her document book did also provide her submissions as it related to her planning concerns and was, as noted, ultimately entered as Exhibit 2.

[18] Following this discussion, as part of closing submissions, Mr. Cheeseman handed up a copy of the *Boundaries Act* and reviewed it with the Board. He also addressed the documents in her document book and referred to Mr. Brown's evidence that the applications now on appeal had proceeded following a new survey.

Boundary Dispute

[19] As expressed at the hearing, the Board confirms it has no jurisdiction over determinations for boundary line disputes. From this pronouncement it appears Ms. Bond concluded that the Board had therefore already determined the outcome of the appeal. The Board, while without jurisdiction to deal with boundary disputes, nonetheless sought to understand the issues presented by Ms. Bond regarding the boundary dispute and whether she had any planning concerns.

[20] Ms. Bond made submissions to the Committee for the 2015 Decisions (Exhibit 2, Tab 6). At that time, before the Committee in 2017 and at this appeal hearing, Ms. Bond opposed the applications on the basis of alleged incorrect boundary lines between the

now new lot at 751 Montbeck Crescent and her vacant lot, located at 753 Montbeck Crescent.

[21] A reading of the Committee's 2015 Decisions (the consent and the two decisions for the variances on the retained and conveyed lot) and her written submissions to the City Clerk for the City dated September 12, 2015, make it clear the Committee was fully apprised of these concerns both for the purposes of the consent and the minor variances for each lot at that time.

[22] The 2015 Decisions all extensively referenced Ms. Bond's concerns and noted that she attended to express her opposition.

[23] At the time of the 2015 Decisions, the Secretary-Treasurer for the Committee advised that with respect to the boundary issue, he had consulted with the City's Legal Services department and understood that "if the application is approved, the northerly boundary line must match the Boundary Act Decision prior to a Certificate being issued. If the boundary line differs, it will affect the lot frontage and lot areas and new minor variance applications will be required." (Consent Decision for Application Number B-44/15, "Consent Decision").

[24] By further example, all three of the 2015 Decisions noted the following:

Mr. Oughtred [applicant's authorized agent] indicated that he was aware of a dispute with respect to the boundary line to the lands to the north. He confirmed that he had consulted a surveyor who had advised him that the matter had been resolved (sic) through the appropriate tribunal. Mr. Oughtred advised the Committee that the surveyor had prepared the draft reference plan in accordance with the confirmed property line.

[25] The hearing before the Committee for the applications on appeal was initially heard on February 16, 2017. It was ultimately deferred to March 30, 2017. The Committee decision notes that Mr. Brown sought a deferral on the basis of outstanding concerns with the land holdings between the Applicants and the abutting neighbour, being Ms. Bond. Mr. Brown testified that Ms. Bond was in attendance at the February 16, 2017 hearing but did not attend the March 30, 2017 hearing.

[26] At each of the February 2017 and March 2017 Committee hearings, the Committee had before it a letter from Ms. Bond indicating her concerns regarding the boundary issue and her planning objections. These letters were substantially the same (Exhibit 1, Tab 9, page 46, letter dated February 23, 2017, Exhibit 1, Tab 15, page 97, letter dated March 30, 2017).

[27] At the appeal, Mr. Brown testified that he sought a new survey in light of Ms. Bond's concerns. He testified that the new survey confirmed what was shown in the boundaries used for the plans initially developed for the proposal.

[28] At the March 2017 Committee meeting, the Committee authorized the variances requested, but on condition that it be "in accordance with the plans reviewed by the Committee" (Exhibit 1, Tab 9, pages 49 and 53). For clarity, Mr. Brown testified that these were the site and elevation plans found at Exhibit 1, Tab 7 for the purposes of the appeal, and not the floor plans, also contained within Tab 7.

[29] A review of the evidence filed by the parties (Exhibit 1, Tab 16, 2015 Decisions and Exhibit 2), and the evidence given at the appeal by Ms. Bond, indicate that the boundary issues were resolved under the *Boundaries Act* some years ago (on or about February 14, 2007, Exhibit 2, Tab 2).

[30] Ms. Bond did not file with the Board a copy of the decision under the *Boundaries Act*. The surveyor involved with the establishment of the boundaries faxed a sketch to Ms. Bond on February 14, 2007, "showing the calculated position of the south-westerly corner of Lot 62 as directed by the Boundary Act Tribunal." He noted "[t]his corner is going to be only 2 cm south from the Iron Bar set by our firm in 2002."

[31] In her written submissions to the Board, Ms. Bond noted that a "Boundary Act Decision had the effect of moving the locations of the lands 2 cm to the South of a survey presented for the OMB Order No. 1496." OMB Order No. 1496 is a 2001 Board decision related to Ms. Bond's lands. That decision and order granted a severance and the requested variances for the lands at 757 Montbeck Crescent, ultimately creating 753

Montbeck Crescent. The property at 753 Montbeck Crescent remains undeveloped. It abuts 751 Montbeck Crescent.

[32] Upon questioning by the Board, Ms. Bond advised that while she had appealed the decision of the Director under the *Boundaries Act* to the Divisional Court, that appeal was dismissed (she advised this was technical in nature related to difficulties in obtaining the transcripts for the appeal). As a result, the decision related to boundaries stands and is confirmed.

[33] The Board may have contemplated an adjournment to await a shortly pending resolution on the boundary issue. However, it was clear that issue had long-since been resolved.

[34] Ms. Bond made submissions that while she understood the Board's position that it did not have jurisdiction to address the boundary issues, the Board understood her to suggest that it ought to impose a condition to address the problem of the erroneous survey. Ms. Bond suggested that the Planning and Development Department needed to understand that the new survey, too, has errors. Beyond Ms. Bond's allegations, there was simply no evidence before the Board to substantiate this point, but in any event, addressing boundary matters has a process and that process has now been concluded.

[35] The Board's 2001 decision related to Ms. Bond's own property similarly continues to stand. Ultimately the decision under the *Boundaries Act* will govern the boundary lines for her property, however. If Ms. Bond continues to have concerns regarding this, she may have other remedies and it will be for her to determine what those are and in what fora they may be addressed.

Minor Variances

[36] For minor variance applications, the four tests under s. 45(1) of the Act must be satisfied. The variances must

- a. maintain the general intent and purpose of the official plan ("OP");

- b. maintain the general intent and purpose of the zoning by-law;
- c. be desirable for the appropriate development and use of the land; and
- d. be minor.

[37] In addition, the Board must find that the proposal conforms to the Growth Plan for the Greater Golden Horseshoe, 2017 (“2017 Growth Plan”) and be consistent with the Provincial Policy Statement, 2014 (“PPS”). Finally, the Board must have regard to the provincial interests enumerated under s. 2 of the Act.

[38] The variances sought are the following, as authorized by the Committee (Exhibit 1, Tab 9):

[39] For the property at 749 Montbeck Crescent:

- a. A lot frontage of 10.06 metres (“m”), whereas a maximum of 15 m is required;
- b. A lot area of 492.32 square metres (“m²”), whereas a minimum of 550 m² is required;
- c. Permit a dwelling depth of 21.18 m, whereas a maximum of 20 m is permitted; and
- d. Permit a northerly side yard setback of 1.2 m, whereas the by-law requires a minimum of 1.8 m in this instance.

[40] For the property at 751 Montbeck Crescent:

- a. A lot frontage of 10.06 m, whereas a maximum of 15 m is required;
- b. A lot area of 500.09 m², whereas a minimum of 550 m² is required; and

- c. Permit a southerly side yard setback of 1.2 m, whereas the by-law requires a minimum of 1.8 m in this instance.

[41] The proposed set-back variances are for the interior side yards between the two new dwellings. The exterior side yards abutting existing neighbouring properties will meet the ZBL standards.

Official Plan

[42] Mr. Brown reviewed the relevant portions of the City's OP and the Lakeview Local Area Plan ("Area Plan").

[43] The property is designated Residential Low Density II and is within the Lakeview Neighbourhood Character Area (Exhibit 1, Tab 11, pages 70 and 71). It forms part of the South Residential Neighbourhood and is within a sub-area referred to as Lakeside (Exhibit 1, Tab 11, page 82). The Lakeview Character Area forms an appendix (Appendix 1) within the Area Plan and establishes policies related to various matters including built form type.

[44] Mr. Brown directed the Board to the Area Plan's guiding principles and other relevant policies. Policy 5.1.2 seeks to strengthen distinct neighbourhoods by protecting established stable neighbourhoods and ensuring appropriate built form transitions for development. Policy 5.2.3 deals with Neighbourhoods and indicates that infill and redevelopment will be facilitated and encouraged in a manner consistent with existing land uses in the surrounding area. Neighbourhoods are to be primarily stable residential areas.

[45] Regarding this neighbourhood, Mr. Brown testified that there is diversity in this area with a wide range of housing, including one and two-storey homes, small, big and "everything in between". The policy itself notes that the South Residential Neighbourhood Precinct "contain[s] a mix of different forms of housing including detached, semi-detached, duplexes, triplexes quadruplexes, and townhouses. There are also apartment clusters in this area."

[46] Policy 6.0 deals with “Direct Growth”. The Lakeview Community Node is expected to have some modest infilling, though the Lakeview Community Node itself has yet to be established, but the Subject Sites is expected to fall within it (Exhibit 1, Tab 11, page 71). As a Neighbourhood Character Area, it is not expected to experience significant change (Policy 6.2).

[47] Appendix 1 of the Area Plan reaffirms at Policy 2.1 that neighbourhood areas are considered to be generally stable residential areas where the existing character is to be preserved and enhanced. These areas are to be “maintained while allowing for infill which is compatible with and enhances the character of the area.” Policy 2.2 deals with built-form type and requires that new developments will be compatible with and enhance the character of the neighbourhood by integrating with the surrounding area.

[48] Specific policies for detached and semi-detached dwellings, duplexes and triplexes are found at Policy 2.2.1. The proposed dwellings are required to “maintain the existing character of the area”, and to that end, several criteria apply. Mr. Brown testified that the proposed dwellings here:

- a. meet the maximum height requirements;
- b. meet the front and rear setbacks, and the setback requirements exterior to the two proposed dwellings, i.e. only the internal setbacks will have a variance;
- c. grades and drainage will be addressed through the building permit application and will maintain and preserve the existing conditions;
- d. fit the scale and character of the surrounding area;
- e. the garages will be aligned with the front wall of the proposed dwellings;
- f. the development will have a minimal impact on adjacent neighbours with respect to overshadowing and overlook as there will be no variances for the

side yard setbacks to the existing abutting properties;

- g. unlike the properties across the street from the Subject Sites, which have a lot of hard surface in the front, hard surface areas will be minimized and there will be ample greenspace;
- h. some smaller trees are to be removed, but the front yards will be preserved and a significant portion of the rear is also to be preserved;
- i. the homes are designed to fit the scale and character of the local area, which is quite diverse;
- j. these are modern architectural styles, which is a trend in the area; they are not standard, repeat designs; and
- k. the building mass, side yards and rear yards respect and relate to the existing abutting lots.

[49] In summary, it was Mr. Brown's evidence that general intent and purpose of the applicable OP policies were maintained.

[50] Ms. Bond suggested to Mr. Brown on cross-examination that most of the properties that exist or that had been built in the area were bungalows. He indicated that the trend with new homes and for renewal was for two-storey dwellings, and just outside the area was a three-storey home. The prior 2015 Decisions in fact had already authorized variances with respect to proposed three-storey dwellings. In sum, it was his opinion that in general infilling was comprised of two-storey homes.

Zoning By-law

[51] Mr. Brown next reviewed the relevant portions of Zoning By-law No. 0225-2007 ("ZBL") against the proposal and variances sought.

[52] Amendments to the ZBL relating to Exception R3-75 were under appeal at the time Ms. Bond appealed the Committee decisions. However, the standard in the approved but not-in-force by-law was identified by the zoning examiner as requiring a variance authorization, in the event the amendment was ultimately approved. As of May 30, 2017, the Board had approved the zoning by-law amendment bringing into effect ZBL No. 0193-2016, meaning a maximum dwelling unit depth of 20 m is now in place. Mr. Brown indicated that no standard previously existed for dwelling depth.

[53] Ms. Bond suggested to Mr. Brown on cross-examination that the community had not been happy with the type of construction going on, and that considerable public consultation had occurred as a result. Mr. Brown agreed that dissatisfaction by the community could be a reason for the consultation. Ms. Bond's written submissions (Exhibit 2) indicated that "residents of Lakeview are so concerned with prior approval and developments in the area that they have brought an appeal to the ... Exception ... R3-75 to deal with these issues." As these are now approved, they govern this application.

[54] Regarding the dwelling depth variance for 749 Montbeck Crescent, this was the variance opposed by the City's Planning and Development Department and was also of concern to Ms. Bond. The Committee, conversely, concluded it was acceptable as it "was only for a small portion of the dwelling".

[55] At the hearing Mr. Brown testified the purpose of the variance was to accommodate a larger tub in the bathroom and it affected only a portion of the second floor. He testified the ground floor meets the ZBL requirement for dwelling depth. It was his opinion that that the general intent and purpose of the ZBL was met as the purpose is to ensure that massing of a two-storey dwelling wall does not create a negative impact. Mr. Brown testified that the design had incorporated features to break up the monotony of a 20 m two-storey wall to mitigate the impact the wall and the 21.18 m second floor projection.

[56] Regarding the interior side-yard setbacks between the two new proposed homes,

the impact is limited to the new condition and does not create an impact on existing properties and will not interfere with the functionality of those side yards. Mr. Brown testified it is still a generous set back and reflects the character of the area.

[57] The variances sought for lot frontage and lot area are required to address the fact that while previously approved by the Committee in the 2015 Decisions, it was in the context of three-storey home developments. To avoid any difficulties, approval for these same variances is now sought for the lower two-storey proposals and related plans.

[58] In sum, it was Mr. Brown's opinion that individually and cumulatively, the variances sought are in keeping with the general intent and purpose of the ZBL.

Desirability and whether variances are minor

[59] Regarding the desirability for the appropriate development or use of the land, Mr. Brown was of the opinion that these developments are desirable and in keeping with the trend for development of two-storey homes.

[60] He also opined that the variances were minor in nature, both cumulatively and individually. He testified the lot frontage and area was in keeping with the established character of the neighbourhood to the north, south and immediately across the road. The interior side-yard setback variances were not likely to result in any adverse impacts in his opinion. Only a small portion, less than half of the second floor at 749 Montbeck Crescent, would exceed the permitted building depth.

[61] Mr. Brown noted that the neighbour abutting 749 Montbeck Crescent, who would potentially be affected by extended building length condition, did appear at the initial Committee hearing, but did not return at the March 2017 continuation and did not attend at the appeal.

[62] In summary, it was Mr. Brown's opinion that all four tests for the purposes of a minor variance were satisfied.

Provincial Matters

[63] Finally, Mr. Brown opined that the proposals were consistent with the PPS, and conformed to the 2017 Growth Plan, meeting the direction and policy statements referred to in those documents.

[64] The Board adopts the opinion of Mr. Brown and agrees that the proposals constitute good planning.

ORDER

[65] The Board allows the appeal in part to address the modification of the condition imposed by the Committee.

[66] The Board authorizes the variances outlined at paragraphs 38 to 40 of these reasons, but such authorization is subject to the condition that the proposed dwellings be constructed substantially in accordance with the site plans and elevation drawings found at Exhibit 1, Tab 7, pages 27, 30 and 31 for 749 Montbeck Crescent and at Exhibit 1, Tab 7 pages 32, 35, and 36 for 751 Montbeck Crescent.

“Paula Boutis”

PAULA BOUTIS
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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