

**Local Planning Appeal Tribunal**  
Tribunal d'appel de l'aménagement  
local



**ISSUE DATE:** August 02, 2018

**CASE NO(S):** PL170671

The Ontario Municipal Board (the “OMB”) is continued under the name Local Planning Appeal Tribunal (the “Tribunal”), and any reference to the Ontario Municipal Board or Board in any publication of the Tribunal is deemed to be a reference to the Tribunal.

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

Appellant:	Ian D. McNeil
Applicant:	Tony Raposo
Subject:	Minor Variance
Variance from By-law No.:	0225-2007
Property Address/Description:	166 Harborn Trail
Municipality:	City of Mississauga
Municipal File No.:	A 217/17
OMB Case No.:	PL170671
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OMB Case Name:	McNeil v. Mississauga (City)

**Heard:** October 24, 2017 in Mississauga, Ontario

**APPEARANCES:**

**Parties**

Ian D. McNeil

**Representative**

Self-represented

**Participants**

Stella and Lance Anderson

Self-represented

David Ananczyk

Self-represented

**DECISION DELIVERED BY STEFAN KRZECZUNOWICZ AND ORDER OF THE  
TRIBUNAL**

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## Background

[1] This was a hearing into an appeal by Ian McNeil of a decision by the Committee of Adjustment (the “Committee”) of the City of Mississauga (the “City”) to approve variances for the construction of a dwelling at 166 Harborn Trail (the “subject property”). Tony Raposo, the owner of the subject property, originally applied for the variances.

[2] The City did not attend the hearing.

[3] Mr. Raposo, the Applicant of record, failed to appear at the hearing, and did not provide the Tribunal with prior notice that he would not attend. As such, pursuant to Rule 12 of its *Rules of Practice and Procedure* (as they were at the time of the hearing), the Tribunal commenced and conducted the hearing 30 minutes after the scheduled start time.

[4] Under the circumstances, the Tribunal was provided with no evidence to support the application or to demonstrate that there are land use planning grounds upon which the variances should be authorized. As such, given the *de novo* nature of the hearing, the Tribunal was in a position to allow the appeal on this basis alone.

[5] However, given the number of attendees with direct interests in the case, the Tribunal decided to hear evidence from three witnesses: Mr. McNeil and two Participants, Lance Anderson and David Ananczyk. All three are abutting neighbours to subject property. Messrs. McNeil and Ananczyk opposed granting the variances. Mr. Anderson supported the Applicant’s proposal.

## Legislative Tests

[6] The Tribunal's authority to grant or deny variances is given under s. 45(1) of the *Planning Act* ("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 Tribunal 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.

[7] The Tribunal 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").

## Evidence Heard

[8] The variances at issue would permit relief from zoning standards in By-law No. 0225-2007 that limit lot coverage (the ratio of building footprint to lot area), garage gross floor area and driveway width. A variance to reduce the front yard setback below the minimum zoning standard is also under appeal.

[9] Messrs. McNeil and Aranczyk opposed the variances principally on the basis that they would create a dwelling that was too large for the neighbourhood. Mr. McNeil noted that requested lot coverage was 40% greater than what the by-law allows and noted that the front wall of the proposed dwelling is set in front of the front walls of

neighbouring homes (Exhibit 1). He also described the proposed driveway as “too much hard surface” in the neighbourhood context. In Mr. McNeil’s view, the variances, taken together, would result in a dwelling that did not respect the physical character of the neighbourhood.

[10] Mr. Ananczyk, whose parents live to the immediate east of the subject property, showed how the views of the front yard from the front door of his family’s home would be obstructed by the front wall of the proposed dwelling.

[11] Mr. Anderson, who lives to the west of the subject property, supported the variance application as it would create “the best achievable solution” for a new dwelling on the property.

### **Findings and Conclusion**

[12] The Tribunal heard no evidence to support the variance application. Indeed, the evidence adduced by Mr. McNeil and Mr. Ananczyk leads the Tribunal to conclude that there are legitimate land-use planning grounds for not authorizing the variances. For these reasons, and in the absence of any evidence from the Applicant in support of the application, or to satisfy the Applicant’s obligation to meet the requirements of the legislation, the Tribunal does not find that the variances meet the four tests as provided for in s. 45(1) of the Act. Accordingly the Tribunal concludes that the appeal should be allowed and the variances as originally requested and approved by the Committee, are not authorized.

**Order**

[13] The Tribunal orders that the appeal is allowed and the variances are not authorized.

*“Stefan Krzeczunowicz”*

STEFAN KRZECZUNOWCZ  
MEMBER

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**Local Planning Appeal Tribunal**

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