

Ontario Municipal Board
Commission des affaires municipales
de l'Ontario



ISSUE DATE: March 08, 2018

CASE NO(S): PL170799

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

Applicant and Appellant:	Kirpal Singh and Kulwant Kaur
Subject:	Minor Variance
Variance from By-law No.:	0225-2007
Property Address/Description:	7551 Chinook Drive
Municipality:	City of Mississauga
Municipal File No.:	A262/17
OMB Case No.:	PL170799
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OMB Case Name:	Kaur v. Mississauga (City)

Heard: February 12, 2018 in Mississauga, Ontario

APPEARANCES:

Parties

Counsel

Kirpal Singh and Kulwant Kaur

Bruce Ketcheson

City of Mississauga

Lia Magi

DECISION DELIVERED BY RICHARD JONES AND ORDER OF THE BOARD

INTRODUCTION

[1] Kirpal Singh and Kulwant Kaur (“Applicants/Appellants”), applied to the City of Mississauga Committee of Adjustment (“COA”) to allow for the construction of a new

replacement home on their property known municipally as 7551 Chinook Drive (“subject property”). A one storey older residence now occupies the subject lands.

[2] The new home involved two variances from By-law No. 0225-2007 (“ZB”) as follows:

1. A lot coverage of 33.66% is proposed, whereas; the ZB permits a maximum lot coverage of 30%.
2. A gross floor area of 476.68 square metres (“sq m”) is proposed; whereas the ZB permits a maximum gross floor area of 307.23 sq m.

[3] The application was refused and subsequently appealed to the Ontario Municipal Board (“Board”). The Planning Department of the City of Mississauga (“City”) had recommended to the COA that the application be refused although, City planning staff were of the mistaken view that two height variances were also incurred (relating to roof height and height of eaves) in addition to the above noted variances.

[4] Although the City actively opposed the appeal before the Board, it nevertheless acknowledged that two, rather than four variances were now involved in the application/appeal.

[5] The subject property is located in the Malton Neighbourhood, near Airport Road and the northerly City limits. Chinook Drive is a local residential roadway improved with single family homes, a characteristic which typifies the Malton Neighbourhood in general which has over 1700 hundred homes.

[6] The Board heard from two planners: Robert Ruggiero a Planner with the City, and Mr. Frank Romano, Planning Consultant, who testified on behalf of the Applicant. Both were qualified as professional planners, and both individuals had involvement with the application beginning with its submission to the COA.

[7] This Decision dismisses the appeal pursuant to the tests for variances arising from s. 45(1) of the *Planning Act*. Although three of the four tests were met by the application, the general intent and purpose of the ZB was not met in the Board's view. Consequently, as the *Planning Act* requires that all tests be met as a prerequisite of variance approval, the appeal is dismissed.

[8] Prior to the planners' examination of the tests, this decision highlights policies and actions which provide context relevant to the evaluation of the four tests.

PROVINCIAL POLICY, INTENSIFICATION AND THE MALTON NEIGHBOURHOOD

[9] Provincial policy documents, the Provincial Policy Statement 2014 ("PPS") and the Growth Plan for the Greater Golden Horseshoe 2017 were introduced by Mr. Romano who cited that policies promoting compact communities, and intensification lent support to the application. Intensification in the planner's view was achieved because the new home proposes to utilize the subject property more efficiently and intensely than the existing bungalow. In this particular respect, the Board disagrees with Mr. Romano's assertion and relies instead on the definition of Intensification provided in the PPS which follows:

Intensification: means the development of a property, site or area at a higher density than currently exists through:

- a) redevelopment, including the reuse of brownfield sites;
- b) the development of vacant and/or underutilized lots within previously developed areas;
- c) infill development; and
- d) the expansion or conversion of existing buildings.

[10] The provision of a larger replacement building does not effect a density increase, nor does it satisfy the intentions of clauses a) to d) inclusive, in the Board's view, an opinion also shared with the City planner. Building a larger mass while still housing a single household does not equate with a higher density which (commonly) entails the creation of more households on a given piece of property. Nevertheless, as the PPS in

s. 4.7 states: “the official plan is the most important vehicle for implementation of this Provincial Policy statement. Comprehensive, integrated and long term planning is best achieved through official plans.” (from Exhibit 1) The Board places greater reliance on the City’s Official Plan in this matter.

[11] Another background related matter influential in this hearing involved the Malton Infill Housing Study (“the Study”). Completed in 2016, and arising from the MyMalton Community Visioning exercise undertaken in 2015, the Study recommended revisions to the City’s ZB which were intended to moderate the size of new replacement homes in the Malton Neighbourhood where houses are for the most part, modest as opposed to the newer replacement homes which are typically larger and two storeys in height.

[12] Prior to the revisions, the ZB did not control gross floor area (“GFA”), and lot coverage was permitted at 35% rather than 30% maximum. The new GFA standard requires that 0.20 times the area of a lot plus 150 square metres is the maximum allowance for building mass. According to the testimony, the effect of the new standard was specifically intended to moderate the size of replacement homes to reflect the prevailing built character of Malton. In Mr. Ruggiero’s view, the new standard was completely appropriate and consistent with the Study, although Mr. Romano opined that the new standard/formulae was unfairly restrictive of larger homes.

THE FOUR TESTS

1. Is the general intent and purpose of the OP met by the application?

[13] Two Official Plans (“OP”) are technically applicable: the Region of Peel OP and the City of Mississauga OP, but it was the latter which both planners considered the more relevant document.

[14] In this regard, the Board will turn to the definition of character, which is found in the OP:

“character” means the aggregate of features including the attributes of the physical, natural, and social dimensions of a particular area or neighbourhood.

[15] This definition is brought forward because many of the policies of the OP allude to this underlying condition in reference to residential uses within designated Neighbourhoods. For instance, the OP is rife with references (to the point of repetition) that the City will “protect” and “conserve” the character of stable residential areas; that Neighbourhoods will not be the focus of “intensification” and should be regarded as “stable” residential areas; that development will be “sensitive” to the existing and planned “context” and will include appropriate “transitions in use, built form, density and scale”. And while new development need not “mirror” existing development it is expected to respect existing “lotting patterns”, respect the “scale” and “character” of the surrounding areas, respect the “massing” and “grades” of the surrounding area, minimize “overshadowing” and “overlook” on adjacent neighbours and have regard to the “local vernacular and “architectural” character as represented by the rhythm, textures and building materials”

[16] The City planner was of the opinion that such policies were not met by the application: the building being far too large and out of character with a neighbourhood which was overwhelmingly modest in built scale if not in lot size. Mr. Romano opined otherwise stating that the policies had all been met and the Board finds that this latter view was the more convincing one. The OP’s definition of character does not imply a demand for uniformity or similarity; rather there is need to have regard for context and an avoidance of impact. Character is defined by an aggregate of considerations rather than the identification of dominant characteristics, and as Mr. Romano illustrated in Exhibit 3, many of Malton’s replacement homes (most of these having been recently built in the very near vicinity of the subject property for reasons unexplained) represented building forms not dissimilar to the proposed new home. Additionally, although the prevailing size of homes in the Malton are smaller in mass and height as

other exhibits affirmed, the replacement homes in contrast were larger and almost always, two storeys in height having been constructed under the more generous terms of the previous zoning regime. Consequently as character is determined from an aggregate of factors, the Board concurs with Mr. Romano, that compliance with the OP is met as noted.

2. Are the variances desirable for the appropriate use and development of the land?

[17] Mr. Romano opined that a large, new home was necessary to accommodate a multi-generation family which included the provision of three-bay garage and four bedrooms. He added that the application was suited to the context of the Chinook Drive streetscape where a number of similar-looking replacement residences had been erected. As the planner also described, there was no neighbourhood opposition to the proposed variances; there was no overlook or loss of privacy, or any trait that could be deemed undesirable with regard to context and impact

[18] Mr. Ruggierio opined to the contrary stating that the absence of objections from neighbouring householders did not signify desirability. Further, in his view, the application went “far beyond what we (the City) could live with” in reference to Exhibit 6 which was prepared by the City. That exhibit listed 15 replacement homes on Chinook Drive, Bonaventure Drive, Redstone Road, Capricorn Crescent, Scarboro Street, Hermitage Road, Justine Drive and Minotola Avenue, compared their respective GFA and lot coverage statistics, and illustrated that the subject property was the largest of the bunch, other than 7588 Redstone Road which had a larger mass (549.19 sq m versus the proposed building mass of 476.68 sq m) and lot coverage (34.52 versus 33.66), but existed on a larger lot (985.30 sq m versus 786.14 sq m).

3. Are the variances minor?

[19] The information of Exhibit 6 was in the City planner's view, evidence of significant deviations, which eliminated consideration that the variances were minor; whereas, Mr. Romano considered the variances individually and collectively minor.

4. Is the general intent and purpose of the ZB met?

[20] Mr. Romano opined that the as other zoning standards (height, setbacks etc.) had been met, and as the proposed built form is appropriately "proportionate" to the lot area and will be suitably "deployed" on the property, the test had been met.

[21] Mr. Ruggiero was unsurprisingly of an opposing view for reasons, which the Board adopts and relies on. The City planner stated that the Study and the revised zoning standards which arose from it, were purposely intended to deny applications of this kind in order to preserve the far more modest built form character of the area. Although replacement home activity had been occurring, it amounted to still less than 1% of the whole neighbourhood where there is over 1700 properties. (These first generation residences, in the planner's view were improved with homes of approximately 121 sq m with average lot coverages of 21%.) Although, the replacement homes were significantly larger, averaging in the planner's opinion, 345 sq m (a figure which derives from the replacement homes on Chinook Drive), those new homes were still materially smaller than the proposed home at 476 sq m.

[22] The Board was persuaded by that testimony and finds that the general intent and purpose of the ZB was not achieved by the application.

[23] The Study and the new zoning standards which flowed from it, was representative of a serious and very recent initiative intended to moderate building mass. The authorization of variances which would inflate building mass from 307 sq m to 476 sq m and raise lot coverage by over 3% would ignore those efforts so recently implemented. Accordingly, pursuant to s. 2.1 of the *Planning Act*, the Board has regard

for those actions enacted by the City and the appeal is dismissed in the order which follows.

ORDER

[24] The Board orders that the appeal is dismissed and the variances to By-law No. 0225-2007 are not authorized with respect to the property known municipally as 7551 Chinook Drive in the City of Mississauga.

“Richard Jones”

RICHARD JONES
MEMBER

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Ontario Municipal Board

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