

**Ontario Municipal Board**  
Commission des affaires municipales  
de l'Ontario



**ISSUE DATE:** March 16, 2018

**CASE NO(S):**

PL170828

**PROCEEDING COMMENCED UNDER** subsection 53(19) of the *Planning Act*, R.S.O. 1990, c. P.13, as amended

Applicant and Appellant: Dane Hawkins  
Subject: Consent  
Property Address/Description: 1015 Lorne Park Road  
Municipality: City of Mississauga  
Municipal File No.: B-052/17  
OMB Case No.: PL170828  
OMB File No.: PL170828  
OMB Case Name: Hawkins v. Mississauga (City)

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

Applicant and Appellant: Dane Hawkins  
Subject: Minor Variance  
Variance from By-law No.: 0225-2007  
Property Address/Description: 1015 Lorne Park Road  
Municipality: City of Mississauga  
Municipal File No.: A298/17  
OMB Case No.: PL170828  
OMB File No.: PL170830

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

Applicant and Appellant: Dane Hawkins  
Subject: Minor Variance  
Variance from By-law No.: 0225-2007  
Property Address/Description: 1015 Lorne Park Road  
Municipality: City of Mississauga  
Municipal File No.: A297/17  
OMB Case No.: PL170828  
OMB File No.: PL170829

**Heard:** November 8, 2017 in Mississauga, Ontario and Written Submissions November 14, 20 and 23, 2017.

**APPEARANCES:**

<u>Parties</u>	<u>Counsel</u>
Dane Hawkins	A. Stewart
City of Mississauga	L. Magi

**DECISION DELIVERED BY SUSAN de AVELLAR SCHILLER AND ORDER OF THE BOARD**

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[1] Dane Hawkins (“Applicant”) wishes to divide an existing lot at 1015 Lorne Park Road (“Subject Site”) in the City of Mississauga (“City”) and then build a new house on each new lot. In support of this intention, the Applicant applied for consent to sever the Subject Site and for associated variances for reduced lot frontage and lot area of each new lot.

[2] The initial application for variances did not include any variances for built form. The Applicant made elevations available that demonstrated the design of the houses he intends to build. The City expressed concern with the design. As a result of the redesign of the houses, now satisfactory to the City, a single variance for built form is necessary.

[3] The Applicant amends the applications for variances to add the third variance, listed below. This variance deals with the side yard setback for the second storey and is driven by the design preference of the City, to which the Applicant responded.

[4] Pursuant to s. 45 (18.1.1) of the *Planning Act*, R.S.O. 1990, c. P. 13, as amended, (“Act”), the Board is of the opinion that the amendment to the original applications is minor and no further notice is required.

[5] In addition to the single built-form variance, since the redesign of the houses is

now acceptable to the City in the event that the Board grants the consent and authorizes the variances, the Applicant has agreed to a condition of variance authorization that the houses are to be built substantially in accordance with the site plan and front elevations filed as Exhibit 4 in these proceedings. The Applicant has also agreed to a condition regarding the filing of an arborist's report.

[6] The variances now being sought, and the conditions of variance authorization, are:

**Variances for the Retained Land (File "A" 297/17) – 1015 Lorne Park (east lot)**

1. A lot frontage of 9.90 m (32.48 ft.); whereas By-law 0225-2007, as amended, requires a minimum lot frontage of 18.00 m (59.05 ft.) in this instance;
2. A lot area of 504.00 m<sup>2</sup> (5,425.01 ft.<sup>2</sup>); whereas By-law 0225-2007, as amended, requires a minimum lot area of 695.00 m<sup>2</sup> (7,480.92 ft.<sup>2</sup>) in this instance; and
3. East and west side yard setbacks of 1.80 m; whereas By-law 0225-2007, as amended, requires a minimum side yard setback of 1.80 m to the ground floor, and 2.41 m to the second storey.

**Variances for the Conveyed Land (File "A" 298/17) – 1017 Lorne Park (west lot)**

1. A lot frontage of 9.90 m (32.48 ft.); whereas By-law 0225-2007, as amended, requires a minimum lot frontage of 18.00 m (59.05 ft.) in this instance;
2. A lot area of 512.30 m<sup>2</sup> (5,514.35 ft.<sup>2</sup>); whereas By-law 0225-2007, as amended, requires a minimum lot area of 695.00 m<sup>2</sup> (7,480.92 ft.<sup>2</sup>) in this instance; and
3. East and west side yard setbacks of 1.80 m; whereas By-law 0225-2007, as amended, requires a minimum side yard setback of 1.80 m to the ground floor, and 2.41 m to the second storey.

**Conditions of Variance Authorization**

1. The proposed dwellings shall be constructed substantially in accordance with the Site Plan and Front Elevations prepared by Huis Design Studio and dated November 2, 2017, filed as Exhibit 4.

2. The owner shall submit an arborist report to address any measures required to ensure the preservation of the Willow tree at the northwest corner of the proposed west lot, to the satisfaction of Community Services, Park Planning Section, which measures shall be incorporated into any site plan application.

[7] The Board heard from two witnesses in this matter, both of whom the Board qualified to provide independent expert opinion evidence in land use planning matters. Franco Romano, called by the Applicant, and Greg Kirton, called by the City.

[8] This dispute focuses on the application for consent and the associated variances that deal with lot frontage. In summary, the City submits that the lot frontages are too small and result in lots that are not in keeping with the character of the neighbourhood.

[9] The criteria for consideration of the division of the Subject Site, and the associated variances for lot frontage, both deal with the City Official Plan ("OP") but the tests are quite different.

[10] For the division of the Subject Site, the criteria are found in s. 51(24) of the Act. Section 51(24)(c) requires consideration of whether the proposed division conforms to the OP. The tests for the authorization of the variances are found in s. 45(1) of the Act. Here the test is whether the variance maintains the general intent and purpose of the OP.

[11] Chapter 5.3 of the OP deals with City Structure and policy 5.3.5 focuses on Neighbourhoods. The following excerpts are most relevant to this dispute:

**5.3.5.1** Neighbourhoods will not be the focus for intensification and should be regarded as stable residential areas where the existing character is to be preserved.

**5.3.5.2** Residential intensification within Neighbourhoods will generally occur through infilling ...

**5.3.5.5** Intensification within Neighbourhoods may be considered where the proposed development is compatible in built form and scale to surrounding development, enhances the existing or planned development and is consistent with the policies of this Plan.

**5.3.5.6** Development will be sensitive to the existing and planned context and will include appropriate transitions in use, built form, density and scale.

[12] The Subject Site is located just north of the intersection of Lakeshore Road West and Lorne Park Road. Lakeshore Road West is a thoroughfare that angles northeast at this point. Lorne Park Road angles off to the west at the intersection. The Subject Site is just off the corner on the north side of Lorne Park Road, adjacent to a small townhouse development that goes along Lakeshore Road West and then angles around the corner so that part of the townhouse property is along Lorne Park Road.

[13] While the Subject Site reads as being one spot in from the intersection, as a result of the angle of Lorne Park Road at the intersection with Lakeshore Road West, the Subject Site is directly across from a service station located at the northwest corner of Lorne Park Road and Lakeshore Road West. The location of the Subject Site, with the townhouses adjacent and a service station immediately across the street, confirm the Subject Site as an edge condition. Detached dwellings on variously sized lots then continue on up Lorne Park Avenue.

[14] While Neighbourhoods are not the focus for intensification, the OP specifically contemplates some intensification in Neighbourhoods. The Subject Site is within a settlement area and on full municipal services. Intensification at this location would contribute to the efficient use of land and infrastructure and to the continued development of the complete community. In this case, the proposal is for modest intensification that is consistent with the Provincial Policy Statement 2014 (“PPS 2014”) and conforms to the Growth Plan for the Greater Golden Horseshoe 2017 (“GGH 2017”).

[15] The issue, then, is not whether some intensification could or should occur on the Subject Site. The issue is whether the specific proposal is the appropriate form of intensification. That issue is best tested through an analysis of compatibility.

[16] The immediate neighbourhood is mixed. Lot sizes vary. House sizes vary. Land

uses vary. The resulting built form of two, single detached dwelling units are a transition from the townhouses to the south and service station across the street to the larger lots and houses to the west.

[17] The Subject Site is in a Residential Low Density II designation within the Clarkson-Lorne Park Neighbourhood. The Clarkson-Lorne Park Neighbourhood, as identified in the OP, is quite large. Assessing compatibility for this proposal to sever a single lot and build two new houses brings the focus down to a much smaller area.

[18] One test of compatibility is design and another is appropriate transition. A further test of compatibility that addresses the character of an area is one that deals with the lot itself and, particularly, the lot frontage. This is commonly known as the 120 metre (“m”) test, set out in policy 16.1.2 as follows:

**16.1.2.1** To preserve the character of lands designated Residential Low Density I and Residential Low Density II, the minimum frontage and area of new lots created by land division...will **generally** represent the greater of:

- a. The average frontage and area of residential lots...on both sides of the same street within 120 m of the subject property...or
- b. the requirement of the Zoning By-law [emphasis added by the Board]

[19] The Board agrees that the proposed lots are smaller in their frontage than the average of residential lots within 120 m of the Subject Site. In setting out this policy to preserve the character of area lands, the OP is appropriately flexible. Mr. Kirton agreed with this point when he acknowledged that he has recommended support for applications that involve lot frontages that are smaller than the results of the 120 m analysis.

[20] Any proposal must consider the range of applicable policies in the OP. In considering whether to provide some flexibility, as suggested by the qualifier of “generally”, the Board focuses on the particular site and its immediate surroundings.

[21] In this case, the Board finds that an analysis of the character of the lands around the Subject Site cannot avoid the obvious conclusion that being adjacent to a townhouse development, opposite a service station, and just in from a busy arterial road demands the application of flexibility that may not necessarily be appropriate in a circumstance where all lands surrounding a particular site have the same land use, lot size, lot frontage, and design.

[22] In this case, changes have been made to the design specifically to respond to the City's preferences and to enhance compatibility with the character of development further along Lorne Park Road. The design changes, the size and the scale of the proposed houses all contribute to an appropriate transition from the land uses and development on Lakeshore Road West to the houses further along on Lorne Park Road.

[23] The Board finds that the proposed modest intensification is reasonable and appropriate. The Board further finds that the proposed modest intensification is compatible with and preserves the character of the immediate area.

[24] In addition to the conditions of variance authorization, the Applicant has accepted the following conditions of approval for consent:

**Conditions of Consent Approval**

1. The applicant shall submit 1 copy of the draft reference plan(s) for approval by the Committee of Adjustment Office and 4 copies of the resultant deposited reference plan(s) shall be provided to the Committee of Adjustment Office.
2. An application amendment letter shall be received from the applicant or authorized agent confirming that the conveyed land shall be together with and/or subject to services easement(s) and/or right(s)-of-way, if necessary, in a location and width as determined by the Secretary-Treasurer based on written advice from the agencies having jurisdiction for any service or right for which the easement or right-of-way is required. Alternatively, a letter shall be received from the applicant or authorized agent confirming that no services easement(s) and/or right(s)-of-way are necessary.
3. A letter shall be received from the City of Mississauga – Manager of Zoning Plan Examination indicating that the conveyed land and

retained lands comply with the provisions of the Zoning By-law, or alternatively; that any variances are approved by the appropriate authorities and that such approval is final and binding.

4. A letter shall be received from the City of Mississauga – Transportation and Works Department, indicating that satisfactory arrangements have been made with respect to the matters addressed in their comments dated June 29, 2017.
5. A letter shall be received from the City of Mississauga – Community Services Department, indicating that satisfactory arrangements have been made with respect to the matters addressed in their comments dated June 30, 2017.

[25] For the application for consent, the Board is satisfied that a plan of subdivision of the land is not necessary for the proper and orderly development of the City.

[26] The Board has reviewed the conditions of variance authorization, set out in paragraph [6] above, and the conditions of consent approval, set out in paragraph [24] above.

[27] Pursuant to s. 45(9) of the Act, the Board considers that the conditions of variance authorization, as set out above, are advisable.

[28] Pursuant to s.51(25) of the Act, the Board is of the opinion that the conditions of consent approval, as set out above, are reasonable having regard to the nature of the development.

[29] The Board finds that the proposed modest intensification has had regard for the matters of provincial interest as set out in s. 2 of the Act, particularly s. 2 (p) dealing with the appropriate location of growth and development.

[30] The Board finds that the proposed consent, subject to conditions, and the proposed variances, subject to conditions, are consistent with the PPS 2014 and conform to the GGH 2017.

[31] The Board finds that the proposed consent, subject to conditions, meets the



criteria set out in s. 51(24) of the Act. Specifically, the Board finds that the proposed consent, subject to conditions, in addition to having appropriate regard to matters of provincial interest as set out s. 2 of the Act:

1. Is in the public interest
2. Conforms to the OP
3. Is located on land suitable for the development of single detached dwellings
4. Will result in lots that have appropriate shapes and dimensions
5. Will result in lots with adequate utilities and on full municipal services

[32] The Board finds that the variances, subject to conditions, maintain the general intent and purpose of the OP.

[33] The general intent and purpose of the zoning by-law is to encourage compact and compatible development. The variances for lot frontage and lot area will result in a compact form. The design that includes the variance for the second floor setback is the design preferred by the City and supports a compatible transition between uses closer to Lakeshore Road West and those further along Lorne Park Road.

[34] The Board finds that the variances, subject to conditions, maintain the general intent and purpose of the zoning by-law.

[35] The Board further finds that the variances, subject to conditions, will result in development that is desirable for the appropriate use of the land and are minor, both individually and in the aggregate.

**ORDER**

[36] The Board orders that the variances, subject to conditions and as set out in Attachment 1 to this decision, are authorized.

[37] The Board orders that the application for consent is granted, provisional upon satisfaction of the conditions as set out in Attachment 1 to this decision.

*“Susan de Avellar Schiller”*

SUSAN de AVELLAR SCHILLER  
VICE-CHAIR

If there is an attachment referred to in this document,  
please visit [www.elto.gov.on.ca](http://www.elto.gov.on.ca) to view the attachment in PDF format.

**Ontario Municipal Board**

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## **ATTACHMENT 1**

### **1015 Lorne Park Road List of Variances and Conditions**

#### **Variances for the Retained Land (File "A" 297/17) – 1015 Lorne Park (east lot)**

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