

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



ISSUE DATE: January 17, 2019

CASE NO(S): PL171120
PL171123

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

Applicant and Appellant: Taka Poisha Inc. and Nerview Investments Ltd.
Subject: Consent
Property Address/Description: 1038 & 1042 Enola Avenue
Municipality: City of Mississauga
Municipal File No.: “B” 75/17 & “B” 76/17
OMB Case No.: PL171120
OMB File No.: PL171120
OMB Case Name: Taka Poisha Inc. 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: Taka Poisha Inc. and Nerview Investments Ltd.
Subject: Minor Variance
Variance from By-law No.: 0225-2007
Property Address/Description: 1042 Enola Ave
1038 & 1042 Enola Avenue
Municipality: City of Mississauga
Municipal File No.: A 427/17
OMB Case No.: PL171120
OMB File No.: PL171121

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

Applicant and Appellant: Taka Poisha Inc. and Nerview Investments

Subject: Ltd.
 Variance from By-law No.: Minor Variance
 Property Address/Description: 0225-2007
 Municipality: 1038 & 1042 Enola Avenue
 Municipal File No.: City of Mississauga
 OMB Case No.: A 428/17
 OMB File No.: PL171120
 OMB File No.: PL171122

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

Applicant and Appellant: Nerview Investments Inc.
 Subject: Consent
 Property Address/Description: 1038 Enola Avenue
 Municipality: City of Mississauga
 Municipal File No.: B-076/17
 OMB Case No.: PL171123
 OMB File No.: PL171123
 OMB Case Name: Nerview Investments Inc. 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: Nerview Investments Inc.
 Subject: Minor Variance
 Variance from By-law No.: 0225-2007
 Property Address/Description: 1038 Enola Avenue
 Municipality: City of Mississauga
 Municipal File No.: A 429/17
 OMB Case No.: PL171123
 OMB File No.: PL171124

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

Applicant and Appellant: Nerview Investments Inc.
 Subject: Minor Variance
 Variance from By-law No.: 0225-2007
 Property Address/Description: 1038 Enola Avenue
 Municipality: City of Mississauga
 Municipal File No.: A 430/17
 OMB Case No.: PL171123
 OMB File No.: PL171125

Heard: December 18-19, 2018, in Mississauga,
Ontario

APPEARANCES:

Parties

Counsel

Taka Poisha Inc.

D. Bronskill

Nerview Investments Ltd.

D. Bronskill

City of Mississauga ("City")

B. Ruddick and R. Wilson (student)

**DECISION OF THE TRIBUNAL DELIVERED BY BLAIR S. TAYLOR AND
ORDER OF THE TRIBUNAL**

INTRODUCTION

[1] This matter concerns two properties known municipally as 1038 and 1042 Enola Avenue ("Subject Lands").

[2] The Subject Lands abut one another and are located within the Lakeview West Neighbourhood and are generally located south of the railway tracks, west of the Cooksville Creek, north of Lakeshore Road East, and east of Roosevelt Road.

[3] Each property has frontage of approximately 15 metres ("m") and a depth of approximately 40 m.

[4] 1038 Enola Avenue is improved with a one-storey brick dwelling and 1042 is improved with a one-and-a-half-storey vinyl clad dwelling.

[5] Both properties are designated Residential Low Density II in the City's Official Plan. The Subject Lands are zoned R3-75 (Residential) under the Mississauga Zoning By-law which permits detached dwellings.

[6] The owners of the Subject Lands (“Applicants”) each made application to the Committee of Adjustment (“Committee”) to sever their existing lot into two lots having a lot frontage of about 7.52 m and a lot area of about 302.40 metres squared (“sq m”) whereas the City Zoning By-law requires an interior lot to have a lot frontage of 15 m and an interior lot to have a minimum lot area of 550 sq m.

[7] To facilitate the consents, the Applicants also sought minor variances for: the proposed lot frontages, the proposed lot areas, maximum lot coverages of 38.7% whereas the Zoning By-law allowed 35%; side yards of 0.9 m whereas the Zoning By-law requires 1.81 m, and a maximum height of 8.04 m for a flat roof whereas the By-law permits a maximum height of 7.5 m for a flat roof.

[8] The City Planning staff in its report to the Committee (which dealt with both applications collectively) made reference only to the matters of lot frontage, and lot area. City Planning staff commented that the proposed lots were roughly half of the Zoning By-law requirements and were considered to be significantly undersized compared to the average in the study area. Staff recommended that all the applications be refused as the proposals represented lots that were too small to be consistent with the neighbourhood, did not have appropriate regard for section 51(24) of the *Planning Act* (“PA”), and that the variances requested did not meet the general intent and purpose of either the Official Plan or the Zoning By-law.

[9] The applications were appealed to the Tribunal and the Tribunal held a two-day hearing with regard to this matter with the parties being only the respective Applicants and the City. No members of the public attended.

[10] The Tribunal heard only from two witnesses, both of whom the Tribunal qualified to give independent expert opinion evidence in land use planning matters: Andrew Ferancik, on behalf of the Applicants, and Caleigh McInnes, on behalf of the City.

[11] The focus of the appeals on the applications for consent and the related variances were with particular regard to lot frontage, lot area, and the side yard

setbacks.

[12] In summary form the Applicants submit that the development applications with frontages of 7.52 m are consistent with the Provincial Policy Statement (“PPS”), conform to the Growth Plan for the Greater Golden Horseshoe 2017 (“Growth Plan”), have due regard to the matters of Provincial Interest in section 2 of the PA, and fit the character with the neighbourhood, whereas the City is of the view that the lot frontages, lot areas and side yard setbacks are simply too small and not in keeping with the character of the neighbourhood.

DECISION

[13] The Tribunal having considered the Provincial Interests, the PPS, the Growth Plan, the evidence of the two land use planners, and the submissions of counsel, prefers the evidence of the Applicants’ land use planner in all matters, and will allow the appeals, authorize the provisional consents for the Subject Lands, and authorize the variances, all subject to the conditions of approval which are appended hereto as Attachment 1.

[14] The criteria for consideration of consent applications focuses on section 53(1) of the PA (that no plan of subdivision is necessary) and on section 51(24) of the PA, and here in particular: (b) whether the proposed subdivision is in the public interest, (c) whether the plan conforms to the official plan, (d) the suitability of the land for the purposes for which it is to be subdivided, and (f) the dimensions and shapes of the lots.

[15] The four tests for the authorization of the variances are found in section 45(1) of the PA and there the first test is whether the variances meet the general intent and purpose of the official plan; the second test is whether the variances meet the general intent and purpose of the zoning by-law; the third test is whether they are desirable for the appropriate use or development of the land; and finally the fourth test as to whether they are minor in nature.

STATUTORY PROVISIONS

[16] The PA in section 3(5) provides the following:

A decision of the council of a municipality, a local board, a planning board, a minister of the Crown and a ministry, board, commission or agency of the government, including the Tribunal, in respect of any authority that affects a planning matter,

- (a) Shall be consistent with the policy statements issued under subsection (1) that are in effect on the date of the decision; and
- (b) Shall conform with the provincial plans that are in effect on that date, or shall not conflict with them as the case may be.

[17] The Tribunal notes that these provisions are mandatory in nature.

[18] The PA also sets out a number of Provincial Interests that are to be considered in section 2:

The Minister, the council of a municipality, a local board, a planning board and the Tribunal in carrying out their responsibilities under this Act shall have regard to, among other matters, matters of provincial interest such as: ...

- (h) the orderly development of safe and healthy communities;
- (j) the adequate provision of a full range of housing, including affordable housing;
- (p) the appropriate location of growth and development;
- (q) the promotion of development that is designed to be sustainable, to support public transit and to be oriented to pedestrians...

[19] The Tribunal notes that these Provincial Interests are to be considered by the Tribunal in carrying out its responsibilities under the PA.

THE LAND USE PLANNING REGIME: PART 1 PPS

[20] The Subject Lands are located within the existing settlement area of Mississauga. The PPS provides that settlement areas will be the focus of growth and regeneration (section 1.3.1), that land use patterns within settlement areas shall have densities and a mix of land uses that efficiently use land and resources (section 1.1.3.2), and that appropriate development standards should be promoted which facilitate intensification, redevelopment and a compact form (section 1.1.3.4). Finally section 4.7 of the PPS provides that the official plan is the most important vehicle for the

implementation of the PPS but also that “the policies of this provincial policy statement continue to apply after adoption and approval of an official plan”. (emphasis added)

PART 2: THE GROWTH PLAN

[21] The Growth Plan directs that the vast majority of growth will be directed to settlement areas that have a delineated built boundary, have existing municipal water and waste water systems and can support the achievement of complete communities (section 2.2.1.2a); and that forecasted growth within settlement areas will be focused in delineated built up areas and locations with existing or planned transit and areas with existing and planned public services (2.2.1.2c). The Growth Plan provides in section 2.2.4 that applying the policies of the Growth Plan will achieve complete communities that: a) feature a diverse mix of land uses including residential, and employment uses and convenient access to local stores, services and public service facilities; c) provide a diverse range and mix of housing options to accommodate people at all stages of life and to accommodate all household sizes and incomes; and e) ensure the development of high quality compact built form and to do that section 2.2.2.4 states that all municipalities will develop a strategy to achieve the minimum intensification target, and intensification throughout the delineated built up area which will a) encourage intensification generally to achieve the desired urban form, and d) ensure lands are zoned and development is designed in a manner that supports the achievement of complete communities.

PART 3: REGIONAL OFFICIAL PLAN

[22] The Regional Official Plan under section 5.5.3 ‘Intensification’, acknowledges that the Growth Plan sets out the requirements for ensuring intensification occurs within the Greater Golden Horseshoe and in accordance with that direction the Regional Official Plan directs a significant portion of new growth to the built-up areas, and promotes compact urban form, intensification and redevelopment. Included under ‘Objectives’ for Intensification are the following: section 5.5.3.1.4, a regional objective is to intensify development on under-utilized lands; section 5.5.3.1.6 to optimize all

intensification opportunities across the Region, and section 5.5.3.1.8 to achieve a diverse and compatible mix of land uses including residential employment uses to support vibrant neighbourhoods. Finally section 5.5.3.2.2 simply states that it is the policy of Regional Council to facilitate and promote intensification.

PART 4: MISSISSAUGA OFFICIAL PLAN

[23] In the Introduction to the Mississauga Official Plan it states that:

new growth will take place primarily through infilling and redevelopment in appropriate areas which can benefit from growth and change, such as the Hurontario Street Corridor. Many areas such as existing stable residential neighbourhoods will experience little change in the future.

[24] This introduction contributes to the policy direction of the Mississauga Official Plan towards “intensification areas” and “non-intensification areas”. The “non-intensification areas” will experience limited growth and change and intensive growth will not be directed to them. Non-intensification areas include Neighbourhoods.

[25] Neighbourhoods are to be stable areas where limited growth is anticipated and where development will be required to be context sensitive and respect the existing or planned character and scale of development (section 9.2.2).

[26] Section 9.2.2.3 provides guidance for development in Neighbourhoods. It provides as follows:

While new development need not mirror existing development, new development in Neighbourhoods will:

- a) respect existing lotting patterns;
- b) respect the continuity of front, rear and side yard setbacks;
- c) respect the scale and character of the surrounding area;
- d) minimize overshadowing and overlook on adjacent neighbours;
- e) incorporate storm water best management practices;
- f) preserve mature high quality trees and ensure replacement of tree canopy; and
- g) be designed to respect the existing scale, massing and character and grades of the surrounding area.

[27] Section 16 of the Mississauga Official Plan deals with Neighbourhoods of which

the Subject Lands are within the Lakeview Neighbourhood. Generally section 16.1.2.1 provides the following:

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 or units or parcels of tied land (POTLs) created by condominium will generally represent the greater of:

- a) the average front and area of residential lots, units or POTLs on both sides of the same street within 120 meters of the subject property. In the case of corner development lots, units or POTLs on both streets within 120 meters will be considered;
- or
- b) the requirements of the zoning by-law.

[28] Section 16.1.2.2 states that:

Notwithstanding 16.1.2.1 where the average lot frontage or lot area of residential lots determine pursuant to section 16.1.2.1.a is less than the minimum requirements of the zoning by-law, consideration may be given to a minor variance.

PART 5: LAKEVIEW LOCAL AREA PLAN

[29] The Subject Lands also fall within an “Area Plan”. The Lakeview Local Area Plan states that in the event of conflict the policies of the Area Plan take precedence over the Mississauga Official Plan.

[30] Section 6 of the Area Plan states: “In Lakeview, some growth is directed to the following areas: Lakeview Community Node, modest infilling in neighbourhoods, and the redevelopment of some sites along Lakeshore Road East, and other larger commercial sites.” (emphasis added)

[31] Under the heading ‘Neighbourhood Character Areas’ section 6.2.1 indicates that intensification will be through modest infilling; section 6.2.2 that neighbourhoods are encouraged to provide a variety of housing forms to meet the needs of a range of household types; and section 6.2.3 intensification will be sensitive to the existing character of residential areas.

[32] Under section 10 'Desirable Urban Form' the Area Plan states that:
"Development will be guided by the Lakeview Built Form Standards as contained in Appendix 1." (emphasis added)

[33] It is important to note that section 2.2.1 of Appendix 1 contains the 120 m policy that is set out in section 16.1.2.1 of the Mississauga Official Plan. Additionally the guidelines provide that the maximum height of any dwelling shall be 10.7 m in height.

PART 6: ZONING BY-LAW

[34] As noted above the R3-75 zoning standard requires the following:

- Lot frontage - a minimum of 15 m
- Lot area - a minimum of 550 sq m
- Lot coverage – a maximum of 35%
- Interior Side yard Setback – 1.2 m plus 0.61 m for each additional storey above one storey
- Maximum Height Flat Roof – 7.5 m

THE NEIGHBOURHOOD

[35] Each planner produced a Study Area upon which to opine as to the characterization of the local neighbourhood. Mr. Ferancik commenced his neighbourhood study on the east side of Enola Avenue excluding the retail commercial properties at Enola Avenue and Lakeshore Road East, included all of Enola Avenue, all of Revus Avenue, all of Shaw Drive, except for the C4-69 lands at the south end of Shaw, Lakeshore and Roosevelt Road.

[36] Ms. McInnes' study area was somewhat broader. As shown in Exhibit 8A, Tab 8, it essentially included all lands north of Lakeshore Road East, all lands from the east side of Enola westerly to the west side of Shaw Drive and the north side of Revus Avenue.

[37] It is clear that the development of this area dates from the plan of subdivision found at Exhibit 8A, Tab 9: Registered Plan F-20 which was registered on title on the 11th day of November, 1920.

[38] At that time the lots along both sides of Enola Avenue appear to be generally made up of 50 foot lots with a few larger lots towards the north end of Enola Avenue. Similarly Shaw Drive appears to be made up of 50 foot lots until the north end of Shaw Avenue at Revus Avenue.

[39] Within the study area selected by the City planner there are retail commercial uses at the north-east and north-west corners of Enola and Lakeshore. Proceeding in a northerly fashion on the east side of Enola Avenue is a six-storey apartment building immediately across from the Subject Lands. Three lots south of 1038 Enola Avenue is a property that is 7.5 m of frontage. Immediately to the west of the Subject Lands on a 22.2 m frontage lot, is a fourplex with an extensive paved parking area in the rear.

[40] South of the fourplex on Shaw Drive are seven lots that are 7.96 m or less in frontage. North of the fourplex towards Revus Avenue there are six lots that are 7.82 m in frontage or less and two additional lots at 8.57 m.

[41] The photos display a number of semi-detached units on Shaw Drive and other 'wartime bungalows' co-existing with replacement two-storey structures on the original 1920's lots.

NEIGHBOURHOOD CHARACTER

[42] The City's planner characterized her study area as being made up of small

'wartime bungalows' and more recent semi's that have arrived on Shaw Drive and that the semi's read as one dwelling unit when viewed from the street.

[43] Mr. Ferancik opined that this local neighbourhood was eclectic in nature, with a 6 storey apartment building immediately across the street from the Subject Lands, a fourplex abutting the Subject Lands at the rear, and a diversity of housing types with existing singles, semi-detached dwellings on new lots, and narrow lot singles.

[44] From a review of the photographs and air photos provided in the exhibits, and from the consideration of the study areas the Tribunal prefers the evidence of Mr. Ferancik. There appear to be at least 24 lots within the Study Area that are sub-standard in terms of lot frontage and lot area. With about 88 lots in total for the local neighbourhood, the number of sub-standard lots in frontage and area is a significant contributor to the character of the neighbourhood.

[45] As the Official Plan and the Area Plan contemplate some infilling within Neighbourhoods, do the development proposals meet the requirements of the PA for the requested consents and minor variances?

OBSERVATIONS

[46] The Tribunal notes that Lakeshore Road East is a transit route, that the Subject Lands are located between the Port Credit and Long Branch GO Train Stations, and development would potentially promote the use of public transit.

[47] In terms of compatibility the Tribunal notes that the Mississauga Official Plan provides a definition for 'compatibility' as meaning:

Development which may not necessarily be the same as, or similar to, the existing or desired development, but nonetheless enhances an established community and co-exists with existing development without unacceptable adverse impact on the surrounding area.

[48] This residential neighbourhood has an existing six-storey apartment building

immediately across the street from the Subject Lands, a fourplex with a rear yard taken up mostly by paved parking immediately to the rear of the Subject Lands, with a number of semi-detached units (which are not permitted uses in the R3-75 general Zoning By-law provisions) and other narrow lot singles, the Tribunal finds that in this eclectic and diverse neighbourhood, a proposed narrow lot single detached dwelling would be compatible and fit the neighbourhood.

CONSENT

[49] Both planners agree that no plan of subdivision is necessary. With regard to the criteria under section 51(24) the Tribunal finds the public interest is best expressed through the matters of Provincial Interest and the PPS and the Growth Plan. In that regard, intensification as set out in the PPS is in the public interest and this is encouraged in the Growth Plan where existing infrastructure exists. The Tribunal finds that the consent applications satisfy the Provincial Interests, are consistent with the PPS and conform to the Growth Plan.

[50] With regard to the tests under section 51(24) of the PA the Tribunal finds that intensification is in the public interest, that the consents conform to the Area Plan directing some infilling to Neighbourhoods, that the Subject Lands are suitable for redevelopment for residential purposes, that the dimensions and shapes of the lots are appropriate for the development of detached homes and are similar to a number of existing homes in the neighbourhood and therefore will fit the character of the neighbourhood

[51] Thus the Tribunal will authorize the provisional consents subject to the conditions of approval appended herewith as Attachment 1.

MINOR VARIANCES

[52] The Tribunal and its predecessor (the Ontario Municipal Board), have said on many occasions that the performance standards in a Zoning By-law are not an end, but

a means to an end, and that end is good planning. (See *Toronto Standard Condominium Corp. #1517 v. Toronto (City) Committee of Adjustment*, [2006] O.M.B.D. No. 707, 54 O.M.B.R. 102.)

[53] With regard to the five minor variances sought for each application, the Tribunal will allow the appeals and authorize all variances as requested. The Tribunal finds that the variances meet the general intent and purpose of the Area Plan by providing some modest infilling compatible with the neighbourhood on lot frontages, areas, and with side yards that are all found in the study area.

[54] The Tribunal finds that the general intent and purpose of the Zoning By-law is met by providing for detached homes in the R3-75 Zoning By-law which permits detached homes and does not permit semi-detached homes. The Tribunal rejects the submission by the City's land use planner that detached units are not acceptable to the City, but that semi-detached dwellings would be.

[55] The Tribunal finds that the height in the local Area Plan envisages a maximum of 10.7 m whereas the Subject Property will have 8.04 m with a flat roof, that the proposed coverage of 38.7% is appropriate in the circumstances and within the range that has been permitted by the Committee for up to 42.2% in the study area. Finally with regard to the side yard setbacks, the Tribunal finds that 0.9 m is appropriate and particularly within the range that has been approved by the Committee which includes existing conditions at 0.14 m, 0.12 m and approvals at 0.31 m.

[56] The Tribunal finds that resulting built form for single detached units on the Subject Lands will comply with the intent and purpose of the Zoning By-law, provide for a compact form of development in a neighbourhood (with existing small lots), that is diverse both in terms of the built form, and the range of lots sizes within the study area. The Tribunal finds that such development is desirable. The Tribunal finds that there will be no unacceptable adverse impacts.

[57] Accordingly the Tribunal allows the appeals and approves the variances.

DECISION

[58] The Tribunal will allow the consent appeals, allow the variance appeals, and grant the provisional consents, all subject to the conditions of approval appended hereto as Attachment 1.

[59] This is the Order of the Tribunal.

“Blair S. Taylor”

BLAIR S. TAYLOR
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.

Local Planning Appeal Tribunal

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ATTACHMENT 1

CONDITION FOR MINOR VARIANCE AUTHORIZATIONS

1. The proposed dwellings shall be constructed substantially in accordance with the site plans and elevations prepared by Arsenault Architect Inc. dated July 14, 2017 and filed as Exhibits 3 and 4 in this Hearing.

CONDITIONS FOR CONSENT APPROVALS

1. The Applicants shall each submit: one copy of the Draft Reference Plan for approval by the Committee of Adjustment office and four copies of the resultant Deposited Reference Plan shall be provided to the Committee of Adjustment office.
2. The Applicants' consulting engineers shall prepare an Overall Grading and Drainage Plan which contains sufficient details to ensure grading compatibility with the adjacent lands and submit the Grading and Drainage Proposal to the Transportation and Works Department for review/approval.
3. Satisfactory arrangements will be made with the Transportation and Works Department for the removal/relocation of the existing structures on the Subject Lands.
4. The Applicants shall each provide a cash contribution of \$522.75 for the planting of one street tree on Enola Avenue. This figure is subject to the most recent Fees and Charges By-law at the time of payment and it is therefore subject to change.