

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



ISSUE DATE: November 29, 2018

CASE NO(S): PL180200

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

Applicant and Appellant:	Samer Ayoub
Subject:	Minor Variance
Variance from By-law No.:	0225-2007
Property Address/Description:	5473 Bimini Court
Municipality:	City of Mississauga
Municipal File No.:	A489/17
OMB Case No.:	PL180200
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OMB Case Name:	Ayoub v. Mississauga (City)

Heard: October 4, 2018 in Mississauga, Ontario

APPEARANCES:

Parties

Samer Ayouth ("Applicant")

City of Mississauga ("City")

Counsel

D. Baker

L. Magi

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

INTRODUCTION

[1] The Applicant owns the lands known municipally as 5473 Bimini Court (“Subject Lands”) and had applied to the City for a minor variance to permit a 2 storey addition to the existing attached garage with a garage area of 121.73 square metres (“m²”) whereas 75 m² is permitted, and a rear yard setback of 4.9 metres (“m”) whereas 7.5 m is required.

[2] The Committee of Adjustment refused the application.

[3] The Applicant appealed to the Tribunal.

[4] The Tribunal heard the oral evidence of the witnesses on October 4, 2018, and as the hearing could not be completed that day, required written submissions from counsel for the parties.

DECISION

[5] Having considered the Provincial Interests under s. 2 of the *Planning Act*, having considered consistency with the Provincial Policy Statement (“PPS”), and conformity with the Growth Plan for the Greater Golden Horseshoe (“Growth Plan”), and having considered the oral evidence of the witnesses, the Tribunal allows the appeal, authorizes the two requested variances, subject to the condition that a building permit application shall be in substantial conformity with the plans and drawings that were filed with the Tribunal as found in Exhibit 1, Tab 2, all for the reasons set out below.

BACKGROUND AND CONTEXT

[6] The Subject Lands are designated Residential Low Density, and are zoned R2-8.

[7] The Subject Lands are part of a subdivision that was developed approximately 20 years ago which included both Bimini Court and Roanoke Court, both accessed off Manor Hill Drive.

[8] The Subject Lands are located at the end of the cul-de-sac of Bimini Court, and

are pie-shaped.

[9] Bimini Court is made up of large lots with large houses and for the most part those houses have three-car garages.

[10] The Subject Lands were described to the Tribunal as being the largest lot on the Court, and having an existing three-car garage. The proposal is for the garage to be enlarged in an irregular shape into the rear yard, with a second floor loft area above the garage, at a height of 7.5 m (whereas the Zoning By-law permits an overall height of 12.0 m) and with no windows facing the rear yard.

[11] For the development proposal to be built, two minor variances are required: firstly for the proposed garage area; and secondly for two triangular encroachments into the required 7.5 m rear yard setback.

THE HEARING

[12] At the hearing the Tribunal heard from three witnesses: firstly land use planner, David Capper, on behalf of the Applicant; secondly land use planner, Robert Ruggiero, on behalf of the City; and finally Jean-Pierre Zahhar, the owner of 5386 Roanoke Court which abuts the Subject Lands to the rear.

[13] With regard to the proposed variances Exhibit 1, Tab 5, Page 42 illustrates the the proposed garage extension into the rear yard of the Subject Lands.

[14] The garage extension is irregular in shape, and consists of one large rectangle added on to the rear of the garage, and a shorter rectangular added on to the first addition. The result of this is that there are two triangular encroachments into the 7.5 m rear yard setback occupying a total area of 13.12 m², and the closest point of the first triangle to the rear lot line is 4.9 m and the second is about 5.0 m. In between the two triangular points is a recessed portion of the proposed garage addition that appears to be close to the 7.5 m required rear yard setback.

[15] The Applicant provided photographs with regard to the Subject Lands, Bimini

Court, and the interior of the existing three-car garage (which show the storage of three high-end automobiles), and two other automobiles parked in the driveway.

[16] The purpose of the garage expansion is to enable additional car parking.

THE OFFICIAL PLAN

[17] The Official Plan designates the Subject Lands as Residential Low Density 1. They are within a 500-meter radius of a Major Transit Station Area being a GO Rail Transit Station and which is shown on Schedule 2 Intensification Areas.

[18] The land use planner on behalf of the City took the position that the Subject Lands were within a Non-Intensification Area where neighbourhoods were stable areas where limited growth was anticipated and development would be required to be context sensitive and respect the existing or planned character and scale of development. In that regard he places great emphasis on Policy 9.2.2.3 which states:

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 the tree canopy; and
- g. be designed to respect the existing scale, massing, character and grades of the surrounding.

[19] The Staff Report dated February 8, 2017 states the following:

The existing home is larger than the area context. The proposed addition is in close

proximity to adjacent lands on Roanoke Court. The depth, scale and extent of the addition into the rear yard are uncharacteristic of the neighbourhood and create an undue impact on the adjacent lands. In our opinion the requested variances do not maintain the intent and purpose of the official plan and does not maintain the intent and purpose of the zoning by-law.

[20] The land use planner, on behalf of the Applicant, considered both the Intensification Areas policies of the Official Plan and Non-Intensification Area policies of the Official Plan in his evidence, due to the proximity to the GO Train.

[21] Acknowledging section 5.5.3 of the Official Plan that planning studies will delineate the boundaries of the Intensification Corridors and Major Transit Station Areas, it was noted that neighbourhoods were to be characterized as physically stable areas with a character that is to be protected. Further while neighbourhoods were not appropriate areas for significant intensification, policy 5.3.5 indicated that they will not remain static, nor that new development must imitate previous development patterns but rather that when development does occur it will be sensitive to the neighbourhood's existing and planned character.

[22] This is borne out in section 5.3.5.6 that development will be sensitive to the existing and planned context and it will include appropriate transitions and use, built form density, and scale.

[23] With regard to the Zoning By-law, the Subject Lands are zoned R2-8 in which a detached dwelling is a permitted use and the required rear yard setback is 7.5 m.

[24] With regard to the regulations for an attached garage only one per lot is permitted with a maximum area of 75 m².

[25] Section 45(1) of the *Planning Act* sets out the four tests which must be satisfied with regard to the authorization of a minor variance. Those four tests are:

1. Does it meet the general intent and purpose of the official plan?
2. Does it meet the general intent and purpose of the zoning by-law?

3. Is it desirable for the appropriate development or use of the land, building or structure?
4. Is it minor in nature?

FINDINGS

[26] With regard to the land use planning evidence, the Tribunal prefers the evidence of the Applicant's planner.

[27] The Tribunal finds this matter to rest with the local land use planning documents and that the provincial documents deal with matters of a higher nature.

[28] The Tribunal finds that the Subject Lands are in close proximity to a Major Transit Station Area and that it would have been appropriate for the City to have at least acknowledged that proximity.

[29] The Tribunal finds that the Official Plan permits detached residential dwellings with attached garages. The Subject Lands are within an area of large lots and large houses predominantly with three-car garages.

[30] In that regard the Tribunal finds that the general purpose and intent of the Official Plan has been met.

[31] With regard to the general intent and purpose of the Zoning By-law the Tribunal finds with regard to the first variance the general intent and purpose of a regulation on the area is to prevent the garage from dominating the streetscape.

[32] The Tribunal finds that the general purpose and intent of the provision for a rear yard setback at 7.5 meters, is to ensure an adequate area of amenity space, and to provide a sufficient separation between lots.

[33] In this case the Tribunal finds that there is no impact on the streetscape with regard to the size of the proposed garage as due to the pie-shape nature of the lot and its depth, such that the existing three-car garage presents itself as a two-car garage

being viewed from the street.

[34] The proposed additional area is at the rear of the existing garage and would have no impact on the street.

[35] With regard to the rear yard setback, as noted above, the proposed encroachment is modest in area and the shape of the garage has been altered such that a straight blank wall does not present itself to the rear yard neighbours, but rather two triangular points sloping away from the rear yard.

[36] Accordingly the Tribunal is satisfied that the variances meet the general intent and purpose of the Zoning By-law.

[37] With regard to the third test as being desirable for the appropriate use of the property, the plans found in Exhibit 1, Tab 2, illustrate that there are no windows on the second floor, that the overall height of the garage is restricted to 7.5 m (and not the permitted height of 12 m), and that these two factors would eliminate any issue with regard to shadowing, or overview into adjoining properties.

[38] With regard to the fourth test as being minor in nature the Tribunal finds the variance for the garage area in these circumstances to be minor in nature as the Subject Lands are a large lot and can accommodate the proposed garage area. With regard to the encroachment into the rear yard setback, the Tribunal notes that the area of the encroachment into the rear yard setback is only 13.12 m² in total whereas the entire rear yard setback is 414.65 m²

[39] The City and the neighbour raised concerns with regard to the view of the garage from the rear.

[40] The Tribunal notes that the Subject Lands are located in an urban area as evidenced by their proximity to a Major Transit Station Area. In such urban contexts there should be no expectation of a right to a view. Moreover the Applicant has thoughtfully designed the plans to mitigate against a straight, large, blank back wall of the garage.

[41] The Tribunal is satisfied that the development proposal does not constitute over-building of the Subject Lands as the Zoning By-law allows lot coverage of 35% whereas with the proposed addition the lot coverage will be 32.3%.

[42] The City submits as part of its case that the recent Board Decision of *DeVries/Lee v London (City)*, 2018 CanLII 78783 (ON LPAT) (PL170935) would support the proposition that the subject appeal should be dismissed.

[43] The Tribunal has reviewed the case and finds that it is readily distinguishable on these facts: firstly the variance in that case was to permit a two-storey addition with a rear yard setback of 1.5 meters in a straight line; there was a steep drop in grade at the rear property line which was estimated to be in the range of 5 meters; the height of the proposed garage was to be 12 meters with second storey windows built near to the rear lot line which would provide a sweeping and direct overview into the adjoining lands. None of those facts apply here.

DECISION

[44] Accordingly the Tribunal will allow the appeal, will authorize the variances as requested, subject to the condition that a building permit application be sought that is in substantial compliance with the drawings and elevations as found in Exhibit 1, Tab 2.

[45] 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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