

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



ISSUE DATE: July 26, 2018

CASE NO(S): PL180464

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:	Leanne Long
Subject:	Minor Variance
Variance from By-law No.:	0225-2007
Property Address/Description:	37 Elmwood Avenue North
Municipality:	City of Mississauga
Municipal File No.:	A 103/18
LPAT Case No.:	PL180464
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LPAT Case Name:	Long v. Mississauga (City)

Heard: July 11, 2018 in Mississauga, Ontario

APPEARANCES:

Parties

Leanne Long

Representative

Christopher Mayer

**MEMORANDUM OF ORAL DECISION DELIVERED BY PAULA BOUTIS ON
JULY 11, 2018 AND ORDER OF THE TRIBUNAL**

INTRODUCTION

[1] This appeal relates to a decision of the Committee of Adjustment (“Committee”)

refusing a minor variance in association with an existing garage located at 37 Elmwood Avenue (“Subject Site”). The garage height is 5.33 metres (“m”) while the limit under Zoning By-law No. 0225-2007 (“ZBL”) is 4.6 m.

[2] The City of Mississauga did not appear.

[3] On behalf of the Applicant, the Tribunal heard evidence from Christopher Mayer, the Applicant’s husband, and Lubomir Dzamba, a neighbour and architect whose firm, Stafford Hainsli Architects Inc., assisted the Applicant and Mr. Mayer.

[4] Neighbour Phillip Jackubowski, living at 40A Woodlawn Avenue, to the rear and north of the Subject Site, appeared in opposition. The Tribunal granted Mr. Jackubowski participant status.

[5] The Tribunal heard evidence that the garage required some reconstruction. In the course of that reconstruction, the Applicant began constructing an addition to the existing garage, at the existing height, without a building permit.

[6] The Applicant then submitted a building permit application. The Tribunal understood that City staff advised that it would not process the building permit application until a minor variance application was submitted. This was required because the height of the garage did not comply with the existing zoning requirements under the ZBL.

[7] Planning staff were supportive of the application, but the Committee refused it.

[8] After hearing the evidence and reviewing the documentation and photographs filed at the hearing, the Tribunal allowed the appeal, authorized the variance, subject to one condition.

EVIDENCE AND ANALYSIS

[9] The *Planning Act* (“Act”) places several obligations on the Tribunal when it makes a decision.

[10] The Act requires that every decision of the Tribunal be consistent with the Provincial Policy Statement, 2014 (“PPS”) and conform to the Growth Plan for the Greater Golden Horseshoe, 2017 (“2017 Growth Plan”).

[11] Under s. 2, the Tribunal must have regard to matters of provincial interest, including the appropriate location of growth and development.

[12] Finally, the four-part test for minor variances under the Act is the following. The proposed minor 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 and use of the land; and
- d. be minor.

[13] Regarding the minor variance test, item c) relates to desirability in the public interest, not that of an applicant. Regarding item d), the main concern is unacceptable impacts.

[14] The Subject Site is located in Port Credit, within a residential neighbourhood. It is about 500 m north of Lake Ontario. It is bounded to the south by Lakeshore Road East and to the west by Hurontario Street. It is south of the Queen Elizabeth Highway. Cawthra Road is the next major road to the east.

[15] The Tribunal did not hear any land use planning opinion evidence, but did have the City’s staff planning report, which was very brief. It stated, in part, the following in

respect of the proposal:

The applicant is proposing to construct a minor addition to an existing garage in the rear yard of the subject property. The addition represents a small portion of the currently existing garage and should have negligible impacts on any surrounding neighbours. The addition is located towards the interior of the property and no construction is proposed adjacent to the side lot lines. The increased size of the garage along the rear of the property is minimal and the Department is of the opinion that the general intent of the Zoning By-law is maintained.

Based on the preceding information, the Planning and Building Department has no objection to the requested variance; however, the applicant may wish to defer the application to apply for the required building permit to ensure that no additional variances are required.

[16] Mr. Dzamba indicated that the application for the building permit was already in at the time the minor variance application was filed. He indicated that the zoning department did a review, who then directed the Applicants go to the Committee. Mr. Dzamba testified they “got a simple statement at the counter which stated you’re over the height” and they would not go any further until that was resolved. In any event, it was Mr. Dzamba’s understanding that no other variances were required other than the one requested to height.

[17] The Committee had before it several letters in support from neighbours regarding the application. However Mr. Jackubowski spoke against it. His concerns were outlined in a letter he submitted for the Committee’s consideration (Exhibit 6). As a resident of over twenty years, he noted the following, in part:

[T]he height of the existing garage on the property ... has always been as it appears today. My objection is with the addition... . This appears to be a second floor living space which will be slightly higher than the existing garage. This structure is intrusive to the privacy of my backyard as it has a large window on the north side overlooking my area.

Construction projects on this property have been ongoing for the last three years. I question the allowance of more living space in the backyard of one’s property. Increased density on residential zoned properties should be restricted especially when it intrudes upon the privacy of neighbouring properties.

[18] The Committee expressed concerns “regarding the intended use of the dormer

space given its design as well as the impact of the height on the neighbouring properties to the rear.”

[19] The Committee concluded that the application was not minor, not desirable for the appropriate use of the development, and that the general intent and purpose of the zoning by-law was not maintained.

[20] Mr. Mayer testified that he is a cabinet maker by trade. He testified that he needed to reconstruct part of the garage for safety reasons (noting it was “substantially under-designed”), and at the same time wanted to make the space more functional.

[21] Several photographs of the interior of the garage were introduced at the hearing which make it very clear that the addition can only be used for storage purposes. The height of the addition is the same height as the existing garage height, specifically the back portion of it.

[22] Mr. Mayer testified he was trying to make it fit the character of the neighbourhood, which he understood the City’s Official Plan (“OP”) required. He indicated that he researched more about the OP and learned that Subject Site is in Credit Grove and is within a Neighbourhood Character Area.

[23] Policy 10.3 of the OP indicates that neighbourhood policies are intended to reflect a number of things, including ensuring that development is sensitive to the existing low rise context and to reinforce the planned character of the area. Policy 10.3.4 specifically applies to this area. It notes that this is a predominantly stable residential area and it will be maintained. It further indicates that predominantly stable residential areas will be maintained while allowing for infill which is compatible with and enhances the character of the area. The predominant characteristics of the area are to be preserved (Policy 10.3.4.1).

[24] Mr. Mayer testified he wanted it to “look nice”, noting these are “usually built like

boxes". His wife asked him to make sure if he was going to build something, to make it look nice. He testified that he tried to go out of his way to create some interest and little peaks. He did not expect this would be held against him.

[25] The Tribunal notes that compatibility, in planning terms, does not require that a proposed development be the same as or even similar to, existing development. Typically, it only requires that a proposed development can co-exist with what is already there. As the back portion of the existing garage has existed at that height for at least two decades, the existing structure height itself forms part of the character of the neighbourhood. The addition to the garage, as described by City planning staff, is not large, and maintains the existing height.

[26] There is a north facing window built as part of the addition, which is the window Mr. Jackubowski raised concerns about. The exact relationship between this window and Mr. Jackubowski's yard is not a direct rear yard to rear yard condition. This Subject Site has an west east orientation. The property immediately to the rear of the Subject Site is 38 Woodlawn Avenue. To the north of 38 Woodland Avenue is 40A Woodlawn Avenue, Mr. Jackubowski's property. The garage addition faces north on the Subject Site, and directly into the yard of 41 Elmwood Avenue. 40A Woodlawn Avenue is north east relative to the north window on the garage addition.

[27] Mr. Dzamba testified that the Applicant could block the window, or make it a "spandrel", which he said was "glass which is non view through, no light would come through and it is completely dark". Mr. Mayer also testified he was happy to take steps to ensure privacy for Mr. Jackubowski.

[28] The Tribunal notes from Exhibits 3C-3 and 3C-4, the view out the north facing window is to a heavily treed area. During the summer, at least, any view to 40A Woodland Avenue appears to be almost completely if not completely obscured.

[29] Mr. Jackubowski reviewed the pictures filed at the hearing. The Tribunal asked

Mr. Jackubowski if it would assist if a condition was placed on the authorization that the north facing window be opaque or frosted. While remaining concerned about the coverage, Mr. Jackubowski indicated that Mr. Mayer had suggested this, and that it would help.

CONCLUSIONS

[30] Given the nature of the PPS and the 2017 Growth Plan the Tribunal does not hesitate to find that this application is consistent with, or conforms to, as the case may be, with those planning instruments.

[31] On the basis of the City staff's planning report, the evidence at the hearing, and upon review of the OP, the Tribunal concludes that the proposal maintains the general intent and purpose of the OP; maintains the general intent and purpose of the ZBL; is desirable for the appropriate development and use of the land; and, with a condition to ensure that the north facing window be opaque or frosted by some means, it is minor.

ORDER

[32] The appeal is allowed.

[33] The Tribunal authorizes a variance to permit the detached garage to remain at the height of 5.33 m whereas Zoning By-law No. 0225-2007, as amended, permits a maximum height of 4.60 m in this instance. This authorization is subject to the following condition:

- a. The north facing window of the proposed addition to the garage shall be opaque or frosted.

"Paula Boutis"

PAULA BOUTIS
MEMBER

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Local Planning Appeal Tribunal

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