

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



**ISSUE DATE:** August 21, 2018

**CASE NO(S):**

PL180500

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

Appellant:	Robert Denhollander
Applicant:	Tyler Gosse
Subject:	Minor Variance
Variance from By-law No.:	0225-2007
Property Address/Description:	29 Port Street West
Municipality:	City of Mississauga
Municipal File No.:	A166/18
LPAT Case No.:	PL180500
LPAT File No.:	PL180500
LPAT Case Name:	Denhollander v. Mississauga (City)

**Heard:** July 16, 2018 in Mississauga, Ontario

**APPEARANCES:**

**Parties**

**Counsel\*/Representative**

Tyler Gosse ("Applicant")

J. Meader\*

Robert Denhollander/Lauren Bernardi  
("Appellants")

Self-represented

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

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### **INTRODUCTION**

[1] The Applicant owns the lands known municipally as 29 Port Street West (“Subject Lands”) and had applied to the Committee of Adjustment (“Committee”) seeking a minor variance to allow for the construction of a detached garage and a second floor addition over a portion of the existing driveway.

[2] The development proposal required the following relief from the Zoning By-law: two garages where only one is allowed; a carport having an area of attachment of 4.61 metres (“m”) whereas 5 m in length is required; a detached garage area of 37.14 square metres (“sq m”) whereas a maximum garage area of 30 sq m is allowed and a side yard setback of 1.41 m whereas 3 m is required.

[3] Before the Committee, the Applicant requested the amendment of the application to delete the proposed variance for the area of the detached garage, and the Committee approved the amended minor variance application.

[4] The Appellants appealed.

### **DECISION**

[5] Based on the uncontroverted expert land use planning evidence, the Tribunal will dismiss the appeal and authorize the variances, as amended at the hearing, all as set out on Attachment 1 appended to this Decision.

### **CONTEXT**

[6] The Subject Lands are generally located in the Port Credit Neighbourhood (West), being west of the Credit River, south of Lakeshore Road West, east of Mississauga Road South, and north of the lake.

[7] The Subject Lands are designated Residential Low Density I, zoned R15-1 (Detached Dwellings-Port Credit), and found within the Old Port Credit Village Heritage Conservation District.

[8] The existing dwelling on the Subject Lands is a bungalow, with a side driveway leading to a detached garage in the rear yard.

[9] The site plans for the development proposal illustrate the second storey addition including expansion over the side driveway (creating the carport), and requiring the side yard setback variance and the two garage variance.

[10] The Subject Lands are located mid-block on the south side of Port Street West.

[11] The Appellants reside at 31 Port Street and abut the Subject Lands.

[12] The south side of Port Street is made up entirely of detached residential dwellings.

[13] To the immediate north is a 5-storey residential apartment building at 11 John Street South and a large single detached dwelling with a double car garage and residential space above the garage (16 Front Street South).

[14] Immediately south of the Subject Lands are detached dwellings, beyond which to the south west is another 5-storey apartment building and to the south east a block of townhouses.

[15] Elsewhere in the larger neighbourhood are some remnants of older institutional buildings including a fire hall and a Masonic Temple.

## **BACKGROUND**

[16] The Applicant had originally made a minor variance application seeking further relief for height, the foot print of the detached garage, and floor area. The circulation

comments show that the Planning and Building Department had no objection to the first minor variance application and advised the Committee that the Department was processing a site plan application and that the Heritage Advisory Committee had reviewed the application and found that it was appropriate for the context of the neighbourhood.

[17] Notwithstanding those comments, the Committee denied the first application.

[18] The Applicant then re-applied seeking the variances as set out above.

[19] The circulation comments for the (second) minor variance application were similar in nature with no objections.

[20] Upon the amendment to withdraw the minor variance for the area of the detached garage, the Committee approved the application with the condition of approval that the construction related to the variance be in general conformance with the plans approved by the Committee.

[21] The appeal filed by the Appellants' former counsel submitted that the variances would result in the construction of both a detached garage and a second floor addition over a carport which would be a form of housing that did not fit with the existing neighbourhood. This, it was submitted, would amount to improper planning for the lands within the Old Port Credit Village Heritage Conservation District, and that the development proposal did not fit with the intent of the Old Port Credit Village Heritage Conservation District Plan, or the guidelines for additions to complementary properties within the Heritage District and did not conform to the Mississauga Official Plan.

## **HEARING**

[22] At the hearing, the Applicant called David Brown a land use planner with considerable planning experience with the City of Mississauga ("City").

[23] Robert Denhollander testified on behalf of the Appellants.

[24] In addition, the Tribunal heard from five participants.

## **MOTION**

[25] At the outset of the hearing counsel for the Applicant made a motion requesting that the Tribunal re-insert the original minor variance request with regard to the area of the detached garage at 37.14 sq m.

[26] Counsel submitted that the requested variance was part of the public notice that had been sent out by the Committee, that the variance had only been withdrawn to facilitate a decision by the Committee and now that the appeal had been filed, the Applicant wished to have the Tribunal decide on the original application.

[27] Her statutory authority for this motion was s. 45(18.1.1) of the *Planning Act* where the Tribunal may make a decision on an amended application where the Tribunal finds the amendment to be minor and no further notice is required.

[28] Lauren Bernardi submitted that notice should have been given, that the request was not minor and that the variance had already been dealt with at the Committee.

[29] The Tribunal allowed the motion, finding that the original application contained the variance request, that public notice had been provided to the neighbourhood of that variance, that the amendment was minor in nature and that no further notice was necessary.

## **APPLICANT'S CASE**

[30] Mr. Brown provided a comprehensive photo review of the Subject Lands and the neighbourhood.

[31] He characterized the neighbourhood as being part of a heritage conservation district but with a mix of housing styles and tenures including 5-storey apartment buildings, row housing, detached dwellings having 1 or 2 storeys, located among older

institutional buildings. Overall, he opined that it was an eclectic mix of forms, styles and houses and buildings.

[32] On the west side of the Subject Lands is the Appellants' property being 31 Port Street West. The photos at Exhibit 1A, Tab 4 show this property to be a 2-storey dwelling with a side driveway leading to a single car garage with living space over the garage. The photos also show that the garage has a rear garage door allowing access through the garage to the rear yard.

[33] Exhibit 1B, Tab 18 at page 138, provides the Committee decision with regard to 31 Port Street West where in 2004 the then owners of 31 Port Street West sought a minor variance to permit a second storey addition. The variances sought included relief for the side yards, excessive height to the peak of the roof and the eaves, and excessive gross floor area. The variances were approved by the Committee.

[34] On the east side of the Subject Lands is 27 Port Street West. There is a mature hedge row that appears to be on the property line and separates the driveway on the Subject Lands from the single car driveway on 27 Port Street West. This property is improved by a modest bungalow. Its owner had written to the Committee on April 4, 2017 indicating that she had seen the Applicant's plans and was aware that those plans might partially overlook her back porch and yard, but she had no objection to the variances as requested.

[35] Turning to the policy documents, Mr. Brown commenced with his opinion that the application was consistent with the Provincial Policy Statement ("PPS") and the Growth Plan for the Greater Golden Horseshoe ("Growth Plan") as these were higher order Provincial matters and that there was no inconsistency or lack of conformity with either.

[36] Turning to the Mississauga Official Plan he testified that the Subject Lands were designated Residential Low Density I where detached dwellings were permitted.

[37] The Subject Lands were also within the Old Port Credit Village Heritage

Conservation District and he took the Tribunal to s. 10.3.2 of the Official Plan dealing with the Old Port Credit Village Heritage Conservation District Precinct. The text there describes the Precinct as containing a mixture of housing, retail commercial and community buildings of many types, representing different eras, but noting that the character was predominantly low rise.

[38] He then reviewed s. 10.3.2.1 that deals with additions, alterations, adaptive reuse or redevelopment and that:

- a. The massing and scale is to be sympathetic to the surroundings;
- b. The historic housing stock is preserved;
- c. The existing historical character is supported;
- d. The existing street grid pattern and building setbacks are maintained; and
- e. The significant groupings of trees and mature vegetation is maintained and enhanced.

[39] Mr. Brown then addressed the 2004 Old Port Credit Village Heritage Conservation District Plan (“District Plan”). There in the District Plan’s Purpose provides that “...restoration to some fixed time in the past is not the plan’s aim, but protecting the neighbourhood’s primarily low-density residential land use and related architectural and urban form patterns that have survived from historical times is acknowledged as key to the neighbourhoods’ liveability.”

[40] The Subject Lands in the District Plan are identified as “complementary” meaning buildings that in terms of height and size complement the buildings of historic interest. The objective for complementary building is found at s. 2.2.3(a) as being to make additions that are in keeping with the building height and size that typically exist among houses in the District. In s. 2.2.3.2 additions to complementary buildings will not exceed 2 storeys, and in s. 3 a heritage permit is required for building permits for additions,

garages, car ports etcetera In s. 5.0 there are Design Guidelines for Additions to Complementary Buildings including s. 5.5 (2 storeys or less for height), s. 5.6 ensure ample open space around the house, s. 5.7 save significant trees, s. 5.8 favour rear additions over front additions, s. 5.15 site garages behind the front wall of the house.

[41] Mr. Brown opined that the proposed development met all these criteria, as the height was 2 storeys, that a heritage permit had been sought and obtained, that the open space was sufficient, that most of the trees were preserved, that the addition was at the side and front of the existing house and the detached garage was behind the house. He testified that his opinion was corroborated by the decision of the Heritage Advisory Committee which recommended approval of the first application and that the current application shows a reduction in scale.

[42] Finally, with regard to heritage matters, Mr. Brown took the Tribunal to Exhibit 1A, Tab 19, page 276, being a copy of the Heritage Property Permit Notice issued by the City of Mississauga for the Subject Lands.

[43] Turning to the actual variances, Mr. Brown noted that the Heritage Permit has been issued by the City and that there is a site plan currently under review by the Planning Department. The design of the addition with its cantilevered second floor addition preserves the existing footprint, provides for an addition over the driveway, has no significant impact on vegetation, puts the garage in the rear yard and to access that garage there is a drive through under the second floor addition that the Zoning Department of the City has deemed to be a carport, which has led to some of the variances.

[44] The first variance is for the two garages: being the "carport" and the detached garage in the rear. Mr. Brown testified that this variance was simply a technical variance as the Zoning Department deemed the space under the second floor to be a carport. He opined that in the ordinary case a carport would have direct access to the dwelling from the covered portion of the carport, which is not the case here, as the intent of the drive through was simply to gain access to the rear detached garage.



[45] With regard to the deemed carport, in order to comply, it has to have an area of attachment of 5 m in length to the dwelling, whereas it has 4.61 m.

[46] With regard to the side yard setback, he noted that the 1.41 m setback applies not to the Appellants' property but rather to 27 Port Street South, that it only applies at ground level to the two building supports for the second floor addition, and that the property line between the two houses is well vegetated.

[47] Turning to the last variance for the area of the detached garage he observed that the zoning by-law allowed a garage floor area of 30 sq m, but if it were an attached garage, one could have an area of 75 sq m. He noted that neither the Planning Department nor the Heritage Advisory Committee had objections to the size of the garage.

[48] In summary, he testified that, in his opinion, the development application met the four tests of s. 45(1) of the *Planning Act* as: the variances conformed to the Official Plan and the heritage policies, as corroborated by the Planning Department and the Heritage Advisory Committee; that the variances met the intent and purpose of the Zoning By-law as a detached dwelling at 2 storeys is a permitted use, that the garage was a permitted use, that the carport was a technical variance due to the drive through for both the area of attachment and the second garage, and that the side yard setback was appropriate given the fact that the adjoining lands had its driveway on the other side. He testified that the variances were desirable for the appropriate use and development of the lands as the Subject Lands were in a residential zone, a 2-storey dwelling was being proposed with an innovative design to allow development over the driveway, and that the garage in the rear of the Subject Lands was appropriate in size. Finally, addressing the fourth test of minor in nature, he rhetorically asked what were the alleged impacts? The garage is appropriate in size, it is screened by the vegetation, the second floor addition over the driveway is not toward the Appellants property but to 27 Port Street West, and the side yard setback is only for a portion of the second floor.

[49] In his opinion, all the tests of s. 45(1) of the *Planning Act* were met and he

recommended that the decision of the Committee be upheld, that the variances as amended and found at Exhibit 9 be granted and the appeal be dismissed.

### **APPELLANTS' CASE**

[50] Robert Denhollander resides at 31 Port Street West which abuts the Subject Lands. He moved to this address two years ago.

[51] His opposition to the development proposal was based on his reading of the Old Port Credit Village Heritage Conservation District Plan. He referenced s. 2.2.3 (a) the Objective for Complementary Buildings as being to make additions to complementary houses in keeping with the building height and size that exist typically among houses in the district. In this regard, he testified that no other house in the district had both a carport and a garage.

[52] He took the Tribunal to s. 2.2.3.2 and the direction that property owners, in designing additions, shall also have regard for impacts on adjacent properties in terms of scale, massing, height and setback, and that rear additions are preferred. Here he noted the addition was to the front and side and not the rear, and that there would be the loss of two trees on the Subject Property that provided some buffering to his property, and contrary to the direction in s. 2.2.6.5 to site additions. where possibly away from significant trees and shrubs.

[53] Going to s. 5.4 the guideline directs that an owner should identify features of a building that are worth keeping including "wall material". He testified that the original structure was going to have a wood siding but that had been changed to vinyl siding. S. 5.6 provides that the size of the addition should maintain ample open space around the house and in this case with the addition to the side, the side yard is reduced to 1.41 m and he questioned whether the cedar hedge could be preserved. S. 5.7, he pointed out, again, referenced the saving of significant trees, and s. 5.8 again favoured rear additions over front additions. Turning to s. 5.9, he pointed out that the direction was for a wall material that complemented buildings of historic interest, and expressed his

concern for the Applicant's wall choice. In s. 5.10 he advised the direction was for windows that were "flat-headed" and taller than they were wide. And finally, he came to s. 5.15 that directs the siting of a garage behind the rear wall of the house. Here he said the Applicant has a carport at the side of the house, and a garage in the rear yard, a design and a combination of which is not seen in the district.

[54] On this basis, he believed the development proposal did not meet the guidelines found in the Old Port Credit Village Heritage Conservation District Plan, that it should be redesigned and that the Heritage Permit was obtained "...under false pretences."

[55] Under cross examination, Mr. Denhollander confirmed that his home was a 2 storey dwelling, that its addition had been processed by way of a similar minor variance application that increased the height, and the floor area, reduced a side yard setback and introduced a single car garage on the side with floor space above the garage, and that the garage had both a garage door opening to the street and also a garage door opening to the rear yard.

[56] He confirmed that there was no variance sought for the side yard setback abutting the property at 31 Port Street West, and that the Applicant's driveway and proposed addition with the carport abutted the property at 27 Port Street West.

## **PARTICIPANTS**

[57] The Tribunal heard from five participants, all supportive of the appeal.

[58] All expressed concerns with the proposed addition: some found the design with a carport and a garage to be not appropriate for the heritage district, others commented on the loss of space between buildings, that the design guidelines call for additions at the rear, that the size of the detached garage was too large, that the Committee got it right on denying the first application and the Tribunal should do the same here and force the Applicant to come back with a redesign that meets the Heritage Guidelines, otherwise this design will become a precedent in the district.

## RE-EXAMINATION

[59] Counsel for the Applicant briefly recalled Mr. Brown with regard to the evidence of Mr. Denhollander that the Heritage Permit had been obtained under false pretences. Mr. Brown noted that the original site plan application did not show the loss of a cedar tree and a sour cherry tree in the rear yard, but the subsequent site plan did identify those trees for removal and a new requirement for two replacement trees.

[60] He noted that if the Tribunal were to deny the appeal, the matter would go back to site plan and in that process a determination would be made as to whether the site plan needs to be revisited by the Heritage Advisory Committee to deal with issues such as the exterior siding, and railings.

## COMMENTARY

[61] The Heritage Permit has been issued by the City.

[62] The matter before the Tribunal is the minor variance, and its jurisdiction is solely to assess whether the minor variance meets the tests set out in the *Planning Act*.

[63] Section 45(1) of the *Planning Act* sets out the four tests that must be met for a minor variance to be authorized:

- a. Does it meet the general intent and purpose of the Official Plan;
- b. Does it meet the general intent and purpose of the Zoning By-law;
- c. It is desirable for the appropriate use or development of the land building or structure; and
- d. Is it minor in nature.

[64] It appears to the Tribunal that the neighbourhood of the Subject Lands is quite

diverse with an eclectic mix of dwellings and other community buildings, with different forms of housing and tenure. The immediate context of the Subject Lands is to face a 5-storey apartment building and a large detached dwelling across the street. On the south side of Port Street West, the Subject Lands sit between a large 2storey dwelling with an attached single car garage and floor space above the garage (31 Port Street West) and a bungalow serviced by a single car driveway that abuts the well vegetated mutual property line (27 Port Street West).

[65] The Tribunal observes that the dwelling owned by the Appellants was the subject of a similar minor variance application for an addition that required relief for height, floor space, and a side yard setback. The Tribunal further observes that the Appellants' dwelling has a side yard driveway leading to a single car garage with floor space above the garage. The photographs depict that the Appellants' garage has a garage door opening to the street and a garage door opening to the rear yard, which if both were open at the same time, would be very similar in effect to the design proposed by the Applicant.

[66] The Tribunal notes while the appeal is by the Appellants, the impugned addition of the carport and the rear yard garage do not abut the Appellants' property but rather abut 27 Port Street West. That neighbour has sent a letter to the Committee indicating that she had seen the plans and had no objection to the proposal.

[67] The Tribunal notes that none of the participants reside on the same street or even in the same block as the Subject Lands. Most live on or near Mississauga Street South.

[68] Finally, the Tribunal observes that this development application has been fully circulated to the commenting agencies and City departments resulting in no objections and a Heritage Permit has been issued by the City. In the face of such processing, the Tribunal would have expected to hear expert opinion evidence challenging the land use planning comments. Instead, the testimony given on behalf of those opposed was absolutely devoid of any reference to the City's Official Plan, and the City's Zoning By-

law, and relied solely on reference to the heritage design guidelines.

[69] The only expert opinion evidence heard by the Tribunal was that of Mr. Brown corroborating the City's land use planning position provided through the processing of the application.

## **FINDINGS**

[70] The Tribunal prefers the evidence of Mr. Brown.

[71] The Tribunal finds that the amended application before the Tribunal adequately addresses all the Provincial Interests set out in s. 2 of the *Planning Act*, is consistent with the PPS, conforms to the Growth Plan, and satisfies all four tests of s. 45(1) of the *Planning Act*.

[72] The Tribunal finds that the Subject Lands are designated low density residential and within the Old Port Credit Village Heritage Conservation District. The Official Plan policies provide that this Precinct has a mixture of land uses, but is predominantly low rise in nature. Section 10.3.2.1 provides direction on how additions will address scale and massing, preserve historic housing stock, support existing historical character, maintain the grid street pattern and building setbacks and maintain and enhance significant groupings of trees.

[73] This application results in a 2-storey dwelling, similar in scale, and mass, to its neighbour at 31 Port Street West. The Subject Lands are not historic. The development proposal is an addition to the existing dwelling that does not change the street pattern nor seek relief for the front yard setback, and maintains most of the trees and where two will be removed, will result in two more being planted.

[74] The Tribunal is satisfied that the application conforms to the Official Plan.

[75] Turning to the Zoning By-law, the Tribunal notes that a detached dwelling is a permitted use. No variances were sought with regard to height, or gross floor area. The

proposal is for a detached garage at the rear. To facilitate that and to provide additional floorspace in the addition, the second floor is proposed to be extended over the driveway leading to the rear yard. The City's Zoning Department has interpreted that as creating a carport requiring a variance to allow more than one garage and a variance for the length of the proposed carport. Mr. Brown testified that, in his opinion, these are technical variances. The Tribunal notes that there is no access provided to the dwelling in the covered area supporting the notion that this is not intended as a carport. The other variances are for the side yard setback for the supports and the floor space over the driveway at 1.41 m and for the area of the detached garage. The Tribunal observes that the City staff had no objection to either variance and in fact had no objection to garage area that was originally proposed. The Tribunal finds that the side yard variance is for a modest portion of the side yard and that the area proposed for the detached garage is appropriate for a two car garage.

[76] The third test is whether the variances are desirable for the appropriate use or development of the property. The proposed use is to add an addition to an existing residence, and innovatively provide access to a rear yard garage. The Tribunal finds that the design is similar in nature to that existing next door at 31 Port Street West: an addition to an existing dwelling, with floor space over a garage with doors that open to the front and back. The Tribunal observes that if both garage doors at 31 Port Street West were open at the same time, the view from the street would be similar to that proposed here. The Appellants and the Participants submit that approval by the Tribunal will create an undesirable precedent. The Tribunal does not agree. Each case is decided on its own merits, and to the Tribunal, the development proposal here fits with the area already influenced by the Appellants' property.

[77] The fourth test is whether the variances are minor in nature and the Tribunal is struck by the absence of any adverse impacts that would arise from the development proposal. The impugned design features of the development proposal do not abut the Appellants' property, and the greatest alleged impact is the loss of a cedar tree and a sour cherry tree which the Tribunal understands will result in two trees being planted on the Subject Lands. The Tribunal finds that the amended variances are minor.

- [78] Accordingly, the Tribunal:
- a. Allows the amendment to the minor variance to reinstate the originally sought minor variance for the garage floor area of 37.14 sq m;
  - b. Upholds the decision of the Committee, and authorizes the variances as set out in Exhibit 9 and appended to this Decision as Attachment 1.
  - c. Denies the appeal.
- [79] This is the Order of the Tribunal and Attachment 1 forms part of this Decision.

*“Blair S. Taylor”*

BLAIR S. TAYLOR  
MEMBER

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

**Local Planning Appeal Tribunal**

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## ATTACHMENT 1

The requested minor variances:

1. To permit two garages, one being a carport and the second being a detached garage, whereas Zoning By-law 225-2007, as amended, permits one detached garage or one attached garage.
2. To permit a carport having an area of attachment to the dwelling of 4.61m in length, whereas Zoning By-law 225-2007, as amended, requires a minimum area of attachment of 5.0m in length.
3. To permit a detached garage having an area of 37.14m<sup>2</sup>, whereas Zoning By-law 225-2007, as amended, permits a maximum area of a detached garage of 30m<sup>2</sup>.
4. To permit a side yard setback of 1.41m, whereas Zoning By-law 225-2007, as amended, requires a minimum side yard setback of 3.0m in this instance.

Exhibit:	9
File #:	