

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



**ISSUE DATE:** July 02, 2019

**CASE NO(S):** PL180601

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:	Anka Bulat
Subject:	Minor Variance
Variance from By-law No.:	0225-2007
Property Address/Description:	5296 Guildwood Way
Municipality:	City of Mississauga
Municipal File No.:	A 120/18
LPAT Case No.:	PL180601
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LPAT Case Name:	Bulat v. Mississauga (City)

**Heard:** September 11, 2018 in Mississauga, Ontario

**APPEARANCES:**

**Parties**

**Counsel**

Anka Bulat

Russell Cheeseman

City of Mississauga

Did not appear

**MEMORANDUM OF ORAL DECISION DELIVERED BY JOHN DOUGLAS ON  
SEPTEMBER 11, 2018 AND ORDER OF THE TRIBUNAL**

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**BACKGROUND**

[1] This was a hearing in the matter of an appeal under s. 45(12) of the *Planning Act*

(the “Act”) by Anka Bulat (the “Applicant/Appellant”), of a decision of the City of Mississauga (the “City”) Committee of Adjustment (the “Committee”) to refuse an application for a minor variance to permit a driveway with a width of 8.5 metres (“m”), whereas By-law No. 0225-2007 permits a maximum driveway width of 6.0 m, with respect to property located at 5296 Guildwood Way, in the City of Mississauga (the “subject property”).

[2] Ms. Bulat was present at the hearing, and was represented by Russell Cheesemen. David Brown also appeared as a witness to provide expert planning evidence on behalf of Ms. Bulat.

[3] The City did not appear at the hearing.

[4] Asid Raksid, a neighbour of Ms. Bulat’s was present at the hearing. Mr. Raksid advised the Tribunal he was in support of the City’s decision to refuse the application. He requested and was granted participant status.

### **The Subject Property and Proposal**

[5] The subject property is a corner lot located at the south west corner of the intersection of Guildwood Way and Bristol Road West.

[6] Mr. Cheeseman advised the Tribunal that the driveway had been constructed and in use since the early 1990s. The driveway is asphalt with two cement curbs running the length of the driveway on either side. In late 2016 or early 2017, the Applicant/Appellant had added a 0.91 m. wide walkway running alongside the east side of the driveway from the front porch of the house to the City sidewalk and continuing on the boulevard between the City sidewalk and the street. After receiving a complaint, the City By-law Enforcement staff attended the property and found that the walkway, and driveway width did not conform with the provisions of Zoning By-law No. 0225-2007.

[7] Ms. Bulat removed the walkway in its entirety and re-sodded the area. She also

applied for a variance to the current by-law to allow the enlarged driveway. The original application before the Tribunal is for a variance to permit a driveway with a width of 8.5 m, whereas Zoning By-law No. 0225-2007 permits a maximum driveway width of 6.0 m.

### **Amended Application**

[8] Mr. Cheeseman advised the Tribunal that the dimensions provided by Ms. Bulat in her application were not accurate. The driveway includes the black-top driveway plus the two cement curbs on either side. The width of the asphalt driveway is 8.39 m. The cement curbs on either side of the driveway are 0.35 m wide. The total width of the driveway with the two curbs is 9.09 m.

[9] Mr. Cheeseman requested the Tribunal accept an amended application which proposes to vary Zoning By-law No. 0225-2007 to allow a driveway width of 9.10 m. The intent of both the original and amended applications is to regularize the existing situation of the asphalt driveway plus the two cement curbs. Mr. Cheeseman argued that notice of the amended application is not required because the revision to the application is minor and he asked the Tribunal to apply s. 45(18.1.1) of the Act, which states:

Exception – The Tribunal is not required to give notice under subsection (18.1) if, in its opinion, the amendment to the original application is minor.

[10] Given that the City was not present at the hearing, no arguments were presented that the amendment to the application proposed by Mr. Cheeseman was not minor. The Tribunal is satisfied that the revisions to the application are minor and that further notice is not required prior to hearing the evidence in the matter.

### **EVIDENCE AND ANALYSIS**

[11] Mr. Cheeseman called Mr. Brown as a witness. Mr. Brown was qualified by the Tribunal to give expert opinion evidence in land use planning.

[12] The Tribunal marked and entered the Book of Documents for Anka Bulat, 5296 Guildwood Way as Exhibit 1.

[13] Mr. Brown referred to the City's May 17, 2018 Planning and Building Report which recommended that the application for variance be refused. He directed the Tribunal's attention to staff's comments in the report (Exhibit 1, Tab 10, page 40):

The requested driveway width and configuration creates excessive hard surface and limited soft landscaping. The intent of the requirements in the zoning by-law is a driveway width limited to provide two vehicles to be parked side by side, and the remainder is intended to be soft landscaping.

A 6 m driveway and the associated garage would provide parking spaces for four vehicles. The zoning by-law requires two parking spaces for a detached dwelling, and one space for a second unit. The proposed driveway width would provide an excessive amount of parking spaces.

We note that a walkway that is parallel and adjacent to a driveway is considered part of the driveway.

[14] Mr. Brown noted that the 0.91 m walkway has been removed in its entirety, and the area re-sodded. Mr. Brown directed the Tribunal to a recent photo he had taken (Exhibit 1, Tab 4, page 21) which shows the front yard landscaping, including the re-sodded area where the walkway has been removed.

[15] To provide community context, Mr. Brown directed the Tribunal to a set of photos (Exhibit 1, Tab 4) he had taken of driveways for other similar properties in close proximity to the subject property on Guildwood Way and other neighbouring streets. He noted that six of the 10 driveways shown had widths he estimated to be more than 6 m in width. He also pointed out that 13 properties within the block had driveways wide enough to accommodate more than two vehicles across. Mr. Brown opined that the driveway width for which the variance is sought is not inconsistent with other driveways within the surrounding neighbourhood.

[16] Mr. Brown noted that, notwithstanding the comments from the City's Planning and Development Committee in its staff report, the By-law requires that two parking spaces must be provided for a single detached dwelling, and one space for a second

unit (where applicable), but Zoning By-law No. 0225-2007 does not provide a maximum number of parking spaces allowed.

[17] Mr. Brown advised that the site sketch submitted with the original application for a variance (Exhibit 1, Tab 7) was inaccurate. He directed the Tribunal to a more accurate site sketch provided in support of the amended application before the Tribunal (Exhibit 1, Tab 8).

[18] Mr. Brown testified that the Applicant/Appellant has confirmed that the driveway with its current width (including the black top and the curbs on each side) has been in existence since 1990. He noted that the building permit for 5296 Guildwood Way was issued in 1989 and the house had been built in 1990. He presumes this is when the driveway was constructed as well. He directed the Tribunal to a series of City aerial photos (Exhibit 1, Tab 17) from 2002 to 2017. The aerial photos show the driveway, in its current configuration, clearly existed for those years.

[19] Mr. Brown directed the Tribunal to an excerpt from Zoning By-law No. 5500, the By-law that predated Zoning By-law No. 0225-2007, under which it states:

37B. Parking in Residential Zones

Parking shall be provided and maintained on each lot for a least one (1) car for each dwelling that is erected on the lot subject to the following:

(2) the maximum permitted driveway or hard surface parking area width per dwelling at any given point on lot frontages of 12.0 m or greater shall be limited to the maximum of the distance equal to 50% of the lot frontage or 8.5 m, whichever is the lesser for all detached dwellings;

(5) all driveways which legally existed on or before the day this section comes into force (1992 May 11) are deemed to Comply with this By-law;

[20] Mr. Cheeseman requested that an excerpt from Zoning By-law No. 0225-2007 – Definitions, be entered as an exhibit. The excerpt was marked and filed as Exhibit 2.

[21] Mr. Brown testified the definition for lot frontage in Zoning By-law No. 0225-2007 is the same as the definition for lot frontage from Zoning By-law No. 5500, which states:

Lot Frontage – means the horizontal distance between the side lot lines and where these lines are not parallel means the distance between the side lot lines measured on a line parallel to and 7.5 m back from the front lot line.

[22] Using this definition of lot frontage and referring the Tribunal to the accurate site sketch in Exhibit 1, Tab 8, Mr. Brown demonstrated that the lot frontage for 5296 Guildwood Way is 17.2 m. Based on this Mr. Brown testified that under Zoning By-law No. 5500, the maximum permitted driveway width was 8.5 m, which is wider than the black top portion of the driveway at the subject property. Mr. Brown testified that it is only because of the change to maximum driveway width from 8.5 m. under Zoning No. By-law No. 5500 to 6.0 m under Zoning By-law No. 0225-2007 that the size of the variance requested is 3.1 m as opposed to 0.6 m.

[23] Mr. Brown stated that in his opinion this application for a variance as amended to legalize a driveway width that has existed since 1990, has no impact on the surrounding community, is consistent with the Provincial Policy Statement 2014 (“PPS”), conforms to the Growth Plan for the Golden Horseshoe 2017 (“Growth Plan 2017”), conforms with the Region of Peel Official Plan (“RPOP”), conforms with the City’s Official Plan, and represents good planning.

[24] Mr. Brown further opined that the application for variance as amended meets the four tests under s.45(1) of the Act: meets the general intent and purpose of the Official Plan and Zoning By-law; is desirable for the appropriate development or use of the property; and is minor in nature.

## **PARTICIPANT**

[25] The participant, Mr. Raksid, expressed a number of concerns regarding a number of actions of his neighbour at 5296 Guildwood Way:

- a. Too many cars park there, four and sometimes five cars. If they have too many cars at one time they illegally park them on the boulevard portion of the driveway.

- b. In the winter there are often two or three pickup trucks parked in his neighbour's driveway, some of which are diesel. To warm up the vehicles his neighbour leaves them idling too long and the smell, particularly of the diesel exhaust, is terrible.
- c. The pickup trucks are business related. His neighbour is running a business from the house. They also use the backyard for storage of business related materials.
- d. His neighbour also has a basement apartment, which adds to the vehicle parking on the site.
- e. When his neighbour clears his snow from the driveway, they store it on his property.

[26] Mr. Raksid did not, in his evidence, address how these concerns relate to the four tests under s. 45(1) of the Act.

[27] Under cross-examination, Mr. Cheeseman asked Mr. Raksid whether he had called the police when the Applicant/Appellant was idling her car/truck or parking on the boulevard. Mr. Raksid replied he has called the City's By-law Enforcement but by the time they arrive, the vehicles are gone. Mr. Cheeseman suggested that these actions by his client may be unneighbourly but asked Mr. Raksid to explain how they were relevant to the application for a variance that would simply permit the width of the existing driveway. Mr. Raksid had no response.

[28] With respect to the number of vehicles that may park on the driveway of the subject property, Mr. Cheeseman asked if he had heard Mr. Brown's testimony that there was no maximum number of cars that could be parked on the driveway in Zoning By-law No. 0225-2007. Mr. Raksid had no response.

[29] The Tribunal has considered Mr. Raksid's comments regarding the amended

variance application but given the persuasive nature of the uncontroverted expert planning evidence provided by Mr. Brown and his clear planning opinion that the proposed variance meets the legislated requirements under the Act, the Tribunal is not convinced by Mr. Raksid's testimony that the proposed variance (as amended) does not meet the legislated tests under the Act. Further, the Tribunal has no jurisdiction or ability to consider or provide relief for the types of concerns raised by Mr. Raksid.

## **FINDINGS**

[30] Based on the uncontroverted evidence of Mr. Brown, the Tribunal is satisfied that the variance as amended to permit a driveway width of 9.10 m where Zoning By-law No. 0225-2007 permits a maximum width of 6 m, has no impact on the surrounding community, is consistent with the PPS 2014, conforms to the Growth Plan 2017, conforms with the RPOP, conforms with the City's Official Plan, and represents good planning.

[31] Since the hearing of this matter on September 11, 2018, the Growth Plan for the Greater Golden Horseshoe, 2019 (the "Growth Plan 2019") came into effect, replacing the Growth Plan 2017. Ontario Regulation 311/06 ("O.Reg 311/06"), addresses transitional matters with respect to revisions to the Growth Plan. Sections 2(i), 3(5) and 2.1(2) of O.Reg. 311/06, are relevant to this matter. The Tribunal hearing in this matter was completed on September 11, 2018 with an oral decision. The final written decision was to be issued at a later date. The transition provisions, with respect to the Growth Plan 2019, confirm that based on these set of facts the applicable plan is the Growth Plan 2017. Section 2.1(2) of O.Reg 311/06 reads:

Where section 3 requires a matter to be continued and disposed of in accordance with the Plan and the matter was commenced before May 16, 2019, the requirement shall be read as a requirement that the matter be continued and disposed of in accordance with the 2017 Growth Plan as it read before its revocation if, on May 16, 2019, the Local Planning Appeal Tribunal or a joint board has completed its hearing of the matter but reserved its final decision.

[32] The Tribunal is accordingly satisfied that the Growth Plan 2017 is applicable to



this matter.

[33] Further, with respect to the four tests set out in s. 45(1) of the Act, the Tribunal finds as follows.

#### **General Intent and Purpose of the Official Plan**

[34] The Tribunal is satisfied, based on the uncontroverted evidence of Mr. Brown, that the variance as amended meets the general intent and purpose of the City's Official Plan.

#### **General Intent and Purpose of the Zoning By-law**

[35] The Tribunal is satisfied, based on the uncontroverted evidence of Mr. Brown, that the variance as amended meets the general intent and purpose of the Zoning By-law No. 0225-2007.

#### **Minor and Desirable**

[36] Mr. Brown testified that the proposed variance is desirable for the appropriate development or use of the land and is minor in nature for a number of reasons, including:

- a. there are other properties in the neighbourhood of 5296 Guildwood Way, that have driveways in excess of 6 m, a number of which can accommodate more than two vehicles across the driveway;
- b. that the variance as requested will serve to legalize a driveway that has existed since 1990;
- c. that the approval of the variance as amended will have no impacts on the surrounding community.

[37] Based on the uncontroverted evidence of Mr. Brown, the Tribunal is satisfied that the variance as amended, is minor and desirable for the appropriate development or use of the land.

## **CONCLUSION**

[38] The Tribunal heard the concerns raised by Mr. Raksid with respect to noise, snow storage by the neighbour on his property, idling of vehicles, and parking on the boulevard. The Tribunal concurs with Mr. Cheeseman when he characterized the actions by his client as “unneighbourly”, but the Tribunal has no jurisdiction to provide relief for Mr. Raksid in these matters.

[39] No evidence was presented to the Tribunal in support of the issues raised in the City’s Planning Report or the decision of the Committee.

[40] Based upon the testimony of Mr. Brown, and the documents submitted and considered by the Tribunal, the Tribunal is satisfied that the proposed severance is consistent with the PPS, conforms with the Growth Plan 2017, conforms to the RPOP and the City’s Official Plan and with the recommended conditions in place, including the requirement for the amendments to the zoning by-law, represents good land use planning.

[41] Mr. Brown has, in the course of his evidence, addressed the four tests set out in s. 45(1) of the Act, stating that the application meets the general intent and purpose of the Official Plan and the Zoning By-law, is desirable for the appropriate development or use of the property, and the variance requested is minor in nature.

[42] Upon the findings made, Mr. Brown’s unchallenged planning evidence, and the whole of the evidence inclusive of the documentary record, the Tribunal finds that with respect to the criteria provided for in s. 45(1), the proposed variance conforms to the applicable policies set out in both the RPOP and Official Plan, is consistent with the PPS and any matters of provincial interest identified in the Act, and represents good

planning in the public interest. For these reasons, the Tribunal will allow the appeal as amended and authorize the variance as amended and presented at the hearing.

## **ORDER**

[43] The Tribunal has been asked to consider an Application that has been amended from the original Application, and the Tribunal has determined, as provided for in s. 45(18.1.1) of the Act, that no further notice is required.

[44] The Tribunal orders that the appeal, as amended, is allowed and the variance to Zoning By-law No. 0225-2007, as amended, is authorized.

*“John Douglas”*

JOHN DOUGLAS  
MEMBER

If there is an attachment referred to in this document,  
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### **Local Planning Appeal Tribunal**

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