

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



ISSUE DATE: February 25, 2019

CASE NO(S): PL180758

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:	Lisa MacCumber
Applicant:	Jade Estates Inc.
Subject:	Minor Variance
Variance from By-law No.:	0225-2007
Property Address/Description:	915 North Service Road
Municipality:	City of Mississauga
Municipal File No.:	A308/18
OMB Case No.:	PL180758
OMB File No.:	PL180758
OMB Case Name:	MacCumber v. Mississauga (City)

Heard: February 20, 2019 in Mississauga, Ontario

APPEARANCES:

Parties

Representative

Lisa MacCumber

Self-represented

**MEMORANDUM OF ORAL DECISION DELIVERED BY HUGH S. WILKINS ON
FEBRUARY 20, 2019 AND ORDER OF THE TRIBUNAL**

[1] On June 29, 2018, Jade Estates Inc. (“Applicant”) applied for a height variance to City of Mississauga (“City”) Zoning By-law No. 0225-2007 (“Zoning By-law”) to facilitate

the construction of a detached garage to be located at 915 North Service Road (“subject property”). The application seeks a variance to:

Permit a height of 6.43 metres (“m”) to the highest point of a proposed detached garage where the Zoning By-law only permits a maximum height of 4.6 m.

[2] On August 16, 2018, the City’s Committee of Adjustment granted the requested variance and on August 31, 2018, Lisa MacCumber appealed the Committee of Adjustment’s decision to the Tribunal.

[3] On February 11, 2019, the Applicant informed the Tribunal that it had sold its interest in the subject property and would not be attending the hearing. It stated that it believed that the new purchaser also did not plan to attend. The Applicant stated that it was its understanding that that the Committee of Adjustment’s decision would be “reversed” due the Applicant’s non-attendance at the hearing.

[4] The appeal was heard on February 20, 2019 in Mississauga. Neither the City nor the Applicant attended. The Tribunal heard fact evidence and submissions from the Appellant in support of the appeal. The appeal was allowed.

ISSUES

[5] The issues in this appeal are whether or not the proposed variance meets the four tests under s. 45(1) of the *Planning Act* (“Act”). More specifically, does the proposed variance maintain the general purpose and intent of the City’s Official Plan; does it maintain the general purpose and intent of the Zoning By-law; is it desirable for the appropriate use of the subject property; and is it minor? Each of these tests must be satisfied for the variance to be authorized.

EVIDENCE, SUBMISSIONS AND FINDINGS

[6] The Appellant provided fact evidence. She stated that she resides in a dwelling that lies adjacent to the subject property. She said the proposed variance would facilitate the construction of a detached garage located close to her property boundary with a permitted height that would be out of character with the area, tower over her property, and cause shadowing and privacy impacts.

[7] The Appellant stated that the dwelling on the subject property is a heritage building. She said the property on which it stands was originally quite large. In 2017, the Applicant severed the property into three lots. As a result, the heritage building's original garage, which ended up being located on one of the severed lots, was demolished. She said the Applicant proposes to build a new garage in a location which is close to her property boundary.

[8] The Appellant stated that the subject property is designated "Residential Low Density 1" under the City's Official Plan and is zoned "R3-75". She said that s. 4.1.2.2. of the Zoning By-law restricts the height of accessory buildings and structures on the subject property to 4.6 m. She said the City's Planning Staff Report, dated July 27, 2018 ("Planning Report") (Exhibit 1), which provided recommendations on the variance application, focused on whether the proposed garage's mass is secondary to the dwelling on the subject property. In the Planning Report, City staff did not object to the proposed variance. The Appellant stated that the Planning Report found that the proposed garage is set back further than the dwelling and is appropriately scaled. However, the Appellant stated that the Planning Report did not address whether the proposed garage would fit in with the surrounding area, whether the proposed variance would be desirable for the appropriate development of the subject property or whether the proposed variance would have adverse impacts on neighbouring properties. She also noted that the Planning Report commented that setback variances also might be needed in order for the proposed garage to conform with the Zoning By-law.

[9] The Appellant said the proposed variance is not desirable for the appropriate use of the subject property as it would facilitate the building of a detached garage that is visible from the street and would not be in keeping with other accessory buildings in the surrounding area.

[10] The Appellant said the proposed variance is not minor in that it would obstruct the existing daylight from her property and adversely impact the landscaping in her yard. She expressed concerns that approval of the proposed variance would set a precedent in the area leading to similar development proposals emerging nearby.

[11] Based on the Appellant's unopposed evidence and submissions, the Tribunal found that the proposed variance fails to satisfy the tests in s. 45(1) of the Act. The Tribunal heard no evidence to demonstrate that the variance meets the four tests in s. 45(1) that would allow it to authorize the proposed variance.

[12] The Tribunal allowed the appeal.

ORDER

[13] The Tribunal allows the appeal and orders that requested variance to permit a height of 6.43 m to the highest point of the proposed detached garage on the subject property is not authorized.

"Hugh S. Wilkins"

HUGH S. WILKINS
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

A constituent tribunal of Tribunals Ontario - Environment and Land Division
Website: www.elto.gov.on.ca Telephone: 416-212-6349 Toll Free: 1-866-448-2248