

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



ISSUE DATE: March 15, 2019

CASE NO(S): PL180766

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:	Tony Raposo
Subject:	Minor Variance
Variance from By-law No.:	0225-2007
Property Address/Description:	170 Pinewood Trail
Municipality:	City of Mississauga
Municipal File No.:	A306/18
OMB Case No.:	PL180766
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OMB Case Name:	Raposo v. Mississauga (City)

Heard: February 25, 2019 in Mississauga, Ontario

APPEARANCES:

Parties

Tony Raposo

Counsel

Jennifer Meader

**MEMORANDUM OF ORAL DECISION DELIVERED BY RICHARD JONES ON
FEBRUARY 25, 2019 AND ORDER OF THE TRIBUNAL**

THE EVIDENCE WHICH ALLOWED THE APPEAL

[1] David Raposo ("Applicant/Appellant") made application to the City of Mississauga Committee of Adjustment ("COA") to allow six variances in relationship to

construction of a replacement home for his property described municipally as 170 Pinewood Trail (“subject lands”).

[2] His application was denied by the COA and subsequently appealed to the Tribunal. The variances before the Tribunal are those same variances denied by the COA.

[3] The City of Mississauga (“City”) did not appear at the hearing and the Tribunal notes that the City’s planning staff supported the application in their recommendation to the COA dated July 27, 2018 (Tab 11, Exhibit 1).

[4] The Tribunal in its oral decision allowed the appeal on the basis of the uncontested planning testimony which affirmed to the Tribunal’s satisfaction that the variances arose from the proposed construction of a below grade garage, which because of the terminology of the City’s Zoning By-law No. 0225-2007 (“ZB”) includes subterranean garage space as if it were a visible, above grade, structural presence on the subject lands contributing to zoning calculations applicable to gross floor area, lot coverage, above grade garage area, front yard setbacks and dwelling depth.

[5] In further explanation of this particular zoning related requirement, Attachment 1, extracted from Tab 9, Exhibit 1, has been appended to illustrate the additional numerical contribution of the proposed subterranean garage space in comparison with values which exclude that below grade garage space for each variance. Attachment 1 revealed a distinct, and in the Tribunal’s view, compelling difference between the two columns of variances as follows:

1. With respect to the calculation of gross floor area, the ZB requires a maximum of 614.99 square metres (“m²”) whereas; the application proposes 542.7 m² or 704 m² depending on the garage being excluded or included in the gross floor area calculation.

2. Similarly, maximum lot coverage is 25%, whereas; calculations of 25.45% or 29.45% were determined assuming the exclusion of below grade garage space, or its inclusion.
3. The ZB's permitted garage area of 75 m² (maximum) is inflated substantially by the addition of underground garage to 243.4 m² versus the 75.3 m² area calculation arising from the deletion of underground garage space. (The proposed new home also proposes a conventional, above grade garage with three doors).
4. The minimum front yard setback of 12.0 metres ("m"), is compared to the setback distance of 13.7 m, assuming the subterranean garage space is not included, in comparison with the actual variance of 7.5 m in compliance with the ZB.
5. The combined, minimum width of side yards, calculated to be 9.46 m in compliance with the ZB is, however; unaffected by the underground garage area and describes a variance of 6.90 m with or without the underground garage.
6. With respect to the last variance of dwelling depth which the ZB requires a minimum depth of 20 m, a variance of 22.41 m arises in the absence of the subterranean garage but is 29.72 m with the inclusion of the subterranean garage space.

[6] Attachment 1 and the professional testimony which justified these variances within the broader context of prevailing policy and physical setting, was the basis for the oral decision allowing the appeal.

THE NEIGHBOURHOOD

[7] The subject lands are located within the Mineola Neighbourhood, an area of large lots and long established single family residences some of which have experienced reconstruction and replacement with larger homes.

[8] The Official Plan for the City ("OP") designates the subject lands Residential Low Density 1. The ZB categorizes the property as R1-2, a zoning designation which is subject to site plan control.

[9] The building drawing describing the new replacement home, (pages 37 and 38 of Exhibit 1) depicts a large French style residence, with a steeply pitched roof enclosing a partial second storey (the second storey is significantly smaller than the first floor because of the articulation of the roofline which restricts second storey habitable space). Available garage parking is provided above and below grade as noted and the subterranean portion is situated below both the proposed above grade garage structure and the driveway in roughly equal parts. According to evidence, the Applicant is a car enthusiast and anticipates storing his collection of automobiles within the below grade area.

PLANNING EVIDENCE

[10] David Brown, a Professional Planning Consultant was qualified to provide expert opinion evidence in the field of land use planning. Mr. Brown was very thorough in his testimony and was commended for his efforts in this regard.

[11] With regard to provincial policy, the planner opined that the Provincial Policy Statement 2014 and the Growth Plan for the Greater Golden Horseshoe 2017 encourage the efficient development of land on full municipal services and these policy objectives were met by the application in the planner's view..

[12] He testified that the OP acknowledges that neighbourhoods are not designated areas of intensification, but such areas are not to remain “static” or obliged to “imitate previous development patterns”. He cited OP policies that encourage appropriate infill actions that serve to revitalize areas but which “minimize undue impacts on adjacent properties”, dual objectives also met by the application in his opinion.

[13] The planner opined pursuant to section 45(1) of the *Planning Act*, that the application met the general intent and purpose of both the OP and ZB; was desirable for the use and development of the land because five out the six variances relate to the proposed subterranean garage which has no visible presence on the subject lands; and further, that the variances were singularly and collectively minor. During his testimony, Mr. Brown emphasized that the side yard variance, which is the only variance not associated with the below grade garage structure, is appropriate because the east and west sidewalls of the new home facing the adjacent residential properties on the west and east property boundaries are either single storey (east side) or are only partially two storeys in height as on the west boundary. The trees, which will be removed by the construction program, five in all, will be replaced within the side yards in accordance with site plan control, and because the adjacent neighbours do not oppose the application, the impact of the variance is deemed to be not adverse or materially impactful.

PARTICIPANT

[14] Speaking on behalf of the Credit Reserve Association, the local ratepayer organization, Maria Furlin, President, stated that the variances promote the over development of the subject property to an unprecedented degree within the neighbourhood for a property of its more limited dimensions in comparison with the majority of neighbourhood lots which are larger. Unlike nearby homes which are well setback from the front lot line on lots which are generally deeper than the subject property, the proposed residence will be set back in a manner quite out of character

with the neighbourhood. Additionally, the new building will unnecessarily damage and remove mature trees within reduced side yard corridors.

FINDINGS

[15] As noted, the oral decision made in favour of the Applicant was delivered in consideration that the below grade garage space, invisible as it will be, has only a numeric impact rather than a material or negative one on the subject lands and neighbourhood, an opinion amply substantiated by the small differences evidenced between the required standards of the ZB and the proposed values of the application when the underground garage is removed from the calculations as per Attachment 1. As significantly, the gross floor area of the new home will be less than that allowed by the ZB-minus the subterranean garage - a factor which is often impactful of lot and neighbourhood character when variations in gross floor area exceed the prevailing, neighbourhood norm and the required gross floor area standard of a municipal zoning by-law.

[16] In the Tribunal's view as well and as previously noted, the new residence's impact on adjacent lots arising from the reduced side yards will be mitigated architecturally, and by the proposed replanting program, which will afford additional buffer protection for those adjacent lots according to planning evidence.

[17] In this regard, the Tribunal found that the application accorded with the principles of good planning practice and meets the four tests for variances pursuant to section 45(1) of the *Planning Act*.

ORDER

[18] The Tribunal orders that the appeal is allowed and the variances to Zoning By-law No. 0225-2007 are authorized with regard to the property known municipally as 170 Pinewood Trail, City of Mississauga, subject to the condition that the future residence

will be built in substantial accordance with drawing numbers A200 and A201 by Nutima Architecture Ltd., as described on pages 37 and 38 of Exhibit 1.

“Richard Jones”

RICHARD JONES
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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VARIANCE COMPARISON CHART

Zoning By-law Section	Zoning Requirements	NOT INCLUDING Subterranean Garage	INCLUDING Subterranean Garage
1. GFA - Infill Residential Section 4.2.2 Table 4.2.2, Line 7.0	614.99 m² (190m ² plus 0.20 times the lot area)	542.7 m²	704.50 m²
2. Lot Coverage Section 4.2.1 Table 4.2.1, Line 5.0 Column B	25% (maximum)	25.45%	29.45%
3. Garage Area Section 4.1.12 Table 4.1.12.1, Line 2.1	75 m² (maximum)	75.3 m²	243.4 m²
4. Front Yard Setback Section 4.2.1 Table 4.2.1, Line 6.1 Column B	12.0m (minimum)	13.7m	7.5m
5. Combined Width of Side Yards Section 4.2.2 Table 4.2.2, Line 2.2	9.46m 27% of the lot width	6.90m	6.90m
6. Dwelling Depth Section 4.2.2 Table 4.2.2, Line 9.0	20.0m (maximum)	22.41m	29.72m