

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



ISSUE DATE: November 05, 2019

CASE NO(S): PL180806

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:	Attique Asad
Subject:	Minor Variance
Variance from By-law No.:	0225-2007
Property Address/Description:	3127 Given Road
Municipality:	City of Mississauga
Municipal File No.:	A053/18
OMB Case No.:	PL180806
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OMB Case Name:	Asad v. Mississauga (City)

Heard: March 20, 2019 in Mississauga, Ontario

APPEARANCES:

Parties

City of Mississauga

Attique Asad

Counsel

B. Ruddick, M. Ng

E. Karmazyn (student-at-law)

DECISION DELIVERED BY HELEN JACKSON AND ORDER OF THE TRIBUNAL

INTRODUCTION

[1] Attique Asad (the “Applicant”) bought his home on the property noted above in 2016. He subsequently constructed a series of sheds in his rear yard along the rear property line. He also had hardscaping done in the front yard enlarging the driveway and along the entire perimeter of the lot, into the rear yard. This work was done without a permit and does not comply with the Zoning By-law provisions for the area. The Applicant has requested variance relief from the provisions of the by-law in order to bring the property into compliance with the Zoning By-law. The City of Mississauga (the “City”) Committee of Adjustment (the “COA”) refused this request on September 6, 2018. Mr. Asad appealed this decision to the Local Planning Appeal Tribunal (“Tribunal”) pursuant to s. 45(12) of the *Planning Act* (“Act”).

[2] David Hahn, representing his parents David and Helen Hahn, requested and was granted participant status on behalf of his parents. The Applicant’s rear property line shares a property line with the Hahns. The Hahns’ objected to the City when construction of the sheds occurred, due to the size of these buildings and the lack of any setback to the property line. Mr. Hahn outlined to the Tribunal his concerns related to the rear sheds and the hardscaping in the Applicant’s rear yard.

[3] Ross Keyes, an engineer by training, testified on behalf of the Applicant. Mr. Keyes prepared the original plans for the sheds, and also a Revised Site Plan for the reconstruction of a rear accessory structure, date stamped as received by the City August 1, 2018 (entered into evidence as Exhibit 1, Tab 9). Mr. Keyes was not qualified to provide expert evidence in the hearing, but rather spoke to the site plan drawings that he prepared in relation to this application.

[4] Lucas Petricca, a Planner with the City, was qualified by the Tribunal to provide expert land use planning opinion evidence limited to this matter on the basis of his experience on the question before the Tribunal in this matter. This was Mr. Petricca’s

first time qualified by the Tribunal. He is a Candidate member of Ontario Professional Planners Institute.

REQUESTED VARIANCES

The Applicant revised their request before the COA three times. The latest application that went before the COA on September 6, 2018 requested relief from Zoning By-law No. 0225-2007, as amended, as follows:

1. a driveway width of 15.97 metres ("m") (approx. 52.39 feet ("ft.)); whereas By-law No. 0225-2007, as amended, permits a maximum driveway width of 6.00 m (approx. 19.68 ft.) in this instance;
2. a driveway setback of 0.00 m (approx. 0.00 ft.) to the side lot lines; whereas Zoning By-law No. 0225-2007, as amended, requires a minimum setback of 0.60 m (approx. 1.96 ft.) to the side lot lines in this instance;
3. a northerly walkway attachment of 1.675 m (approx. 5.49 ft.); whereas By-law No. 0225-2007, as amended, permits a maximum walkway attachment width of 1.50 m (approx. 4.92 ft.) in this instance;
4. a soft landscaped area of 31.95% of the front yard; whereas Zoning By-law No. 0225-2007, as amended, requires a minimum soft landscaped area of 40.00% of the front yard in this instance;
5. a floor area of 17.6 square metres ("m²") (approx. 189.44 square feet. ("sq ft.)) for the accessory structure; whereas By-law No. 0225- 2007, as amended, permits a maximum floor area of 10.00 m² (approx. 107.63 sq. ft.) for the accessory structure;

6. an occupied area of 13.92 m² (approx.149.83 sq. ft.) for the Gazebo; whereas Zoning By-law No. 0225-2007, as amended, permits a maximum occupied area of 10.00 m² (approx.107.63 sq. ft.) for the Gazebo in this instance;
7. total of 75% of the perimeter of the gazebo is enclosed by walls, lattices, doors and/or windows; whereas Zoning By-law No. 0225-2007, as amended, only permits a maximum of 50% of the total perimeter to be enclosed by walls, lattices, doors and/or windows; and
8. a northerly and southerly side yard of 0.00 m (approx. 0.00 ft.) measured to free standing deck; whereas Zoning By-law No. 0225-2007, as amended, requires a minimum side yard of 0.61 m (approx. 2.00 ft.) measured to the free standing deck.

[5] At the hearing, the Applicant indicated that he was no longer intending to build a gazebo; therefore, Variances 6 and 7 were no longer needed.

[6] The Applicant also stated that Variance 5 should be revised to be a request for 35.2 m² footprint for the accessory structure. This was based on the Revised Site Plan date stamped as received by the City August 1, 2018 (entered into evidence as Exhibit 1, Tab 9). The revised plan is for a new structure that respects the setbacks and is built to the height restriction in the Zoning By-law.

[7] The Applicant stated that Variance 3 should also include the setback for the south walkway. The variance should include: “and a southerly walkway attachment width of 1.824 m (5.98 ft.); whereas Zoning By-law No. 0225-2007, as amended, permits a maximum walkway attachment width of 1.50 m (approx. 4.92 ft.)”.

[8] Variance 8 relates to the side yard setback to the concrete decorative slabs, which are referred to in the variance description as ‘deck’.

[9] The City agreed with these modifications to the requested variances.

[10] Pursuant to s. 45(18.1.1) the Tribunal has the authority to amend the variances without further notice. The Tribunal exercises that authority and amends the variance request as described above accordingly.

ISSUE

[11] Section 45(1) of the Act allows the Tribunal to authorize variances to a Zoning By-law where the variance is minor; is desirable for the appropriate development or use of the land, building or structure; maintains the general intent and purpose of the Official Plan; and maintains the general intent and purpose of the Zoning By-law. The Tribunal must be satisfied that all four tests are met in order to authorize the requested variances.

POSITION OF THE PARTIES

[12] The Applicant stated that the originating complaint made by the Hahns was in regard to the back yard shed structures. The Applicant is now prepared to remove the existing structures and build a new accessory structure according to the revised site plan, and no longer intends to build a gazebo. The Applicant contends that there were no complaints about the driveway or the setbacks along the side yards and therefore these variances should be permitted.

[13] The City's position is that the City opposes: Variance 1 that allows the increased driveway width; Variance 2 that allows a 0 m setback for the driveway; Variance 4 that allows a decrease in the percentage of soft landscaping in the front yard; and, Variance 8 that permits a 0 m setback to the decorative stones.

[14] The City stated that they take no position on Variance 3, which permits the walkways, and Variance 5, which permits an accessory structure of 35.2 m², as long as

the accessory structure is built according to the revised site plan, that is, with the setbacks and height required by the provisions of the Zoning By-law.

[15] The City also noted that there is a question as to the accuracy of the variances and a full zoning review should be done to ensure the accuracy of the requested variances.

EVIDENCE

[16] Mr. Asad testified that he had purchased the home about 2.5 years prior and commenced the work in the front yard about five months after moving into the house. He stated that the by-law enforcement officer noted the driveway and front yard conditions at the time that he came to inspect the rear yard and sheds. Mr. Asad indicated that he required the large driveway to park multiple cars for his family's needs. He also stated that he had a hard surface installed extending to the property line because he was concerned about snakes coming from the trees and grass onto the driveway and frightening his children.

[17] Mr. Petricca provided background to the property conditions. He stated that this lot was developed through a severance in 2013. The lot is approximately 16 m by 66 m depth. He stated that the driveway was widened to 7.817 m and is the full width of the lot at the front of the house (15.97 m). He also stated that the accessory structure in the rear yard was built to the rear lot line and at a height of 3.84 m whereas 3.0 m maximum height is permitted in the Zoning By-law.

[18] Mr. Petricca reviewed the planning context for this application, referencing the documents provided in the Document Book at Exhibit 1. He stated that the property is within the Urban System in the Region of Peel's Official Plan. It is designated as Low Density 1 in the City's Official Plan. The property is within the Cooksville Neighbourhood East Character Area. It is located south of the Canada Pacific Railway corridor and north of the Dundas Street East intensification corridor. The surrounding

homes are single detached bungalow and two storey homes. The zoning is predominately R3.

[19] Mr. Petricca testified that there are no minor variances for increased driveway width or reduced soft landscaping or reduced side yard setbacks for hard surfaces for any of the homes in the area.

[20] Mr. Petricca referred to Section 9 – Build a Desirable Urban Form of the City’s Official Plan which states:

Site development is the layout and design of all features on a property including buildings, structures, parking, driveways, landscaping and utilities. Site development policies are directed at the creation of buildings and spaces which not only satisfy the needs of its own users and those who will live and work in the area, but also the needs of future generations. Sites will be developed to:

Respect the experience, identify and character of the surrounding context;

[21] He also referenced s. 9.5.1.1 that states:

Buildings and site design will be compatible with site conditions, the surrounding context and surrounding landscape of the existing or planned character of the area; and

s. 9.5.2 that states:

The arrangement of elements on a site, as well as their massing and design, should contribute to achieving the City’s vision and the intended character for the area. The development of a property may include one or

more buildings or structures, services and utilities, parking areas and driveways and landscaping. Site design which incorporates stormwater best management practices will assist in achieving sustainable development objectives.

[22] Mr. Petricca referenced s. 9.5.2.11 that states:

Site development will be required to:

- a. Incorporate stormwater best management practices;
- b. Provide enhanced streetscape;
- c. Provide landscaping that complements the public realm;

[23] In Mr. Petricca's opinion, the revisions to the accessory structure that move the structure to comply with the setbacks to the lot line and the reduction to the height of the building result in a structure that does not impact the neighbourhood character, does not result in drainage concerns to adjoining properties and as such, complies with the intent and purpose of the Official Plan, as outlined in the policies above. The provision of the appropriate setbacks ensures that the drainage from this structure does not impinge on neighbouring properties. He is of the view that the request for relief for the footprint of the building is appropriate in this instance, given that the size of the lot is large and can accommodate a large accessory structure.

[24] Similarly, he is of the view that the request for the slightly wider walkway than is permitted by the Zoning By-law provisions is appropriate as it is a small deviation from the Zoning By-law provision and is interior to the lot. In his view, this request respects and is compatible with the existing and planned character of the area.

[25] Mr. Petricca, however, is of the opinion that the request for relief from the Zoning By-law to permit hard surface to extend to the lot line without any setbacks is not

appropriate and does not comply with the intent and purpose of the Official Plan, which is to provide for best management practices for storm water management, given that the presence of hard surface to the edge of the lot line can result in impact to drainage to the neighbouring lands. As well, the significant hardscaping in the front yard is not compatible with the neighbourhood, as the homes in the neighbourhood have extensive soft landscaping in the front yards, a characteristic of the neighbourhood. The Applicant expressed the need for adequate parking for his family; however, Mr. Petricca noted that a driveway built to the provisions of the Zoning By-law would allow three cars to be parked in tandem, two wide, for a total of six cars; which is a significant number of cars.

[26] Mr. Petricca's opinion is that the intent and purpose of the Zoning By-law is maintained by the accessory structure and walkway, provided that the accessory structure is built according to the dimensions and location provided in the revised site plan, as this will reduce the impact of this structure on neighbouring lands.

[27] However, he testified that the requested relief for a widened driveway, reduced landscaping in the front yard, and reduced setbacks to the lot lines for hardscaping, do not meet the intent and purpose of the Zoning By-law. The provisions of the Zoning By-law are intended to provide for well landscaped front yards to complement the public realm, and to avoid wide driveways that allow excessive parking in the front yard. The requirement for setbacks along the lot lines is to mitigate any drainage issues to neighbouring lands.

[28] With respect to the question of whether the requested variances are minor, and an appropriate and desirable development of the lands; Mr. Petricca stated that the requested relief for the shed, as provided in the revised site plan, and the walkways, meet these tests, given that this relief will provide for an accessory structure and walkways that will have no undue adverse impact on the neighbouring lands or the character of the neighbourhood. However, the requested relief for the remainder of the variances are not appropriate, as the existing and planned context of the neighbourhood will not be maintained, and the impacts to the neighbouring lands are not minor.

ANALYSIS AND FINDINGS

[29] The Applicant submits that the inciting complaint from the Hahns related only to the presence of the sheds in the rear yard, and that the revised site plan for the accessory structure addresses these issues appropriately. No neighbours, including the Hahns, have expressed any concern with respect to the front yard conditions at the subject property. The Applicant submits that the lack of impact to the neighbours resulting from the conditions in the front yard should be considered by the Tribunal when determining whether the requested variances meet the four tests of the Act. Evan Karmazyn submits that there is no meaningful adverse effect on the neighbours or the neighbourhood as a result of the driveway conditions on the lot.

[30] The City contends that the question of whether a requested variance meets the four tests of the Act is not simply a question of impact but also includes the determination of whether the requested relief from the provisions of the Zoning By-law meets the intent and purpose of the Official Plan and the Zoning By-law, and is desirable and appropriate for the lands, and is minor. If a variance fails on any one part of the four-part test, it must be refused.

[31] Both parties provided previous decisions of the Board and case law for the Tribunal to consider in deliberating for this matter, which the Tribunal has considered in coming to this decision.

[32] In particular, the Tribunal finds that it is not proper to collapse the four-part test to one of exclusively of impact, as each part of the test is distinct and must be individually measured.

[33] The Tribunal heard uncontroverted planning opinion evidence from Mr. Petricca who went through the four tests of the Act that are required to be met for the authorization of a variance. It was his opinion that the four tests are met for the requested relief for the shed, as proposed by the revised plan, and the walkways;

however, in his opinion the remainder of the requested variances do not meet the four tests.

[34] The Tribunal relies on this opinion evidence in relation to the four tests of the Act. The Tribunal finds that the requested variance to permit an accessory structure with an area of 35.2 m², meets the four tests of the Act. Similarly, the Tribunal finds that a walkway with a slightly increased width also meets the four tests of the Act. However; the Tribunal is not persuaded that it is appropriate to authorize variance relief to the Zoning By-law that will permit an enlarged driveway, as this is clearly not the intent of the Official Plan or the Zoning By-law, which directs development to provide for soft landscaping in the front yard to enhance the streetscape and public realm. This finding is in line with previous decisions of the Board.

[35] Additionally, the Tribunal finds it is not appropriate to authorize variances that would permit hardscaping to extend to the lot line. The intent and purpose of the Official Plan and Zoning By-law is to direct development that includes best management practices for storm water management. The presence of a hardscaped surface to the lot line has the potential to result in drainage impact to neighbouring properties, which is contrary to the intent and purpose of the Official Plan.

[36] The Tribunal notes that the City advised that it wished to tie the authorization to the revised site plan; however, the revised site plan includes hardscaping that the Tribunal does not authorize.

Summary

[37] The Tribunal finds that it is appropriate to authorize the minor variance that will permit the accessory structure to be constructed with a Ground Floor Area of 35.2 m², which is in excess of the Zoning By-law provision for floor area. However, the existing sheds which are built to the property line must be removed, and the new accessory structure must comply with the Zoning By-law provisions for height and setback from the

property lines. The Tribunal also finds it appropriate to authorize the minor variance that will permit the walkways in the front.

[38] The Tribunal notes the City's comment that a Zoning By-law review has not been completed, and it is possible that there will be additional variances.

ORDER

[39] The Tribunal allows the appeal, in part.

[40] The following variances are authorized:

1. a floor area of 35.2 m² for the accessory structure; whereas Zoning By-law No. 0225- 2007, as amended, permits a maximum floor area of 10.00 m² for the accessory structure

2. a northerly walkway attachment width of 1.675 m (approx. 5.49 ft.) and a southerly walkway attachment width of 1.824 m (5.98 ft.); whereas Zoning By-law No. 0225-2007, as amended, permits a maximum walkway attachment width of 1.50 m (approx. 4.92 ft.) in this instance

[41] The remaining variances are not authorized.

"Helen Jackson"

HELEN JACKSON
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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