

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



**ISSUE DATE:** July 06, 2020

**CASE NO(S):**

PL180867

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 53(19) of the *Planning Act*, R.S.O. 1990, c. P.13, as amended

Applicant and Appellant: M & J Dhoot  
Subject: Consent  
Property Address/Description: 1654 Birchwood Drive  
Municipality: City of Mississauga  
Municipal File No.: B070/18  
LPAT Case No.: PL180867  
LPAT File No.: PL180867  
LPAT Case Name: Dhoot v. Mississauga (City)

**PROCEEDING COMMENCED UNDER** subsection 45(12) of the *Planning Act*, R.S.O. 1990, c. P.13, as amended

Applicant and Appellant: M & J Dhoot  
Subject: Minor Variance  
Variance from By-law No.: 0225-2007  
Property Address/Description: 1654 Birchwood Drive  
Municipality: City of Mississauga  
Municipal File No.: A396/18  
OMB Case No.: PL180867  
OMB File No.: PL180869

**PROCEEDING COMMENCED UNDER** subsection 45(12) of the *Planning Act*, R.S.O. 1990, c. P.13, as amended

Applicant and Appellant: M & J Dhoot

Subject: Minor Variance  
Variance from By-law No.: 0225-2007  
Property Address/Description: 1654 Birchwood Drive  
Municipality: City of Mississauga  
Municipal File No.: A395/18  
OMB Case No.: PL180867  
OMB File No.: PL180868

**Heard:** January 06, 07, 10, 2020 in Mississauga,  
Ontario

## **APPEARANCES:**

### **Parties**

Mohanjit and Jatinder Dhoot

Drew Pallet

City of Mississauga

### **Counsel**

D. Bronskill\*

R.K. Webb\* and H. Bahmanpour

B. Ruddick\*

## **DECISION OF THE TRIBUNAL DELIVERED BY DOUGLAS A. JOYNER AND ORDER OF THE TRIBUNAL**

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### **INTRODUCTION**

[1] Mohanjit and Jatinder Dhoot (the “Applicant/Appellants”) applied for variances and a consent to sever lands located at 1654 Birchwood Drive, Mississauga, Ontario (the “Subject Property”). The City of Mississauga Committee of Adjustment (the “COA”) refused the applications. The Appellants filed appeals to the Local Planning Appeal Tribunal (the “Tribunal”), seeking the following relief:

**Requested Relief:**

- a. The appeals of the Appellants from the decisions of the Mississauga COA (the “Decisions”);
- b. The requested variances, as set out in Schedule “A” subject to the conditions of approval, as set out in Schedule “B”; and
- c. The requested consent as shown on the draft R-Plan in Schedule “C” subject to the conditions of approval, as set out in Schedule “D”.

[2] The purpose of the applications is requesting a consent to sever the Subject Property to enable the creation of two new residential building lots in total; one retained lot and one severed lot with variances to implement the proposed lots and two new dwellings on these lots. A single detached dwelling is proposed to be constructed on each of the lots. The lot to be severed is referred to as (Part 1, interior lot) and the retained lot is referred to as (Part 2, the corner lot).

[3] The Subject Property is located within the Clarkson – Lorne Park neighbourhood of Mississauga, near the intersection of Clarkson Road North and Truscott Drive. The Tribunal heard evidence that this immediate area has irregular lotting pattern and a variety of lot sizes. Counsel for the Appellants made submissions that the severed and retained lots would be compatible with the existing lot fabric and appropriate within the context of the immediate neighbourhood.

[4] The Tribunal heard evidence from three experts, who were qualified to provide expert opinion evidence in the following fields: land use planning (Andrew Ferancik) for the Appellant; land resource management and development (N. Edward (Ted) Davidson) for Mr. Pallet; and, land use planning (Allan Ramsay) for the City of Mississauga. The Tribunal also heard briefly from three Participants; Joan Koszo, J. Paul Kennedy, and Rick Gaetz. The Tribunal notes there were several observers in the

gallery. Joan Koszo has been a resident for 18 years and stated that she is opposed to the proposed severance and consent as it will affect her property value. J. Paul Kennedy has been a resident for over 71 years and voiced several concerns pertaining to preserving the heritage of the neighbourhood, drainage concerns in the rear yard, and destruction of Oak trees. Rick Gaetz opposed the severance and would like to maintain the character of the street, maintaining deep lots and parkland/rural setting and retention of mature trees.

[5] Each lot will have lot areas that are larger than the minimum required zoning by-law. Part 1 (severed lot, interior) will have a lot area of 1,082.68 square metres and Part 2 (retained lot, corner lot) will have a lot area of 928.19 square metres.

[6] The focus of the appeals on the applications for consent and variances were with regard to lot frontage, gross floor area, and awning encroachment as outlined in (Schedule "A"- Requested Variances); see below,

#### Retained Lot

1. Lot frontage of 27.87 metres ("m") whereas By-law No. 0225-2007 as amended, requires a minimum lot frontage of 30 m.

#### Severed Lot

2. A Gross Floor Area – Infill residential of 520.07 square metres, whereas By-law No. 0225-2007, as amended, permits a maximum gross floor area – infill residential of 406.54 square metres.
3. An awning encroachment of 1.22 m into the required front yard whereas By-law No. 0225-2007, as amended, permits a maximum awning encroachment of 0.61m into the required front yard setback.

[7] The depth of the proposed severed and retained parcels is approximately 36 m

but would differ slightly with respect to lot frontage. The proposed lots comprise a lot frontage of 30 m for the severed portion (Part 1, interior) and 27.872 m for the retained lot (Part 2, corner lot). The Tribunal heard evidence that the immediate context of the Birchwood Drive neighbourhood has irregular lotting patterns with a variety of lot shapes, lot frontages, and lot sizes. 30 m frontages are located immediately abutting the Subject Property to the East.

[8] Through the application 'A' 396/18 (Part 1, severed lot), the Applicants are requesting a variance for excessive gross floor area and to exceed the maximum awning encroachment. An awning encroachment of 1.22 m into the required front yard whereas By-law No. 0225-2007 permits a maximum encroachment of 0.61 m. During the hearing, counsel for the City, referred the Tribunal to the City staff report to the COA, that the general intent of the gross floor area restrictions in the zoning by-law are to ensure that a dwelling is appropriately scaled to the lot on which it is constructed, and that it fits in with the general character of the neighbourhood. The Tribunal agrees with the staff report that although there are larger dwellings in this general area, these dwellings are situated on larger lots and don't appear out of place.

[9] In summary, the Applicants submit that that the proposed development application (variances and consent), with frontages of 30 m (Part 1) and 27.87 m (Part 2), are consistent with the Provincial Policy Statement, 2014 (the "PPS"), the Growth Plan for the Greater Golden Horseshoe (the "GPGGH"), to promote efficient development and land use planning and direct the focus towards appropriate intensification and redevelopment. A consent and minor variance application must also be evaluated against municipal planning policy after determining conformity with Provincial policy. Also, the Mississauga City Official Plan (the "MOP"), has several policy sections to consider when evaluating the proposal as to whether the consent and minor variances are consistent and compatible with the relevant area, character, and represent good planning. Counsel for the City and Mr. Pallet are of the view that the lot frontages, the excessive gross floor area, and the awning encroachment are not in keeping with the character of the neighborhood.

[10] In their closing argument, the City refers to the four overarching questions that the Tribunal should consider in coming to its decision with respect to the applications before you:

1. What is the relevant area for considering neighborhood character in the context of the MOP and what is the character of that area?
2. Would lots of the size proposed, protect, enhance, or preserve the character of the area?
3. Would the development proposed on the severed lands, in terms of gross floor area (“GFA”) protect, enhance, or preserve the character of the area?

And,

4. To what extent should the Tribunal apply the direction of the PPS and the Growth Plan with respect to intensification?

## **ANALYSIS AND FINDINGS**

[11] The Tribunal having considered the PPS, The Growth Plan, the MOP, the City Staff report to the COA, the submissions of counsel, and the evidence of three land use planners, prefers the evidence of the Applicants land use planner in all matters presented. Provincial planning policies encourage approval of this application. The MOP recognizes policy used to promote development and direct the focus towards modest intensification and redevelopment in neighbourhoods. An approval of this proposal represents good planning and would result in contextually appropriate, sensitive, and modest intensification within a mature neighbourhood. The Tribunal did not hear compelling analysis from the City or the neighbour to suggest that the proposed houses were too big for the neighbourhood. For this Subject Property, the Tribunal finds that the requested gross floor area is appropriate within the proposed design of this dwelling. The Tribunal agrees, there are areas of this proposal that contribute to additional

massing however, the Tribunal does not consider the gross floor area to be excessive within the immediate neighbourhood. The opposition did not produce a study of lot coverage in the neighbourhood or a study of setbacks in the neighbourhood to demonstrate how the proposed coverage or setbacks are out of keeping with the neighbourhood. The Tribunal heard no evidence of potential planning impacts, such as bulk/massing, loss of trees, or loss of privacy.

[12] The *Planning Act* requires the Tribunal to apply the following statutory tests:

- a) Subsection 3(5) of the *Planning Act* – Is the proposal consistent with the Provincial Policy Statement (2014)?
- b) Subsection 3(6) of the *Planning Act* – does the proposal conform with the Growth Plan for the Greater Golden Horseshoe (2019)?
- c) Subsection 45(1) of the *Planning Act* – do the requested variances meet the four tests in subsection 45(1).

[13] The Tribunal's authority to grant variances is given under subsection 45(1) of the *Planning Act* (the "Act"). This section has given rise to what are commonly referred to as the "Four Tests" for variance approval. The tests must be applied by the Committee when considering a variance application and by the Tribunal when making its decision on a variance appeal. In order to meet the tests, the variances must:

- a. Maintain the general intent and purpose of the OP;
- b. Maintain the general intent and purpose of the zoning by-law;
- c. Be desirable for the appropriate development or use of the land, building, or structure; and
- d. Be minor in nature.

[14] The Tribunal must also consider whether the variances have sufficient regard to the Provincial interests listed in section 2 of the *Planning Act*, whether they are consistent with the PPS.

[15] The *Planning Act*, section 3(5) provides the following:

A decision of Council of a Municipality, a local board, a planning board, a minister of the Crown and a ministry, board, commission or agency of the government, including the Tribunal, in respect of any authority that affects a planning matter;

- a) Shall be consistent with the policy statement issued under subsection (1) that are in effect on the date of the decisions; and
- b) Shall conform with the Provincial plans that are in effect on that date or shall not conflict with them as the case may be.

[16] The Tribunal notes that the above *Planning Act* provisions are mandatory.

[17] The *Planning Act* also sets out a number of Provincial Interests that are to be considered in Section 2. For the purpose of this hearing, the Tribunal finds that the interests listed below are most relevant:

The Minister, the Council of a Municipality, a local board, a planning board and the Tribunal in carrying out their responsibilities under this Act shall have regard to, among other matters, matters of Provincial Interest such as,

- h) the orderly development of safe and healthy communities;
- j) the adequate provision of a full range of housing, including affordable housing;
- p) the appropriate location of growth and development;
- q) the promotion of development that is designed to be sustainable, to support public transit and to be oriented to pedestrians.

[18] The Tribunal notes that these Provincial Interests are to be considered by the Tribunal in carrying out its responsibilities under the *Planning Act*.

[19] The Tribunal heard expert opinion evidence from Mr. Ferancik to solidify that the proposal represents a form of intensification that is in the public interests and encouraged by Provincial planning policies. The applicant's proposal also conforms to



the general intent of the Official Plan and satisfies the criteria of sections 45(1) and 51(24) of the *Planning Act*. The proposal conforms with the MOP and its direction for some infill in neighbourhoods like the Clarkson Lorne-Park neighbourhood. The severed and retained lands would be compatible with the existing lot fabric and entirely appropriate within the context of the immediate neighbourhood. The proposal represents good planning and would result in contextually appropriate and sensitive intensification within this stable (not static) neighbourhood, and development standards that are more than appropriate for this type of development. Mr. Ferancik provided the Tribunal with a review of all relevant policies in the MOP, including:

- a. Much of the City's greenfield lands have been developed and much of its infrastructure is in place. (Exhibit 1, pg. 231).
- b. The City's Neighbourhood's are not appropriate areas for significant intensification but residential intensification within Neighbourhoods will generally occur through infilling and the development of existing commercial sites as mixed-use areas. (Exhibit 1, pg. 259).
- c. Intensification within Neighbourhoods may be considered where the proposed development is compatible in-built form and scale to surrounding development, enhances the existing or planned development and is consistent with the policies of the MOP.
- d. Neighbourhoods are stable areas where limited growth is anticipated. (Exhibit 1, pg. 259).

[20] The Tribunal heard evidence from both the Applicant's and the City's Witness that a plan of subdivision is not required for the development of the Subject Property and the proposed consent has regard to the matters under subsection 51(24) of the *Planning Act*. While opposed in their testimony in chief to the proposed development,

under cross examination, Mr. Davidson and Mr. Ramsay generally agreed that the proposed houses are compatible with other houses in the neighbourhood, and in terms of the neighbourhood study areas, all three planners took a broadly similar approach in terms of defining the study and the character of the area. In his testimony, Mr. Davidson referred to the important character elements of the neighbourhood are:

1. Lack of sidewalks;
2. Large tree canopy;
3. Lack of storm sewers and curbs;
4. Large Lot frontages, large areas and lot depths;
5. Large front yard building setbacks;
6. Large spacial separation between buildings;
7. Well treed and landscaped front yards;
8. Privacy;
9. Reduced or no over look to adjacent properties;
10. Little or no on street parking which requires larger front yard setbacks for visitors;
11. No available or planned transit;
12. Limited vehicular access to the neighbourhood

[21] However, under cross examination, Mr. Ramsay agreed that 50% of the lots within this immediate neighbourhood have frontages between 28 metres and 30 metres,

as proposed by the Appellants. He also agreed that over 50% of the lots within the surrounding neighbourhood area had areas between 695 square metres and 1,390 square metres, meaning the proposed lots would fall within the majority of lot areas.

[22] The Tribunal heard evidence from both Mr. Davidson and Mr. Ramsay that they believe that what the Appellant is proposing is not in character with the neighborhood, the area is a stable residential community, very limited number of severances have occurred in the last 40 or 50 years and they submit that this indicates the great stability of the area. In their opinion, Mr. Davidson and Mr. Ramsay opined that the proposal does not respect the existing lotting pattern and that the retained and severed lots will be among the smallest in the neighbourhood. Furthermore, it is both their opinion that the proposal does not respect the continuity of setbacks nor does it respect the scale and character of the surrounding area because the proposal is an over-development of the site and is out of scale and character with the surrounding area as pointed out in the MOP.

[23] Section 16.5.4 requires infill housing to:

(c) see new housing to fit the scale and character of the surrounding area and take advantage of the features of a particular site;

(j) the building mass, side yards and rear yards should respect and relate to those of adjacent lots.

[24] Having considered all the evidence, the Tribunal finds that the proposal is consistent with the PPS and conforms with the GPGGH because the applications promote efficient development and appropriate land use consisting of modest intensification and redevelopment within an established settlement area (section 1.3.1). The Tribunal agrees that this infill will allow for an efficient use of existing services that already exist and will take advantage of the transportation infrastructure and housing options that continue to respect the existing character of the neighbourhood (section 1.1.3.2).

[25] The Tribunal heard evidence that the MOP has a number of policy sections used

to consider and evaluate this proposal. The general intent and purpose of the MOP speaks to growth, compatible development, and the protection of neighbourhood character. The Tribunal also finds that the general intent of the zoning by-law has been accomplished and the proposal can develop in an appropriate fashion with minimal conflicts. The Tribunal notes that this proposal does not require a variance for minimum setbacks.

[26] The Tribunal accepts and prefers the planning evidence and opinions of Mr. Ferancik, land use planner retained by the Applicant, to find that the tests established in section 45(1) of the *Planning Act*, is met. On the sum of the evidence, the Tribunal is satisfied the general intent and purpose of the Official Plan and the zoning by-law is being properly maintained. The variances will facilitate the development of the Subject Property for a use and in a manner that is appropriate and desirable and consistent with the principles of good land use planning. The proposed variances are minor in nature and do not result in the creation of a modest awning or increased gross floor area that will have unacceptable adverse impacts to neighbouring properties or the broader neighbourhood, as opined by the adjacent neighbours. The Tribunal finds that such development is desirable.

[27] In his closing argument, Mr. Bronskill refers to the following case to support his argument that the question whether a variance is minor or not.

[28] The leading case *McNamara Corp. v. Colekin Investments Ltd.* (1977), 15 O.R. (2d) 718 (Ont. Div. Ct.) has this to say in terms of variance on a performance standard:

The Legislature by s. 42(1) confided to committees of adjustment and ultimately to the Municipal Board the authority to allow "minor variances". The statute does not define these words and their exact scope is likely incapable of being prescribed. The term is a relative one and should be flexibly applied: *Re Perry et al. and Taggart et al.*, {1971} 3 O.R. 666, 21 D.L.R. (3d) 402 (Ont. H.C.). No hard and fast criteria can be laid down, the question whether a variance is minor must in each case be determined in the light of the particular facts and circumstances of the case. In certain situations, total exemption from a by-law will exclude a variance from falling within the category of "minor variances". But not necessarily so. In other situations, such a variance may be considered a minor one. It is for the committee and, in the event of an appeal, the Board to determine the extent

to which a by-law provision may be relaxed, and a variance still classed "minor".

## **DECISION**

[29] The Tribunal finds that the requested variances meet the four tests in subsection 45(1) of the *Planning Act* and will allow the appeals and approves the variances.

[30] The Tribunal will allow the variance appeals, allow the consent appeal, with the relief granted as requested in paragraph 1 and subject to the conditions in Schedule B and D.

## **ORDER**

[31] THE BOARD ORDERS that the appeal of the variances is allowed, and the variances to By-law No. 0225-2007, as amended, are authorized subject to the conditions set out in Schedule "B" to this Order.

[32] THE BOARD ORDERS that the appeal of the consent is allowed, and the provisional consent is to be given subject to the conditions as set out in Schedule "D" to this Order.

[33] This is the Order of the Tribunal.

*"Douglas A. Joyner"*

DOUGLAS A. JOYNER  
MEMBER

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

### **Local Planning Appeal Tribunal**

A constituent tribunal of Ontario Land Tribunals

Website: [www.olt.gov.on.ca](http://www.olt.gov.on.ca) Telephone: 416-212-6349 Toll Free: 1-866-448-2248

SCHEDULE "A" – REQUESTED VARIANCES

Retained Lot

1. Lot frontage of 27.87 metres (approx. 91.44 feet) whereas By-law 0225-2007, as amended, requires a minimum lot frontage of 30.00 metres (approx.. 98.43 feet).

Severed Lot

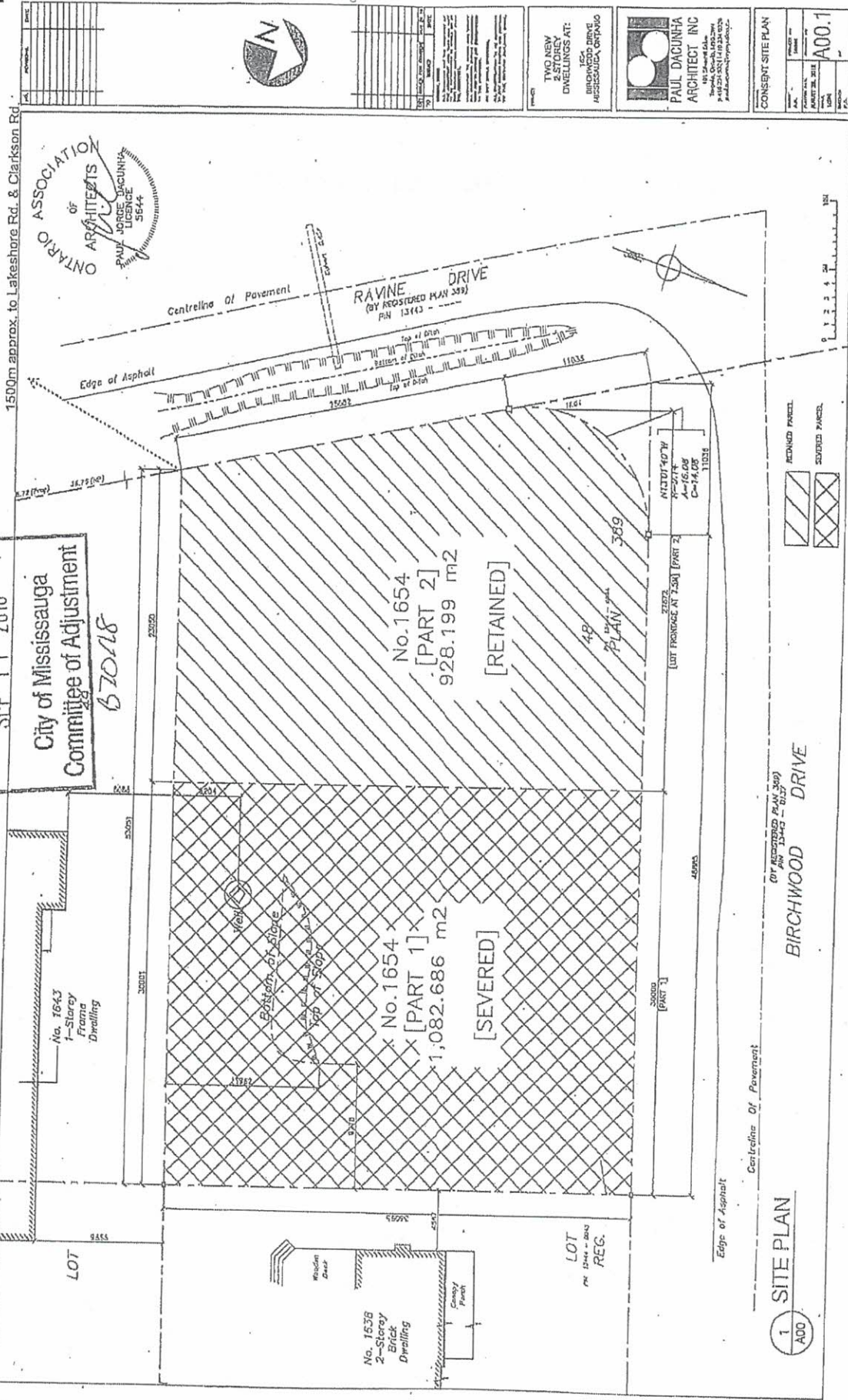
2. A gross floor area – infill residential of 520.07 square metres (approx.. 5,597.99 square feet) whereas By-law 0225-2007, as amended, permits a maximum gross floor area – infill residential of 406.54 square metres (approx. 4,375.96 square feet).
3. An awning encroachment of 1.22 metres (approx.. 4.00 feet) into the required front yard whereas By-law 0225-2007, as amended, permits a maximum awning encroachment of 0.61 metres (approx.. 2.00 feet) into the required front yard setback.

**SCHEDULE "B" – CONDITIONS OF APPROVAL FOR VARIANCES**

1. Any construction shall be substantially in accordance with the site plan (Drawing A00), dated May 14, 2019, filed as Exhibit 4 with the Local Planning Appeal Tribunal.

SCHEDULE "C" – DRAFT R-PLAN FOR CONSENT





**RECEIVED**  
SEP 11 2018  
City of Mississauga  
Committee of Adjustment  
67018

1500m approx. to Lakeshore Rd. & Clarkson Rd.

**ONTARIO ASSOCIATION OF ARCHITECTS**  
PAUL JORDJE DUCUNHA  
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**TWO NEW TOWNHOMES DWELLINGS AT:**  
BIRCHWOOD DRIVE  
MISSISSAUGA, ONTARIO

CONSENT SITE PLAN

DATE: \_\_\_\_\_  
PROJECT NO.: \_\_\_\_\_  
SHEET NO.: 1 OF 1  
SCALE: 1/8" = 1'-0"

**A00.1**

**SCHEDULE "D" – CONDITIONS OF APPROVAL FOR CONSENT**

1. Approval of the draft reference plan(s), as applicable, shall be obtained at the Committee of Adjustment office, and the required number of prints of the resultant deposited reference plan(s) shall be received.
2. If any city department or external agency (e.g. Region of Peel, Conservation Authority, etc.) determines that an easement or right-of-way is required that was not included in the provisional approval it may be added prior to the final approval of the application.
3. A letter shall be received from the City of Mississauga, Manager of Zoning Plan Examination, indicating that the conveyed land and retained lands comply with the provisions of the Zoning By-law, or alternatively, that any variances are approved by the appropriate authorities and that such approval is final and binding ("A"395/18 & "A"396/18).
4. A letter shall be received from the City of Mississauga, Transportation and Works Department, indicating that satisfactory arrangements have been made with respect to the matters addressed in their comments dated October 12, 2018.
5. A letter shall be received from the City of Mississauga, Community Services Department, indicating that satisfactory arrangements have been made with respect to the matters addressed in their comments dated October 12, 2018.
6. A letter shall be received from the Region of Peel, Development Services/Public Works, indicating that satisfactory arrangements have been made with respect to the matters addressed in their comments dated October 15, 2018.
7. The applicant shall provide a cash contribution of \$1607.46 for planting of three (3) street trees on Birchwood Drive. This figure is subject to the most recent Fees and Charges By-law at the time of payment and is therefore subject to change.