

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



ISSUE DATE: March 20, 2020

CASE NO(S): PL180902

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: | Pat Runzer |
| Applicant: | IMH 2185 Sheridan & 2250 Homelands Inc. |
| Subject: | Minor Variance |
| Variance from By-law No.: | 0225-2007 |
| Property Address/Description: | 2250 Homelands Drive & 2185 Sheridan Park Drive |
| Municipality: | City of Mississauga |
| Municipal File No.: | A328/18 |
| LPAT Case No.: | PL180902 |
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| LPAT Case Name: | Runzer v. Mississauga (City) |

Heard: April 30, 2019 in Mississauga, Ontario

APPEARANCES:

Parties

Counsel*/Representative

Pat Runzer

Self-represented

IMH 2185 Sheridan & 2250
Homelands Inc.

Scott Snider*
Jennifer Meader*

City of Mississauga

No one appeared

DECISION DELIVERED BY JOHN DOUGLAS AND ORDER OF THE TRIBUNAL

BACKGROUND

[1] This was a hearing in the matter of an appeal to the Local Planning Appeal Tribunal (the “Tribunal”) pursuant to s. 45(12) of the *Planning Act* (the “Act”) made by the Concerned Homelands Sheridan Residents (represented by Pat Runzer (the “Appellant”) regarding a decision of the City of Mississauga (the “City”) Committee of Adjustment (the “Committee”) to approve a variance for parking to allow the addition of a 17 storey residential apartment building with 150 units on lands located at 2185 Sheridan Park Drive and 2250 Homelands Drive (the “subject property”).

[2] The subject property, located on the northeast corner of Sheridan Park Drive and Homelands Drive, is currently improved with two 14-storey, 166 unit rental apartment buildings, totalling 332 units and providing a total of 410 parking spaces.

[3] The existing land uses surrounding the subject property include single detached residential neighbourhoods to the north and west, medium density townhouse dwellings to the east and a utility corridor and Region of Peel Paramedic Station and the Sheridan Research Park to the south. Further to the south are a number of business employment uses.

[4] On November 1, 2018, the Committee approved an application for minor variance by IMH 2185 Sheridan & 2250 Homelands Ltd. (the “Applicant”) seeking relief from the parking standard under the City’s Zoning By-law No. 0225-2017. The Committee’s decision permitted the construction a 152-unit rental apartment building on the subject lands, as an infill development, which combined with the two existing towers would result in a total of 484 units with 516 parking spaces (444 Resident parking spaces and 72 visitor parking spaces). A group of local residents, the Concerned Homelands Sheridan Residents, appealed the Committee’s decision to the Tribunal.

[5] To address concerns raised, the Applicant has since amended its proposal,

decreasing the number of proposed new units and thereby raising the proposed parking rate. The Applicant provided the following wording regarding the proposed amendment:

To allow the addition of a 17 storey apartment building on the site proposing a total of 516 parking spaces (72 visitor) at a rate of 0.95 spaces per unit for residents and 0.15 spaces per unit for visitors (total of 1.10 spaces per unit applied across the site) whereas By-law 0225-2007, as amended, requires a minimum of 1.0 to 1.5 spaces per unit for residents (depending on unit type) and 0.2 spaces per unit for visitors.

[6] The number of units in the proposed building has been reduced to 136 units which combined with the units in the existing buildings would result in a total of 468 apartment units on the subject property. However, the parking plan for the proposed building has not changed. The following Table provides a breakdown regarding parking:

| A. | B. Parking spaces in Existing Buildings | C. Parking Spaces for New Building per ZBL No. 0225-2017 | D. Total No. of parking spaces required by ZBL No. 0225-2017 | E. Total No. of parking spaces proposed |
|-----------------------------|---|--|--|---|
| Spaces for Resident Parking | 422 | 170 | 592 | 444 |
| Spaces for Visitor Parking | 66 | 27 | 93 | 72 |
| Total Spaces | 488 | 197 | 685 | 516 |

[7] Counsel for the Applicant requested that the Tribunal exercise its authority under s. 45 (18.1) of the Act to hear the amended application. Following submissions from the Parties the Tribunal is satisfied that notice was provided and given that the amended variance requested is less than was originally applied for, the Tribunal agreed to hear the appeal on the amended variance application.

[8] According to the evidence before the Tribunal, the total number of parking spaces required under ZBL No. 0225-2017 is calculated based on parking rates set out in the by-law. The parking rate varies based on unit size. Using those rates, the Total number of parking spaces required under ZBL No. 0225-2017 were calculated and are shown in column D in the Table above.

[9] The application before the Tribunal, as amended, is to allow a variance to Zoning By-law No. 0225-2017 to allow the proposed number of parking spaces shown in Column E of the Table in paragraph [5].

[10] The Tribunal became aware that the group of residents referred to as the Concerned Homelands Sheridan Residents was not an incorporated body and as a result the Tribunal did not accept the group as a party. After hearing submissions and on consent of the Parties, Pat Runzer, a member of the collection of homeowners referred to as the Concerned Homelands Sheridan Residents, was granted party status in the group's stead for the hearing.

[11] The Tribunal heard two requests for participant status. Following submissions and on the consent of the Parties Valerie Sprenger and Gavin Fraser were granted participant status.

[12] The Tribunal heard from three lay witnesses who appeared in opposition to the proposed minor variance: Pat Runzer, Valerie Sprenger and Gavin Fraser.

[13] The Tribunal heard from two expert witnesses who were called to provide evidence in support of the proposed minor variances:

- Following submissions on his qualifications and on the consent of the Parties, Mark Rogers was qualified by the Tribunal to provide expert opinion evidence in land use planning.
- Following submissions on his qualifications and on the consent of the Parties, Kenneth Chan was qualified by the Tribunal to provide expert opinion evidence in Transportation Planning and Engineering.

[14] When considering a minor variance, the Tribunal must consider the four-part test

set out in s. 45(1) of the Act: Does the variance maintain the general intent and purpose of the official plan (“OP”)?; Does the variance maintain the general intent and purpose of the zoning by-law?; Is the variance desirable for the appropriate development or use of the land?; and Is the variance minor?

[15] The Tribunal must also determine whether the variance requested has had regard for matters of provincial interest under s. 2 of the Act; is consistent with the Provincial Policy Statement, 2014 (the “PPS 2014”); and conforms to the Growth Plan for the Greater Golden Horseshoe 2017 (the “Growth Plan 2017” which was in force and effect at the time of this hearing).

[16] Mr. Rogers testified that the proposal contributes to the adequate provision of a full range of housing, provides for necessary rental housing units, and is an appropriate location for this type of growth and development. He opined that the proposal has had appropriated regard for matters of provincial interest under s. 2 of the Act.

[17] Mr. Rogers testified that the proposed development; promotes an efficient land use pattern that is supportive of public transit through the intensification of an under-utilized site within an already developed area; is infill development contributing to intensification; and, supports the objectives of developing complete communities by making efficient use of land and existing infrastructure at a location that is well served by alternative modes of transportation. He opined that the proposal is consistent with the policies of the PPS 2014 and conforms to the policies of the Growth Plan 2017.

[18] Based on Mr. Rogers’ uncontested planning evidence the Tribunal finds that the application is consistent with the PPS 2014, and conforms to the Growth Plan 2017.

[19] Ms. Runzer and Ms. Sprenger testified that the proposal will contribute to a number of generalized impacts on health and environment, increased traffic, noise, and pollution, and loss of privacy for neighbour’s backyards, properties, and will negatively impact property values. Ms. Runzer and Ms. Sprenger also raised concerns with

respect to concerns local residents had with the process leading up to (and after) the Committee made its decision.

[20] Mr. Fraser's evidence focused on broad air quality issues citing various studies, including the Balsillie Report, the *Action Plan: Report of the Air Quality Task Force to the Honourable John Gerretsen, Minister of the Environment*.

[21] As noted in a previous Tribunal decision, *Larry and Susan Conlin v North Kawartha (Township)*, 2020 CanLII 1422 (ON LPAT) ("*Conlin*" decision) there are a number of grounds for the appeal which the Tribunal is not able to address, in this case through the hearing of the appeal of an application for minor variance. In paragraph 14, Member Lanthier provides a summary of the extent to which certain issues can be addressed by the Tribunal, two of which are particularly relevant in this matter:

1. The Appellants assert that the ZBLA will somehow adversely affect property values of other nearby properties. Such matters are not valid grounds for appeal to be considered by the Tribunal. ...
3. Much of the Appellants' concerns relate to the procedural conduct of the meeting of Council that gave rise to the passage of the ZBLA, a "rehashing" of events during the meeting (with numerous references to portions of the video recording of the hearing), and objections to the correctness of information presented at that meeting. Although s. 2.1(1) of the *Planning Act* requires the Tribunal to have regard to the decision of council and any information and material that Council considered in making the decision, the hearing of this Appeal is a hearing *de novo*, on the evidence presented, and a determination of the identified issues upon that evidence. A retroactive critiquing of what occurred at the Council meeting by the Appellants is of little or no assistance to the Tribunal in the determination of the issues now before it.

[22] This is a hearing *de novo*. As per the *Conlin* decision, concerns raised around what occurred leading up to the decision of the Committee "is of little or not assistance to the Tribunal in the determination of the issues now before it". Although the Appellant did not dwell on it during her testimony, the Tribunal wants to be clear that the concern raised around potential impacts on property values are also not valid grounds for appeal to be considered by the Tribunal.

[23] With respect to the concerns of loss of privacy or overlook, the Tribunal notes that according to the evidence before the Tribunal no variance is required with respect to rear yard setback. The maximum rear yard setback requirement (where a rear lot line, or any portion thereof, abuts a zone permitting detached and/or semi-detached) is 25.5 metres (“m”). The proposed building is to be located 68.6 m from the rear lot line. Based on the evidence the Tribunal finds that there will be no significant impacts in terms of overlook or privacy.

[24] The concerns raised by Mr. Fraser regarding air quality are highly generalized, and the connection he makes between this proposed development and the studies he presented was not supported by any expert evidence. Although the Tribunal understands the sincerely felt concerns Mr. Fraser has with respect to air quality, the Tribunal simply has not been provided any convincing evidence that this application for a variance to a parking standard should be denied on the basis of air-quality concerns.

[25] Of the concerns raised by the Appellant and the Participants, what is germane to the Tribunal are the concerns related to variance for requested for parking. As noted earlier, an application for minor variance must be considered against the four tests set out in s. 45(1) of the Act.

[26] Mr. Rogers testified that the application, as amended, meets the general intent and purpose of the City’s OP and the Sheridan Neighbourhood District policies. He noted that most of the greenfield lands in Mississauga have been developed and much of its infrastructure is in place. He opined that most new growth in the City will take place primarily through infilling, intensification and redevelopment. Mr. Rogers testified that the subject property is designated Residential High Density in the City’s OP, which permits residential apartment dwellings. With respect to concerns of the residents regarding traffic impacts, Mr. Rogers evidence shows that Sheridan Park Drive is classified as a Major Collector Road within Table 8-2 of the City’s OP. The OP states that major collectors in Neighbourhoods will be designed to accommodate moderate volumes of traffic and will be the focus of active transportation facilities. The Tribunal

heard no expert testimony to suggest that this proposal would result in adverse traffic impacts. He testified that the subject property is an appropriate location for the proposed infill development making efficient use of existing infrastructure and supporting existing transit services.

[27] The Appellant and Ms. Sprenger did not provide any testimony related to the OP.

[28] The Appellant and Ms. Sprenger testified that the application does not maintain the general intent and purpose of the ZBL. They contest that as a result of the proposed new building the Applicant will be providing almost 30% fewer parking spaces than required by ZBL No. 0225-2017. One of the key concerns was that impact on the availability of street parking. Based on the observations of the Appellant, and Ms. Sprenger, residents (and/or visitors) from the apartments on the subject property are parking on the side streets. They also expressed concern that the Parking Utilization Studies undertaken were flawed for two key reasons: both studies took place when paid visitor parking was in effect; and, the timing of the observations was flawed – the second study had only two days and did not include observations from two days for two consecutive weeks.

[29] Mr. Chan testified that the parking utilization study was conducted on four separate times: Parking Utilization Study - November 2017; Parking Utilization Study - June 2018, Parking Utilization Study Update - October 2018, and Parking Utilization Study Update - April 2019. Mr. Chan noted that the update conducted in April 2019 was undertaken to address concerns set out in the appeal to the Tribunal. This is one of the reasons that the application was amended to improve the overall parking rate for the subject property. Mr. Chan testified that he had recommended that paid visitor parking be eliminated and that he is satisfied based on the studies that the proposed number of visitor parking spaces is sufficient. Mr. Chan further testified that while a total of 516 parking spaces are to be provided, the anticipated peak parking demand will be for 487 spaces. Mr. Chan opined that there will be no significant impact on the surrounding neighbourhood.

[30] Mr. Rogers testified, based on the parking utilization studies that have been completed in accordance with the terms of reference as set out by the City, based on current utilization, it has been concluded that sufficient parking will be provided at the reduced rate, with an anticipate surplus of 43 parking spaces (10 resident spaces and 33 visitor spaces). Mr. Rogers opined that the application, as amended, meets the general intent and purpose of ZBL No. 0225-2017.

[31] The Appellant and Mr. Sprenger testified that the proposed reduction in parking is neither minor nor desirable for the appropriate development of the subject lands because of the potential the residents and visitors to the apartments of the subject property might use available public parking (where permitted) on streets in the neighbourhood.

[32] Mr. Rogers testified that based on the parking utilization, studies undertaken have found that there is a surplus of available parking on-site presently and it is expected that there will continue to be a surplus of available parking on-site following construction of a new 17-storey, 136-unit rental apartment building. The requested variance to reduce the required number of on-site parking spaces will not result in a negative impact on the surrounding community. He further testified that the requested variance, as amended, strikes a balance between a potential costly oversupply of parking against a potential undersupply of housing and as such the requested variance, as amended, is appropriate for the development of the subject lands.

[33] In summary, Mr. Rogers testified that in his professional planning opinion the requested variance, as amended meet the tests as prescribed by s. 45(1) of the Act.

CONCLUSION

[34] The Tribunal heard no objective expert evidence to suggest that the variance requested, as amended, will have any negative impact on the surrounding community.

The Tribunal notes, based on recommendations in the City's planning report, that City staff did not anticipate any negative impacts on the surrounding neighbourhood.

[35] Upon the findings made, Mr. Rogers' uncontested and unchallenged land use planning evidence, and Mr. Chan's uncontested and unchallenged evidence regarding parking and traffic, and the whole of the evidence inclusive of the documentary record, the Tribunal finds that the proposed variance meets the four tests set out in s. 45(1) of the Act, is consistent with the PPS 2014, conforms with the Growth Plan 2017, and has had regard for 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 in part so that the Tribunal may authorize an amended variance for parking as set out in paragraphs [5] and [6] of this decision.

ORDER

[36] The Tribunal orders that the appeal is allowed in part in order to allow the Tribunal to amend the variance for parking as set out in paragraphs [5] and [6] of this decision.

[37] The appeal is otherwise dismissed.

[38] The Tribunal so orders.

"John Douglas"

JOHN DOUGLAS
MEMBER

If there is an attachment referred to in this document,
please visit www.elfo.gov.on.ca to view the attachment in PDF format.

Local Planning Appeal Tribunal

A constituent tribunal of Tribunals Ontario - Environment and Land Division
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