

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



ISSUE DATE: May 08, 2019

CASE NO(S): PL180919

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:	Hak Chung and Mikyung Kang
Subject:	Minor Variance
Variance from By-law No.:	6593
Property Address/Description:	48 Emerson Street
Municipality:	City of Hamilton
Municipal File No.:	A-255/18
LPAT Case No.:	PL180919
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LPAT Case Name:	Chung v. Hamilton (City)

Heard: April 25, 2019 in Hamilton, Ontario

APPEARANCES:

Party

Hak Chung and Mikyung Kang

Counsel

Anna Toumanians

**MEMORANDUM OF ORAL DECISION DELIVERED BY HELEN JACKSON ON
APRIL 25, 2019 AND ORDER OF THE TRIBUNAL**

[1] Hak Chung and Mikyung Kang (the “Applicants”) applied for relief from Zoning By-law No. 6593 (“ZBL”), as amended, to permit the construction of a new two storey single family dwelling for their property at 48 Emerson Street. The City of Hamilton

("City") Committee of Adjustment (the "COA") refused the application. The refusal was appealed to the Tribunal as is described further herein.

[2] The variance relief requested was for a building height of 9.10 metres ("m") whereas the ZBL requires a maximum building height of 9.0 m. The Applicant is also seeking a second variance to allow for a Gross Floor Area ("GFA") of 66% whereas the ZBL limits the GFA to 45%. The City Planning Staff were not supportive of the variance for height, but were supportive of the variance for GFA.

[3] At the commencement of the hearing, the Applicants advised the Tribunal that they no longer required the variance for height, as they intended to build within the by-law provisions. Pursuant to s. 45(18.1) of the *Planning Act*, the Applicants requested the Tribunal consider an amended application to include only the variance for GFA. The Applicants request the Tribunal exercise its discretion pursuant to s. 45(18.1.1) of the Act and find that this change is minor and no further notice of the revised application is required. The Tribunal is satisfied that with the reduction of the requested number of variances, the change to the application is minor and no further notice is required.

[4] Joseph Sanseverino, Planning Technician for the City responsible for this application, was summoned by the Applicants. Mr. Sanseverino provided uncontested expert land use planning evidence at the hearing. No other persons attended the hearing.

REQUESTED VARIANCES

The amended application requests relief from the ZBL, as amended, subject to the Notes, as follows:

1. A maximum gross floor area ratio (GFA) of 66% (0.66) shall be permitted instead of the maximum gross floor area ratio (GFA) of 45% (0.45).

NOTES:

1. The C/S 1335a District permits a maximum floor area ratio of 45% based on the lot area multiplied by the factor of 0.45.

2. The property requires the provision of 3 parking spaces based on a total of 10 habitable rooms. The Hamilton Zoning By-law 6593 requires 2 parking spaces for the first 8 habitable rooms and 0.5 parking spaces for each additional habitable room.
3. The proposed building height for the single family dwelling has been measured from grade as defined in the Zoning By-law.

ISSUE

[5] Section 45(1) of the *Planning 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 (“OP”); 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.

EVIDENCE

[6] Mr. Sanseverino described the planning context and the proposal. The lands are designated Neighbourhoods in the Urban Hamilton Official Plan (“UHOP”) and Residential Low Density 2 in the Ainslie Wood Westdale Secondary Plan (“Secondary Plan”). The lands are zoned C/S 1335a and C/S-1335 (Urban Protected Residential) in the ZBL, as amended.

[7] Mr. Sanseverino indicated that the new home is to be two storeys in height. The footprint of the new home will be slightly smaller than the current house that is to be demolished. He indicated that the lot coverage complies with the ZBL and to all other setback provisions in the ZBL. The location is in close proximity to the University and the hospital. His opinion is that the overall scale is in keeping with the character of the neighbourhood, which consists of a mix of one and two storey homes.

[8] Mr. Sanseverino testified the proposed new dwelling is consistent with the Provincial Policy Statement (“PPS”) and conforms to the Growth Plan for the Greater

Golden Horseshoe (“Growth Plan”). The application is to rebuild a home. This provides replenishment of the housing stock and retains the residential use of the property. This is an appropriate area for single family dwellings and the replacement of the existing dwelling is in keeping with the surrounding neighbourhood.

[9] Mr. Sanseverino explained that the ZBL includes portions of the basement in the calculation of GFA. He states that:

“The GFA standard that is varied by the application does not alter the overall footprint of the proposed dwelling and has no impact on the requirements for front, side and rear yard setbacks, landscaping and onsite parking provisions in the ZBL. As such, the proposed dwelling will have no impact on surrounding properties and streetscape of the neighbourhood.”

[10] Mr. Sanseverino opined that the proposed variance for GFA maintains the general intent and purpose of the UHOP and the ZBL, is minor in nature and is desirable and appropriate for the use of the lands.

[11] He confirmed that City staff are in support of the variance for relief for maximum GFA.

ANALYSIS AND FINDINGS

[12] The Tribunal has considered the uncontroverted evidence provided at this hearing. Based on this evidence the Tribunal finds that the amended application and requested variance for GFA to permit a new home meets the intent and purpose of the UHOP which provides that new development must respect and reinforce the existing neighbourhood. The Tribunal is satisfied that the intent and purpose of the ZBL is met by this proposed new home, as it will fit compatibly within its context and within the neighborhood. The Tribunal is satisfied that the variance for GFA is minor and that there is no undue adverse impact that will arise from this development. The Tribunal finds this to be a desirable and appropriate development of the lands.

ORDER

[13] The Tribunal allows the appeal and authorizes the requested variance to Zoning By-law No. 6593, as amended, subject to the Notes, as provided below:

1. A maximum gross floor area ratio (GFA) of 66% (0.66) shall be permitted instead of the maximum gross floor area ratio (GFA) of 45% (0.45).

NOTES:

1. The C/S 1335a District permits a maximum floor area ratio of 45% based on the lot area multiplied by the factor of 0.45.
2. The property requires the provision of 3 parking spaces based on a total of 10 habitable rooms. The Hamilton Zoning By-law 6593 requires 2 parking spaces for the first 8 habitable rooms and 0.5 parking spaces for each additional habitable room.
3. The proposed building height for the single family dwelling has been measured from grade as defined in the Zoning By-law.

"Helen Jackson"

HELEN JACKSON
MEMBER

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Local Planning Appeal Tribunal

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