

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



ISSUE DATE: August 06, 2019

CASE NO(S): PL190001

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:	Dinyar Sarkari and Soofia Sarkari
Subject:	Minor Variance
Variance from By-law No.:	0225-2007
Property Address/Description:	29 Plainsman Road
Municipality:	City of Mississauga
Municipal File No.:	A332/2018
OMB Case No.:	PL190001
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OMB Case Name:	Sarkari v. Mississauga (City)

Heard: May 23, 2019 in Mississauga, Ontario

APPEARANCES:

Parties

Representative

Soofia and Dinyar Sarkari

Self-represented

DECISION OF THE TRIBUNAL DELIVERED BY RICHARD JONES

[1] The subject lands, 29 Plainsman Road are located within the Streetsville neighbourhood of the City of Mississauga (“City”) which is comprised of various plans of subdivision approved and developed from the onset of the 1950s through to the 1970s. The surrounding lots are generally large and primarily single-family detached in

character.

[2] The neighbourhood is experiencing some rejuvenation involving the renovation and/or replacement of the smaller, original homes with newer dwellings consisting of one and half and two-storey dwellings.

[3] Soofia and Dinyar Sarkari (“Applicant/Appellant”), propose a new two-storey dwelling for the subject property in replacement of their existing one-storey home.

[4] 29 Plainsman Road has a lot area of 2,578 square metres and a frontage of 22.56 metres (“m”). Approximately half the lot area, consisting of the rear portion, slopes towards the adjoining Credit River although the front portion is sufficiently large enough to support the entirety of the proposed new building envelope.

[5] The Sarkaris submitted an application to the City’s Committee of Adjustment (“COA”) in July 2018 to permit a gross floor area of 537.80 square metres; whereas, the City’s Zoning By-law No. 0225-2007 (“ZB”) allows a maximum of 391.8 square metres. Throughout the course of the application review/approval process, the gross floor area was subsequently reduced by the owners to 469.8 square metres pursuant to a redesign of the new home and presented on a second occasion to the COA which subsequently denied the revised application. The City’s planning department was supportive of the revised gross floor area reduction according to evidence. The owners appealed the decision to the Local Planning Appeal Tribunal (LPAT) in December 2018.

[6] Following the appeal, a further reduction of the gross floor area variance was made in April 2019 resulting in a reduced figure of 457.8 square metres as a consequence of further refinements to the building plans. This revised variance was described at the outset of the hearing. The Tribunal allowed the reduction without the need for further public notice in reference to s. 45 (18.1.1) of the *Planning Act* (“Act”), because the proposed variance aligned more closely with the maximum standard required by the ZB.

[7] Planning evidence on behalf of the Applicant/Appellant was heard from Allan Ramsay, an experienced planning consultant. Mr. Ramsay was qualified by the Tribunal to provide expert opinion evidence in the field of land use planning. The City was not represented at the hearing.

[8] The Tribunal heard that the application did not raise matters of provincial or regional interest, so his evidence, with respect to matters of policy focused exclusively on the City's Official Plan ("OP"). Citing Policy 5.3.5 under the OP title of "Neighbourhoods" which states that neighbourhoods are physically stable areas with a character that is to be protected, Mr. Ramsay opined that the application is sensitive to the existing and planned character of the neighbourhood and is compatible with regard to existing characteristics of built form and scale. More specifically, because the new home design eliminated bedroom side windows from the upper floors adjoining existing single-family homes, adverse impact on the neighbouring homes was avoided. Furthermore, as no other variances were proposed, the new home would not be intrusive or out of character within the existing neighbourhood context given the scale of replacement homes within this particular enclave of Streetsville which includes 323 residential lots and 18 semi-detached units. Along Plainsman Road itself, the planner, in reference to his photo exhibits (Tab 2 of Exhibit 2), described similar replacement homes at nearby 31 Plainsman Road and 35 Plainsman Road as well as others located farther away. Mr. Ramsay stated that the OP's definition of "compatibility" does not stipulate that new development shall be the same as, or even similar to, but requires that new built-forms enhance the established community and will coexist with existing development without unacceptable, adverse impact on the surrounding area.

[9] Consequently, with regards to this application and those tests which are required of variance applications pursuant to s. 45 (1) of the Act, the test addressing whether an application can maintain the general intent and purpose of the OP (or not), was in the planner's view successfully met.

[10] Similarly, the planner also testified that the general intent and purpose of the ZB

was also successfully addressed because in his view, the variance of gross floor area being the only variance requested in the application, proposed a built form completely compatible with the neighbourhood with respect to massing and scale. More specifically, Mr. Ramsay, who made frequent references to his neighbourhood studies and exhibits, testified that there were 25 lots within his study area where residences with potentially larger gross floor areas could be built on an as-of-right basis in excess of the Sarkari's application although the planner acknowledged that such properties are zoned somewhat differently in comparison with the subject property.

[11] Mr. Ramsay opined that the variance was minor, a third test pursuant to the Act, because as the new building will be sited in compliance with prevailing zoning standards with respect to setbacks and height, there will be no adverse impact on adjoining properties.

[12] With respect to the final test—was the variance desirable for the appropriate development and use of the land—the planner concluded that the proposed new home was entirely compatible to the neighbourhood and the lot for which it is proposed, and in his view, the principles of sound planning practice were met by the application.

[13] The Tribunal heard from a number of nearby neighbours who testified as participants.

[14] Jim Simpson of 69 Suburban Drive submitted a petition (Exhibit 4) containing 122 names all of who opposed the variance. In testimony, Mr. Simpson testified that various gatherings hosted by the Applicants in the past had resulted in on street parking congestion causing unsafe conditions for motorists and pedestrians attempting to navigate the roadway during those occasions.

[15] Roy Fraser of 22 Plainsman Road stated that the proposed new home did not fit the neighbourhood; it being too large for an area where the prevailing stock of homes of is more modest character. He also advised the Tribunal that too many trees may have been removed in contravention of Credit Valley Conservation ("CVC") regulations within

the rear portion of the subject lands. His wife, Linda Fraser, in separate testimony, conveyed similar concerns to the Tribunal.

[16] Deborah Lamb-Green, previously of 27 Plainsman Road, also suggested the possibility that trees had been removed in 2017 in violation of CVC natural heritage regulations, a prospect she believed had occurred as depicted in her photo exhibit (Exhibit 6). Ms. Lamb-Green had been a resident for 26 years although she has recently moved out of the neighbourhood.

[17] Anna Simkovic of 25 Plainsman Road stated that the building plans were deceptive and proposed a larger built form than accurately revealed by building drawings, describing the house as a “hotel” rather than a residence. Her husband, in separate testimony, said that prior tree removal activities undertaken by the Applicants had been excessive and contrary to current regulations.

FINDINGS

[18] The Tribunal finds the evidence of the planning consultant Mr. Ramsay was compelling in support of the proposed variance.

[19] There was in the Tribunal’s view no adverse impact, nor evidence of any policy pertinent to the OP that would compel that the new home be constructed in a manner reflective of the architectural styles and massing of earlier decades. The OP’s definition of compatibility allows for the expression of building diversity as long as externalities relating to adverse impact are not incurred, and conditions pertinent to appropriate lot—fit can be established. Both these objectives are realized with the application which at its core involves a single variance allowing a larger home which is easily accommodated without the incurrence of additional variances.

[20] Although the participants expressed multiple concerns that too many trees had either been removed or would be, CVC in their comments to the City’s Planning Department (Exhibit 2, Tab 8) stated that the building is located “outside of the natural

conditions and does not pose a concern". The CVC did not report or affirm that unauthorized tree removal had been undertaken by the Applicant within the conservation zone which affects half the lot area as noted.

[21] In this regard, the Tribunal finds that the application meets the tests pursuant to s. 45(1) of the Act and accords with the principles of sound planning practice.

ORDER

[22] The Tribunal orders that the appeal is allowed and the variance to the City of Mississauga Zoning By-law No. 0225-2007 is authorized with regards to the application by Soofia and Dinyar Sarkari for 29 Plainsman Road.

"Richard Jones"

RICHARD JONES
MEMBER

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Local Planning Appeal Tribunal

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