

Ontario Land Tribunal
Tribunal ontarien de l'aménagement
du territoire



ISSUE DATE: July 20, 2021

CASE NO(S): PL2000348

The Ontario Municipal Board (the “OMB”) and the Local Planning Appeal Tribunal (the “LPAT”) is continued under the name Ontario Land Tribunal (the “Tribunal”), and any reference to the Ontario Municipal Board or Local Planning Appeal Tribunal 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

Appellant: Christopher Mackie
Applicant: Marcesso Homes Inc.
Subject: Consent
Property Address/Description: 47 Ben Machree Drive
Municipality: City of Mississauga
Municipal File No.: B26/20
LPAT Case No.: PL200348
LPAT File No.: PL200348
LPAT Case Name: Mackie v. Mississauga (City)

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

Appellant: Christopher Mackie
Applicant: Marcesso Homes Inc.
Subject: Minor Variance
Variance from By-law No.: 0225-2007
Property Address/Description: 47 Ben Machree Drive
Municipality: City of Mississauga
Municipal File No.: A126/20
LPAT Case No.: PL200348
LPAT File No.: PL200349

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Appellant: Christopher Mackie

Applicant: Marcesso Homes Inc.
 Subject: Minor Variance
 Variance from By-law No.: 0225-2007
 Property Address/Description: 47 Ben Machree Drive
 Municipality: City of Mississauga
 Municipal File No.: A127/20
 LPAT Case No.: PL200348
 LPAT File No.: PL200350

Heard: March 11-12, 2021 by video hearing

APPEARANCES:

Parties

Marc Esso Homes Inc.

Christopher Mackie

Counsel

Jennifer Meader

Hugh MacKenzie

DECISION DELIVERED BY N.P. ROBINSON AND BY ORDER OF THE TRIBUNAL

PART I—OVERVIEW

[1] The Applicant (“Marc Esso Homes Inc.”) is seeking to sever an existing property located at 47 Ben Machree Drive (“Subject Lands”) into two lots (“Proposal”). The severance will result in the need for one variance to the regulations of the City of Mississauga (“City”) Zoning By-law (“ZBL”), to allow for a frontage of 10.67 metres (“m”), whereas the ZBL requires a minimum lot frontage of 12 m. No variances are required for the lot area, which will remain well in excess of the ZBL minimum requirements.

[2] The Proposal also includes two custom-built, single detached dwellings. No variances are required for the construction of either dwelling. Both dwellings fit fully within their as-of-right building envelopes.

[3] The within matter finds itself before the Tribunal as a result of an appeal by Christopher Mackie (“Appellant”).

THE SITE AND SURROUNDINGS

[4] The Subject Lands have a frontage of 21.34 m and an area of 0.128 hectares. It is an interior lot, located within the Cranberry Cove Neighbourhood in the Port Credit area of the City. The Subject Lands are designated Neighbourhoods in the City Official Plan, including the Port Credit Local Area Plan ("LAP"). They are zoned R15-2 (Detached Dwellings Port Credit) in the ZBL.

[5] Andrea Sinclair ("Ms. Sinclair") was qualified to give expert opinion evidence before the Tribunal with the consent of the parties for matters regarding land use planning and urban design. Ms. Sinclair described the neighbourhood as eclectic, in terms of lot sizes and dwelling types, sizes, and styles. Ms. Sinclair testified that there is no singular lot size or type of development. Ms. Sinclair also indicated that lot sizes range from 12 m to approximately 30 m in terms of frontage. She indicated that the neighbourhood is mainly single detached dwellings, but also contains various apartment buildings located along Lakeshore Road, as well as scattered duplexes and triplexes. There is also a neighbourhood park towards the south end of the neighbourhood with a direct connection to the Waterfront Trail.

PROVINCIAL AND REGIONAL POLICY

[6] The Subject Lands are located within a Built-Up Area, as delineated through the Growth Plan for the Greater Golden Horseshoe, 2019 ("Growth Plan"). They are also within close walking distance to transit and are serviced by existing public infrastructure.

[7] Ms. Sinclair opined that the Application represents a modest and sensitive intensification that utilizes existing infrastructure and land efficiently. It was her uncontested planning opinion that the Application is consistent with the Provincial Policy Statement, 2020 ("PPS") and conforms to the Growth Plan.

[8] The Region of Peel Official Plan ("ROP") directs a significant portion of growth to the Built-Up Area through intensification. It also encourages the optimization of all

intensification opportunities. The Application maintains the existing character of the neighbourhood and assists the ROP in meeting its intensification target.

[9] Section 1.4.3 of the PPS speaks to providing for an appropriate range and mix of housing options and densities to meet projected market-based and affordable housing needs. It further speaks to permitting and facilitating all forms of residential intensification including redevelopment and directs new housing to locations with appropriate infrastructure and public service facilities.

[10] The Subject Lands are located where appropriate levels of infrastructure and public service facilities are available (Policy 1.4.3 c).

[11] The Tribunal concludes that the Proposal is consistent with the PPS and makes good use of existing infrastructure to support the diversification of Ontario's housing stock.

OFFICIAL PLAN CONFORMITY

[12] Ms. Sinclair took the Tribunal to area-specific policies applying specifically to the Cranberry Cove Neighbourhood. She noted that there are limited applicable policies, especially in comparison to other, more culturally significant areas of Port Credit. Those limited, applicable policies expressly contemplate relatively small building masses on small lots with well-landscaped streetscapes. In Ms. Sinclair's uncontroverted opinion, the Application conforms to the Official Plan.

PART II—ISSUES

SEVERANCE CRITERIA

[13] Ms. Sinclair confirmed that pursuant to s. 53(1) of the *Planning Act*, a plan of subdivision is not required for the orderly development of the municipality. She also gave a detailed opinion on criteria set out in s. 51(24) of the *Planning Act* and concluded that all applicable criteria are met.

[14] In Ms. Sinclair's opinion, the Application (particularly the severance) addresses the applicable criteria as follows:

1. It has appropriate regard for matters of provincial interest, including:
 - i. The protection of ecological systems;
 - ii. The conservation and management of natural systems;
 - iii. The supply, efficient use and conservation of energy and water;
 - iv. Adequate provision and efficient use of communication, transportation, sewage and water services and waste management systems;
 - v. The orderly development of safe and healthy communities;
 - vi. The adequate provision of a full range of housing;
 - vii. The Application is not premature, since the Subject Lands are designated and zoned for residential uses and the proposed lot maintains the predominant characteristics of the neighbourhood;
 - viii. The Application conforms to the ROP and the Official Plan, including the LAP, and does not impact any adjacent plans of subdivision;
 - ix. The Subject Lands are suitable for residential purposes; no change in use is being proposed;
 - x. The dimensions and shapes of the proposed lots are appropriate as the lots are regularly shaped with direct access onto a public road. The lots meet the minimum lot area requirements of the ZBL. The

lots are a sufficient size to accommodate two new dwellings while maintaining minimum setbacks and maximum coverage regulations;

- xi. The proposed conditions of approval sufficiently address any agency comments and the concerns of the residents;
- xii. The conditions of approval sufficiently address any City requirements relating to servicing;
- xiii. The Subject Lands are close to existing schools;
- xiv. The proposed dwellings will be energy efficient and will make better use of the Subject Lands;
- xv. The conditions of approval sufficiently address any City requirements for the preparation of site and grading plans.

[15] Ms. Sinclair also concluded that the conditions of provisional consent proposed by the Applicant are reasonable and in accordance with s. 51(25) of the *Planning Act*.

FOUR-PART TEST FOR MINOR VARIANCES

[16] Ms. Sinclair gave uncontested expert opinion evidence that the Application (particularly the frontage variance) meets the four-part test set out in s. 45(1) of the *Planning Act*. More specifically, the frontage variance meets the four-part test for the following reasons:

1. The proposed heights, uses, and densities are in keeping with the Official Plan. The variance will allow for the creation of one new lot to be developed as a single detached dwelling and will maintain the predominant characteristics of the area, including relatively small building

masses on small lots. The Official Plan encourages intensification throughout the Built-Up Area. The objectives and policies of the Official Plan are met by the Application. The Application conforms to the Official Plan and therefore maintains the general intent and purpose of the Official Plan.

2. The Application proposes the severance of one of the largest lots in the Neighbourhood and requires only one variance. The variance from the as-of-right frontage requirement is minor. The purpose of the ZBL, as it applies to the Subject Lands, is to permit residential development, with the primary use being single detached dwellings. Except for the frontage variance, the proposed lots meet all zoning regulations including permitted uses, setbacks, lot area, coverage, building length, height, and parking. The frontage variance for each lot therefore meets the general intent and purpose of the ZBL.
3. The Subject Lands will be developed with two single detached residential dwellings, which is in keeping with the primary land use in the area and current permissions. The lots will have access to a public street and will be located in proximity to transit, commercial uses, and parks. The variance is therefore desirable for the appropriate development of the Subject Lands.
4. The reduction in frontage of 1.33 metres is minor and does not preclude the lands from developing with single detached dwellings on lots that meet all other zoning requirements, including setbacks and minimum lot requirements. The LAP describes the character of the area as containing relatively small homes on small lots. The creation of two smaller lots will not negatively impact the character of the neighbourhood. There is a wide range of lot sizes and lot frontages in the neighbourhood, including two

12-metre lots directly north of the Subject Lands. The variance application is therefore minor.

[17] The concerns raised by the Appellant's testimony focus on issues of densification and potential disruption to the neighbourhood's mature tree canopy. The Appellant argues that the variance is not minor and will open the floodgates to other similar developments. The Applicant in this case has proposed including a condition that requires the planting of new trees and the Appellant did not call an arborist or another expert to address issues concerning the tree canopy. Each case is decided on its own merits and the evidence before the Tribunal demonstrates that the Applicant has taken steps to adequately address these concerns.

CONCERNS RAISED BY RESIDENTS

[18] The Tribunal had the benefit of submissions from several participants and testimony from local residents. The concerns expressed by the Appellant were echoed in the evidence given by all local residents. The evidence before the Tribunal demonstrates that the concerns raised by the residents will not be borne out, or otherwise, will not result in adverse impacts or any negative impacts at all.

[19] Some participants from the neighbourhood expressed concerns that the Proposal would set a negative precedent for future development and result in greater intensification. The Tribunal notes that this particular neighbourhood is already subject to a wide range of lot sizes and frontages.

[20] The participants also echoed the Appellant's concerns that trees would not be protected by the Proposal. This concern does not comport with the City's conditions of approval which require the retention and protection of the large trees in front of the property. Further, the loss of any of the private trees would not be prevented with the construction of one, larger dwelling. The proposed conditions require that the Applicant plant replacement trees for any that are lost due to construction. None of the existing trees that may potentially be removed are significant in size.

[21] Jennifer Patterson and Dorothy Rouatt raised concerns with respect to the loss of views through the Subject Lands. The Tribunal heard that these concerns are not alleviated with the construction of one, large dwelling on the Subject Lands, which would be subject to the same setback, height, and coverage requirements as the two proposed dwellings.

[22] Finally, some local residents expressed concerns with respect to the impact that the Proposal would have on property values. The Tribunal was not presented with evidence of the impact on property values and thus cannot address this issue.

PART III—ORDER

[23] For the foregoing reasons, the Tribunal dismisses the appeal and grants provisional consent and authorizes the minor variance application, subject to the following conditions:

1. The Conditions set out in the City's Notices of Decision appended herein as Attachment 1;
2. That the proposed dwellings be constructed substantially in accordance with the site plan and elevations for each dwelling as detailed at Attachment 2; and
3. That the Applicant plant a minimum of 15 new trees on the Subject Lands to the satisfaction of the City.

"N.P. Robinson"

N.P. ROBINSON
MEMBER

Ontario Land Tribunal

Website: olt.gov.on.ca Telephone: 416-212-6349 Toll Free: 1-866-448-2248

The Conservation Review Board, the Environmental Review Tribunal, the Local Planning Appeal Tribunal and the Mining and Lands Tribunal are amalgamated and continued as the Ontario Land Tribunal.

ATTACHMENT 1

Conditions of 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. An application amendment letter shall be received from the applicant or authorized agent confirming that the conveyed land shall be together with and/or subject to services easement(s) and/or right(s)-of-way, if necessary, in a location and width as determined by the Secretary- Treasurer based on written advice from the agencies having jurisdiction for any service or right for which the easement or right-of-way is required; alternatively, a letter shall be received from the applicant or authorized agent confirming that no services easement(s) and/or right(s)-of-way, are necessary.
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"126/20 & "A"127/20).
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 July 28, 2020.
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 July 28, 2020.

Lot Creation

- a. The variance application approved under File(s) A126/20 & A127/20 must be finalized.

Overall Grading and Drainage Plan

6. The applicant's consulting engineer will be required to prepare an Overall Grading and Drainage Plan which contains sufficient details to ensure grading compatibility with the adjacent lands and submit the grading and drainage proposal to this department for review/approval. Due to potential high groundwater level in this area, applicants should design the basement floor elevation to be at least 1.0 metre above the seasonal groundwater table elevation.

Municipal Address Requirement

7. Prior to the issuance of final consent, satisfactory arrangements are to be made with Corporate Services Department, Information Technology Division, Digital Services & Mobility Section, Geospatial Solutions Group for the creation of new municipal addresses for the severed and retained lands. For further information, please contact Susie Tasca at (905) 615-3200 ext. 3088 or susie.tasca@mississauga.ca

Lot Grading and Drainage

8. We advise the applicant that issuance of any building permits for the new dwelling(s) will be subject to the owner submitting a certified lot grading and drainage plan to this Department for review/approval. The grading and drainage plan is to contain sufficient detail to ensure grading compatibility with the adjacent properties. In addition, the owner will be required to submit the applicable lot grading and municipal services protection deposits.

Servicing

9. All costs incurred in providing any service laterals will be the responsibility of the owner. The owner will also be responsible for all costs incurred for the required road reinstatement (if required). If the service connections are to be installed by a private contractor retained by the owner, issuance of an open cut permit will be subject to the owner depositing adequate securities with the City to guarantee proper road reinstatement.

Access

10. We advise the applicant that all costs incurred in providing any new driveway entrance(s) to the subject lands or any modifications/reinstatement required, would be at cost to the owner. We are also noting that should any utilities need to be relocated, all costs incurred will also be to the owner.

Storm Sewer Outlet

11. The applicant is advised that there is no storm sewer system available in front of the proposed lot on Ben Machree Drive. In this regard, we advise that all dwellings to be constructed on the subject lands will require a sump pump to discharge the weeping tile to grade. It is the full responsibility of the applicant to advise any prospective purchasers of the properties of this requirement.

Parks, Forestry & Environment

12. The applicant shall ensure that future driveways do not impact or require the removal of the above noted trees.

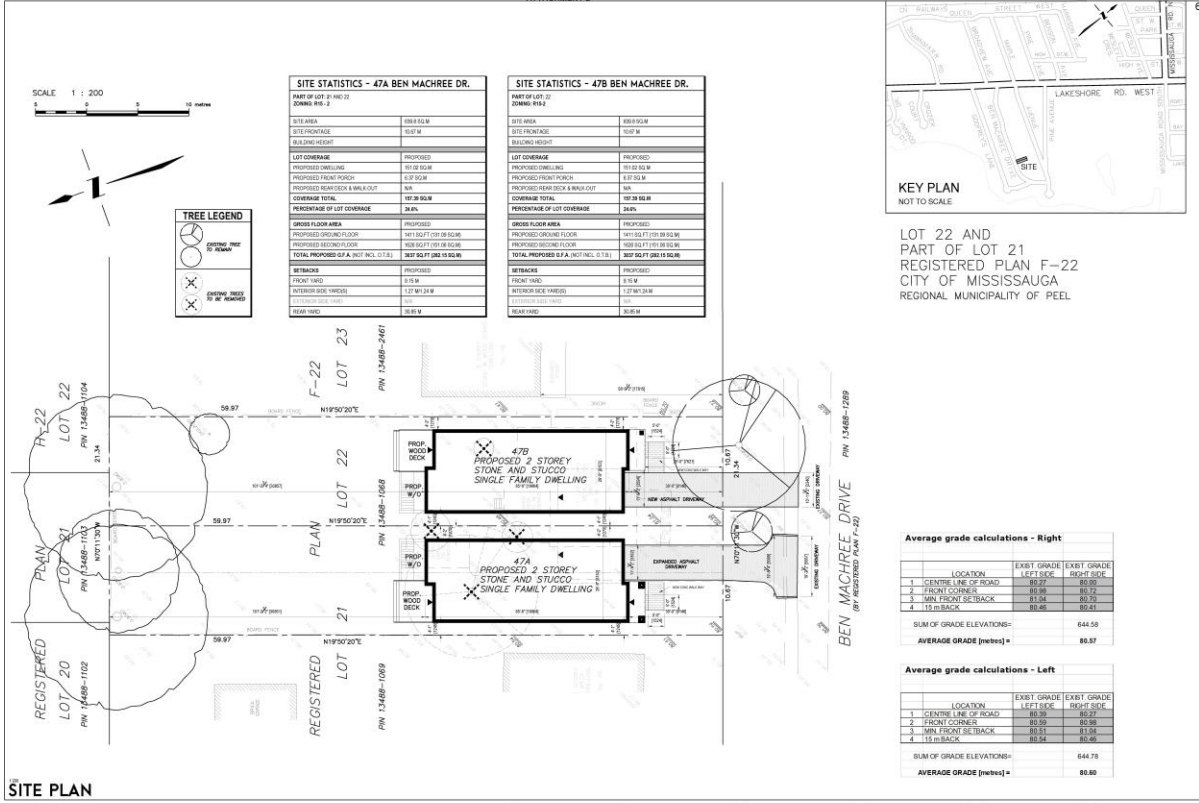
13. The applicant shall provide a cash contribution of \$1,178.88 for planting of two (2) street trees on Ben Machree Drive. This figure is subject to the most recent Fees and Charges By-law at the time of payment and is therefore subject to change.
14. The applicant shall provide tree protection securities in the amount of \$7,530.00 for the above noted municipal trees.
15. Payment for street tree fees and charges can be made at the Parks and Forestry customer service counter located at 950 Burnhamthorpe Road West in the form of a certified cheque, bank draft, or money order payable to the City of Mississauga.
16. The applicant shall provide frame tree hoarding at the dripline of the above noted tree prior to any construction to the satisfaction of City of Mississauga Forestry Staff. Please call Ryan Cormier at 905-615-3200 ext. 4580 to arrange a hoarding inspection.
17. Prior to the issuance of building permits, cash-in-lieu for park or other public recreational purposes is required pursuant to Section 42 of the Planning Act (R.S.O. 1990, C.P. 13, as amended) and in accordance with the City's policies and by-laws.

Condition of Minor Variance Approval

18. Variance(s) approved under file(s) A126/20 & A127/20 shall lapse if the consent application under file B26/20 is not finalized within the time prescribed by legislation.

Additional Conditions

19. The proposed dwellings be constructed substantially in accordance with the site plan and elevations for each dwelling, all dated February 25, 2020 and prepared by HUIS Design Studio.
20. That the Applicant plant a minimum of 15 new trees on the Subject Lands (the severed and retained lands combined) to the satisfaction of the City.



Average grade calculations - Right

LOCATION	EXIST. GRADE	EXIST. GRADE
	LEFT SIDE	RIGHT SIDE
1. CENTRE LINE OF ROAD	80.37	80.30
2. FRONT CORNER	80.89	80.72
3. 10M FRONT SETBACK	81.04	80.75
4. 15M BACK	80.65	80.41
SUM OF GRADE ELEVATIONS		644.58
AVERAGE GRADE (metres)		80.57

Average grade calculations - Left

LOCATION	EXIST. GRADE	EXIST. GRADE
	LEFT SIDE	RIGHT SIDE
1. CENTRE LINE OF ROAD	80.36	80.37
2. FRONT CORNER	80.59	80.38
3. 10M FRONT SETBACK	80.51	81.04
4. 15M BACK	80.54	80.49
SUM OF GRADE ELEVATIONS		644.78
AVERAGE GRADE (metres)		80.60

SITE PLAN

PHIL STUBBS ARCHITECTURE

1. THE CLIENT REPRESENTS THAT THE INFORMATION PROVIDED TO THE ARCHITECT IS TRUE AND CORRECT AND THAT THE CLIENT IS NOT PROVIDING ANY INFORMATION THAT IS FALSE OR MISLEADING. THE CLIENT ACCEPTS THAT THE ARCHITECT'S RESPONSIBILITY IS LIMITED TO THE DESIGN AND CONSTRUCTION OF THE PROJECT AND THAT THE CLIENT IS RESPONSIBLE FOR OBTAINING ALL NECESSARY PERMITS AND APPROVALS FROM THE APPROPRIATE AUTHORITIES.

HUIS DESIGN STUDIO

1. THE ARCHITECT HAS REVIEWED THE INFORMATION PROVIDED TO HIM/HER AND HAS FOUND IT TO BE SUFFICIENT FOR THE DESIGN AND CONSTRUCTION OF THE PROJECT. THE ARCHITECT HAS NOT CONDUCTED ANY SURVEYING OR ENGINEERING WORK AND IS NOT PROVIDING ANY SUCH SERVICES. THE ARCHITECT HAS NOT CONDUCTED ANY TESTING OR INSPECTION OF THE PROJECT AND IS NOT PROVIDING ANY SUCH SERVICES. THE ARCHITECT HAS NOT CONDUCTED ANY ASSESSMENT OF THE PROJECT AND IS NOT PROVIDING ANY SUCH SERVICES.

GENERAL NOTES

1. THE ARCHITECT HAS REVIEWED THE INFORMATION PROVIDED TO HIM/HER AND HAS FOUND IT TO BE SUFFICIENT FOR THE DESIGN AND CONSTRUCTION OF THE PROJECT. THE ARCHITECT HAS NOT CONDUCTED ANY SURVEYING OR ENGINEERING WORK AND IS NOT PROVIDING ANY SUCH SERVICES. THE ARCHITECT HAS NOT CONDUCTED ANY TESTING OR INSPECTION OF THE PROJECT AND IS NOT PROVIDING ANY SUCH SERVICES. THE ARCHITECT HAS NOT CONDUCTED ANY ASSESSMENT OF THE PROJECT AND IS NOT PROVIDING ANY SUCH SERVICES.

REVISIONS

NO.	DATE	DESCRIPTION
1	2024-10-20	ISSUED FOR PERMIT
2	2024-10-20	ISSUED FOR PERMIT

APPROVALS

DESIGNED BY: PHIL STUBBS
CHECKED BY: PHIL STUBBS
DRAWN BY: PHIL STUBBS
SCALE: AS SHOWN