

Appendix B - LPAT Decision March 18, 2021

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



ISSUE DATE: March 18, 2021

CASE NO(S): PL190201

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:	David Horwood and Doreen D'Sousa
Subject:	Minor Variance
Variance from By-law No.:	2014-014
Property Address/Description:	3194 Shoreline Drive
Municipality:	Town of Oakville
Municipal File No.:	A/049/2019
LPAT Case No.:	PL190201
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LPAT Case Name:	Horwood v. Oakville (Town)



Heard: October 21, 2020 by video hearing

APPEARANCES:

Parties

David Horwood and
Doreen D'Sousa

Town of Oakville

Counsel

Russell Cheeseman

Dennis Perlin

DECISION DELIVERED BY C. TUCCI AND ORDER OF THE TRIBUNAL

[1] David Horwood ("Appellant") filed an appeal against the Committee of Adjustment's ("COA") refusal of a minor variance application pursuant to s. 45(12) of the

Planning Act ("Act").

[2] The application proposes the demolition of the existing single detached, two-storey dwelling with attached garage and the reconstruction of a two-storey single detached dwelling with an attached garage on the property municipally known as 3194 Shoreline Drive.

[3] This proceeding originally scheduled as a contested hearing of the merits was converted to a Settlement Hearing at the request of the Parties.

[4] The Tribunal was informed that the Parties have agreed to settle the matter. The Parties jointly provided the Tribunal with a copy of Minutes of Settlement ("Settlement") which is the basis of the agreement amongst the Parties.

[5] David Capper, a Registered Professional Planner was a witness called by the Applicants. The Tribunal qualified Mr. Capper to provide opinion evidence in land use planning matters. Mr. Capper provided oral testimony in support of the Settlement as well as verbal testimony summarizing the details of the Settlement.

[6] Although this is considered a settlement hearing, the Tribunal must be satisfied that the requested variance application satisfies that the variances are consistent with the Provincial Policy Statement, conform with the Growth Plan, and satisfy the four tests set out in s. 45(1) of the Act.

SUBJECT PROPERTY AND AREA CONTEXT

[7] The property is located on the south side of Shoreline Drive and backs onto Lake Ontario. The lot area is 498.15 square metres ("sq m") with a lot frontage of 16.18 metres ("m"). The lot depth on the westerly property line is 33.43 m and 34.19 m on the easterly property line.

[8] The existing dwelling is a two-storey single detached dwelling with a height of 8.3

m and a floor area of 221.58 sq m.

[9] The neighbourhood consists of low-density residential land uses in the form of single detached dwellings. Within the neighbourhood there is a diverse range of dwellings sizes and architectural designs. Most dwellings within the neighbourhood are two-storey dwellings.

VARIANCES REQUESTED

[10] The Appellant has requested that the five variances be revised as follows:

- a. A reduction in the minimum required garage setback to 5.62 m from the original request of 5.57 m whereas the ZBL requires a minimum garage setback of 5.7 m.
- b. To permit a maximum garage projection of 4.06 m from the original request of 4.36 m whereas the ZBL permits a maximum garage projection of 1.5 m.
- c. To permit a reduction in the minimum required rear yard to 6.36 m from the original request of 6.34 m whereas the ZBL requires a minimum rear yard of 7.5 m.
- d. To permit a maximum residential floor area ratio of 57.5% whereas the ZBL permits a maximum residential floor area ratio of 43% on a residential lot with a lot area of less than 557.5 sq m within the RL3-0 Zone.
- e. To permit a maximum lot coverage of 37.81% (188.36 sq m) from the original request of 39.63% (197.38 sq m) whereas the ZBL permits a maximum lot coverage of 35%.

[11] The parties agreed to decrease the relief requested by the variances.

[12] The Tribunal finds the Amendments are minor in accordance with s. 45(18.1.1) of the Act and will not order that notice of the amended application be given.

EVIDENCE AND FINDINGS

Provincial Policy Statement (“PPS 2020”)

[13] Mr. Capper evaluated the proposal against the PPS 2020. He made specific reference to Section 1 – Future Development and Land Use Patterns, specifically policies 1.1.1, (a, c, e), 1.1.3.1 and 1.1.3.2 (a, b).

[14] Mr. Capper informed the Tribunal that the proposed development will result in the efficient use of existing infrastructure and public service facilities in that the proposed dwelling will replace an existing dwelling.

[15] Mr. Capper opined that the minor variances requested are consistent with the policies contained in the PPS 2020.

Growth Plan for the Greater Golden Horseshoe, 2019 (“Growth Plan 2019”)

[16] Mr. Capper evaluated the proposal against the policies found in the ‘A Place to Grow – Growth Plan for the Greater Golden Horseshoe, 2019 Growth Plan 2019. Specific reference was made to s. 2.1, whereas the “proposed development provides for greater diversity of housing forms while ensuring that there are adequate water and wastewater services to support growth”. Furthermore, he referred to policy 2.2.1.2.c.iv which “requires that growth be focused on areas with existing or planned public service facilities.”

[17] Mr. Capper opined that the proposed development and the Minor Variances that are required conform to the relevant policies of the Growth Plan 2019.

[18] The Tribunal accepts the evidence of the planner for the Appellant in its entirety

and finds that the proposal meets all the relevant Provincial Policy tests of the PPS 2020 and the Growth Plan 2019.

MINOR VARIANCE TESTS

Maintain the General Intent and Purpose of the Official Plan

[19] The Region of Halton's Official Plan designation for the subject property is found on Map 1 and is designated a "Urban Area" Mr. Capper reviewed policies of the Region's Official Plan and found that the proposal to replace an existing Single Detached Dwelling with a new Single Detached Dwelling within the "Urban Area" is contemplated by the Regional Official Plan.

[20] Mr. Capper opined that the proposal conforms to and is in keeping with the general intent and purpose of the Region of Halton's Official Plan.

[21] Mr. Capper informed the Tribunal is within the Town of Oakville's Official Plan , the subject property is designated as "Low Density Residential" in the Liveable Oakville Official Plan. The designation permits a variety of low-density housing types.

[22] Mr. Capper referred to s. 11.1.9 of the Liveable Oakville Plan for the criteria for infill development in stable residential communities.

[23] Mr. Capper informed the Tribunal that the intent of the evaluative criteria is to "ensure that new development within stable residential neighbourhoods is compatible with and maintains the character of the neighbourhood."

[24] The proposal is to replace an existing Single Detached Dwelling which maintains, protects and enhances the stability and character of the existing residential community.

[25] Mr. Capper opined that the proposed minor variances are in "keeping with the intent of the relevant Official Plan policies and would allow for the continuance of the

planning objectives of the Liveable Oakville Official Plan.”

Maintain the General Intent and Purpose of the Zoning By-law

[26] The subject property is zoned RL.3-0 in the Town of Oakville Zoning By-law No. 2014-014 (“ZBL”).

[27] Mr. Capper provided to the Tribunal an in-depth opinion on each of the five variances requested in relevance to the maintenance of the intent and purpose of the ZBL.

i) Garage Setback

- The application seeks a variance from the 5.7 m requirement to the requested 5.62 m. The intent of the zoning is to ensure that sufficient space is available between the garage face and the property line so that a vehicle can be parked without impacting or encroaching into the right of way. The variance is requested based on lot configuration for technical reasons. Mr. Capper opined that the requested setback can accommodate a vehicle without encroaching the right of way and therefore meets and maintains the general intent of the ZBL.

ii) Garage Projection

- The application seeks a variance from the 1.5 m requirement to the requested 4.06 m. The intent of the zoning is to ensure that the garage door does not dominate the face of a dwelling nor becomes a dominant architectural feature. Mr. Capper informed the Tribunal that this zoning regulation did not apply to the R03 Zone in the Town of Oakville ZBL No. 1984-063, which is the predecessor to the in Zone ZBL No. 2014-014. The RL2-0 zone in which the subject property is located is under ZBL No. 2014-014 and was previously an R03 Zone. As such, there is a

prevalence of garage projections within the surrounding neighbourhood.

- Mr. Capper noted that the proposed garage projection of 2.56 m is less than the projection of the existing garage on the property which is 6.26 m. Mr. Capper further informed the Tribunal that the proposed variance will be closer to the Zoning conformity than the existing garage and would remain in keeping with the character of the neighbourhood.
- Mr. Capper opined that the variance sought meets and maintains the general intent of the ZBL.

iii) Yard setback

- The intent of the zoning is to ensure that an appropriate amenity area is provided, as well as to provide an adequate degree of separation between rear yards of adjacent dwellings and to avoid impacts on privacy issues to the proximity of adjacent properties.
- Mr. Capper informed the Tribunal that the variance requested is only to accommodate a small projection from the main rear wall to establish a breakfast nook in the kitchen. The remaining portion of the rear wall will not encroach into the required rear yard as two thirds of the rear wall will be set back approximately 10 m from the lot line.
- Mr. Capper opined that the variance sought meets and maintains the general intent of the ZBL.

iv) Residential Floor Area

- The application seeks a variance from the 43% requirement to the requested 57.5%. The intent of regulating the maximum floor space is to ensure that new dwellings or additions are constructed in proportion to the

area of the lot and the neighbouring properties. Additionally, the regulation oversees that the scaling and massing of a dwelling has sufficient lot area to provide for an appropriate amount of private amenity space.

- Mr. Capper informed the Tribunal that the subject property is located in an area where there is a diverse range in size and massing of dwellings. The range of dwelling sizes vary from 135.54 sq m to 666.02 sq m and average being 282.50 sq m. The proposed dwelling has a residential floor area of 286.43 sq m which is well within the range of the existing neighbourhood.
- Mr. Capper opined that the variance sought meets and maintains the general intent of the ZBL.

v) Lot Coverage

- The application seeks a variance from the 35% maximum requirement to the requested 188.3 sq m or 37.8%. The intent of the maximum lot coverage regulation is to control the scaling and massing of a dwelling, to ensure that the dwelling is in keeping with the character of the neighbourhood and to ensure that an appropriate amount of private amenity area is provided on a residential lot.
- Mr. Capper informed the Tribunal that the smallest residential floor area in the neighbourhood is 85.65 sq m and the largest is 354.61 sq m. The average within the neighbourhood is 201.3 sq m. The proposal of 188.3 sq m is below the average and is within range of the existing neighbourhood.
- Mr. Capper opined that the variance sought meets and maintains the general intent of the ZBL.

Be Desirable for the Appropriate Development or Use of the Land

[28] Mr. Capper opined that after much analysis of the neighbourhood, the variances requested are desirable for the appropriate development of the lands.

Be Minor in Nature

[29] Mr. Capper opined that through the analysis of the neighbourhood, the variances requested are minor in nature.

ANALYSIS

[30] The Tribunal accepts the uncontested evidence of Mr. Capper in its entirety and finds the proposed minor variances meet all the relevant policy tests of the PPS 2020, Growth Plan 2019, Region of Halton's Official Plan and the Town's Official Plan. It represents good planning and is in the public interest.

[31] The Tribunal finds that, based on the evidence, the four tests under s. 45(1) of the Act have been met by this proposal and that the appeal should be allowed for the following reasons.

[32] The Tribunal is satisfied that the variances sought meet the general intent and purpose of the Region of Halton and the Town's Official Plans. The replacement of the dwelling in the Town's Residential areas is complimented when the existing neighbourhood structure is maintained or enhanced. The Evidence presented reinforces this opinion.

[33] The Tribunal is satisfied that the application meets the general purpose and intent to the Town's ZBL No. 2014-014. The scale and massing of the proposal is in keeping with the single detached dwellings in the neighbourhood. The additional floor space will not pointedly add to the massing of the residence.

[34] The Tribunal finds that the variances are desirable for the appropriate development of the land. The proposal will confirm that the new single detached dwelling will complement, be a good fit and enhance the character of the neighbourhood.

[35] The Tribunal is satisfied that the variances sought are minor. They will not impose any adverse impacts on the owners of the adjacent properties and neighbourhood in general. The Tribunal is satisfied that the conditions proposed by the parties are advisable in accordance with s. 45(9) of the Act.

ORDER

[36] The Tribunal Orders that the appeal is allowed and the variances to By-law No. 2014-014 are authorized subject to the following conditions:

- 1) That the approval expire two (2) years from the date of the Tribunal Decision if a building permit has not been issued for the proposed construction.
- 2) That the development proceeds in general accordance with the Revised Site Plan and Elevation Drawings in Schedule C to the Minutes of Settlement and in accordance with the required Site Plan Approval under Section 41 of the *Planning Act*.
- 3) That the List of Construction Mitigation Covenants in Schedule D to the Minutes of Settlement be made part of the Special Covenants Schedule to the Site Plan Agreement as part of receiving and Site Plan Approval.

*"C. Tucci"*C. TUCCI
MEMBER

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

Local Planning Appeal Tribunal

A constituent tribunal of Ontario Land Tribunals

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