

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



ISSUE DATE: June 21, 2018

CASE NO(S): PL170513

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:	Sonja Mitrovic and Dragan Pusica
Subject:	Minor Variance
Variance from By-law No.:	569-2013 passed on May 9, 2013
Property Address/Description:	8 Baby Point Terrace
Municipality:	City of Toronto
Municipal File No.:	A0898/16EYK
OMB Case No.:	PL170513
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OMB Case Name:	Mitrovic v. Toronto (City)

Heard: September 6, 2017 in Toronto, Ontario

APPEARANCES:

Parties

Counsel

Sonja Mitrovic and Dragan Pusica

D. Wood

DECISION DELIVERED BY C. CONTI AND ORDER OF THE TRIBUNAL

INTRODUCTION

[1] This is the decision resulting from a hearing before the Ontario Municipal Board (“Board”), now the Local Planning Appeal Tribunal (“Tribunal”) for an appeal by Sonya

Mitrovic and Dragan Pusica (“Appellants”) against the refusal by the Committee of Adjustment (“Committee”) of the City of Toronto (“City”) of an application for minor variances for a property at 8 Baby Point Terrace.

[2] The subject property consists of a residential lot measuring approximately 15.24 metres (“m”) by approximately 42.67 m located on the west side of Baby Point Terrace. A two-storey single family dwelling is located on the property. The Appellants are proposing to construct a two-storey addition to the dwelling on the south and west sides of the existing house that will provide additional living space.

[3] The proposal requires the following variance from the provisions of City Zoning By-law No. 569-2013:

1. Section 10.20.40.40.(1)(A) – The maximum permitted gross floor area is 0.4 times the lot area (259.76 square metres). The altered dwelling will have a gross floor area of 0.5 times the lot area (324.7 square metres).

[4] This is the variance that was refused by the Committee.

[5] The application that went to the Committee proposed that the altered dwelling would have a floor space index (“FSI”) of 0.63 which would equate to a gross floor area of 0.63 times the lot area. With the proposed FSI of 0.63 the application also required a variance to York Amended Zoning By-law No. 3623-97 which permits an FSI of 0.5. However, at the meeting where the Committee considered the application, the Appellants amended the application so that the proposed FSI was reduced to 0.5. This eliminated the need for a variance to By-law No. 3632-97 and consequently, only the variance from By-law No. 569-2013 was refused by the Committee.

[6] At the hearing Dennis Wood requested that the Board amend the application to include a variance to the parent York Zoning By-law No. 1-83. He noted that the parent By-law requires an FSI of 0.4 whereas amending By-law No. 3623-97 requires an FSI of 0.5. He indicated that out of an abundance of caution, a variance to By-law No. 1-83 should be part of the Board’s consideration at the hearing. He requested that the

application be amended under s. 45(18.1.1) of the *Planning Act* (“Act”) and that because of the minor nature of the revision, no further notice would be required.

[7] However, subsequent to the hearing, Mr. Wood provided correspondence to the Board indicating that because of a Board decision by this Member issued on March 1, 2018 the provisions of By-law No. 569-2013 are in full force and effect as they relate to the FSI requirements for the property. Therefore, a variance to parent By-law No. 1-83 is no longer required and the proposal only requires the variance to By-law No. 569-2013.

[8] Consequently this Decision only considers the above-noted variance to By-law No. 569-2013 that was refused by the Committee.

[9] It should be noted that in the above-noted variance to By-law No. 569-2013, the area of the dwelling that will comprise 0.5 times the lot area has been changed from the area of the dwelling identified in the Committee’s decision. The planning opinion evidence provided to the Board at the hearing was that the figure in the Committee decision was not correct and that 324.7 is the correct figure.

[10] At the beginning of the hearing Clara Madonia and Linda Galas requested participant status which was granted by the Board on consent.

ISSUE

[11] The issue in this appeal is whether or not the proposed variances meets the four tests under s. 45 (1) of the Act. That is, does the variance maintain the general purpose and intent of the City’s Official Plan, does it maintain the general purpose and intent of Zoning By-law No. 569-2013, is the variance desirable for the appropriate use of the land, and is the variance minor?

EVIDENCE

[12] The Board heard evidence on behalf of the Appellants from Sasha Milenov,

Principal of Milenov Associates, Architects and Planners. Mr. Milenov is a Registered Professional Planner and a member of the Ontario Association of Architects who has more than forty years of experience. He was qualified by the Board as an expert in land use planning and architecture.

[13] The Board heard evidence on behalf of the Appellants from Orest Stoyanovskyy an architect who prepared drawings for the proposal in Exhibit 5.

[14] The Board also heard evidence from the participants, Ms. Madonia and Ms. Galas.

[15] The City did not appear at the hearing and provided no evidence.

[16] Except for the above, no other evidence was provided in relation to this matter.

[17] Mr. Milenov stated that the lot area of the subject property is 649.39 square metres ("sq m") and that for an FSI of 0.4 the size of the dwelling would be 259.76 sq m and for an FSI of 0.5 it would be 324.7 sq m. He testified that a variance had been approved for the subject property to permit 0.45 FSI in 1994, but the owners only constructed the dwelling with an FSI of 0.42.

[18] The proposed addition will be mainly to the side and rear of the existing dwelling. Mr. Milenov stated that the addition will be entirely within the existing footprint of the house. A dormer roof will be provided which the City is permitting. Mr. Milenov indicated that from the street the dwelling will not appear to have 0.5 FSI but will look more like a dwelling with 0.4 to 0.45 FSI.

[19] Mr. Milenov referred to a study that he had completed with regard to the characteristics of other lots in the area (Exhibits 8 and 9). He stated that there are 319 properties within the study area and that the FSI of 26% of the properties is greater than 0.4 and 11% have FSI values greater than 0.5. The FSI values range to a maximum of 0.88.

[20] Mr. Milenov also submitted evidence of a number of Committee decisions which approved proposals with FSI values above 0.5 (Exhibits 10 and 11). These included decisions which approved an FSI of 0.51 for 6 Baby Point Terrace and an FSI of 0.53 for 9 L'Estrange Place. It was Mr. Milenov's opinion that the proposed dwelling will be compatible with the neighbourhood with regard to the 0.5 FSI value.

[21] He indicated that the subject property is within a Heritage Conservation District Study Area. However, the Board heard that a Heritage Conservation District has not been approved for the area and the property has not been designated under the *Ontario Heritage Act*.

[22] Mr. Milenov submitted photographic evidence of other dwellings in the area, some of which were constructed recently which are not consistent with the Home Smith architecture which characterizes some of the properties in the area. It was his opinion that the area is characterized by a variety of housing types, roofs and façade treatments. He maintained that the dwelling with the proposed addition will fit with the character of the area.

[23] Mr. Milenov provided excerpts from the City's Official Plan (Exhibit 14). He indicated that the subject property is designated as Neighbourhoods. He noted that in s. 2.3.1.1 the Official Plan indicates that Neighbourhoods are physically stable and that development should respect and reinforce the existing physical character. He also referred to s. 4.1.5 which identifies a number of factors to consider in determining if development respects and reinforces the existing physical character. Mr. Milenov indicated that the variance appropriately considers these factors and the proposal respects and reinforces the existing physical character of the area. It was Mr. Milenov's opinion that the variance maintains the general purpose and intent of the Official Plan.

[24] With regard to the By-law, it was Mr. Milenov's evidence that the intent of the By-law is to ensure compatibility of development with the surrounding area. The By-law controls density through the FSI provisions. He stated that there are no negative implications for the increase in FSI from 0.4 to 0.5. A number of similar applications

have been approved in the area. It was Mr. Milenov's opinion that the variance maintains the general purpose and intent of the By-law.

[25] Mr. Milenov stated that the variance is minor. He indicated that the proposal will have no impact, the addition will be constructed within the permitted building envelope, the building fits within the area and the increase in FSI is not significant.

[26] Mr. Milenov stated that the variance is desirable. With the addition the subject property will be similar to other properties in the area. The proposal will not cause substantial change to the façade of the dwelling. Most of the change will occur at the rear of the house.

[27] Mr. Milenov referred to conditions recommended by City staff regarding archeological and heritage concerns (Exhibit 15). He indicated that the property has not been designated under the *Ontario Heritage Act*, but the property is within an archeologically sensitive area because of the location of an aboriginal site in the vicinity. The conditions that have been recommended by City staff require an archeological assessment to be undertaken. Mr. Milenov indicated that the Appellants have retained an archeological consultant to undertake the assessment. He requested that the last condition recommended by staff be modified to account for some soil disturbance that may have already occurred with the construction that has been approved by the City as set out in Exhibit 17.

[28] Mr. Milenov's opinion was that the proposal is desirable for the appropriate use of the lands, including with regard to heritage and archeological matters.

[29] Mr. Milenov referred to a condition that had been requested by the City's Urban Forestry department (Exhibit 18). He indicated that the Appellants have retained an arborist who prepared a report and that the condition has been satisfied. He submitted a copy of the arborist's report and a City permit to injure or destroy/remove trees (Exhibit 19). He stated that it is no longer necessary to impose the condition requested by Urban Forestry.

[30] Mr. Milenov stated that the proposed variance meets the four tests under s. 45(1) of the Act. He also recommended that the conditions included in Exhibit 17 be imposed on approval of the variance.

[31] Ms. Madonia expressed concerns that the construction on the subject property needed to be controlled and that the proposal should be carried out according to the drawings. She expressed some concern about the height of the dwelling. She indicated that if the gross floor area of the building is limited to 325 sq m she would not have a concern about the size of the dwelling. However, she stressed that the construction should not exceed the permissions and that there needs to be control over the proposal.

[32] Ms. Galas supported the concerns raised by Ms. Madonia. She expressed concern about the canopy over the patio at the rear of the house and about potential overlook from the patio. She indicated that the plans for the subject property seem to be constantly changing.

[33] The concerns raised by Ms. Madonia and Ms. Galas were largely addressed through the evidence of Mr. Stoyanovskyy. He indicated that the height of the dwelling will be 10.95 m which is below the permitted height of 11 m. Also, the plans for the property indicate that the patio is not intended to be enclosed. Mr. Stoyanovskyy stated that the patio has been constructed according to the permit.

ISSUES, ANALYSIS AND FINDINGS

[34] The Tribunal has carefully considered the evidence and submissions of the Appellants and the participants. The expert planning opinion of Mr. Milenov in support of the proposal is uncontradicted.

[35] The lot study provided by Mr. Milenov demonstrates that FSI values greater than 0.4 are common in the area. The proposed FSI of 0.5 has been exceeded through a number of approvals in the area. The Tribunal concludes from the evidence that the proposal with the variance will fit with the existing physical character of the area.

[36] The concerns of Ms. Madonia were largely resolved provided that the FSI does not exceed 0.5. Ms. Galas's concerns were largely related to the canopy and patio which are permitted and not affected by the proposed variance. With regard to concerns that the proposal should be carried out according to the approvals, the City controls construction through the building permit process.

[37] The participants provided no compelling evidence that the variance does not meet the four tests. Some of the participants' evidence involved the impact of the proposal which is related to the test of minor. However, the Tribunal cannot conclude from the evidence that the impact will be significant or that the variance fails the test of minor.

[38] In addition, Mr. Wood submitted a number of previous decisions of the Board which support approval of the variance.

[39] In consideration of the above, the Tribunal accepts and agrees with the planning opinion provided by Mr. Milenov. The Tribunal finds that the variance maintains the general purpose and intent of the City's Official Plan and City Zoning By-law No. 569-2013. The Tribunal finds that the variance is minor and the variance is desirable for the use of the lands. The Tribunal also finds that the conditions recommended by Mr. Milenov are appropriate and will apply them to the approval of the application.

[40] The appropriate order is provided below.

ORDER

[41] The Tribunal orders that the appeal is allowed and the variance to Toronto Zoning By-law No. 569-2013 is authorized subject to the following condition:

1. Prior to the issuance of any Building Permit, including (but not limited to) a permit for demolition, excavation and/or shoring:
 - i) The applicant shall retain a consultant archeologist, licensed by the

Ministry of Tourism, Culture and Sport under the provisions of the *Ontario Heritage Act* (R.S.O. 1990 as amended) to carry out a Stage 1-2 archeological assessment of the entire property and follow through on recommendations to mitigate, through preservation or resource removal and documentation, adverse impacts to any significant archeological resources found. The assessment is to be completed in accordance with the 2011 Standards and Guidelines for Consulting Archeologists, Ministry of Tourism, Culture and Sport.

- ii) Should the archeological assessment process continue beyond a Stage 1-2 assessment, any recommendations for Stage 3-4 mitigation strategies must be reviewed and approved by Heritage Preservation Services prior to commencement of the site mitigation.
- iii) The consultant archeologist shall submit a copy of the relevant assessment report(s) to the Heritage Preservation Services Unit in both hard copy format and as an Acrobat PDF file on compact disk. All archeological assessment reports will be submitted to the City of Toronto for approval concurrent with their submission to the Ministry of Tourism, Culture and Sport.
- iv) No excavation, grading or other soil disturbances shall take place on the subject property, other than that which has already occurred, prior to the City's Planning Division (Heritage Preservation Services Unit) and the Ministry of Tourism, Culture and Sport (Heritage Operations Unit) confirming in writing that all archeological licensing and technical review requirements have been satisfied.

"C. Conti"

C. CONTI
VICE-CHAIR

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Local Planning Appeal Tribunal

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