

Ontario Municipal Board
Commission des affaires municipales
de l'Ontario



ISSUE DATE: August 04, 2017

CASE NO(S): PL170087

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

Applicant and Appellant:	1044774 Ontario Inc.
Subject:	Minor Variance
Variance from By-law No.:	9089
Property Address/Description:	1 Ranstone Gardens
Municipality:	City of Toronto
Municipal File No.:	A-158/16SC
OMB Case No.:	PL170087
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OMB Case Name:	1044774 Ontario Inc. v. Toronto (City)

Heard: July 11, 2017 in Toronto, Ontario

APPEARANCES:

Parties

1044774 Ontario Inc.

City of Toronto

Counsel

Dennis Wood

Nathan Muscat
Adrienne deBacker

**MEMORANDUM OF ORAL DECISION DELIVERED BY PAULA BOUTIS AND
KARLENE HUSSEY ON JULY 11, 2017 AND ORDER OF THE BOARD**

INTRODUCTION

[1] This is an appeal by 1044774 Ontario Inc. (“Appellant”) of the the Committee of Adjustment (“Committee”) for the City of Toronto (“City”) of a refusal to authorize minor

variances related to the reconstruction of a garage into amenity space on the ground level and two apartments on the second level.

[2] The two new apartments, built approximately five years ago, are in addition to the already existing six residential units in a separate building at 1 Ranstone Gardens (“Subject Property”), in the former City of Scarborough, within a community known as Ionview. It is on an oversized corner lot, at Ranstone Avenue and Birchmount Road. The reconstructed garage and six-unit apartment building abut, but they are not connected to each other internally.

[3] The two new apartments were constructed without permits. The main floor, to include a gym room, washroom, change room, and storage area for bikes, has not yet been constructed (Exhibit 12).

[4] The Subject Property is zoned as a multiple-family residential use under Zoning By-law No. 9089 (“Scarborough By-law”) and Multiple Dwelling Zone under Zoning By-law No. 569-2103 (“City By-law”). Only one other nearby property at 1117 Birchmount Road is zoned similarly, though it is currently used as a day care (Exhibit 6a). All other uses are detached one and two storey homes.

[5] At the opening of the hearing, we heard from Appellant’s counsel that issues related to privacy and overlook had been resolved to the satisfaction of planning staff and would be presented to the Board in the form of revised plans and conditions, in the event the Board authorized the minor variances. There were no changes requested to the variance themselves.

[6] Despite City staff being satisfied, the City solicitor had been instructed to oppose the appeal and defend the Committee’s decision to refuse the minor variance authorizations. The City did not present any planning evidence of its own. No residents sought participant status before the Board.

[7] Nothing has changed in terms of the footprint of the buildings as a result of this

redevelopment of the second storey of the garage and the proposed redevelopment of the main floor. However, since the garage is now a residential use, different zoning bylaw permissions apply and variances are needed. The variances requested were for setbacks, buffer strips, the total number of permissible dwellings from six to eight, floor area variances for each of the apartment suites, and landscaping area variances.

[8] For the following reasons, the Board allows the appeal and authorizes the variances, with conditions, all in accordance with Attachment 1.

ANALYSIS

[9] The four tests under s. 45(1) of the *Planning Act* ("Act") must be satisfied for the purpose of authorizing variances. The variances must

- a. maintain the general intent and purpose of the official plan;
- b. maintain the general intent and purpose of the by-law;
- c. be desirable for the appropriate development and use of the land; and
- d. be minor.

[10] The specific variances requested are the following:

- a. Under both the Scarborough and City By-laws (collectively "ZBLs")
 - i. Setbacks of 1.3 metre ("m") and 1.5 m on the south side of the former garage and 1.5 m on the west side of the former garage compared to a requirement of 4.76 m (1/2 the height of the building) under the ZLBs. For the purposes of determining height, the building chosen by the City's zoning examiner was the taller six-unit residential building rather than the lower former garage. While the Applicant had some doubt about whether the six-unit residential building was the appropriate

building from which to determine height, as opposed to the former garage, it proceeded on the basis that zoning examiner's choice was correct.

- ii. Buffer strips of 1.4 m on the east side of the former garage; 0.7 m on the east side of the parking lot; and 1.3 m on the south side of the former garage, compared to a minimum 1.5 m buffer strip requirement under the ZBLs.
- iii. Total number of residential suites required is eight, whereas under the ZBLs a maximum of five are permitted (one unit per 199 square metres ("m²") of lot area), plus one legal non-conforming suite.

b. Under the City By-law alone

- i. A rear yard setback of 1.4 m versus a requirement of 7.5 m; the 1.4 m referred to is 1.49 m based on the up to date survey, but the Applicant proceeded with 1.4 m.

c. Under the Scarborough By-law alone

- i. The one bedroom suite has an area of 48 m² and the two bedroom suite has an area of 58 m², compared to the ZBLs requirements of 51 m² and 67 m², respectively.
- ii. A minimum of 7.5 m of landscaping is required in the rear yard, compared to the existing rear yard landscaped area of 1.4 m on the south side of the former garage and 0.7 m on the south side of the existing paved parking area.

[11] On behalf of the Appellant, Sasha Milenov testified. Mr. Milenov is both an architect and professional planner. He was qualified to provide opinion evidence in the

area of land use planning for the purposes of this appeal.

[12] Mr. Milenov gave an overview of the Subject Property and the neighbouring homes and nearby day care. He testified that the Subject Property was quite different than other lots in terms of size and configuration. In 1999, the garage itself was the subject of authorized variances related to rear and side yard setbacks in the context of that use (Board Case No. PL990680).

[13] There is dense foliage consisting of trees on the property surrounding the original apartment building of 6 units. The driveway entrance to the Subject Property is from Ranstone Gardens. It leads immediately into an eight vehicle parking lot facing the former garage. There is a walk way leading to the original six-unit apartment building from Ranstone Gardens as well (Exhibit 6c).

[14] For corner lots like the Subject Property, the shortest part of the property fronting a street is considered the front yard. As a result, it is Birchmount Road that is the frontage, even though the property is not accessed from Birchmount Road. This creates unusual front, back, and side yard conditions.

[15] The Subject Property's parking lot and driveway along the east and the east side of the former garage – technically the rear yard - abuts the side yard of 50 Mozart Avenue, also a corner lot. The south side yard from the former garage abuts the back yard of 48 Mozart Avenue. The west and additional south elevation of the former garage backs onto the backyard of 1121 Birchmount Road.

[16] A bus route runs along Birchmount Road, with a stop at the corner of Birchmount Road and Ranstone Gardens. This bus connects to the subway system.

[17] From both Ranstone Gardens and Birchmount Road, the Subject Property faces a hydro corridor and trail. South along Birchmount is an employment area (Exhibit 6a).

[18] Mr. Milenov testified that the monthly rental costs for the two bedroom unit is

\$900 per month and the one bedroom unit is rented at \$800 per month. In the entire complex, rents range from \$780 to \$1,050 per month. All units, including the two in the former garage, are currently rented. While there was no expert opinion before the Board on market rental costs in the area, Mr. Milenov understood that these were below market rent. The Board takes notice that these units are modestly priced units.

[19] Mr. Milenov visited the units and testified that they were functional and reasonable accommodations, with sufficient room. The Board, on the basis of this evidence and the plans themselves, so finds (Exhibit 12).

[20] At the Committee hearing, while planning staff recommended refusal of the variances, no resident objected to the application. Nine area residents filed form letters as letters of support, most being from residents on Mozart Avenue, and included one immediately opposite the Subject Site at 15 Ranstone Gardens. Two others provided their own letters of support, being the owners at 39 Yorkshire Road and 1121 Birchmount Road. For the purposes of the appeal, a further letter of support was filed from what the Board understood to be the new owner of 1121 Birchmount Road (Exhibits 7 and 13).

[21] No residents appeared before the Board at the appeal to oppose the application.

[22] To satisfy the City planner's concerns regarding potential difficulties with privacy and overlook, the location and style of certain windows are to be modified (Exhibits 11 and 12). A window will be removed entirely from the south elevation of the former garage and moved to the east elevation. On the east side, the windows will be higher and with a different style than those in place. This allows for light while reducing the likelihood of overlook concerns into the side yard of 50 Mozart Avenue. On the west elevation, the two windows will similarly be changed.

[23] At the hearing, Mr. Milenov reviewed each of the variances requested as against the purpose and intent of the ZBL's and then considered the variances as a whole with respect to the other three tests under s. 45(1).

[24] For the increase in units to eight from six, Mr. Milenov was unable to provide a rationale for the requirement that there be no more than one unit per 199 m². He noted that while it appears to limit density, it did not make sense from his perspective, as it did not seem to control anything related to the size of the unit, amenity space or landscaped space. He suggested it was an arbitrary number and was unable to find any historical information about its purpose.

[25] Nonetheless, it was his opinion that there is adequate space in the units themselves, there would be new amenity space, and the property remains well landscaped. As a result, he was of the opinion that the proposed variance to 138.4 m² per unit to allow for eight units was satisfactory to meet the ZBL requirements for appropriate density and to ensure that the development is compatible with the physical character of the established neighbourhood (Toronto Official Plan Policy 4.1.8).

[26] As the units themselves are functional, it was Mr. Milenov's opinion that the general intent and purpose of the Scarborough ZBL for area requirements for each of the units as is also maintained. This particular requirement is not carried over into the City ZBL.

[27] The minimum rear yard setback requirement of 7.5 m exists in the City ZBL only. The Subject Property rear yard backs onto the side yard at 50 Mozart Avenue. There is a fence between the two properties at this location. The side yard at 50 Mozart is not used and the rear yard of 50 Mozart Avenue is almost "non-existent". As a result, the failure to meet the 7.5 m set back has no impacts in this situation and meets the purpose and intent of the ZBL requirements. Concerns regarding privacy, in any event, were otherwise addressed by changes to the window configuration.

[28] Regarding side yard setback variances, we have a condition here where the west side yard is adjacent to the rear yard of 1121 Birchmount Road. The side yard is minimally used and as a result there are no impacts on 1121 Birchmount Road. This type of condition also exists with 48 Mozart Avenue. Therefore it was Mr. Milenov's opinion that the general intent and purpose of the ZBLs were also met here as privacy

concerns are not significantly implicated.

[29] Regarding the buffer variances under the ZBLs, the majority of the variances requested are quite small relative to the prescribed standards. While it would have been possible to avoid the larger buffer variance related to the parking lot, this would have resulted in removal of four trees. The Board agrees with the Applicant that the variance is preferred to the removal of the trees. The property is also well landscaped with vegetation and the existing fence assists with privacy concerns.

[30] In summary, Mr. Milenov concluded that the intent and purpose of the ZBLs was maintained for the variances individually and collectively.

[31] Mr. Milenov reviewed the Toronto Official Plan and concluded that this type of intensification was appropriate here, as it was consistent with, respected and reinforced the existing character of the neighbourhood. The redeveloped garage is similar to the adjacent one and two-storey houses, and the apartment complex itself is on a corner lot and is permitted. There is no change to the prevailing patterns with this change in use. The housing policies support a variety of housing, and make reference to the need for affordable housing. Mr. Milenov therefore concluded that the redevelopment met the intent and purpose of the Official Plan.

[32] Mr. Milenov was of the opinion that the change in use was also desirable. In addition to sensitive infill to accommodate additional rental housing, the buildings will use the same infrastructure (hydro, water and sewer), with negligible impact on that infrastructure, and support existing public transit.

[33] Lastly, Mr. Milenov was of the opinion that the variances were minor, both individually and collectively, as they had no adverse impact and given the unique configuration and status of the Subject Property. With the addition of the conditions and agreements reached with the City staff in accordance with Exhibit 16, privacy matters would be assured.

[34] The City noted that under the Scarborough ZBL garages are prohibited from being used for any human habitation. However, the Board notes this garage has been redeveloped solely for multi-unit residential purposes, which is authorized under the ZBLs, and is no longer a garage. Issues regarding appropriate size and privacy from the change in use have been adequately addressed.

[35] This situation can be distinguished from the decision in *Hill v. Rideau Lakes (Township)*, [2016] O.M.B.D. No. 185 submitted by the City, in which the Board denied the redevelopment of a garage in a rural community to allow a residential use on the second storey on a property zoned for a single dwelling. Authorization of that use would result in a multi-residential use where it was not authorized, and the garage use would continue to be used as a garage. In any event, under the *Planning Act*, official plans are required to be amended to contain policies authorizing the use of a second residential unit including in ancillary structures, and by-laws must be passed to give effect to these.

[36] This case is also distinguished from the 2006 decision in *Morriello v. Toronto (City) Committee of Adjustment* [2006] O.M.B.D. No. 619 ("*Morriello*") (Case File No. PL051182) submitted by the City, where the Board refused the addition of a fifth apartment in the basement. In that case there was a clear finding that there was insufficient on-site parking, whereas this is not the case here. Further, area residents in the *Moriello* case appeared to oppose the additional unit.

[37] The City also submitted that this case would establish an unwelcome precedent and destabilization in the community, however, there was no evidentiary basis for this.

[38] The Board accepts Mr. Milenov's opinion and agrees that the variances meet the four tests under s. 45(1) of the Act. In addition, the Board adopts Mr. Milenov's opinion that the proposal is consistent with the Provincial Policy Statement, 2014, and the Growth Plan for the Greater Golden Horseshoe, 2017, and that this proposal represents good planning.

ORDER

[39] The Board allows the appeal and authorizes the minor variances, with conditions, all in accordance with Attachment 1.

[40] On a contingent basis pursuant to s. 87 of the *Ontario Municipal Board Act*, the Board will authorize the variances sought pursuant to Zoning By-law No. 569-2013.

"Paula Boutis"

PAULA BOUTIS
MEMBER

"K. J. Hussey"

KARLENE HUSSEY
VICE-CHAIR

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

Ontario Municipal Board

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ATTACHMENT 1

OMB Case No. PL170087

1 Ranstone Gardens, Toronto

Authorized Minor Variances

By-law No. 569-2013 and By-law No. 9089

1. The existing two-storey garage building that was converted to residential units has building setbacks of 1.3 m and 1.5 m on the south side; and 1.5 m on the west side;
Whereas the by-law requires minimum setbacks from the side lot lines equal to $\frac{1}{2}$ the height of the building (a minimum setback of 4.76 m is required).
2. The existing buffer strip adjacent to the east side of the existing two-storey garage building is 1.4 m;
The existing buffer strip adjacent to the east side of the existing paved parking area is 0.7 m;
The existing buffer strip adjacent to the south side of the existing two-storey garage building is 1.3 m;
Whereas a minimum 1.5 m buffer strip must be provided along any lot line abutting a residential lot.
3. The total number of residential suites (individual dwelling unit) is 8;
Whereas the by-law permits a maximum of one suite (individual dwelling unit) per 199 m² of lot area. A maximum of 5 suites are permitted (there are 8 existing suites including 1 lawful non-conforming suite and 2 additional suites in the converted garage and storage building).

By-law No. 569-2013

4. The existing two-storey garage building that was converted to residential units has a rear yard setback of 1.4 m;
Whereas a minimum rear yard of 7.5 m is required.

By-law No. 9089

5. The proposed floor area of the one-bedroom suite is 48 m²; the proposed floor area of the two-bedroom suite is 58 m²;
Whereas the minimum required floor area for a one-bedroom suite is 51 m² and the minimum required floor area for a two-bedroom suite is 67 m².

ATTACHMENT 1

6. The existing rear yard landscaped area is 1.4 m wide on the south side of the existing garage building and 0.7 m on the south side of the existing paved parking area;

Whereas a minimum of 7.5 m of landscaping must be provided in the rear yard.

ATTACHMENT 1

Conditions

1. The construction and alterations shall be completed substantially in accordance with plans prepared by Milenov Associates, Architects and Planners, dated July 2017, relating to the south, east and west elevations on drawing numbers 3, 4, 5 & 7 of Exhibit No. 12, and that the main floor of the garage be constructed substantially in accordance with the Ground Floor Plan, Drawing No. 2., of Exhibit No. 12 particularly relating to the uses of the interior amenity space as shown on the plans;
2. That the ground floor of the garage contain no habitable space or commercial uses; and
3. The Owner shall enter into an agreement pursuant to Section 45(9) of the *Planning Act*, R.S.O. 1990 c. P. 13, to the satisfaction of the Director of Community Planning, Scarborough District, and the City Solicitor, to secure the indoor amenity area (gym room and change room).