

Ontario Municipal Board
Commission des affaires municipales
de l'Ontario



ISSUE DATE: June 3, 2016

CASE NO(S): PL151165

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

Applicant and Appellant:	Lacaban Developments Inc.
Subject:	Minor Variance
Variance from By-law No.:	1-88
Property Address/Description:	76 Athabasca Drive
Municipality:	City of Vaughan
Municipal File No.:	A294/15
OMB Case No.:	PL151165
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OMB Case Name:	Lacaban Developments Inc. v. Vaughan (City)

Heard: April 13, 2016 in Vaughan, Ontario

APPEARANCES:

Parties

Counsel

Lacaban Developments Inc.

P. Gross

DECISION DELIVERED BY L. M. BRUCE AND ORDER OF THE BOARD

INTRODUCTION

[1] The matter before the Board was an appeal of a Committee of Adjustment (the “Committee”) decision that denied the variance application of Carmela Peccia. The appeal has since been assumed by Lacaban Developments Inc. (the “applicant”). The proposal is to construct an addition to an existing two-car garage attached to a single detached dwelling.

[2] The Board qualified professional land use planner Paul Johnston who provided expert planning evidence in support of the application.

[3] The City of Vaughan (“City”) was not in attendance at the hearing. Several neighbours were in attendance and were interested in obtaining participant status. It was agreed amongst the participants that two of the neighbours, Joan Rocco and Raffaella Capone would be granted participant status and would speak to their collective concerns.

THE SUBJECT PROPERTY AND PROPOSAL

[4] The subject property is located between Keele Street and Dufferin Street, south of Kirby Road. It is situated on Athabasca Drive across the street from Maple Trail Park. The property has frontage of 23 metres (“m”), and a depth of 46 m. Mr. Johnston characterized the neighbourhood properties as consisting of single-family homes, on large, estate-like lots. He stated that it is a stable and desirable neighbourhood. Mr. Johnston stated that the houses typically have two or three car attached garages, some facing and some siding on to the street. He opined that many of the houses have a great deal of modulation in the front wall of the houses, in part due to the projecting garages. (Exhibit 2, Figure 2).

[5] The proposal is to allow the owner of the subject property to convert a two-car garage into a three-car garage. Mr. Johnston stated that this requires the front of the garage, which sides onto the road, to be moved 1.53 m closer to the road, thus reducing the front yard setback. He opined that this is an extremely modest proposal involving a 10.8 square metre addition.

[6] The addition requires two variances. The first is for lot coverage variance. The Zoning By-law (“ZBL”) permits lot coverage of 28% whereas 32% is requested. The second variance is for front yard setback. The setback requirement is 7.5 m whereas 6.0 m is requested.

[7] At the beginning of the hearing the Board was advised that the original application was for a lot coverage variance of 31.3%. This coverage was based on a calculation error. The Board finds that this is a minor change and no further notice is required under s. 45(18.1.1) of the *Planning Act* (the “Act”).

[8] The City Planning Department supported the application for both of the variances. The concerns expressed by the neighbours were related to visual impact, the appropriateness of a three-car garage on a lot of this size, and the potential impact to sight lines when backing out of adjacent driveways.

ANALYSIS AND FINDINGS

[9] When considering a minor variance, the Board must consider the four-part test set out in s. 45(1) of the Act:

- a) Does the variance maintain the general intent and purpose of the official plan (the “OP”)?
- b) Does the variance maintain the general intent and purpose of the ZBL?
- c) Is the variance desirable for the appropriate development or use of the land?
- d) Is the variance minor?

[10] The Board must also determine whether a minor variance is consistent with the Provincial Policy Statement, 2014 (the “PPS”) and confirms to the Growth Plan for the Greater Golden Horseshoe (the “Growth Plan”). It was Mr. Johnston’s opinion that the proposed variances were consistent with the PPS and the Growth Plan.

[11] Mr. Johnston spoke to the four tests under s. 45(1) of the Act.

Official Plan

[12] The property is designated Low Rise Residential and is within the Oak Ridges Moraine Conservation Area Plan Settlement Area as identified in the City of Vaughan Official Plan, 2010. Mr. Johnston stated that there are no ecological or hydrological features on or near the property. The requested variances, he opined, conform to and are consistent with the Oak Ridges Moraine Conservation Plan.

[13] Mr. Johnston carried out a lot study of 75 properties on a stretch of Athabasca Drive from north of Hunterwood Chase and including Appalachian Road and Kootenay Ridge. He considered 75 properties in this study area. He stated that 64% have three-car garages, 35% have two-car garages and 1% have a four-car garage.

[14] Mr. Johnston reviewed Building Types and Development Criteria specified in the Vaughan Official Plan, 2010. He indicated that the OP states that community areas are to respect and reinforce the scale, massing, setback and orientation of other built and approved houses in the areas. It was his opinion, supported with photos of the neighbourhood, (Exhibit 2) that this was a modest change that will fit into the prevailing pattern and modulation of building features of front walls. He opined that the required variances are consistent with the character of the area and conform to the general intent and purpose of the OP.

Zoning By-law

[15] Mr. Johnston stated that the subject property is zoned Residential (R1) under ZBL No. 1-88 as amended and is located on lands identified in Schedule E-1034 with standards set out in s. 949 of the ZBL. It was Mr. Johnston's opinion that the general intent and purpose of the ZBL is to provide residential integrity and preserve the low-density character of the neighbourhood. He opined that this general intent and purpose is met since the garage expansion will not result in an overlook issue, privacy or shadow impacts nor a reduction in amenity space. It was his opinion that the character of the community is maintained. He supported this opinion through reference to a Committee

decision analysis that demonstrated that there have been a notable number of minor variances granted in the neighbourhood for increased coverage. This has included requests of 30% to 33.1% lot coverage. As such, it was his opinion that this lot coverage variance is in line with what has been permitted in the area.

[16] With respect to the front yard setback, Mr. Johnston reiterated that the street is characterized by the modulation of the front of the houses and that this would be maintained with the relatively small setback variance.

Desirable and Minor

[17] Mr. Johnston stated that the variances would provide for the expansion of the garage to accommodate the needs of the owner and would be in keeping with the character of the neighbourhood. He opined that it would be a standard design that created no adverse impact of overlook, shadowing or privacy on the street or the neighbours. The garage, he stated, would be next to another garage and a driveway and that there are no living areas or large windows on neighbouring properties that would be adjacent to the garage. It was his opinion that the variance is minor in terms of both impact and magnitude.

[18] The participants did not share Mr. Johnston's opinion. Both Ms. Capone and Ms. Rocco spoke to the visual impact this would have. Ms. Capone stated that the existing garage which sides onto her property will now be five feet longer, adding to the long line of bricks that she currently looks at (Exhibit 3). In addition to this visual impact, she stated it would mean she would need to drive five feet further down her driveway in order to be able to see up and down the street, which would be a safety issue when backing out of her driveway. It was both Ms. Capone's and Ms. Rocco's opinions that the lot is not of a sufficient size to permit a three-car garage. Ms. Rocco added that the adjacent neighbour would no longer be able to sit on their front porch and see to the east.

CONCLUSION

[19] The Board has considered the input from the participants, the uncontroverted evidence of an expert witness, and the Book of Authorities provided by Council for the applicant. While the Board understands that there is an apprehension of impact associated with a longer garage wall, the Board heard no compelling evidence that impacts will result. As Mr. Johnston pointed out this is a garage-to-garage relationship. Further, as stated in the OMB decision of Vice Chair J. V. Zuidema *Atkinson v. Cambridge* (OMB File PL130690), paragraph 16: "With respect [to] the criticism that there would be a loss of view, there are many prior decisions of the Board which categorically state that there is no right to a view."

[20] The Board finds that the requested variances are not of a large magnitude and are similar to other variances that have been granted in the area. The driveway on the neighbouring property is sufficiently long enough that sight lines should not be unduly impacted.

[21] The Board accepts the professional planning evidence of Mr. Johnston that the four tests under s. 45(1) of the Act are met.

ORDER

[22] The Board orders that the variances to Zoning By-law No. 1-88 are authorized.

"L. M. Bruce"

L. M. BRUCE
MEMBER

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Ontario Municipal Board

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