

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



**ISSUE DATE:** January 08, 2019

**CASE NO(S):** MM180029

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 114(15) of the *City of Toronto Act*, 2006, S.O. 2006, c. 11, Sched. A

Subject:	Site Plan
Referred by:	Gerard Borean
Property Address/Description:	3418 Lakeshore Boulevard West and "0" Skeens Lane
Municipality:	City of Toronto
OMB Case No.:	MM180029
OMB File No.:	MM180029

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

Applicant and Appellant:	Eden Oak (Lakeshore) Inc.
Subject:	Minor Variance
Variance from By-law No.:	1997-77
Property Address/Description:	3418 Lakeshore Boulevard West and "0" Skeens Lane
Municipality:	City of Toronto
Municipal File No.:	A0142/17EYK
OMB Case No.:	MM180029
OMB File No.:	PL180643

**Heard:** November 21, 2018 in Toronto, Ontario

**APPEARANCES:****Parties**

City of Toronto

Eden Oak (Lakeshore) Inc.

**Counsel**

A. Suriano

G. Borean and H.T. Arnold

**DECISION DELIVERED BY C.J. BRYSON AND INTERIM ORDER OF THE TRIBUNAL**

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**BACKGROUND**

[1] Eden Oak (Lakeshore) Inc. (“Applicant” and “Appellant”) applied to the City of Toronto (“City”) Committee of Adjustment (“CoA”) for variances and to the City itself for site plan approval for a proposed five storey, 32-unit apartment building development at 3418 Lakeshore Boulevard West and “0” Skeens Lane (“Subject Lands”). The CoA refused the variance application and the City failed to decide upon the site plan application. The Applicant appealed the variance refusal to the Tribunal pursuant to s. 45(12) of the *Planning Act* (“PA”) and the failure to decide upon its site plan application pursuant to s. 41(12) of the PA and s. 114(15) of the *City of Toronto Act* (“COTA”).

[2] Initially, the Applicant requested variances to the applicable Etobicoke Zoning By-law No. 1997-77 (“ZB”) to allow for eight undersized dwelling units from the required minimum 60 square metres (“sq m”) to four units of 53 sq m and four units of 54 sq m; a slight increase in floor space index (“FSI”) from the permitted 3.0 to 3.13, and; a reduction in required residential parking spaces from 32 to 29.

[3] At the hearing, the Parties proposed a settlement upon a revised proposal, inclusive of a reduced number of dwelling units, an addition of commercial space at ground level, and reduced variance requests as listed in Exhibit 3. The newly requested variances call for an allowance of four undersized units, two at 53 sq m and two at 54 sq m, and a reduction in parking from the now required 30 to 24 residential spaces and

from the required three to zero commercial spaces. The FSI variance is no longer required. The Parties also proposed two conditions for variance approval as listed in Exhibit 4. The conditions require that the development include 135.22 sq m of commercial gross floor area on the ground floor as depicted in Exhibit 2, and that prior to final Tribunal approval of the variances the City and Applicant enter into a payment in-lieu-of parking agreement to the satisfaction of City Solicitor.

[4] The Parties also requested that the Tribunal bi-furcate the site plan appeal in matter MM180029 from this variance appeal in matter PL180643 and adjourn it *sine die*. The Parties are optimistic that the site plan will be resolved in the near future, upon the revised development plans. At the hearing, they sought the Tribunal to set a status update telephone conference call ("TCC") for the site plan appeal and that this Member remain seized due to the relation of the variance evidence heard at this hearing to that matter.

[5] Nancy Frieday, a planner for the Applicant, was qualified on consent to provide expert opinion evidence in the area of land use planning in support of the proposed settlement of the variance appeal.

[6] Tim Dobson sought but was denied party status in the variance appeal. Mr. Dobson submitted he owned a property nearby but not adjacent to the Subject Lands and that he had general concerns regarding the inclusion of commercial space in the development and the reduced parking leading to overflow to on-street parking in the area. He further raised concerns regarding the potential building façade. The Tribunal was not satisfied that Mr. Dobson raised direct concerns regarding the proposed development and variances sufficient to garner party status. Further, the Tribunal found that some of Mr. Dobson's concerns pertained to site plan and not variance concerns. Mr. Dobson was not an adjacent property owner and did not indicate to the Tribunal any intent to bring forward evidence of any direct impact of the variances upon him or his property interests. Mr. Dobson was granted participant status without objection.

## **PROPERTY**

[7] The Subject Lands front upon the recognized City Avenue of Lakeshore Boulevard West, back onto Skeens Lane, have several commercial properties directly to the west and 29<sup>th</sup> Street directly to the east. Further to the north of Skeens Lane is a pair of semi-detached dwellings with integrated parking and then townhouses. Further to the south from the commercial properties along the south side of Lakeshore Boulevard West are single detached dwellings.

[8] Ms. Friday testified that the Subject Lands on the north side of Lakeshore Boulevard West are currently vacant, approximately 0.1 hectare ("h"), rectangular and flat. They have a frontage of 32.6 metres ("m") on Lakeshore Boulevard West and a depth of 24.8 m along 29<sup>th</sup> Street. They are immediately east of 29<sup>th</sup> Street, between Kipling Avenue and Brown's Line. She further informed the Tribunal that the Subject Lands were previously used by the City of Etobicoke for a municipal parking lot, which was acquired by the Applicant in 1997.

[9] The Subject Lands are designated in a Mixed Use and Avenue Area under the City Official Plan ("OP") and within the area affected by Site and Area Specific Policy 21 ("SASP 21") which applies to the whole of Lakeshore Boulevard per an Avenue study undertaken by the City in 2004 and related OP amendments. The Subject Lands are zoned C1-AV under the ZB and zoning amendment By-law No. 1055-2004.

## **PARTICIPANT EVIDENCE**

[10] Mr. Dobson owns property to the west of the subject Lands along Lakeshore Boulevard West. It is a commercial property with residential units above and parking behind. There are three commercial businesses between his property and the Subject Lands. Mr. Dobson provided no evidence of insufficient on-site parking for his property uses or of potential impact on his property uses resulting from the variances. He only stated that some unnamed commercial operators on the south side of Lakeshore Boulevard West have experienced on-street parking supply issues.

[11] Mr. Dobson also suggested the proposed development should incorporate another underground level of residential parking, to provide for more than one space per unit, beyond the requirements of the ZB and inclusive of commercial parking spaces. He took no issue with the proposed undersized dwelling units.

[12] In cross-examination by Mr. Arnold, Mr. Dobson conceded that the condition for cash-in-lieu of parking would be utilized by the City for parking in the area, that the former City of Etobicoke sold its municipal parking lot to the Applicant for lack of demand, that less parking is required for one-bedroom units which constitute 40% of the proposed development, that some buyers will not have a car and all buyers will have knowledge of the parking limitation upon purchase, and that the units will be more affordable without individual parking spaces.

## **PLANNING EVIDENCE**

[13] Ms. Frieday testified regarding the proposed variances. She correctly outlined the applicable four tests for variance approval as found in s. 45(1) of PA: do the variances maintain the general purpose and intent of the OP; do they maintain the general purpose and intent of the ZB; are they minor in nature, and; are they desirable for appropriate development of the land.

[14] Ms. Frieday outlined that Chapter 4 OP policies regarding Mixed Use designations, Chapter 2 OP policies regarding Avenues and Chapter 3 OP policies regarding Urban Design apply to the Subject Lands. Further, SASP 21 applies. Ms. Frieday opined that the Urban Design policies will be addressed in the site plan process and that the Mixed Use, Avenue and SASP 21 policies support the proposed variances and mixed use development. Although a single use building is permitted, the OP policies encourage mixed use through inclusion of a commercial component at grade along the Avenue and high quality use to meet the needs of the community and support a reduction in vehicle use. Ms. Frieday further opined that the reduced unit sizes and parking spaces do not offend the OP for there are no specific applicable policies regarding unit size or parking requirements.

[15] Ms. Frieday continued that the ZB per the Etobicoke Zoning Code – Chapter 330 supports the proposed variances and development. The ZB has a maximum FSI of three, which is met by the revised proposal as is the maximum permitted height of 21 m. An apartment building is a permitted use with or without the included commercial component. The ZB does require a minimum one and two bedroom unit size of 60 sq m. Ms. Frieday testified that she looked at the prior zoning by-law and found it only had a required minimum of 48 sq m for one-bedroom units and 65 sq m two-bedroom units. The 1997 ZB changed the minimum required size for all one and two-bedroom units to 60 sq m but Ms. Frieday opined the trend is now toward smaller, more affordable dwelling units. On this basis and the resulting development in the area, Ms. Frieday opined that the reduction in size for four one-bedroom units from 60 sq m to two units of 53 sq m and two units of 54 sq m does not offend the purpose and intent of the ZB.

[16] Ms. Frieday further testified that the ZB instituted the one parking space per dwelling unit requirement, in advance of the development of provincial policies regarding transit use encouragement. She noted that there is one lay-by space in front of the Subject Lands, a cash-in-lieu of parking payment required of the Applicant as a condition of the settlement, and that the Subject Lands front on a pedestrian Avenue and are near 24 hour transit service along 30<sup>th</sup> Street, one block to the east as well as other transit options along Lakeshore Boulevard West. Finally, she noted that there is on-street and overnight parking along 29<sup>th</sup> Street, directly adjacent to the Subject Lands. On this basis, Ms. Frieday opined that the reduction in parking proposed does not offend the general purpose and intent of the ZB.

[17] Ms. Frieday also opined that the proposed variances and development are minor in nature in the absence of evidence of any resulting adverse impacts upon the Subject Lands or the surrounding area landowners and community members and services. She concluded that the proposed variances are desirable for the infill development of the Subject Lands provided for needed housing and commercial space along an Avenue, while contributing to the pedestrian streetscape.

[18] Finally, Ms. Frieday opined that the variances and proposed development are consistent with the Provincial Policy Statement, 2014 (“PPS”) and conform to the Growth Plan for the Greater Golden Horseshoe, 2017 (“GGH”) for they provide for infill residential development, along an Avenue well-supported by local services and transit.

## CONCLUSION

[19] The Tribunal accepts the uncontested opinion evidence of Ms. Frieday and on that basis approves of the variance appeal settlement, as outlined in Exhibits 3 and 4. Mr. Dobson did not provide any evidence that the proposed variances and resulting development did not meet the four tests or were inconsistent with the PPS and lacking conformity to the GGH. Specifically, there was no evidence provided of any adverse impact resulting from the undersized units or the reduced parking on-site of the Subject Lands.

## ORDER

[20] The Site Plan appeal in MM180029 is adjourned *sine die*.

[21] A Site Plan appeal status update TCC is scheduled **for 9 a.m. on Friday, February 8, 2019**. The parties are directed to call **416-212-8012 or Toll Free 1-866-633-0848 and to enter code 1006967# when prompted**.

[22] The Tribunal having been asked to consider an application which has been amended from the original application, and the Tribunal having determined as provided for in subsection 45(18.1.1) of the *Planning Act* that no further notice is required; the Tribunal orders that the variance appeal is allowed in part and the variances to By-law No. 1997-77 as found in Exhibit 3 and attached to this Decision and Order as Attachment 1, are authorized subject to the conditions set out in Exhibit 4, a copy of which attached to this Decision and Order as Attachment 2. Further, the Tribunal orders that it will withhold issuance of its final order until such time that it is advised by the City Solicitor that condition 2 set out in Attachment 2 has been complied with.

[23] There will be no further notice.

[24] This Member is seized of the scheduled TCC for the Site Plan appeal.

*"C.J. Bryson"*

C.J. BRYSON  
MEMBER

If there is an attachment referred to in this document,  
please visit [www.elto.gov.on.ca](http://www.elto.gov.on.ca) to view the attachment in PDF format.

**Local Planning Appeal Tribunal**

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## ATTACHMENT 1

Exhibit # 3

**Application to be amended to request variances as follows:**

**Variance 1**

Permit reduction of dwelling unit sizes from 60 sq. m. to 53 sq. m. for 2 dwelling units and from 60 sq. m. to 54 sq. m. for 2 dwelling units.

**Variance 2**

Permit reduction of parking required for residential dwellings from 30 parking spaces to 24 parking spaces; and,

**Variance 3**

Permit reduction of parking required for commercial uses from 3 parking spaces to 0 parking spaces.

**3418 Lake Shore Boulevard West & "0" Skeens Lane  
LPAT Case No.: MM180029**

Exhibit #: 4

**Proposed Conditions of Minor Variance Approval**

1. The proposed development shall include 135.22 square metres of commercial gross floor area on the ground floor of the building in the configuration and location as generally shown on the revised architectural plans prepared for 3418 Lake Shore Boulevard West and "0" Skeens Lane by SRN Architects Inc. dated November 20, 2018, and submitted as Exhibit 2 in the Local Planning Appeal Tribunal's hearing for LPAT Case No. MM180029.
2. Prior to the issuance of the final order, the Owner shall enter into a Payment-In-Lieu of Parking Agreement with the City, to the satisfaction of the City Solicitor.