# Ontario Municipal Board
Commission des affaires municipales
de l'Ontario

**ISSUE DATE:** January 29, 2016 **CASE NO(S).:** PL150716

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

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|---|---|
| Appellant: | Linda Morgan |
| Applicant: | Chelsea A. Miller |
| Subject: | Minor Variance |
| Variance from By-law No.: | 2014-014 passed on February 25, 2014 |
| Property Address/Description: | 472 Jeanette Drive |
| Municipality: | Town of Oakville |
| Municipal File No.: | CAV A/126/2015 |
| OMB Case No.: | PL150716 |
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| OMB Case Name: | Morgan v. Oakville (Town) |

**Heard:** January 12, 2016 in Oakville, Ontario

**APPEARANCES:**

| **Parties** | **Counsel*/Representative** |
|---|---|
| Chelsea Miller | Kirsten Leggat |
| Linda Morgan | Self represented |
| Town of Oakville | Dennis Perlin* |

**MEMORANDUM OF ORAL DECISION DELIVERED BY RICHARD JONES ON JANUARY 12, 2016 AND ORDER OF THE BOARD**

## INTRODUCTION

[1] The Board found in favour of Linda Morgan ("Appellant"), and the Town of Oakville ("Town"), and dismissed the application for minor variance. The Board's reasons for this decision are noted in the paragraphs under the heading of FINDINGS.

## BACKGROUND

[2] Chelsea Miller ("Applicant"), applied for a building permit to build their new home at 472 Jeanette Drive in the Town in May 2015. The surrounding neighbourhood was established in the 1950s and consists for the most past of smaller residences fairly typical for the era. Since then, this neighbourhood has realized renovations involving structural additions to the existing housing stock, and more recently, housing replacement involving much larger residences. The neighbourhood's large lots and attractive settled character as well as the Town's ongoing growth have perhaps facilitated that change.

[3] The lot has a frontage of 18.29 metres ("m") and a depth of 38.1 m resulting in a lot area of 696.85 square metres ("$m^2$"). The existing bungalow was demolished to make way for the new home, which is under construction at present.

[4] The first building permit was issued in compliance with the current Zoning By-law, By-law No. 1984-63. However, as a consequence of the municipal review process, it was discovered that the proposed home did not comply with the new Zoning By-law, By-law No. 2014-014 which is not fully in effect due to current appeals which are before the Board. Nevertheless, according to the new Zoning By-law, a maximum Residential Floor Area Ratio of 41% is permitted; whereas, the Applicant proposed a ratio of 46.3% in compliance with the existing by-law when building permit drawings were first submitted.

[5] As testimony affirmed, the Applicant redesigned the proposed residence to conform with the new standard to expedite the process of building by lowering part of

the roof structure above the garage to reduce attic space. In the existing by-law such space was not included as floor area, but the new by-law does include attic floor area where headroom clearance exceeds 1.8 m. The height of the roof above the garage was reduced to approximately 6 m from 9 m. Subsequently; the building permit was approved to allow subsequent construction of the Millers' new home.

[6] Following permit issuance, an application was made to the Committee of Adjustment ("COA") to permit a variance 46.3% with regard to the Floor Area Ratio standard of the new Zoning By-law. The original building drawings were resubmitted to substantiate the variance. The Millers, as testimony revealed, preferred the higher roof configuration over the garage from an aesthetic perspective, and it would seem the COA did as well. The variance application was approved with one of the three conditions being: "that approved residential floor area above the garage not be converted into livable space."

[7] Ms. Morgan, the Appellant, of 494 Jeanette Drive appealed the COA decision.

[8] The Town was a party in opposition to the application during the hearing. The Town together with Ms. Morgan provided professional planning witnesses who opposed the variance in accordance with evidence heard in association with s. 45(1) of the *Planning Act*. Their real estate broker, Kirsten Leggat, represented the Applicant. Mrs. Leggat also testified and Mrs. Leggat's husband, Steven, is the Millers' home builder. No professional planning testimony was heard in support of the Applicant.

[9] Additionally, the Board heard testimony from Jim Barry, Senior Manager of Enforcement Services for the Town who stated that the condition imposed by the COA was essentially unenforceable.

[10] Finally, testimony was provided by five participants, who are nearby neighbours of the subject property. All the participants expressed dismay at the changes recently unfolding in their community which in their eyes was rendering it less affordable, less friendly and less green with the recent advent of the "monster" houses. The subject

application was opposed because it would have the highest floor area ratio in their neighbourhood. It would also be the second largest dwelling in absolute terms.

**FINDINGS**

[11] Professional planning opinion held that the four tests of s. 45(1) of the *Planning Act* were not met. Although a great deal of the planning testimony concentrated on the supposed virtue of a lower roofline as proof of increased neighbourhood compatibility as opposed to a higher roof over the garage, the difference between the two designs is not material in the Board's view particularly as both designs comply with the prevailing height limit. This Tribunal appreciates the need for good design and understands the Town's policies and guidelines in place which attempt to encourage it. But "good design" is often in the eyes of the beholder and this issue was not by itself persuasive.

[12] The participants had all expressed concerns that the rebuilding program recently being experienced in the neighbourhood was rendering it less friendly and more alien due to increased size of the new homes and the presumed higher incomes of the new residents who are building these new homes. In this respect, the Board notes that changes of this kind are not uncommon throughout the Province for reasons both good and perhaps unsettling to existing residents who are obliged to experience them. Nevertheless, in the Board's opinion the Millers were simply responding to an opportunity allowed in the existing Zoning By-law. The Applicants appear not to be speculators and are upset by the reaction of at some of neighbourhood residents according to evidence. Additionally, the Applicant set out to comply with the terms of the existing By-law and had attempted to address the added constraint of the new By-law, when it became known to them, by making application which the COA saw fit to approve with conditions when their application for variance was reviewed.

[13] Furthermore, it is doubted in the Board's opinion that the change in roofline will alleviate the residents' concerns in a substantive way. The new home will still be a large one, and the impacts, primarily visual, will not be mitigated in any substantive manner.

In this regard, the issue facing the existing neighbourhood is in general that larger buildings are allowed by both the existing and new Zoning By-laws. In the Board's opinion the Millers were perhaps trying to improve the exterior architecture of their new home and not in any real way expand the usable floor space because they did not oppose the condition eliminating attic space as a habitable area.

[14] However, what is substantive in this case, is the fact, that the condition imposed by the COA is in the Board's view not enforceable if the owners or subsequent homeowners chose to expand their habitable area through the conversion of the attic space without benefit of building permit and variance approval. Mr. Barry's testimony was critical in the determination that the test of zoning compliance was not met by the Application in relationship to s. 45(1) of the *Planning Act*. Although the COA was perhaps attempting in a helpful manner to reconcile the Millers' desire for a more desirable roofline with the stricter floor space ratio definition of the new Zoning By-law, it bumped into the reality of building permit enforcement, which is an important and critical consideration. That "compromise" put forward by the Town's COA had faulty underpinnings in this Tribunal's opinion.

[15] In this regard, the test of zoning compliance was not met, and the variance is not considered minor as a consequence.

**ORDER**

[16] The Board orders that the appeal is allowed and the variance is not authorized.

*"Richard Jones"*

RICHARD JONES
MEMBER