

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



ISSUE DATE: January 17, 2020

CASE NO(S): PL190309

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:	Annamaria Bartolomucci
Subject:	Minor Variance
Variance from By-law No.:	(1995) - 14864
Property Address/Description:	58 Memorial Crescent
Municipality:	City of Guelph
Municipal File No.:	A-52/19
LPAT Case No.:	PL190309
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LPAT Case Name:	Bartolomucci v. Guelph (City)

Heard: November 6, 2019 in Guelph, Ontario

APPEARANCES:

Parties

Counsel*/Representative

Annamaria Bartolomucci

Self-represented

City of Guelph

Alex Ciccone*

**DECISION DELIVERED BY DOUGLAS A. JOYNER AND ORDER OF THE
TRIBUNAL**

INTRODUCTION

[1] The Local Planning Appeal Tribunal (the “Tribunal”) held a hearing on November 6, 2019 at Old City Hall in Guelph, Ontario. Annamaria Bartolomucci (the “Applicant”) represented herself and gave evidence which included numerous surveys and pictures of her property and the surrounding neighbourhood. The City of Guelph (“City”) appeared and was represented by Alex Ciccone, counsel for the City.

[2] Ms. Bartolomucci has appealed the decision of the City of Guelph Committee of Adjustment (the “COA”) to deny the application A-52/19 for a minor variance for the property at 58 Memorial Crescent Guelph, Ontario (the “Subject Property”). The Applicant appealed the COA’s decision pursuant to s. 45(12) of the *Planning Act* (“Act”)

[3] The Applicant is seeking relief from the By-law requirements to permit a fence height of 1.83 metres (“m”) to be erected in the front yard of the Subject Property.

[4] The Subject Property is in the Residential Single Detached (R.1B) Zone. A variance from s. 4.20.9 of Zoning By-law No. (1995)-14864, as amended was requested. The By-law requires that within any residential zone, any fence located in the front yard shall not exceed 0.8 m in height.

Official Plan

[5] The Subject Property is designated “Low Density Residential” (9.3.2 Low Density Residential) in the City’s Official Plan (the “OP”) and this designation applies to residential areas within the built-up area of the city which are currently predominantly low-density in character. The “Low Density Residential” land use designation permits a range of residential uses including a Single Detached dwelling with associated fencing. The Applicant is proposing to construct a fence in the front yard with a height of 1.83 m which the Tribunal finds the requested variance to meet the general intent and purpose of the City’s Official Plan.

Zoning

[6] The Subject Property is zoned “Residential Single Detached” (R.1B) according to Zoning By-law No. (1995)-14864, as amended. The Applicant is requesting a variance from s. 4.20.9 of the Zoning By-law to permit a fence height of 1.83 m in the front yard, when the By-law allows for a maximum fence height of 0.8 m in the front yard.

[7] The Zoning By-law sets out maximum fence heights to ensure the streetscape is not negatively impacted. Limiting the fence height also ensures there is no potential conflict with safety (i.e. sight lines).

[8] In the City’s Planning report, staff acknowledge that based on the lot configuration of 58 Memorial Crescent, this property has a very small rear yard and a fence in the front yard would allow the Applicant some privacy.

[9] It is also acknowledged by the City’s Planning report, that by having a 1.83 m fence in the front yard, there will be some impact to the streetscape along Memorial Crescent. However, in order to mitigate this impact, the Applicant has agreed to setback the fence a minimum of 1.5 m from the Subject Property line to allow for landscaping and reduced impacts to the streetscape. In the Planning report, it is noted that the City’s Engineering Department has no concerns with the request of seeking relief from the By-law requirements to permit a fence height of 1.83 m in the front yard of the Subject Property.

The Four Tests

[10] The primary issue before the Tribunal in any minor variance application is whether the requested variances meet the four Tests set out in s. 45(1) of the Act and should be authorized by the Tribunal. The Tribunal must accordingly be satisfied that the variances that would permit the construction: (a) maintain the general intent and purpose of the City’s Official Plan; (b) maintain the general intent and purpose of the

applicable Zoning By-law, which in this case is Zoning By-law No. (1995)-14864 (“ZBL”); (c) are minor, and (d) are desirable for the appropriate use or development of the property, or building, or structure. Additionally, as of the date that the appeal was before the Tribunal, the variance must be consistent with the 2014 Provincial Policy Statement (the “PPS”) and conform to applicable plans.

Decision and Order

[11] Based on the evidence provided by the Applicant, the Tribunal finds that the Applicant met the four tests under s. 45(1) of the Act and with the appropriate setback of the fence (minimum of 1.5 m from the property line) the Tribunal finds that the requested variance is minor in nature, desirable, and meets the general intent and purpose of Zoning By-law No. (1995)-14864, as amended.

[12] The condition to set back the fence was accepted by the Applicant at the COA meeting on June 13, 2019. Additionally, Ms. Bartolomucci provided the Tribunal with a survey showing the site line triangle distance of 1.985 m away from the Applicant’s property line and 3.485 m away from the proposed location of the fence. The City’s Engineering Services Department has no concerns with the request of seeking relief from the By-law requirements to permit a fence height of 1.83 m in the front yard. The City’s Building Services Department also supports the recommendation made by the City Planning Services Department.

[13] In closing, the Tribunal finds that Applicant has provided enough proof to pass the four tests under s. 45(1) of the Act. After reviewing all the reports, surveys, and video footage from the Applicant’s application, it is the decision of the Tribunal that the 1.83 m fence height does not pose a safety issue with pedestrian crossing or concern with traffic in this general area.

[14] The Tribunal Orders that the appeal is allowed and the variance to By-law No. (1995)-14864, as amended, is authorized, subject to the following condition: (1) that the fence be setback a minimum of 1.5 m from the front property line.

“Douglas A. Joyner”

DOUGLAS A. JOYNER
MEMBER

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Local Planning Appeal Tribunal

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