

**Ontario Land Tribunal**  
Tribunal ontarien de l'aménagement  
du territoire



**ISSUE DATE:** May 01, 2023

**CASE NO(S):**

OLT-22-004755

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

Applicant/Appellant:	Muhammad Naeem
Subject:	Minor Variance
Description:	To allow an existing driveway to exceed the maximum allowable width
Reference Number:	A8-22
Property Address:	694 Broadview Avenue
Municipality/UT:	City of Orillia/County of Simcoe
OLT Case No.:	OLT-22-004755
OLT Lead Case No.:	OLT-22-004755
OLT Case Name:	Naeem v. Orillia (City)

**Heard:** March 29, 2023 by Video hearing

**APPEARANCES:**

**Parties**

Muhammad Naeem.

City of Orillia

**Counsel\*/Representative**

Joshua Salama-Frakes

Jennifer E. Biggar\*

**MEMORANDUM OF ORAL DECISION DELIVERED BY P. TOMILIN AND  
ORDER OF THE TRIBUNAL**

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**INTRODUCTION**

[1] The matter before the Tribunal is an appeal filed by Muhammad Naeem (“Appellant”) against the decision of the City of Orillia (“City”) Committee of Adjustment

(“COA”) to deny a Minor Variance (“MV”) Application from provisions of Zoning By-law No. 2014-44, as amended, (“ZBL”) concerning 694 Broadview Avenue (“subject property” / “subject site”).

[2] The subject site is located within the “Living Area - Stable Neighbourhood” designation of the City and is partially located on the water’s side of Lake Couchiching (“Lake”) in the “Shoreline Buffer Overlay Zone” and the “Flood Hazard Overlay Zone” and is zoned “Residential One” (R1) by Zoning By-law 2014-44, as amended.

[3] The subject property has a frontage of approximately 15.24 metres (“m”) on Broadview Avenue and along the Lake, a lot area of 0.11 hectares (0.29 acres), and is developed with a single-detached dwelling with an attached garage.

## **STATUS REQUEST**

[4] The Tribunal did not receive any Party or Participant status requests in advance of the Hearing. At the onset of the Hearing, the Tribunal advised that anyone seeking status in the hearing were required to fill out and submit a Status Request Form at least 10 days in advance of the hearing, as indicated in the Hearing Notice (Exhibit 1).

## **BACKGROUND TO THE APPLICATION**

[5] The minor variance application results from the Appellant’s request that the existing driveway be permitted to exceed the maximum allowable width. The City’s Planning Division has recommended the approval of the Application A8/22, subject to conditions. The COA found that: “The application conforms with the requirements of the City of Orillia Zoning By-law, the City of Orillia Official Plan, a Plan of Subdivision is not required, and satisfies the requirements of all commenting agencies.” However, as the COA had received numerous objections from the neighbours, it refused the application.

[6] Prior to the Hearing, the Tribunal received a communication from the City that it will appear at the Hearing to defend the refusal of the MV application, that legal counsel

had been retained, and that the City intends to seek an adjournment to allow sufficient time for the recently-retained Solicitor to prepare for the hearing. The assigned Case Coordinator informed the City that per the OLT Rules of Practice and Procedures, **RULE 17 ADJOURNMENTS** states:

**17.1 Hearing Dates Fixed** Hearing events will take place on the date set unless the Tribunal agrees to an adjournment. Adjournments will not be allowed that may prevent the Tribunal from completing and disposing of its proceedings within any applicable prescribed time period.

**17.2 Requests for Adjournment if All Parties Consent** If all of the parties agree, they may make a written request to adjourn a hearing event. The request must include the reasons, a suggested new date, and the written consents of all parties. However, the Tribunal may require that the parties attend in person or convene an electronic hearing to request an adjournment, even if all of the parties consent. The consenting parties are expected to present submissions to the Tribunal on the application of any prescribed time period to dispose of the proceeding.

**17.3 Requests for Adjournment without Consent** If a party objects to an adjournment request, the party requesting the adjournment must bring a motion at least 15 days before the date set for the hearing event. If the reason for an adjournment arises less than 15 days before the date set for the hearing event, the party must give notice of the request to the Tribunal and to the other parties and serve their motion materials as soon as possible. If the Tribunal refuses to consider a late request, any motion for adjournment must be made in person, at the beginning of the hearing event.

**17.4 Emergencies Only** The Tribunal will grant last minute adjournments only for unavoidable emergencies, such as illnesses so close to the hearing date that another representative or witness cannot be obtained. The Tribunal must be informed of these emergencies as soon as possible.

**17.5 Powers of Tribunal upon Adjournment Request** The Tribunal may,

- a. grant the request.

- b. grant the request and fix a new date or, where appropriate, the Tribunal will schedule a case management conference on the status of the matter;
- c. grant a shorter adjournment than requested;
- d. deny the request, even if all parties have consented;
- e. direct that the hearing proceed as scheduled but with a different witness, or evidence on another issue;
- f. grant an indefinite adjournment, if the Tribunal finds no substantial prejudice to the other parties or to the Tribunal's schedule and the Tribunal concludes the request is reasonable for the determination of the issues in dispute. In this case, a party must make a request, or the Tribunal on its own initiative may direct, that the hearing be rescheduled or resumed as the case may be;
- g. convert the scheduled date to a mediation or case management conference; and
- h. make any other appropriate order.

[7] The City decided not to pursue the adjournment and further indicated that they will not be calling any witnesses in support of its position.

## **LEGISLATIVE FRAMEWORK**

[8] An appeal pursuant to s. 45 of the *Planning Act* ("Act") is a hearing *de novo* and the Applicant bears the onus of demonstrating that the four tests as set out in s. 45(1) have been met, namely that the requested variance:

- a) maintains the general intent and purpose of the Official Plan ("OP");
- b) maintains the general intent and purpose of the ZBL;
- c) is minor in nature; and
- d) is desirable for the appropriate development or use of the land, building or structure.

## THE REQUESTED VARIANCE

	<b>Section 6.2.12.2</b>	<b>Requirement</b>	<b>Proposed</b>	<b>Variance</b>
1	A driveway shall have a minimum length of 6.0 m and a minimum width of 2.7 m. The maximum width of a Driveway shall be 60% of the Lot Frontage or 6.0 m, whichever is the lesser.	Maximum 6.0 m driveway width at the front property line	8.0 m	2.0 m

## HEARING

[9] At the Hearing, the Appellant informed the Tribunal that his business partner would be making submissions to the Tribunal on his behalf. The City's Solicitor took the position that because it is a hearing *de novo*, the Appellant bears the onus to prove why the MV should be authorized and reminded the Tribunal that Mr. Salama-Frakes is not an expert and that he will not be able to provide opinion evidence in support of the application. Mr. Salama-Frakes stated that he will be relying on City's Planning Division Report ("Report") and will be quoting directly from it.

[10] Mr. Salama-Frakes explained that the width of the driveway by the garage is 5.95 m, and closer to Broadview Avenue it widens to 7.65 m. He brought to the Tribunal's attention that the Report indicated that the required four tests have been met. More specifically, the report indicates that:

- a) the Official Plan does not prescribe driveway widths for Single Detached Dwellings but defers to the Zoning By-law. The proposed development does not offend any other section of the Official Plan and generally conforms with the purpose and intent of the Official Plan. Staff are of the opinion the proposal meets the purpose and intent of the Official Plan.
- b) The proposed application shows the existing driveway at 7.65 m (25.09 ft) where the driveway meets the street. This equates to about 50% of the street frontage, well within the 60% maximum. Other provisions of Zoning By-law 2014-44 related to driveway locations are that they be set back from a Side Lot Line a minimum of 0.30 m. The proposed driveway complies with this requirement. As such, in the

opinion of staff, the proposed variance is consistent with the intent and purpose of the Zoning By-law and maintains a safe and attractive streetscape with sufficient green space.

- c) As demonstrated in the above statements, there are no negative impacts associated with this wider driveway. The driveway has been integrated into the existing lot, it does not exceed 50% of the lot's frontage and affords ample room for Landscaped Open Space to thrive. The Applicant has also requested that the variance permission be granted at 8.0 m instead of the measured 7.65 m width. Therefore, the driveway width is minor in nature.
- d) The proposed variance is desirable, as the wider portion of the driveway only exists at the entrance and then tapers off to the required width of 6.0 m. Therefore, the driveway maintains compliance with the Zoning By-law's standards for the majority of the driveway.

[11] During cross examination, the City's solicitor asked the Appellant if the property is being used as a short-term rental, such as Airbnb. The Tribunal inquired if the City has a short-term rental policy in place, to which counsel confirmed it does not. In response, the Tribunal indicated that it is not aware of any by-law anywhere in Canada that restricts the number of people that can reside in a private residence. In any event, the Tribunal does not zone people and disturbance is a matter for by-law enforcement or policing officials.

## **CONCLUSION**

[12] The Tribunal, having reviewed the Report and considered the submissions of the Appellant, is satisfied that the application meets the criteria set out at Section 45(1) of the Act.

[13] The tribunal finds that the increased driveway width being requested is minor in nature and is compatible and comparable with the width of the driveways of surrounding properties. The differential between the as-of-right zoning standard is minor in nature and will not negatively impact the adjacent properties or result in the creation of

unacceptable adverse impacts.

## ORDER

[14] **THE TRIBUNAL ORDERS** that the appeal is allowed and the variance to By-law No. 2014-44 is authorized, subject to the following conditions:

1. That the variance only apply to the submitted application drawings and any future development be subject to the Zoning By-law standards and provisions.
2. That the owner/applicant apply for and obtain an Entrance Permit, to the satisfaction of the City.

*"P. Tomilin"*

P. TOMILIN  
MEMBER

### Ontario Land Tribunal

Website: [www.olt.gov.on.ca](http://www.olt.gov.on.ca) Telephone: 416-212-6349 Toll Free: 1-866-448-2248

The Conservation Review Board, the Environmental Review Tribunal, the Local Planning Appeal Tribunal and the Mining and Lands Tribunal are amalgamated and continued as the Ontario Land Tribunal ("Tribunal"). Any reference to the preceding tribunals or the former Ontario Municipal Board is deemed to be a reference to the Tribunal.