

ISSUE DATE:

DEC. 16, 2005

DECISION/ORDER NO:

3287



PL050456

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

Filomena Andrade has appealed to the Ontario Municipal Board under subsection 53(19) of the *Planning Act*, R.S.O. 1990, c. P.13, as amended, from a decision of the City of Cambridge which granted an application by Giuseppe Romeo, Nadir Patel and Sikander Susiwala numbered B12/05 for consent to convey part of the lands composed of Lots 81 and 82, Part Lots 80, 98, 99, 100, Plan 531, in the City of Cambridge.
OMB File No. C050148

Filomena Andrade has appealed to the Ontario Municipal Board under subsection 45(12) of the *Planning Act*, R.S.O. 1990, c. P.13, as amended, from a decision of the Committee of Adjustment of the City of Cambridge which granted an application by Nadir Patel, Giuseppe Romeo and Sikander Susiwala numbered A26/05 for variance from the provisions of By-law 150-85, respecting 130 Brown Street.
OMB File No. V050325

APPEARANCES:

<u>Parties</u>	<u>Counsel*/Agent</u>
City of Cambridge	John Cosman*
Giuseppe Romeo, Nadir Patel, and Sikander Susiwala	Steven O'Melia*
Filomena Andrade	Self

**DECISION DELIVERED BY G. C. O'CONNOR AND SUSAN SCHILLER
AND ORDER OF THE BOARD**

Romeo, Patel and Susiwala, the applicants, own a seven unit converted dwelling house that sits on a large, 2016m², lot. The current frontage is on King Street, a busy main street in Cambridge. The house itself is set well back from King Street, leaving a large green area of grass and trees between the house and King Street. The current flankage is Brown Street. The applicants wish to sever the King Street frontage, taking 1250m² from the existing parcel. They propose building five townhouses on the severed parcel. The proposal to build these townhouses has been the subject of site plan review with the City of Cambridge, which supports the proposed development. These

townhouses would front on Brown Street and King Street would become their flankage. The townhouses are set back from King Street and loaded close to the existing seven unit building. No variances are required for these townhouses.

The variances being sought are for the retained lot and its existing seven unit building. The impact of severing lands from the King Street frontage of the site is that the existing building will now have its frontage on Brown Street. The Zoning By-law requires 45% of the front yard to be landscaped. Current parking arrangements for the existing building have parking slots stretching along the edge of the property on Brown Street, overlapping into the area proposed to be severed. These parking spaces will be lost once the townhouses are built. In their place, the townhouses will have driveways on to Brown Street to accommodate their private, off street parking. Parking spaces for the existing building will be both reduced in number and relocated to the new front yard of the building, on Brown Street.

Filomena Andrade owns the lot adjacent to the subject site. Her lands front on King Street and the existing building houses a professional office with a residential unit above. Ms Andrade brought two core issues before the Board:

1. the appropriateness of townhouses at this location; and
2. the impact of the consent and development on:
 - a. the amount and configuration of parking for the retained parcel, and
 - b. the amount of green space for the retained parcel.

The Board heard from two qualified land use planners: Trevor McWilliams, on behalf of the City, and Victor Labreche, on behalf of the applicants. The Board finds, on the unshaken evidence of Mr. Labreche, that the proposed intensification with the development of townhouses at this location is consistent with the Provincial Policy Statement, conforms to the regional Official Plan for intensification and the provision of a broad range of housing types, and conforms to the City Official Plan for the development of housing in a residential urban area on full municipal services.

Mr. McWilliams testified that the front yard location for the relocated parking spaces for the existing building was made necessary by the small size of the retained lot, when considered in light of the footprint of the existing building. Mr. McWilliams

acknowledged that curb cuts on Brown Street and the front yard vehicular movements associated with the current proposal would be significantly reduced if the relocated parking for the existing building occurred along its side yard, adjacent to the townhouses and parallel to King Street, and utilizing a single curb cut to access these parking spaces.

The Board is satisfied that the intent and purpose of the zoning by-law requirement for 45% landscaped space in the front yard is designed in part to encourage and maintain green space and reduce front yard vehicular movements. Adjusting the size of the proposed retained lot would allow the parking to be located along the side, rather than in the front yard. In addition, the variance sought regarding front yard landscaped space would also be reduced, since additional landscaping could then be provided on the new front yard facing Brown Street.

Having regard to Section 51(24)(f) of the *Planning Act*, the Board finds that the dimension of the proposed retained lot is too small and inappropriate for the continued use of the existing building with its attendant parking. The appeal is allowed and the Board withholds provisional consent at this time. Having regard to s. 45 of the *Planning Act*, the Board finds that the requested variance does not maintain the intent and purpose of the zoning by-law and is not minor in its impact. The appeal is allowed and the variance is not authorized.

Since evidence at the hearing provided a possible solution to cure the concerns of the Board in this matter, the applicants have 90 days from the date of this Decision to submit to the Board a revision to the application for consent to convey that reduces the size of the lot to be severed and increases the size of the retained lot such that parking for the existing building on the retained lot may be accommodated by a single curb cut with parking removed from the front yard and placed instead along the side of the lot, parallel to King Street. Although the evidence before the Board was clear that any possible variance to the 45% landscaped front yard requirement would be reduced by this change, the Board did not have before it any definitive evidence as to what that reduction might be and whether any variance would then be required. If the applicants choose to submit to the Board a revised application for consent, as outlined above, the application must be accompanied by a revised application for any variances required to relocate the parking, also as described above. If no variances are required then a statement to this effect must accompany the revised application for consent to convey.

The revised application for consent must be accompanied by affidavit evidence from both Mssrs. Lebreche and McWilliams, two land use planners previously qualified by this panel of the Board to provide expert opinion evidence in this matter, addressing the tests found at Section 51(24) of the *Planning Act*. If a revised application for variance is also submitted, then that must similarly be accompanied by affidavit evidence from Mssrs. Lebreche and McWilliams, addressing the tests found at Section 45(1) of the *Planning Act*.

Prior to any submissions to the Board, the applicants are directed to meet with Ms Andrade and engage in settlement discussions to determine if the revised applications can come to the Board on consent. The Board is to be advised whether the matters come to the Board on consent at the time any revised applications are submitted to the Board. Regardless of the outcome of any settlement discussions, a full copy of materials filed with the Board in regard to any revised applications must be filed at the same time with Ms Andrade.

If the applicants choose to submit revised applications, the Board will make such other directions, as it considers appropriate, upon review of the materials filed.

The Board's Order in this matter is withheld at this time. If the applicants choose not to submit revised applications as outlined above, the Board's Order will issue allowing the appeals, withholding provisional consent, and not authorizing the variance.

If difficulties arise, the Board may be spoken to. This panel of the Board remains seized.

"G. C. O'Connor"

G. C. O'Connor
MEMBER

"Susan Schiller"

Susan Schiller
MEMBER

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