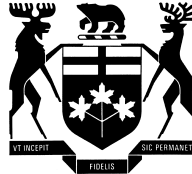


ISSUE DATE:

May 5, 2008



Ontario

Ontario Municipal Board

Commission des affaires municipales de l'Ontario

PL070670

IN THE MATTER OF subsection 53(19) of the *Planning Act*, R.S.O. 1990, c. P. 13, as amended

Applicant and Appellant: Marta Vodinelic
Subject: Consent
Property Address/Description: 2182 Gordon Drive
Municipality: City of Mississauga
Municipal File No.: B64/07
OMB Case No.: PL070670
OMB File No.: C070164

IN THE MATTER OF subsection 45(12) of the *Planning Act*, R.S.O. 1990, c. P. 13, as amended

Applicant and Appellant: Marta Vodinelic
Subject: Minor Variance
Property Address/Description: 2182 Gordon Drive
Municipality: City of Mississauga
Variance from By-law: 5500
OMB Case No.: PL070670
OMB File Nos.: V070338, V070339
Municipal File Nos.: A278/07, A279/07

APPEARANCES:

Parties

Marta Vodinelic

City of Mississauga

Gordon Woods homeowners Association
(incorporated)

Dagnina Proctor

Counsel

M. L. Flynn-Guglietti
A. Warnan (student at law)

Q. M. Annibale

E. Costello

E. Costello

DECISION DELIVERED BY D. R. GRANGER AND ORDER OF THE BOARD

These are appeals by Marta Vodinelic (applicant) from decisions of the Committee of Adjustment (Committee) of the City of Mississauga (City) that dismissed

her applications for consent to convey lands and for variances to the applicable zoning by-law 5500, as amended, (By-law) to permit the existing property at 2182 Gordon Drive (subject property) to be divided into two separate lots each having a frontage of 22.86 metres instead of the minimum 30.0 metres and each having an area of approximately 3251 square metres instead of the minimum 3500 square metres (proposal).

It is intended to demolish the existing one-storey single-detached dwelling and separate garage located on the subject property and construct two new single-detached dwellings with integral garages.

S. Arbuckle, on behalf of the applicant, provided expert land use planning evidence in support of the applications.

P. van Wassenaer, on behalf of the applicant, provided expert arbor and urban forestry evidence in support of the proposal as further detailed in his Tree Preservation/Arborist Report presented as Exhibit 11.

M. Crechiolo, on behalf of the City, provided expert land use planning evidence in opposition to the applications.

C. Munroe, on behalf of the Gordon Woods Homeowners Association (association), provided expert land use planning evidence in opposition to the applications.

This was a three-day hearing with 17 exhibits presented.

Having considered all of the evidence presented, and pursuant to subsections 45(1) and 51(24) of the *Planning Act*, the Board finds that the variances do not maintain the general intent and purpose of the By-law or of the applicable City Official Plan (OP), are not desirable for the appropriate use and development of the land and are not minor. In addition, the proposed severance does not conform to the OP, the dimensions of the lots are not appropriate in the circumstances and the severance is not in the overall public interest of the community.

The reasons follow:

The Board has had the benefit of hearing the evidence of three well-qualified land use planners who ably presented their evidence in the appropriate planning context of the 2005 Provincial Policy Statement (PPS), the applicable Growth Plan for the Greater Golden Horseshoe (GP) the Official Plan for the Region of Peel (ROP), the City Official Plan (OP) and By-law. The planners have also undertaken some historical analysis of the planning instruments in order to address the intent of the OP policies and By-law lot area and lot frontage standards.

A critical issue for the adjudication of this matter is the issue of protecting and enhancing the character of the existing surrounding area. This was a reoccurring theme as the planners addressed the applicable planning policy hierarchy and as they addressed the specific statutory tests related to these applications.

In considering this issue, there was some dispute as to what represented the appropriate surrounding area to be relied upon in the determination of that character. The broadest area equated to more or less the extent of the Gordon Woods association and was identified in the OP Cooksville District policy 4.8.7.12 as Site 11. Within Site 11, two special zoning categories exist. Both categories require a minimum lot frontage of 30 metres. One category requires a minimum lot area of 3500 square metres and the other a minimum lot area of 1140 square metres (previously 1160). The subject site is located within the larger lot area category that has been referred to as the core area throughout this hearing. The planners for the City and association have emphasized the character of the core area as being most germane to the subject property especially in its immediate context along the west side of Gordon Drive within a line of seven of the larger area lots. The smaller area lot zoning exists along the east side of Gordon Drive.

There was no dispute that Gordon Woods Site 11 area represents an older, well-treed area with a range of relatively large lots. The area is identified as being within one of three Residential Woodland areas now identified in the OP and the mature tree canopy constitutes one of the defining characters of the area.

The planner for applicant is of the opinion that in the context of the Gordon Woods area, the proposed lots would still represent two of the largest lots with generous front yard setbacks and protected tree cover that would maintain a similar presentation to the street having no impact on the character of the area.

The planners for the City and association both emphasized that the creation of two narrower lots in the context of the larger core area lots in the immediate vicinity together with the constraints resulting from the tree preservation plan relied upon by the applicant would result in lots that would be noticeably narrower than the 30 metre frontage standard applicable throughout the Gordon Woods area and require narrower longer homes with atypical minimum side yard setbacks between them.

The planners for the City and association recognized that lots exist throughout the Gordon Woods area with narrower frontages and smaller areas, but confirmed that these lots were all legally recognized with the approval of Official Plan Amendment No. 112, approved by the Board in 1989 and implemented through By-law 929. Their evidence confirmed that no other lots with less than the minimum frontage or area have been created since that time and that the recently approved City OP and City zoning by-law, have confirmed these standards without appeal in this area.

Having carefully considered the extensive planning evidence presented, including excellent visual presentations, the Board finds that the character of Gordon Woods is clearly that of large lots, large single-detached dwellings, extensive tree cover and extensive tree canopy along the street. This character is differentiated along Gordon Drive. The west is more estate-like with long driveways and dwellings well-hidden from the street and the east side is made up of less deep lots with large single-detached dwellings closer and more exposed to the street.

The Board finds that the proposal will negatively impact the stable nature of that character along the west side of Gordon Drive creating noticeably narrower lots and resultant narrower and longer dwellings and smaller side yards. The distinctly different character from one side of Gordon Drive to the other does reflect a unique character in this area and the existence of smaller lots and shallower front yard setbacks on one side of the street should not be used as a justification to reduce the size and setback on the other side and thus result in some loss of this unique character. This is especially important where existing standards have been long standing and recently reviewed and confirmed through an extensive open public planning approval process, in this case a new OP and By-law for the City. It is clear from the evidence presented that the unique

characteristics of this area have been purposefully and well protected by the City's planning instruments since 1989.

The planner for the applicant is of the opinion that the additional lot should be approved as implementing the policies of the PPS that encourage the efficient and cost effective use of land in the form of intensification. He set out that the proposal represents a compatible intensification with minimal negative impact and long-term certainty with respect to the preservation of trees in accordance with the tree preservation plan.

The planner for the City was of the opinion that while the PPS generally encourages opportunities for intensification, PPS policy 1.1.3.3 charges planning authorities, in this case the City, with the identification and promotion of those opportunities. He set out how the City has done just that through Official Plan Amendment No. 58, a GP conformity exercise that confirms the City meeting its intensification responsibilities focusing on the Urban Growth Centre as set out in Exhibit 14. He noted the PPS setting out that the OP is the most important vehicle for implementation of the PPS in policy 4.5.

The Board finds nothing in the applications that would offend the PPS, but similarly finds no justification for the creation of a new lot as representing an intensification opportunity of any necessity especially where the City has recently fulfilled its obligation to address future intensification growth in accordance with the GP as set out in the evidence of the planner for the City that was not contradicted. It is clear in the policies of the OP, as now implementing the GP, that residential intensification outside of the Urban Growth Area will occur through the development of vacant or underutilized lands.

There was some disagreement as to whether or not the subject property represented an underutilized lot or not.

The planners for the City and association were of the opinion that the subject property was being properly utilized as a large lot with a single-detached dwelling as permitted in the OP and By-law. They agreed that further utilization may include

accommodating a larger home in accordance with existing permissions and, in this area, subject to site plan control that includes a requirement for a tree preservation plan.

Having carefully considered the definitions of the words “utilize”: “to make use of; turn to practical use or account” and “underutilize”: “to utilize less than fully or below the potential use” as submitted by counsel for the applicant, the Board finds nothing from the evidence presented to suggest that the subject property is not capable of accomplishing its proper utilization by a permitted use especially in this case where the preservation of significant tree cover is paramount. The Board finds that the proposal as presented would represent an over-utilization requiring variances of reduced width and area in order to accomplish the construction of two dwellings squeezed closer together on lots that would not be in keeping with the character of the immediate area.

The Board will now address the statutory tests related to the applications.

With respect to the variances to reduce the lot frontage and lot area, the Board finds that the subject property is designated Residential Low Density 1 and identified as within a Residential Woodlands in the applicable OP. The proposed use and density are permitted. The subject land is included within the Cooksville District Policies identified as Site 11 now policies 4.8.7.12 a. to j.

The planners for the City and association are of the opinion that the variances do nothing to preserve and enhance the generous front and side yard setbacks as set out in OP policy 4.8.7.12 a. The proposal being relied upon by the applicant, and defended by the arborist for the applicant, results in reduced front yard setbacks from those existing on the subject and abutting lots and minimum side yards between the proposed new dwellings. There was no dispute with respect to the adequacy of the rear yard setbacks.

OP policy 4.8.7.12 c. encourages new housing to fit the scale and character of the surrounding area. As previously found based on the planning evidence presented, the Board finds that the two reduced lots at this location do not.

The development concept being relied upon by the applicant proposes second storey balconies at the rear of both proposed dwellings. The planner for the applicant is

satisfied that the existing vegetation separating the proposed lots from the existing abutting dwellings is adequate to mitigate any overlook potential. No evidence was presented with respect to the potential for overlook between the two proposed dwellings proposed to be separated by the minimum side yard setback requirement.

The planners for the City and association expressed their concern with the rear elevations of the proposed dwellings, including balconies, being located forward of the front elevation of the existing dwelling abutting the north and that the potential for overlook into the front area of an abutting dwelling was completely out of character for the area. The planner for the applicant indicated the possibility of moving the proposed dwellings further back but this was in direct conflict with the evidence of the arborist for the applicant who urged not extending construction further into the rear yard of the proposed lots for the sake of tree preservation.

With respect to the application of the OP policies, the Board prefers the evidence of the planners for the City and association. The Board finds that the local community character has not been reinforced or enhanced especially as it respects the immediate context as set out by the planners for the City and association as being required by OP policy 3.2.3.2. Also in this context, the generous front and side yard setbacks are not preserved or enhanced and the proposed dwelling placements are not in keeping with the surrounding development.

Having considered all of the planning evidence presented, the Board finds that the variances each and together do not maintain the general intent and purpose of the OP.

The Board finds that the subject property is zoned R1 Residential with special provision 1087 requiring a minimum lot frontage of 30 metres and minimum lot area of 3500 square metres. The new comprehensive zoning by-law, now in effect for this property, zones the subject property R1-6 and confirms the same requirements as set out in Section 4.2.2.6. The proposed residential use is permitted.

To get to the intent of the By-law, the Board was taken to a decision of the Board, otherwise constituted, dated April 19, 1989 that approved Official Plan Amendment No. 112 and By-law 929-87 to establish the minimum lot frontage and area that continue in

place today on the subject property. It was noted in that case that the planning evidence was uncontested and uncontradicted and that the area was special and “contains the only heavily forested part of the City and is composed of very large lots with substantial forest vegetation preserved. The move to larger minimum lots will preserve the character of this area in keeping with the existing Official Plan Policies.” That these standards have survived unchanged and unvaried since 1989 through the latest comprehensive by-law approval process in 2007 confirms that the intent is being successfully met.

The Board finds that to permit the proposed variances would result in a change to the established character of the area, a character the by-law was clearly intended to protect.

Having considered all of the planning evidence presented, the Board finds that the variances each and together do not maintain the general intent and purpose of the By-law.

The Board finds that the variances to reduce the lot width and area result in a proposal being relied upon by the applicant that is not compatible with the immediate area especially as it results in narrower and longer dwellings with minimum side yard setback separation and rear elevations being further forward toward the street than front elevations on abutting property. The proposal does not fit within the existing physical character of the area, especially in the immediate context of this unique west side of Gordon Drive. The proposed lots would be significantly smaller than the existing abutting lots. In addition, as noted previously, the proposal does not represent an appropriate form of intensification in the circumstance.

Having considered all of the evidence presented, the Board finds that the variances each and together are not desirable for the appropriate use and development of the land.

It was the opinion of the planners for the City and association that the variances result in an adverse impact on the streetscape, the narrower lots being out of keeping with the immediate large-lot context. The potential for overlook from proposed balconies, especially related to the juxtaposition of the rear wall of the proposed

dwelling to the front wall of the abutting home to the north was also expressed as being adverse.

The planner for the applicant was simply of the opinion that the variances were minor, they being reflective of the area.

In considering the test of minor, the Board must consider any adverse impacts as well as the comparative size and importance of the variances sought.

The potential to mitigate adverse impact such as overview does exist through the course of site plan control approval as acknowledged by all three planners. The lot area is acknowledged as the lesser quantitative variance when compared to the by-law minimum yet more significant when compared to the abutting lots. Of greatest concern and importance is the impact of the reduced lot width and resulting implications to the size, shape and locations of proposed dwellings as well as the lot widths themselves in the context of the wider lots along this portion of Gordon Drive. The Board finds that for the reasons already expressed that the proposed lot frontage and area variances are of such significance and importance as to not be considered minor. The establishment of this zoning standard, and clear intent for its establishment, is well founded, long proven and very recently confirmed and ought not to be ignored in its importance.

Having considered all of the evidence presented the Board finds that the variances each and together are not minor.

Finding that the proposed variances fail the four tests of subsection 45 (1) of the *Planning Act* leaves the application for consent somewhat mute. The lots cannot comply with the By-law and would not for the reasons already expressed conform to the OP.

Having considered the planning evidence presented and having regard to subsection 51 (24) of the *Planning Act*, the Board finds that the proposed consent is not in the public interest, does not conform to the OP and that the proposed dimensions and shape of the proposed lots are not appropriate.

In conclusion, the appeals by Marta Vodinelic are dismissed. The variances are not authorized and provisional consent is not to be granted.

The Board so Orders.

“D. R. Granger”

D. R. GRANGER
VICE-CHAIR