

ISSUE DATE:

Feb. 03, 2009



PL081149

Ontario Municipal Board
Commission des affaires municipales de l'Ontario

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

Applicant and Appellant: Darryl Mitchell
Subject: Consent
Property Address/Description: 108 Bythia Street
Municipality: Town of Orangeville
OMB Case No.: PL081149
OMB File No.: PL081149
Municipal No. B-6/08

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

Applicant and Appellant: Darryl Mitchell
Subject: Minor Variance
Variance from By-law No.: 22-90
Property Address/Description: 108 Bythia Street
Municipality: Town of Orangeville
OMB Case No.: PL081149
OMB File No.: PL081151
Municipal No. A-20/08

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

Applicant and Appellant: Darryl Mitchell
Subject: Minor Variance
Variance from By-law No.: 22-90
Property Address/Description: 108 Bythia Street
Municipality: Town of Orangeville
OMB Case No.: PL081149
OMB File No.: PL081150
Municipal No. A-19/08

APPEARANCES:

Parties

D. Mitchell

J. Cotton

H. Spriggs

Town of Orangeville

Agent

D. Baker

M. Mullin

J. Stiver

Participants

Carol Findley

**MEMORANDUM OF ORAL DECISION DELIVERED BY C. HEFFERON ON
JANUARY 14, 2009 AND ORDER OF THE BOARD**

Mr. D. Mitchell owns a vacant corner lot at 108 Bythia Street in Orangeville, which was the subject of a successful 2007 consent appeal to the Town of Orangeville Committee of Adjustment.

Mr. J. Cotton entered recently into a purchase and sale agreement with Mr. Mitchell. He (Mr. Cotton) intends to purchase 108 Bythia Street, subject to the condition that the lands can be subdivided into two, roughly equal-sized lots. With the signed permission of the owner-of-record Mr. Mitchell, Mr. Cotton appealed to the Committee of Adjustment on August 6, 2008 for consent to divide the subject property into two lots. He also applied for minor variances from the lot area and parking provisions of Zoning By-law 22-90. His appeals were refused

Mr. Cotton then appealed this August 6, 2008 decision of the Town of Orangeville Committee of Adjustment to the Ontario Municipal Board.

After consideration of all the evidence presented, the Board allows the appeals against the decision of the Committee of Adjustment. The reasons follow.

Background

108 Bythia Street is a vacant lot at the corner of Bythia and Dufferin Streets. It is located in a low-density residential area in the south part of Orangeville. From the photos presented (Exhibit 5, Tab 4) and from other evidence led, the Board learned that the homes in the area comprise a variety of building forms. Generally, they appear to be modest-sized and well-priced homes that would appeal to a wide variety of household types.

Mr. James Stiver, the Director of Planning for the Town of Orangeville and, Ms H. Murray, who is a professional planner with the Town, appeared at the hearing in support of Mr. Cotton's appeal.

Mr. M. Mullin, a real estate agent, represented Mr. Cotton, who is described as a "custom home builder", at the Board hearing. Mr. D. Baker, another real estate agent, acted as agent on behalf of both Mr. Mitchell (the current owner of the subject property) and Mr. Cotton (the prospective purchaser).

Evidence and Findings

Mr. H. Spriggs, a resident of Orangeville and a Member of the Committee of Adjustment, appeared on his own behalf to oppose the appeals.

Several local residents also appeared at the hearing to oppose the appeals. Ms C. Findlay was nominated as their spokesperson. She cited their concerns to be potential overcrowding of the neighbourhood, insufficient on-site parking for the proposed development, and the danger that additional automobiles attracted by the proposed development, constitutes to the children in the area.

The Board listened carefully to the evidence of Mr. Spriggs and Ms Findlay, but preferred the expert opinion evidence of Ms H. Murray, the land use planner for the Town, who led opinion evidence on the merits of the proposal.

Ms Murray informed the Board that the proposal conforms to the intent and purpose of both the Official Plan and the Zoning By-law.

She took the Board first to section H7 of the Official Plan, which sets down the Town's policy on Consents (Exhibit 8) and confirmed that in this particular instance, a plan of subdivision was not necessary for the division of the subject property and that the proposed consent fulfills the Town's policy objectives.

She took the Board then to section E of the Official Plan, which sets down the land use policies for the Town, whose goal is:

To provide an adequate supply of (housing) with a full range of sizes, types, architectural forms, ownership, rental options and prices in order to ensure that all members of the community are able to find suitable and affordable accommodation regardless of age, household composition or income.

Subsection E.1.2 sets down the objectives of these policies. Ms Murray pointed specifically to subsection E.1.2.1, which states that “infilling of vacant, serviced lands shall be encouraged to promote energy and servicing efficiency”. She testified that the proposal also fulfills the remaining objectives (E.1.2.2 to E.1.2.5) of the Land Use Policies (Exhibit 9).

Finally, she took the Board to section D7 of the Official Plan, which speaks to Community Form and Identity. Policy D7.2.4 addresses infill development. She confirmed that the proposed lots comply with the requirements of relevant subsections under this policy (Exhibit 10).

She told the Board that the proposal conforms to the intent and purpose of the Zoning By-law and satisfies the specific requirements for a residential lot in the R3 zone but one: lot area. The existing lot is 516.8 square metres in area. While the retained lot meets the lot size requirement of the By-law, the area of the lot proposed to be severed does not. It will have an area of 235 square metres, whereas a minimum lot area of 275 square metres is required.

She testified that both the retained and the severed lots comply with the requirements of the By-law in all other respects but parking. Three parking spaces per lot (for a total of six spaces for the two lots) are required; two parking spaces per lot (for a total of four spaces for the two lots) are proposed. The reason for the third parking space for each lot is that Mr. Cotton proposes to construct a semi-detached (freehold) home on each of the two lots. Each home will include a second suite. In this configuration, the By-law requires three parking spaces for each of the semi-detached units.

Ms Murray told the Board that two fewer parking spaces will not constitute a problem either to the community or to the Town since both the prospective purchaser of the homes, as well as the prospective renters of the suites, can see there are only two parking spaces on each site and will have to accommodate themselves to that fact. Ms

Murray offered her professional planning opinion that this will not constitute a problem for the community.

She indicated that in her opinion, the variances requested are therefore minor and the impact on the surrounding properties minimal. The four adjacent lots on Dufferin Street are also developed with semi-detached dwellings; the proposed development is thus in keeping with the built form in the immediate vicinity. The proposal (as shown in Exhibit 3) is therefore, she testified, desirable for the appropriate development of the subject property.

Ms Murray then took the Board to subsection 51 (24) of the *Planning Act* and with reference to specific subsections demonstrated that the proposed consent conforms to the requirements of the *Planning Act*; and that with reference to section 2, the proposed severance promotes the public interest.

Ms Murray also testified that the proposal complies with the intensification policies set down in the Growth Plan for the Greater Golden Horseshoe (under the *Places to Grow Act*) and represents a more efficient use of existing infrastructure and public services.

Disposition and Order of the Board

The Board Orders the appeal is allowed. The consent to sever the subject property, 108 Bythia Street, is granted and the variances against the minimum lot size and parking provisions of the Zoning By-law 22-90 requested are authorized. The Board therefore authorizes the approximately 235 metres square lot area of the severed lot. The Board also authorizes the total of four parking spaces for the two lots that were requested.

So Orders the Board.

“C. Hefferon”

C. HEFFERON
MEMBER