

ISSUE DATE:

Nov. 23, 2009



PL081384

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:	Michael Murray
Subject:	Consent
Property Address/Description:	236 Parkside Dr.
Municipality:	City of Hamilton
OMB Case No.:	PL081384
OMB File No.:	PL081384
Municipal No.	B-105/08

APPEARANCES:

Parties

Michael Murray

The City of Hamilton

Agent

Tony Millington

Kate Mihaljevic

**MEMORANDUM OF ORAL DECISION DELIVERED ON NOVEMBER 10, 2009
BY J.P. ATCHESON AND ORDER OF THE BOARD**

This was a hearing of the Board by way of telephone conference in the matter of an appeal by Michael Murray from a decision of the City of Hamilton Committee of Adjustment (File No. B-105/08) that refused to grant a provisional consent for a property known municipally as 236 Parkside Drive formerly in the Town of Flamborough now in the City of Hamilton. The conveyance sought was for a parcel of land measuring approximately 12m by 45.72m containing a portion of an existing greenhouse which was to be removed such that the new lot could be used for a single family dwelling. The retained parcel of land measuring approximately 18.43m by 45.72m contains an existing single family dwelling and a portion of an existing greenhouse that was to be removed.

THE CONTEXT AND EVIDENCE

The Board heard uncontradicted evidence from two qualified land use planners, Mr. Poole for the Appellant, and Ms Kate Mihaljevic for the City of Hamilton.

The subject property is located on the south side of Parkside Drive in the North West portion of the former Town of Flamborough. The subject property abuts existing single family development to the south, east and west.

The lands are designated "Urban Area" in the Hamilton Wentworth Official Plan and "Residential" in the Official Plan of the former Town of Flamborough. The lands at the time of the severance application were zoned Urban Residential (single detached) Zone R1-6 by Zoning By-law No. 90-145-Z of the former Town of Flamborough. This zone required a minimum lot frontage of 30m and a minimum lot area of 1390 sq.m. The evidence of the Planner for the Municipality was that the subject property has been rezoned by the Municipality to Urban Residential (single detached) R1-1 Zone which is a standard zone of Zoning By-law No. 90-145-Z. This Zoning By-law Amendment has gone through its appeal period and is in full force and effect. The municipal planner advised the Board that as a result of this Zoning By-law Amendment both the proposed severed and retain lots would meet the requirements of the Zoning By-law.

The Board reviewed with the planners a series of conditions as set out in a report dated October 02, 2008, which the Board has marked as Exhibit 3. The uncontradicted evidence of both planners was that the conditions save and accept for Condition No. 2 which required rezoning of the property, and which has now been fulfilled were appropriate and necessary for the orderly development of the property. The applicant through his planners consents to the revised conditions.

The uncontradicted evidence of both land use planners was that there were no consistency issues with any Provincial Policies, that the severance conformed to the policies of the Hamilton Wentworth Official Plan and the Official Plan of the former Town of Flamborough, and should be considered as an infilling and intensification project encouraged by these documents. It was their shared opinion that subject to the modified conditions the proposed consent represented good planning for this area and should be approved.

FINDINGS AND CONCLUSIONS

The Board, after carefully reviewing the evidence, the exhibits filed, and the submissions made by the parties, makes the following findings.

The Board accepts and adopts the uncontradicted evidence of both planners that the proposed severance, subject to the modified conditions, represents good planning and should be approved. It is clear from the evidence that there are no longer any zoning compliance issues as the Municipal Council has passed an appropriate Zoning By-law Amendment to recognize the severance that is in full force and effect. The Board is also satisfied that there are no consistency issues with any applicable Provincial Policies and that the severance with its conditions is in conformity with the Official Plan policies covering the area which encourage this form of intensification and infilling.

Accordingly, and for the reasons contained in this decision,

THE BOARD ORDERS that the appeal is allowed and the provisional consent is to be given subject to the conditions set out in Attachment 1 to this Order.

This is the Order of the Board

“J.P. Atcheson”

J.P. ATCHESON
MEMBER

ATTACHMENT 1

The attached conditions shall apply to the provisional consent granted by Ontario Municipal Board in its decision File PL081384:

1. The owner shall submit a deposited Ontario Land Surveyor's Reference Plan to the Committee of Adjustment Office, unless exempted by the Land Registrar;
2. The existing portion of the building straddling the proposed property line be removed, to the satisfaction of the Planning and Economic Development Department (Building Services Division). The removal of this portion of the building will be subject to the issuance of a building permit in the normal manner.
3. The owner/applicant shall ensure compliance with the Ontario Building Code requirements (re: separation distance) to the satisfaction of the Planning and Economic Development Department (Building Services Division).
4. That the owner be required to make a road allowance widening dedication of approximately 9.5 feet (2.9 m) on the west and 11.5 feet (3.5 m) on the east side of the front property line on Parkside Drive.
5. That the owner be required to pay for the future urbanization of Parkside Drive based on the metres of frontage of the severed lot in accordance with the New Road Servicing Rate for the year that final approval is obtained.
6. That the Owner be required to enter into and register on title of the lands, a consent agreement with the City, to deal with the grading and drainage on the severed lot and the agreement will also include the Owner's share of the cost of the storm sewer on Parkside Drive.
7. The owner/applicant shall satisfy the requirements of the Public Works Department, Operations and Maintenance Division, Forestry & Horticulture Section.
8. That the Owner submit to the Committee of Adjustment office an administration fee of \$15.00 payable to the City of Hamilton to cover the cost of setting up a new tax account for the newly created lot.

NOTE (TO BE INCLUDED IN DECISION):

1. Based on this application being approved and all conditions being met, the owner/applicant should be made aware that the lands to be conveyed (Part 1) will be assigned the municipal address of 234 Parkside Drive, and that the lands to be retained (Part 2) will remain as 236 Parkside Drive.
2. Should deeply buried archaeological remains be found on the property during construction activities, the Ontario Ministry of Culture (MCL) should be notified immediately (416.314.7143). In the event that human remains are encountered during construction, the applicant/landowner should immediately contact both MCL and the Registrar or Deputy Registrar of the Cemeteries Regulation Unit of the Ministry of Government Services (416.326.8392). (MH/FT 2008 09 24)