

ISSUE DATE:

June 17, 2009



PL090177

Ontario
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: Helen & Joseph Taibi
Subject: Consent
Property Address/Description: 92 Strathearne Place
Municipality: City of Hamilton
OMB Case No.: PL090177
OMB File No.: PL090177
Municipal No.: B159/08

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

Applicant and Appellant: Helen & Joseph Taibi
Subject: Minor Variance
Variance from By-law No.: 464
Property Address/Description: 92 Strathearne Place
Municipality: City of Hamilton
OMB Case No.: PL090177
OMB File No.: PL090178
Municipal No.: A318/08

APPEARANCES:

Parties

Helen & Joseph Taibi

Counsel

B. Duxbury

DECISION DELIVERED BY M. G. SOMERS AND ORDER OF THE BOARD

1. CONTEXT

Helen and Joseph Taibi (“the Applicants”) are seeking a consent and minor variance for the property municipally known as 92 Strathearne Place (“the Subject Property”) in the former Township of Glanbrook (“the Township”), now the City of Hamilton (“the City”).

The Consent Application proposed the conveyance of a vacant parcel of land measuring 22.5 metres (frontage) by 53.9 metres (depth) to accommodate a new single detached dwelling unit. The retained parcel measures 37.3 metres (frontage) by 53.38 metres (depth) and contains the existing single detached dwelling.

The Application for Minor Variance requests relief from the provision of Zoning By-law 464 to permit a minimum lot area of 1,200 square metres for the lot to be severed, whereas the By-law requires 1,390 square metres. The retained lot complies with the Zoning By-law in all regards.

On January 29, 2009, the Committee of Adjustment (“the Committee”) denied the Applications. The Applicants appealed the Committee’s decision to the Board pursuant to subsections 53(19) and 45(12) of the *Planning Act*.

James Webb, a qualified planner, was retained by the Applicants and provided evidence in support of the Applications. Kathy Jazvac, a qualified planner with the City’s Planning Department, was subpoenaed and provided evidence. In addition, two residents: James Kaytor and Michael Cahill were present and were granted Participant status. Both residents testified in opposition to the Applications.

2. APPLICANTS’ PLANNING EVIDENCE

Mr. Webb advised the Board that the Applications are subject to a planning policy framework that includes: provincial policy and local policy, notwithstanding amalgamation of the City of Hamilton in January 2001, the City maintains a two tier Official Plan framework with a Regional Official Plan and a local (Township of Glanbrook) Official Plan and the Mount Hope Secondary Plan. The applicable Zoning By-law is By-law No. 464 of the Township.

It was Mr. Webb’s evidence that the Subject Property is located on the north side of Strathearne Place, west of Homestead Drive in the Mount Hope Urban Area. The east portion of Strathearne Place is characterized by larger lot frontages ranging from approximately 25 metres to 35 metres, while the west end of Strathearne Place is

characterized mainly by smaller lot frontages, ranging from approximately 10.0 metres to 16.0 metres, which were developed as part of “Southampton Estates – Phase 1”.

(i) Provincial Policy Settlement (“the PPS”)

It was Mr. Webb’s evidence that the proposal is consistent with the Settlement Area and Housing Policies of the PPS. The Subject Property is within a designated Settlement Area and full municipal services are available for both the severed and retained lots (PPS Policy 1.1.3). The subject Settlement Area is not located within the boundary of the Greenbelt. Mr. Webb maintains that the proposal to sever the existing lot and create an additional dwelling is a mild form of intensification and is consistent with Policy (PPS Policy 1.4.3 (b) (2) 1.4.3 (c) and (d)).

Mr. Webb notes that planning for land uses in the vicinity of airports must be undertaken, such that airports and sensitive land uses are appropriately designed, buffered and/or separated from each other to prevent adverse effects from noise, odour and other contaminants (PPS Policy 1.6.7). He maintains that airports must be protected from incompatible land uses and development by prohibiting new residential development and other sensitive land uses in areas near airports above the 30 NEP/NEF.

The City has adopted new NEF Contours through the adoption of a new Rural Official Plan. According to Mr. Webb, the Subject Property is outside of the 30 NEF Contour. He concurs with the City that a noise-warning clause should be included in the purchase and sale agreement regarding the severed lot. He notes that such a condition is mentioned in Attachment “1”. It is his opinion, the proposal does not have an adverse impact on the airport.

In addition, Mr. Webb testified that the City has identified the Subject Property as having an archaeological potential. As such, the City has recommended a condition regarding the consent that appropriate studies are undertaken to confirm that all archaeological resource concerns have been addressed (PPS Policy 2.6). Mr. Webb concurs with the City’s recommendation and notes that it is expressly mentioned as a condition in Attachment “1”.

In conclusion, it is Mr. Webb's opinion that the proposal is consistent with the PPS.

(ii) Places to Grow

It was Mr. Webb's evidence that the Policies for Managing Growth states that the population growth will be accommodated by directing a significant portion of new growth to the Built-Up Areas of the community through intensification. He maintains that infill development is included as a form of intensification. He notes that the City is in the process of establishing the boundary for the Built-Up Area through preparation of a new Urban Official Plan, which will be adopted this summer. It is his testimony that the Subject Property is within the proposed boundary for the Built-up Area.

As the Subject Property is within the proposed Built-Up Area and is a mild form of intensification, he maintains that additional development will contribute towards the City's intensification target. In his opinion, the proposal is consistent with the Growth Plan.

(iii) The Region of Hamilton-Wentworth Official Plan ("the Regional Plan")

It was Mr. Webb's evidence that the Subject Property is located in an area that is designated as an Urban Area. Policy C.3.1 Urban Areas states that a wide range of urban uses, defined through local area municipal Official Plans and based on full municipal services will be concentrated in the Urban Areas. Urban Areas are intended to accommodate 96% of new residential housing units in the Region by the year 2020.

Mr. Webb maintains that the Regional Plan establishes a land use strategy for Urban Areas that consists of a compact urban form, including mixed-use areas, and a firm urban boundary. It was Mr. Webb's testimony that the proposal will comply with Policy C.3.1. In his opinion, the proposal will develop an underutilized and vacant portion of the Subject Property and achieve maximum permissible densities under the Municipalities' Official Plans and Zoning Policies.

In his opinion, the proposal conforms to the general intent and purpose of the Regional Plan.

(iv) Minor Variance – subsection 45(1) of the Planning Act

As previously mentioned, the Applicants are proposing a lot area of 1,200 square metres for the severed lot, instead of the minimum required 1,390 square metres.

It was Mr. Webb's evidence that the Subject Property is within an area identified by the Township's Official Plan as "Existing Residential Area". It is an area where intensification is encouraged as a means of increasing the amount of available housing stock. Infill development is supported and encouraged subject to ensuring the development is compatible and complementary. In his opinion, the proposal is both compatible and complementary.

Mr. Webb testified that the Mount Hope Secondary Plan policies confirm that the predominant form of housing is low density. In addition, there is a specific direction that future residential development shall occur on the vacant portions of existing large residential lots (Secondary Plan section B.2.1.24 (ii)). In his opinion, the Subject Property is such a large lot with a vacant portion that has potential to accommodate a single detached dwelling.

Regarding the character of the Neighbourhood, it was Mr. Webb's evidence that the Neighbourhood is made up of two distinct areas, an older area adjoining Strathearne Place/Aberdeen Avenue and a recently developed area immediately to the west of the Subject Property, known as Southampton Estates. In his opinion, the Subject Property is a transition point between these two areas.

He testified that the older area of the Neighbourhood was developed in excess of fifty years ago. This part of the Neighbourhood consists of exclusively single detached one and two-storey dwellings. There is a uniform lot pattern. The lots are relatively large compared to contemporary development standards. The larger sized lots were to accommodate private services. The lot frontage ranges from 22 metres up to 55 metres and the lot areas range from 865 square metres to over 3,000 square metres.

Mr. Webb testified that the older area has been subject to redevelopment. He notes that there are recent examples of infill development at 55 and 61 Aberdeen Avenue, which was originally part of 92 Strathearne Place. In this particular case, the Applications for Consent and Minor Variance were processed in 1995 to sever the two

lots. The minor variance was approved to allow a reduction in the lot area requirement from 1,390 square metres to 1,167 square metres. Mr. Webb notes that the lot area is smaller than the area of the proposed severed lot (1,200 square metres).

In addition, Mr. Webb testified that there is another infill development approved in 2007, at the southwest corner of Aberdeen Avenue and Marion Street. In this case, there were Applications for Consent to sever one existing lot into three building lots. In this matter, there was an amendment to the Zoning By-law that changed the zoning from "ER" Zone to "R1" Zone, a reduction in lot frontage and lot area requirement from 22.5 metres and 1,390 square metres to 22 metres and 700 square metres respectively. The Consent Application was granted in this matter and resulted in three lots, smallest lot having a lot frontage of 22 metres and an area of 865 square metres.

In regard to the second distinct area of the Neighbourhood, there is a transition from the original development pattern to more recent urban development standards implemented for properties to the west. Immediately to the west, the rear portion of 65 Aberdeen Avenue is zoned as R1. Mr. Webb testified that in this new area there is an extension of Strathearne Place with ten lots for single detached dwellings located on a cul-de-sac. These lands were rezoned to R3 Zone which permits single detached dwellings with minimum lot frontage of 15 metres and minimum lot areas of 450 square metres. The developed lots have frontages of 16 metres and lot areas ranging from 800 square metres.

In summary, it was Mr. Webb's evidence that the Applications facilitate residential intensification that is compatible and complementary to the established development pattern and that the proposal conforms to the general intent and purpose of the Official Plan and the Secondary Plan.

In addition, Mr. Webb informed the Board that the proposal conforms to the general intent and purpose of the Zoning By-law. Mr. Webb testified that a single detached dwelling can be sited on the proposed lot while maintaining compliance with additional regulations for the ER Zone category, such as setbacks, lot coverage and appropriate streetscape. He maintains that the proposed lot will be consistent with the zoning of the surrounding lands, which is characterized by a mix of lot sizes and dwelling forms.

Mr. Webb further testified that the proposal is desirable for the appropriate development of the land. He maintains that the lot area of 1,200 square metres with a lot frontage of 22.5 metres would provide a building envelope of sufficient size to accommodate a single detached dwelling. Furthermore, the size and location of the proposed dwelling will be consistent with the established built form of the area.

It is Mr. Webb's opinion, that the variance requested is minor. He notes that the proposed reduction in lot area is minor, as the proposed lot area, one-third of an acre, is significant for the purpose of accommodating a single detached dwelling. The proposed lot area is in keeping with the lot areas existing in the Neighbourhood, similar to two lots immediately to the rear, and generally larger than the newer development to the west. In his opinion, the lot area reduction will not have an adverse impact on the established Neighbourhood in terms of setting a precedent or contributing to a form of development that would be out of character with the established pattern of development.

In summary, it is Mr. Webb's opinion that the Application for minor variance satisfies the four tests outlined in subsection 45 (1) of the *Planning Act*.

(v) Application for Consent - subsection 53 (1) of the Planning Act

A consent may be granted when the Approval Authority is satisfied that a plan of subdivision is not necessary for the proper and orderly development of the Municipality. Mr. Webb maintains that a draft Plan of Subdivision is not necessary for the Subject Property.

Mr. Webb testified that the proposal has regard to the matters outlined in Section 51 (24) of the *Planning Act*. For example, the proposal addresses the matter of provincial interest, albeit a mild form of intensification and has regard for the Airport. Furthermore, Mr. Webb notes that potential land use conflicts have been addressed by the Conditions of Draft Approval and there is a recommended condition regarding protection of cultural heritage. He further testified that the proposal is not premature and does not prejudice adjoining and surrounding lands. He also maintains that the proposal is in conformity with the Official Plans and adjacent Plans of Subdivision and conforms to the residential, intensification and land severance policies of the Township's Official Plan.

As previously mentioned, Section B.2.1.24 (ii) of the Mount Hope Secondary Plan specifically directs that future residential development shall be located on the vacant portions of existing large lots. The Subject Property is such a large lot with a vacant portion that has potential for redevelopment to accommodate a single detached dwelling.

Mr. Webb testified that the proposal satisfies the land severance policies of the Township's Official Plan, specifically Policy D.3 (a) (c)-(f).

In summary, it is Mr. Webb's opinion, that the Application for Consent satisfies the applicable criteria set out in the *Planning Act* and represents good planning and is in the public interest.

(vi) Subpoenaed Witness – Ms Jazvac

Ms Jazvac, a qualified land use planner with the City was subpoenaed by the Applicants. It was her evidence that the Application for Minor Variance satisfies the four tests outlined in subsection 45(1) of the *Planning Act*. In her opinion, the proposed consent is not premature and does not require a plan of subdivision and that the proposal conforms to the Official Plans and Secondary Plan and is in the public interest and represents good planning. She maintains that the proposed consent has regard to matters set out in subsection 51 (24) of the *Planning Act* (Exhibit 1, Tab 5 and B).

It was her testimony that the proposal would enhance the Community's health and economic and environmental well-being.

She testified that she fully agrees with the testimony of Mr. Webb.

3. RESIDENTS IN OPPOSITION

Mr. Cahill, a resident of the Neighbourhood, testified that the proposal would disrupt the character of the Neighbourhood. He stated that the proposed lots were too small and would not be compatible with the surrounding area. It was his view that the proposal would set a precedent for other severance applications in the Neighbourhood.

He maintains that the existing house on the property is badly outdated and will require several hundred thousands of dollars for renovations. As such, Mr. Cahill believes that the Applicants will demolish the existing house. The Board finds whether the Applicants demolish the existing home is speculation on the part of Mr. Cahill and is not relevant to the subject Applications.

It is Mr. Cahill's view that the proposal would "drag the beautiful streets [in the area] down the slippery slope of ugliness."

Mr. Kaytor, another resident of the Neighbourhood, opposed the Applications. He testified that the Neighbourhood is made of large properties. In his view, the severance would create two smaller properties that would be out of place.

Mr. Kaytor testified that a "long narrow building [the proposed dwelling] would be squished up against the existing building". It is his view, if the Board authorized the Applications, it would disrupt the continuity of the Neighbourhood, and devalue the properties in the area.

He stated that the By-law should be strictly adhered to. He noted that when he built on his property, he ensured that the design and size of the lot were compatible with the surrounding area. In his view, the Applicants have not done so. Mr. Kaytor maintains that the existing dwelling is now centrally located on the Subject Property and that if a side piece of the property were to be separated, it would be out of character with the surrounding properties.

Mr. Kaytor testified that if the proposal proceeds most of the beautiful trees on the Subject Property would be destroyed. The Board notes that both Mr. Webb and Ms Jazvac were satisfied that the Applications represented good planning and that the vegetation and trees were not a concern. The Board further notes that in Ms Jazvac's Staff Report dated March 16, 2009, she states that the proposal enhances the environmental well-being in the Community and that the ecological function and the natural heritage system are protected. Based on the uncontradicted evidence of the two planners, the Board finds that vegetation and trees are not a concern in these Applications.

In addition, Mr. Kaytor states that since the existing house on the Subject Property is being rented, the Applicants will sell the property and not care what happened to the adjoining properties and the Neighbourhood. The Board finds this speculation at best and finds that this is not relevant to the subject Applications.

Mr. Kaytor notes that a number of other residents in the area opposed the Applications and wrote letters to the Committee (Exhibit 1, Tab 6).

4. FINDINGS AND CONCLUSIONS

The Board finds Mr. Cahill and Mr. Kaytor to be sincere in their testimonies. However, the Board must focus on land use planning and whether the proposal satisfies the criteria set out in the *Planning Act*, that is have the four tests outlined in subsection 45(1) been satisfied and whether the proposal has had regard to the criteria outlined in subsection 51(24).

At no point did Mr. Cahill and/or Mr. Kaytor present any persuasive evidence to show that the proposal did not satisfy any of the four minor variance tests or that the proposed consent did not have regard to the criteria outlined in subsection 51(24), and/or whether the proposal was premature or whether the proposal was in the public interest. The Participants' evidence was solely based on their personal views and did not provide the Board with any objective land use planning evidence and/or objective documentary evidence.

On the other hand, the Board finds the uncontradicted expert land use planning evidence of Mr. Webb and Ms Jazvac and the documentary evidence filed on behalf of the Applicants to be detailed, credible, persuasive and trustworthy.

It was Mr. Cahill's and Mr. Kaytor's evidence that the proposal was not compatible and/or complementary to the established Neighbourhood. The Board disagrees and finds that the proposal was compatible and complementary to the adjoining and surrounding lands. This finding was based on the evidence that the older area of the Neighbourhood with ER Zoning already had infill activity. The said infill projects introduced lot areas smaller than the lot area proposed by the Application. In

addition, the lands recently developed by plan of subdivision represented significantly smaller lot sizes. The Board finds that the proposed lot sizes and dwelling types were consistent with contemporary urban residential development. Furthermore, the Subject Property was located as the transitional lot between new and older development patterns. The lot area and lot frontage created a built form that acts as a transition from large lot to small lot development.

Both Participants were concerned that the proposal would act as a precedent for others to sever their properties and destroy the character of the Neighbourhood. The Board disagrees and notes that if there are any future applications for severance, the matter would have to be decided on its own merits by the Committee of Adjustment. However, the Board notes that there has already been infill projects introduced into the area and this has not resulted in a flood of Severance Applications to reduce the size of the lots. As such, the Board finds that the Applications do not represent a precedent with respect to reduction of lot areas.

In addition, the Board notes that the City did not attend the hearing to oppose the Applications. The Board puts significant weight that the Planning Staff did not oppose the Applications.

Based on the above reasons, the Board has carefully considered all the *viva voce* evidence and documentary evidence presented at the hearing. Based on the uncontradicted expert land use planning evidence, the Board finds that the four tests outlined in subsection 45(1) of the *Planning Act* have been satisfied. The Board finds the variance is minor and desirable and that the variance conforms to the general intent and purpose of the Official Plans, the Secondary Plan and the Zoning By-law.

In addition, the Board finds that the proposed consent satisfies the criteria set out in subsection 53(1) and 51(24) of the Act. The Board further finds that the proposed consent is not premature or that it does not require a plan of subdivision and that it is in the public interest and represents good planning.

The Board Orders that the appeal regarding the consent is allowed and that the provisional consent is to be given subject to the conditions set out in Attachment "1" to this Order.

In addition, the Board Orders that the appeal regarding the minor variance is allowed and the variance to By-law 464 noted below is authorized:

To permit a minimum lot area of 1,200 square metres for the lot to be severed;
Whereas the By-law requires 1,390 square metres.

The Board so Orders.

“M. G. SOMERS”

M. G. SOMERS
MEMBER

ATTACHMENT "1"

January 15th, 2009

CONSOLIDATION REPORT
SEVERANCES

The attached comments have been reviewed with regard to Committee of Adjustment Severance File GL/B-08:159 (92 Strathearne Place, Glanbrook) and the following is submitted:

Should the Committee grant the severance, an approval should be subject to the following conditions:

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 owner shall receive final approval of minor variance application GL/A-08:318.
3. The owner/applicant shall agree to include the following warning clause in the consent agreement and in all purchase and sale and/or lease agreements:

"Purchasers/tenants are advised that sound levels due to increasing air traffic may occasionally interfere with some activities of the dwelling occupants as the sound levels may exceed the Municipality's and the Ministry of the Environment's noise criteria."

4. The owner shall carry out an archaeological assessment of the entire property and mitigate, through preservation or resource removal and documentation, adverse impacts to any significant archaeological resources found. No demolition, grading, construction activities, landscaping, staging, stockpiling or other soil disturbances shall take place on the subject property prior to the approval of the Director of Planning and the Ministry of Culture confirming that all archaeological resource concerns have met licensing and conservation requirements. All archaeological reports shall be submitted to the City of Hamilton concurrent with their submission to the Ministry of Culture.

Should deeply buried archaeological remains be found on the property during any of the above development 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).

5. The owner shall submit survey evidence that the maximum lot coverage of the lands to be retained does not exceed 25%, or alternatively apply for and receive final approval of any variances from the requirements of the Zoning By-Law as determined necessary by the Planning and Economic Development Department (Building Services Division).
6. The owner shall enter into and register on title of the lands, a Consent Agreement with the City of Hamilton to the satisfaction of the Manager of Engineering Design and Construction to deal with the grading, drainage on the subject lands. The applicant shall demonstrate to the satisfaction of the Manager of Development Engineering that all drainage from the site shall be taken to a suitable outlet.
7. The owner shall pay their proportionate share of the actual cost, for existing sewers, watermains and road works on Strathearne Place adjacent to Block 190, 62M-992, to the satisfaction of the Manager of Development Engineering.
8. The owner shall have prepared, at his own expense, a reference plan identifying the portion of the 0.3m reserve to be incorporated into the Strathearne Place road allowance, to the satisfaction of the Manager of Development Engineering.
9. The owner shall 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.