

ISSUE DATE:

Jun. 10, 2010



PL100222

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

Appellant:	Tracy Crowley
Applicant:	Dr. Mark Shankman
Subject:	Consent
Property Address/Description:	67 Alma Street
Municipality:	City of Hamilton
OMB Case No.:	PL100222
OMB File No.:	PL100222
Municipal No.	B-101/09

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

Applicant:	Tracy Crowley
Applicant:	Dr. Mark Shankman
Subject:	Minor Variance
Variance from By-law No.:	3581-86
Property Address/Description:	67 Alma Street
Municipality:	City of Hamilton
OMB Case No.:	PL100222
OMB File No.:	PL100223
Municipal No.	A-339/09

APPEARANCES:

Parties

Dr. Mark Shankman

Tracy Crowley

Counsel

P. Tice

DECISION DELIVERED BY A. CHRISTOU AND ORDER OF THE BOARD

This is an appeal by Tracy Crowley (Appellant) of 14 and 16 Queen St., in the Town of Dundas, against the decision of the Committee of Adjustment of the City of Hamilton that:

1. Approved a consent application to sever a parcel of land into two to permit one new residential lot; and
2. Authorized variances for frontage and lot area to facilitate the consent, as follows:

Lot to be retained:

- Minimum lot area of 370 m², whereas 450 m² is required; and
- Minimum frontage of 12 m; whereas 15 m is required.

Lot to be conveyed:

- Minimum frontage of 12 m; whereas 15 m is required.

The Appellant contends that there would be erosion of the ravine backing onto her property; narrowing of the swale would cause flooding and erosion; and safety of the environment.

City planning staff recommended approval of the consent and variance applications and the Committee approved the applications subject to conditions requested by various agencies.

At the start of the hearing, Ms Crowley told the Board that she owns the semi-detached houses north of 67 Alma Road (subject property). A one-metre wide watercourse runs diagonally across her property and through a small point of the Applicant's irregular site. There is a steep slope (28 ft) with trees between the properties. A large tree was recently cut to accommodate the new construction. She testified that the Hamilton Conservation Authority (HCA) was not notified by the City of the consent application, although HCA approval is required for development within the slope and open watercourse. She wants to have conditions imposed by the Board for the Applicant to have no trees removed on the slope, and a geotechnical assessment be produced by an Engineer, to be approved by the City and HCA.

Mr. Tice indicated that the Applicant would accept these conditions, because they already have a geotechnical assessment by a geotechnical Engineer that addresses Ms Crowley's concerns.

John Ariens is a qualified professional land use planner and proffered uncontested land use planning evidence on behalf of the Applicant. He testified that the property is not on the face of the Niagara Escarpment and is not regulated by the HCA. The tree that was cut down was not on the slope, but on table land. Development only requires written approval from the conservation authority. He produced extensive photographic and mapping evidence in support of his position. He told the Board that the consent approval requires a detailed Consent Agreement with the City which deals with servicing, slope and grading, which is part of the geotechnical analysis that has been produced, utilities, approvals by HCA, tree management plan and is also subject to the conditions of approval imposed by the Committee as set out in its decisions (Exhibit 3, page 56).

He opined that the consent to create one new lot is consistent with the PPS which encourages infill and intensification; will implement the Growth Plan; complies with the Niagara Escarpment Plan; is consistent with the Regional and local Official Plans (OP) and represents good planning. A plan of subdivision is not required for the orderly development of the area. There are existing municipal services and infrastructure to support the one new lot to be created.

With respect to the variances, Mr. Ariens testified that there are several similar size lots already developed in the area and the proposed reduction in frontage and lot area will be consistent with the character of the area. Therefore, in his opinion, the variances would maintain the general intent and purpose of the OP and the Zoning By-law and are minor. The variances would be desirable and appropriate development for the area, would provide for intensification and utilize existing services without adversely impacting the neighbours and the environment. Therefore it would be in the public interest and he recommended the Board approve the consent and authorize the variances.

DISPOSITION

The Board having heard uncontradicted planning evidence finds that the proposal to create one new lot meets both the consent criteria and the variance criteria of the *Planning Act* and the variances should be approved. The property is in an established low density residential neighbourhood with similar size lots. It is in what

appears to be a heavily wooded area with a steep slope toward the north, where the Appellant lives. A small watercourse runs along the properties to the north and traverses the subject site at the apex of the irregular triangular shaped lot. There is no development proposed within the treed slope or near the creek.

What appeared to be of concern to the Appellant was the size of the building envelope shown on the drawing circulated with the Committee's Notice for these applications, which extended over the sloped area. Mr. Ariens assured the Board that development will only occur on table land and any development on this property is subject to stringent controls set out by the authorities, which do not allow the building to extend into the treed area. In fact, the geotechnical report indicates that the house would have to be well setback from the stable slope, which is several metres back from the actual top of the bank.

The Board is satisfied that the consent criteria can be met by this proposal consistent with provincial Policy and the new lot will fit in well in this area. The 12 m frontages requested would be similar to other recent developments with similar lot frontages and the reduced lot area requested for the lot to be retained will have no adverse impacts to its neighbours, given the topography. There is ample space for a new single detached dwelling on a 370 m² lot. The Board concludes that the variance criteria in the *Planning Act* are met individually and collectively.

The Board will allow the consent appeal in part subject to the conditions requested by the Appellant and will grant the variances.

THE BOARD ORDERS that the appeal is allowed in part and the provisional consent is to be given as follows:

- consent is subject to the conditions imposed by the Committee in its decision dated February 4, 2010;
- a Certified Geotechnical Survey to be provided by the Applicant to the satisfaction of the City and the Hamilton Conservation Authority; and
- the Applicant to maintain the existing slope at the rear and to prevent erosion by preserving the tree cover on the slope.

AND THE BOARD ORDERS that the appeal is dismissed and the variances to By-law 3581-86 are authorized.

This is the Order of the Board.

A. Christou

"A. CHRISTOU"
MEMBER