

ISSUE DATE:

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PL100410
PL100835

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/Appellant: Dino Scalia
Subject: Consent
Property Location: 680 Garth Street
Municipality: Hamilton
Municipal Number: B-13/10
OMB Case Number: PL100410
OMB File Number: PL100410

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

Applicant and Appellant: Dino Scalia
Subject: Minor Variance
Variance from By-law No.: 6593
Property Address/Description: 680 Garth Street
Municipality: City of Hamilton
Municipal File No.: A-10/132
OMB Case No.: PL100410
OMB File No.: PL100835

APPEARANCES:

Parties

Dino Scalia

City of Hamilton

Counsel/Agent*

M. Hinchey

C. Stobo

DECISION DELIVERED BY STEVEN J. STEFANKO AND ORDER OF THE BOARD

Background

Dino Scalia, along with his father and brother acquired 680 Garth Street, Hamilton, approximately 4 years ago. This property is 33.53 metres wide by a depth of 27.43 metres and currently has on it a single family detached home. Mr. Scalia wishes

to sever this property so that he can demolish the existing home and build 2 new single family homes. He proposes to sell the new residences to third party purchasers.

In order to accomplish his objective Mr. Scalia brought a consent application ("Proposed Severance") and a separate variance application before the Committee of Adjustment. The Proposed Severance divided 680 Garth Street into 2 lots ("Proposed Lots"); the severed lot would be 16.03 metres wide by a depth of 27.43 metres and the retained lot would be 17.5 metres wide by a depth of 27.43 metres. The variance application sought a lot area of 439.7 square metres for the severed lot and 480 square metres for the retained lot ("Designated Variances") in place of the required area under the By-law of 690 square metres. The Committee denied both the consent application and the variance application. As a result, Mr. Scalia appealed to this Board.

The Evidence

The City was in favour of the relief sought and called Mr. Barnett, a planner with the City to provide expert planning evidence in support of the Proposed Severance and the Designated Variances. In fact, the Planning Staff for the City supported the relief requested at the Committee of Adjustment stage as well. According to Mr. Barnett, the relief sought was consistent with the 2005 Provincial Policy Statement ("PPS"), conformed with the Growth Plan for the Greater Golden Horseshoe ("Growth Plan"), satisfied the requirements of s.51(24) of the *Planning Act* ("Act") and met the 4 tests of s.45(1) of the *Act*. No other witness provided expert land use testimony and accordingly, Mr. Barnett's evidence was uncontradicted from that perspective.

Mr. Scalia also testified in support of his position. He described the site, commented on the state of repair of the existing home and indicated specifically what he intended to do if his appeals were successful.

The only neighbour who gave viva voce evidence was Mr. Knowles, the owner of 19 Bethany Court. His property is located to the rear of the subject parcel and he was granted participant status. Mr. Knowles was opposed to the proposal essentially because, in his view, the size of the Proposed Lots is not in keeping with the character of the area. Mr. Knowles also provided a copy of an email from one Charles Harvey, the owner of 656 Garth Street, to Mr. Knowles dated October 10, 2010. This email

stated Mr. Harvey's opposition to the proposal basically for the same reason expressed by Mr. Knowles.

Analysis and Discussion

The comments of Mr. Knowles did not refer to the provisions of either the PPS or Growth Plan and, as a result, these are not matters I need to address further in these reasons. I accept the uncontracticted testimony of Mr. Barnett in relation to both of these documents.

In relation to the provisions of s.51(24) of the *Act*, the key subsections, in my view are (c), (d) and (f). They make reference to the official plan and the dimensions and shapes of proposed lots. The City's Official Plan ("Official Plan") states in Policy A.2.1.8 that "a variety of housing styles, types and densities be available in all residential areas" and in Policy A.2.1.13 that "Plans for redevelopment will ... ensure that the Residential character of the area will be maintained or enhanced and that the redevelopment will not burden existing facilities and services". The creation of one additional lot in this case does not require any new road or the extension of municipal services. Although, the Proposed Lots are modestly smaller than other lots in the area, when seen from the street, they maintain the scale and character of the area. Moreover, the creation of the Proposed Lots will not be precedent setting because no other lot (other than 656 Garth Street) can be severed and still achieve the frontage requirements in the By-law. I am satisfied that the proposal satisfies the provisions of s.51(24) of the *Act*.

As to whether the Designated Variances meet the 4 tests of s.45(1), I believe they do.

The Proposed Lots will allow for building envelopes similar to the building envelopes on other lots in the neighbourhood, will meet the requisite frontage requirements of the By-law and, as I have already stated, when viewed from the street, the scale and character of the area are maintained. I agree with Mr. Barnett that the variances are minor and meet the intent of the By-law.

What is proposed is also, in my view, desirable. The creation of the Proposed Lots achieves both Provincial and City goals of focus growth into the urban area and intensification in a built up area. The proposal also has the effect of creating more affordable residential dwelling lots.

Lastly, the intent and purpose of the Official Plan are also, in my opinion, maintained, since the proposal conforms to Policies A.2.1.1 and A.2.1.13 previously mentioned, makes more efficient use of infrastructure and is compatible with the scale and character of the existing residential area.

Disposition

Based on all of the foregoing therefore, provisional consent is hereby granted for the creation of the Proposed Lots and the Designated Variances are authorized, all on condition that:

1. Mr. Scalia will enter into and register on title to the subject lands, a Consent Agreement with the City to deal with grading and drainage of the subject lands and demonstrate that all drainage can be taken to a suitable outlet, to the satisfaction of the Manager of Engineering Design and Construction.
2. Mr. Scalia will submit a deposited Ontario Land Surveyor's Reference Plan to the Committee of Adjustment office, unless exempted by the Land Registrar.
3. Mr. Scalia shall include the following warning clause in the Consent/Development Agreement and in all Purchase and Sale and/or Lease/Rental Agreements:

"Purchasers/tenants are advised that sound levels due to increasing road traffic 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. Mr. Scalia shall submit to the Committee of Adjustment office an administration fee of \$15.00 payable to the City, to cover the cost of setting up a new tax account for the newly created lot.

5. Mr. Scalia will satisfy the requirements of the Public Works Department, Operations and Maintenance Division, Forestry and Horticulture Section.
6. Mr. Scalia will pay any outstanding realty taxes and/or other charges owing to the City Treasurer.
7. Mr. Scalia will 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 concurrent with their submission to the Ministry of Culture.

Should deeply buried archaeological materials 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, Mr. Scalia shall immediately contact both MCL and the Registrar or Deputy Registrar of the Cemeteries Regulation Unit of the Ministry of Small Business and Consumer Services (416-326-8392).

The conditions above set forth shall be fulfilled within one year of the date of issuance of this Decision, failing which, the approvals granted herein shall lapse and be of no further force or effect.

Subject to the conditions above expressed, the appeals are accordingly allowed.

"S. J. Stefanko"

S. J. STEFANKO
MEMBER