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PL100980

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: Heidi Livingston
Subject: Consent
Property Address/Description: 3478 Cawthra Road
Municipality: City of Mississauga
Municipal File No.: B32/10
OMB Case No.: PL100980
OMB File No.: PL100980

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

Applicant and Appellant: Heidi Livingston, Mawama Limited
Subject: Consent
Property Address/Description: 3470 Cawthra Road
Municipality: City of Mississauga
Municipal File No.: B31/10
OMB Case No.: PL100980
OMB File No.: PL100981

APPEARANCES:

Parties

Heidi Livingston

City of Mississauga

Counsel

M. Weir

A. Wilson-Peebles

**MEMORANDUM OF ORAL DECISION DELIVERED BY M. C. DENHEZ ON
MAY 31, 2012, AND ORDER OF THE BOARD**

This severance dispute arose after two property owners in the City of Mississauga (City) proposed to reconfigure their lot boundaries, to turn two lots into three. Heidi Livingston and Makama Limited would create a new lot out of the backyards of (i) a corner lot, plus (ii) the abutting lot. Ms. Livingston applied for consent from the Committee of

Adjustment (CoA). At the eventual hearing, the Board was told that Ms. Livingston acted essentially on behalf of both owners. That application mentioned no variances.

The location is at the corner of busy Cawthra Road and Hyacinthe Boulevard. By memo dated June 17, 2010, City planning staff recommended that any such consent be subject to 11 conditions (Exhibit 1). As an addendum to the arrangement, however, road authorities wished to acquire land for a sight triangle at the corner; but conveyance of that land would reduce the size of the remaining corner lot to below the zoning by-law's minimum permissible lot area. There was also opposition from neighbours. The CoA turned down the application, and Ms. Livingston (the appellant) appealed to the Ontario Municipal Board (the Board).

Subsequent to launching that appeal, two events occurred. First, Ms. Livingston transferred title to a Mr. Froilan Berroya. Second, a variance was obtained for lot size.

The City attended the present hearing on the merits of the application for consent for the reconfiguration of the lots. Now that a prerequisite variance for lot area had been obtained, said counsel for the City, the City had no further objection. The City was thereupon excused from the hearing. However, a neighbour, Ms. Mezzaucella, requested participant status, and spoke against the proposal.

The applicable criteria for approving consents for severances are outlined in separate sections of the *Planning Act*. The relevant provision for consents, subsection 53(12), refers to the criteria in subsection 51(24):

...Regard shall be had, among other matters, to the health, safety, convenience and welfare of the present and future inhabitants of the municipality and to,

- (a) The effect of development... on matters of provincial interest...;

- (b) Whether the (proposal) is premature or in the public interest;
- (c) Whether the plan conforms to the Official Plan...;
- (d) The suitability of the land for the purposes...;
- (e) (Highways);
- (f) The dimensions and shapes of the proposed lots;
- (g) The restrictions or proposed restrictions, if any, on the land proposed to be subdivided or the buildings and structures proposed to be erected on it and the restrictions, if any, on the adjoining land...;
- (h)-(l) (Natural resources, floods, services, schools, land dedications, energy).

The *Planning Act* also deals with whether the transaction should proceed instead by way of subdivision; but that suggestion was not made at the hearing. In the absence of new roads or other public facilities which might normally require the subdivision process, the Board finds no need to proceed by way of subdivision.

The Board heard from an expert planning consultant, Mr. Blyleven, who said that, in his professional opinion, the project met all the above criteria of the *Planning Act*, and corresponded to the principles of good planning. He also presented a detailed written opinion, outlining how the proposal now complied with all relevant planning documents.

The participant expressed concerns about (a) traffic and (b) greenery. On the subject of traffic, The Board heard no evidence that one additional dwelling would produce any

significant negative impact on traffic levels. If anything, the sight triangle and the relocation of the corner lot's existing driveway (currently opening onto Cawthra Road, at a location perilously close to the corner), would have a positive impact on traffic safety.

On the question of greenery, the Board was advised that dead or dying trees must obviously be removed. However, the Board was also reassured that, under the City's tree protection regime, healthy trees along the west lot line – which are not on the footprint of construction on the new lot – would normally be "tagged" and preserved in accordance with the City's tree by-law. In the words of counsel, "whatever trees are there will be kept". Furthermore, "presumably there'll be (new) trees planted." The Board is prepared to take counsel at his word, and is satisfied with the above reassurance.

The Board has carefully considered all the evidence, as well as the arguments of counsel and of the neighbour, Ms. Mezzaucella. The Board concludes that the proposal now meets the terms of the Ontario *Planning Act* for consent to the severance, and the appeal is allowed accordingly.

The Board does not consider it necessary to include a condition specifically concerning the City's tree by-law, since compliance with that by-law is assumed as a matter of course. For good measure, one of the 11 conditions from City planning staff pertained to approval by City Parks officials.

THE BOARD ORDERS that the appeal is allowed. Provisional consent is to be given, subject to the 11 conditions outlined by City planning staff in its memo dated June 17, 2010 (Exhibit 1).

It is so Ordered.

"M. C. Denhez"

M. C. DENHEZ
MEMBER