

ISSUE DATE:

October 4, 2011



PL110094

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: Sandra Dussin
Subject: Consent
Property Address/Description: 100 Southcote Road
Municipality: City of Hamilton
Municipal File No.: B-133/10
OMB Case No.: PL110094
OMB File No.: PL110094

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

Applicant / Appellant: Sandra Dussin
Subject: Minor Variance
Variance from By-law No.: 87-57 (Ancaster)
Property Address/Description: 100 Southcote Road
Municipality: City of Hamilton
Municipal File No.: A-233/10
OMB Case No.: PL110094
OMB File No.: PL110095

APPEARANCES:

Parties

Sandra Dussin

Counsel

N. Smith

Participants

Robert Wild

Brian Moar

Joe Boyachek

**MEMORANDUM OF ORAL DECISION DELIVERED BY M. A. SILLS ON
AUGUST 18, 2011 AND ORDER OF THE BOARD**

The matter before the Board relates to appeals by Sandra Dussin (Applicant/Appellant) resulting from the refusal of the City of Hamilton Committee of Adjustment (COA) to grant provisional consent and to authorize minor variances for the property located at 100 Southcote Road, in the former Town of Ancaster.

Background

The subject property is a 2,028 square metre parcel having 21.3 metres frontage on Southcote Road. This lot is generally rectangular in shape, with the exception of a triangular shaped extension at the front southeast corner of the property. The property extends for a depth of 75.85 metres, with the most southwesterly section of the rear yard having 15.05 metres frontage on the bulb portion of Lynda Lane. Lynda Lane is a cul-de-sac comprised of nine properties developed with single family homes.

The owners purchased this property in March of 2010 and proceeded to demolish an existing dwelling and construct a new home in its place. The Applicant now proposes to sever the property into two parcels and construct a new home on the severed parcel. The retained lands would maintain frontage on Southcote Road and have a depth of 37.78 metres and a lot area of 0.29 acres, while the severed parcel would front onto Lynda Lane and have a depth of 38.1 metres and a lot area 0.20 acres.

In order to proceed with the development of the home on the severed parcel, an application was submitted for minor variances, as follows:

1. to permit a lot frontage of 15 metres, whereas a lot frontage of 18 metres is required;
2. to permit a lot coverage of 35.5 % of the lot area, whereas a maximum lot coverage of 35% of the lot area is permitted (no longer required); and
3. to permit a northerly rear yard setback of 1.6 metres with further eave projection, whereas a minimum rear yard setback of 7.5 metres is required;

Two additional variances to recognize deficiencies related to the existing dwelling on the retained parcel were initiated by the Municipality, as follows:

1. to permit a northerly rear yard setback of 1.5 metres with further eve projection, whereas a minimum rear yard setback of 7.5 metres is required; and
2. to permit a southerly rear yard setback of 1.5 metres with further eve projection, whereas a minimum rear yard setback of 7.5 metres is required.

It is to be noted that in March of 2010, a building permit was issued for the existing building on the proposed retained parcel, without the requirement for a minor variance application having been recognized. It was only upon City staff's review of the current applications that it was identified that the additional variances were required in order to legalize the constructed home. The Municipality initiated the application for the related variances at the COA.

The subject applications were first before the COA in October of 2010, at which time they were tabled in order to allow Committee members an opportunity to conduct a site inspection. In an attempt to respond to concerns expressed by local residents, the Applicant reconfigured the building envelope of the proposed new home. The modifications to the building plans resulted in reducing the lot coverage relief required from 45% to 35.5%, and eliminated the need for a front yard setback.

In December 2010, the COA denied the consent and the minor variance applications related to the proposed severed parcel. However, the variances initiated by the Municipality related to the existing single detached dwelling, were authorized.

The Applicant is appealing the COA's decision with respect to the consent application, and Variances 1 and 3 related to the severed parcel only. As a result of further considerations/modifications, Variance 2 is no longer required as the proposed lot coverage now conforms to the zoning by-law.

At the commencement of the hearing, local residents Mr. Robert Wild, Mr. Brian Moar, and Mr. Joe Boyachek requested and were granted Participant status.

Municipal planning staff recommended approval of both the consent application, subject to conditions, and the minor variance application.

The Municipality was not represented at the hearing.

Concerns of the Participants

Mr. Wild, Mr. Moar and Mr. Boyachek are all residents of Lynda Lane. They share the view that the development proposal is in conflict with the existing character of their neighbourhood. The severance will result in the creation of two lots which are smaller than most in this neighbourhood, and the proposed new home is too large and will overwhelm the lot and look out of place. They are concerned that approval of the severance application will set a negative precedent for the Lynda Lane neighbourhood.

Mr. Wild's property, which abuts the subject lands to the west, is at a lower elevation than the proposed severed parcel. He is concerned that the construction of a home on this lot would result in water run-off/drainage problems onto his property.

Mr. Boyachek's property is located at the bulb of the cul-de-sac and abuts the subject property to the south. He contended that the combination of reduced frontage and driveway entrance for the proposed new home, and the existing property line vegetation, will impair visibility for pedestrians and vehicles entering and exiting his property. He was particularly concerned about the safety of his four small children.

Mr. Moar had further concerns that the introduction of a new home on Lynda Lane will increase traffic and create parking issues on the street.

The Planning Evidence

Mr. George Zajac was qualified to give expert planning opinion evidence in land use planning.

It was Mr. Zajac's professional opinion that the proposal is consistent with the Growth Plan (GP) and the Provincial Policy Statement (PPS), conforms to the Regional and local Official Plans, and is in keeping with the general intent of the Zoning By-law.

Mr. Zajac contends that the proposal represents an appropriate infilling situation which provides a "good fit" and blends in well with the character of the surrounding residential neighbourhood. The variances required will not result in the creation of unacceptable adverse impacts to the neighbours or the neighbourhood, and are minor

in nature. Consequently, he concluded that the proposal is an appropriate development of the property and represents good land use planning.

He provided a detailed description of the site and surrounding area, the development proposal, and the history of the subject applications.

Mr. Zajac submitted that the proposed redevelopment of the subject property conforms to the guiding principles and pertinent policies of the Growth Plan for the Greater Golden Horseshoe (GGH). The relevant guiding principles include *building compact, vibrant and complete communities, by planning and managing growth to support a strong and competitive economy, and optimizing the use of existing infrastructure to support growth in a compact, efficient form*. Specifically, the proposal is consistent with *Managing Growth* policies related to intensification, directing development to settlement areas, and making use of existing infrastructure and servicing (Policy 2.2.2).

Likewise, the proposal is consistent with PPS policies related to *promoting efficient development land use patterns* (Policy 1.1.1 (a)), *accommodating an appropriate range and mix of residential uses* (Policy 1.1.1 (b)), *avoiding development and land use patterns which may cause environmental or public health and safety concerns* (Policy 1.1.1 (c)), *promoting cost efficient development standards to minimize land use consumption and servicing costs* (Policy 1.1.1 (e)), and *ensuring that necessary infrastructure and public services are and will be available to meet current projections* (Policy 1.1.1 (g)). He submitted that planning authorities are compelled to identify and promote opportunities for intensification and redevelopment in areas with suitable infrastructure and public services (Policy 1.1.3.3) and incorporate development standards which facilitate intensification and compact form while maintaining appropriate levels of public health and safety (Policy 1.1.3.4).

The Hamilton-Wentworth Regional OP identifies the subject lands as being within the Urban Policy Area. The relevant policies are intended to promote a more compact urban form and encourage maximization of existing infrastructure and public service facilities. The OP outlines that a wide range of urban uses, defined through Area Municipal OP's and based on full municipal services, will be concentrated in Urban Areas. These areas are intended to accommodate approximately 96 percent of new

residential housing units in the Region to the year 2020 (Policy C-3.1). Mr. Zajac submitted that the redevelopment of the subject property as proposed conforms to the Hamilton-Wentworth OP.

The Town of Ancaster Official Plan designates the property as “Residential”. The OP provides the authority for the subdivision of lands in Residential zones, subject to the provisions set out in Policy 7.7.1.2. In accordance with these provisions, the proposed severed parcel has frontage on a municipal road and has access to full municipal services.

Mr. Zajac testified that after conducting a review of the relevant criteria for the subdivision of land, it was his professional opinion that the proposed severance conforms to subsection 51(24) of the *Planning Act*.

Likewise, Mr. Zajac opined that Variance 1 and 3 associated with the severed parcel satisfy the criteria set out in subsection 45(1) of the *Planning Act*.

He contended that Variance 1 is minor in nature. The intent and purpose of the zoning by-law standard related to frontage is to maintain the character of the streetscape and to ensure the lot is capable of accommodating a suitable sized dwelling. There are a variety of lot frontages in this area; the proposal will not negatively alter the character of the streetscape, and the proposed home is set back on the lot and of a sufficient size to accommodate an appropriate single family living area and amenity space. The driveway will be located on the westerly side of the property and will function like any other typical driveway with respect to providing adequate visibility and sight lines.

He testified that Variance 3 is technical in nature in that it is required due to the fact that the property “is irregular and does not face Lynda Lane in a traditional manner”. The Town of Ancaster Zoning By-law defines all lot lines that are not the front lot, and that are not touching the front lot line, to be rear lot lines. Accordingly, both the northerly and easterly lot lines function as a rear lot line. The severed parcel will maintain 267 square metres of amenity space between the proposed dwelling and the easterly rear lot line. Mr. Zajac is of the opinion that this is more than an adequate amenity space area.

In summary, Mr. Zajac submitted that the proposal represents a permitted use and is consistent with Provincial and municipal planning policies with respect to providing a compact urban form and making use of existing infrastructure. The development of the lands in the manner proposed will result in a desirable and appropriate development and use of the lands; the proposed residential dwelling is compatible with the area and will result in minimal adverse impact on adjacent properties. The proposed variances will facilitate the implementation of the planned uses of the subject lands which is consistent with the principles of good land use planning.

Analysis and Disposition

The Board adopts and relies on the uncontradicted expert planning opinion of Mr. Zajac to find that the proposed consent and minor variance applications satisfy the criteria set out in subsections 51(24) and 45(1) respectively, of the *Planning Act*. The proposal meets the criteria for severances as required by Provincial and municipal planning legislation/policies and the minor variances will facilitate the development of the proposed home. The Board is satisfied that the planned development is a permitted use of the lands and is consistent with the principles of good land use planning. The relief required will not result in the creation of adverse impacts to the neighbours or the neighbourhood as a whole, and the variances are minor in nature.

The Board carefully considered the concerns of the local residents. However, there was no evidence before the Board which could support their position that the proposal offends the character of the neighbourhood and/or would result in the creation of adverse impacts related to drainage, traffic, parking, and public safety.

While it is true that the severance results in the creation of two smaller sized lots, a review of the area mapping (Exhibit 3 – Tab 2 and Tab 21) reveals that the resulting lot sizes and the frontage of the severed parcel are not dissimilar to those of many other properties in the neighbourhood as a whole. It is apparent that in arriving at their conclusion in this regard, local residents have considered only the nine lots on Lynda Lane and possibly the four properties immediately north of the subject lands on Southcote Road, in determining what constitutes “the neighbourhood”. The Board finds that the scope of comparison properties relied upon by the residents in defining the

neighbourhood was too narrow a focus for the purpose of conducting a legitimate planning analysis. In other words, a single street, particularly a small cul-de-sac, does not necessarily constitute a “neighbourhood” within the context of municipal and Provincial planning policies.

In examining the broader neighbourhood from the perspective of a one block radius in all directions of the subject lands, at minimum, it is evident that this area consists of lots of varying shapes, sizes, and frontages. The lot sizes that would result from the proposed severance do not appear to be out of character with several other properties in this neighbourhood. Likewise, the Board was not convinced by the evidence that the relief required with respect to the lot frontage of the proposed severed parcel would offend the character of the neighbourhood or otherwise compromise public safety.

Mr. Boyachek was particularly concerned that the driveway of the severed parcel, along with the existing vegetation on the separating property line, would result in the creation of a blind spot for vehicles and pedestrians entering and exiting his property. The Board was unable to agree with his concerns. His property is located at the northerly curved portion (bulb) of the cul-de-sac, and his driveway is on the north side of the lot. In viewing photos submitted by the Applicant (Exhibit 7), it would appear that the driveway of Mr. Boyachek’s home has a relatively direct view down Lynda Lane in the direction of the subject property. The separating property line vegetation is an existing factor. Once again, in viewing the photos, it would appear that the only possible obstruction of view from Mr. Boyachek’s property is created by a small portion of hedge that extends from the separating lot line across the front of his property.

The residents were also concerned that the proposed home is too large. The proposal is to construct a bungalow which conforms to the zoning by-law standards in all aspects, with the exception of rear yard setbacks and lot frontage. The only properties that are impacted by the reduced rear yard setbacks are the existing home on the retained parcel (owned by the Applicant) and the property to the north, municipally known as 90 Southcote Road. The owners of this property, Mr. and Mrs. Whitelaw provided a letter in support of the proposed consent and development proposal. Their letter sets out that prior to the current owners having taken possession, the subject property was in a state of disarray; the house was dilapidated, several non-

operational vehicles were parked on the site, and the property was overgrown with weeds and unruly vines/vegetation which attracted rodents and animals. Mr. and Mrs. Whitelaw commended the new owners for cleaning up the property and building “a beautiful new home which is aesthetically pleasing and fits the current development of this mature neighbourhood”.

Mr. Wild was concerned that the construction of a home on the severed parcel would result in water run-off onto his property. While the Board can appreciate his concerns, the Applicant will be required to enter into a Consent Agreement with the City which will address grading and drainage.

Mr. Moar contended that allowing the proposal to proceed would result in increased traffic, and create parking issues on Lynda Lane. The Boards finds such a proposition to be untenable. Currently, there are nine single family residences on Lynda Lane; the proposed development will increase that number by one. Even at ten residences, this cul-de-sac would experience very limited traffic volume, and much less than most residential streets. In other words, the addition of one single family residence would have a negligible impact on vehicle traffic activity. Likewise, any potential impacts related to parking can no more be attributed to the new home than they can to any of the other homes on the street. In any event, the City engineers have not identified any problems related to traffic and parking, and there was no technical evidence before the Board to suggest otherwise.

There was no dispute with respect to the variances initiated by the Municipality for the existing home on the retained parcel. Accordingly, the Board adopts the expert opinion evidence of Mr. Zajac and the decision of the COA with respect to these variances.

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

And further, Variances 1 and 3 (related to reduced lot frontage and north rear yard setback for the severed parcel) and Variances 1 and 2 (related to reduced north and south rear yard setbacks for the retained parcel), to Zoning By-law No. 87-57 are authorized.

The Board so Orders.

"M. A. Sills

M. A. SILLS
MEMBER

ATTACHMENT 1

OMB Case No.: PL110094

Proposed Conditions of Severance

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. That the owner/applicant agree to 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 may occasionally interfere with some activities of the dwelling occupants as the sound levels may exceed the Municipality's and the Ministry or the Environment's noise criteria.
3. That the proponent shall carry out an archaeological assessment of the conveyed portion of the 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 Tourism and 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 Tourism and Culture.

Should deeply buried archaeological materials be found on the property during any of the above development activities the Ontario Ministry of Tourism and Culture (MTC) should be notified immediately (416.314.7143). In the event that human remains are encountered during construction, the proponent should immediately contact both MTC and the Registrar or Deputy Registrar of the Cemeteries Regulation Unit of the Ministry of Small Business and Consumer Services (416.326.8392)
4. That the owner/applicant receive final approval of minor variance application AN/A-10:233.
5. The applicant shall enter into and allow to have registered on title of the lands, a Consent Agreement with the City of Hamilton to the satisfaction of the Director of Development Engineering to deal with the grading and drainage on the subject lands. The applicant shall demonstrate to the satisfaction of the Director of Development Engineering that all drainage from the site shall be taken to a suitable outlet.
6. The owner shall pay to the City of Hamilton the future urbanization costs of Lynda Lane based on the New Road Servicing Rate for the year that final approval is obtained, to the satisfaction of the Manger of Engineering Design and Construction.
7. The owner shall dedicate to the City of Hamilton by deed, 10 feet (3.048 m) of land from the lands to be retained for road allowance widening purposes, to the satisfaction of the Manager of Engineering Design and Construction.
8. The owner shall have the existing sanitary sewer lateral on Lynda Lane video inspected, while the City of Hamilton Sewer Inspector is present, to the satisfaction of the Manager of Engineering Design and Construction.
9. The owner shall pay the required commutation amount of Local Improvement Charges to Budgets & Finance, City of Hamilton City Hall.
10. The owner shall pay any outstanding realty taxes and/or all other charges owing to the City Treasurer.

11. 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.
12. The owner shall obtain a Building/Land Use Permit from the Ministry of Transportation for the proposed dwelling.