

ISSUE DATE:

**February 16, 2012**



PL110706

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

Appellant: Richard Wellenreiter  
Applicants: Nelson & Alicia Da Silva  
Subject: Consent to sever  
Property Address/Description: 117 Rockcliffe Road  
Municipality: City of Hamilton  
Municipal File No.: B-18/11  
OMB Case No.: PL110706  
OMB File No.: PL110706

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

Appellant: Richard Wellenreiter  
Applicants: Nelson & Alicia Da Silva  
Subject: Minor Variance  
Variance from By-law No.: 90-145-Z  
Property Address/Description: 117 Rockcliffe Rd  
Municipality: City of Hamilton  
Municipal File No.: A-71/11  
OMB Case No.: PL110706  
OMB File No.: PL110707

**APPEARANCES:**

**Parties**

Nelson and Alicia Da Silva

Richard Wellenreiter

**Counsel**

J. Restivo

Self-represented

**MEMORANDUM OF ORAL DECISION DELIVERED BY SUSAN de  
AVELLAR SCHILLER ON FEBRUARY 2, 2012 AND ORDER OF THE  
BOARD**

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Mr. Daniel Barnett, appearing under summons, was called by Nelson and Alicia Da Silva. The Board qualified Mr. Barnett to provide independent expert opinion

evidence in these matters. Since no executed copy of the Board's Acknowledgement of Expert's Duty form was filed, the Board read the form to Mr. Barnett and secured his acknowledgement, under oath, of his duty to this Board.

The Da Silvas wish to sever their property to create one additional single detached residential lot. The existing lot fronts on Rockcliffe Road in the former Town of Flamborough, now the City of Hamilton. The front part of the existing lot is designated Urban Area within the in-force Hamilton-Wentworth Official Plan. It is designated Urban Residential within the former Town of Flamborough Official Plan. The rear part of the existing lot is designated Escarpment Natural Area within the Hamilton-Wentworth Official Plan. The subject lands are within the development control area of the Niagara Escarpment Commission (NEC). The NEC has issued a Development Permit for the proposal now before the Board.

The two lots will have approximately the same frontage on Rockcliffe Road but the retained lot will be much larger in area. The retained lot will be an L shape and includes all of the lands designated Escarpment Natural Area. The existing frontage is 45m, larger than most lots in the area. The Town of Flamborough Zoning By-law requires a minimum frontage of 30m. The requested variance is for lot frontages of 22m.

The By-law sets a maximum lot coverage of 15%. Mr. Barnett testified that the 15% was intended to ensure that lots were large enough to accommodate private services. Full municipal services are now available and there is no further servicing need for the reduced lot coverage. Only the lot to be conveyed requires a variance to the 15% requirement, and only because all of the Escarpment Natural Area has been kept within the retained lot. In this case, the variance is to allow this lot to have a maximum lot coverage of 22%.

The By-law requires an interior side yard setback of 3m. The purpose of the setback is to ensure adequate access for maintenance and appropriate separation between neighbours. No reduction in the side yard setback is being sought for the sides that abut existing neighbours. Instead, the request is for a variance to reduce the interior side yard setback to 2.1m along the property line that separates the retained and conveyed lots. At 2.1m, there is adequate space to ensure access for maintenance and still provide appropriate separation between the two new houses to be built. Since the

reduction is between the retained and conveyed lots, there is no impact on existing adjacent neighbours.

Part way through the cross-examination of Mr. Barnett by Mr. Wellenreiter, and during a recess in the proceedings, a settlement was reached between the parties. Specifically, Mr. Wellenreiter advised the Board that he was now withdrawing his appeal. The Board was advised that Mr. and Mrs. Da Silva and Mr. Wellenreiter have entered into a separate agreement and that the withdrawal at this stage was being done on a without costs basis.

Counsel for the Da Silvas confirmed to the Board that they were satisfied with the decisions of the Committee of Adjustment regarding the applications for consent to convey and the applications for minor variances, including conditions.

The Board finds that the application for consent to convey meets the criteria set out in subsection 51(24) of the *Planning Act*, particularly that the lot shapes and sizes are appropriate and that they are on full municipal services.

Having regard to subsection 45(1) of the *Planning Act*, the Board finds that the requested variances maintain the general intent and purpose of the Town of Flamborough Official Plan and the Town of Flamborough Zoning By-law, are desirable for the appropriate development and use of the land and are minor.

The Board further finds the proposals implement the matters of Provincial interest, as set out in section 2 of the *Planning Act*, and are consistent with the Provincial Policy Statement. The Board makes this finding principally on the desirability of protecting the natural features by maintaining the Escarpment Natural Area entirely within one lot, rather than dividing it between two lots. In addition, the Board notes that with both proposed new houses on full municipal services the proposals make efficient use of existing infrastructure, and the development of an additional house provides some modest intensification that is still in keeping with the surrounding area.

Provisional consent is given to permit the conveyance of an irregular-shaped parcel of land having a frontage of approximately 22m, an irregular depth of 62.51m, and an area of 1,392m<sup>2</sup> for single family residential purposes, and to retain an irregular-shaped parcel of land having a frontage of approximately 22m, an irregular depth of

91.38m, and an area of 278m<sup>2</sup> for single family residential purposes, subject to the condition that the Applicants must enter into, and the City of Hamilton register, a Consent Agreement.

The variances to the Town of Flamborough Zoning By-law are authorized.

On consent of the parties, the Board releases Exhibit 2 (Appellant's Document Book) to Mr. Wellenreiter.

So Orders the Board.

"Susan de Avellar Schiller"

SUSAN de AVELLAR SCHILLER  
VICE CHAIR