

ISSUE DATE:

April 16, 2012



PL110837

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: Anthony Hurst
Appellant: William Roebuck
Applicant: 1669682 Ontario Ltd.
Subject: Consent to sever
Property Address/Description: 196 Governor's Road
Municipality: City of Hamilton
Municipal File No.: B-41/11
OMB Case No.: PL110837
OMB File No.: PL110837

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

Appellant: Anthony Hurst
Applicant: 1669682 Ontario Ltd.
Subject: Minor Variance
Variance from By-law No.: 3581-86
Property Address/Description: 196 Governor's Road
Municipality: City of Hamilton
Municipal File No.: A-189/11
OMB Case No.: PL110837
OMB File No.: PL111102

APPEARANCES:

Parties

1669682 Ontario Ltd.

Anthony Hurst

Counsel*/Agent

B. Duxbury*

Self-represented

**MEMORANDUM OF ORAL DECISION DELIVERED BY SUSAN de
AVELLAR SCHILLER ON FEBRUARY 1, 2012 AND ORDER OF THE
BOARD**

1669682 Ontario Ltd. (applicant) owns an unusually large, well treed lot. The applicant wishes to divide this large lot into three parcels. To do so, the applicant seeks consent to convey and a minor variance to reduce the frontage from the by-law requirement of 18 m to 17.23 m for each parcel.

The City of Hamilton Committee of Adjustment authorized the minor variance and has given provisional consent, with conditions, to allow the single large lot to be divided into three parcels.

Anthony Hurst and William Roebuck are neighbours, concerned with privacy and retaining the mature trees and landscaping. Messrs. Hurst and Roebuck both appealed the decision on the application for consent to convey; Mr. Hurst appealed the decision on the application for minor variance.

As a result of extensive discussions between the parties, the Board was advised that the parties had reached a settlement. A copy of the minutes of settlement was filed as Exhibit 1 in these proceedings.

Mr. Hurst then advised the Board that he was withdrawing his appeal against the decision of the Committee of Adjustment with regard to the application for minor variance. That appeal having been withdrawn, the decision of the Committee of Adjustment to authorize the minor variance stands.

The Board then turned to the application for consent to convey and heard from Mr. Stephen Fraser. Mr. Fraser is a full member of the Canadian Institute of Planners and is a Registered Professional Planner in Ontario.

None of the conditions to the Committee's decision on the application for consent to convey were challenged. The Board was advised that all parties were content to leave these conditions in place. Having reviewed the conditions imposed by the Committee of Adjustment, the Board is satisfied that they are appropriate to secure oversight for the municipality and to protect environmental and heritage features that may be identified on the subject lands. A complete list of the conditions imposed by the Committee of Adjustment, and confirmed as appropriate by this Board, is found in the decision of the Committee of Adjustment which is in Attachment #1 to this decision.

In order to maintain landscaping and reduce the impact of the additional lots to be created, the parties ask the Board to add a further condition to the consent as follows:

That the applicant establish a shared driveway and shared services, including but not limited to services for sanitary and storm sewers, water, hydro and cable for each of the three lots/dwelling (shown as Parts 2, 5 and 6 on the application for consent to convey) measuring 51.69m x 9.5m for reciprocal rights of way for access and servicing purposes, to the satisfaction of the City of Hamilton Manager of Development Engineering.

The Board is satisfied that this additional condition is appropriate. It secures a more efficient use of land and infrastructure and improves compatibility with adjacent properties.

The Board has considered the application for consent to convey, subject to the conditions imposed by the decision of the Committee of Adjustment and the additional condition sought by the parties.

The Board finds that this application meets the criteria set out in subsection 51(24) of the *Planning Act* R.S.O. 1990 c.P.13, is consistent with the Provincial Policy Statement, conforms to the Growth Plan for the Greater Golden Horseshoe, conforms to the Hamilton-Wentworth Official Plan, and conforms to the Dundas Official Plan. In particular, this proposal will contribute to intensification and a more compact development form, will make efficient use of land and infrastructure and enhances the protection of natural features.

The appeal of the decision of the Committee of Adjustment regarding the application for consent to convey is allowed in part and provisional consent is given, subject to the conditions imposed by the Committee of Adjustment and with the additional condition set out above.

So Orders the Board.

“Susan de Avellar Schiller”

SUSAN de AVELLAR SCHILLER
VICE CHAIR

ATTACHMENT 1
COMMITTEE OF ADJUSTMENT
NOTICE OF DECISION

APPLICATION FOR CONSENT LAND SEVERANCE

APPLICATION NO. DN/B-11:41
SUBMISSION NO. B-41/11

IN THE MATTER OF The Planning Act, R.S.O. 1990, Chapter P13, Section 53(1);

AND IN THE MATTER OF the Premises known as Municipal number 196 Governor's Road, formerly in the Town of Dundas, now in the City of Hamilton;

AND IN THE MATTER OF AN APPLICATION by the agent A.J. Clarke and Associates Ltd. (Stephen Fraser) on behalf of the owner 1669682 Ontario Ltd. (Douglas Hammond), for consent under Section 53(1) of The Planning Act, R.S.O. 1990, Chapter 13, so as to permit the conveyance of a parcel of land (shown as Parts 4 & 5 on attached sketch) measuring 17.23m x 49.68m containing a portion of an existing dwelling (to be demolished) for single family residential purposes, and to retain two parcels of land both containing a portion of an existing dwelling (to be demolished); one (shown as Parts 2 & 3 on attached sketch) measuring 17.23m x 49.68m, and the other (shown as Parts 6 & 7 on attached sketch) measuring 17.23m x 49.68m both for single family residential purposes; also to establish a shared driveway for each of the three lots/dwellings (shown as Parts 2, 5 & 6 on attached sketch) measuring 51.69m x 9.5m for reciprocal rights of way for access purposes.

THE DECISION OF THE COMMITTEE IS:

That the said application, as set out in paragraph three above, IS APPROVED for the following reasons:

1. After conducting a site inspection, the Committee is of the opinion that the proposal does not conflict with the intent of the Hamilton-Wentworth and Town of Dundas Official Plans.
2. The Committee is satisfied that a plan of subdivision is not necessary for the proper and orderly development of the lands.
3. The Committee considers the proposal to be in keeping with development in the area.

Having regard to the matters under subsection 51(24) of the Planning Act, R.S.O. 1990, c.P. 13, the said application shall be subject to the following conditions.

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 of the Environment's noise criteria."
3. That the proponent shall 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

CERTIFIED TRUE COPY.

SECRETARY - TREASURER

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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 dedicate to the City of Hamilton by deed 17 feet (5.182m) of land from the lands to be severed and/or retained for road allowance widening purposes to establish a property line 50 feet (15.240m) from the centerline of Governor's Rd road allowance.
5. That the Owner enters into, and has the City register on the title of the lands, a Consent Agreement to the satisfaction of the Senior Director of Growth Management to deal with the grading and drainage on the subject lands. The applicant shall demonstrate that all drainage from the site shall be taken to a suitable outlet.
6. The owner shall demolish all or an appropriate portion of any buildings straddling the proposed property line, to the satisfaction of the Planning and Economic Development Department (Building Services Division). May be subject to a demolition permit issued in the normal manner.
7. The owner shall receive final approval of any necessary variances from the requirements of the Zoning By-Law as determined necessary by the Planning and Economic Development Department (Building Services Division).
8. The owner shall pay any outstanding realty taxes and/or all other charges owing to the City Treasurer.
9. The owner submit to the Committee of Adjustment office an administration fee of \$30.60 (15.30 per lot) payable to the City of Hamilton to cover the costs of setting up new tax accounts for the newly created lots.

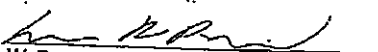
DATED AT HAMILTON this 7th day of July, 2011.


M. Dudzic, Chairman


I. Dunlop


D. Smith


D. Drury


W. Pearce

THE DATE OF GIVING OF THIS NOTICE OF DECISION IS July 14th, 2011.
HEREIN NOTED CONDITIONS MUST BE MET WITHIN ONE (1) YEAR OF THE DATE OF THIS NOTICE OF DECISION (July 14th, 2012) OR THE APPLICATION SHALL BE DEEMED TO BE REFUSED (PLANNING ACT, SECTION 53(41)).

NOTE: THE LAST DATE ON WHICH AN APPEAL TO THE ONTARIO MUNICIPAL BOARD MAY BE FILED IS August 3rd, 2011.

NOTE: THIS DECISION IS NOT FINAL AND BINDING UNLESS OTHERWISE NOTED.

NOTE (TO BE INCLUDED IN DECISION IF APPROVED):

Based on this application being approved and all conditions being met, the owner / applicant should be made aware that the lands to be conveyed (Parts 4 and 5) will remain as 188 Governor's Road, and the lands to be retained the east (Parts 6 and 7) will be assigned the municipal address of 194 1/2 Governor's Road and the lands to be retained the west (Parts 2 and 3) will be assigned the municipal address of 196 1/2 Governor's Road.