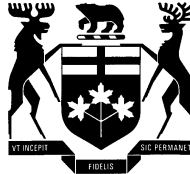


ISSUE DATE:

September 9, 2013



PL130292

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:	Shawn Murray
Subject:	Consent / Minor Variance
Property Address/Description:	19 Cameron Drive
Municipality:	Hamilton
Municipal File No.:	B-105/12
OMB Case No.:	PL130292
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APPEARANCES:

Parties

Counsel

Shawn Murray

City of Hamilton

M. Minkowski

DECISION DELIVERED BY SYLVIA SUTHERLAND AND ORDER OF THE BOARD

[1] This was an appeal by Shawn Murray (“Applicant/Appellant”), owner of property at 19 Cameron Drive (“subject property”) in the City of Hamilton (“City”) against a decision of the Committee of Adjustment (“COA”) refusing his application to permit the conveyance of an irregular shaped parcel of land for residential purposes and to retain an irregular shaped parcel of land for residential purposes. The existing dwelling would be demolished.

[2] Mr. Murray represented himself at the hearing. Allan Ramsay gave uncontradicted expert land use planning evidence and opinion on behalf of the City. Jennifer Pate and Clinton Davis spoke as participants at the hearing. Both opposed the application.

BACKGROUND

[3] Mr. Murray is proposing to divide an existing 2,241.3 sq m property to create one additional single detached residential lot. He had previously applied to sever the subject property and was given approval by the COA in April, 2011; however, he failed to meet the conditions of approval within one year and the application consequently lapsed.

[4] The applicant was also granted the following variances for the subject property in 2011:

- a minimum lot frontage of 16 m shall be provided for the land to be conveyed instead of the minimum required of 18 m lot frontage; and
- a minimum lot frontage of 16 m shall be provided for the land to be retained instead of the minimum required 18m lot frontage. (Exhibit 1, Tab 20)

[5] In the COA decision, dated April 28, 2011, it was stated that “the variances are necessary to facilitate Consent Application AN/B-11.15”, the application that was allowed to lapse.

[6] The consent application before the Board is identical to the 2011 application, the proposed lots consisting of:

1. a severed parcel having a lot frontage of 12 m and area of 927.9 sq m; and
2. a retained parcel having a lot frontage of 11.6 m and an area of 1,313.3 sq m

[7] In effect, as Mr. Ramsay pointed out at the hearing, the variances granted in 2011 do not facilitate the application, which requires frontages of 12 m and

11.6 m. He also pointed out that actual proposed lot frontage of the retained lot is 16.04 m, different from that stated on the application. (Exhibit 2, Page 4)

SUBJECT PROPERTY

[8] The subject property is located on the east side of Cameron Drive in the former Town of Ancaster. The frontage of the irregular pie-shaped lot is 20.9 m and it has a depth ranging from 38.16 m to 59 m. It is a flat, well-vegetated property, with mature deciduous trees in the front and rear yards.

[9] A one-story detached dwelling located centrally on the subject property has a floor area of approximately 248 sq m and includes a detached double car garage.

[10] The subject property is within an established residential neighbourhood. Mr. Ramsay characterizes the land use and built form immediately surrounding the site as having mostly one to one-and-a-half storey single detached dwellings along Cameron Drive, with a small neighbourhood commercial plaza located at the south-west corner of Cameron Drive and Wilson Street. The Hamilton Golf and Country Club is located immediate to the east.

[11] The neighbourhood was laid out as part of the Stevens Survey and approved in the 1950s. There is a well-established pattern of large lots, generally much larger than the minimum by-law requirements.

[12] Mr. Ramsay stated that the existing development can be categorized into two distinct groups, one involving dwellings of modest size built in the 1950's, which have generous side yard building setbacks. They typically incorporate attached one-car garages. The second comprises much larger dwellings, with setbacks typically very close to minimum by-law requirements. These newer dwellings incorporate two or three car garages.

[13] Mr. Ramsay said that "with a few exceptions" the newer development has been "well integrated" within the neighbourhood.

FINDINGS

[14] Mr. Murray, a real estate agent and builder by trade, stated that his proposed pie-shaped lots necessitated smaller frontages than required by the Zoning By-law ("ZBL"), and was of the opinion that the variances he was granted in 2011 allowed for those smaller frontages, even though at least one was shy of the 12 m he required for the severed parcel. He did not address the various criteria of s. 51(24) of the *Planning Act* ("Act"), which must be considered when evaluating proposals for land division, relying instead on a staff report which supported his application (Exhibit 1, Tab 16). Among the criteria of s. 51(24) not addressed in the staff report is criteria f), the dimensions and shape of the proposed lots.

[15] Mr. Murray did address what he considered to be neighbourhood concerns regarding drainage (it will have to be approved before he can proceed), lot size (his smallest lot exceeds the size of many of the lots in the neighbourhood and Lot 12 is smaller in size and was allowed to be severed in 2009) and tree preservation (none of the trees at the rear of the property will have to be cut down.)

[16] He emphasized that he had earlier obtained approval for the proposed severance, and believed that his approved lot frontage variances were adequate.

[17] It is clear, however, that that they are not.

[18] In the expert opinion of Mr. Ramsay, the proposed consent does not comply with the following provisions c), d) and f) of s. 51(24) of the Act. It does not, in his opinion conform to the relevant policies of the former Town of Ancaster Official Plan ("AOP") and does not comply with the regulations of Ancaster ZBL 87-57.

[19] He opined that the proposed development does not complement the character of the area as required by the OP. He pointed to houses at 42 1/2 and 44 Cameron Drive (Exhibit 7) as being examples of what would happen if the application is approved: houses facing houses on too-small lots with what appears to be a common front yard. Mr. Ramsay said this is not a situation that should be replicated. He stated that it does not complement the established character of the neighbourhood, a requirement of s. 3.1.4 the AOP. He said the proposed lots will have lot frontages well below what are typically found within the neighbourhood,

adding that the existing lot at 19 Cameron Drive already has one of the smallest lot frontages in the immediate area.

[20] Mr. Ramsay was also of the opinion that sufficient details have not been provided with the application “to adequately access such matters as building heights, mass, setback and privacy and overview.” It is also impossible without such information to access the impact of the severance on mature vegetation.

[21] Most particularly, and convincingly, Mr. Ramsay, stated that the application does not satisfy subsection iii) of the AOP which requires the proposal to be “in compliance with the zoning by-law” or subsection v) which requires the lots to be “a shape consistent with the existing lots in the area.”

[22] Ms. Pate, who owns a property adjacent to Mr. Murray, maintained that if the application is approved it will affect the character of the neighbourhood with the resultant substantially smaller lot frontages. She also felt that the houses would have to be moved back some distance from the street, potentially impacting the trees at the back. She also had concerns regarding overview and her privacy.

[23] Mr. Davis added concerns regarding potential drainage problems and flooding, as well as precedent.

[24] The Board finds that this proposal does not comply with the zoning by-law, and agrees with Mr. Ramsay that the variances granted in 2011 do not bring the proposal into compliance.

[25] It was the responsibility of the Applicant/Appellant to provide evidence regarding compliance of his application with s. 51(24) of the Act. Mr. Murray did not meet this requirement.

[26] The Board accepts Mr. Ramsay’s expert opinion that the application is deficient in meeting several of the criteria of s.51 (24), not least of which are the dimensions and shapes of the proposed lots (criteria f) and its failure to conform to the AOP regarding conformity with the character of the neighbourhood.

ORDER

[27] The appeal is dismissed and provisional consent is not to be given.

“Sylvia Sutherland”

SYLVIA SUTHERLAND
MEMBER