

**Ontario Municipal Board**  
Commission des affaires municipales  
de l'Ontario



**ISSUE DATE:** July 08, 2014

**CASE NO(S):** PL130481

**PROCEEDING COMMENCED UNDER** subsection 53(19) of the *Planning Act*, R.S.O. 1990, c. P.13, as amended

Applicant and Appellant: 1794757 Ontario Inc.  
Subject: Consent  
Property Address/Description: 39 Deerhurst Road  
Municipality: City of Hamilton  
Municipal File No.: B-10/13  
OMB Case No.: PL130481  
OMB File No.: PL130481

**PROCEEDING COMMENCED UNDER** subsection 45(12) of the *Planning Act*, R.S.O. 1990, c. P.13, as amended

Applicant and Appellant: 1794757 Ontario Inc.  
Subject: Minor Variance  
Variance from By-law No.: 3692-92  
Property: 39 Deerhurst Road  
Address/Description:  
Municipality: City of Hamilton  
Municipal File No.: A42/13  
OMB Case No.: PL130481  
OMB File No.: PL130482

Heard: April 16, 2014 in Hamilton, Ontario

**APPEARANCES:**

**Parties**

1794757 Ontario Inc.  
City of Hamilton

**Counsel**

P. Maloney  
L. Magi

**DECISION DELIVERED BY M. C. DENHEZ AND ORDER OF THE BOARD**

## INTRODUCTION

[1] This dispute arose after 1794757 Ontario Inc. (the “applicant”) proposed to split a lot (involving two variances) in an established suburban neighbourhood in the former City of Stoney Creek, now part of the City of Hamilton (the “City”).

[2] The subject property has an existing bungalow off-centre on its lot. The bungalow was flanked by a large grassy sideyard. The applicant proposed to split off that sideyard as a separate parcel 11.75 metres wide (38½ feet), leaving the bungalow with a lot 14.72 metres wide (48 feet).

[3] This proposal would require a variance for the width of each lot, because the Zoning By-law sets minimum lot width at 15 metres (49 feet). The project would also require a variance for an interior sideyard setback. The applicant applied to the Committee of Adjustment (“COA”) for the severance, along with the variances.

[4] City planning staff countered that most lots immediately north of the subject property are over 20 metres wide. Staff recommended against the applications, saying they were out of character with the area. The COA turned them down. The applicant appealed to the Ontario Municipal Board (the “Board”), pertaining to both the severance and the variances.

[5] At the Board hearing, the applicant was represented by counsel, with the support of planner Gregory Poole. The City, which opposed the application, was also represented by counsel, with the support of planner Delia McPhail. Participants Peter VanderWerf and Joseph Jakabffy also opposed the project.

[6] The Board has carefully considered all the evidence, as well as the submissions of counsel. With the consent of the parties, the Board also conducted an unaccompanied site visit, though some time after the hearing.

[7] The Board has no hesitation in observing that there are many places in Ontario

where such a project would be an appropriate and even welcome addition. In these particular surroundings, however, the Board agrees with the City planning staff and the COA. There were fundamental problems of compatibility, contrary to the intent of the planning documents, which repeatedly referred to massing and rhythm of the streetscape. The appeals are dismissed. The details and reasons are set out below.

## **PROJECT AND HISTORY**

[8] The subject property is at 39 Deerhurst Road, on the west side of this north-south suburban street. The subdivision dates from 1952, though some individual houses might be older. Several first-generation houses are modest clapboard bungalows, covering perhaps 1000 square feet. Later houses from the 1950's are built of masonry, and are more substantial.

[9] Building size and materials are not the only source of variety. Some garages are one-car integral garages; some are two-car garages; and some are detached. The width of front façades also varies; the early bungalows are relatively narrow, whereas the new house under construction to the north of the site appears to have a façade (including a three-car garage) at least 60 feet wide.

[10] On the site, the original bungalow measures 12.73 metres in width (almost 42 feet). It was off-centre on its lot, almost entirely on the south half, whereas the north half was left as a grassy sideyard. The project foresaw that, after the severance, this former sideyard would accommodate a two-storey house, with a normal separation distance from the neighbour to the north, and a reduced separation from the existing bungalow (hence the variance for the interior sideyard). For rough illustration purposes, the applicant showed house plans from another site, though specifying that those plans were not the applicant's exact intentions. There would be room for a façade (including integral garage) of perhaps 8.5 metres (28 feet).

[11] The City and the participants replied that, although the general neighbourhood exhibited the openness often associated with 1950's subdivisions, this particular street

was, from the outset, exceptionally open – to the point that this was its defining characteristic. Front yards were typically deep, and sideyards were generous. As mentioned, lots north of the subject property on this block all measured at least 20 metres in width, though some lots across the street were narrower than that.

[12] There were some changes in later years. In the 1980's, new houses were built on a former hydro easement further south. Their zoning was different, and one lot was narrower than proposed here; but because of a dogleg in the street, it was not in direct view.

[13] Further up the block, on the same side of the street, a house was destroyed by fire, and was replaced by two more substantial dwellings, on lots of 12.2 metres each. Across the street from them, more houses – again with substantial façades – are under construction on three lots measuring 14.3 metres in width.

## **APPLICABLE CRITERIA**

[14] The applicable criteria for approving consents for severances are outlined in separate sections of the *Planning Act* (the "Act"). The relevant provision for consents, s. 53(12), refers to the criteria in s. 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)

[15] Consent for the severance, however, presupposes that the variances for lot widths are approved. For variances, the criteria (often called “the four tests”) are set out at s. 45(1), namely that a variance must be minor, desirable for the appropriate development or use of the property and maintain the general intent and purpose of both the zoning by-law and of the official plan.

[16] In this overall context, there are several layers of governing documents, including the Act, the Provincial Policy Statement (“PPS”), the Growth Plan for the Greater Golden Horseshoe (“Growth Plan”), and Official Plans (“OP’s”). The PPS, Growth Plan and relevant O P’s make repeated reference to intensification; they also refer to other factors.

[17] In this instance, there are actually several OP's of interest. At the time when the application was made (March 2013), City Council had already adopted (2009) the Urban Hamilton Official Plan (UHOP); but it was under appeal at the time. In the meantime, the Official Plan of the former City of Stoney Creek was in effect. On February 21, 2014, after this appeal had been launched but before the hearing on the merits, pursuant to the decision of another Panel of this Board, relevant provisions of the UHOP took effect.

[18] The former City of Stoney Creek’s OP listed one of its "objectives" as follows:

1.1.3 to ensure that new Residential development or re-development is compatible with the surrounding existing and proposed development....

[19] The UHOP addressed the same concept in greater detail, to the point of repetition:

B.2.4.1.4 Residential intensification developments shall be

evaluated based on the following criteria...

- b) The relationship of the proposal to existing neighbourhood character so that it maintains, and where possible, enhances and builds upon desirable established patterns and built form...
- d) Integration of the development with the surrounding area in terms of... scale, form and character.

B.2.4.2.2 When considering an application for a residential intensification development within the *Neighbourhoods* designation, the following matters shall be evaluated:

- a) the matters listed in Policy B.2.4.1.4...
- c) the relationship of the proposed building(s) with the... massing and scale of nearby residential buildings;
- d) the consideration of transitions in height and density to adjacent residential buildings;
- e) the relationship of the proposed lot(s) with the lot pattern and configuration within the neighbourhood;
- f) the relationship to existing patterns of private... amenity space;
- g) The ability to respect and maintain or enhance the streetscape patterns....

2.6 ...Residential intensification within Neighbourhoods... can happen at a range of scales and densities provided the intensification is compatible with and respects the built form and character of the surrounding neighbourhood.

#### B.3.3.1 Urban Design Goals

The following goals shall apply in the urban area...

B.3.3.1.5 Ensure that new development is compatible with and enhances the character of the existing environment and locale....

- B.3.3.1.8 Promote intensification that... is compatible in form... to the character of existing communities and neighbourhoods.
- B.3.3.2.3 Urban design should foster a sense of community pride and identity by:
- a) Respecting existing character, development patterns, built form, and landscape....
- B.3.3.2.4 ...Private development and redevelopment should create quality spaces by...
- b) Recognizing that every new building or structure is part of a greater whole that contributes to the overall appearance and visual cohesiveness of the urban fabric....
- B.3.3.2.6 ...New development and redevelopment should enhance the character of the existing environment by...
- d) Complementing the existing massing patterns, rhythm, character, colour, and surrounding context....
- B.3.3.3 Built form shapes the visual qualities of streets.... Built form plays a large role in defining the character of an area. New development shall serve to maintain and support existing character, or create and promote the evolution of the character in areas where transformations are appropriate and planned.
- E.3.2.4 Existing character of established *Neighbourhoods* designated areas shall be maintained. Residential intensification within these areas shall enhance and be compatible with the scale and character of the existing residential neighbourhood....
- F.1.14.3.1 Consents for new lot creation... shall be permitted provided the following conditions are met...
- d) The lots reflect the general scale and character of the established development pattern in the surrounding area by taking into consideration lot frontages and... mass.

[20] The UHOP defines “compatible” as meaning:

land uses and building forms that are mutually tolerant and capable of existing together in harmony within an area. Compatibility or compatible should not be narrowly interpreted to mean "the same as" or even as "being similar to".

## **ANALYSYS**

[21] There was nothing frivolous about this application or this appeal. The proposal is a "modest intensification", and intensification is broadly consistent with Ontario public policy. The proposal was clearly prepared with thought and presented with eloquence. Furthermore, in 2014 Ontario, many observers would argue that lots of almost 12 metres – 38½ feet, as proposed here – can hardly be called intrinsically "narrow" lots.

[22] Furthermore, counsel for the applicant argued that, in such an "eclectic" neighbourhood, "variety" was already a defining characteristic. "Variety *is* the pattern." "Regeneration" was another characteristic. By his reasoning, there was no incompatibility in a lot size or house form which digressed from a supposed neighbourhood pattern – because no such pattern existed in the first place. Indeed, one merely had to look at the new house next door – with its sprawling façade – to conclude that nothing in the vicinity was likely to follow the same pattern; so eclecticism was an inevitability anyway.

[23] The Board agrees – to a point. However, there is more to the policy framework than intensification. O P's are part of that framework: the severance had to conform to the applicable OP, and the variances had to maintain its intent and purpose. Whether or not this proposal would fit elsewhere in Ontario does not answer the question of whether it meets OP criteria here.

[24] There can be little question about OP intent here. It is "compatibility", for which the UHOP provides immense detail.



[25] Much could be said about lot widths. Not only is the proposed 11.75 metres below the zoning standard of 15 metres; in terms of surroundings, there is nothing under 14 metres within sight. The width proposed here is not only the narrowest; it is the narrowest by a margin of fully ten feet, with no mitigating factors. Indeed, it is the narrowest in the neighbourhood, if one discounts the lot around the bend – which is in a different zoning category.

[26] Of course, one cannot rely exclusively on numerical arguments, particularly if the dimensions are visible only on a map buried in a land titles office. The broader question is what is visible in the streetscape. That is where the application encounters a more significant problem. Lot widths are not a mere mathematical abstraction: they have a direct effect on a property's buildable envelope.

[27] The Board finds that, although some aspects of the streetscape are "eclectic", the massing does indeed follow a consistent pattern. Though houses vary in size (usually in accordance with their date of construction), almost every house aligns its predominant visible massing parallel to the street. The visual impression is of a building that "faces" the street. Inversely, the proposed new house would be primarily aligned at right angles to the street, with a façade dominated by the garage, with little room for much else.

[28] That problem is perhaps manageable with imaginative design (the applicant offered examples of houses on other streets). Another discernible pattern is more problematic. It is what the UHOP calls the "rhythm" of the streetscape. Here, the proposed sideyard lot was expected to accommodate the narrowest new house on the street. Indeed, a passer-by would get the impression that the proposed house, though taller than its neighbours, would be:

- about two thirds of the width of the existing bungalow to the south,
- and barely one third of the new house to the north.

[29] Those proportions, in the City planner's opinion, would be visually incongruous – "a narrow tall dwelling sandwiched among the others." The Board is compelled to agree. Indeed, nowhere else on the street has that relationship - not among older buildings, and certainly not among the new ones.

[30] The question is whether this lack of proportionality can be reconciled with the OP, old or new. The old Stoney Creek OP referred to being "compatible" with the surroundings. The new UHOP refers to the relationship to the "established patterns and built form", "integration", "lot patterns", "streetscape patterns", "built form", "visual cohesiveness", "massing patterns", "rhythm" and "character". The Board needed to be satisfied that those criteria – and/or their intent – were being met. It was not.

[31] Granted, the OP definition of "compatibility" is loosely drawn. It is also acknowledged that there are also other visual incongruities on this street, notably in a transitional period involving juxtaposition of large new houses next to small older ones. However, there has been no instance of a visibly narrower new house being built – let alone a new narrow house being built so close to wide ones. Whatever the visual incongruities on the street today, this would be the first time that a new building would be built, for which such a dichotomy in façade width would be essentially permanent and clearly intentional. The Board found no authority in the OP for such a position.

[32] In short, the Board was not shown how this project would maintain the manifest intent of the planning documents, particularly as they pertained to the "massing patterns" and "rhythm" of the streetscape. Despite the skill of the presentation and the eloquence of the project's supporters, the Board therefore could not conclude that the project complied with s. 51(24) and 45(1) of the Act.

**CONCLUSION**

[33] The appeals are dismissed. Provisional consent is not to be granted, and the variances are not authorized.

*"M. C. Denhez"*

M. C. DENHEZ  
MEMBER

**Ontario Municipal Board**

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