

Ontario Municipal Board
Commission des affaires municipales
de l'Ontario



ISSUE DATE: August 6, 2014

CASE NO(S): PL140147

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

Appellant:	John Sills
Applicant:	Giovanni Meranda
Subject:	Consent
Property Address/Description:	5080 Kalar Road
Municipality:	City of Niagara Falls
Municipal File No.:	B-2013-014
OMB Case No.:	PL140147
OMB File No.:	PL140147

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

Appellant:	John Sills
Applicant:	Giovanni Meranda
Subject:	Consent
Property Address/Description:	5080 Kalar Road
Municipality:	City of Niagara Falls
Municipal File No.:	B-2013-015
OMB Case No.:	PL140147
OMB File No.:	PL140148

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

Appellant:	John Sills
Applicant:	Giovanni Meranda
Subject:	Minor Variance
Variance from By-law No.:	79-200
Property Address/Description:	5080 Kalar Road
Municipality:	City of Niagara Falls
Municipal File No.:	A-2013-033

OMB Case No.: PL140147
 OMB File No.: PL140150

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

Appellant: John Sills
 Applicant: Giovanni Meranda
 Subject: Consent
 Property Address/Description: 5080 Kalar Road
 Municipality: City of Niagara Falls
 Municipal File No.: B-2013-016
 OMB Case No.: PL140147
 OMB File No.: PL140149

Heard: June 23, 2014 in Niagara Falls, Ontario

APPEARANCES:

Parties

Counsel

City of Niagara Falls

K. L. Beaman

Giovanni Meranda

R. Vacca

John Sills

DECISION DELIVERED BY J. V. ZUIDEMA AND ORDER OF THE BOARD

INTRODUCTION

[1] Giovanni Meranda (“Applicant”) filed an application to the City of Niagara Falls (“City”) Committee of Adjustment (“COA”) for a consent to divide an existing residential parcel into 4 new residential lots with a lot portion (Part 5) dedicated for road widening at 5080 Kalar Road (“subject property”) in the City.

[2] The COA approved the application with conditions. Included with those conditions was to obtain minor variances which would be required for construction on the newly created lots.

[3] The Applicant then filed this application to obtain a variance from the City's Zoning By-law No. 79-200 which requires a minimum lot area of 370 square metres, whereas Parts 1 and 2 would each provide a lot area of 338 square metres and Parts 3 and 4 would each provide a lot area of 336 square metres. Therefore, variances of 32 and 34 square metres, respectively, were requested.

[4] Further, the by-law requires a minimum lot frontage of 12 metres, whereas minimum lot frontages of 11.4 metres were proposed for each of the four proposed lots. Therefore, a variance of 0.6 metres for each lot was requested.

[5] Part 5, on the surveyor's sketch, represented the City's requested road widening along Kalar Road.

[6] Those variances were also approved by the COA.

[7] Mr. Sills ("Appellant") appealed both the consent and variances decisions to this Board on the following grounds:

- Lot sizes too small and inconsistent with lot sizes in the area and will force multi-storey houses to be built;
- Drainage issues;
- Will endanger fate of 17 mature trees on the lot;
- Depreciation of Appellant's property values;
- Immediate residents are in opposition;
- A petition against the proposal has been filed with the City for the Applicant to abide the By-law requirements;
- Does not represent the best interests of the people in the area who have lived and paid taxes for 30-40 years.

[8] The City's Planning Department had filed a staff report on the consent application and had recommended approval subject to conditions. The same was true for the minor variance application.

[9] Similarly, the City's Park Services had no concerns but cited its requirements for

parkland dedication. The City's Transportation Services and its Municipal Works and Engineering Services had no objections.

[10] The Appellant attended the COA meeting to oppose the application and he filed an objection letter, together with a 12-signature petition in opposition. One other resident filed an objection letter with COA.

[11] Upon the decisions of the COA, Mr. Sills appealed to this Board. He represented himself and testified on his own behalf. Mr. Sills is a retired police officer who had worked in St. Catharines for over 32 years. He is a long-time resident of the subject area as he once owned the subject property. He sold it in 1987 and his mother lived at this location for some 17 years until 2002. She rented the property during this time.

[12] In a nutshell, Mr. Sills was concerned about the process held before the COA. He felt his concerns had been disregarded.

[13] He took issue with the 1.2 metre side yard setback requirement in the by-law.

[14] He was concerned with perceived drainage problems which he alleged arose from the development of 5094 Kalar Road.

[15] He feared the loss of a mature tree located on the subject property.

[16] He thought the proposal was an over-intensification of the site. He believed two lots would be preferable to the four proposed, although he did not discount the right of a "businessman trying to make as much money as possible."

[17] The Board heard from Kenneth Mech and John Perry. Each were qualified and accepted as experts in land use planning. Mr. Mech is the City's senior planner and Mr. Perry, with considerable experience also as an in-house municipal planner with the City of St. Catharines, now working as a private consultant, were the only experts to testify.

[18] Unfortunately, Mr. Sills' lay evidence was not sufficient to successfully undermine the expert opinion evidence from Messrs. Mech and Perry. It was on the basis of their evidence that I provided an oral decision granting the severance as requested and supported by the City, along with authorizing the variances required with the conditions imposed.

[19] Each Planner methodically reviewed the operative provincial policies (2005 PPS

and 2014 PPS), along with the Region of Niagara Policy Plan and the City's Official Plan as well as the requirements under ss. 51(24) of the *Planning Act* to opine that the proposed consent and minor variances represented good planning and were in the public interest.

[20] The subject property is a through-lot with frontage on two streets. Kalar Road is an arterial road and Post is a local road. The proposal represents appropriate intensification within a built-up area which has municipal services. This is exactly what the Provincial Policy encourages: efficient use of designated land with existing infrastructure.

[21] Mr. Mech explained the rationale for the road widening which was contained under policy 1.5.33 and 1.5.34. The area is zoned Residential R2 under Zoning By-Law 79-200 which permits single-family and two-family dwellings. There are single and semi's in the area so the type of development proposed will fit with the existing character of the neighbourhood.

[22] To address the specific grounds of Mr. Sills' appeal, both Mr. Mech and Mr. Perry concluded that the proposed lot size was appropriate for the area.

[23] Concerning the issue of drainage, a standard condition for the development would require the Applicant to enter into a Development Agreement with the City. Part of that process would be the preparation and submission of a Master Drainage Plan and Agreement which would address drainage issues, for as much as Mr. Sills would like to ensure no drainage problems arise from the proposed development, the same is true for the City.

[24] His complaints of what he views to be existing drainage problems associated with properties not subject to the applications before me are outside of my jurisdiction.

[25] With respect to trees located on private property, Mr. Sills acknowledged that such trees are not regulated. The Region's tree By-law addresses woodlots etc. but does not apply to this property in these circumstances.

[26] And while Mr. Sills suggested that his opposition to the density of the proposed development was a concern he shared with many of his neighbours, he was the only person to testify against the development.

[27] The Board was satisfied with the evidence of the expert planning witnesses to conclude that the applications for consent and minor variance meet the statutory tests set out under ss. 51(24) and ss. 45(1) respectively, are consistent with the operative provisions of Provincial Policy, conform to the upper-tier and local Official Plan, and generally represent good planning and are in the public interest.

[28] It was on the basis of Messrs. Mech and Perry's expert opinions that I provided an oral decision dismissing the appeals and approving the consent with conditions and authorizing the minor variances with conditions, as set out in the COA's decisions and supported by the City's Planning Department reports.

[29] Therefore, the Board orders that the appeals are dismissed and the consent is granted subject to conditions and the minor variance is authorized subject to conditions as described above.

"J. V. Zuidema"

J. V. ZUIDEMA
VICE-CHAIR

Ontario Municipal Board

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