

Ontario Municipal Board
Commission des affaires municipales
de l'Ontario



ISSUE DATE: December 4, 2014

CASE NO(S): PL140446

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

Appellant:	Eva Franceschini
Applicant:	Estate Of Robert P. Hurley
Subject:	Consent
Property Address/Description:	2222 Doulton Drive
Municipality:	City of Mississauga
Municipal File No.:	B-013/14
OMB Case No.:	PL140446
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Heard: November 20 and 21, 2014 in Mississauga, Ontario

APPEARANCES:

Parties

Eva Franceschini

Estate of Robert P. Hurley

Counsel

Ronald Webb
Anthony Simone (student-at-law)

Gerald Swinkin

DECISION DELIVERED BY J. de P. SEABORN AND ORDER OF THE BOARD

INTRODUCTION

[1] Eva Franceschini (“Appellant”) has appealed a decision of the Committee of Adjustment (“Committee”) for the City of Mississauga (“City”). The Committee granted provisional consents to sever a parcel owned by the Estate of Robert P. Hurley (“Applicant”) into three lots. There were several conditions imposed by the Committee when it granted the consents and the application was supported by City planning staff. The City did not appear at the hearing nor did any participants. Land use planners David Brown and Edward Davidson testified at the hearing on behalf of the Applicant and the Appellant respectively. There were no other witnesses.

EVIDENCE AND FINDINGS

[2] The Applicant owns a large corner lot at the intersection of Mississauga Road and Daulton Drive. The application seeks two consents so that the parcel can be split into three lots. Lot 1 will have access from Mississauga Road. Lot 2 will be an irregular shaped corner lot and Lot 3 is the retained lot, which is where the existing residential dwelling is located. The Appellant lives next door to the Applicant, abutting what will be, following the severance, the retained lot. The concern of the Appellant, expressed through the evidence of Mr. Davidson, is largely that the consents are premature in the absence of clear plans indicating what will be built on each of the lots. There is no site plan application or even a concept plan. Mr. Davidson indicated that in the absence of building envelopes or detailed plans impacts cannot be assessed. Given that the provisions of the *Planning Act* (“Act”) do not entitle the Appellant to formally participate in the site plan process there is no ability for her to have input into any future development of the lots. Moreover, it was Mr. Davidson’s opinion that while the application is consistent with the Provincial Policy Statement (“PPS”) and conforms to the Growth Plan, it does not conform to the City’s Official Plan (“OP”) for the area. On this basis and in the absence of detail associated with the development of the lots, Mr. Davidson’s view was that provisional consents should not be given. In addition, Mr.

Webb argued that the application should be by way of draft plan of subdivision, a process which would permit his client to participate in future development plans for the parcel.

[3] The Applicant was successful before the Committee and provisional consent was given, subject to several conditions. Each condition is acceptable to the Applicant and arose from comments received from the various City departments that reviewed the application in the first instance. Mr. Brown explained the process followed by the Applicant, the comments from City staff and the various conditions attached to the consents.

[4] Under the City's OP the Applicant's property is designated Residential Low Density I – Site 1 and part of the Character Area known as the Sheridan Neighbourhood. The Special Site 1 policies within the Sheridan Neighbourhood have specific requirements that apply to the Applicant's lands, which form part of the Doulton Drive Lands (s. 16.22.2.1.1 City's OP). These policies indicate that the preservation of this distinctive area "could be achieved with up to 47 residential lots" (s. 16.22.2.1.2.a). The area will continue to have under 47 lots following the consents. Minimum lot areas and lot frontages (s. 16.22.2.1.2 b) are required as part of these Special Site 1 policies and these standards would be met following consent. There is no issue that undersized lots would be created. All new development is subject to site plan approval (s. 16.22.2.1.2 c), which was a condition imposed by the Committee when it considered the Applicant's proposal and a condition that continues to be acceptable to the Applicant. Redevelopment may proceed on the basis of private sewage disposal subject to applicable regulations and the application is capable of satisfying this requirement set out in s. 16.22.2.1.2 d. Finally, under s. 16.22.2.1.2 e "comprehensive site and environmental analyses will be required in support of any divisions of land". On this matter, Mr. Davidson's opinion was that in the absence of a site and environmental analyses provisional consent cannot be given. However as Mr. Brown testified, that OP policy has been interpreted by City staff to require the Applicant to prepare an arborist's report in satisfaction of the site and environmental analyses. On this point staff indicated

in their comments (Exhibit 1, Tab 13) that given “the proposal meets the other site specific policies, we are of the opinion that an appropriate condition of approval be that a letter be received from the Planning and Building Department stating that satisfactory arrangements have been made with respect to the comprehensive site and environmental analyses”. While it was Mr. Davidson’s opinion that this approach does not satisfy the policy, I accept the opinion of Mr. Brown that his client has met the City’s requirements.

[5] The criteria that must be considered when evaluating either a draft plan of subdivision or applications for consent is set out in s. 51(24) of the Act. I adopt and rely upon the opinion of Mr. Brown and find that the consents satisfy the criteria. The lots will not be undersized and conform to the policies for the Special Site 1. Pursuant to By-law 0255-2007 the land is zoned R1-5 Residential and following land division, the zoning requirements are met. The application is consistent with the PPS and conforms to all applicable provincial plans. It represents intensification that meets the OP policies and respects the in force zoning and it is in the public interest.

[6] Regardless of the conditions and the support of the City, as indicated above Mr. Davidson’s opinion was that provisional consent should not be given. While Mr. Davidson is a seasoned and well respected planner, on this matter I adopt the opinion of Mr. Brown. Mr. Davidson’s complaints were largely directed at the City and in his view, the lack of clarity of the OP policies as they relate to this special area. While the requirement for a site and environmental analysis may not be detailed enough for Mr. Davidson, the Applicant has met the City’s requirements in this regard and the Applicant has complied with the policies.

[7] I do not accept that the application is premature. Similar consents have been granted for lands on Doulton Drive. I also find there is no basis upon which to conclude that the matter should proceed by way of a draft plan of subdivision. This is a simple application for provisional consent that achieves the policy intent under the OP for the area and maintains its distinctive character. There was simply no evidence of impact to

the Appellant. The parcels will conform to the lot and area requirements of the OP and achieve provincial objectives. They also respect the character of Mississauga Road, which is identified at this point as part of the Mississauga Scenic Route ("Route"). There was no evidence to suggest that the Route is in any way threatened by the new lots.

[8] The Appellant is concerned that when the lots are redeveloped variances may be sought and with this concern in mind, suggested first that there should be no consent and second, if consent is given there be conditions. However, the Applicant accepts each of the conditions imposed by the Committee. These conditions represent the views of staff, from several departments each of which considered the application. With respect to the argument in the alternative that if the consents are granted several additional conditions should be attached beyond those imposed by the Committee, I adopt the submissions of Mr. Swinkin. The conditions proposed by the Applicant could not possibly be cleared. For example, the Appellant recommends set back requirements, the construction of fencing and landscape buffering, all matters that would be subject to site plan approval. While Mr. Webb is correct that his client could not participate in that process, the Appellant can of course advise the City of her concerns and raise any issues of impact with planning staff. There was also a concern expressed that once the plans for each lot are finalized variances may be sought. If that indeed happens, the Appellant can participate in that process. In granting the consents, I am not making any determination as to the appropriateness of the building envelopes and built form that may be planned for the parcels. Lastly, in arriving at the decision that the provisional consents shall be given, I have had regard to the provincial interest as well as the decision of the Committee as required by the provisions of the Act.

DECISION AND ORDER

[9] For all of the reasons given, the appeals are dismissed. As a result, the decisions of the Committee arising from its April 3, 2014 meeting are confirmed, including the

conditions imposed by the Committee as part of granting the provisional consents.

"J. de P. Seaborn"

J. de P. SEABORN
VICE CHAIR

Ontario Municipal Board

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