

Ontario Municipal Board
Commission des affaires municipales
de l'Ontario



ISSUE DATE: March 15, 2017

CASE NO(S):

PL151237

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

Appellant:	Basil Gobbo
Applicant:	Mitchell Grant and Leah Sargent
Subject:	Consent
Property Address/Description:	368 Meadow Wood Lane
Municipality:	City of Mississauga
Municipal File No.:	B057/15
OMB Case No.:	PL151237
OMB File No.:	PL151237
OMB Case Name:	Gobbo v. Mississauga (City)

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

Appellant:	Basil Gobbo
Applicant:	Mitchell Grant and Leah Sargent
Subject:	Minor Variance
Variance from By-law No.:	0225-2007
Property Address/Description:	368 Meadow Wood Lane
Municipality:	City of Mississauga
Municipal File No.:	A468/15
OMB Case No.:	PL151237
OMB File No.:	PL151239

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

Appellant:	Basil Gobbo
Applicant:	Mitchell Grant and Leah Sargent
Subject:	Minor Variance
Variance from By-law No.:	0225-2007

Property Address/Description:	368 Meadow Wood Lane
Municipality:	City of Mississauga
Municipal File No.:	A-467/15
OMB Case No.:	PL151237
OMB File No.:	PL151238

Heard: June 7 , 2016

APPEARANCES:

Parties

Counsel

Basil Gobbo

J. Inglis

Mitchell Grant, Leah Sargant

M. Joblin

DECISION DELIVERED BY K. J. HUSSEY AND ORDER OF THE BOARD

[1] These are appeals brought by Basil Gobbo (“Appellant”) from the decision of the Committee of Adjustment (“COA”) which approved with conditions, applications made by Mitchell Grant and Leah Sargant (Applicants) for consent and minor variance, regarding their lands at 368 Meadow Wood Lane in the City of Mississauga. The purpose for the applications is to create an additional building lot by dividing the subject property into equal sized lots. A new dwelling would be constructed on the newly created lot, and the existing dwelling would remain on the retained lot. For this development to be realised, variances from By-law No. 0225-2007 are required. The COA authorized the two variances which the Applicants sought.

[2] Pursuant to s. 45(18.1) of the *Planning Act*, R.S.O. 1990, c. P.13, as amended (the “Act”) the Applicants requested the Board’s approval to amend the minor variance application that was before the COA. The amendment is as follows:

1. Lot frontage of 19.48 metres (“m”) on a private lane, for each of the severed and retained lots, whereas Zoning By-law No. 0225-2007, as amended (R3-3 Residential) requires a minimum lot frontage of 30.0 m on a public road.

2. The easterly lot line to be considered the front lot line for each of the severed and retained lots, notwithstanding the existing definition Zoning By-law No. 0225-2007, as amended.

[3] The Applicants submit that the amendment does not change what was approved by the Committee of Adjustment; the new wording simply provides a greater degree of clarity and specificity. Having examined the documents that were before the COA, the Board agrees that the amendment would result in no change to the proposed development. It was understood then, and it is clear now, that the frontage of the subject property would be on a private lane, and access to the property would be by the private lane. That is the situation that the Applicants seek to clarify by this amendment.

[4] The Applicants provided evidence (Exhibit 5), that the language proposed through this amendment is identical to language previously approved by the COA for a similar application for frontage on a private lane. That application was filed by the Appellant with respect to his property at 376 Meadow Wood Lane, which is adjacent to the Applicants' property.

[5] The Board has determined that the amendment is minor and approves the revision to the variance application. Pursuant to s. 45(18.1.1) of the Act, further notice is not required.

The Issues:

[6] The Appellant argued that the Board ought not to approve either application because the consent application does not have regard for several of the requisite criteria set out under s. 51(24) of the Act and the variances fail to meet the tests under s. 45(1) the Act.

[7] The Appellant has two main objections to these applications:

- i. The area has not been identified for intensification.

ii. Access to the subject property would be by the private lane which is inadequate to the task. The Appellant is concerned that the existing safety hazards and inconveniences currently experienced by the lane residents would be exacerbated by the addition of another dwelling. The Appellant submits the following:

- The lane is essentially a nine-foot wide gravel and mud path which is not properly maintained by the residents and there is no other mechanism in place for maintenance.
- The lane is not properly graded and as a result there is inadequate drainage in wet weather conditions.
- There are no sidewalks and no room for garbage pickup; the right of way cannot adequately accommodate two-way traffic, nor is it acceptable for emergency vehicles.

The Statutory Requirements

[8] The Applicants must satisfy the statutory regime for the applications to succeed:

- a) For the variance application to be authorized, the four tests set out under s. 45(1) of the Act must be met: the Board must be satisfied that the variance maintains the general intent and purpose of the Official Plan; maintains the general intent and purpose of the Zoning By-law; is desirable for the appropriate development or use of the land building or structure; and is minor.
- b) The Board must also consider whether the variances have sufficient regard to the Provincial interests listed in s. 2 of the Act; whether they are consistent with the Provincial Policy Statement 2014 (“PPS”), and whether they conform to the Provincial Growth Plan for the Greater Golden Horseshoe (the “Growth Plan”).

- c) For the consent application to succeed, the Board must be satisfied that a plan of subdivision is not necessary for the proper and orderly development of the municipality, and that the application has regard to the criteria under s. 51(24) of the Act.

[9] The Board heard evidence from two qualified Land Use Planners and two local residents, Sue Shanly, president of the Meadow Wood Rattray Ratepayers Association, and Pia Gobo, the spouse of the Appellant. Land Use Planner Andrea Bourrie was called by the Applicants and she supported the application. The Appellant called Land Use Planner Michael Barton, who concluded that the applications should be refused. The two area residents objected to the Applications on the same grounds as the Appellant.

[10] Having considered the evidence and submissions, the Board finds that the opinion evidence presented by Ms. Bourrie convinced the Board that the tests under s. 45(1) of the Act are met for the variances to be authorized. The Board also finds that the consent application meets the relevant criteria set out under s. 51(24) of the Act, and that a plan of subdivision is not required. The reasons follow.

Context

[11] The subject property is designated Residential Low density 1 "Neighborhood", on the City of Mississauga Plan, Schedule 1- Urban Systems Map; it is zoned "R3-3", Residential.

[12] The subject property is located in the Clarkson-Lorne Park Neighborhood, south of Bob O Link Road, north of Watersedge Road and Watersedge Park, on the west side of Meadow Wood Lane. It contains a single detached dwelling and garage. There is open space to its rear, and otherwise, it is surrounded by other single detached dwellings. It is one of eight properties located on Meadow Wood Lane, a private lane that provides access to all eight properties. The proposal seeks to add a ninth.

[13] The subject property is considerably larger than the others on Meadow Wood Lane. Ms. Bourrie testified that it is approximately double the width of most of the other lots on Meadow Wood Lane, with the exception of the last lot on the lane which is the Appellant's, but it too is smaller than the subject property. The severed lots would be similar in size to the other lots on Meadow Wood Lane.

ISSUES, ANALYSIS AND FINDINGS

[14] The proposal would create two lots, each with frontage of 19.48 m, having access from Meadow Wood Lane. As stated previously, access is the Appellant's bone of contention. The Appellant argued that the number of residents would increase and inevitably, so would automobile traffic on the lane. Greater demand on the already inadequate private lane would not have regard to the provincial interest as it would not constitute orderly development of a safe and healthy community. Further, the Appellant argued that the proposed infill development is inappropriate in this area which has not been identified for intensification by the local official plan policies.

[15] The Board does not accept the Appellant's argument that the proposal fails to satisfy the Provincial interests in orderly development of a safe and healthy community. The Board concurs with Ms. Bourrie's opinion that the PPS and the Growth Plan are high level policy documents providing direction on broader provincial goals and objectives, and interests listed under s. 2 of the Act.

[16] The Board finds that the two applications for this modest local infill development, are consistent with the broad policies of PPS, and conform to the Growth Plan. The PPS promotes intensification, the efficient use of lands and existing infrastructure, and the development of a compact form of housing. The Board finds that the applications are consistent with those principles.

[17] Similarly, the Growth Plan supports appropriate intensification within the urban built boundary; it directs that existing infrastructure should be optimized to support growth in compact and efficient forms. There is nothing in the proposal before the Board which, in the Board's view, runs counter to those directives.

[18] The Board therefore turns to the local Official Plan for specific guidance on the Appellant's areas of contention.

The General Intent and Purpose of the Official Plan

[19] The background information on the Official Plan states that most of the City's green-field lands have been developed and much of its infrastructure is in place. New development will therefore be accommodated through infilling, intensification and redevelopment in appropriate areas. The Plan also states that existing stable residential neighborhoods will experience little change in the future.

[20] The Board finds that the divergent view held by the two land use planning witnesses on whether the proposal constitutes good planning, resides in the difference in the interpretation of the Official Plan policies relating to where growth may be accommodated, and whether any infill development is appropriate within the subject area.

[21] The Board prefers Ms. Bourrie's approach. Unlike Mr. Barton, she does not apply a rigid interpretation to the Official Plan's direction on growth. Ms. Bourrie, while recognizing that Neighborhoods are not appropriate for significant intensification, appreciates that the Official Plan allows for some flexibility. The Official Plan states that "Mississauga's Neighbourhoods will not remain static"; it provides that Neighbourhoods are stable areas where limited growth is anticipated. It does not close the door on new development in Neighbourhoods if there is a suitable opportunity.

[22] The Board finds that the proposal presents such an opportunity, and it conforms to the parameters set out in Official Plan for development in cases such as this.

[23] The Official Plan states that development is to be sensitive to the existing physical character of the neighborhood. New development in existing Neighborhoods should be compatible in built form and scale to surrounding development, including lot frontages.

[24] Policy 16.1.2.1 provides specific guidance on preserving the character in areas, where the lands, such as the subject property, are designated Residential Low Density 1. It provides that the minimum frontage and area of new lots created by land division will generally represent the greater of the average frontage or area of residential lots on both sides of the same street within 120 m of the subject property or the requirements of the Zoning By-law.

[25] It was Ms. Bourrie's evidence that the average frontage of lots within 120 m of the subject property is 16.89 m, which is smaller than each of the two lots, proposed at 19.48 m. The average area of the lots within 120 m of the subject property is 706.46 square metres ("m²") whereas the area of each of the proposed lots is 801.95 m² (the Applicants do not seek a variance for the lot area).

[26] Ms. Bourrie's opined that notwithstanding the average lot frontage is less than the minimum requirement of the Zoning By-law, the proposed lot frontage at 19.48 m will not change the look, feel or character of the existing neighborhood. On the contrary, she opined that two lots accommodating modest size homes, as proposed, maintains the character of the area more so than one very large home on the existing lot.

[27] A minor variance is sought for lot frontage of 19.48 m on a private lane, for each of the severed and retained lots, whereas the Zoning By-law requires a minimum lot frontage of 30.0 m on a public road. Ms. Bourrie concluded that the application maintains the general intent and purpose of the Official Plan as there would be no change to the character of the neighborhood because of the minor variance for reduced frontage; in

fact the minor variance would lead to two properties of comparable size to those which already exists in the neighborhood. It was also her opinion that so slightly, if at all, would the variances deviate from the existing character that it is unlikely that a person walking along the street would notice anything different about these two properties in comparison to the rest of the neighborhood.

[28] The Board agrees with Ms. Bourie's opinion evidence and finds that the application meets the general intent and purpose of the Official Plan.

General Intent and Purpose of the Zoning By-law

[29] The subject property is zoned Residential R3-3, which requires minimum lot frontage of 30 m. The Zoning By-law also requires all lots to front onto a public street. The Applicants seek relief from both of those requirements. Ms. Bourie's evidence is that the Zoning By-law regulates the use and physical characteristics of the site to prevent large deviation and to prevent differing or nuisance uses of the property from those in the surrounding area.

[30] It was Ms. Bourie's opinion that the proposed variance for reduced lot frontage is largely in-line with the existing properties even though it does not meet the minimum requirements set out in the By-law Residential Exception Zone R3 – 3. The proposed lots would be similar in size to other lots in the surrounding area and like all the other properties on Meadow Wood Lane, the frontage would be on the lane rather than on a public street. The Board agrees with Ms. Bourie's conclusion that requests presents little to no deviation from the existing conditions in the surrounding area and so the Board finds that the application meets the general intent and purpose of the Zoning By-law.

Are the variances desirable for the appropriate development or use of the land?

[31] The Appellant and the Participants say that neither variance is desirable or appropriate because the existing challenges and issues associated with the private lane will only be exacerbated through intensified use of the lands.

[32] The Board finds that the development proposal is appropriate and desirable. The development makes efficient use of the lands and infrastructure and it is a modest form of intensification that would be respectful of the established neighbourhood character. The Board is satisfied that the concerns raised by the Appellant and Participants, have been satisfactorily answered by the Applicants. The Applicants' position is that the addition of one lot will not exacerbate the pre-existing concerns relating to the private lane in any meaningful way; but that aside, the existing conditions are not planning issues on which to refuse the applications. The Applicants submit as follows:

- The level of maintenance needed will not be altered by the addition of one lot but may even be enhanced by lessening the burden on the other residents with the increase in the number of persons responsible for providing maintenance.
- If individual owners do not properly maintain the private lane, to the extent that it infringes on the easement rights of the other lot owners, that is a matter of enforcement which outside of the Board's jurisdiction. It is not a planning issue.
- Any issue that may exist with emergency access is a pre-existing condition that will not be exacerbated to any significant degree with the addition of one new lot. In any event, the Fire Department and Transportation and Works, having had a chance to comment on the applications, expressed no concerns with the situation.

- If other owners create impediments on the private lane with parking, delivery etc., those are matters of access rights the enforcement of which is not within the Board's jurisdiction, and is not a planning issue.
- The proposed development would be subject to site plan control, whereas no other property to its south is, and to avoid future impediments such as parking on the private lane, those matters could be addressed through that process.
- Flooding is an existing issue unrelated to the application. However conditions of approval to which the Applicants have agreed, include an overall grading and drainage plan, which would ensure grading compatibility with the adjacent lands. Rather than the applications exacerbating an existing issue with drainage, the requirement for the drainage and grading plan could result in improvement.

[33] The Board agrees with the Applicants that the Appellant's concerns associated with the inadequacies of the private lane are not planning issues, and are not impediments to authorizing the variances. Those are private matters, which properly should be addressed among the residents who own and use the lane.

Are the Variances Minor?

[34] The Board finds that the variances are minor. The use proposed by the Applicants is anticipated by the planning documents, and the development proposed is consistent with the character of the neighbourhood. The Board is satisfied that there would be no significant impact from the proposed development.

[35] Accordingly, the Board finds that the Application for minor variance meets the tests under s. 45(1) of the Act to be authorized.

The Consent Application

[36] Having reviewed the application for consent, and having received the Applicants' submissions and the opinion evidence of a qualified land use planner, the Board is satisfied that a plan of subdivision of the lands is not necessary for the orderly development of the lots. The Board finds that the proposed lots are in keeping with the character of the neighbourhood; The dimensions and shapes fit comfortably within the neighbourhood where the lot frontages are similar; the use proposed for the lots, residential development, is appropriate in that established neighbourhood, and the development which would be on full municipal services, contributing to the efficient use of infrastructure, is not pre-mature.

[37] Accordingly, the Board finds that the Provincial interest is satisfied. The Board finds that the Application for consent meets the criteria set out in s. 51(24) of the Act, provided that the Applicant fulfills the conditions of approval imposed by the COA in its disposition on December 3, 2015 granting provisional consent.

ORDER

[38] The Board Orders that the appeal is denied.

- 1) Provisional consent is to be given subject to the conditions of approval imposed by the COA on December 3, 2015.
- 2) Variances to By-law Zoning By-law No. 0225-2007, as amended, set out below are authorized.
 - i. Lot frontage of 19.48 m on a private lane, for each of the severed and retained lots, whereas Zoning By-law No. 0225-2007, as amended (R3-3 Residential) requires a minimum lot frontage of 30 m on a public road.

- ii. The easterly lot line to be considered the front lot line for each of the severed and retained lots, notwithstanding the existing definition Zoning By-law No. 0225-2007, as amended.

[39] This is the Order of the Board.

"K. J. Hussey"

K. J. HUSSEY
VICE-CHAIR

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Ontario Municipal Board

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