

Ontario Municipal Board
Commission des affaires municipales
de l'Ontario



ISSUE DATE: June 14, 2017

CASE NO(S): PL160999

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

Applicant and Appellant: Daniel Chang Medicine Professional Corporation
Subject: Consent
Property Address/Description: 1338 Broadmoor Avenue
Municipality: City of Mississauga
Municipal File No.: B-059/16
OMB Case No.: PL160999
OMB File No.: PL160999
OMB Case Name: Daniel Chang Medicine Professional Corporation v. Mississauga (City)

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

Applicant and Appellant: Daniel Chang Medicine Professional Corporation
Subject: Minor Variance
Variance from By-law No.: 0225-2007
Property Address/Description: 1338 Broadmoor Avenue
Municipality: City of Mississauga
Municipal File No.: A361/16
OMB Case No.: PL160999
OMB File No.: PL161001

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Municipal File No.: A360/16
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Heard: May 18 and 19, 2017 in Mississauga, Ontario

APPEARANCES:

Parties

Counsel

Daniel Chang Medicine Professional Corporation

M. Flynn-Guglietti
 K. Sutton (student-at-law)

City of Mississauga

M. Joblin
 C. Yi

DECISION DELIVERED BY SUSAN de AVELLAR SCHILLER AND ORDER OF THE BOARD

INTRODUCTION

The Applications

[1] Daniel Chang Medicine Professional Corporation (“Applicant”) owns a lot at 1338 Broadmoor Avenue (“Subject Lands”) in the City of Mississauga (“City”). The Subject Lands are a corner lot at the northwest intersection of Broadmoor Avenue and Mineola Road East. The Applicant wishes to divide the Subject Lands into two lots and has applied for consent to do so. Part A is the northern lot on Broadmoor Avenue; Part B is the southern lot that continues to be a corner lot at the northwest intersection of Broadmoor Avenue and Mineola Road East.

[2] A single family house is intended to be built on each lot. No variances are sought for the houses or for any setbacks. The two proposed lots require variances and the Applicant applied for the necessary variances, which are:

1. For Part A, the northern lot:

- i. Lot frontage of 26.04 metres (“m”) where the zoning By-law No. 0225-2007 (“ZBL”) requires a minimum of 30 m.
 - ii. Lot area of 710.7 square metres (“m²”) where the ZBL requires a minimum of 750 m².
2. For Part B, the southern lot, lot frontage of 27.04 m where the ZBL requires a minimum of 30 m.

[3] The variance for the frontage for Part B is the existing frontage on Mineola Road East. While this is considered to be the frontage, the existing house, which is to be demolished, is oriented to Broadmoor Avenue and does not face Mineola Road East. Both proposed new houses will be oriented to face Broadmoor Avenue as well. The effective frontage for Part B, with the house facing Broadmoor Avenue, is slightly more than the ZBL requirement of 30 m. No variance is required for the lot area for Part B.

[4] The City Committee of Adjustment denied the application for consent and refused to authorize the applications for variance. The Applicant has appealed these matters to this Board.

[5] At the outset of the hearing, the Board confirmed that there is no amendment being sought to the applications for variance.

Witnesses Heard

[6] The Board heard from five witnesses.

[7] The Board qualified James Levac, Gregory Kirton and Edward Davidson to provide the Board with independent expert opinion evidence in land use planning matters. Mr. Levac was called by the Applicant and Mr. Davidson was called by the City. Mr. Kirton was called by the Applicant, under summons.

[8] Mr. Kirton is a planner with the City and specializes in Committee of Adjustment matters. Mr. Kirton wrote the report of the Planning and Building Department to the Committee of Adjustment on these applications and adopted its analysis and findings when he testified.

[9] The report analyzed the applications in the context of the relevant City Official Plan ("OP") policies, the requirements of the ZBL, the criteria in s. 51(24) and the tests in s. 45(1) of the *Planning Act*, R.S.O. 1990, c. P. 13 ("Act"). The report concludes that the applications meet the criteria and tests and that the Planning and Building Department has no objection to the requested applications.

[10] The Board qualified Thomas Bradley to provide the Board with independent expert opinion evidence in arboriculture. Mr. Bradley is a certified arborist, a certified tree risk assessor and a registered butternut tree health assessor, among other registrations and memberships related to arboriculture. Mr. Bradley was called by the Applicant.

[11] The Board also heard from Krzysztof Balcewicz. Mr. Balcewicz is an immediate neighbour whose property is adjacent to the north of the Subject Lands on Broadmoor Avenue. Mr. Balcewicz appeared as a Participant. No one else appeared to address the Board in these matters.

LEGISLATIVE FRAMEWORK

[12] For the application for consent, the Board must be satisfied that no plan of subdivision is required and the Board must have regard for the relevant criteria set out in s. 51(24) of the Act.

[13] For the applications for variance, the Board must find that each application meets each of the tests set out in s. 45(1) of the Act. Specifically, the Board must find that each variance maintains the general intent and purpose of the OP, maintains the general intent and purpose of the ZBL, is desirable for the appropriate development or

use of the land, and is minor.

[14] In addition, s. 3(5) of the Act requires that a decision of the Board affecting a planning matter, in this case the application for consent and the applications for variance, must be consistent with the Provincial Policy Statement, 2014 (“PPS”). This section requires that these applications conform to applicable Provincial plans, in this case the Growth Plan for the Greater Golden Horseshoe (“GGH”). The Board must also have regard for matters of Provincial interest as set out in s. 2 of the Act and must have regard for the decision of the municipal council and the matters considered by council in making its decision, as set out in s. 2.1 (1) of the Act.

ISSUES, ANALYSIS AND FINDING

[15] The principal issue in these matters is whether the applications for consent and associated variances protect the character of the neighbourhood.

The Neighbourhood Context

[16] Before the character of a neighbourhood can be determined, the neighbourhood itself must be determined.

[17] The OP boundary for the Mineola Neighbourhood is quite large. It is bordered by the Canadian National Railway tracks on the south, Cawthra Road on the east, the Queen Elizabeth Way on the north and the Credit River on the west.

[18] Hurontario Street is the dividing line between areas known as Mineola West and Mineola East. Hurontario Street is identified as a Corridor intended to accommodate light rapid transit (LRT) in the future. As such, Hurontario Street acts as an important internal boundary within the Mineola Neighbourhood. The Subject Lands are in Mineola East. More particularly, they are in a still smaller area between Hurontario Street on the west and approximately at the point at which Mineola Road East turns into Mineola Gardens.

[19] The OP has two designations across the Mineola Neighbourhood: Residential Low Density 1 (“LD1”) and Residential Low Density 2 (“LD2”). The Subject Lands are within the LD1 designation, on the border with LD2.

[20] For the area in and around the Subject Lands, Mineola Road East is the dividing line between the LD1 and the LD2 designations. This dividing line for these designations does not equal a boundary of the neighbourhood for the Subject Lands. For the reasons set out in the following sections, the appropriate neighbourhood area for the Subject Lands must include lands both north and south of Mineola Road East, in the LD1 and the LD2 areas, and must consider the features relating to Mineola Road East itself.

The 120 m Analysis

[21] As part of protecting the character of lands designated LD1 and LD2, the OP requires an analysis of the average frontage and area of lots within 120 m of a given site on both sides of the same street. For a corner lot, as in this case, the 120 m analysis must be done on both sides of each street.

[22] Messrs. Levac, Davidson and Kirton all undertook studies in response to this OP requirement. Each study reached a different result.

[23] The Board is satisfied that it is not necessary to review in detail here the differences in methodology or the differences in the results. What the Board finds compelling is that, of the three, Mr. Kirton is the person on the City staff who does these analyses on a regular basis and who follows the standard City methodology in doing so. The Board is satisfied that Mr. Kirton’s analysis correctly met the stated requirements of the OP for the 120 m study. The Board relies on Mr. Kirton’s analysis.

[24] What is clear from the application of this OP requirement is that the neighbourhood of the Subject Lands includes lots that are designated LD1 and lots that are designated LD2. The neighbourhood for the Subject Lands is not confined to lots

that are north of Mineola Road East and only in the LD1 designation.

[25] While the LD1 area north of Mineola Road East and the LD2 area south of Mineola Road East have different features, both designations permit single family detached homes. The proposal is for a single family detached home on each proposed new lot.

[26] Mr. Kirton's analysis demonstrated that the frontage of each proposed lot exceeds the average within the 120 m study area. Although there is an application for variance to the frontage for the southern lot, this is a technical variance as explained earlier. The proposed orientation of the new house is to Broadmoor Avenue and that dimension slightly exceeds the ZBL minimum of 30 m. The streetscape frontage that would be readily perceived by a passerby is the dimension along Broadmoor Avenue which displays the front façade of the house.

[27] While the proposed lot areas are slightly lower than the average, the orientation of the proposed houses is consistent with lots along Broadmoor Avenue. With no variances being sought for any of the front, side or rear yard setbacks, and with no variances being sought for the house structures themselves, the proposed single family homes are compatible with the house forms in the neighbourhood.

Applications to Divide Additional Corner Lots

[28] The lots in the LD2 are generally a little smaller than those in LD1, although they are still fairly large. The LD2 area has curbs and sidewalks not found in the LD1 area. The LD1 area has a somewhat more rural ambience than the LD2 area and has a mix of lot sizes.

[29] These differences were cited by Mr. Balcewicz, who expressed the concern that the division of the Subject Lands, which comprise a corner lot, would become a precedent and encourage owners of other corner lots internal to the LD1 area north of Mineola Road East to apply for consent to divide their lots in two as well.

[30] What is not considered in this expression of concern is the important distinguishing fact that the Subject Lands are an edge condition. The particular characteristics of the Subject Lands are not replicated elsewhere in the nearby LD1 area north of Mineola Road East.

[31] The Subject Lands are across the street from the LD2 area. As a result of the requirement of the 120 m analysis, lands that are in the LD2 area are within the neighbourhood of the Subject Lands.

[32] The Subject Lands front on Mineola Road East, which the City identifies as a major collector. There is a bus stop in front of the Subject Lands on Mineola Road East. Broadmoor Avenue is identified by the City as a minor collector. The result is an intersection of two streets identified by the City as appropriate to carry more traffic than any of the local streets more internal to the LD1 area north of Mineola Road East.

[33] The facts and characteristics of the location of the Subject Lands clearly distinguish them from corner lots further north and internal to the LD1 area.

A Well-treed Lot

[34] The Subject Lands are very well-treed and there is a line of City-owned trees adjacent to the Subject Lands. All told, there are 34 trees on or adjacent to the site. Nine trees are to be removed and 25 trees are to be preserved.

[35] Of the nine trees to be removed, Mr. Bradley identified five as hazards. Of these trees, one is a City-owned tree and the remainder are very old apple trees that are shared with the lot adjacent to the west. None of these five trees is impacted by the proposed construction of the two houses and the recommendation for removal is unrelated to the proposed new construction.

[36] The City has a tree preservation by-law. That by-law permits the removal, without a permit, of a tree that has a diameter of less than 15 centimetres ("cm") at breast

height (“DBH”). There is one such tree on the property that is slated for removal to accommodate the proposed construction. There are four trees greater than 15 cm DBH that are slated for removal to accommodate the proposed construction.

[37] To the extent that a well-treed lot is an important part of the characteristic of the more rural streetscape on Broadmoor Avenue, the proposal is clearly compatible and maintains that characteristic.

Modest Intensification through Modest Infill Development

[38] The OP describes neighbourhoods as stable areas that are not static. While they are not a focus for growth, the OP acknowledges that modest intensification and infill development is appropriate and reasonable in neighbourhoods. Although infill development in a neighbourhood must be compatible with the neighbourhood, the OP does not require that it be the same as existing development.

[39] The proposed single family houses are not the largest to be found in the neighbourhood but the proposed size is well within the range in the area and certainly within the range of the existing house that will be demolished. The proposed new houses will, like the existing house, be oriented to Broadmoor Avenue. The existing house has a semi-circular driveway with two curb cuts. Each proposed house will have a single driveway so there is no increase in curb cuts for the streetscape. The proposed driveways have been located to protect and preserve the existing trees.

[40] Recognizing the particular location and features of the Subject Lands and surroundings, the proposed infill houses and the resulting streetscape represent modest intensification that protects the character of the surrounding neighbourhood.

Conditions

[41] The Applicant has accepted the conditions of consent, filed as Exhibit 6 in these proceedings, which were placed before the Committee of Adjustment when it

considered the application for consent. The Board has reviewed the conditions and notes that they are standard conditions, adjusted to reflect the date of departmental comments on the application. The Board finds that these conditions of approval for provisional consent are appropriate.

[42] The Board also reviewed conditions for the applications for variance that were submitted by the City at this hearing of the merits. The Board has reviewed these proposed conditions and finds that they repeat the requirements of the ZBL that are already met by the proposed new houses and for which no variances are being sought. Having regard to s. 45(9) of the Act, the Board is of the opinion that these proposed conditions are not advisable.

[43] In its submissions in the alternative to its preference to have the Board dismiss the appeals, the City asked the Board to withhold its order for the variances to permit the City time to review and possibly re-word the proposed conditions for the variances. The Board finds that re-wording inadvisable conditions does not increase their advisability and will not withhold its order on this basis.

Requisite Tests and Criteria

[44] Both the PPS and GGH call for new development to be within the settlement area, efficiently utilizing land and infrastructure. The proposed lots and associated houses are within the settlement area and on full municipal services. The Board finds that the application for consent, subject to conditions, and the applications for variance are consistent with the PPS and conform to the GGH.

[45] The Board finds that the application for consent, subject to conditions, and the applications for variance have had regard for the matters of provincial interest as set out in s. 2 of the Act. They are in an appropriate location for modest and orderly growth and contribute to the support of the existing and proposed transit in the area.

[46] In accordance with the requirements of s. 2.1 (1) (a) of the Act, the Board is

required to have regard to the decision of City Council. In accordance with the requirements of s. 2.1(b) of the Act the Board is required to have regard to the material Council considered in making its decision.

[47] The Board has had regard for the decision that City Council took to appear in these proceedings in opposition to the applications. While the Board has had regard for the fact of this decision by the City, the Board was given no information on what material was actually considered by Council in making its decision.

[48] With no information on what material was before Council when it made its decision, the Board declines to assume what material Council considered. The Board finds that the clear requirement of s. 2.1 (1)(b) of the Act would not be fulfilled by making an assumption without supporting evidence.

[49] Under these circumstances the Board looks to, and grounds its decision in, the weight, extent and clarity of the evidence in these proceedings that support the applications.

[50] The Board finds that the application for consent, subject to conditions, does not require a plan of subdivision. The Board further finds that the application for consent, subject to conditions, meets the criteria set out in s. 51(24) of the Act.

[51] The Board finds that each variance sought in the applications for variance maintains the general intent and purpose of the OP and of the ZBL, is desirable for the appropriate development and use of the land and is minor.

ORDER

[52] The Board orders that the appeals by Daniel Chang Medicine Professional Corporation are allowed.

[53] The Board grants provisional consent, subject to the conditions filed in these

proceedings as Exhibit 6.

[54] The Board authorizes the variances sought as set out in paragraph 2 of this decision.

“Susan de Avellar Schiller”

SUSAN de AVELLAR SCHILLER
VICE-CHAIR

If there is an attachment referred to in this document,
please visit www.elto.gov.on.ca to view the attachment in PDF format.

Ontario Municipal Board

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