

Ontario Municipal Board
Commission des affaires municipales
de l'Ontario



ISSUE DATE: July 25, 2017

CASE NO(S): PL170220

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

Applicant and Appellant: Irene Kraus-Picado
Subject: Consent – Appeal of Condition 11 - Conditions of provisional consent
Property Address/Description: 332 Progreston Road
Municipality: City of Hamilton
Municipal File No.: B-91/16
OMB Case No.: PL170220
OMB File No.: PL170220
OMB Case Name: Kraus-Picado v. Hamilton (City)

Heard: July 7, 2017 in Hamilton, Ontario

APPEARANCES:

Parties

Irene Kraus-Picado

Counsel

Nancy Smith

MEMORANDUM OF ORAL DECISION DELIVERED BY J. V. ZUIDEMA ON JULY 7, 2017 AND ORDER OF THE BOARD

[1] Irene Kraus-Picado (“Appellant”) made an application to the City of Hamilton (“City”) to sever her property located at 332 Progreston Road (“subject property”) in order to convey a vacant parcel of land (“severed parcel”) measuring 127.0 metres (“m”) x 45.72 m and having an area of 0.58 hectare (“ha”) for residential purposes and to

retain a parcel of land (“retained parcel”) measuring 9.1 m x 432.1 m and having an area of 9.65 ha. The subject property had an existing dwelling located on it, but by the time this hearing was held, that structure had been demolished. That demolition occurred without the benefit of demolition permit. The structure had been used for agricultural purposes.

[2] The City’s Committee of Adjustment (“C of A”) approved the request to sever subject to the following conditions:

- a. The owner shall submit a deposited Ontario Land Surveyor's Reference Plan to the C of A Office, unless exempted by the Land Registrar. The reference plan must be submitted in hard copy and also submitted in CAD format, drawn at true scale and location and tied to the City Corporate Coordinate System.
- b. The Applicant shall ensure compliance with Ontario Building Code requirements regarding spatial separation distances of any structures to the satisfaction of the Planning and Economic Development Department (Building Division - Plan Examination Section), if required.
- c. The owner shall receive approval of any variances from the requirements of the Zoning By-law as determined necessary by the Planning and Economic Development Department (Building Division - Zoning Section).
- d. The owner shall receive final and binding approval of minor variance application FL/A- 16:371.
- e. The Applicant shall submit survey evidence that the lands to be retained, including the location of any existing structure(s), conform to the requirements of the Zoning By-law or alternatively apply for and receive final approval of any variances from the requirements of the Zoning By-law as determined necessary by the Planning and Economic Development Department (Building Division - Zoning Section), if required.
- f. The Applicant shall submit survey evidence from a BCIN Qualified Designer (Part 8 Sewage System) or Professional Engineer that the

existing septic system complies with the clearance requirements of Part 8 of the Ontario Building Code for the lands to be retained, to the satisfaction of the Planning and Economic Development Department (Building Division - Plan Examination Section), if required.

- g. The Applicant must provide a 13.45 foot (4.10m) road widening dedication to the City by transfer of deed, to the satisfaction of the Development Engineering (West) Division.
- h. The owner shall submit to the C of A Office an administration fee of \$17.00, payable to the City of Hamilton, to cover the cost of setting up a new tax account for the newly created lot.
- i. The owner shall pay any outstanding realty taxes and/or all other charges owing to the City Treasurer.
- j. The owner shall apply for and receive final approval of a demolition permit to remove all structures, to the satisfaction of the Planning and Economic Development Department (Building Division).
- k. That the Applicant apply for and obtain a Zoning By-Law Amendment to prohibit a new single family dwelling from being erected on the retained lands, to the satisfaction of the Planning and Economic Development Department, Development Planning (Rural) Division.

[3] It was the last condition to which the Appellant objected and which resulted in an appeal being filed with this Board. In her Notice of Appeal, the Appellant argued that:

- a. It was mistakenly placed on the severance because of the consideration of polices in the OP which do not apply in this circumstance. The new lot to be created is located within the Carlisle Settlement Area which permits a severance of lots for residential purposes. City of Hamilton Staff supported the proposed severance without Condition 11 which is consistent with the PPS and the GP.

[4] There had been a related application for a minor variance which had been granted and was not appealed to this Board. As such, the only matter I had before me was the appeal of the conditions to the severance.

[5] Correspondence had been sent by the City to the Board that the City would not be appearing at the hearing. As such, other than representatives for the Appellant, no one else attended.

[6] I heard from Edward Fothergill, who was qualified and accepted as an expert in land use planning. He provided opinion evidence which was unchallenged to confirm that the last condition imposed by the C of A was unnecessary and should be removed.

[7] He indicated that following the finalization of this process, his client would obtain a demolition permit given that the demolition of the structure on the subject property had been done without the proper permit. He explained that his client needed to have the severance condition appeal finalized before she could obtain the demolition permit.

[8] I relied upon Mr. Fothergill's uncontested evidence to provide an oral decision allowing the appeal in part by removing the condition associated with the Zoning By-law Amendment.

[9] Mr. Fothergill reviewed the history of the proposal and rationale for the severance. He had been in attendance at the C of A meeting when this matter was addressed. The offending condition had not been recommended by Hamilton City Staff when the application had been circulated. Mr. Fothergill explained that one of the C of A Members, Paul Mallard, sought to have the condition included but without any specific rationale.

[10] Given that no one from the City was in attendance and no other evidence was provided to explain the reasoning behind the inclusion of the condition, I accepted Mr. Fothergill's account. In all other respects, Mr. Fothergill had no concerns with the decision of the C of A.

[11] Therefore, the Board orders that the appeal is allowed and condition (k) as noted above is deleted. All other conditions remain and are applicable.

“J. V. Zuidema”

J. V. Zuidema
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

A constituent tribunal of Environment and Land Tribunals Ontario
Website: www.elto.gov.on.ca Telephone: 416-212-6349 Toll Free: 1-866-448-2248