Local Planning Appeal Tribunal
Tribunal d'appel de l'aménagement local

ISSUE DATE: February 10, 2020 **CASE NO(S).:** PL171027

The Ontario Municipal Board (the "OMB") is continued under the name Local Planning Appeal Tribunal (the "Tribunal"), and any reference to the Ontario Municipal Board or Board in any publication of the Tribunal is deemed to be a reference to the Tribunal.

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

Applicant and Appellant:	Sylvia Mackenzie
Subject:	Consent
Property Address/Description:	1313 and 1319 Queen Victoria Avenue
Municipality:	City of Mississauga
Municipal File No.:	B-066/17
OMB Case No.:	PL171027
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OMB Case Name:	Mackenzie v. Mississauga (City)

Heard: November 21, 2018 in Mississauga, Ontario

APPEARANCES:

Parties	**Counsel**
Sylvia Mackenzie	Self-represented
City of Mississauga	Brendan Ruddick

DECISION DELIVERED BY JOHN DOUGLAS AND ORDER OF THE TRIBUNAL

INTRODUCTION

[1] This was a hearing with respect to an appeal to the Local Planning Appeal Tribunal pursuant to s. 53(19) of the *Planning Act* (the "Act") by Sylvia Mackenzie (the "Applicant/Appellant") of a decision of the City of Mississauga (the "City") Committee of Adjustment (the "Committee") to refuse an application for consent to sever property located at 1313 and 1319 Queen Victoria Avenue, to permit the creation of one new lot plus the retained lot.

[2] Brendan Ruddick called one witness on behalf of the City, Caleigh McInnes, a planner with the City. Ms. McInnes was qualified by the Tribunal to give expert opinion evidence in the field of land use planning.

[3] The Tribunal heard lay evidence from the Applicant/Appellant in support of her appeal.

[4] The subject property is unusual in that it is improved with two single detached dwellings, one to the front of the lot (the "primary residence") and the second to the rear of the lot (the "secondary residence"). According to the evidence, the primary residence (municipal address 1319 Queen Victoria Avenue), was built in 1939. The dwelling at the rear of the subject property (the "secondary residence"), (municipal address 1313 Queen Victoria Avenue) was built around 1955 and is a legal non-conforming use. The Applicant/Appellant wants to downsize but still remain at the primary residence and sell the severed parcel with the secondary residence. Based on evidence filed by the City in Exhibit 9, the retained lot would be 23 metres ("m") wide with a lot area of approximately 1,029 square metres ("sq m").

[5] The subject property is rectangular in shape, with lot frontage on Queen Victoria Avenue of approximately 23 m, a lot depth of approximately 87.5 m and a lot area of approximately 2,012 sq m. The lot runs from South West ("SW") to North East ("NE").

The SW lot line is the frontage along Queen Victoria Avenue. The rear lot line is the NE lot line. The primary residence is located approximately 6.1 m from the side yard/SE lot line. A thick well-established hedge runs along the SE property line. Current access to Queen Victoria Avenue is taken from a driveway that lines up with a two-car garage located at the SE end of the primary residence. There is an existing shed abutting the SE property line, a short distance past the rear wall of the primary residence, which is proposed to be removed. Currently, individuals staying at the secondary residence park their car on the driveway by the primary residence and walk approximately 60 m to the secondary residence.

[6] The subject property is located within an established residential neighbourhood and is surrounded by residential uses to the north, east, south and west.

[7] The Applicant/Appellant has applied for consent to sever the property to create a separate lot for the secondary residence. The proposed severed lot can be described as a flag shaped lot with the second dwelling located on the flag behind the primary residence, with a 4 m wide pole running along the SE lot line and ending with a 4 m frontage on Queen Victoria Avenue. According to exhibit 9 filed by the City, the severed lot would have 4 m frontage on Queen Victoria Avenue and a lot area of approximately 989.4 sq m. The Applicant/Appellant would like to sell the severed lot.

[8] The curb cut for the existing driveway in front of the primary residence is proposed to be closed and relocated several metres further to the southeast adjacent to the SE property line. A new driveway is to be constructed along the 4 m wide strip of land (the flag pole) that would extend from the curb cut at Queen Victoria Avenue back along the lot line to the secondary residence. Both the retained and the severed lots would access the street using the new driveway and entrance onto the street. The 4 m strip of land would be part of the severed or the retained lot and an easement would be required to allow the driveway to be used by the owners of both lots. It was unclear from the answers provided by the Applicant/Appellant whether the 4 m strip of land, over

which the easement would be registered, would be part of the retained or the severed lot.

ISSUES AND ANALYSIS

[9] When considering an application for consent under the Act, the Tribunal must ensure, among other things, that its decision has regard for matters of provincial interest including the criteria set out in s. 51(24) of the Act.

[10] In her evidence, Ms. McInnes testified that in her opinion the proposed consent did not have sufficient regard for the criteria set out in s. 51(24) of the Act. Of particular interest to the Tribunal was Ms. McInnes' opinion that the proposed severance did not meet s. 51(24) (c) and (f) of the Act, regarding: whether the proposed consent conforms to the policies of the Official Plan ("OP"); and, the appropriateness of the dimensions and shapes of the proposed lots (as per the requirements set out in the City's Zoning By-law No. 0225-2007 (the "ZBL")). The key issues in this matter focus on conformity of the proposed consent with the City's OP and ZBL.

[11] Ms. McInnes opined that the proposed consent does not conform to the policies of the City's OP.

[12] Ms. McInnes testified that although there are several existing flag lots in the neighbourhood, the proposed lots do not meet the policy requiring that new lots be consistent with the predominant shape or pattern of lots in the neighbourhood. She testified that although several flag lots do exist in the neighbourhood, they are relics of the past that do not meet current OP policies. The City is opposed to the creation of new flag lots, in part because they did not respect the continuity of front, rear and side yard setbacks.

[13] Ms. McInnes directed the Tribunal's attention to OP Policy 16.1.2.1 which states:

> To preserve the character of lands designated "Residential Low Density 1" … the minimum frontage and area of new lots created by land division … will generally represent the greater of:
>
> a. The average frontage and area of residential lots … on both sides of the same street within 120 m of the subject property; or
>
> b. The requirements of the Zoning By-law.

[14] Ms. McInnes testified that the proposed frontage of 4 m on 1313 Queen Victoria Avenue was significantly less than the minimum lot frontage required in the ZBL and significantly less than the average frontage of residential lots on both sides of the same street within 120 m of the subject property.

[15] Testimony by the Application/Appellant inadvertently supports Ms. McInnes's testimony. In her evidence, the Applicant/Appellant identified a number of lots with small lot frontages, including 11.5 m frontages for 1295, 1281, 1292 and 1284 Queen Victoria Avenue. The Tribunal notes that if one were to average the 11.5 m lot frontages (which the Applicant/Appellant has identified as being small lot frontages on Queen Victoria Avenue) with the lot frontages of all the houses within 120 m of the subject property, the average would have to be greater than 11.5 m, which is significantly greater than the 4 m frontage proposed for the severed lot.

[16] Ms. McInnes testified that the dimensions and shapes of the proposed lots did not conform to the zoning for the subject property. Ms. McInnes testified that the subject property is zoned R2-4 in the ZBL, and neither the retained nor the severed lot meets the minimum interior side yard requirements, and the severed lot does not meet the minimum lot frontage requirement. The following table summarizes key relevant zone regulations against the dimensions of the proposed severed and retained lots (based on the figures provided by the City in Exhibit 9):

OP Policy 16.1.2.1 – Average of lots within 120 m; or Zone Regulation	ZBL 0225-2007	Severed	Retained
Average Lot Frontage	22.5 m	4.0 m	23.0 m
ZBL – Min. Lot Frontage	20.6 m	4.0 m	23.0 m
Average Lot Area	1719.9 sq. m	989.4 sq m	1029 sq m
ZBL – Min. Lot Area	695 sq. m.	989.4 sq m	1029 sq m
ZBL – Minimum Interior Side Yard	1.81 + 0.61 m for each additional storey or portion thereof above 1 storey	1.6 m (NE side) Approx. 10 m (SW side)	6.1 m (NE side) 0.73 m (SW side)

[17] Ms. McInnes testified that the proposed and severed lots would not conform to the provisions of the ZBL. She testified that no supporting application for minor variance had been submitted to correct the zoning deficiencies of the consent application with respect to minimum lot frontage and minimum side yard setbacks.

[18] Ms. McInnes testified that the secondary residence is a legal non-conforming use as it was built before the ZBL came into force and effect. She opined that legal non-conforming uses are intended to fade out over time. To approve this application would entrench a use that is not permitted under the policies of the OP and zoning regulations.

[19] Mr. Ruddick provided the Tribunal with a decision *Cuylle v. Oxford (County),* 1988 CarswellOnt 3446 (the "*Cuylle* decision"). This was a decision with respect to a proposed severance of a 1.2-acre parcel from a 14-acre rural property that had two existing dwellings on site, one of which was a legal non-conforming use. The retained

lot in this case was already undersized without the proposed consent. In paragraph 10, the Ontario Municipal Board ("OMB") stated:

> No application is before the board to deal with that land. The board regards that as an exceedingly technical point, but cannot be disregarded as the board should not by the granting of a consent render another parcel in conflict with a zoning by-law as to the size or dimension unless it also has before it an application to deal with the remainder parcel.

[20] The Tribunal accepts the evidence of Ms. McInnes and the underlying rationale of the *Cuylle* decision that the result of the proposed severance of the subject property would result in a retained lot and severed lot that do not conform to the regulations set out in ZBL No. 0225-2007.

[21] The Applicant/Appellant testified that there are a number of existing flag lots in the neighbourhood and one of the most recent had been approved by the OMB. She provided the Tribunal with a copy of *Clarke v. Mississauga (City)*, 2003 CarswellOnt 5268 (the "*Clarke* decision"). The Tribunal read the *Clarke* decision but notes that although there appears to be some similarities between the *Clarke* proposal and the proposal now before the Tribunal, the Tribunal did not hear any objective expert land use opinion evidence in this regard.

[22] The Tribunal hears each case on its own merits and bases its decisions on the evidence each party provides in making its case. In this hearing the Tribunal heard expert land use opinion evidence from the City only. While previous Tribunal decisions are informative, it is the evidence that is produced during a hearing that is the key determining factor in the outcome of a hearing.

CONCLUSION

[23] Upon the findings made, the uncontested expert land use planning evidence of Ms. McInnes and the whole of the evidence inclusive of the documentary record, the

Tribunal finds that the established criteria as set out in s. 51 (24) of the Act have not been met.

ORDER

[24] The Tribunal orders that the appeal is dismissed and the provisional consent is not to be given.

"John Douglas"

JOHN DOUGLAS
MEMBER