

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



ISSUE DATE: November 27, 2019

CASE NO(S): PL190235

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

Appellant:	Peter Dove
Applicant:	Exquisite Living Homes Inc.
Subject:	Consent
Property Address/Description:	552 Jerseyville Rd W
Municipality:	City of Hamilton
Municipal File No.:	B-154/18
LPAT Case No.:	PL190235
LPAT File No.:	PL190235
LPAT Case Name:	Dove v. Hamilton (City)

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

Appellant:	Peter Dove
Applicant:	Exquisite Living Homes Inc.
Subject:	Minor Variance
Variance from By-law No.:	87-57
Property Address/Description:	552 Jerseyville Rd W
Municipality:	City of Hamilton
Municipal File No.:	A-418/18
LPAT Case No.:	PL190235
LPAT File No.:	PL190236

Heard: November 13, 2019 in Hamilton, Ontario

APPEARANCES:

<u>Parties</u>	<u>Counsel*/Representative</u>
Exquisite Living Homes Inc. ("Applicant")	J. Hoffman*
Peter Dove ("Appellant")	J. Lambert
City of Hamilton	Did not attend

**MEMORANDUM OF ORAL DECISION DELIVERED BY BLAIR S. TAYLOR AND
JATINDER BHULLAR ON NOVEMBER 13, 2019 AND ORDER OF THE TRIBUNAL**

INTRODUCTION

[1] The matter before the Tribunal concerned a consent and minor variance application proposing to sever an existing lot and build two new detached dwellings on the lands known municipally as 552 Jerseyville Road West ("Subject Lands").

[2] Neither the consent nor the minor variance was recommended for approval by the City's Planning Staff, however the Committee of Adjustment ("Committee") approved both, and the Appellant appealed.

[3] The Tribunal heard expert land use planning evidence on behalf of the Applicant and heard fact evidence from the next door neighbour expressing concerns regarding the minor variance process, additional traffic, and possible drainage concerns.

[4] For the reasons set out below, the decisions of the Committee are upheld, dismissing both the appeal against the consent application and the appeal against the minor variance application.

DECISION

[5] The Subject Lands have 30.5 metres (“m”) of frontage on Jerseyville Road West, a depth of about 45.99 m, and is currently occupied by a detached bungalow.

[6] The development proposal is to sever the Subject Lands into two lots, each with 15.25 m of frontage and a lot depth of about 40 m (after a proposed road widening dedication to the City), demolish the existing dwelling and build two new detached homes.

[7] The Subject Lands are currently designated Neighbourhoods in the Urban Hamilton Official Plan (“UHOP”), designated Low Density Residential 1b in the Meadowbrook West Secondary Plan (“Secondary Plan”), and zoned Agricultural.

[8] To facilitate this development proposal, a consent application and a minor variance application were required. The request for relief for the minor variance application sought:

- a. Lot areas of about 600 square metres (“sq m”) whereas 1,850 sq m is required;
- b. Lot frontages of 15.25 m, whereas 30 m is required; and
- c. Side yard setbacks of 1.2 m, whereas 3.0 is required.

[9] The locational context for this development proposal is that the Subject Lands are located on Jerseyville Road West which forms the boundary line for the Hamilton Urban Area. North of Jerseyville Road West is the Greenbelt. South of Jerseyville Road West is within the Hamilton Urban Area.

[10] The Subject Lands are within the settlement area of the City of Hamilton and within the City's Urban Area. There is a local high school close by and a community centre is located on the north side of Jerseyville Road West, in the Green Belt.

[11] The Subject Lands are located within a residentially developed area: there are single detached dwellings to the east with zoning requiring a minimum 12-m frontage, a minimum lot area of 400 sq m, and 1.2 m side yard setbacks. To the south are single detached dwellings with 9 m frontages, lot areas of 275 sq m, and 1.2 m side yards. To the west are townhouses with 7.3-m frontages, lot areas of 180 sq m, and 1.5 m side yard setbacks.

[12] All of this is well depicted in Exhibit 1, Tab 8 at, page 56A, which displays the zoning in the immediate vicinity of the Subject Lands. That exhibit shows that there are only two remnant parcels of land that are still zoned Agricultural: 520 Jerseyville Road West, and the Subject Lands.

[13] The lands at 520 Jerseyville Road West were, in 2016, the subject of a similar development proposal seeking a severance into two lots and a minor variance application seeking relief *inter alia* for the minimum lot frontages of 15 m, minimum lot area of 606 sq m, and 1.2 m side yard setbacks. The City Planning Staff report recommended tabling the consent application after the applicant there applied for and received final approval of a Zoning By-law amendment. Notwithstanding that recommendation, the Committee approved both the consent application and the minor variance application. Photographs in Exhibit 1 show that one new home has been built on one lot at 520 Jerseyville Road West.

[14] For the subject development proposal, City Planning Staff had concerns regarding the process of using a minor variance application and recommended that both applications be denied by the Committee and the Applicant apply for a rezoning. The rationale for this is set out in the City Planning Staff report found at Exhibit 1, Tab 23 at page 127. There the City Planning Staff report states the following:

- a. In further review, while **staff has no objection to the overall proposal**, the appropriate means of implementation would be to re-zone the property first to allow Council to make a decision on the proper land use before dealing with the consent. Based on the foregoing, staff does not support the consent application. However, if the Committee decides to approve the consent, staff recommends that a condition be added that the subject lands are re-zoned to an appropriate designation. (emphasis added)

[15] The Appellant agrees with a portion of the quoted planning report. Namely that, “staff has no objection to the overall proposal”.

[16] The Tribunal notes that arising out of the circulation of the development proposal no objections were raised by any of the commenting agencies and departments regarding traffic and drainage. Only the Planning Staff report raised the “rezoning first” process issue.

[17] Land use planning in Ontario is a “top-down”, policy-led system.

[18] At the Provincial level, there are a number of Provincial Interests set out in s. 2 of the *Planning Act* (“PA”). The Province has issued a Provincial Policy Statement 2014 (“PPS”), and a Place to Grow: Growth Plan for the Greater Golden Horseshoe 2019 (“Growth Plan”).

[19] At the municipal level, the City of Hamilton has an in force and effect Urban Official Plan, and also has a Secondary Plan.

[20] To implement all of the above, a municipality is to pass a zoning by-law.

[21] In this case, the City’s zoning that is in place significantly lags behind all the other public policy documents.

[22] The zoning is Agricultural, and that is from the Zoning By-law that was passed in 1987. It means that the zoning predates even the first iteration of the PPS not to mention PPS 2014, the Growth Plan, UHOP, and the City's Secondary Plan.

[23] This zoning is a remnant from a different era. There are no agricultural uses south of the Jerseyville Road West in the immediate area of the Subject Lands, and the Subject Lands themselves have been occupied for some period of time as a residence.

[24] It is important to note that s. 3(5) of the PA mandates that a decision of this Tribunal in the exercise of any authority that affects a planning matter must make a decision that is consistent with the PPS and conforms to the Growth Plan.

[25] In this regard both the PPS and the Growth Plan direct development to settlement/built up areas where there are municipal services, which are to be optimized. Both policy documents provide direction for residential intensification.

[26] The subject development proposal is a modest form of residential intensification: the creation of one additional lot and the construction of two new detached homes in an area that has detached homes and townhouses abutting the Subject Lands.

[27] S. 4.7 of the PPS states that the Official Plan is the most important document for the implementation of the PPS.

[28] S. 4.8 of the PPS states that planning authorities shall keep their zoning and development permit by-laws up-to-date with their official plans and the PPS.

[29] UHOP designates the Subject Lands as Neighbourhoods in which a detached dwelling is a permitted use. Moreover; it encourages residential intensification; provides criteria to evaluate residential intensification in a Neighbourhoods designation, and consent criteria.

[30] The Secondary Plan designates the Subject Lands as Low Density Residential 1b. The permitted uses in this designation are single detached dwellings with a minimum lot frontage of 12.2 m.

[31] The Tribunal notes that while the City Planning Staff did not recommend approval to the Committee, neither did the City appeal the Committee decision to the Tribunal, nor did the City appear in opposition at this hearing.

[32] The Tribunal has before it uncontroverted expert land use planning evidence on behalf of the Applicant. The Applicant's land use planner opined that the development proposal as a whole had duly considered the matters of Provincial Interest in s. 2 of the PA, was consistent with the PPS and conformed to not only the Growth Plan, but also the UHOP and the Secondary Plan.

[33] While the City Planning Staff recommended that a rezoning application be made so that City Council could make a determination on the appropriate land use for the Subject Lands, the Applicant's land use planner testified that it had already been done through the City's own Official Plan and Secondary Plan down to the detailed level of requiring lot frontages of a minimum of 12.2 m. Thus, in his view it was not appropriate nor necessary to go back to City Council.

[34] The Applicant's land use planner noted that the Agricultural zoning had specific regulations for permitted residential development: standards he said that anticipated a rural area and potentially private services, and none of those circumstances applied to the Subject Lands.

[35] Rather, he testified that the Subject Lands are in a settlement area designated for urban development, are designated Neighbourhoods in UHOP, and further designated Low Density Residential 1b, with full municipal services, and that there would be no adverse impacts arising out of the implementation of the development proposal.

[36] Accordingly, the Tribunal finds that:

- a. the matters of Provincial Interest have been duly considered;
- b. the applications are consistent with the PPS and conform to the Growth Plan, conform to UHOP and the Secondary Plan;
- c. all the criteria under s. 51(24) of the PA have been met and that the PPS provides the appropriate lens for the consideration of the public interest and a modest form of residential intensification is in the public interest;
- d. pursuant to s. 45(1) of the PA:
 - i. the variances conform to the Official Plan;
 - ii. the variances are desirable for the appropriate use or development of the Subject Lands;
 - iii. in these unique circumstances, the variances meet the general intent and purpose of the Zoning By-Law, as being in an urban area, with residential development on three sides of the Subject Lands and with full municipal services; and
 - iv. in these unique circumstances, the variances are minor in nature with no adverse impacts.

[37] Thus, the Tribunal will:

- a. Uphold the decisions of the Committee.
- b. Dismiss the appeals.

- c. Authorize the minor variances as requested and
- d. Grant the provisional consent, subject to the requested conditions of approval as found in the Committee's decision in Exhibit 1, Tab 27 at pages 161, 162, and 163.

[38] This is the Order of the Tribunal.

"Blair S. Taylor"

BLAIR S. TAYLOR
MEMBER

"Jatinder Bhullar"

JATINDER BHULLAR
MEMBER

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

Local Planning Appeal Tribunal

A constituent tribunal of Tribunals Ontario - Environment and Land Division
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