

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



ISSUE DATE: March 06, 2020

CASE NO(S): PL190421

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:	Matt Robillard
Applicants:	Dominic, Chantelle & Suzanne Reale
Subject:	Consent
Property Address/Description:	19 Tolhurst Avenue
Municipality:	County of Brant
Municipal File No.:	B30-31-18-DN
LPAT Case No.:	PL190421
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LPAT Case Name:	Reale v. Brant (County)

Heard: January 21, 2020 in Brant, Ontario

APPEARANCES:

Parties

Counsel*/Representative

Matt Robillard

Self-represented

Dominic Reale and
Chantelle Reale

James A. Hitchon*

DECISION DELIVERED BY M. ARPINO AND ORDER OF THE TRIBUNAL

INTRODUCTION

[1] This is the hearing of an appeal of a decision of the Committee of Adjustment for the County of Brant (the “Committee”). Dominic, Suzanne and Chantelle Reale (the “Applicants”) own property, which has frontage on Tolhurst Avenue and High Street, in Brant County (the “Subject Lands”). The Subject Lands consist of vacant land on High Street and a residential dwelling at 19 Tolhurst Avenue. The Applicants sought to sever the Subject Lands into four semi-detached lots on High Street; the existing home at 19 Tolhurst Avenue would be retained (the “proposed development”). The Committee approved the severances for the proposed development. Matt Robillard, (the “Appellant”) who resides adjacent to the Subject Lands, appealed the decision of the Committee.

EVIDENCE AND SUBMISSIONS

[2] The Tribunal received six letters from neighbours seeking Party status in this matter; those who attended the hearing withdrew their request. The Appellant called four of these individuals as witnesses.

[3] Daniel Namisniak testified under summons at the hearing. He is employed as a Planner by the County of Brant (the “County”) and is the Secretary/Treasurer of the Committee. Mr. Namisniak gave contextual evidence about the severance application. He informed the Tribunal that in September 2018 the Applicants submitted an application seeking approval to create two semi-detached dwellings fronting onto High Street and a new single detached dwelling fronting on Tolhurst Avenue; the existing house would remain in its current location. After submissions were received from reviewing agencies, the Applicants amended their application. The proposed development sought approval to create two semi-detached dwellings. The existing dwelling would remain in place and the new single-family dwelling previously proposed on the lot facing Tolhurst Avenue was deleted from the proposed development.

[4] Robert Phillips was called as a witness by the Applicants. After hearing evidence about his credentials and experience, the Tribunal was satisfied that Mr. Phillips was qualified to provide expert opinion evidence regarding site grading and storm water management in this hearing. Mr. Phillips testified that he prepared a Stormwater Management Plan and a Lot Grading Plan for the proposed development, which would reduce the flow of water from the Subject Lands. Mr. Phillips informed the Tribunal that it was his professional opinion that no adverse impacts to the downstream system are anticipated as a result of the proposed development.

[5] The Applicants called Robert van Poorten as a witness. After hearing evidence about his credentials and experience, the Tribunal was satisfied that Mr. van Poorten was qualified to provide expert land use planning opinion evidence in this hearing.

[6] Mr. van Poorten, testified that, in his expert opinion, the severances granted by the Committee conform to the criteria in s. 51(24) of the *Planning Act*. He opined that Conditions of severance, which were imposed by the Committee appended as Attachment 1 (the “Conditions”) are appropriate and provide significant protection to the interests of the County and general neighbourhood and are consistent with the criteria set out in s. 51(25) of the *Planning Act*.

[7] Mr. van Poorten, informed the Tribunal that the County Official Plan (the “Official Plan”) is under review; he opined that the decision of the Committee conforms to the intent and policies of the existing Official Plan.

[8] Mr. van Poorten provided an overview of the relevant provisions of the Growth Plan for the Greater Golden Horseshoe 2019 (the “Growth Plan”), and it was his opinion that the proposed development conforms to the Growth Plan, specifically the Managed Growth, Delineated Built Area and Housing policies of the Growth Plan. Mr. van Poorten reviewed the relevant sections of the Provincial Policy Statement (2014) (the “PPS”), and he testified that it was his professional opinion that the proposed development is consistent with the PPS.

[9] Mr. van Poorten provided an overview of the applicable Zoning By-law, and he testified that the severed lots and retained lot comply with the zoning by-laws and exceed the minimum lot size standards of By-law No. 61-16. Mr. van Poorten stated that in his opinion, the decision of the Committee represents good planning.

[10] The Appellant called 4 neighbours to testify: William Koopmans, Gord Wright, Dave Prosser and Darlene Eberly. These individuals expressed concerns about flooding, pedestrian traffic, insufficient on-street parking and soil contamination that could occur as a result of the proposed development.

[11] The Appellant also called Dave Prosser who informed the Tribunal that he operates a mobile heavy equipment mechanic business from his home at 70 High Street. Mr. Prosser testified that he is concerned that the proposed development will generate more on-street parking which could impede his ability to drive large vehicles onto his property.

[12] The Appellant testified at the hearing. He informed the Tribunal that he shares the neighbours' concerns. He added that he reviewed the hydrogeological study submitted by the Applicants, and noted that one of the recommendations was that any contamination of the subsoil had to be remediated.

ANALYSIS AND FINDINGS

[13] Regarding the issue of soil contamination, the Tribunal notes that one of the Conditions addresses this matter; the Certificate of Consent will not be issued until any contamination concerns have been addressed to the satisfaction of the Development Engineering Division of the County.

[14] The Tribunal heard evidence about pre-existing flooding issues in this neighbourhood, however, the Tribunal heard no evidence that the proposed development would create an increase in water runoff or otherwise exacerbate the

problem. The Development Engineering Department of the County did not object to the proposed development. The Tribunal accepts the professional opinion of Mr. Phillips that the Lot Grading Plan and the Stormwater Management Plan will reduce the water over flow from the Subject Lands. The Tribunal is also satisfied that pursuant to the Conditions, the Applicants will be required to address any concerns related to Storm Water Management prior to issuance of the Certificate of Consent.

[15] The drawings, which accompany the application, indicate that the proposed development will have consolidated driveways, which Mr. van Poorten testified would increase the quantity of on-street parking spaces. The proposed development provides the parking that is required therefore, parking is not an issue that the Tribunal views as an impediment to approving the Consent.

[16] When considering the appropriateness of a decision to grant a consent to sever, the Tribunal must have consideration to s. 2 of the *Planning Act*, which includes a list of broader policy and public concerns across the Province. Although the neighbours raised several practical issues, the Tribunal finds that those concerns, though understandable, are manageable and are addressed by the Conditions. The Subject Lands are designated for residential use and no variances are required. The Tribunal has reviewed the record, the submissions and the evidence, and concludes that the proposed development meets the statutory criteria in s. 2 and s. 51(24) of the *Planning Act*, and that a plan of subdivision is not required.

[17] Upon the findings made, the evidence of the expert witnesses and the whole of the evidence inclusive of the documentary record, the Tribunal finds the application accords with the relevant provisions of the *Planning Act*, it is consistent with the policies of the PPS, conforms to the Growth Plan, the Official Plan, and zoning by-laws, and represents good planning.

ORDER

[18] The Tribunal orders that the appeal is dismissed.

"M. Arpino"

M. ARPINO
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.

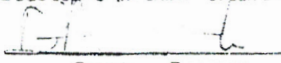
Local Planning Appeal Tribunal

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

ATTACHMENT 1

I hereby certify that the foregoing is
a true copy of the original document

COUNTY OF BRANT
COMMITTEE OF ADJUSTMENT
66 GRAND RIVER STREET NORTH
PARIS ON N3L 2M2


Secretary - Treasurer
Committee of Adjustment
County of Brant

Applicant: D. Reale
Submission No.: B30-31/18/DN
Roll No.: 292001603018000

DECISION OF COMMITTEE
IN THE MATTER OF SECTIONS 50 & 53
OF THE PLANNING ACT, R.S.O. 1990, as amended
-and-

IN THE MATTER OF AN APPLICATION FOR CONSENT from D. Reale, Owners of PLAN 81 BLK C LOT 14 PT LOT 13 PT LOT 15, in the Former Township of South Dumfries, County of Brant and known as 19 TOLHURST AVE proposing to sever the following to facilitate the construction of one (1) semi-detached dwelling:

1. The creation of two (2) semi-detached dwelling lots each having a frontage of 9 metres along High St, depth of 42 metres and area of approximately 375 square metres

This Application was heard on the **18th day of July, 2019** after notice by mail and personal service to surrounding property owners and interested parties as directed by the Committee and Rules of Procedure

THE DECISION OF THE COMMITTEE IS:

THAT the Application be APPROVED subject to the following conditions:

1. Proof that taxes have been paid up-to-date on the subject property to the County of Brant.
2. That the Applicant provides a copy of the draft reference plan for the severed parcel, including the location of the existing well and septic system by a licensed surveyor for review by the Development Services Department, prior to the finalization of the Consent (i.e. registration of the deed in the appropriate Registry Office).
3. That the Applicant satisfy the comments of the Development Engineering Division:
 - The Site Development Plan drawing (Nov. 22, 2018 – J. H. Cohoon Engineering) is required to be improved to show significantly more elevations, proposed water and sanitary sewer service laterals, driveway locations, property line locations, and all other necessary revisions as required as part of this report.
 - That a 10.0m road widening from the travelled centreline and a 4.5m x 4.5m daylighting triangle at the intersection of Tolhurst Avenue and High Street all on the Retained Parcel be deeded to the County along the Tolhurst Avenue frontage starting from the south limit of the existing driveway for Municipal # 19 Tolhurst Avenue to the intersection of Tolhurst Avenue and High Street prior to the stamping of the deeds, as per the County of Brant Official Plan (Sept. 2012), Section 5.3.2.1.7, which states that road allowances for Urban Residential Local Roads shall have a right-of-way width of 20-22 metres. The widening and daylighting triangle is required for the maintenance and sightlines at the corner of Tolhurst & High Streets.
 - The applicant is responsible for trimming of the branches and/or removal of the existing trees for sightline purposes along the frontage of the severed and retained parcels.
 - Road Restoration and Milling will be required on the full width of the existing asphalt on both Tolhurst Avenue and High Street for any servicing installations or removals and is required to be shown on the Site Development Plan.
 - Any existing sanitary services that are abandoned are required to be disconnected at the main and removed to the satisfaction of the County of Brant.
 - The existing drop-curb on High Street to be removed and replaced with barrier curb as per County of Brant standards This can be addressed through the Public Works permit process for the new driveways.
 - That the Applicant address any concerns related to Storm Water Management in accordance with the Development Engineering Division comments.
 - That the Hydrogeological Report be accepted and approved by the Development Engineering Division and that any contamination concerns be addressed.

Applicant: D. Reale
Submission No.: B30-31/18/DN
Roll No.: 292001603018000

- Works for the subject lands may require, but may not be limited to, works within the road allowance and construction of an entrance. As such, Public Works Permits will be required.
4. Parkland dedication or monies-in-lieu of parkland will be payable at the time of stamping of the deeds, in amount of \$4,340 for each new lot.
 5. That the Applicants enter into an Agreement with the County and provides a \$5,000.00 security deposit (plus applicable \$200.00 Registration Fees) for each new lot for drainage/grading and provides a Site Development Plan completed by a P.Eng. for review by the Development Services Department, prior to the release of the executed Certificate of Official.
 6. That the current Deed Stamping Fee of \$308 for the creation each new lot be paid to the County of Brant for each new lot, prior to the release of the executed Certificate of Official.
 7. That the above conditions must be fulfilled and the Document for Conveyance be presented to the Consent Authority for stamping within one year of the date of the written decision, sent by the Secretary-Treasurer pursuant to Section 53(17) of the Planning Act, R.S.O. 1990, otherwise the approval shall lapse.

Having regard for the criteria under Section 51 (24) of the Planning Act,
The decision is based upon the following reason(s):

1. The proposal is compatible and consistent within the context of existing development.
2. The application is consistent with the policies of the Growth Plan for the Greater Golden Horseshoe and Provincial Policy Statement.
3. The application is in conformity with the general intent of the policies of the Official Plan and Zoning By-law.

NOTE: THAT pursuant to Section 53(17)-(18.2) and Section 45(8)-(8.2) of the Planning Act, R.S.O. 1990, c.P.13, the following statement SHALL BE INCLUDED in the Notice of Decision:

"Regard has been had for all written and oral submissions received from the public before the decision was made in relation to this planning matter, as discussed in the staff report, addendum (if required) and public meeting."