

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



ISSUE DATE: March 17, 2021

CASE NO(S):

PL190551

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: 2628934 Ontario Inc.
Subject: Consent
Property Address/Description: 152 Stone Church Road East
Municipality: City of Hamilton
Municipal File No.: B-86/19
LPAT Case No.: PL190551
LPAT File No.: PL190551
LPAT Case Name: 2628934 Ontario Inc. v. Hamilton (City)

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Applicant and Appellant: 2628934 Ontario Inc.
Subject: Consent
Property Address/Description: 152 Stone Church Road East
Municipality: City of Hamilton
Municipal File No.: B-87/19
LPAT Case No.: PL190551
LPAT File No.: PL190552

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

Applicant and Appellant: 2628934 Ontario Inc.
Subject: Minor Variance
Variance from By-law No.: 6593
Property Address/Description: 152 Stone Church Road East

Municipality:	City of Hamilton
Municipal File No.:	A-399/19
LPAT Case No.:	PL190551
LPAT File No.:	PL200043

Heard: September 29, 2020 by video hearing

APPEARANCES:

Parties

2628934 Ontario Inc.

City of Hamilton

Counsel

Scott Snider

Patrick MacDonald

DECISION DELIVERED BY C. TUCCI AND ORDER OF THE TRIBUNAL

INTRODUCTION

[1] The matters before the Tribunal are two appeals under s. 53(19) of the *Planning Act* (the "Act") and one appeal under s. 45(12) of the Act from decisions of the City of Hamilton's ("City") Committee of Adjustment ("COA").

[2] 2628934 Ontario Inc. ("Applicant") owns the property at 152 Stone Church Road East ("Subject Lands") in the City of Hamilton and is proposing to sever the rear portion of the Subject Lands through a consent application and to further subdivide the severed lands into two residential building lots with frontage on Cielo Court through a concurrent consent application. A minor variance application was also submitted to facilitate the related consent applications.

[3] The subject lands are zoned "B/S-1788" (Suburban Agriculture and Residential, etc.) District, Modified, in the Former City of Hamilton Zoning By-law No. 6593. Single family dwellings are permitted in accordance with the applicable provisions.

[4] The Subject Lands are located on the south side of 152 Stone Church Road East,

between Upper James Street to the west and Upper Wellington Street to the east. The rear portion of the Subject Lands abut Cielo Court, an internal subdivision road to the south, separated by a 0.3 metre ("m") reserve. 152 Stone Church Road East has a frontage of 22.86 m, a depth of 90.02 m and an area of 0.206 hectares (2,063 square metres ("sq m")).

[5] On September 26, 2019, the COA considered and denied each of the three applications. No one attended in opposition to the applications.

[6] A Joint Book of Documents was filed with the Tribunal and marked as Exhibit 1

[7] The Tribunal heard planning opinion evidence from Nancy Frieday, qualified in the area of land use planning, in support of the applications.

[8] The Tribunal also heard planning opinion evidence from Sara Rogers, a planning technician with the City of Hamilton, against the applications.

Applications

[9] The purpose of the first consent application is to sever the rear portion of the Subject Lands from the front portion which contains the existing single-detached dwelling. The retained lands will have an area of 1,290 sq m (approximately 0.13 hectares) and the severed land will have an area of 768 sq m (approximately 0.077 hectares).

[10] The location of the severance line (rear lot line of the proposed new lot) was determined based on the rear lot line of the severed lot immediately adjacent to the west.

[11] The purpose of the second consent application is to sever the rear portion created through the first consent into two lots, each being 384 sq m in area.

[12] The purpose of the minor variance application is to vary the development

standards associated with the “B” (Suburban Agriculture and Residential, etc.) District zone in Zoning By-law No. 6593 (the “By-law”) in order to accommodate one new single detached dwelling on each of the new lots fronting Cielo Court. The variances sought are as follows:

- Minimum lot width of 11 m, whereas the By-law requires 20 m
- Minimum lot area of 380 sq m, whereas the By-law requires 1,100 sq m
- Minimum front yard depth of 6 m, whereas the By-law requires 12 m
- Minimum side yard of 1.2 m, whereas the By-law requires 3 m
- Minimum rear yard depth of 7 m, whereas the By-law requires 9 m

ISSUES AND ANALYSIS

[13] In considering the appeals, the Tribunal is to have regard for the criteria as set out in s. 51(24) of the Act when considering whether to give provisional consent. When considering the variances, the Tribunal must determine whether the variances meet the four tests of a minor variance as set out in s. 45(1) of the Act being that each variance:

- i. maintains the general intent and purpose of the Official Plan;
- ii. maintains the general intent and purpose of the zoning by-law;
- iii. is desirable for the appropriate development or use of the land, building or structure; and
- iv. is minor.

[14] Furthermore, the Tribunal’s decision must be consistent with the Provincial Policy Statement, 2020 (the “PPS 2020”), conform with the Growth Plan for the Greater

Golden Horseshoe, 2019 (the “Growth Plan”), and have regard for the matters set out in s. 2 of the Act.

[15] Ms. Frieday advised the Tribunal that the subject property is located in the Ryckman neighborhood of the City. The proposal is to create two new residential lots and retain the existing dwelling on the resultant lot.

[16] She advised that the lands to the south were developed as DiCenzo Gardens located immediately to the south of the Subject Lands. To the southwest, the new Jamesmount Gardens was draft approved by the City on August 17, 2020. The lands are located east of Upper James Street and south of Stone Church Road East. The Jamesmount Draft Plan of Subdivision includes 150 residential units, including 19 blocks for 38 semi-detached homes; 13 blocks for 91 townhouses, one block for block townhouses and various blocks for single-detached dwellings. With this development, the Ryckman Neighbourhood will be near built-out.

[17] Ms. Frieday submitted that the proposed severances will satisfy s. 51(24) and s. 2 of the Act and that City staff had not identified any concerns with these criteria. The subject applications will clearly contribute to the provision of a full range of housing (s. 2(j)) and represent orderly development (s. 2(h)). The lands are certainly suitable for the proposed dwellings (s. 51(24)(d)) and conform with the Official Plan (s. 51(24)(c)).

[18] Ms. Frieday further submitted that staff recommended against the applications because of the form of the applications: minor variances rather than a rezoning.

[19] Throughout the evidence presented by City staff, this was a recurring theme.

PPS 2020

[20] Ms. Frieday reviewed the PPS 2020 and testified the consent applications and the five variances requested are consistent with the PPS 2020.

[21] In her testimony, she states that:

- A. Part V, Policies, Section 1.0, Building Strong Healthy Communities, Policy 1.1.1 e) states: promoting the integration of land use planning, growth management, transit- supportive development, intensification and infrastructure planning to achieve cost-effective development patterns, optimization of transit investments, and standards to minimize land consumption and servicing costs;
- B. The Urban Hamilton Official Plan (“UHOP”) promotes residential intensification throughout the City which is consistent with Policy 1.1.3.3 of the PPS. Policy 1.1.3.3 states that municipalities shall identify appropriate locations and promote opportunities for transit-supportive development through intensification and redevelopment.
- C. Policy 1.1.3.4 of the PPS 2020 promotes appropriate development standards which facilitate intensification, redevelopment and compact form and which avoid or mitigate risks to public health and safety. The development standards proposed by the minor variances, exist throughout the subject area, are appropriate and cause no risks to public health and safety.
- D. Policy 1.6.6.2 (Infrastructure and Public Services) states:
Municipal sewage services and municipal water services are the preferred form of servicing for settlement areas to support protection of the environment and minimize potential risks to human health and safety. Within settlement areas with existing municipal sewage services and municipal water services, intensification and redevelopment shall be promoted wherever feasible to optimize the use of the services.

[22] Ms. Frieday further submitted the Subject Lands are underutilized within the Ryckman Neighbourhood. They are within a developing area, will make more efficient use of land and municipal services which already exist on Cielo Court and the lands are suitable for redevelopment and intensification as per the definition of intensification and residential intensification in the PPS 2020.

[23] Ms. Rogers’ review of the PPS 2020 identified the subject lands are within a “Settlement Area”. She stated that in section 1.1.3.3, the PPS authorizes Planning authorities to identify appropriate locations to accommodate housing supply through intensification and redevelopment taking into consideration existing building stock and area and the availability of suitable infrastructure and public service facilities.

[24] Ms. Rogers further submitted that the existing lot is underutilized, and the proposed development would allow for intensification that would utilize existing infrastructure.

[25] Ms. Rogers concludes that the proposal is consistent with the PPS.

[26] The Tribunal finds that the proposal is consistent with the policies of the PPS and represents an efficient use of land and the existing infrastructure.

GROWTH PLAN

[27] Ms. Frieday submitted A Place to Grow: Growth Plan or the Greater Golden Horseshoe, 2019 (“Growth Plan”) policies are based on several guiding principles including to prioritize intensification and higher densities and to make efficient use of land and infrastructure and support transit viability.

[28] Ms. Frieday further submitted:

- i) Section 2.2.2.3 of A Place to Grow states that all municipalities will develop a strategy to achieve the minimum intensification target and intensification throughout delineated built-up areas
- ii) Section 2.2.7 4 of A Place to Grow states that Greenfield Area targets shall be established and require the “achievement of a more *compact built form* in *designated greenfield areas* to the horizon of this Plan in a manner that is appropriate given the characteristics of the municipality and adjacent communities.

[29] Ms. Frieday opined that the consent applications and associated variances will contribute to established growth targets and will achieve a more compact built form that is appropriate given the characteristics of the Ryckman Neighbourhood and adjacent neighbourhoods. Furthermore, the requested variances will facilitate development that conforms to the Growth Plan.

[30] With regard to the Growth Plan, 2020 Ms. Rogers’ review of the Policy identified the subject lands are within the “Built up Area”. Within Section 2.2.1 Managing Growth, the policy directs growth to settlement areas within the delineated built boundary with

existing or planned municipal water and wastewater systems that can support the achievement of complete communities (2.2.1.2(a)). The proposal is to create two new lots within the built boundary with existing municipal water and wastewater services in an established neighbourhood.

[31] Ms. Rogers concluded that based on the preceding information, it was her opinion that the proposed applications conform to the Growth Plan, 2020.

[32] The Tribunal finds that the proposal conforms to the policies of the Growth Plan as it is supporting intensification, contributing to complete communities and providing a range of housing options.

URBAN HAMILTON OFFICIAL PLAN

[33] Ms. Frieday indicated that the Urban Hamilton Official Plan (“UHOP”) was adopted on July 9, 2009, approved by the Province on March 16, 2011, and took effect on August 16, 2013. The subject lands are both designated “Neighbourhoods” in sections “Urban Structure to the UHOP” and “Urban Land Use Designation”.

[34] Ms. Frieday submitted that in Section E.2.0, Urban Structure, Subsection E.2.6.7 states that:

Changes compatible with the existing character or function of the neighbourhood shall be permitted. Applications for development and residential intensification within Neighbourhoods shall be reviewed in consideration of the local context and shall be permitted in accordance with Sections B.2.4 – Residential Intensification, E.3.0 – Neighbourhoods Designation.

[35] In terms of the scale and design of new uses in the Neighbourhoods designation, Section E.3.0 Neighbourhoods Designation, Subsection E.3.2.13 states:

The City supports residential intensification on lands within the Neighbourhoods designation in accordance with Section B.2.4 – Residential Intensification Policies, F.1.14 – Division of Land, and other applicable policies.

[36] Ms. Frieday testified that for the Subject Applications, it is appropriate to first review Chapter F of the UHOP.

[37] Chapter F states: “The success of the Official Plan can only be achieved through effective implementation.” Further, Chapter F allows that the Act and other provincial regulations allow for a series of tools to fulfill the UHOP’s goals and objectives.

[38] Within Chapter F, the following subsections are applicable to the Applications:

Secondary Plans and Neighbourhood Plans,

- i) Section F.1.2 states that “Secondary plans are used to provide detailed and community specific guidance to growth and change in smaller geographic areas of the City”, and may be prepared as needed for planning districts, neighbourhoods, nodes, corridors or any other area of the City.
- ii) There is no Secondary Plan that applies to the Subject Lands.
- iii) Section F.1.2.7 states that “*Neighbourhood plans* are policies adopted by council resolution and do not form part of the Official Plan. Any proposal for development or redevelopment must conform to the designations, and policies in the Neighbourhood Plan.

[39] The Subject Lands are located in the Ryckmans Neighbourhood Plan and designated “Single and Double”.

[40] Ms. Frieday opined that the proposed single-detached dwellings comply with this designation.

1.4 Interpretation of the Official Plan

[41] Sections F.1.4.3 through F.1.4.8 provide goals, objectives and guides to assist in understanding the intent of the policies.

1.5 Zoning By-law

[42] Section F.1.5 states the City shall prepare a Zoning By-law that will implement the UHOP and that the Zoning By-law is a key tool component to ensure the City’s goals, objectives and policies are realized.

[43] In 2004/2005 the City took action to prepare a new Comprehensive Zoning By-law for the City. To date, the City has not incorporated revised, up-to-date residential zones and development standards in the new Comprehensive Zoning By-law No. 05-200.

[44] Zoning By-laws of the former municipalities remain in effect. By-law No. 6593 for the former City of Hamilton was adopted on July 25, 1950.

1.13 Minor Variance

[45] Section F.1.13.1 states that Council may appoint a Committee of Adjustment to authorize consents and variances to the Zoning By-law provided the consents and variances maintain the intent and purpose of the UHOP and any other requirements of the Act.

[46] In Ms. Frieday's opinion, the approval of the Subject Applications maintains the intent and purpose of the UHOP and other requirements of the Act.

1.14 Division of Land

[47] Section F.1.14.1.1 states that the division of land shall occur by registered plan of subdivision where: a new road or an extension to an existing road is required; and, it is deemed in the public interest for the proper and orderly development of lands.

[48] Ms. Frieday submits that the lands on the north side of Cielo Court do not require a new road or an extension as the road has been completed. Through the approval of past consent and minor variance applications on the north side of Cielo Court, the City has not indicated that a plan of subdivision is required for the proper and orderly development of the lands, being the rear portion of large lots that extend from Stone Church Road East to Cielo Court.

[49] Ms. Frieday further submits that section F.1.14.3.1 lists six conditions that must

be met for the creation of new lots through consent in the Neighbourhoods Designation:

- a) that the lots comply with the policies of the UHOP and the secondary plan, where one exists;
- b) the lots comply with existing Neighbourhood Plans;
- c) the lots are in conformity with the Zoning By-law or a minor variance is approved;
- d) the lots reflect the general scale and character of the established development pattern taking into consideration lot frontages and areas, building height, coverage, mass, setbacks, privacy and overview;
- e) the lots are fully serviced; and,
- f) the lots have frontage on a public road.

[50] Accordingly, Ms. Frieday opined the subject Consent Applications meet all six conditions provided the associated minor variance application is also approved. City staff did not dispute that the proposed lot creation complies with the UHOP and the intent of the Ryckman Neighbourhood Plan.

[51] Furthermore, according to Ms. Frieday, City staff are also not disputing the fact that the lots are fully serviced, front on a public road and reflect the scale and character of the established development pattern, considering lot frontages, lot areas, coverage, setbacks, etc.

[52] Ms. Frieday opined the Subject Consent Applications meet the conditions for the creation of new lots within the Neighbourhoods Designation contained within Section F.1.14.3.1 of the UHOP.

[53] Ms. Frieday testified that in Section B.2.4.5 of “Communities”, it states: “The City shall establish zoning that permits residential intensification generally throughout the built-up area, in accordance with this Plan.” To date, the City has neither established zoning that permits residential intensification on the Subject Lands nor on the other lots fronting Stone Church Road East that continue to be zoned in the 1950s “B” (Suburban Agriculture and Residential, etc.) District. Currently the Subject Lands have access to urban services within a completed local street, however, these existing services are not being efficiently utilized.

[54] Ms. Frieday informed the Tribunal that Section B.2.4.1.4 of the UHOP contains the criteria upon which to evaluate residential intensification developments.

[55] The six criteria in Section B.2.4.1.4 of the UHOP are:

- a) the relationship of the proposal to existing neighbourhood character so that it maintains, and where possible, enhances and builds upon desirable established patterns and built-form;
- b) the development’s contribution to maintaining and achieving a range of dwelling types and tenures;
- c) the compatible integration of the development with the surrounding area in terms of use, scale, form and character. In this regard, the City encourages the use of innovative and creative urban design techniques;
- d) the development’s contribution to achieving the planned urban structure as described in Section E.2.0 – Urban Structure;
- e) infrastructure and transportation capacity; and,
- f) the ability of the development to comply with all applicable policies.

[56] Regarding Section B.2.4.1.4 b), the configuration of the proposed new lots has been designed to match the existing lots immediately to the west as well as lots along the southern side of Cielo Court. The new lots replace a portion of the rear lotting along the northern side of Cielo Court with a front-yard to front-yard interface. The proposed new dwellings will enhance the residential character of Cielo Court with a compatible development of similar height, mass, scale, and density to that of the existing built-form.

[57] Regarding Section B.2.4.1.4 c) and d) with regard to maintaining and achieving a range of dwelling types and compatible integration of the new dwellings, the proposed consents and associated minor variances will permit development that mirrors the existing lotting pattern along the south side of Cielo Court and directly to the west of the Subject Lands.

[58] Regarding Section B.2.4.1.4 e), being the Subject Applications' contribution to the achieving of the planned urban structure, residential intensification within the Neighbourhoods designation is identified as part of the evolution of a neighbourhood as long as the intensification is compatible with and respects the surrounding built form and character.

[59] Regarding Section B.2.4.1.4 f) and g), with regard to infrastructure and transportation capacity and compliance with all applicable policies, Cielo Court is currently an underutilized street. As a cul-de-sac, Cielo Court does not carry through traffic. Furthermore, dwellings are only located on the south side of the road, which is neither an optimal use of the road nor existing water and wastewater services.

[60] Accordingly, Ms. Frieday opined that the Subject Applications meet the general criteria for residential intensification as per Section B.2.4.1.4 of the UHOP.

[61] Ms. Rogers, in regards to the UHOP, identified the subject lands as "Neighbourhoods" in Schedule "E" – Urban Structure and designated "Neighbourhoods" in Schedule "E-1" – Urban Land Use Designations in the UHOP.

[62] Ms. Rogers submitted that the subject lands are not within a Secondary Plan and are not subject to any Urban Area Specific Policies or Urban Site Specific Policies.

[63] Ms. Rogers evaluated the proposed consents against policies and specific subheadings within the UHOP as follows:

Neighbourhoods

[64] Ms. Rogers submitted the subject lands contain one single detached dwelling at a density of 4.9 units per hectare.

[65] A density of 7.8 units per hectare is proposed for the retained lands of the first consent and a density of 26.0 units per hectare is proposed for both the severed and retained lands of the second consent,

[66] The proposed densities therefore conform with Scale Policy E.3.4.4, which permits a maximum net residential density of 60 units per hectare on lands within the low-density residential areas of the Neighbourhoods designation.

Residential Intensification

[67] The subject lands are on the north side of Cielo Court, which contains a mix of large through lots fronting on Stone Church Road East and infill lots created through previous Consent applications.

[68] The south side of Cielo Court is developed with single detached dwellings.

[69] The proposed lot pattern, size, and frontages is consistent with the lots on the south side of Cielo Court and the infill lots created to date along the north side of Cielo Court

[70] Ms. Rogers opined that the Consent applications maintain the general intent of the policies in Section B.2.4 Residential Intensification.

[71] Ms. Rogers informed the Tribunal, that the lots on the south side of Cielo Court conform to the requirements of their existing “C” District zoning and were created through the comprehensive review and approval of the plan of subdivision registered as 62M-209.

[72] Ms. Rogers further submitted that the infill lots on the north side of Cielo Court are in the “B” District zoning and were created through consent applications.

[73] Ms. Rogers opined that the proposal would more appropriately be assessed through a Zoning By-law Amendment application.

Noise

[74] Ms. Rogers informed the Tribunal that Stone Church Road in this location is identified as a minor arterial road in Schedule C – Functional Road Classification in the UHOP. The consents are proposed for the purpose of a sensitive land use. In turn, Ms. Rogers opined a noise feasibility study, or noise study, or both, is required to be submitted for review and approval in order to conform to Policy B.3.6.3.7 Road and railway Traffic Noise and Vibration.

Natural Heritage

[75] Ms. Rogers outlined the subject lands contain existing trees which may conflict with the proposal development. As a result, a Tree Protection Plan and associated Landscape Plan which shows required compensation will be required to be submitted for review and approval in order to conform to Policy C.2.11.1 Tree Woodland Protection.

Lot Creation – Urban Area

[76] Ms. Rogers informed the Tribunal that within Section F.1.14.3.1, Urban Area Lot Creation policy, the proposed lots comply with the Neighbourhoods and Residential Intensification policies of the UHOP.

[77] Ms. Rogers reviewed additional policies within the UHOP.

Section F.1.14.3.1(b) The lots comply with existing Neighbourhood Plans:

[78] Ms. Rogers identified the lands as “Single and Double” within the Ryckmans Neighbourhood Plan, to which the proposal complies.

Section F.1.14.3.1(c) The lots are in conformity with the Zoning By-law or a minor variance is approved:

[79] Ms. Rogers opined that the proposed lots do not conform to the Zoning By-law and the variances necessary to facilitate the consents do not meet the four tests of subsection 45(1) of the Act.

Section F.1.14.3.1(d) The lots reflect the general scale and character of the established development pattern in the surrounding area by taking into consideration lot frontages and areas, building height, coverage, mass, setbacks, privacy and overview:

[80] Ms. Rogers confirmed that the lots reflect the general scale and character of the established development pattern, on the north side of Cielo Court.

Section F.1.14.3.1(e) The lots are fully serviced by municipal water and wastewater systems:

[81] Ms. Rogers informed the Tribunal that there are municipal services available on Cielo Court.

F.1.14.3.1(f) The lots have frontage on a public road.

[82] Along Cielo Court there is a 0.3 m reserve block, being part of Block 106, Registered Plan 62M-1209, that abuts the subject lands. The portion of the reserve block abutting the subject lands along Cielo Court must be lifted for the proposed lots to have frontage on a public road, and to permit the lots to connect to the municipal services available on Cielo Court.

[83] Ms. Rogers opined that the proposed consents conform to parts (b), (d), and (e) of F.1.14.3.1 and upon lifting the reserve block, will conform to part (f).

[84] Ms. Rogers further added that the proposed consents do not conform to F.1.14.3.1 (c), as the lots are not in conformity with the Zoning By-law and the variances required to facilitate the consents do not meet the four tests of subsection 45(1) of the Act.

[85] Ms. Rogers added that the proposed lots would more appropriately be assessed through a Zoning By-law Amendment application.

[86] The Tribunal is satisfied that the Applications for Consent have had regard for the criteria set out in s. 51(24) and s. 2 of the Act. There were no concerns identified with the criteria. The applications will contribute to the provision of a full range of housing and represent orderly development. The lands are appropriate for the applications and the consents conform to the Official Plan.

ZONING BY-LAW NO. 6593, AS AMENDED

[87] Through her testimony, Ms. Freiday informed the Tribunal the Subject Lands remain zoned in the former City of Hamilton Zoning By-law No. 6593. This Zoning By-law was passed on July 25, 1950. The Office Consolidation of Zoning By-law No. 6593 on the City's website is dated April 12, 2019.

[88] At the time the Subject Applications were submitted, the Subject Lands were zoned "B" (Suburban Agriculture and Residential, etc.) District.

[89] On December 11, 2019, City Council passed Zoning By-law No. 19-307. This By-law adds the Site-Specific notation S-1787 and S-1788 to 10 residential zones in the City within Wards 1, 8 and part of 14.

[90] S-1787 and S-1788 modify regulations in Section 19 of the Zoning By-law to

provide alternative zoning by-law standards on a temporary basis for three years to facilitate the creation of an accessory dwelling in single detached and two-family dwellings as part of the on-going Low Density Rental Housing Licensing Pilot Project and Zoning By-law Reform project. The Temporary Use By-law is intended to serve as a bridge between providing relief to existing regulations in an in-effect Zoning By-law (such as By-law No. 6593) and future regulations for Second Dwelling Units in the City Zoning By-law No. 05-200.

[91] The Subject Lands are now zoned B/S-1788. The modification permits the conversion of single detached dwellings in the “B” District to include one additional dwelling unit, subject to regulations in Section 19 of Zoning By-law No. 6593. Ms. Friday cited as an example, for conversion the minimum lot area had to be 270 sq m, but has now been changed to 200 sq m.

[92] Ms. Friday opined, given that this modification applies to the “B” District, it is recognized that lands that remain zoned “B” District in the urban area may in fact be considerably smaller than 1,100 sq m and some may be 200 sq m. Therefore, smaller lots, 200 sq m and above, meet the lot area criterion for a residential conversion.

[93] Subsection 8(1) of Zoning By-law No. 6593, titled Requirements as to Use, states that the residential uses permitted in the “B” District include a single detached dwelling, a foster home, a residential care facility and a retirement home.

[94] The following “B” District development standards apply (Section 8, Subsection (2), (3) and (4) of Zoning By-law No. 6593):

- a) a minimum lot area of at least 1,100 sq m;
- b) a minimum lot width of at least 20 m;
- c) a minimum front yard depth of at least 12 m;

- d) a minimum rear yard depth of at least 9 m;
- e) a minimum side yard depth of at least 3 m; and,
- f) a maximum height of 2.5 storeys (11 m).

[95] In Ms. Frieday's opinion, given the up-to-date UHOP policies in 2020, the development standards for the "B" District are not appropriate for the Subject Lands, especially given the immediate context.

[96] Ms. Frieday submitted that the test for a minor variance in terms of the Zoning By-law is whether the "general intent and purpose" of the Zoning By-law is maintained. In her opinion, the general intent and purpose of the Zoning By-law for the Subject Lands is to provide for single detached dwellings that are compatible with other residential uses in the area, along with other compatible uses.

[97] Ms. Frieday opined, the variances clearly maintain that general intent and purpose of the Zoning By-law.

[98] Ms. Frieday further submitted that the consents and variances will continue to provide for single detached dwellings that are compatible with other residential uses in the vicinity. The two lots will permit only single detached dwellings with lot areas and setbacks that are not only compatible with other lots in the area, but in fact are very consistent with the established development pattern of lots fronting on Cielo Court.

[99] Ms. Frieday stated that the request is to vary the development standards to reflect the general scale and character of the existing development pattern in the immediate area and beyond. The variances would not vary the general intent and purpose of the Zoning By-law.

[100] Ms. Frieday informed the Tribunal that the existing development pattern was established through the registration of 10 phases of a plan of subdivision south of Cielo

Court, draft approved in 1987 and referred to as DiCenzo Gardens.

[101] The existing lot pattern was also established through the approval of consent applications and minor variance applications on the north side of Cielo Court.

[102] The City initiated rezoning of City lands, through the new Comprehensive Zoning By-law project, has not yet included new residential zones. New residential zones may not come into effect for two or more years.

[103] Ms. Frieday opined that the minor variance application to permit the establishment of lot sizes and setbacks for new dwellings, more in keeping with the efficient use of urban serviced land and the surrounding development pattern should be permitted to proceed, similar to the division of land and minor variances approved for 46 and 51 Cielo Court which are immediately to the west of the Subject Lands.

[104] Ms. Frieday further opined that there is nothing that would be gained by requiring a rezoning to achieve precisely the same result.

Zoning By-law No. 05-200

[105] Ms. Frieday informed the Tribunal that the City's new Comprehensive Zoning By-law No. 05-200 came into effect on May 25, 2005 and is being implemented in stages. This Zoning By-law applies to the entire City of Hamilton and is replacing the Zoning By-laws of the former municipalities.

[106] The final phase of the Comprehensive Zoning By-law project is now focused on new residential zones in the urban area. The purpose of this project is to implement the policies of the UHOP to create consistent residential zones across the entire urban area of the City of Hamilton.

[107] Ms. Frieday stated that on the City's website, Zoning By-law No. 05-200 "represents a living document that will evolve over time; a flexible, up-to-date document,

reflecting current planning trends and priorities; and forward thinking – future ready.” Zoning By-law No. 6593, and in particular the “B” District zone, does not reflect the up-to-date UHOP, current planning trends and forward thinking.

[108] Ms. Frieday further stated that in due course, the new residential zones to be established by By-law No. 05-200 will apply to the Subject Lands. However, it is not appropriate to require a landowner to await this process nor would a site-specific re-zoning be any more comprehensive or broad-based than the proposed variances.

[109] Ms. Frieday again opined that there is no planning merit to simply requiring a different form of application to achieve the same results.

Former City of Hamilton Zoning By-law No. 6593

[110] Ms. Rogers informed the Tribunal that Site Specific “S- 1788” modifies Section 19. (1) – Residential Conversion Requirements provisions for Single Family Detached Dwellings.

[111] She further submitted, in the “B” District, the minimum required lot area is 1,100.0 sq m and the minimum required lot width is 20 m. The lands proposed to be retained with frontage on Stone Church Road East (Consent application HM/B-19:86) have a lot area of 1290 sq m and a lot width of 22.86 m and therefore conform to these requirements.

[112] The lands proposed to be severed and retained with frontage on Cielo Court (Consent application HM/B-19:87) both have a lot area of 384 sq m and a lot width of 11.42 m and therefore do not conform to these requirements.

SUMMARY OF FINDINGS

[113] The Tribunal, after considering the uncontested testimony of the witnesses, is satisfied that the proposed development has regard for the matters of provincial interest

as set out in s. 2 of the Act.

[114] The Tribunal accepts the evidence that the Applications for Minor Variance as requested before the Tribunal satisfy the four tests of a minor variance.

[115] The Tribunal finds that the requested variances maintain the general intent and purpose of the OP. The proposal represents intensification that is consistent with the policies of the OP and implements appropriate urban design policies to create a compatible development that enhances the streetscape and area.

[116] The Tribunal finds that the variances maintain the general intent and purpose of the Zoning By-law. The relief requested arises in large measure as a result of the infill lot sizes and configurations. It will be noted once again that lots created through consent and similar minor variances were approved to the west of the subject property including 47 and 51 Cielo Court which is immediately adjacent to the Subject Land. The Tribunal acknowledges the City is of the opinion that a Zoning By-law Amendment should be required. In the Tribunal's view, with previous applications for consent and minor variances being approved within the exacting vicinity, a Zoning By-law Amendment would be an onerous and unfair task on the property owners who may want to make future changes to their properties.

[117] The Tribunal is of the view that the request is desirable for the appropriate development and use of the Subject Lands. The introduction of single detached dwellings would enhance the existing underutilized land while preserving and completing the Cielo Court streetscape. The requested variances will result in progressive planning and design principles closely comparable the surrounding lots and existing homes.

[118] The Tribunal is satisfied that the requested variances are minor in nature, due to the fact that they will enable a development of a streetscape that is harmonious with the surrounding area. The variances enable the commitment to complete and maintain the development form built previously on Cielo Court. As similar variances had previously

been approved by the COA, the request will not create any adverse impact on the adjoining properties and will complement the neighbourhood.

[119] In Attachment 1 to this Decision, it has been demonstrated to the Tribunal the previous successful allowances of lot separations on Cielo Court. The subject property being numbered “152” is immediately adjacent to lot “146”. Through similar consent and variance applications, two (2) new lots were created from the original parcel to form “47” and “51” Cielo Court.

ORDER

[120] The Tribunal Orders that the appeals are allowed. The provisional consent is to be given and the variances to By-Law 6593 are authorized.

“C. Tucci”

C. TUCCI
MEMBER

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

Local Planning Appeal Tribunal

A constituent tribunal of Ontario Land Tribunals

Website: www.olt.gov.on.ca Telephone: 416-212-6349 Toll Free: 1-866-448-2248



● Site Location



City of Hamilton

Committee of Adjustment

Subject Property



152 Stone Church Road East,
Hamilton (Ward 8)

File Name/Number:
HM/A-19:399

Date:
November 26, 2019

Technician:
AL

Map Not To Scale

Appendix "A"



Hamilton

PLANNING AND ECONOMIC DEVELOPMENT DEPARTMENT

CERTIFIED A TRUE COPY

 SECRETARY-TREASURER