

Ontario Municipal Board
Commission des affaires municipales
de l'Ontario



ISSUE DATE: December 22, 2014

CASE NO(S): PL140431

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

Applicant and Appellant: 19208292 Ontario Inc.
Subject: Consent
Property Address/Description: 145 Bathgate Drive
Municipality: City of Toronto
Municipal File No.: B005/14SC
OMB Case No.: PL140431
OMB File No.: PL140431

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

Applicant and Appellant: 19208292 Ontario Inc.
Subject: Minor Variance
Variance from By-law No.: Centennial Community By-Law Number 12077
Property Address/Description: 145 Bathgate Drive
Municipality: City of Toronto
Municipal File No.: A-023/14SC
OMB Case No.: PL140431
OMB File No.: PL140432

Heard: December 8, 2014 in Toronto, Ontario

APPEARANCES:

Parties

Counsel

19208292 Ontario Inc.

P. Gross

City of Toronto

B. O'Callaghan

**MEMORANDUM OF ORAL DECISION DELIVERED BY R. G. M. MAKUCH ON
DECEMBER 8, 2014 AND ORDER OF THE BOARD**

[1] 19208292 Ontario Inc. (the Applicant/Appellant) wishes to sever the subject property into two lots and applied for the authorization of a variance to reduce the minimum required lot area of the proposed lot to be conveyed from 696 square metres ("m²") to 556 m² under By-law No. 12077 and By-law No. 569-2013. The proposed lot to be conveyed would have a frontage of 15 metres ("m").

[2] The application was refused by Committee of Adjustment resulting in this appeal.

[3] To succeed, an applicant for authorization of variances must satisfy the Board that the four tests set out under s. 45(1) of the *Planning Act* ("Act") are met by the application. The four tests require the applicant to satisfy the Board that the variances:

- 1) Maintain the general intent and purpose of the official plan;
- 2) maintain the general intent and purpose of the zoning by-law;
- 3) are desirable for the appropriate development or use of the land, building or structure; and
- 4) are minor.

[4] The Board must also be satisfied that a plan of subdivision is not necessary for the orderly development of the municipality pursuant to s. 53(1) of the Act and that the application for consent to sever meets the criteria set out in s. 5 (24) of the Act.

[5] The City of Toronto ("City") appeared in opposition to the appeals but did not proffer any evidence.

[6] The only evidence before the Board consists of the testimony of Paul Johnston, the professional land use planning consultant for the Applicant/Appellant. The Board is satisfied based on that evidence that the four tests under s. 41(1) of the Act have been met by this application and that a plan of subdivision is not necessary for the orderly

development of the municipality. The appeals should be allowed for the reasons that follow.

[7] Mr. Johnston reviewed the application for consent to sever in relation to the criteria set out in s. 51(24) of the Act and the Board is satisfied from the un-contradicted opinions expressed by Mr. Johnston that these criteria have been adequately addressed by the application

[8] With respect to the variance sought, the Board is firstly satisfied that it meets the general intent and purpose of the Official Plan. The subject property is located in a "Neighbourhoods" designation. "Neighbourhoods" are considered physically stable areas made up of residential uses in lower scale buildings such as detached houses, and that the development criteria set out at s. 4.1.5 of the Official Plan applies which states that:

5. Development in established Neighbourhoods will respect and reinforce the existing physical character of the neighbourhood, including in particular:
 - a) patterns of streets, blocks and lanes, parks and public building sites;
 - b) size and configuration of lots;
 - c) heights, massing, scale and dwelling type of nearby residential properties;
 - d) prevailing building type(s);
 - e) setbacks of buildings from the street or streets;
 - f) prevailing patterns of rear and side yard setbacks and landscape open space;
 - g) continuation of special landscape or built-form features that contribute to the unique physical character of a neighbourhood; and
 - h) conservation of heritage buildings, structures and landscapes.

[9] Mr. Johnston has carried out an area study of lots in the vicinity, and the Board is satisfied that the size and configuration of the lots proposed are appropriate and will respect and reinforce the existing character of the neighbourhood. There is a range of lot sizes in the area from 510 m² to 929 m² and lot frontages from 15 m to 18 m. The

proposed retained lot will have a frontage of 17.86 m and the proposed conveyed lot will have a frontage of 15 m. The proposed retained lot will have an area of 696.32 m² and the conveyed lot will have an area of 556.68 m².

[10] The Board also notes that according to Mr. Johnston, the City's Planning Department has also recently recommended approval of smaller lots within Mr. Johnston's study area as small as 501.6 m² adjacent to a larger lot having an area of 768 m².

[11] The configuration of the lots will be the same as the lots at 135 Bathgate Drive and 5 Ivan Street across from the subject property.

[12] The Board is also satisfied that the applications are consistent with the Provincial Policy Statement (2014) and is in conformity with the Growth Plan. These will result in one additional housing unit with access to existing municipal infrastructure as well as modest financial benefits to the City in the form of additional realty taxes and development charges.

[13] With respect to the zoning by-law, the Board is also satisfied that the application meets its intent and purpose and notes that the intent and purpose of the zoning by-law is to protect this stable and mature low density character of the neighbourhood. The proposed lots will not affect that stability.

[14] The Board is also satisfied that the variance is desirable for the appropriate development of the property as it will add a new dwelling consistent with the existing built form in the neighbourhood and represents intensification as contemplated by the Growth Plan although the area is not specifically targeted for intensification.

[15] The Board is satisfied that the variance sought is minor in that it will not cause any undue adverse impacts on the abutting properties or on neighbourhood in general.

[16] Accordingly, the appeal is allowed and provisional consent is hereby granted

subject to the conditions set out in Attachment 1 (Exhibit 1, Tab 15) hereto.
Furthermore, the variance as applied for is also hereby authorized.

"R. G. M. Makuch"

R. G. M. MAKUCH
MEMBER

Ontario Municipal Board

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ATTACHMENT 1

Recommended Conditions of Consent
145 Bathgate Drive – File B005/14SC

- (1) Confirmation of payment of outstanding taxes to the satisfaction of Revenue Services Division, Finance Department.
- (2) Municipal numbers for the subject lots indicated on the applicable Registered Plan of Survey shall be assigned to the satisfaction of Survey and Mapping Services, Technical Services.
- (3) Two copies of the registered reference plan of survey integrated to NAD 83 CSRS (3 degree Modified Transverse Mercator projection), delineating by separate Parts the lands and their respective areas, shall be filed with City Surveyor, Survey & Mapping, Technical Services.
- (4) Three copies of the registered reference plan of survey satisfying the requirements of the City Surveyor, shall be filed with the Committee of Adjustment.
- (5) The applicant must obtain sightline clearance for the intersection of Bathgate Drive and Ivan Road, for motorists travelling southbound on Ivan Road and must contact Mr. Al Burrows at 416-396-7147 in Traffic Operations, Transportation Services in this regard and will be required to, at his expense, remove any sightline obstructions such as trees and shrubs etc., in order to re-instate safe visibility for vehicles and pedestrians, to the satisfaction of the General Manager of Transportation Services.
- (6) The owner shall submit a detailed Arborist Report and/or a Tree Inventory for City-owned trees of all sizes and privately-owned trees measuring 30 cm diameter or greater measured at 1.4 metres above ground level located on and within six metres of the property. The owner may be required to submit a Tree Protection Security Deposit for City-owned trees and/or apply for a Tree Injury/Removal Permit for affected trees, as identified in the Arborist Report or Tree Inventory, or as determined by Urban Forestry staff, in accordance with the City of Toronto Municipal Code Chapter 813, Article II, Trees on City Streets, and Article III, Private Tree Protection.
- (7) The owner shall provide to Urban Forestry a payment in the amount of \$583.00 per lot in the form of a certified cheque, bank draft or money order as cash in lieu to cover Urban Forestry's costs of planting one new street tree either on the street allowance adjacent to each of the new lots or elsewhere in the community. The payment shall be made payable to the Treasurer, City of Toronto and sent to Urban Forestry, 70 Nashdene Road, Toronto, M1V 2V2.
- (8) The Owner shall obtain a Final and Binding Decision on minor variance application A023/14SC, to the satisfaction of the Deputy Secretary-Treasurer, Committee of Adjustment, Scarborough Panel.
- (9) Within ONE YEAR of the date of the giving of this notice of decision, the applicant shall comply with the above-noted conditions and prepare for electronic submission to the Deputy Secretary-Treasurer, the Certificate of Official, Form 2 or 4, O. Reg. 197/96, referencing either subsection 50(3) or (5) or subsection 53(42) of the *Planning Act*, as it pertains to the conveyed land and/or consent transaction.