

Ontario Municipal Board
Commission des affaires municipales
de l'Ontario



ISSUE DATE: November 21, 2014

CASE NO(S): PL140107

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

Applicant and Appellant: Amanda Zingaro, Daryl Coelho,
Jennifer Zingaro & Justin Johnston
Subject: Consent
Property Address/Description: 16 Gordon Drive/Part of Lot 9, Concession 8
(Lot 40, Registered Plan 4735)
Municipality: City of Vaughan
Municipal File No.: B031/13
OMB Case No.: PL140107
OMB File No.: PL140107

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

Applicant and Appellant: Amanda Zingaro, Daryl Coelho,
Jennifer Zingaro & Justin Johnston
Subject: Minor Variance
Property Address/Description: 16 Gordon Drive/Part of Lot 9, Concession 8
(Lot 40, Registered Plan 4735)
Variance from By-Law: Zoning By-Law No. 1-88
Municipality: City of Vaughan
Municipal File No.: A351/13
OMB Case No.: PL140107
OMB File No.: PL140108

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

Applicant and Appellant: Amanda Zingaro, Daryl Coelho,
Jennifer Zingaro & Justin Johnston
Subject: Minor Variance
Property Address/Description: 16 Gordon Drive/Part of Lot 9, Concession 8
(Lot 40, Registered Plan 4735)
Variance from By-Law: Zoning By-Law No. 1-88
Municipality: City of Vaughan
Municipal File No.: A352/13
OMB Case No.: PL140107
OMB File No.: PL140109

Heard : October 10, 2014 in Vaughan, Ontario

APPEARANCES:

Parties

Amanda Zingaro, Daryl Coelho,
Jennifer Zingaro & Justin Johnson

City of Vaughan

Counsel*/Representative

Tony Zingaro

Dawne Jubb*

DECISION DELIVERED BY JASON CHEE-HING AND KAREN KRAFT SLOAN AND ORDER OF THE BOARD

INTRODUCTION

[1] Amanda Zingaro, Daryl Coelho, and Jennifer Zingaro and Justin Johnston (“Applicants/Appellants”) made an application for consent to sever a lot at 16 Gordon Drive (“subject property”), in the City of Vaughan (“City”) into two undersized residential lots, as well as applications for two variances, one for each lot to By-law No. 1-88 (Exhibit 6A, Tab 2, Tab 3 and Tab 4). The Applicants/Appellants intend to construct a detached two-storey dwelling on each of the two lots. The retained lot (Part A) is east of the severed lot (Part B). The current house will be demolished. The Committee of Adjustment denied the applications and the Applicants/Appellants appealed to the Board pursuant to s. 53(19) and s. 45(12) of the *Planning Act* (“Act”).

THE CONSENT AND VARIANCE APPLICATIONS

[2] **Retained – Part A**

Address to be assigned

Part A has a width of 10.50 metres (“m”), a depth of 37.53 m, and an area of 473.6 square metres (“sq m”). The existing dwelling will be demolished and a

new two-storey detached dwelling will be constructed, requiring the following variance to the Zoning By-Law:

- The minimum lot frontage requirement for the retained lands is 12.0 m.
- The proposed lot frontage for the retained lands is 10.50 m.

[3] **Severed – Part B**

Address to be assigned

Part B has a width of 9.91 m, a depth of 37.53 m, and an area of 360.7 sq. m. The existing dwelling will be demolished and a new two-storey detached dwelling will be constructed, requiring the following variance to the Zoning By-Law:

- The minimum lot frontage requirement for the severed lands is 12.0 m.
- The proposed lot frontage of the severed lands is 9.91 m.

[4] The City Planning and Development Department did not support the consent application or the associated minor variances.

SUBJECT PROPERTY

[5] The subject property is located west of Kipling Avenue on Gordon Drive, a short street that terminates at the CP Rail Road lines. The subject property has a lot frontage of 19.81 m, a depth of approximately 35.16 m and an area of 846 sq m. The subject property is part of a small enclave of modest-sized residential dwellings, built in 1950's on large lots. At the time, these lots would have been referred to as "self-sufficient lots" as they were large enough to accommodate private wells and septic systems. The existing home on the subject property is a small one-storey bungalow. Housing in the immediate area includes original homes built around the same time as the one on the subject property as well as newer homes.

[6] Kipling Avenue to the west of the subject property is a busy street, with a mix of residential and commercial uses, along with new development. Single- and semi-detached homes and townhouses line both sides of the street, with a row of older townhouses located on the west side of Kipling Avenue. These older townhouses are separated from the subject property by a laneway and a maintenance shed used by the townhouse development abuts the east side of the subject property.

[7] The subject property is zoned R3 residential under By-Law No. 1-88.

BOARD FINDINGS AND REASONS

[8] William Dolan and Gillian McGinnis both qualified planners gave expert land use planning evidence on behalf of the Applicants/Appellants and the City respectively.

[9] It was Mr. Dolan's planning opinion that the requested consent had appropriate regard for the criteria set out in s. 53(24) of the Act and that the requested variances for both the retained and the severed lots meet the four statutory tests under s. 45(1) of the Act. Ms. McGinnis did not agree with Mr. Dolan's planning opinion on both the requested consent and associated minor variances. It was Ms. McGinnis' planning opinion that the application for consent failed s. 51(24)(f) of the Act with regard to dimension and shapes of the proposed lots. It was her opinion that the requested variances should be denied as they failed all four of the tests under s. 45(1) of the Act.

[10] The Board after carefully reviewing the Parties' evidence and submissions makes the following findings.

[11] The expert planning witnesses identified significantly different study areas during the hearing. In Mr. Dolan's opinion the study area or as he referenced it, the area of influence, should be described by a set of boundaries east of Kipling Avenue, south of Gordon Drive, west at the CP Railway Line, and north of Hurricane Avenue. This area of influence includes a mix of residential and commercial uses, as well as a wide variety of housing types, single- and semi-detached homes, townhouses and one-

and two-storey dwellings. Mr. Dolan provided visual evidence, which established reinvestment through renovation and new build construction in certain parts of this area of influence, as well as the existence of original, older housing stock (Exhibit 5A). He also submitted that different planning instruments control this area of influence. For example, the entire area, including the subject property, is covered by an official plan amendment (“OPA”) No. 94, which is intended to incorporate a land severance policy into the City’s Official Plan (“OP”) (Exhibit 6A, Tab 22). While another planning instrument, OPA No. 695 excludes the subject property as it covers lands contained within the Kipling Avenue Corridor Study Area (“Kipling Corridor Study”) (Exhibit 4G) and the subject property is outside those boundaries.

[12] Ms. McGinnis’ opinion was that the study area should be much smaller and not include lands within the Kipling Corridor Study. Thus the western edge of Kipling Corridor Study would demarcate the eastern boundary of her study area and the southern boundary would include both sides of Gordon Drive, the western boundary would stop at the CP Rail Line and the northern boundary would include both sides of Hurricane Avenue (Exhibit 8A). Ms. McGinnis presented oral and visual evidence, which established her study area as being homogenous and comprised of single-detached homes on large lots of similar shape and dimensions. In addition, Ms. McGinnis’ study area is covered by the same planning instruments and the area is entirely zoned R3 residential.

[13] The Board finds that defining the study area is a central consideration for analyzing the planning evidence and weighing the divergent expert land use opinion as these significantly different study areas result in substantially different neighbourhood characteristics. Neighbourhood character is a pivotal element in shaping the context in which this application must be considered.

[14] Mr. Dolan provided in evidence the adjacent land use policy s. 2.1 of OPA No. 94 (Exhibit 6A, Tab 22). It is his opinion that this policy supports the rationale that he has used to define his area of influence, which he would like the Board to use in its deliberation of this application. Section 2.1, Adjacent Uses provision states:

Regard should be had for the compatibility of the proposed size, shape and use of the lot to be created with the present and potential uses in the adjacent areas.

[15] It is Mr. Dolan's opinion that the character of adjacent areas should be incorporated in any decision on the appropriateness of the consent request, as set out in s. 2.1 of OPA No. 94. It is Mr. Dolan's opinion that adjacent areas along Kipling Avenue as well as those to the east of Kipling Avenue and to the south of Gordon Drive, and those to the north of Hurricane Avenue form these adjacent areas and therefore should be captured within the boundary of what he defines as the area of influence.

[16] Ms. McGinnis submitted that s. 2.1 of OPA No. 94 requires that when making land severance decisions one must have "regard to" the compatibility of the proposed site to adjacent areas (Exhibit 6A, Tab 22).

[17] In presenting oral and visual evidence on the Kipling Avenue Corridor Study Area ("Kipling Corridor Study"), Ms. McGinnis submitted to the Board that the City had regard to an "Area of Influence" that extended well outside the Kipling Corridor Study in order to understand the impact of this wider area of influence on the function and success of the Kipling Avenue corridor (Exhibit 6B, Tab 30). This wider area of influence included the subject property. In addition, Ms. McGinnis proffered evidence on OPA No. 695, which provides the planning framework to guide the long-term vision for the Kipling Corridor Study. She testified that while surrounding areas were taken into account these surrounding areas were deliberately left out of the Kipling Corridor Study and as a result not included as part of the lands governed by OPA No. 695.

[18] It is Ms. McGinnis' opinion that the lands within the Kipling Corridor Study should not be included in her study area. In addition it is her opinion that her study area is a reflection of the homogeneity of residential housing that being single-detached homes on lots with similar shape and dimensions.

[19] The Board is persuaded by Ms. McGinnis' testimony and accepts her study area as the appropriate area when considering the potential adverse impacts of the requested consent and associated minor variances.

[20] The Board finds that a salient test for deciding between the study areas put forward by both expert planning witnesses is the relationship of the subject property to the lands within the Kipling Corridor Study. The Board agrees with Ms. McGinnis, in this instance, that the City made a conscious effort to examine lands in an extended area of influence to determine their impact on and the role that they play in the development of the Kipling Corridor but decided to exclude them from OPA No. 695. While the subject property is part of a larger area adjacent to the Kipling Corridor Study, the subject property was consciously excluded as the result of a deliberative planning process, which has been shown through Ms. McGinnis' evidence to be consistent over time with the zoning development examples that the City planner provided in evidence and other planning instruments that were replaced by OPA No. 695.

[21] It was Ms. McGinnis's opinion that the proposal does not meet consent criteria provision s. 53(24)(f) of the Act, with respect to the dimensions and shapes of the lot. Ms. McGinnis provided oral and visual planning evidence to demonstrate that the proposed severance would result in two lots with significantly smaller frontages than any other that exists within her study area. She testified that lots within her study area approved for severance have frontages that exceeded the minimum ZBL standard of 12 m. It is Ms. McGinnis' opinion that the proposed size and shape of the severed lots are not compatible with the existing lotting fabric of the neighbourhood and thus fail the criteria provision for severance as set out in s. 53(24)(f) of the Act.

[22] Mr. Dolan disputed Ms. McGinnis' opinion that the proposed severance fails the criteria provision in s. 53(24)(f) of the Act, in that the proposed lots are compatible to the dimensions and shapes of lots within the area of influence as it contains a diversity of lot dimensions and shapes. It was his testimony that the neighbourhood is comprised of older townhouses adjacent to the subject property on the west side of

Kipling Avenue with new townhouses on the east side. Mr. Dolan's area of influence contains semi-detached as well as single-detached one- and two-storey dwellings, as well as older, smaller bungalows similar to that on the subject property.

[23] Further it is Mr. Dolan's opinion that the subject property is located in a transition area, as it marks the end of the older townhouse development on the west side of Kipling Avenue and the beginning of the larger lots and single detached homes along Gordon Drive. He pointed to OPA No. 695 that includes policies that support the creation of transitional areas. He drew comparisons to the existing townhouse development on Chavender Place, which in his opinion serves as a transition area.

[24] Ms. McGinnis disputed Mr. Dolan's position that the subject property represents a transition area, as no applicable policy exists in the planning instruments that govern the subject property. Ms. McGinnis' opinion is that the subject property is not in a transition area as there are too few homes on Gordon Drive, which is a short street that terminates at the CP Rail Lines. It is her opinion that it would be impossible to say where the transition area ended.

[25] It is the Board's finding that Gordon Drive is not a transition area as Mr. Dolan had argued. In this regard the Board prefers the planning evidence of Ms. McGinnis.

[26] The Board finds that that a severance of the subject property would result in two lots that differ significantly from the existing lot fabric. The Board finds that the proposed consent would result in two lots that would not be consistent with the physical character of the neighbourhood.

[27] For all these reasons, the Board finds that the proposal fails to have appropriate regard to criteria s. 51(24)(f) of the Act.

[28] While the Board heard evidence from both planners on the associated minor variances these variances are contingent on the Board granting the consent. The Board has already found that the requested consent to sever fails to have appropriate

regard to the criteria found in s. 51(24) of the Act. As such, the minor variance appeal is denied.

ORDER

[29] For the reasons given, the Board orders that the consent and minor variance appeals are dismissed.

“J. Chee-Hing”

J. CHEE-HING
MEMBER

“Karen Kraft Sloan”

KAREN KRAFT SLOAN
MEMBER

Ontario Municipal Board

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