

ISSUE DATE:  
**July 24, 2013**



Ontario  
Ontario Municipal Board  
Commission des affaires municipales de l'Ontario

RECEIVED  
-07-29 2013  
COM OF ADJUSTMT  
PL130174

IN THE MATTER OF subsection 53(19) of the *Planning Act*, R.S.O. 1990, c. P. 13, as amended

Appellant: John and Debbie Macnamara  
 Applicant: Waterloo Heights Property Limited  
 Subject: Consent  
 Property Address/Description: 25 Howard Blvd.  
 Municipality: City of Hamilton  
 Municipal File No.: B-103/12  
 OMB Case No.: PL130174  
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<b>OFFICE OF THE CITY CLERK</b>	
JUL 26 2013	
REC'D BY <u>C. Dalrymple</u>	DATE
REF'D TO <u>P. Mallard</u>	DATE
REF'D TO <u>J. McCabe</u>	DATE
REF'D TO <u>M. Kowalski</u>	DATE
<u>L. Bernier</u>	
ACTION	

**APPEARANCES:**

<u>Parties</u>	<u>Counsel*/Agent</u>
Waterloo Heights Property Limited	Arlene Iantomasi
John and Debbie Macnamara	

**DECISION DELIVERED BY C. CONTI AND ORDER OF THE BOARD**

**INTRODUCTION**

[1] This is the decision for an appeal by John and Debbie Macnamara ("Appellants") against the approval by the Committee of Adjustment of the City of Hamilton of an application by Waterloo Heights Property Limited ("Applicant") to create an additional lot on a property at 25 Howard Boulevard in Waterdown.

[2] The subject property is within a residential area characterised by large lots. The property has a frontage on Howard Boulevard of approximately 113 feet and a depth of 132 feet. A dwelling currently is located on the property.

[3] The Applicant proposes to sever the property in half to create two lots each with frontage of 56.5 feet. The Applicant proposes to construct a new dwelling on each lot. Each dwelling is planned to have a gross floor area of approximately 2625.3 square feet.

[4] The Appellants reside on the lot immediately south of the subject property.

#### **ISSUE**

[5] The main issue in this appeal is whether the proposed consent complies with the provisions of the applicable planning documents and with s. 51(24) of the *Planning Act*.

#### **EVIDENCE**

[6] The Appellants provided evidence on their own behalf.

[7] The Board heard evidence from Ms. Iantomasi on behalf of the Applicant.

[8] No expert evidence was provided in relation to this appeal.

[9] The City of Hamilton did not appear and provided no evidence.

#### **RELEVANT FACTS**

[10] The Board heard no planning opinion evidence in relation to this appeal. However, from the submissions of the parties and from the appeal record, the Board understands that the following facts are relevant.

[11] The subject property is designated as Urban Residential in the Hamilton Official Plan. The designation allows the residential use, and detached and semi-detached single dwellings. The Official Plan includes policies to provide for intensification through a number of measures including development on newly created lots.

[12] The zoning of the property is residential the Hamilton Zoning By-law. However, the exact zoning category of the property is not clear from the evidence. From the Appellants' testimony and the conditions applied by the Committee of Adjustment the property needs to be rezoned if the severance is granted.

#### **ISSUES, ANALYSIS AND FINDINGS**

[13] The Board has carefully considered the submissions of the parties.

[14] The Appellants contended that the proposed severance will create a smaller sized lot that is out of character with the other properties in the neighbourhood.

Furthermore, the Appellants maintained that the proposal would cause increased traffic and a need for parking in an area where there are concerns for sight lines and safety. The Appellants also expressed concern about the potential loss of trees on the subject property.

[15] The Applicant maintained that the proposed consent is appropriate, it will fit with the character of the area, and it meets all of planning requirements. The proposal represents an opportunity for intensification of the residential use. The Applicant noted that little traffic or demand for parking will be created by the addition of one lot. The Applicant contended that every effort will be made to protect significant trees on the property and pointed out that a rezoning and site plan are required for the proposal.

[16] The Board must consider the proposal in the context of the provisions of the *Planning Act*, in particular s. 51(24). The parties provided little evidence to directly address the provisions of the Act. However, from a review of the Committee of Adjustment decision (Exhibit 3) the Board can conclude that in the Committee's opinion the proposed consent complies with the relevant provisions of the Official Plan and that has regard to s. 51(24) of the *Planning Act* subject to a number of conditions.

[17] The Appellants contended that the area is characterized by larger lots and that restrictions were placed upon creating new lots in order to maintain this character. However, the Applicant indicated that there had been other severances approved in the immediate area, which the Appellants acknowledged. The Applicant provided evidence that there are other lots in the immediate area of similar size to the lots that will result from the severance (Exhibit 2, p. 2).

[18] The Appellants raised concerns about safety related to traffic associated with the additional lot and noted that the Provincial Policy Statement (PPS) supports appropriate development while protecting public health and safety. The Appellants provided no evidence to support their concern that traffic concerns will be impacted by the addition of one single family home to the neighbourhood. If traffic impact were a legitimate concern, the Board expects that the relevant City department would have provided comments to this effect on the severance application. The Appellants did not produce a copy of this type of comment and none was included in the appeal record.

[19] Furthermore, the PPS also encourages intensification through sections 1.1.3.2 to 1.1.3.6. The Board agrees with the Applicant that the proposal represents a form of intensification which is promoted by these policies and permitted through the provisions of the Official Plan.

[20] With regard to the protection of trees on the property the Applicant indicated a desire to retain as many trees as possible. Since the proposal needs to go through a site planning process, this could be an appropriate mechanism to ensure that significant trees are protected.

[21] In summary, the Appellants presented no firm evidence to substantiate any of their concerns.

[22] The Committee of Adjustment approved the proposed consent based upon an analysis of the planning merits of the proposal. A number of previous Board decisions including *East Beach Community Association v. Toronto (City)* (1996) have established the principle that Appellants must do more than simply raise apprehensions but must raise substantive issues to support their appeals. In this case, the Appellants simply have not established through their evidence that there are any legitimate planning grounds for refusing the proposed severance.

[23] In consideration of the above, the Board accepts the evidence provided by the Applicant and finds that the proposed consent is appropriate it maintains the provisions of the Official Plan and it has regard for s. 54(21) of the *Planning Act*.

[24] There may be opportunities for the parties to cooperate and resolve some of the issues raised by the Appellants during the required rezoning and site planning process. While the evidence has not established that the Appellants' concerns have planning merit, the Board encourages discussion between the parties to attempt to resolve any conflict.

[25] In view of the above findings, the Board will deny the appeal and adopt the conditions applied by the Committed of Adjustment (Exhibit 3) and impose them on the consent. They are included in the Order below.

[26] It should be noted that pursuant to s. 53(41) of the *Planning Act*, the conditions of approval must be fulfilled within one year of the date of issuance of this decision.

**ORDER**

[27] The Board orders that the appeal is dismissed and the provisional consent is to be given subject to the following conditions:

1. The owner shall submit a deposited Ontario Land Surveyor's Reference Plan to the Committee of Adjustment Office, unless exempted by the Land Registrar.
2. That the owner/applicant agree to include the following warning clause in the consent/development agreement and in all purchase and sale and/or lease/rental agreements:

Purchasers/tenants are advised that sound levels due to increasing road traffic may occasionally interfere with some activities of the dwelling occupants as the sound levels may exceed the Municipality's and the Ministry of the Environment noise criteria.

3. The proponent shall carry out an archaeological assessment of the entire property and mitigate, through preservation or resource removal and documentation, adverse impacts to any significant archaeological resources found. No demolition, grading, construction activities, landscaping, staging, stockpiling or other soil disturbances shall take place on the subject property prior to the approval of the Director of Planning and the Ministry of Tourism and Culture confirming that all archaeological resource concerns have met licensing and conservation requirements. All archaeological reports shall be submitted to the City of Hamilton concurrent with their submission to the Ministry of Tourism and Culture.

Should deeply buried archaeological materials be found on the property during any of the above development activities the Ontario Ministry of Tourism and Culture (MTC) should be notified immediately (416.314.7143). In the event that human remains are encountered during construction, the proponent should immediately contact both MTC and the Registrar or Deputy

Registrar of Cemeteries Regulation Unit of the Ministry of Small Business and Consumer Services (416.326.8392)

4. The owner/applicant shall receive rezoning approval to the satisfaction of the Manager of Development Planning.
5. Owner shall demolish the existing dwelling to the satisfaction of the Director of Building Services.
6. The owner shall receive final approval of any necessary variances from the requirements of the Zoning By-law as determined necessary by the Planning and Economic Development Department (Building Services Division).
7. The owner/applicant shall apply for and receive any required building permits in the normal manner to the satisfaction of the Planning and Economic Development Department (Building Services Division).
8. The owner shall enter into and register on the title of the subject lands, a Consent Agreement with the City of Hamilton to the satisfaction of the Manager of Engineering Approvals in order to deal with grading and drainage. The applicant shall demonstrate to the satisfaction of the Manager of Engineering Approvals that all drainage from the conveyed and retained lands shall be taken to suitable outlet.
9. The owner shall submit to the Committee of Adjustment Office an administration fee of \$15.30, payable to the City of Hamilton, to cover the cost of setting up a new tax account for the newly created lot.
10. The owner shall pay any outstanding realty taxes and/or all other charges owing to the City Treasurer.

"C. Conti"

C. CONTI  
MEMBER