Ontario

Ontario Municipal Board
Commission des affaires municipales de l'Ontario

V 870292
V 870293
C 870242

IN THE MATTER OF Section 44(12) of The Planning Act, 1983

AND IN THE MATTER OF two appeals by Pietro Buffone, Raimonda Buffone and Vittorio Bandiera from two decisions of the Committee of Adjustment of the City of North York whereby the Committee granted two applications numbered A 138/87 and A 139/87 by Lina DiGenova for a variance from the provisions of By-law 7625, as amended, upon conditions, premises known municipally as 171 Cornelius Parkway
O.M.B. File No. V 870292/V 870293

AND IN THE MATTER OF Section 52(7) of The Planning Act, 1983

AND IN THE MATTER OF an appeal by Pietro Buffone, Raimonda Buffone and Vittorio Bandiera from a decision of the Committee of Adjustment of the City of North York whereby the Committee granted an application numbered B 23/87 by Lina DiGenova, upon the conditions set out in the decision
O.M.B. File No. C 870242

C O U N S E L:

R.K. Webb, Q.C.	- for	Vittorio Bandiera
Ugo Cara	- for	Pietro Buffone, and Raimonda Buffone
Richard R. Arblaster	- for	Lina DiGenova

MEMORANDUM OF ORAL DECISION delivered by R.D.M. OWEN on September 16, 1987

The matter before the Board is a consent application and two variance applications relating to each of the proposed lots that would result if the consent application succeeds. Before hearing these matters, the Board had before it two preliminary motions.

Dealing first with the second motion, this motion was, in effect, that the applicant, although the purchaser of the subject lands under an Agreement of Purchase and Sale executed prior to the applications, is not an owner of the land, or a person authorized by the owner, as referred to in the regulations governing minor variance applications. Neither is he the owner of the land or the owner's agent or solicitor under the regulations governing consent applications. Therefore the applications do not comply with the statute and neither the Committee of Adjusment nor this Board has the jurisdiction to grant the relief requested

The Board has reviewed the authorities cited by Mr. Cara in his motion, his argument, and that of Mr. Arblaster, counsel for the applicant

The Board finds that the Court of Appeal case of Re Edgeley Farms Ltd. and Uniyork Investments Ltd., O.R. 1970, vol. 3, p. 131, governs, and the term "owner" in the regulations under consents and by reasonable extension the term "owner" under the regulations for minor variance applications includes a purchaser under an executed Agreement of Purchase and Sale. The applications are therefore valid and the matters are properly before the Board. The motion is dismissed.

The other motion, by Mr. Webb on behalf of the appellants, is that this matter represents an abuse of process of the Board and the appeal should be allowed and the applications dismissed on that ground. There was no dispute that the consent application is identical to the one heard by the Board on October 11, 1983 and dismissed. The purpose then and now is to divide the lot into two equal parts and with variances, erect two single-family residences. The variances relating to side yards are somewhat different as would be the resulting single-family residences

The Board in the 1983 decision dismissed the application for consent on the basis endorsed on the disposition sheet, Exhibit 1:-

"Proposal does not conform to the policies of the Official Plan and it is not compatible to the existing development in the area."

Arblaster for the applicant argued that all the matters, the consent together with the variances, must be considered as a package, and as some of the variances differ, the entire matter can be heard again. The applicant is also different and the Committee of Adjustment allowed the applications where before the Committee of Adjustment had denied them.

The Board has carefully considered this motion and the cases referred to it and the arguments of both of the able counsel that are before the Board.

The consent application before the Board is identical with the earlier application as are those variances to the by-law required to permit the division of the subject parcel into two lots to comply with the zoning by-law. It has been agreed that no changes have occurred in the zoning by-law or Official Plan for this area. No submissions were made that the existing development of the area had in any way changed. In fact, submissions were made that no changes have occurred.

Board at the hearing in October 1983 held that the consent application did not conform to the policies of the Official Plan and was not compatible to the existing development in the area. That decision must be as applicable today as then given no changes to the Official Plan or the existing development in the area. The fact that the applicant differs has no significance as the issue is the division of land, the same land in the same area, designated and zoned in the same manner as in 1983.

The Board quotes with approval the earlier remarks of D.L. Santo, in the City of Brampton and Demintich, 16 O.M.B.R., 327, at p. 328:-

"The Board is usually hesitant to dismiss a matter without a hearing on the merits. The Planning Act (R.S.O. 1980, c. 379), in itself, does not prohibit or limit the right to re-apply. However, at the same time the end result of the prescribed procedures should be certainty and that at some point, the process must end."

The Board is satisfied that this matter has been dealt with properly in 1983 and it was neither appealed nor was a review requested. Nothing has changed which would support, in effect, a rehearing now.

The Board is satisfied the merits of the consent application addressed and decided upon and to hear again the identical consent application results in an abuse of process as it leads to uncertainty concerning the finality of any decision.

Other avenues may be open to the applicants to pursue.

The appeals are therefore allowed and the application for consent denied. It follows the applications for variances fail as they dependent on the consent applications succeeding. Those appeals accordingly allowed and the applications for variances dismissed.

R.D.M. OWEN
MEMBER

"Rene Chartier"

RENE CHARTIER
MEMBER

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C O U N S E L :

R.R. Arblaster	- for Lina DiGenova
R.K. Webb, Q.C.	- for Vittorio Bandiera
Dominic J. Buffone	- for 655323 Ontario Limited

MEMORANDUM OF ORAL DECISION delivered by P.G. WILKES on March 18, 1988

In 1983 a prospective purchaser of residential property at 171 Cornelius Parkway wanted to divide the lot into two parcels so that a new house could be built on each parcel. His application for consent and the accompanying applications for variance were refused by the Committee of Adjustment, and these decisions of the Committee were then appealed to the Board. The appeals were made not by the prospective purchaser, but by the owner of 171 Cornelius Parkway.

The Board dismissed the appeals on the grounds that the "proposal does not conform to the policies of the Official Plan and it is not compatible to the existing development in the area."

a subsequent owner of 171 Cornelius Parkway submitted another

certain conditions. These decisions
Board by neighbouring property owners.

At the hearing of these appeals on September 16, 1987, the Board heard a motion by counsel for the appellants that "this matter represents an abuse of process of the Board and the appeal should be allowed and the applications dismissed on that ground."

The Board granted this motion and allowed the appeals without hearing the matters on their merits because of the similarity of the 1983 and 1987 appeals.

Counsel for the property owner has brought a motion asking the Board to rescind this decision and fix a date for a full hearing of the appeals on their merits

The Board has decided to grant this motion. In reaching this decision, the Board has carefully weighed the need for finality in processes of this kind with the right of the landowner to a full hearing before the Board.

One of the tests the Board applies in cases of this kind is whether or not the new application involves sufficient changes of substance to warrant a new hearing. The parties agree that the consent applications are almost identical, and so too is the relief requested with respect to lot frontages, lot widths and lot areas. However, there are significant differences with respect to the setbacks that would have resulted from the granting of the applications, particularly if the Board were to apply the same conditions as were applied by the Committee in its 1987 decision.

Needless to say, counsel for the appellant does not believe that these setback differences are substantive in nature. Instead, it is his view that the overriding matter is the consent application, and since the Board refused to grant consent after a full hearing in 1983, it is an abuse of process to rehear the matter when there have been no changes to the official plan, the zoning by-law or any other planning policies in the interim. In saying this he does not believe that the changes in setbacks have any bearing on the consent application.

The Board does not accept this argument. At a hearing involving both consent and variance appeals, it is difficult to distinguish the evidence dealing solely with the consent appeal from that dealing with the variance appeals.

Section 50(4)(g) of the Planning Act provides that before granting consent the Board must consider the restrictions or proposed restrictions on the buildings proposed to be erected on the property in question, and the restrictions on adjoining lands. The question of setbacks, particularly the front yard setback in this case, cannot be excluded from this consideration.

As a consequence the Board has concluded that there are sufficient changes of substance in the subject appeals to distinguish them from the earlier appeals. It is, therefore, appropriate to hear the subject appeals on their merits.

The Board will, therefore, hear the matters commencing at 10:00 A.M. Monday June 27, 1988 at the Board's Chambers, 180 Dundas Street West.

This member is not seised.

No further notice will be given.

P.G. WILKES
MEMBER

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Dominic J. Buffone	- for	Pietro & Raimonda Buffone

DECISION OF THE BOARD delivered by A. B. BALL

These related matters are now before the Board pursuant to Section 42 of the Ontario Municipal Board Act, and an oral decision of the Board, otherwise constituted, on March 18, 1988.

The subject lands are owned by Lina DiGenova and are known municipally as 171 Cornelius Parkway, North York.

The Committee of Adjustment granted an application for consent which would have the effect of subdividing the subject lands into two equal parcels. At the same time the Committee granted applications for variances from the zoning by-law which would allow the construction of one single-family dwelling on each of the two new lots. All decisions are now appealed.

William Dolan is a qualified planning consultant and he gave evidence on behalf of the owners of the subject lands. Exhibit C-2 is a compilation of site plans, photographs, building elevations, and area plans. Exhibit C-3 is a planning report prepared by Mr. Dolan.

The subject lands are located in the "Maple Leaf" Community of North York, south of Highway 401 and east of Keele Street. Some years ago the area was subdivided by Plan 3192 into large lots of the order of 150 feet by 280 feet. Since then various subdivisions by consent have resulted variety of lot sizes, the subject lot being 79 feet by 140 feet in depth The street has built up over the years with a wide variety of housing, and in recent years some of the properties have been redeveloped with newer housing. The subject property contains a one-storey frame house of approximately 1,200 square feet. The house is older than most in the area and is in a state of disrepair.

The appplication for consent seeks to divide the land into two equal parcels, each with 39.5 feet of frontage and a depth of 140 feet. As shown on Exhibit C-2, two two-storey single-family houses would be constructed, but variances are required with respect to sideyards, and frontages, and lot areas, and lot widths as follows

Item	By-law	Proposed	Variances
Frontage	49.21 ft.	39.50 ft.	9.71 ft.
Width	49.21 ft.	39.14 ft.	10.07 ft.
Area	5,920 sq.ft.	5,480 sq.ft.	440 sq. ft.
North Sideyard	5.9 ft.	4.5 ft.	1.4 ft.
South Sideyard	5.9 ft.	4.5 ft.	1.4 ft.

Mr. Dolan said that this community is in a state of rejuvenation and he believes the proposal herein to be appropriate and a positive development for the area

He said the area is characterized by single-family dwellings, varying in size, shape, and design. The lots also vary in size, and there is no consistent pattern to the area. The photographs on Exhibit C-2 show some examples of redevelopment in the area. There are 40 dwellings on this block, and 18 are one-storey, eleven are one and one-half storey, and eleven are two-storey. As well, lot sizes vary, and as shown on Exhibit C-2, 37 1/2% have frontages below the by-law standard and many have areas less than the by-law standard. Similar characteristics exist on other adjoining streets. The proposal therefore is not out of character with the area

The community is designated "Residential Density 1" under the Official Plan, with a maximum density of 8 units per net acre. It is Mr. Dolan's opinion that the proposal conforms to the Official Plan and maintains the intent and integrity of the Official Plan policies

Zoning By-law 7625 was enacted in June 1952 and is still in effect, with various amendments. Except for the requested variances, the proposal satisfies all other requirements of the by-law. It is Mr. Dolan's opinion that the requested variances are in keeping with the established development in the area, are minor in nature, and continue the intent and purpose of the by-law. He said the requested variances are not visually perceptive and would have no adverse impact on neighbouring properties.

He reviewed Section 50(4) of the Planning Act, 1983, and could not identify any conflict by the application for consent with those matters to be regarded in Section 50(4). He also reviewed Section 44(1) of the Planning Act, 1983, and stated his opinion that the applications for variances would fully satisfy all four tests of that requirement. He said the proposal would create no adverse impact with respect to traffic, sunlight, streetscape, building design, and stability of the neighbourhood.

Mr. Dolan was cross-examined at great length by counsel for the appellants. He entered Exhibit 6, a series of photographs showing existing vegetation on the subject lands, and said that vegetation would remain in place, except for one tree to be removed for a driveway. He said he does not agree with the construction of "monster" houses, such as 204 Cornelius Parkway, because, in an area such as this, those houses are out of character and inappropriate, but that is an alternative available to the owner of the subject lands.

John Montana is the husband of the owner of the subject lands, and he is a house-building contractor. He said the proposal here is for two houses as shown on Exhibit C-2, one for his family and one for his sister. The rest of his evidence and cross-examination was of no value to this proceeding.

Joseph Chiarandini has lived in the area for 32 years at 166 Cornelius Parkway. His lot is 50 feet by 150 feet and is across the street from the subject lands. He objects to the proposal for two two-storey houses because, he says, there are bungalows on each side and the proposed houses will be too large. His house is a 1,300 square foot bungalow.

Pietro Buffone resides at 175 Cornelius Parkway, next door to the subject lands. He objects to the construction of two houses as proposed and believes only one house should be allowed on the lands.

William Sutton is a qualified planning consultant, and he gave evidence on behalf of the appellants. He entered Exhibit C-13, a land use inventory of the area, colour coded as to the type and condition of buildings. He described the area as an established residential community of low density, with a combination of different types of houses. He said it is a policy of the Official Plan that there be no increase in density in this area and that the established character of the area be maintained.

It was his opinion that the proposal before the Board would not be compatible with the area because most lots comply with the by-law standard of 50 feet for minimum frontage. His Exhibit C-14 lists the frontages of all lots on Cornelius Parkway, and shows 15 lots with less than 50 feet of frontage and 24 lots with more than 50 feet of frontage. He said the street had generally developed by severances over the years

He said this proposal is not in the public interest because of the reduced frontages and the increased intensity of development with two-storey houses proposed. He said the dimensions of the proposed lots are not appropriate and do not fit the established pattern of the area. He entered Exhibit C-15, a series of photographs of both sides of Cornelius Parkway to show the established character of the area. He said the proposal for two houses is too much development for too little land.

He said the requested variances are not minor and do not maintain the spirit and intent of the by-law and the Official Plan. He said this proposal if approved would encourage other similar applications and is therefore not appropriate for the area.

Under cross-examination Mr. Sutton said his main objection was the substantial reduction requested in the frontage standard of the by-law. He agreed there are a number of 40 foot lots now in the area and said these are satisfactory.

In argument counsel for the owner-applicant said the applications meet all the required tests for consents and variances and the proposal is in character with the area. He said there was no evidence to show any adverse impact by the proposed development.

Counsel for the appellants said his evidence shows that the creation of two lots, each less than 40 feet in frontage, would be out of character with the area. He argued that such a relaxing of standards should be the subject of an amendment to the zoning by-law. He said the requested

variances are not minor. He said there is no local support in the neighbourhood for this proposal and approval would lead to instability in the area

The Board has chosen to disregard totally the evidence given by witnesses with respect to petitions and the Board attaches no weight to the documents entered as Exhibits C-9, and C-11.

Mr. Sutton's evidence was reduced essentially to maintaining stubbornly that 40 foot lots are too small in this area although there are a number of such lots now in the area. His evidence was not sufficient to persuade the Board to follow his opinions.

Mr. Dolan's evidence covered all aspects of the applications and the requirements of the Planning Act, 1983. The Board accepts his evidence that the application for consent satisfies all those matters required to be met under Section 50(4) of the Act, and also satisfies the Board that the application is not out of character with the area. His evidence clearly shows that the requested variances are minor in nature and will maintain the intent and purpose of the by-law and the Official Plan. In comparing photographs of the established area, by both planners, it is easily seen that there are a number of similar redevelopments already in place on the street. The Board is satisfied that the application represents a development which is appropriate for the subject lands.

Therefore, the appeals will be dismissed and the decisions of the Committee of Adjustment will be confirmed. The applications for variances will be approved. The application for consent will be approved subject to the following conditions:

1. Payment of $2,000.00 Parks Fund Charges;

2. Payment of $1,000.00 Sewage Impost Charges;

3. Compliance with all requirements of the City's Public Works Department.

The approval for consent will lapse if all documentation to finalize the consent is not completed within one year from the date of the Board's Order.

DATED AT TORONTO this 18th day of August, 1988.

A. B. BALL
MEMBER