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C 870242
V 870292
V 870293

Ontario Municipal Board
Commission des affaires municipales de l'Ontario

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 B23/87 by Lina DiGenova,
upon the conditions set out in the
decision
O.M.B. File No. C 870242

AND 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 A138/87 and A139/87 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 Nos. V 870292/V 870293

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 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 in a 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 application 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:

<u>Item</u>	<u>By-law</u>	<u>Proposed</u>	<u>Variances</u>
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 perceptible 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, 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 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-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 bungalow.

Pietro Buffone resides at 175 Cornelius Parkway, next door to 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 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 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:

- 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' 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' Order

DATED AT TORONTO this 18th day of August 1988

A. B. Ball
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MEMBER