

Toronto (City) v. Toronto (City) Committee of Adjustment

The City of Toronto has appealed to the Ontario Municipal Board under subsection 45(12) of the Planning Act, R.S.O. 1990, c. P.13, as amended, from a decision of the Committee of Adjustment of the City of Toronto which granted an application by Midov Developments Limited numbered SA100/99

for variance from the provisions of the Highland Creek Community Zoning By-law No. 10827, as amended, respecting 325 Morrish Road O.M.B. File No. V990199 and

Midov Developments Limited has appealed to the Ontario Municipal Board under subsection 53(14) of the Planning Act, R.S.O. 1990, c. P.13, as amended, from the City of Toronto, Urban Planning and Development Services failure to make a decision on an application numbered SB1999008 for consent to convey part of the lands known municipally as 325 Morrish Road, in the former City of Scarborough O.M.B. File No. C990160

[1999] O.M.B.D. No. 1383
File Nos. PL990417, V990199, C990160

Ontario Municipal Board
C.A. Beach
Oral decision: November 12, 1999
Filed: December 1, 1999

COUNSEL:

I.M. Schacter, for City of Toronto.
R. Arblaster, for Midov Developments Limited.

MEMORANDUM OF ORAL DECISION DELIVERED BY
C.A. BEACH AND
ORDER OF THE BOARD:--

[para1] The matters before the Board pertain to 325 Morrish Road, formerly in the City of Scarborough but now part of the City of Toronto. The Committee of Adjustment, City of Toronto authorised an application for minor variance as it applies to the subject property but made it conditional on the applicant receiving an approved consent to convey application. The City of Toronto has appealed the authorised minor variance application and the applicant has appealed the City's failure to make a decision on the consent to convey application.

[para2] The subject property is located on the east side of Morrish Road within the Highland Creek Community Area. It is a very large area which is bounded approximately by Highway 401 on the north and east, Kingston Road on the south and Morningside Avenue on the west. Morrish Road is a north to south major road which divides the Community Area into approximately east and west halves.

[para3] Dealing first with the consent to convey application, the subject lot is one of the larger lots fronting onto Morrish Road. It has a frontage of 27 metres, a depth of approximately 51.91 metres and an area of 1438 square metres. The evidence indicates that it is a "well treed" lot with an existing two storey dwelling located on the north half of the lot. The intent of the application is to retain the north part with a frontage of 15.5 metres and an area of 790 square metres, and convey the south part with a frontage of 12.2 metres and an area of 640 square metres.

[para4] The minor variance application is with respect to relief from the requirements of By-law No. 10827 which requires a minimum lot frontage of 15 metres compared to the 12.2 metres provided; a minimum lot area of 696 square metres compared to the 640 square metres provided.

[para5] The Board notes that the lands are located in an area designated and zoned for low density residential use. Therefore, the designation and zoning of the lands are not at issue.

[para6] The Official Plan, City of Scarborough is the operational Plan with respect to the subject applications. The Board was directed by Mr. Franco Romano, a qualified land use planner to Section 2.4.1.3 of the Plan. It states:

Council shag maintain the stable residential character of existing neighbourhoods and communities. New development proposals shall have regard for compatibility with adjacent land uses and designations, particularly with regard to dwelling units type, density and height.

He also directed the Board to Section 4.15.2 General Polices in the Highland Creek Community Secondary Plan, particularly Residential Policy 4.15.2(2) which clearly divides the community into north and south neighbourhoods along an Ellesmere Avenue east to west axis. Areas north of Ellesmere Avenue - will be established on the basis of an "average net density" of 15 units/hectare. Areas south of Ellesmere Avenue - will be established on the basis of an "average net density" of 9 units/hectare.

[para7] The subject lands are located south of Ellesmere. This has led the planner just mentioned to conclude that the area south of Ellesmere should be held to a higher land use planning standard than areas north of Ellesmere. In passing, the Board notes that the Residential Policies 4.15.2(1), (2) and (3) are silent with respect to lot areas. The Board makes this point because these polices have been deleted by Amendment 988 to the Highland Creek Community Secondary Plan and replaced by new polices. Although the new amendment 988 policies have been adopted (but not approved by the Minister) after the applications were made, it is instructive to note the planning direction in which council is heading. In particular, the new policies (1) and (2) state:

1. Residential Character of the Community

The residential areas of the Highland Creek Community are characterised by dwellings on spacious, treed lots.

The preservation of this character within the residential areas of the Community shall be the principal criterion in evaluating development proposals. Residential infill and redevelopment shall be compatible with the existing character and consistent with the Residential Goals of the Official Plan.

2. The Low Density Residential designation shall include only single detached dwellings, on lots having a minimum lot area of 450 sq m.

[para8] With respect to the subject applications, Amendment 988 does two things. It mimics policy 2.4.1.3 of the Official Plan with respect to maintaining the stable residential character of neighbourhoods and communities and it sets a minimum lot area of 450 sq m for Low density Residential designations.

[para9] This emphasis on "maintaining the character of the area" in the Official and the Secondary Plans, led both counsel to essentially structure their case and argument on this point.

[para10] The Board, in its consideration of the matters before it, rejects the evidence of Mr. C. Delbarre, a past president of the Highland Creek Community Association, that the appearance along Monish Road (Streetscape) determines the character of the community. This would be too general and simplistic a characterization. If this was so, every urban arterial through a community would determine its character and this is palpably not so. The character of a community is generally formed by its collective streetscape, its lotting pattern, its house form, the state of its housing inventory, its parks and street system.

[para11] The Board accepts that the area including the subject lands are well treed. It also finds from the filed exhibits 12(a) and 12(b) that along Morrish Road and other streets in the neighbourhood there are lots with frontages and areas less than that required by the prevailing zoning by-law. And, as already mentioned, the amended Secondary Plan for the Community now permits lot areas less than that for which relief is requested. The shape of the proposed new lot will be largely indistinguishable from the existing lots which front onto Morrish Road and in the neighbourhood. In fact, the Board, on the basis of the evidence adduced finds that the character of the Highland Community is not impaired by the applications before it. As a result, the Board finds that the

consent to convey application conforms to Section 51(24) of the Planning Act, R.S.O. 1990, c. P13 and that the application for minor variance meets the tests mandated in Section 45(1) of the same Act.

[para12] The appeal of Midov Developments Limited with respect to the application for consent to convey is allowed. The appeal of the City of Toronto with respect to the application for minor variance is dismissed.

[para13] The application for minor variance is authorised subject to the following condition:

1. The applicant submit a site plan for the approval of the Director, Community Planning East, prior to the issuance of a building permit on the proposed lot to be created. The site plan, among other things is to indicate all existing trees on the lot and those that are to be retained.

[para14] The Board so orders.

C.A. BEACH, Member