

Local Planning Appeal Tribunal
Tribunal d'appel de l'aménagement
local



ISSUE DATE: November 01, 2019

CASE NO(S): PL190016

The Ontario Municipal Board (the “OMB”) is continued under the name Local Planning Appeal Tribunal (the “Tribunal”), and any reference to the Ontario Municipal Board or Board in any publication of the Tribunal is deemed to be a reference to the Tribunal.

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

Applicant and Appellant:	William Rowe
Subject:	Consent
Property Address/Description:	7 Royal Oak Drive
Municipality:	City of Barrie
Municipal File No.:	B25/18
OMB Case No.:	PL190016
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OMB Case Name:	Rowe v. Barrie (City)

Heard: July 4, 2019 in Barrie, Ontario

APPEARANCES:

Parties

William Rowe

Dennis Nykoliation

Counsel

Kim Mullin

Edward Veldboom

DECISION DELIVERED BY L.M. BRUCE AND ORDER OF THE TRIBUNAL

INTRODUCTION

[1] The matter before the Board was an appeal of a Committee of Adjustment

(“COA”) decision which denied a severance which would permit the creation of one new residential lot which would facilitate the development of a new single detached dwelling.

[2] Edward Veldboom, representing Dennis Nykolation and other property owners in proximity to 7 Royal Oak Drive, sought and were granted party status. The City did not appear as a party at the hearing.

[3] The property is legally described as Concession 14 Plan M14 Lot 4 and is municipally known as 7 Royal Oak Drive (the “subject property”). The subject property is located on the southeast corner of Royal Oak Drive and Lovers Court. The neighbourhood fronts onto Kempenfelt Bay, located on the south side of Lake Simcoe, north of Tollendale Road.

[4] The severed parcel would have a lot area of 900 square metres (“sq m”) and a proposed lot frontage of 36.57 metres (“m”) on Royal Oak Drive. The retained parcel would have a lot area of 1200 sq m and a proposed lot frontage of 22.57 m on Lovers Court. In accordance with the ZBL, frontage of a property is the measurement of the shortest distance on the road, however, the dwelling associated with the retained lot is front facing onto Royal Oak Drive with a width of 31 m.

[5] The Tribunal heard that the Applicant intends to remain in the dwelling on the retained lot for the foreseeable future and in the future move into a smaller dwelling proposed for the severed lot.

THE SETTING

[6] The subject property is a generally flat lot and runs in a north-south direction. The proposal is to retain the lands with the existing house on the northern part of the lot and to sever the lands on the southern portion of the lot that currently serve as the back yard of 7 Royal Oak Drive.

[7] The subject property is situated in a residential neighbourhood comprised of single detached dwellings on large lots. The lots around the exterior of the neighbourhood are typically the largest with houses well setback from the road. The interior lots are comparatively smaller and are often located closer to the road. The majority of the lots are between 1350 sq m and 2000 sq m with the lots adjacent to Lake Simcoe and many around the perimeter of the neighbourhood being greater than 2000 sq m. The lots immediately adjacent to and across the street from 7 Royal Oak Drive are also larger than 2000 sq m. The lots on Lovers Court, being interior lots, are smaller.

[8] The Tribunal qualified Land Use Planners Michael Sullivan to provide expert opinion evidence in support of the application and Jamie Robinson who provided expert opinion evidence in opposition to the application.

PLANNING FRAMEWORK

[9] When considering a consent, the Board must have regard to the criteria set out in s. 51(24) of the *Planning Act* ("Act").

[10] The Tribunal must also determine whether the requested consent is consistent with the Provincial Policy Statement ("PPS") and conforms to A Place to Grow; Growth Plan for the Greater Toronto Horseshoe 2019 (Growth Plan) and the Official Plan (OP). The Tribunal heard opinion evidence from both Mr. Sullivan and Mr. Robinson that this application is consistent with the PPS and conforms to the Growth Plan.

[11] The Tribunal was provided with an overview of the planning context. Relevant sections to the issues before the Tribunal are summarized below.

City of Barrie Official Plan (“OP”)

[12] The City of Barrie’s OP designates the subject site as “Residential”. Schedule B – Plan Areas, identifies the subject site as within the “South Shore” planning area. There are no specific provisions associated with this planning area that affects this application.

[13] Section 4.2.2.6 of the OP provides residential intensification policies. The policies recognize intensification will occur in different forms and establishes a land use framework that directs intensification to specific areas in the city including the urban growth centre; intensification nodes; intensification corridors; and, major transit areas, as identified in the OP. Royal Oak Drive is not located in these intensification areas. Section 4.2.2.6 (d) recognizes that intensification will also occur in areas outside of the intensification areas and establishes criteria that must be satisfied for new development. However, in s. 6.2.1.1 (c) the OP states that s. 4.2.2.6 (d) does not apply to applications for new lots within established residential planning areas.

[14] The OP, in s. 6.2.1.1 c states:

“Notwithstanding the policies of Section 4.2.2.6 related to Intensification, **in order to maintain the integrity of established residential planning areas, the lot size, frontage, and configuration** of both of the parcel(s) to be severed and the parcel to be retained should be in keeping with **existing, proposed and anticipated development in the area**”. [emphasis added].

City of Barrie Zoning By-law 2009-141 (the “ZBL”)

[15] The City’s ZBL identifies the subject property as “Residential Single Detached First Density R1” which represents the lowest built density for residential uses in the City. This zone applies to all lands north of Tollendale Mill Road whereas more dense residential zones are found in adjacent neighbourhoods.

[16] The severed and retained lots both meet the City's zoning standards for the R1 zone which includes a 900 sq m minimum lot area. The Tribunal heard evidence that the dwelling on the retained lot as well as a new dwelling on the severed lot could meet setback requirements.

EVIDENCE AND ANALYSIS

The Issue

[17] Having heard the evidence, the Tribunal concludes that the issue on whether this consent should be approved or not rests with the interpretation of OP policy 6.2.1.1(c), the intent of which is to maintain the integrity of residential planning areas. The Tribunal considered the evidence of Planners Sullivan and Robinson and the City's Planning Report submitted in both Exhibits 1 and 5.

Michael Sullivan's Evidence

[18] It was Mr. Sullivan's opinion that while the City's OP encourages intensification more in certain areas than others, that in keeping with the Provincial Policy, that growth, even when incremental, is encouraged.

[19] Mr. Sullivan spoke to OP Section 6.2.1.1(c) that discusses criteria that need to be considered when a residential consent is proposed. It was his opinion that the policy does not specify that lots shall be the same size, but rather that they should be in keeping with the development in the area. He stated to the Tribunal that in order to determine what size lots are appropriate, from a minimum standard perspective, that "we need to look to the City of Barrie Zoning Bylaw". He stated that in terms of configuration that the existing dwelling is closer to the street than majority of other lots in the neighbourhood and that the proposed lot would have a similar setback to the properties on both sides. He states that the ZBL must be considered in determining the

nature and extent of development that can occur within a particular designation and that since the proposed development meets all standards for the R1 zone without the need for a variance, it is an appropriate form of development.

[20] It was his opinion that the additional lot does not threaten the existing, proposed and anticipated development in the area and is consistent with the City's OP. He opined that while the retained and severed lots would be the smallest in the neighbourhood, they are located on the inside of the neighbourhood and are closer to the character of their adjacent lots than those on the outside of the neighbourhood.

[21] Mr. Sullivan provided photos of the area. He opined that the proposed severance would create lots that are keeping with the general character of the area when viewed from the street and therefore meets OP policy 6.2.1.1 (c). While the severed lot will have a smaller area, the frontage of the lot is quite substantial. The smaller lot area is a function of the shallower depth, which will not be evident from the street.

[22] Mr. Sullivan provided a frontage and area analysis (Exhibit 1, Tab 17). He concludes that there is a low risk that this application creating one new lot, would threaten to de-stabilize the neighbourhood since there are only a few other lots in the immediate area that could be severed and meet the zoning standards. It was Mr. Sullivan's conclusion that the application represents good planning, meets s. 51(24) of the Act. It can be supported with existing infrastructure, is transit supportive is not premature, complies with zoning and is in the public interest. Further, it was his opinion that the proposed severance conforms with the OP.

[23] Mr. Sullivan's noted that the City Staff Report supports the requested severance.

[24] He stated that if the Tribunal was to approve the severance there would be conditions of approval implemented through a Development Agreement to provide architectural control.

Jamie Robinson's Evidence

[25] It was Mr. Robinson's evidence that the purpose of s. 6.2.1.1 (c) of the OP is to establish criteria upon which to base a decision on whether the integrity of established residential planning areas is impacted by intensification. It was Mr. Robinson's opinion that for the severed and retained lots to conform to s. 6.2.1.1 (c), it must be demonstrated that the lot size, lot frontage and lot configuration are in keeping with the existing development in the area.

[26] Mr. Robinson reviewed the lot sizes within the neighbourhood. Referring to Exhibit 3, Tab 4, Page 2 he stated that the proposed lots would be the two smallest lots in the area at 1200 sq m and 900 sq m. The severed lot would be 33 percent smaller than the next smallest lot in the area which has a lot area of 1350 sq m. The average lot size in the area is about 2000 sq m. It was his opinion based on a review of lot sizes, that the proposed severed and retained lots are not in keeping with existing lot sizes in the area.

[27] Mr. Robinson spoke to lot configuration. He stated that the majority of the lots in the area are configured to provide generous front and rear yard setbacks. The depth of the retained and severed lots, however, would be less than other lots in the area. It was his opinion that the proposed lots are configured in a manner that is not in keeping with existing development in the area. (Exhibit 3, Tab 4, Page 3).

[28] Mr. Robinson acknowledged that the retained and severed parcels would satisfy the R1 zoning standards for minimum lot area of 900 sq m and lot frontage of 11 m. However, it was his opinion that when considering s. 6.2.1.1 (c) that this section of the OP is not intending to simply apply the zoning standards to evaluate conformity but rather consider the setting of the proposed severance.

[29] It was Mr. Robinson's opinion that the building envelope that would be produced with the severed lot would result in a dwelling that is at a location closer to the road than

most other development in the surrounding area, such that almost the entire house is in front of the neighbouring dwelling to the south. (Exhibit 3, Tab 5).

[30] It was his opinion that the lot size and lot configuration are not in keeping with development in the area and as such do not conform to s. 6.2.1.1.(c) of the OP.

CONCLUSION

[31] The Tribunal has considered the detailed evidence from Planners Sullivan and Robinson. While the Tribunal understands that the requested consent meets the zoning by-law standards, the test in the OP goes beyond this. The test is whether the integrity of the residential planning area can be maintained. The OP has not suggested that the lots created by the severance need to be the “same as” what is found in the neighbourhood but rather need to not adversely affect the integrity of the area. In this regard, both planners spoke to the impact of the proposed severance on the character of the area. Character is typically considered in the context of what one sees when they are passing through a neighbourhood, in other words, the streetscape. The frontages of the severed and retained developments will remain generous. The severed lot with an area of 900 sq m will be the smallest in the neighbourhood, yet because of the generous frontage it will not adversely affect the character of the neighbourhood. The smaller area of this lot is a function of the depth of the lot which is not highly evident from the street. The retained lot will be only marginally smaller than the next largest lot in the area (1200 sq m vs 1405 sq m) which the Tribunal accepts will not adversely affect the integrity of the area.

[32] The Tribunal acknowledges that the house on the severed portion will sit closer to the road than other houses on Royal Oak Drive; however, this is in part a function of the curvature of Royal Oak and will fit with the house at 7 Royal Oak. In summary, the Tribunal prefers the evidence of Mr. Sullivan that the OP policy 6.2.1.1 (c) is maintained by this proposed consent.

ORDER

[33] The Board orders that the appeal is allowed, and the consent is granted subject to the condition that a Development Agreement that addresses architectural control and the establishment of a building envelope is executed to the satisfaction of the municipality.

"L.M. Bruce"

L.M. BRUCE
MEMBER

If there is an attachment referred to in this document,
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Local Planning Appeal Tribunal

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