

Ontario Municipal Board
Commission des affaires municipales
de l'Ontario



ISSUE DATE: August 14, 2017

CASE NO(S): PL160655

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

Appellant:	Bruce Smith
Applicant:	Jaspal Dadwan
Subject:	Consent
Property Address/Description:	3264 Charleston Sideroad
Municipality:	Town of Caledon
Municipal File No.:	B-010-16
OMB Case No.:	PL160655
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OMB Case Name:	Smith v. Caledon (Town)

Heard: July 10, 2017 in Caledon, Ontario

APPEARANCES:

Parties

Counsel*/Representative

Jaspal Dadwan

Peter Gross*

Bruce Smith

Self-represented

Town of Caledon

Roman Ivanov*

**MEMORANDUM OF ORAL DECISION DELIVERED BY ANNE MILCHBERG ON
JULY 10, 2017 AND ORDER OF THE BOARD**

[1] Bruce Smith (“Appellant”) has appealed the June, 2016 decision of the Town of Caledon (“Town”) Committee of Adjustment (“CoA”) to allow the severance of

approximately 0.736 hectares (“ha”) from a 1.08 ha residential through-lot located at 3264 Charleston Sideroad (“subject property”). The Applicant is Jaspal Dadwan.

[2] The Appellant resides in the residential neighbourhood facing the front of the proposed severed parcels, at 2 Avellino Court. He provided lay testimony in support of his appeal.

[3] Two planners who were qualified to give expert land use planning opinion evidence provided testimony in support of the application: Paul Johnston, a Registered Professional Planner who was retained by the Applicant, and Elaine Leung, Development Planner for the Town.

[4] A number of neighbourhood residents attended the hearing. Of these individuals, Trish Ethier of 1615 Chester Drive requested and was granted participant status in order to testify. Ms. Ethier was opposed to the proposed severance.

BACKGROUND

[5] The subject property is located in the Caledon Village settlement area on the south side of Charleston Sideroad, near Chester Drive. It is an L-shaped through-lot with approximately 61 metres (“m”) of frontage on Charleston Sideroad, 90 m of frontage on Avellino Court, and an average depth of approximately 128 m. The lands on the Charleston Sideroad frontage contain a single detached dwelling.

[6] The Town’s Official Plan (“OP”) designates the subject property as Residential, Caledon Village. The Town’s Zoning By-law No. 2006-50, as amended (“the ZBL”) zones it as Rural Residential.

[7] The subject property is surrounded to the north and west by large-lot, single detached dwellings. The severance proposal would result in large lots, with single detached dwellings on them.

[8] Part of the Avellino Court frontage of the subject lands is a small, wedge shaped parcel (“wedge”), shown as Parts 7 and 8 in Exhibit 2, Figure 4. On its own, the wedge is not large enough to develop. In 2016, the Town Council enacted By-law No. 2016-019 to remove the wedge from a registered plan of subdivision for Avellino Court so that it could merge with the rest of the subject property for development purposes.

B10-16 AND B11-16

[9] What became clear only in the latter part of the hearing was the complicating but significant fact that the subject property had been the subject of two concurrent, interrelated severance applications, numbered B10-16 and B11-16 by the Town. Both severance applications were considered and approved by the CoA on the same day in June 2016.

[10] The purpose of B10-16 was to split the L-shaped lot into two parcels, one fronting onto Charleston Sideroad and the other fronting onto Avellino Court. This application was appealed by Mr. Smith, and is the subject of this hearing.

[11] The purpose of B11-16 was to split the severed parcel on Avellino Court (from B10-16) into two smaller parcels, one with a frontage of 46 m and lot area of 0.355 ha, and the other with a frontage of approximately 45 m and lot area of 0.381 ha. This application was not appealed.

[12] Counsel for the Applicant explained that it is the practice of the municipality to handle these kinds of severances as multiple applications.

[13] The combination of B10-16 and B11-16 would result in the splitting of one L-shaped lot into three parcels, one fronting onto Charleston Sideroad (a retained parcel with the existing dwelling), and two fronting onto Avellino Court (one of which is considered a retained parcel and the other new). Though B11-16 was not appealed, it cannot be implemented without B10-16’s approval.

[14] It was important for the Board to fully understand this. While the application before the Board is to sever a parcel into two portions (one facing Avellino Court), if the Board were to approve the application, the result would be three parcels (two facing Avellino Court), and the Board would need to view the application accordingly.

ISSUES

[15] Mr. Smith was opposed to the proposed severance for a number of reasons:

- When he bought his home at 2 Avellino Court 18 years ago, he was led to believe that the wedge parcel fronting onto Avellino Court (across the street from his dwelling) was maintained for a road allowance and would never be developed. It came as a surprise to him that this wedge was suddenly being considered for severance as part of the subject property, and that two dwellings could be built across from his home. He was opposed to new development where he expected open space in perpetuity (“wedge” issue).
- In his view, the CoA was inequitable in its consideration of severances in the neighbourhood. Mr. Smith wondered why 1 Avellino Court’s severance application was refused by the CoA several years ago, while the subject property’s application was approved by the CoA more recently (“equity”)
- Mr. Smith was concerned about the impact, during construction, of adding two homes to Avellino Court. If the street were to be dug up to add services, he worried that a pinch-point in the road allowance would be created for the five existing residents on Avellino Court (“construction”).

[16] Ms. Ethier, whose home backed onto the subject property, shared Mr. Smith’s expectation that the lands would never be redeveloped. However, in her view, the

creation of new lots was not at issue; what was at issue for her was the size of homes that would be built (“dwelling size”)

ANALYSIS AND DISPOSITION

Planning Opinion Evidence

[17] Mr. Johnston provided uncontroverted planning opinion evidence that the proposed severance was consistent with the policies set out in the Provincial Policy Statement, 2014 (“PPS”) and the Growth Plan for the Greater Golden Horseshoe, 2017 (“GGH”), and that it met the general intent and purpose of the Region of Peel Official Plan (“Regional OP”), and the Town of Caledon Official Plan (“Town OP”). He also analyzed the proposed severance against s. 51(24) of the *Planning Act* (“Act”), amply demonstrating that the proposal met all the criteria in that section of the Act. Ms. Leung corroborated Mr. Johnson’s opinions in her own evidence.

[18] In the case of the PPS, Mr. Johnston cited the proposal’s consistency with specific policies encouraging intensification and adequacy of servicing.

[19] Referring to the Town OP, Mr. Johnston opined that the proposed new lots would achieve the intensification objectives set out in the OP, with lot sizes and densities that are consistent with the rest of the neighbourhood. Because just two new lots are proposed to be created from a combination of B10-16 and B11-16, the proposal would comply with s.5.10.3.19 of the OP, which states that “[c]reation of **three** or more adjacent lots shall generally occur by registered plan of subdivision or registered plan of condominium” [emphasis added].

[20] Referring to the Town ZBL, Mr. Johnston noted that the frontages and sizes of the proposed new lots complied fully with the minimum requirements set out in the ZBL.

[21] The consistency of lot sizes and density with other lots in the neighbourhood was confirmed by Exhibit 4, a map prepared by the Town using Municipal Property

Assessment Corporation data. Exhibit 4 showed lot frontage (in feet) and area (in acres) of all neighbourhood properties surrounding the subject property on Charleston Sideroad, Chester Drive, Avellino Court and a couple of other streets, and from this exhibit, it was clear that the three parcels that would be created as a result of B10-16 and B11-16 would fit well into the existing fabric surrounding it.

Wedge

[22] The Appellant appears to have misapprehended what an appeal could do in terms of stopping development on the wedge parcel, or undoing the merger with the rest of the subject property. Evidence was submitted that the Town Council had already enacted By-law No. 2016-019 to remove the wedge from the registered plan of subdivision for Avellino Court [Exhibits 8 and 9], and that the wedge had already been sold to the Applicant [Exhibit 7] so that it could merge with the rest of the subject property. The Board explained to Mr. Smith that the Board had no jurisdiction to roll that back, and that it was obligated to consider the wedge as part of the application before it.

[23] Based on the planning evidence from Mr. Johnston and Ms. Leung, the Board determined that there was no demonstrable adverse planning impact resulting from the wedge's merger with the rest of the subject property --- on the contrary, its merger allows for better utilization of the land.

Equity

[24] The Appellant claimed that the CoA was inequitable in its handling of severances in his neighbourhood. The Board did not receive any detailed evidence on a severance application at 1 Avellino Court from a few years ago cited by the Appellant, but in any event, the Board is not responsible for the CoA's track record or degree of consistency. The Board is an appeal body that looks at each application brought before it on its own merits.

Dwelling Size

[25] The Board finds that Ms. Ethier's concern about the dwelling size on the two proposed lots on Avellino Court was not substantiated, and in any event, dwelling size was not before the Board.

Construction

[26] In the neighbourhood surrounding the subject property, dwellings have municipal water and on-site septic services. The two new lots that would be created, should the requested consent be allowed, would need to be hooked up to the Town's water. Ms. Leung did not know whether the water would be connected from Avellino Court or Charleston Sideroad. Mr. Smith was quite concerned that Avellino Court would be dug up to extend servicing, creating a vehicular pinch point for the five current residences on his street. This impact, if any, would be temporary, and in the Board's estimation, the municipality could ameliorate it by providing advance notification to the affected residents of any new servicing and utility installations in the Avellino Court right-of-way resulting from the creation of the two new lots.

DECISION AND ORDER

[27] In light of the uncontroverted evidence of the two professional planning witnesses who outlined the proposed severance's consistency with the PPS and GGH, conformity to the OP and ZBL, compliance with the criteria set out in s. 51(24) of the Act and the consistency of the size and frontage of the proposed new lots with the rest of the neighbourhood, the Board finds that the proposal represents good planning and should be approved.

[28] The Town of Caledon requested, in the event that the Board approves the proposed consent, that 10 conditions be attached to the decision. These appear in Exhibit 6, Tab 17, and deal with standard matters such as cash-in-lieu of parkland, grading and servicing, the conveyance to the Region of Peel of a narrow strip of land on

the Charleston Sideroad frontage for right-of-way purposes, and other technical matters. The Board will approve the proposal with these conditions.

[29] The Board orders that the appeal is dismissed and that provisional consent is to be given subject to the 10 conditions set out in Exhibit 6, Tab 17, and in addition, to the following new condition:

11. That the Secretary-Treasurer receive a written communication plan from the appropriate Town official, the purpose of which will be to commit to providing advance notification to affected residents of any new servicing and utility installations in the Avellino Court right-of-way resulting from the creation of the two new lots.

[30] The Board may be spoken to if there are any questions arising from this Decision.

“Anne Milchberg”

ANNE MILCHBERG
MEMBER

If there is an attachment referred to in this document,
please visit www.elto.gov.on.ca to view the attachment in PDF format.

Ontario Municipal Board

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Website: www.elto.gov.on.ca Telephone: 416-212-6349 Toll Free: 1-866-448-2248