

ISSUE DATE:

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PL101394

Ontario Municipal Board

Commission des affaires municipales de l'Ontario

IN THE MATTER OF subsection 53(19) of the *Planning Act*, R.S.O. 1990, c. P.13, as amended

Applicant and Appellant: John Ross
Subject: Consent
Property Address/Description: 2114 Parker Drive
Municipality: City of Mississauga
Municipal File No.: B-36/10 - B-41/10
OMB Case No.: PL101394
OMB File No.: PL101394 - PL101399

IN THE MATTER OF subsection 45(12) of the *Planning Act*, R.S.O. 1990, c. P.13, as amended

Applicant and Appellant: John Ross
Subject: Minor Variance
Variance from By-law No.: 0225-2007
Property Address/Description: 2114 Parker Drive
Municipality: City of Mississauga
Municipal File No.: A-267/10 - A-270/10
OMB Case No.: PL101394
OMB File No.: PL101400 - PL101403

APPEARANCES:

Parties

Tony Ferkul

City of Mississauga

Counsel

G. Swinkin

Q. Annibale and M. Joblin

DECISION DELIVERED BY D. R. GRANGER AND ORDER OF THE BOARD

These are appeals by John Ross from decisions of the Committee of Adjustment (Committee) of the City of Mississauga (City) that dismissed his applications for consents to convey lands and for variances to By-law 0225-2007 (By-law) to permit the development of six new lots, two facing onto Parker Drive (one being the retained lot) and four facing onto Lynchmere Avenue, and the transfer of a 160.2 square metre block to be added to property at 2112 Parker Drive (Proposal). This would result in the build-

out of property at 2114 Parker Drive (Subject Lands). The existing dwelling on 2114 Parker Drive is to be demolished.

Mr. Ross, owner of the subject lands for the past 70 years, is selling the property to Tony Ferkul. There was no objection to Mr. Ferkul (Applicant) now assuming the applications and appeals.

The two proposed lots fronting onto Parker Drive comply with all By-law requirements. The proposed four lots fronting onto Lynchmere Avenue comply with all By-law requirements save the minimum frontage requirement of 30 metres. The variances would permit a reduction in frontage to 25.16 metres for each of the four lots fronting onto Lynchmere Avenue.

The essence of the dispute, acknowledged by both Parties, is whether or not permitting four lots with reduced frontages fronting onto Lynchmere Avenue meets the tests of subsection 45(1) and criteria of subsection 51(24) of the *Planning Act*. The City submitted it has no objection to three wider lots in compliance with the By-law fronting onto Lynchmere Avenue. It did recommend that the lot abutting the existing residential property to the north be wider to facilitate an increased northerly side yard setback, greater tree and tree canopy preservation and greater opportunity for preserving the existing drainage and grading to further protect the existing trees.

On behalf of the Applicant, D. Brown was qualified and presented expert land use planning evidence and opinion, T. Bradley was qualified and presented expert arbour evidence and opinion and R. Kerkusz was qualified and presented expert engineering evidence and opinion all in support of the Proposal as set out in Exhibit No. 2, Tab 5.

On behalf of the City, J. Bennett was qualified and presented expert land use planning evidence and opinion, T. McCormick was qualified and presented expert arbour evidence and opinion and D. Waters was qualified and presented expert engineering technology evidence and opinion all in opposition to the Proposal set out in Exhibit No. 2, Tab 5 but in support of a 5-lot alternative proposed by the City as set out in Exhibit No. 4, Tab 29.

L. Easson, owner of the existing dwelling abutting to the north of the Subject Lands on Lynchmere Avenue, presented evidence in support of the Proposal.

G. Liske, owner of an existing dwelling to the south of the Subject lands on Lynchmere Avenue, presented evidence in opposition to the Proposal.

Having considered all of the evidence presented and pursuant to subsections 45(1) and 51(24) of the *Planning Act*, the Board finds that the reduced frontages do not maintain the general intent and purpose of the City Official Plan (OP) nor of the By-law, are not desirable for the appropriate development and use of the land and are not minor.

The lots as proposed by the Applicant fronting onto Lynchmere Avenue do not conform to the OP, are not appropriate, do not represent good planning and are not in the overall public interest of the community.

The reasons follow.

The Subject Property is designated Residential Low Density 1 and governed by the applicable Special Site Area 11 (Area 11) policies of the Cooksville District policies of the City OP.

The Area 11 policies seek to preserve and enhance the large-lot, mature treed area, including the Subject Property, recognized as a Residential Woodland area in the City's Natural Areas Survey.

To implement the Area 11 objectives, the policies include those seeking to achieve generous lot setbacks, minimal grading changes, minimal hard surfaces and building masses and yards that respect and relate to adjacent properties.

The land use planner for the Applicant submitted that the Proposal is in keeping with the character of the area relying, in large part, on a tree protection plan that was developed subsequent to the decision by the Applicant to pursue four new lots fronting onto Lynchmere Avenue.

It was acknowledged that the initial grading plans by the Applicant propose storm sewer infrastructure that would not permit significant retention of existing trees along the

northerly boundary of the Lynchmere lots and that the side yard setback abutting the existing property to the north is proposed to be the By-law minimum of 1.8 metres.

The land use planner for the Applicant also relied on the smaller frontage lots located opposite the proposed lots on Lynchmere. It was acknowledged that those lots were in a different zoning category that permitted 25 metre frontage lots. Those lots are outside of the Woodland Residential area as delineated in the City's Natural Areas Survey (2009).

All experts acknowledged there being a greater opportunity for the preservation of more trees if only three lots were developed fronting onto Lynchmere Avenue instead of four.

The Board finds that the reduction of lot frontage by approximately 5 metres for four lots represents a significant reduction resulting in the development of an additional dwelling and associated utility and amenity spaces. This is contrary to the intent of both the OP and By-law.

The OP and By-law have incorporated long-standing, relatively up-to-date and very specific policies and regulations to protect the clearly intended purpose to protect the existing trees and tree canopy. To accomplish this, the policies establish that hard surfaces and grading changes be minimized and that generous yard setbacks be provided. It is the intent of the minimum 30 metre frontage to implement these policies. In addition, building masses and yards must respect and relate to adjacent property.

The cumulative effect of four proposed lots, with significant frontage reductions contrary to the policies and regulations, is to introduce a fourth developed residential lot where one would not normally be permitted. This results in a significant increase in hard surface in the form of building structure and loss of area for tree and tree canopy protection.

In addition, there was no contradiction to the evidence that the Proposal would require extensive regrading and buried storm sewer infrastructure in the northwesterly corner that would prejudice the ability to protect or enhance any treed buffer between the Proposal and existing residential property to the north.

The Proposal as it relates to the proposed lots fronting onto Lynchmere Avenue does not conform to the OP and does not maintain the general intent and purpose of the By-law.

While the development of an additional family dwelling over what the By-law would normally permit in keeping with the scale and character of other dwellings in the immediate vicinity may seem desirable on the face, the site-specific policies related to the protection of this unique Residential Woodland area cannot be overlooked. The fear of any precedent for the reduction of lot frontages in this unique large-lot area of the City is warranted. While many existing lots in the vicinity are smaller than the By-law would now permit, and are deemed legal pursuant to previous by-law permissions, the City has been diligent in protecting the remaining large lots over a long period of newer official plan reviews and amendments as well as updated zoning by-laws enacted following open public land use planning approval processes.

The Subject Property represents a largely vacant remnant parcel with one existing dwelling unit. The OP and By-law permit up to five residential lots in full conformity and compliance. That in itself represents a desirable building out of the area through an appropriate infill development acknowledged to be in an area outside of the areas of the City promoted for intensification, pursuant to the requirements of the Growth Plan for the Greater Golden Horseshoe.

The development of an additional dwelling on the Subject Property is not desirable or appropriate in the context of the strict policies as noted.

The cumulative effect of a row of four new lots with significant frontage reductions cannot be considered minor in the circumstances of the Subject Property. There was no dispute that the Proposal could result in a loss of at least 25 relatively healthy trees, two considered to be large and mature, over the 5-lot alternative presented by the City. In the context of the area specific policies and regulations for this unique Residential Woodland area, the Board finds the impact to be significantly adverse.

Counsel for the Applicant confirmed the City's 5-lot proposal as unacceptable in the alternative to the Applicant's Proposal.

For all of the above noted reasons, the Board dismisses the appeals. The variances are not authorized and the provisional consents are not to be granted.

The Board so Orders.

"D. R. Granger"

D. R. GRANGER
VICE CHAIR