

Ontario Municipal Board
Commission des affaires municipales
de l'Ontario



ISSUE DATE: July 3, 2015

CASE NO(S): PL140761

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

Applicant and Appellant: Ennio Naccarato
Subject: Consent
Property Address/Description: 48 Thirty Fifth Street
Municipality: City of Toronto
Municipal File No.: B65/13EYK
OMB Case No.: PL140761
OMB File No.: PL140761
OMB Case Name: Naccarato v. Toronto (City)

PROCEEDING COMMENCED UNDER subsection 45(12) of the *Planning Act*, R.S.O. 1990, c. P.13, as amended

Applicant and Appellant: Ennio Naccarato
Subject: Minor Variance
Variance from By-law No.: 1993-108
Property Address/Description: 48 Thirty Fifth Street
Municipality: City of Toronto
Municipal File No.: A475/13EYK
OMB Case No.: PL140761
OMB File No.: PL140762

PROCEEDING COMMENCED UNDER subsection 45(12) of the *Planning Act*, R.S.O. 1990, c. P.13, as amended

Applicant and Appellant: Ennio Naccarato
Subject: Minor Variance
Variance from By-law No.: 1993-108
Property Address/Description: 48 Thirty Fifth Street
Municipality: City of Toronto
Municipal File No.: A476/13EYK

OMB Case No.: PL140761
OMB File No.: PL140763

Heard: April 23 and 24, 2015 in Toronto, Ontario

APPEARANCES:

Parties

Ennio Naccarato

City of Toronto

Counsel

B. Ketcheson

A. Suriano

DECISION DELIVERED BY J. ZUIDEMA AND ORDER OF THE BOARD

INTRODUCTION

[1] Ennio Naccarato, President of Ashbury Victoria Developments Ltd. (“Appellant”) filed applications for a consent and minor variances in order to sever a property located at 48 Thirty Fifth Street (“subject property”) into two smaller lots.

[2] The Appellant proposed to demolish the existing single-detached dwelling and construct two new two-storey dwellings, with integral garages.

[3] The variances requested were for minimum lot frontage, minimum required lot area, maximum gross floor area (“GFA”) and minimum required front yard setback.

[4] The Committee of Adjustment refused the consent and minor variance applications and as such, the Appellant appealed the decisions for the following reasons:

- a. The land division conforms to the policies of the Official Plan, as well as the criteria found under Section 51 of the *Planning Act*;

- b. The proposal is to create two 8.075 metres (“m”) wide lots, which represents modest intensification supported by the Official Plan.
- c. The size and shapes of the proposed lots are consistent with the neighbourhood and are suitable for the construction of two new single-family detached homes;
- d. The variances are minor within the general intent and purpose of the Official Plan and Zoning By-Law and desirable for the appropriate development of the property.

[5] A number of residents appeared and testified as lay witnesses in opposition to the appeal. The only expert evidence was that from Mr. Franco Romano who was qualified and accepted as an expert in land use planning. Mr. Romano testified on behalf of the Appellant.

[6] To summarize the concerns of the residents, their areas of anxiety related to over-intensification, loss of neighbourhood character and privacy, and negative impact on the existing infrastructure, such as parking and stormwater management. They were of the view that the proposal was not an appropriate fit with the existing neighbourhood.

[7] While I do not doubt that their concerns were genuinely held and that by in large, these residents only have the well-being of their community at heart, I cannot ignore the only professional planning evidence which was provided to me.

[8] The City of Toronto (“City”) appeared as the only other party to these proceedings but did not call any evidence. The City’s cross-examination of Mr. Romano was not sufficient for me to set aside his planning opinions in favour of the lay evidence from the residents. Given this circumstance, I have afforded greater weight to the opinion evidence provided by Mr. Romano.

[9] I determine therefore, that the appeal is allowed and the consent is granted and

minor variances are authorized subject to conditions as reflected in Exhibit 9. I rely upon the Mr. Romano's opinions to arrive at my decision.

[10] Specifically, Mr. Romano reviewed the history and geographical context of the applications and recommended approval. He testified that the consent met the requisite criteria under ss. 51(24) and the variances met the four tests under ss. 45(1) of the *Planning Act*. He also opined that the applications represented good and proper planning and were in the public interest.

[11] The subject property is located north of Lake Ontario approximately 1 kilometre ("km") east of Brown's Line near the Long Branch GO Station and near the boundary of Mississauga. The proposal is to sever the existing lot into two equal parcels.

[12] For both parcels, lot frontage is proposed to be reduced from the required 12 m to 8.07 m. The same is true for lot area from the required 371 square metres ("sq. m.") to 246 sq. m. reflecting a GFA from 0.35 to 0.73 and a reduction in the front yard setback from 8.9 m to 7.8 m.

[13] The zoning for the area is RM1 which permits a wide variety of dwellings. From a review of the area, borne out from Mr. Romano's evidence and supported by the testimony of the residents, the area has an eclectic mix of housing styles and sizes. There are single family dwellings but also semi-detached and multiple units in the immediate vicinity.

[14] The area is designated Neighbourhoods and Apartment Neighbourhoods. For Mr. Romano's lot study, he reviewed those designated Neighbourhoods in the RM1 zone. He looked at 202 lots of which 47 are smaller than the required 12 m frontage. Along Thirty Fifth Street, over a third is smaller than the requirement. Lots range from 6.7 m to 22 m and this proposal falls within this range.

[15] Similarly lot areas range from 204 sq. m. to 1,183 sq. m. and this proposal is within this range. From the evidence, it is clear that this area is stable but not static, as

envisioned by the City's Official Plan policies.

[16] The area is identified as a target area for growth. Mr. Romano opined that the proposal is consistent with the 2014 Provincial Policy Statement with specific reference to policies 1.1.3, 1.1.3.2, 1.4.1 and conforms to the Growth Plan for the Greater Golden Horseshoe with specific reference to policies 1.2.2, 2.2.2 (a) and (h), 2.2.3.6 (b). Both these policy documents work hand-in-hand and encourage compact growth and efficient use of existing infrastructure harmonious to the surrounding neighbourhood and community.

[17] In this instance, I am satisfied from the only expert evidence provided that the proposed development meets these policy directives. It also represents good planning and is in the public interest.

[18] Mr. Romano also reviewed specific policies in the City's Official Plan ("OP") addressing, respecting and reinforcing the character of neighbourhoods by paying attention to the buildings, streetscape and open spaces. The Board has long understood that harmonious does not mean identical as assessing compatibility requires an analysis of many factors.

[19] Mr. Romano took me to policies 3.1.2 which speak to built form; policies 3.2.1 on housing objectives and 4.1 to conclude that the applications generally meet the intent and purpose of the City's OP.

[20] The fact is that while some residents would rather only focus on a micro-neighbourhood of adjacent properties, the concept of neighbourhood and community can and usually does, go beyond those parameters.

[21] In this instance, I am satisfied that what is being proposed will fit generally within this neighbourhood and with reference to the above noted OP policies, meets the OP test under ss. 45(1).

[22] Concerning the test of generally meeting the intent and purpose of the Zoning By-Law, I am satisfied that this test is also met. The sizes of the lots located in the study area are varied. What is being proposed will maintain an appropriate relationship with the surrounding context in terms of GFA and front yard setbacks.

[23] With respect to the tests of minor and desirable, I accept Mr. Romano's opinion that there will not be any unacceptable adverse impacts from the proposed development. There already exists a diversity of lot sizes. No issues of overlook into either the property south or north of the subject property were identified. The proposal is a modest form of housing intensification and according to Mr. Romano, design elements will be used to ensure compatibility.

[24] I am satisfied that all four tests both individually and collectively have been met pursuant to ss. 45(1).

[25] Concerning the ss. 51(24) criteria, Mr. Romano reviewed the list in detail and spoke to each specific criterion and its application. I accept his opinion on this account.

[26] Mr. Romano also suggested that privacy screening along the exterior side of the deck could be provided and such screening could be of an opaque material to ensure maximum privacy. This requirement is included as a condition of approval.

ORDER

[27] Therefore the Board orders that the appeal is allowed and the consent is approved and the variances are authorized subject to conditions as set out in Exhibit 9 along with the requirement to provide screening as noted above. For ease of reference, a copy of Exhibit 9 is appended to this decision and marked as "Attachment 1."

"J. Zuidema"

J. ZUIDEMA
VICE-CHAIR

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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