

ISSUE DATE:

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PL110814

Ontario
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: Sunny Fan
Subject: Consent
Property Address/Description: 10 Marilyn Ave.
Municipality: City of Toronto
Municipal File No.: B014/11SC
OMB Case No.: PL110814
OMB File No.: PL110814

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

Applicant and Appellant: Sunny Fan
Subject: Minor Variance
Variance from By-law No.: 12360
Property Address/Description: 10 Marilyn Ave.
Municipality: City of Toronto
Municipal File No.: A074/11SC, A075/11SC
OMB Case No.: PL110814
OMB File No.: PL110815, PL110816

APPEARANCES:

Parties

City of Toronto

Sunny Fan

Counsel

Phong Phan

Ron Kanter

DECISION DELIVERED BY J. de P. SEABORN AND ORDER OF THE BOARD

Introduction

Pursuant to both s. 53(19) and s. 45(12) of the *Planning Act* (Act), Sunny Fan (Applicant) has appealed decisions made by the Committee of Adjustment (Committee) for the City of Toronto (City) dated July 21, 2011. The request that provisional consent be given to sever 10 Marilyn Avenue into two (2) lots was denied and the associated

variances seeking narrower lot frontages than required under the By-law were not authorized.

Issues

The main issue before the Board is whether provisional consent should be given to create two lots with frontages of approximately 42 ft (12.9 m) from an existing lot with a frontage of about 84.74 ft (26 m). The application is opposed by the neighbours on the basis that if severed, the resulting frontages will be too narrow for the streetscape, representing over intensification. The City is opposed to the application and retained Mr. Romano, a land use planner. Mr. Rendl provided land use planning evidence in support of the application for consent and variances.

Evidence and Findings

Consent

The Applicant purchased the property in 2010 and intends to demolish the existing house and build two (2) new single family homes. The lot is generous for the street, with a frontage of 25.83 m and a depth of 70.41 m. It is the widest lot on Marilyn Avenue and typical frontages are about 17.2 m. The house requires demolition and at the time of its purchase, the Applicant acknowledged that the dwelling had been used for a large scale marijuana operation. While residents on the street testified that they are opposed to the proposal to built two (2) houses where there is currently one, they acknowledge that the existing situation must be remedied, given the state of disrepair of the house. Nonetheless, the position of the residents, and the City, was that the proposal represents over intensification.

There was no report from City planning staff in respect of the application and Mr. Romano, retained by the City, testified in opposition to the consent and associated variances. It was his opinion, as a qualified land use planner, that the proposal fails to meet the test for consent as set out in s. 51(24) of the Act and the two variances that would flow from the severance should not be authorized. Mr. Romano's view was that the dimensions and shapes of the proposed lots are a concern and that the proposal represents an over intensification of Marilyn Avenue. Because the frontage for newly created lots will not meet the applicable by-law standards, Mr. Romano's opinion was

that the consent should not be granted. The neighbours echoed Mr. Romano's opinion, expressing the concern that a severance of the Applicant's lot would create a dangerous precedent for the neighbourhood. Both Mr. Romano and the residents who testified were fair in acknowledging that the existing house on the Applicant's lot has to be demolished. The residents would prefer one new home be built, as opposed to two new single family dwellings.

Mr. Rendl provided evidence explaining the planning history of the area, the nature of the neighbourhood, and explained the Applicant's future plans. Briefly, the area is designated Neighbourhoods under the Official Plan and zoned under By-law 12360 (Scarborough) as single family. If the consent is granted, Mr. Rendl explained that two new homes can be built within the zoning standards, with the exception of lot frontage. In order to implement the consent, variances are required for each lot to reduce the frontage from 15 m under the By-law to 12.9 m. The existing frontages along Marilyn Avenue range from approximately 85 ft to 56 ft. However, lot frontages are typically 56.50 ft, which would not be candidates for future severances. The evidence provided was that of the twelve lots on the same side of the street as the Applicant's lot (# 6 to 30), all but two had frontages at 56.50 ft. Only the Applicant's lot and the lot at 18 Marilyn Avenue have frontages at 84.75 ft. The majority of the lots on the same side of the street at 56.50 ft would simply not be candidates for future consents. Similar statistics exist for the lots on the opposite side of the street. There are very few lots on the street, or in the area generally that would support future consents.

The Board finds that provisional consent should be given to create two (2) lots. First, the proposal has regard to matters of provincial interest and represents appropriate intensification. It makes use of existing land without impact to the neighbourhood and street. In fact, implementation of the proposal will replace a house in disrepair and provide two (2) new single family dwellings that can be constructed to blend in with the existing neighbourhood. Second, while the Board appreciates the concerns of the residents that the consent will negatively impact the street and neighbourhood, the Board finds that the proposed frontages will, even for this area, be generous and maintain the "feel" of the street as one with lovely homes on large lots. In this regard the Board was mindful of the testimony provided by the residents. They do not want this unique area over intensified, which is a valid concern. However, the decision in this case to grant the consent should not be seen as a precedent for the

neighbourhood. There are very few, if any, new lots that can be created from the existing streetscape. The large lots will continue to be the norm for Marilyn Avenue. The Applicant's lot is unusually wide for the street. Lot frontage is designed to ensure that a lot is not too narrow for a building. In this instance the retained and severed lots can accommodate the proposed dwellings as each will be constructed in accordance with the by-law standards. The result will not be two over sized homes for the newly created lots. Instead, a derelict dwelling that must be demolished will be replaced representing new investment in the area intended to stabilize, rather than destabilize, the neighbourhood.

Variances

The Board may authorize a variance from a by-law if each of the four tests set out in s. 45(1) of the Act are satisfied. On the facts of this case, the variances relate to lot frontage. As indicated above, if provisional consent were given then the frontages for each lot would not comply with the applicable zoning provisions, thereby necessitating the variances. The variances request authorization to reduce the lot frontages from 15 m to 12.9 m. For the same reasons delineated above in connection with the consent, the Board finds that on the facts of this case variances to permit 12.9 m lots maintain the general intent and purpose of both the Official Plan and the Zoning By-law. The proposal is desirable for the development of the land as it will result in the demolition of a single family home that is not habitable and the replacement with two new homes, each of which will be constructed in accordance with the by-law standards as they relate to lot area, height and all set backs. The reinvestment on the street with these new homes is positive and desirable and consistent with other projects in the neighbourhood. In this instance, the Board finds that the variances for a reduction in lot frontage are minor. This will, however, not always be the case. It is important that in a stable neighbourhood such as this that reductions in frontage not be routine and in this regard the Board would not have been supportive of any proposal that reduces frontages below the approximately 12.9 m (42 ft) as proposed. Any further reduction would result in a loss of identity and character for the street and on this basis the Board's decision on the application should not be taken as a precedent for future intensification.

Decision and Order

For all of the reasons given, the Board finds that the appeal under s. 53(19) is allowed and provisional consent shall be given, subject to conditions that may be required by urban forestry and public works. The appeals under s. 45(12) are allowed and the Board authorizes variances from the by-law requirements in respect of lot frontage of 12.9 m for the severed lot and the retained lot.

So orders the Board.

“J. de P. Seaborn”

J. de P. SEABORN
VICE CHAIR