

Ontario Municipal Board
Commission des affaires municipales
de l'Ontario



ISSUE DATE: March 18, 2015

CASE NO(S): PL141144

PROCEEDING COMMENCED UNDER subsection 34(19) of the *Planning Act*, R.S.O. 1990, c. P.13, as amended

Appellant: Sander Gladstone
Subject: By-law No. 1072-2014
Municipality: City of Toronto
OMB Case No.: PL141144
OMB File No.: PL141144

Heard: February 18 – 20, 2015 in Toronto, Ontario

APPEARANCES:

Parties

Counsel

Kanko 200 Ridley Ltd.

A. Stewart

City of Toronto

A. Hill

Sander Gladstone

**MEMORANDUM OF ORAL DECISION DELIVERED BY R. G. M. MAKUCH ON
FEBRUARY 20, 2015 AND ORDER OF THE BOARD**

[1] City of Toronto (the ‘City’) Council enacted Zoning By-law 1072-2014 following an application by Kanko 200 Ridley Ltd. (“Applicant”) to permit a residential development over the vacant part of a site containing a four-storey rental apartment building, which would be retained. The application went through a number of iterations following consultation with City staff as well as with the community.

[2] Zoning By-law 1072-2014 changed the zoning designations on the subject lands

from R3 (19) to RM4 (27) at the front of the site, where the new building is proposed and from RM4 to RM4 (27) at the rear of the site where the existing apartment building is situated. The by-law would permit an increase in height and density and allow the development of a four-storey, 30 unit condominium apartment building.

[3] An underground garage is proposed in the new building to provide resident and visitor parking for these units. A turning circle will be added in front of the existing rental apartment building, which will permit the elimination of the easterly leg of an existing U-shaped driveway and will continue to provide a fire route as well as access to Ridley Boulevard.

[4] The amendment provides for a minimum of 69 residential parking spaces and nine visitor parking spaces for the existing building and 1.0 spaces per dwelling unit and 0.2 visitor parking spaces for the new building.

[5] The maximum gross floor area on the subject lot will not exceed 11,200 square metres ("m²") and the maximum lot coverage for all buildings will not exceed 37%.

[6] The Applicant had also applied for the authorization of a consent to sever the lands so that the lands over which the new building would be on would be in different ownership than the lands over which the existing apartment building is located. The application for consent was to sever the property into two lots and to convey easements for both the retained and conveyed parts. The purpose of the easements is to *inter alia* provide shared vehicular access for the existing and proposed apartment buildings over the mutual driveway and shared pedestrian access to exterior landscaped amenity areas. The consent application is required to implement the redevelopment proposal and the zoning by-law as amended.

[7] On January 20, 2015, the Applicant appealed the Committee of Adjustment's ("C of A") failure to make a decision within 90 days pursuant to s. 53(14) of the *Planning Act* (the "Act") (O.M.B. File No. PL150112).

[8] The Applicant requested an order of the Board consolidating the consent appeal pursuant to s. 53(14) with the appeal herein. Counsel for the Applicant served notice of its intention to do so on all property owners within 60 m of the subject site as well as all of those who had been served with the Notice of Hearing in this matter.

[9] The City did not object to the two matters being heard together or for an abridgement of time for service of the notice to 28 days from the required 35 days. Sander Gladstone (the “Appellant”) was opposed to the matter being heard by this Board without it first having been reviewed by the C of A.

[10] The Board is satisfied that it is in the public interest to hear these two matters together as they relate to the same property and would result in better use of the City’s and the Board’s resources. Accordingly, the two matters will be heard together and the time for service of the notice in O.M.B. File No. PL150112 is hereby abridged to 28 days from the required 35 days.

[11] Counsel for the City provided the Board with a resolution from City Council requesting that certain conditions be imposed on the granting of any consent to sever the subject property.

[12] The Appellant has appealed the enactment of Zoning By-law 1072-2014 on the grounds that it is inappropriate to the neighbourhood context, density, use and existing built form and does not conform to the Official Plan (“OP”)“Neighbourhood” policies. It also does not conform to council approved requirements set out in the 2008 “Avenues” Study for Avenue Road between Lawrence Avenue and Wilson Avenue. Furthermore, the concerns of the community were not addressed adequately.

[13] The evidence in support of the appeal consists of the testimony of the Appellant as well as Raffi Asailian and Denise Belanger, both residents of the area. Mr. Asailian lives directly across Ridley Boulevard from the subject site with his wife and three children. Ms. Belanger is a tenant in the existing apartment building on the subject site.

[14] It is noted that the Appellant is a professional architect registered in the Province of Ontario but was not qualified to give opinion evidence by reason of his status as Appellant and the main advocate in support of the appeal. One cannot be both an advocate and a professional witness in such a case.

[15] Furthermore, the Board finds it difficult to give his evidence any weight at all. It consisted largely of exaggerations and statements that were not supportable by the facts of the case or in law. His insistence for instance that the proposed building was a five and a half storey building was a fabrication in his own mind not supported by general planning and architectural principles or by the zoning by-law. His suggestion that any development be subject to the imposition of some sort of levy per apartment unit based on its size totalling approximately \$3.95 million was beyond credulity and made it difficult for the Board to take him seriously.

[16] The Appellant did not call any witness to provide expert opinion evidence to contradict the professional opinions proffered by the witnesses who testified in opposition to his appeal. He also did not challenge their evidence in any meaningful way on cross-examination.

[17] While the evidence of Mr. Asailian and Ms. Belanger was genuine and sincere and proffered out of a sense of concern for their well-being, it nevertheless fell short of what is required by the Board to allow the appeal.

[18] The totality of the evidence proffered by the Appellant in support of his appeal fell far short of what would be required for the Board to rely on in order to allow his appeal.

[19] The evidence in opposition to the appeal consists of the testimony of Michael Goldberg and Douglas Hall, the land use planning consultant and parking and traffic consultant respectively for the Applicant, as well as Lauralyn Johnston, the land use planner for the City. Their evidence was thorough, convincing, and virtually unchallenged. The Board is satisfied based on the above-noted un-contradicted

professional evidence before it that By-law 1072-2014 represents appropriate land use planning for the reasons that follow.

[20] Firstly, the Board is satisfied based on Mr. Goldberg's un-contradicted land use planning evidence that By-law 1072-2014 is consistent with the Provincial Policy Statement 2014, and is in conformity with the Growth Plan for the Greater Golden Horseshoe Area. Both of these planning documents promote the efficient use of transportation and other infrastructure systems within the City and encourage the provision of a full range of housing options including affordable housing. These policies promote the intensification and redevelopment of land to achieve complete communities and a compact built form and the Board is convinced that the proposed development will assist the City in achieving just that.

[21] Mr. Goldberg's testimony makes it quite clear that the subject property is an excellent site for intensification given that it is well served by municipal infrastructure and its proximity to public transit along Avenue Road and bus routes to subway stations. It is also in proximity to Highway 401, a major provincial highway. A large portion of the subject site is vacant and underutilized with a front lawn measuring approximately 79.15 metres ("m") by 47 m.

[22] The Board is also satisfied that the proposal conforms with the City's OP and as such represents appropriate land use planning. The subject property is located in a "Neighbourhoods" designation under the City's OP, which permits the proposed use.

[23] The Board agrees with Mr. Goldberg's interpretation of the OP that the reference to "prevailing building types" makes it clear that on both anomaly sites and sites containing existing apartment buildings, s. 4.1.5 does not apply if it is not possible or desirable to provide the same standards and development patterns as in the surrounding "Neighbourhood"

[24] The OP expressly recognizes that certain "anomaly" sites in "Neighbourhoods"

designations are appropriate for infill intensification:

Scattered throughout many Neighbourhoods are properties that differ from the prevailing patterns of lot size, configuration and orientation...Due to the site configuration and orientation it is often not possible or desirable to provide the same site standards and pattern of development in these infill projects as in the surrounding Neighbourhood. Special infill criteria are provided for dealing with the integration of new development for these sites, and for intensification on existing apartment sites in Neighbourhoods.

[25] The Subject Property is one such “anomaly” site and the infill criteria set out in s. 4.1.9 and s. 4.1.10 of the OP apply under the circumstances. It is a very large irregularly shaped parcel (11,031 m² (1.1 hectares)), which has an existing apartment building set back more than 54 m from the front property line along Ridley Boulevard, which makes it impractical to develop according to the test in s. 4.1.5. It is an ideal buffer between the interior residential neighbourhood and the more intense development on Avenue Road.

[26] The applicable test is “compatibility”, which has been generally recognized in the land use planning world to mean “capable of co-existing in harmony.”

[27] There are numerous decisions issued by the Board over the years that stand for the proposition that being compatible with is not the same thing as being the same as. Being compatible with is not even the same thing as being similar to. Being similar to implies having a resemblance to another thing; they are like one another, but not completely identical. Being compatible with implies nothing more than being capable of existing together in harmony.

[28] Section 4.1.9 of the OP refers to the height, massing and scale having to be appropriate and compatible instead of imposing an obligation on development having to respect and reinforce the existing physical character of a neighbourhood. The Board agrees that compatibility of heights, massing and scale should be assessed based on urban design concepts, including setbacks, stepbacks, transition measures and

landscaping. Furthermore, s. 4.2.3 states that compatible infill development may be permitted on a site containing an existing apartment building that has sufficient underutilized space.

[29] The Board is satisfied that the proposed development meets all of the special criteria for infill development, and for intensification on existing apartment sites. The evidence showed that the overall height is 14 m, only 1 m higher than the existing apartment building on the site and that the 4th floor is partial only as it is set back on all sides from the 3rd floor below, by a minimum of 5 m making it virtually invisible from street level, even when standing across the street. Furthermore, the 4th floor does not have any residential units but an amenity room only.

[30] There is sufficient separation distances between the buildings with a minimum of 13.9 m, which exceeds the City's standards. The shadow studies proffered by the Applicant indicate that any shadow impacts are minimal in this case and the Board notes that the test does state that there shall be no impact, but rather provide adequate privacy, sunlight and sky views in s. 4.1.9, 4.2.2 and 4.2.3.

[31] Both the existing and proposed buildings have frontage and presence on Ridley Boulevard. The proposed building is low rise and grade-related.

[32] There is sufficient residential amenity on the site with improvements to exterior landscaping, a play area, and the conversion of an apartment unit in the existing building to an indoor amenity space.

[33] Parking will be provided for the new building below grade, and surface parking will be appropriately screened, which is an improvement over the existing condition with parking in the front yard.

[34] The Appellant suggested that new four-storey buildings are only permitted if they do not contain elevators, a proposition with absolutely no merit given the requirements

of the Ontario Building Code and inconsistency with policy 4.2.2(h), which requires new apartment buildings to wherever possible contain units that are accessible or adaptable for persons with physical disabilities.

[35] The Board is also satisfied based on Mr. Hall's un-contradicted evidence that there are no unresolved parking or traffic issues arising from this proposed development and in fact, the Appellant congratulated Mr. Hall for resolving many of his concerns.

[36] The Board is also satisfied based on Ms. Johnston's un-contradicted evidence that the proposed development is consistent with and in conformity with provincial housing policy as well as City OP housing policies. The Board notes that the City was able to extract a number of concessions from the Applicant, which have been secured with a section 37 agreement registered on title to the subject property.

[37] The Appellant's cross-examination of these witnesses only served to strengthen their opinions.

[38] City Council had extensive information and studies before it when it made the decision in this matter. Council's decision followed a lengthy and thorough public consultation process and the Board is required under s. 2.1 of the Act to have regard for City Council's decision to approve By-law 1072-2014 and the associated development. The Board does not accept the Appellant's complaint that the community was not adequately consulted in this case. Not getting what one wants does not equate to a lack of consultation.

[39] With respect to the appeal pursuant to s. 53(14), there was no meaningful challenge to this application by the Appellant and the Board is satisfied that a plan of subdivision is not necessary for the orderly development of the municipality and that the criteria set out under s. 51(24) of the Act have been adequately considered based on the evidence of Mr. Goldberg and Mr. Hall.

[40] Accordingly, the appeal against By-law 1072-2014 is dismissed. Furthermore, the appeal pursuant to s. 53(14) is hereby allowed and provisional consent as applied for is granted subject to the conditions set out in Attachment 1 (Exhibit 2).

"R. G. M. Makuch"

R. G. M. MAKUCH
MEMBER

Ontario Municipal Board

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