



PLANNING AND BUILDING SERVICES

Town of Newmarket

395 Mulock Drive

P.O. Box 328, STN Main

Newmarket, ON L3Y 4X7

www.newmarket.ca

planning@newmarket.ca

T: 905.953.5321

F: 905.953.5140

Planning Report

To: Committee of Adjustment

From: Ted Horton
Senior Planner

Date: December 10, 2019

Re: Application for Consent **D10-B07-19**
Part Lot 22, Lot 23, Plan 78
353 Ontario Street, Newmarket
Made by: BIANCHI, David

1. Recommendations:

That Consent Application D10-B07-19 be denied.

2. Application:

An application for Consent has been submitted by the owner of the above noted lands. The Committee of Adjustment previously granted provisional consent for the subject lands on January 12, 2017 as part of the following applications:

- Application for Consent D10-B01-13
- Applications for Minor Variance D13-A01-13 and D13-A02-13

Under Section 53 (41) of the Planning Act, if an application for consent includes conditions that are imposed and those conditions are not fulfilled within one year after notice of decision is provided the consent is deemed to be refused. The applicant for consent application D10-B01-13 did not fulfill the conditions that were imposed by Committee, and thus the consent was deemed to be refused. They then sought a second application for consent in order to complete the consent, which was granted by Committee under application D10-B03-18.

Following this second application for Consent, it was determined that the proposed conveyance was not possible as both the recipient lands and retained lands had merged in ownership and were one parcel of land. Accordingly, it was not possible to transfer land from a parcel to the same parcel, nor was it possible to sever the lots without an application for consent. Therefore, the applicant has submitted this application to bring about the intended result of the two previous applications, being that there be two residential lots of 13.77m in frontage.

An initial report was provided to Committee on December 5th. Following this, comments from the Lake Simcoe Region Conservation Authority ('LSRCA') were provided to the Town regarding this application. These comments form the basis for this updated report.

2. Planning Review:

The original application for consent for the subject lands was made in 2013. At that time, the review by the LSRCA indicated that the majority of the property was located within the regulatory floodplain. This would have placed the rear half of the homes on the proposed lots in areas subject to more than 1 metre of flood depth. Accordingly, Planning staff recommended that the application be deferred to provide the applicant an opportunity to discuss with the LSRCA and obtain their approval.

In 2017, the applicant returned to Committee after having undertaken studies that determined that the development of the site could be undertaken in a manner that addressed the policies of the LSRCA, namely that flood velocities would not surpass the Authority's maximums, that there would not be significant increase to upstream or downstream flooding, and that the development would not cause an obstruction to flow or flood storage capacity. With the LSRCA having indicated its support for the application, Planning staff recommended approval and Committee granted this application, subject to certain conditions. As discussed above, it was determined during the period of fulfilling the conditions that the previously-existing two parcels had been merged into a single parcel due to the applicant having placed both in ownership under the same name. Accordingly, the consent could not be fulfilled.

The applicant undertook a third application in 2019, which is before Committee on December 11th under file number D13-B07-19. A report was provided to Committee on the basis that it reflected the same applications previously made, and was reviewed under the same set of policies, which led to the same recommendation. Following the submission of the report to Committee, comments were provided by the LSRCA that indicated an updated set of data related to flooding and hydrology led to different comments from the Authority.

The LSRCA is responsible for environmental mapping and the review of planning and development applications in the context of natural heritage and natural hazards as laid out in the Provincial Policy Statement ('PPS'), the Growth Plan for the Greater Golden Horseshoe ('Growth Plan') and the Lake Simcoe Protection Plan ('LSPP'). In addition, the approval of the LSRCA is required for any actions regulated by *O. Reg. 179/06: Lake Simcoe Region Conservation Authority: Regulation of Development, Interference with Wetlands and Alterations to Shorelines and Watercourses*.

The comments from the LSRCA note several applicable policies of the PPS, the York Region Official Plan, and the Town's own Official Plan that direct that development not be permitted within a floodway or natural hazard area. As is well known to Committee, planning decisions such as those of Committee are required to conform to the PPS, the Official Plan, and other superior policy documents.

While comments from the LSRCA related to earlier applications indicated that there was a portion of the proposed lots on which development would be possible without conflicting with these policies, the comments from the Authority related to this application reveal new information that suggests the case is otherwise. An update to the LSRCA's hydraulic model in the area of the East Holland River and its tributaries has provided updated data that indicates the regulatory floodplain elevation has increased in this area. This increase has the result of demonstrating that the topography of the subject lands as laid out in the applicant's own previously-provided topographic survey would be subject to much greater flood depths than previously contemplated.

The LSRCA has indicated their opposition to this application due to its conflict with the cited policies of the PPS, YROP, and Town Official Plan. Even were an application for consent granted, the approval of the LSRCA would be required for the development of either property. Given this policy conflict and identified hazard, Planning staff recommend the denial of this application. Should the applicant wish to discuss the matter in more detail with the LSRCA before Committee renders a final decision, the applicant may wish to request that Committee defer the matter *sine die* to allow the time to do so.

3. Other comments:

Tree protection

The Town's Tree Preservation, Protection, Replacement and Enhancement Policy will apply to this application if it is granted, and conditions can be provided to this effect.

Heritage

There is no structure on the lot.

Effect of public input

Planning Services received no input from the public as of the date of writing this report.

Interim Control By-law

On January 21st, 2019 Council adopted an Interim Control By-law under Section 38 of the Planning Act. The Interim Control By-law limits the ability to increase the floor area or height of residential dwellings throughout its study area, which includes the lands subject to this application. The by-law exempts lands that have been subject to a complete *Planning Act* application, which includes the subject lands.

Commenting agencies and departments

Comments from Building Services were not available as of the date of this report.

Comments from the Regional Municipality of York were not available as of the date of this report.

Comments from the Lake Simcoe Region Conservation Authority are attached to this report.

Engineering Services has reviewed the application and indicates that if provisional consent is granted that it should be subject to conditions laid out in their comments.

Bell Canada has reviewed the application and indicates that if provisional consent is granted that it should be subject to conditions laid out in their comments.

5. Conclusion:

That the proposed application for consent does not conform to the Official Plan, applicable Regional and Provincial legislation, regulations and planning policies as laid out in this report and should be denied.

Respectfully submitted,



Ted Horton
Senior Planner

Attachments:

- Comments from Lake Simcoe Region Conservation Authority
- Previous Planning Report dated December 5, 2019



Sent via E-mail: aslattery@newmarket.ca

December 9, 2019

File No.: D10-B07-19
IMS No.: CO-162433-112819

Ms. Alannah Slattery
Planner & Secretary-Treasurer, Committee of Adjustment
Town of Newmarket
395 Mulock Drive, P.O. Box 328
Newmarket, ON L3Y 4X7

Dear Ms. Slattery:

Re: Proposed Application for Consent
Owner: David Bianchi
353 Ontario Street
Town of Newmarket, Regional Municipality of York

Thank you for circulating the captioned application to the Lake Simcoe Region Conservation Authority ("LSRCA") for review and comment. We understand that the Owner of the above-noted property has submitted an application for Consent to request permission to sever Subject Land 'A' and retain the Remainder Land marked as 'B', as shown on Schedule '1' to create one (1) additional residential building lot. We note that the Owner has not submitted the applicable development fee of \$500.00 to the LSRCA in accordance with the approved Fees Policy under the *Conservation Authorities Act* for review of this application.

The LSRCA has reviewed this application in the context of the natural heritage and natural hazard policies of the Provincial Policy Statement (PPS), Growth Plan for the Greater Golden Horseshoe, the Lake Simcoe Protection Plan (LSPP) and Ontario Regulation 179/06 of the *Conservation Authorities Act*.

Current environmental mapping shows that the subject property is within an area governed by Ontario Regulation 179/06 of the *Conservation Authorities Act*. This is representative of flooding under the Regional Storm Event associated with a tributary of Western Creek. Accordingly, a permit from the LSRCA under Ontario Regulation 179/06 will be required prior to development or site alteration occurring on the property and prior to the issuance of a municipal building permit.

Based on our review of the current environmental mapping and review of the applicable planning policies, we provide the following comments:

1. Section 3.0 of the PPS (2014) provides Ontario's long-term prosperity; environmental health and social well-being depend on reducing the potential for public cost or risk to Ontario's residents from natural or human-made hazards. Section 3.1.1 states: *Development shall not be permitted within a floodway regardless of whether the area of inundation contains high points of land not subject to flooding.*

2. The Region of York Official Plan outlines an objective to minimize risks to human health and safety and property associated with natural hazards. Accordingly, Policies 2.3.22, 2.3.25 and 2.2.26 provide the following:
 - 2.3.22 *To direct development and site alteration away from hazardous lands and hazardous sites;*
 - 2.3.25 *That development and site alteration are generally prohibited within defined portions of the floodplain, subject to conservation authority regulations;*
 - 2.3.26 *To prohibit new lot creation in hazardous lands and hazardous sites.*
3. The Town of Newmarket Official Plan provides the following Policies:
 - 10.2.2 *Development will generally be directed to areas outside of the Floodplain and Hazard Lands. Development or re-development within these hazardous areas shall be regulated in accordance with Provincial hazard land policies and the regulations of the Lake Simcoe Region Conservation Authority;*
 - 16.1.5.2 *Applications for consents shall only be granted where: (i) the consent complies with all relevant provisions of this Plan.*
4. The LSRCA Watershed Development Guidelines state in Section 4.0.2 that: The LSRCA will not permit modifications to hazardous lands, watercourses, wetlands and natural features contributing to the conservation of land **to create additional useable area** or to accommodate or facilitate **development** or **intensification** except under the following circumstances: (a) the works would result in permanent remediation and a reduction in risk and improve public safety.

Based on a review of the submitted information, the application would allow for residential intensification within hazardous lands which is not consistent and in conformity with the above-mentioned planning policies. At this time, the LSRCA is not in support of the proposed application. We recommend denial of this Application for Consent.

Should you have any questions concerning these comments, please do not hesitate to contact the undersigned. Please advise our office of any decision made with regard to this matter.

Sincerely,



Laura McGinnis
Planner I



PLANNING AND BUILDING SERVICES

Town of Newmarket

395 Mulock Drive

P.O. Box 328, STN Main

Newmarket, ON L3Y 4X7

www.newmarket.ca

planning@newmarket.ca

T: 905.953.5321

F: 905.953.5140

Planning Report

To: Committee of Adjustment

From: Ted Horton
Senior Planner

Date: December 5, 2019

Re: Application for Consent **D10-B07-19**
Part Lot 22, Lot 23, Plan 78
353 Ontario Street, Newmarket
Made by: BIANCHI, David

1. Recommendations:

That Consent Application D10-B07-19 be granted subject to the following conditions:

- a. That prior to the issuance of the Certificate of Official, that the owner be required to obtain a demolition permit and remove the existing structures on the lot;
- b. That the Owner be required to prepare at their sole cost an R-Plan showing a municipal easement of 3 metres in width centered over the existing sanitary sewer, and to register an easement in favor of the Town over this area at their sole cost, to the satisfaction of the Town;
- c. That the applicant be required to provide to the satisfaction of the Town proof that they have registered on title easements for sanitary infrastructure under the property to the satisfaction of the Town;
- d. That the applicant be required to provide to the satisfaction of the Town proof that they have registered on title easements for Bell Canada infrastructure under the property to the satisfaction of the Town;
- e. That the Owner be required to provide to the satisfaction of the Secretary-Treasurer of the Committee of Adjustment the following:
 - i. proof of payment of all outstanding taxes and local improvement charges owing to date against the subject, recipient, and retained parcels
 - ii. three white prints of a deposited reference plan showing the subject land, which conforms substantially to the application as submitted; and
 - iii. required transfers to effect the severance and conveyance applied for under Consent Application D10-B07-19, conveying the subject lands, and issuance by the Secretary-Treasurer of the certificate required under subsection 53(42) of the *Planning Act*.

2. Application:

An application for Consent has been submitted by the owner of the above noted lands. The Committee of Adjustment previously granted provisional consent for the subject lands on January 12, 2017 as part of the following applications:

- Application for Consent D10-B01-13
- Applications for Minor Variance D13-A01-13 and D13-A02-13

Under Section 53 (41) of the Planning Act, if an application for consent includes conditions that are imposed and those conditions are not fulfilled within one year after notice of decision is provided the consent is deemed to be refused. The applicant for consent application D10-B01-13 did not fulfill the conditions that were imposed by Committee, and thus the consent was deemed to be refused. They then sought a second application for consent in order to complete the consent, which was granted by Committee under application D10-B03-18.

Following this second application for Consent, it was determined that the proposed conveyance was not possible as both the recipient lands and retained lands had merged in ownership and were one parcel of land. Accordingly, it was not possible to transfer land from a parcel to the same parcel, nor was it possible to sever the lots without an application for consent. Accordingly, the applicant has submitted this application to bring about the intended result of the two previous applications, being that there be two residential lots of 13.77m in frontage.

2. Other comments:

Tree protection

The Town's Tree Preservation, Protection, Replacement and Enhancement Policy will apply to this application and its application is recommended as a condition of this consent.

Heritage

No structure on the lot is listed under the *Ontario Heritage Act*.

Effect of public input

Planning Services received no input from the public as of the date of writing this report.

Interim Control By-law

On January 21st, 2019 Council adopted an Interim Control By-law under Section 38 of the Planning Act. The Interim Control By-law limits the ability to increase the floor area or height of residential dwellings throughout its study area, which includes the lands subject to this application. The by-law exempts lands that have been subject to a complete *Planning Act* application, which includes the subject lands.

Commenting agencies and departments

Comments from Building Services were not available as of the date of this report.

Comments from the Regional Municipality of York were not available as of the date of this report

Engineering Services has reviewed the application and does not have any objections to the proposed consent, provided that the proposed conditions are imposed.

3. Planning considerations:

Staff continue to support the recommendations of the previous reports.

4. Conclusion:

That the proposed application for consent conforms with the Official Plan, the Zoning By-law, and applicable Regional and Provincial legislation, regulations and planning policies.

Respectfully submitted,

A handwritten signature in blue ink, appearing to read "Ted Horton", is positioned above the printed name.

Ted Horton
Senior Planner

Withdrawn