

ISSUE DATE:
SEPT. 1, 2009



PL081563

Ontario Municipal Board
Commission des affaires municipales de l'Ontario

Shiu Bing Kwan and Chak Suen Kwan have appealed to the Ontario Municipal Board under subsection 34(11) of the *Planning Act*, R.S.O. 1990, c. P.13, as amended, from Council's neglect to enact a proposed amendment to Zoning By-law 122-72 of the Town of Markham to rezone lands respecting 19 Oakcrest Avenue from Single Family Rural Residential (RRH) to facilitate a severance to create 2 lots for the construction of 2 new single-family dwellings

OMB Case No.: PL081563

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APPEARANCES:

Parties

Shui Bing Kwan

Town of Markham

Counsel

T. Pochmurski

J. Streisfield

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**TOWN OF MARKHAM
CLERKS DEPT.**

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

The matter before the Board is an appeal by Shui Bing Kwan (Applicant) from the refusal or failure of the Council for the Town of Markham (Town) to make a decision in respect of an application for a site-specific rezoning. The Applicant ultimately intends to seek provisional consent to sever his property into two lots however requires a rezoning prior to proceeding with that application. The Town opposes the rezoning. A number of area residents appeared as participants, both in support of and opposition to the rezoning.

Mr. Ferancik, a qualified land use planner and Mr. Gain, an architect, each testified in support of the rezoning. Mr. McDonald, also a qualified land use planner, testified on behalf of the Town. Both planners provided evidence with respect to the historical development of the area and the purpose of the rezoning and its significance, not just for the Applicant but also for surrounding property owners.

The Applicant's property is located at 19 Oakcrest Avenue (Oakcrest), in the South Unionville area of Markham, referred to as the Oakcrest/Sabiston Community (Community). The Community is bounded by Highway 407, Highway 7, McCowan Road and Kennedy Road. Oakcrest runs from Highway 7 to Castan Avenue and the Applicant's property is about halfway between River Bend Road and Castan. Described as part of a distinct large lot residential enclave, the property has a frontage of just over 39 metres (128 feet) and an area of 2,066 m² (about one half an acre). The property is zoned Single Family Rural Residential (RRH) under Zoning By-law 122-72 and the proposal is to rezone the lot to R3, which permits lots with frontages (among other standards) of 60 feet. If the rezoning is approved, the Applicant will be in a position to seek provisional consent to sever the property and construct two dwellings (evidence was provided indicating the type of homes that would be constructed), meeting development standards for the R3 zone, subject as well to the applicable infill Zoning By-law. The Town's position was that the rezoning and subsequent severance (if granted) would not be in keeping with the character of the Community and would set a dangerous precedent for Oakcrest in particular.

Town documents and various planning reports have considered how to approach zoning by-law amendment applications for the Community. First, the evidence was clear that the area is in transition and different standards apply to different streets and even parts of streets. Oakcrest is no exception. One end of Oakcrest is zoned RRH while the other part of the street is zoned Agricultural One (A1) under Zoning By-law 304-87. Campbell Court and Sabiston Drive are also zoned RRH as are the front portions of the lots on River Bend Road. There have been several site-specific rezoning applications approved on each of these streets, thereby permitting the creation of smaller lots through consents. In addition, the Town's infill Zoning By-law 16-93 applies to the majority of the lots in the area regulating building height, depth, garage projection and maximum floor area ratio. Second, the Community is split on whether land severances are appropriate for the Community. Third, the Town has considered and reviewed the issue of land severances and ultimately retained Meridian Planning (Meridian) to undertake a review of the existing zoning in the area and provide recommendations for dealing with existing applications and future proposals. Staff reported in June 2008, that the review by Meridian recommended to the Town separate guidelines that should be implemented on a street-by-street basis and what type of development was appropriate

for maintaining the character of each street or the Community as a whole. The study was not complete and the Applicant determined that given the amount of time that has passed since the original rezoning application, the amount of public consultation that has already occurred, and a desire to move ahead and seek provisional consent, he felt compelled to proceed to the Board with the appeal.

Mr. McDonald, on behalf of the Town, indicated that there is no need to direct development to Oakcrest in order to meet objectives under the Provincial Policy Statement (PPS) with respect to intensification. Nonetheless, he was candid in his opinion that the PPS generally supports maximizing the use of existing infrastructure and intensification. While the Board agrees that the rezoning is not required under the PPS, the proposal clearly is consistent and in keeping with Provincial policy objectives. Mr. McDonald testified that under the Official Plan, infilling may only be permitted without disturbing the pattern of the existing development. In this regard, it was his opinion that the ultimate creation of two lots at 19 Oakcrest will disturb the existing pattern and create two substandard lots, negatively affecting the character of the street and setting a dangerous precedent. In this regard, the Board notes that the lot is designated Urban Residential in the Town's Official Plan and as indicated by staff in their September 2007 Report (Exhibit 2, Tab 7), the Applicant's proposal is generally consistent with low density housing and land severance policies of the Official Plan. In addition, staff concluded that the additional lot would be in keeping with Town initiatives regarding compact urban development form. The Board agrees with staff's analysis and finds that the rezoning has regard to the Town's Official Plan.

The planners differed however in their opinions as to whether the area is in transition. There is no question that smaller lots have been created in the Community and general area. The crux of the difference between the parties (and participants who expressed views on both sides of the issue) is whether approval will result in development that is not in keeping with the area and result in a dangerous precedent that ultimately will negatively affect the character of an existing established neighbourhood. Mr. McDonald indicated that because 19 Oakcrest is at the centre of an established neighbourhood and street, approval of the application would begin a process of transition along Oakcrest that will have a negative impact on the "quality of the place". Mr. Ferancik's opinion was that the area has been in transition for several years and smaller lots have been created both on Oakcrest and the surrounding streets.

Approval of this application would not set a precedent given the existing frontage of the Applicant's lot.

As indicated by the evidence, the Applicant's lot is in the middle of Oakcrest. The homes at 18 to 28 Oakcrest and 21 to 31 Oakcrest have generous frontages, however, they are not generally as wide as 19 Oakcrest. If they were rezoned to R3, subsequent applications for consent would not generally meet the R3 standard, at least in respect of lot frontage, as they would not support two 60-foot lots (following severance). In addition, these lots are zoned under a different Zoning By-law than applies to 19 Oakcrest. The area context zoning map (Exhibit 2, p. 51) and the map delineating land severances in the area (Exhibit 2, p. 166A), clearly show the distinction between the lots on Oakcrest. Simply put, there have already been site-specific rezoning applications to R3 approved on surrounding lots, most significantly 16 Oakcrest, which is directly across the street from the Applicant's home. In that instance, the rezoning and subsequent consent were each approved creating two lots of approximately 88 feet, meeting the standard for lot frontage in the R3 zone. In this instance, a subsequent application for consent would create somewhat smaller lots, but each would meet the standard for the R3 zone of 60-foot minimum lot frontage. It is primarily for this reason that the Board finds the rezoning should be approved. Any subsequent application for provisional consent can comply with the zoning standards for the R3 zone.

The Board rejects the submission that the Applicant's proposal results in a dangerous precedent. First, City staff have stated in numerous reports that the Community is in transition and that new lots have been created over the past ten years. Second, unlike other lots on Oakcrest, if the Applicant seeks provisional consent to sever the property after the rezoning, the standards set out for the R3 zone in respect of frontage can be met. Third, a site-specific rezoning was approved for 16 Oakcrest, directly across the street. Fourth, the Board finds that approval of this rezoning will neither set a precedent nor interfere with the work of Meridian. As indicated previously, Oakcrest itself is subject to different zoning and while the lots are large, they are also of varying sizes. Very few other lots could be rezoned to R3 and upon subsequent application for consent accommodate 60 foot lots, which is the minimum standard set out in the R3 zone. Fifth, the decision of the Board is not intended to create a precedent for every property on Oakcrest. Existing lots have various frontages. Some have already been severed. Each case is decided on its own facts and merits and this

decision ought not to be viewed as creating a standard for Oakcrest or the Community. The evidence clearly indicated that several severances have been granted for surrounding properties and the area is clearly one that is in transition. However, the Board is not dictating in any fashion how future applications should be decided. It is merely confirming that a site-specific rezoning to R3 for this property represents good planning because if a consent is sought, the frontages (and other standards) for the two resulting lots can meet the R3 Zone requirements. In this regard, the Board rejects the notion that two substandard lots will be created. The application has regard to the Town's Official Plan and is consistent with and in keeping with Provincial policy objectives.

In arriving at this decision the Board has had regard to matters of Provincial interest and the Town's decision in this matter (Sections 2 and 2.1 *Planning Act*) and for reasons given, finds the rezoning represents good planning.

For all of these reasons, the decision of the Board is to allow the appeal and Zoning By-law 122-72 of the Town of Markham is amended to rezone 19 Oakcrest Avenue from RRH to R3. There is no appeal before the Board seeking provisional consent and that application must be pursued through the Town.

This is the Order of the Board.

"J. de P. Seaborn"

J. de P. SEABORN
VICE CHAIR