

DR #	109	FOLIO #	350
ORDER ISSUE DATE			
NOV - 3 1995			
OB #	1095-6	FOLIO #	395



Ontario

Ontario Municipal Board

Commission des affaires municipales de l'Ontario

RECEIVED NOV - 6 1995

11 Hillbillie Dr.

C 950008

Robert Strandholt has appealed to the Ontario Municipal Board under subsection 53(7) of the Planning Act, R.S.O. 1990, c.P.13, from a decision of the Committee of Adjustment of the Town of Orangeville, which granted an application by Sally Franco numbered B-5/94 for consent to convey Lot 9, Registered Plan 170

AND the Board has requested further appeal representations from Mr. Strandholt pursuant to Section 53(16) of the Planning Act, R.S.O. 1990, c. P.13

DECISION delivered by T. F. BAINES and ORDER OF THE BOARD WITH REASONS

Following a request to the appellant and/or his solicitor for any further reasons for the appeal herein, the Board is satisfied by the reply of the appellant's solicitor Joseph Vroom and the proceedings which took place before one of the Board's mediators, that the sole reason for the appeal is that the appellant claims title by adverse possession to a part of the lands for which the consent to convey was applied for and granted. This Board has no power to determine the issue of ownership raised by a claim for adverse possession. It is not a claim that is recognized as a planning issue. If the applicant was seeking a consent to convey lands, all or part of which the applicant claimed was his/hers/its by adverse possession, the Board would not entertain such an appeal and claim pending determination elsewhere of the ownership. The reverse, however, leaves a situation beyond the control of the applicant and, though more satisfactory, the determination of the planning issue need not await the determination of the legal issue.

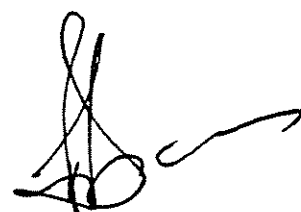
The application herein was heard by the Committee of Adjustment on November 21, 1994. The appeal was made on December 15, 1994 and a mediation hearing before a

Board mediator held on July 25, 1995. As yet the most that has happened is that the Board's request on September 26, 1995 for any further reasons of appeal, has elicited from Mr. Strandholt's solicitor the notation that "I am instructed to bring an application before the Courts to obtain an Order for Possession". This consent application, it is argued, might prejudice Mr. Strandholt's application to the Courts for a decision granting title by adverse possession. The letter requesting further representations cited Section 53(16) of the Planning Act, R.S.O. 1990, so the recipient knows of the Board's powers thereunder. This is well over a year after Mr. Strandholt became aware that this would become an issue and that in the absence of a willing conveyance by the registered owner, such relief from the Courts would be necessary.

Even if the appellant is successful before the Courts, the Town's planning commissioner, whose opinion was given in writing to the Committee of Adjustment before the hearing, is that the remaining lot would still meet the area requirements of the Town of Orangeville zoning by-law. The Board agrees that an attempt to convey the consent lot without resolution of the adverse possession issue may well lead to difficulties for the applicant.

The Board's decision is that the appeal is dismissed and the consent application approved as applied for, subject to the conditions attached hereto as Schedule "A". To conduct a full hearing, after the appellant has had but has not used the opportunities given for an appeal based on planning grounds, would be a waste of time, effort and funds. The Board so orders.

DATED at TORONTO this 3rd day of November, 1995.



T. F. BAINES
VICE-CHAIRMAN



Ontario

C 950008

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SCHEDULE "A"

CONDITIONS:

- 1) That the minor variance for a reduction in the minimum lot frontage from 12 metres (39.4 feet) to 11.6 metres (38 feet) for the severed parcel of land be granted; and
- 2) That a consent agreement is entered into between the applicant and the Town, which would be registered on title indicating that the applicant is to provide a site plan prepared by a qualified individual showing among other things, the house location, driveway access, water and sanitary sewer services, a "tree saving Plan", and proposed grading, to the satisfaction of the Town before a building permit shall be issued.
- 3) That cash-in-lieu of parkland be paid to the Town in an amount of five (5) per cent of the appraised value of the land as of the day before the day of giving of the consent. The appraisal of the land shall be conducted at the expense of the applicant and to the satisfaction of the Town.

COMMITTEE OF ADJUSTMENT

DECISION OF COMMITTEE WITH REASONS
RE APPLICATION FOR MINOR VARIANCE

Planning Act, R.S.O. 1990, c. P.13, ss. 45(8)

APPROVAL AUTHORITY: THE CORPORATION OF THE TOWN OF ORANGEVILLE

RE AN APPLICATION BY: Sally Franco

LOCATION OF PROPERTY: Lot 9, Registered Plan 170,
Town of Orangeville

PURPOSE OF APPLICATION: The applicant is seeking permission for a reduction in the minimum lot frontage in the "R5, Residential Fifth Density Zone" from 12 metres (39.4 feet) to 11.6 metres (38 feet).

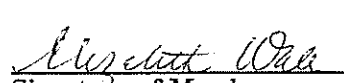
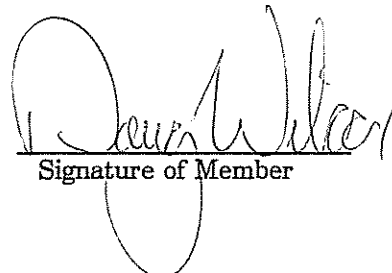
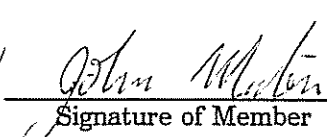
WE, the undersigned, in making the decision upon this application have considered whether or not the variance requested was minor and desirable for the appropriate development and use of the land and that the general intent and purpose of the zoning by-law and the official plan will be maintained, or in the case of a change in a use of property which is lawfully non-conforming under the by-law as to whether or not this application has met the requirements of section 45 (2) of the Planning Act,

CONCUR in the following decisions and reasons for decisions made on the 16th day of November, 1994.

DECISION: Granted

CONDITIONS - This decision has been made subject to the following conditions: None

REASONS FOR DECISION: Variance is minor.

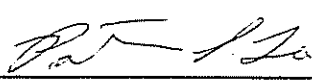
 Signature of Member	 Signature of Member	 Signature of Member
 Signature of Member	 Signature of Member	

CERTIFICATION

Planning Act, 1990, R.S.O. c. P.13, ss. 45(10)

I, Patrick Lee, Secretary-Treasurer of the Committee of Adjustment certify that the above is a true copy of the decision of the committee with respect to the application recorded therein.

DATED THIS 21 day of November, 1994.


Patrick Lee
Secretary-Treasurer