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March 24, 2015

To Mayor and Members of City Council
c/o Marilyn Toft
12th Floor, West Tower, City Hall
100 Queen Street West
Toronto, Ontario M5H 2N2

Dear Sir/Madam:

**RE: Recommendation from Government Management Committee Meeting
Convened on February 17, 2015 Related to Release of Covenant on Title to
28 Hedgewood Road / Agenda Item GM2.8 /Reference Number:
P:\2015\Internal Services\RE\Gm15003re (AFS # 20752) / Our File No. K315**

My firm acts as solicitors for Narges Ehsani-Armaki, the owner of 28 Hedgewood Road. I am submitting this correspondence to you to request City Council not to adopt the recommendations made by the Government Management Committee in connection with the above captioned matter (**Recommendation Tab 1**) but rather adopt the recommendations that were set out in the report from the Chief Corporate Officer related to this item. Pursuant to that report it was recommended that the City should accept the Offer by my client to release the restrictive covenant currently registered against the said property (**Report Tab 2**). Notwithstanding the staff recommendation, the Committee refused to accept the offer. This decision was prompted by opposition from area residents, supported by the local counsellor, based on unsubstantiated concerns related to the intended use of the property by my client (**Correspondence Tab 3**).

In considering this matter, it is important that Council appreciate some of the background related to this proposal.

28 Hedgewood Road is currently occupied by a single family detached dwelling which has been owned by the family since September 30th, 2013. The property comprises two whole lots on a plan of subdivision (Lots 77 and 78, Plan 1750) together with a portion of a former road allowance known as Beechwood Avenue, which was closed by the former City of North York and subsequently conveyed by the municipality to a

former owner of my client's property in the early 1990's. The property today comprises a large parcel with a frontage of 53.06 metres and an area of 1738.38 square metres.

It was at the time of this conveyance to the former owner that the restrictive covenant in favour of the municipality was registered against the property. The effect of the restrictive covenant was to preclude a use of the conveyed road allowance in conjunction with the original lots for the purposes of a severance.

Following my client's acquisition of the property, they decided that it would be desirable for the family if the property could be severed in order to re-establish the site as two separate parcels upon each of which would be constructed a new single family home (fronting on Hedgewood Road). It was their intention for each of the new homes to be occupied by family members; in this case one home to be occupied by Mr. and Mrs. Armaki and the second by their daughter and family.

In order to pursue their plans, the Armakis contacted both real estate and planning staff regarding the process for seeking release of the restrictive covenant. They were advised of the necessity for planning approvals being secured for the severance and any related minor variances required for the construction of the new dwellings. They were also advised that subject to the planning applications being approved, which staff indicated they could support, the covenant could be released subject to the payment of a fee to the municipality. Comments from the City staff expressing no concerns with the proposed development are attached. (**Comments Tab 4**)

Based on their consultations with staff, my clients filed the requisite applications with the Committee of Adjustment which were subsequently opposed by area residents, and area Councillor (influenced by the opposing neighbours) also opposed the application and ultimately was refused by the Committee.

In their subsequent correspondence to the Government Management Committee in February related to the release of the restrictive covenant, reference is made by the residents to this decision as evidence that my client's proposed development represented bad planning and therefore should provide the basis for not granting the release. However, what the residents failed to acknowledge in their submission was that the Ontario Municipal Board, on an appeal from the Committee of Adjustment, approved the applications on the basis that the propose use of the property represented good planning for the site as well as the surrounding neighbourhood (**Decision Tab 5**). In that regard, the Board member made the following finding:

"The Board finds the proposed new homes are not markedly different from what exists today in the area and that these two large homes would not destabilize the neighbourhood. It is the Board's finding that to create two new lots of the size

being proposed would respect the intent of the both Zoning By-laws, would maintain the large lot frontage and lot areas that currently exist and which give the neighbourhood its distinctive character as required by the OP. The Board finds that the magnitude of the variances to the setbacks and coverage to be minor and in fact assist in allowing larger homes on these lots consistent with the style size and built form of other homes in the area."

OMB Decision Issued October 24th, 2014, Paragraph 80

This decision of the OMB was made after a hearing at which the Board heard evidence from qualified planners, arborists and residents from the community. None of the concerns that the residents have offered in opposition to the granting of the release (including the sizes of the lots, the looks of the homes or the provision of landscaping) were found by the Board to have any merit. However, notwithstanding the fact that City planning staff supported the proposed development, and the OMB approved it, the residents once again offer the same concerns as the basis for blocking the release of the restrictive covenant.

My client both at the time of the OMB hearing, and subsequent to the release of the Board decision through the local Counsellor's office has attempted to dialogue with the residents who opposed the applications. Unfortunately, these efforts have been repeatedly rebuffed by the opposing neighbours, supported by the Counsellor. The Counsellor has consistently opposed my client's application for the severance and release of the restrictive covenant on the basis, as she advised my client, that she would take the lead from the opposing neighbours in this matter. In fact her statements to the Committee of Adjustment and the Government Management Committee have been mostly carbon copy of the opposing neighbours' concerns, which are unwarranted and are contrary to the facts.

The proposed refusal to release the restrictive covenant, prompted by the actions of a number of residents will, if supported by the City, result in personal hardship and prejudice to my clients. Such a result will further deprive the municipality of the opportunity to receive a substantial payment based on fair market value for the release of a restrictive covenant that otherwise provides no public benefit to the citizens of Toronto.

My client, before proceeding with their plan to develop the property, for use by the family, proceeded in a cautious and prudent fashion. They have expended significant time and expenses to date in consulting with staff and by retaining the appropriate qualified professionals (lawyer, planner, architect and arborist) to prepare their plans in response to comments received through this consultation. Having expended this time and effort, they should not now be faced with the prospect of a refusal prompted by the

desire of certain residents to continue to advance planning concerns that have previously been found to be unwarranted.

The proposed refusal to release the restrictive covenant would be for "no other good reason" than blocking the severance of the property, prompted by the actions of a number of residents.

For all of the reasons above, I would ask City Council not to adopt the recommendation of the Government Management Committee for this item but instead to endorse the recommendations as previously submitted to the Committee by the Chief Corporate Officer.

Yours very truly,

RITCHIE KETCHESON
HART & BIGGART LLP



Bruce C. Ketcheson
BCK/es
c. client

TAB 1



Tracking Status

- This item was considered by Government Management Committee on February 17, 2015 and was adopted with amendments. It will be considered by City Council on March 31, 2015.

Government Management Committee consideration on February 17, 2015

GM2.8	ACTION	Amended		Ward:25
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Release of Covenant on Title to 28 Hedgewood Road

Confidential Attachment - This report involves the security of property belonging to the City or one of its agencies, boards and commissions.

Committee Recommendations

The Government Management Committee recommends that:

1. City Council not accept the Offer from Mrs. Narges Ehsani-Armaki (the "Owner") to secure the release of the covenant registered on title to the property known municipally as 28 Hedgewood Road (the "Property") in exchange for payment in the amount of \$207,000, exclusive of HST, substantially on the terms and conditions outlined in Appendix B to the report (February 9, 2015) from the Chief Corporate Officer.
2. City Council direct that the confidential information in Appendix C to the report (February 9, 2015) from the Chief Corporate Officer remain confidential as it contains information relating to the security of property belonging to the City.

Decision Advice and Other Information

The Government Management Committee recessed its public session to meet in closed session to consider this item as it relates to the security of property belonging to the City or one of its agencies, boards and commissions, the receiving of advice that is subject to solicitor-client privilege, and litigation or potential litigation, including matters before administrative tribunals, affecting the City or local board.

Origin

(February 9, 2015) Report from the Chief Corporate Officer

Summary

To obtain authority for the release of a covenant registered on title to 28 Hedgewood Road, prohibiting the use of part of a closed road for the purposes of creating a separate building lot.

Background Information

(February 9, 2015) Revised Report from the Chief Corporate Officer on Release of Covenant on Title to 28 Hedgewood Road

(<http://www.toronto.ca/legdocs/mmis/2015/gm/bgrd/backgroundfile-76233.pdf>)

(February 9, 2015) Revised Appendix C - Confidential Attachment on Release of Covenant on Title to 28 Hedgewood Road

(February 2, 2015) Report and Appendices A and B from the Chief Corporate Officer on Release of Covenant on Title to 28 Hedgewood Avenue

(<http://www.toronto.ca/legdocs/mmis/2015/gm/bgrd/backgroundfile-75606.pdf>)

(February 2, 2015) Appendix C - Confidential Attachment on Release of Covenant on Title to 28 Hedgewood Avenue

Communications

(February 12, 2015) Letter from Bruce C. Ketcheson, Partner, Ritchie Ketcheson Hart and Biggart, LLP (GM.New.GM2.8.1)

(<http://www.toronto.ca/legdocs/mmis/2015/gm/comm/communicationfile-51141.pdf>)

(February 13, 2015) Letter from Diane Salerno, Chair, Development Committee, York Mills Valley Association (GM.New.GM2.8.2)

(<http://www.toronto.ca/legdocs/mmis/2015/gm/comm/communicationfile-51153.pdf>)

(February 13, 2015) E-mail from Christine Acconcia (GM.New.GM2.8.3)

(February 17, 2015) Submission from John M. Thomspson O.C. and Graham F. Alloway (GM.New.GM2.8.4)

Speakers

Bruce C. Ketcheson, Partner, Ritchie Ketcheson Hart and Biggart, LLP

Graham F. Alloway

David Meyerowitz

Councillor Jaye Robinson

Motions

1 - Motion to Meet in Closed Session moved by Councillor Paul Ainslie (Carried)

10:34 a.m. - That the Government Management Committee recess its public session to meet in closed session to consider this item as it relates to the security of property belonging to the City or one of its agencies, boards and commissions, the receiving of advice that is subject to solicitor-client privilege, and litigation or potential litigation, including matters before administrative tribunals, affecting the City or local board.

2 - Motion to Amend Item moved by Councillor Mark Grimes (Carried)

That recommendations 1, 2, 4, 5 and 6 in the report (February 9, 2015) from the Chief Corporate Officer be deleted and replaced with the following:

"City Council not accept the Offer from Mrs. Narges Ehsani-Armaki (the "Owner") to secure the release of the covenant registered on title to the property known municipally as 28 Hedgewood Road (the "Property") in exchange for payment in the amount of \$207,000, exclusive of HST, substantially on the terms and conditions outlined in Appendix "B" to the report (February 9, 2015) from the Chief Corporate Officer."

3 - Motion to Adopt Item as Amended moved by Councillor Mark Grimes (Carried)

Source: Toronto City Clerk at www.toronto.ca/council

TAB 2



**STAFF REPORT
ACTION REQUIRED**
with Confidential Attachment

Release of Covenant on Title to 28 Hedgewood Avenue

Date:	February 2, 2015
To:	Government Management Committee
From:	Chief Corporate Officer
Wards:	25 – Don Valley West
Reason for Confidential Information:	This report involves the security of property belonging to the City or one of its agencies, boards and commissions.
Reference Number:	P:\2015\Internal Services\RE\Gm15003re (AFS # 20752)

SUMMARY

To obtain authority for the release of a covenant registered on title to 28 Hedgewood Avenue, prohibiting the use of part of a closed road for the purposes of creating a separate building lot.

RECOMMENDATIONS

The Chief Corporate Officer recommends that:

1. City Council authorize acceptance of the Offer from Mrs. Narges Ehsani-Armaki (the "Owner") to secure the release of the covenant registered on title to the property known municipally as 28 Hedgewood Avenue (the "Property") in exchange for payment in the amount of \$207,000, exclusive of HST, substantially on the terms and conditions outlined in Appendix "B" to this report.
2. City Council authorize severally each of the Chief Corporate Officer and the Director of Real Estate Services to execute the Offer and associated agreements and documents on behalf of the City.
3. The confidential information in Appendix "C" remain confidential as it contains information relating to the security of property belonging to the City.

4. City Council authorize the Chief Corporate Officer to administer and manage the transaction, including the provision of any consents, approvals, waivers and notices (including termination), provided that she may, at any time, refer consideration of any such matters (including their content) to City Council for its consideration and direction.
5. City Council authorize the City Solicitor to complete the transaction on behalf of the City, including paying any necessary expenses, amending the closing and other dates, and amending and waiving terms and conditions, on such terms as she considers reasonable.
6. The appropriate City Officials be authorized and directed to take the necessary action to give effect thereto.

Financial Impact

The proposed Offer to release the covenant provides that the Owner will pay \$207,000.00, exclusive of applicable taxes and fees, to the City of Toronto for the release of the covenant. This revenue will be contributed to the Land Acquisition Reserve Fund upon completion of the transaction.

The Deputy City Manager and Chief Financial Officer has reviewed this report and agree with the financial impact information.

DECISION HISTORY

The former City of North York, at its meeting held on July 8th, 1992, adopted By-law 31805, authorized the stopping up and closing of a portion of Beechwood Avenue as a public highway.

http://www.toronto.ca/legdocs/pre1998bylaws/north_york_-_city_of/31805.pdf

ISSUE BACKGROUND

In 1991, the City sold a portion of closed Beechwood Avenue, known also as Hedgewood Avenue, to a prior owner of the Property, being the adjoining land owner, subject to a covenant registered on Title prohibiting the use of the former road for the purpose of a creating a separate building lot.

In 2014, the current Owner applied to the Ontario Municipal Board for permission to sever the Property into two separate Residential lots. Consent was granted by the OMB by Decision dated October 24, 2014.

Following the severance of the Property, the owner of the land approached the City to release the covenant, as it interferes with the use of the new southerly lot for the purpose of a building lot.

The request has been reviewed by staff of Real Estate Services who have determined that the value of the requested release of covenant is \$207,000.00 (exclusive of HST). The Owner has submitted an Offer to the City on the Terms set out in the attached Appendix "B".

COMMENTS

The proposed transaction for the release of the covenant would generate revenue to the City in the amount of \$207,000.00. The terms for completing the transaction as set out herein are considered to be fair, reasonable and reflective of market value. Given the foregoing, it would be appropriate to release the covenant.

CONTACT

Joe Casali
Director, Real Estate Services
Tel: (416) 392-7202
Fax: (416) 392-1880
jcasali@toronto.ca

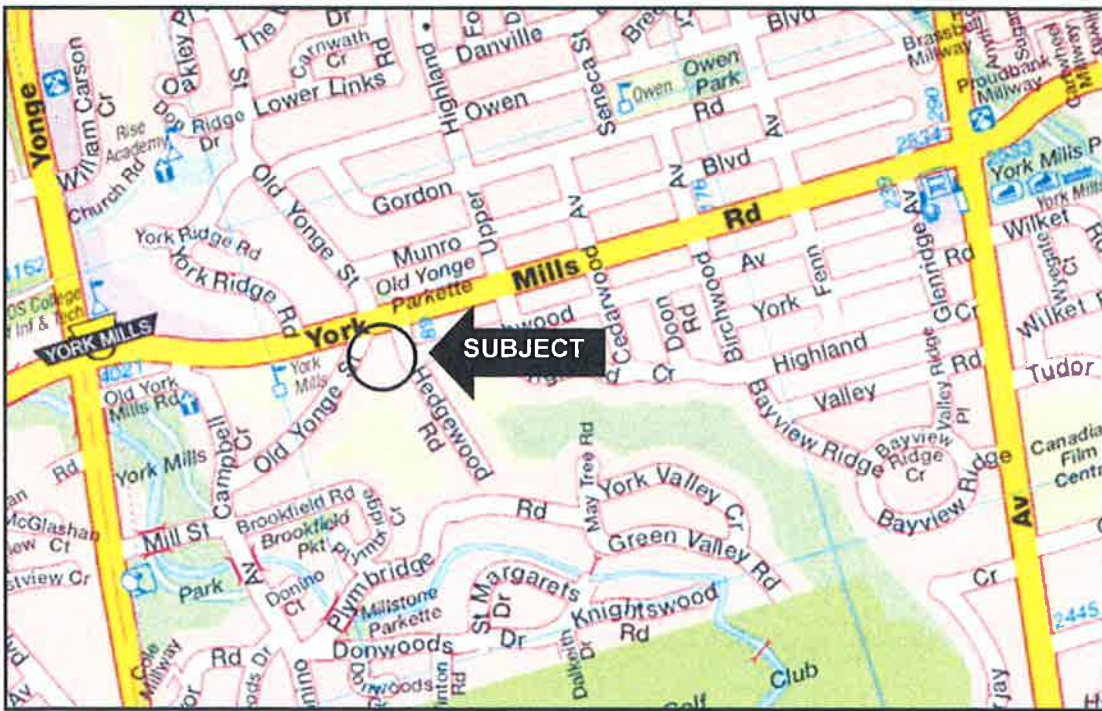
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Josie Scioli
Chief Corporate Officer

ATTACHMENTS

Appendix "A" – Map and Aerial
Appendix "B" – Terms & Conditions
Appendix "C" – Confidential Attachment

Appendix "A"



Appendix "B"

Terms and Conditions for the Release of Covenant

Property:	28 Hedgewood Avenue, Toronto
Legal description:	Lots 77 and 78, Part Beechwood Avenue, Plan 1750, closed by By-law #31805 (TB845989), designated as Parts 1 and 2, Plan 64R-13347, save and except Part 2, Plan 66R-18479, Toronto
Release Fee:	\$207,000.00 exclusive of HST.
Deposit:	\$20,700.00
Irrevocable Date:	April 10, 2015
Closing Date:	April 30, 2015
Balance:	Cash or certified funds on closing, plus HST (if applicable), subject to the usual adjustments.
Other Terms & Conditions:	The owner shall acknowledge and agree that the City will not be prejudiced in carrying out its statutory rights and responsibilities, including planning rights and responsibilities, and including the right to approve, refuse, object to or oppose any planning application in relation to the subject lands.



**STAFF REPORT
ACTION REQUIRED
with Confidential Attachment**

Release of Covenant on Title to 28 Hedgewood Road

Date:	February 9, 2015
To:	Government Management Committee
From:	Chief Corporate Officer
Wards:	25 – Don Valley West
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SUMMARY

To obtain authority for the release of a covenant registered on title to 28 Hedgewood Road, prohibiting the use of part of a closed road for the purposes of creating a separate building lot.

RECOMMENDATIONS

The Chief Corporate Officer recommends that:

1. City Council authorize acceptance of the Offer from Mrs. Narges Ehsani-Armaki (the "Owner") to secure the release of the covenant registered on title to the property known municipally as 28 Hedgewood Road (the "Property") in exchange for payment in the amount of \$207,000, exclusive of HST, substantially on the terms and conditions outlined in Appendix "B" to this report.
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6. The appropriate City Officials be authorized and directed to take the necessary action to give effect thereto.

Financial Impact

The proposed Offer to release the covenant provides that the Owner will pay \$207,000.00, exclusive of applicable taxes and fees, to the City of Toronto for the release of the covenant. This revenue will be contributed to the Land Acquisition Reserve Fund upon completion of the transaction.

The Deputy City Manager and Chief Financial Officer has reviewed this report and agree with the financial impact information.

DECISION HISTORY

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ISSUE BACKGROUND

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In 2014, the current Owner applied to the Ontario Municipal Board for permission to sever the Property into two separate Residential lots. Consent was granted by the OMB by Decision dated October 24, 2014.

Following the severance of the Property, the owner of the land approached the City to release the covenant, as it interferes with the use of the new southerly lot for the purpose of a building lot.

The request has been reviewed by staff of Real Estate Services who have determined that the value of the requested release of covenant is \$207,000.00 (exclusive of HST). The Owner has submitted an Offer to the City on the Terms set out in the attached Appendix "B".

COMMENTS

The proposed transaction for the release of the covenant would generate revenue to the City in the amount of \$207,000.00. The terms for completing the transaction as set out herein are considered to be fair, reasonable and reflective of market value. Given the foregoing, it would be appropriate to release the covenant.

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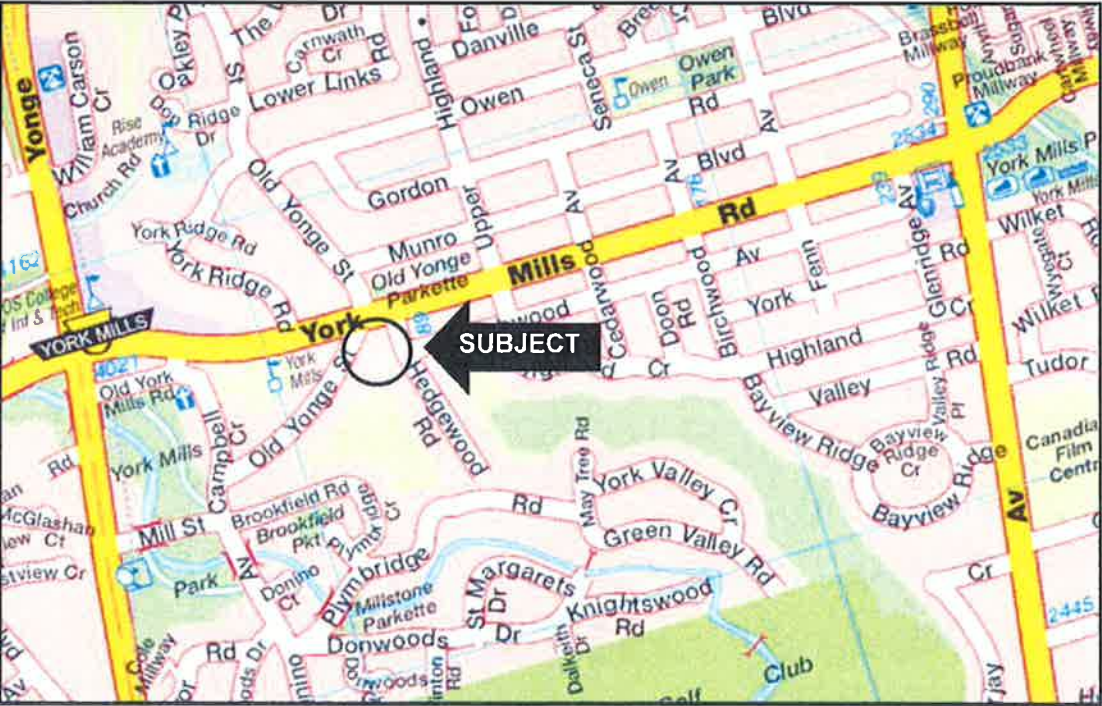
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Josie Scioli
Chief Corporate Officer

ATTACHMENTS

Appendix "A" – Map and Aerial
Appendix "B" – Terms & Conditions
Appendix "C" – Confidential Attachment

Appendix "A"



Appendix "B"

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Deposit:	\$20,700.00
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Balance:	Cash or certified funds on closing, plus HST (if applicable), subject to the usual adjustments.
Other Terms & Conditions:	The owner shall acknowledge and agree that the City will not be prejudiced in carrying out its statutory rights and responsibilities, including planning rights and responsibilities, and including the right to approve, refuse, object to or oppose any planning application in relation to the subject lands.

TAB 3



York Mills Valley Association

February 13, 2015

DELIVERED BY EMAIL

Diana Salerno
Chair, Development Committee
On behalf of the York Mills Valley Association
31 Plymbridge Crescent
Toronto, ON M2P 1P4

Government Management Committee
c/o Carol Kaustinen
Toronto City Hall
10th Floor, West Tower
100 Queen Street West
Toronto, Ontario M5H 2N2

Dear Government Management Committee Members:

In anticipation of the upcoming General Management Committee meeting scheduled on Tuesday February 17, 2015, the York Mills Valley Association would like to express its continued opposition to the severance of 28 Hedgewood Road into two lots, and request that the sale of the Covenant on Title to 28 Hedgewood Road in Ward 25 be denied by the Committee (agenda item GM2.8).

In early 2014, the Committee of Adjustment denied the severance of the property on the basis that the division was: i) not consistent with the purposes of the Official Plan, ii) did not maintain the general intent of the zoning by-law, and iii) was not considered to be an appropriate development for the land. This decision was justified given that Hedgewood Road is characterized by very wide lots with significant spacing between homes and an abundance of mature vegetation. Almost without exception, the homes on Hedgewood Road have over 100 foot frontages.

The severance of 28 Hedgewood Road would result in 2 smaller lots that are inconsistent with the character of the street, and the effect of this would be further compounded by the lot coverage that is inherent with the construction of two separate residences. Overall, the massing of the proposed homes would be extremely out of character with the streetscape, and would also require the destruction of a very mature and rare honey locust tree, which residents are strongly opposed to.

Although the developer appealed the C of A's decision to the Ontario Municipal Board, who ultimately allowed the appeal, the OMB have essentially placed the final decision regarding the severance in the hands of City Council through two conditions; specifically the sale of the Restrictive Covenant and

approval of a landscaping plan which could adequately compensate for the large-scale removal of vegetation and trees protected by law.

Therefore, we join with the residents of Hedgewood Road in their continued opposition to this development, and respectfully request that the Government Management Committee deny the sale of the Restrictive Covenant in order to protect the unique character of our neighbourhood and uphold the intent of the Official Plan.

Thank you,
Development Committee members.

Signed,

A handwritten signature in black ink, appearing to read "Diana Salerno", followed by a long horizontal flourish.

Diana Salerno, M.Arch., OAA, MRAIC
Chair, Development Committee, York Mills Valley Association

- cc. Councillor Paul Ainslie, by email
Councillor Janet Davis, by email
Councillor Rob Ford, by email
Councillor Mark Grimes, by email
Councillor Pam McConnell, by email
Councillor Frances Nunziata, by email
Mayor John Tory, by email
Councillor Sarah Doucette, by email

TAB 4

Date:	March 6, 2014
To:	Chair and Committee Members of the Committee of Adjustment North York District
From:	Allen Appleby, Director, Community Planning, North York District
Ward:	Ward 25 (Don Valley West)
Reference:	File No: B059/13NY, A741/13NY, and A742/13NY Address: 28 HEDGEWOOD ROAD Application to be heard: Wednesday, March 19, 2014

RECOMMENDATION

1. Should the Committee choose to approve this application for consent, staff recommend it be made subject to the following conditions:

- i. Confirmation of payment of outstanding taxes to the satisfaction of Revenue Services Division;
- ii. A draft Certificate of Official, as prescribed in O.Reg. 197/96 as Form 2 or 4, and in a form satisfactory to the Deputy Secretary-Treasurer, that includes a completed and registerable description of the land that is the subject of the consent, shall be submitted to the Deputy Secretary-Treasurer within one year of the date of the giving of notice of this decision;
- iii. Copies of a deposited Reference Plan of Survey, integrated with the Ontario Co-ordinate System, and clearly delineating the parcels of land approved by the Committee of Adjustment. A listing of the PARTS and their respective areas is required;
- iv. A copy of a letter from the Executive Director of Technical Services advising that the applicant has obtained the necessary adjustment to the municipal addressing of the land. Contact Survey and Mapping Services, Technical Services at (416) 392-7755. The application for municipal addressing must be accompanied by a copy of the deposited Reference Plan of Survey, integrated with the Ontario Co-ordinate System, and specify the PART numbers that will comprise each of the new parcels; and

v.

This Decision shall become null and void within 12 months unless the Certificate of the Committee of Adjustment is affixed to the relevant documents.

APPLICATION

CONSENT REQUESTED:

This is an application for consent to sever the subject property into two residential lots.

RETAINED - Part 1

The lot frontage is 26.53 metres and the lot area is 869.19 square metres. A two-storey dwelling is proposed to be constructed on the resultant lot. The associated variances are outlined in Application No. A741/13NY.

CONVEYED - Part 2

The lot frontage is 26.53 metres and the lot area is 869.19 square metres. A two-storey dwelling is proposed to be constructed on the resultant lot. The associated variances are outlined in Application No. A742/13NY.

REQUESTED VARIANCES TO THE ZONING BY-LAW:

A741/13NY – NORTH 26.5m OF 28 HEDGEWOOD ROAD (PART 1)

1. **Section 10.5.100, By-law No. 569-2013**
The maximum permitted driveway width is 9.0m.
The proposed driveway width is 9.5m.
2. **Section 10.10.40.70.(1), By-law No. 569-2013**
The minimum required front yard setback is 6.0m.
The proposed front yard setback is 4.95m.
3. **Section 10.5.80.40(1), By-law No. 569-2013**
For a lot with a detached house or a semi-detached house and a minimum required lot frontage is less than 24.0m, the maximum combined width of all vehicle entrances through the front main wall of the residential building is 6.0m.
The proposed combined width of all vehicle entrances through the front main wall is 9.75m.
4. **Section 12.6, By-law No. 7625**
The maximum permitted lot coverage is 30% of the lot area.
The proposed lot coverage is 34.8% of the lot area.
5. **Section 12.4, By-law No. 7625**
The minimum required front yard setback is 5.25m for a key lot.
The proposed front yard setback is 4.95m.

6. **Section 6A(5)a, By-law No. 7625**
The maximum permitted driveway width is 9m.
The proposed driveway width is 9.5m.

A742/13NY – SOUTH 26.5m OF 28 HEDGEWOOD ROAD (PART 2)

1. **Section 10.10.40.70.(1), By-law No. 569-2013**
The minimum required front yard setback is 6.22m.
The proposed front yard setback is 6.00m.
2. **Section 10.5.80.40(1), By-law No. 569-2013**
For a lot with a detached house or a semi-detached house and a minimum required lot frontage is less than 24.0m, the maximum combined width of all vehicle entrances through the front main wall of the residential building is 6.0m.
The proposed combined width of all vehicle entrances through the front main wall is 6.3m.
3. **Section 12.6, By-law No. 7625**
The maximum permitted lot coverage is 30% of the lot area.
The proposed lot coverage is 35% of the lot area.
4. **Section 12.4, By-law No. 7625**
The minimum required front yard setback is 6.5m.
The proposed front yard setback is 6.0m.
5. **Section 6A(5)a, By-law No. 7625**
The maximum permitted driveway width is 6m.
The proposed driveway width is 6.3m.

COMMENTS

The subject property is located east of Yonge Street, and south of York Mills Road. It is zoned *R3*, under North York Zoning By-law No. 7625, *RD* under Toronto Zoning By-law No. 569-2013, and designated *Neighbourhoods* in the Toronto Official Plan. The applicant proposes to sever the existing lands, creating two building lots. On each of the resultant lots, the applicant proposes the construction of a two-storey, detached dwelling.

A review of lotting patterns on Hedgewood Road, and portions of Beechwood Road and York Mills Road, zoned *R3* and *RD* were completed. The lot frontages range between 15.2 metres and 62.1 metres, with the average being 25.4 metres. With respect to lot area, the surveyed lots range between 673.5 square metres and 4,273.4 square metres, with the average being approximately 1526.7 square metres. The proposed lots meet the provisions of both zoning by-laws, which require a minimum lot frontage of 18 metres, and a minimum lot area of 690 square metres. Each lot would have a frontage of 26.5 metres, and an area of 869.2 square metres.

Should the Committee choose to approve this application for consent, staff recommend it be subject to the conditions as set out in this report.

CONTACT

Michelle Corcoran, Planner
Tel: 416 395-7130
Fax: 416-395-7155
E-mail: mcorcor@toronto.ca

SIGNATURE



per: Allen Appleby
Director, Community Planning, North York District
B059/13NY, A741/13NY, and A742/13NY

Urban Forestry
North York District
5100 Yonge Street, 3rd floor
Toronto, Ontario M2N 5V7
North York Civic CentreHarold Moffatt
Supervisor, Tree Protection & Plan
Review
Tel: 416 395-6134
Fax: 416 395-6714

DATE: March 19, 2014

TO: Daniel Antonacci, Manager & Deputy Secretary-Treasurer
City Planning, Community Planning-North District
North York Civic Centre
Tel: 416 395-7128

FROM: Harold Moffatt, Supervisor, Tree Protection and Plan Review
North York Civic Centre, 3rd Floor

RE: Conditions of Urban Forestry – Committee of Adjustment

This will acknowledge the “Public Hearing Notice” regarding an application for approval of the Committee of Adjustment for requested variance(s).

Urban Forestry advises that the following addresses may require one or all of the following requirements as outlined in column IV:

- 1) City of Toronto Municipal Code Chapter 813, Article II, City-owned trees
(www.toronto.ca/trees/city_trees.htm)
- 2) City of Toronto Municipal Code Chapter 813, Article III, Privately-owned trees
(www.toronto.ca/trees/private_trees.htm)
- 3) Tree Security Deposit (*certified cheque, bank draft or letter of credit only*) and signing a Tree Preservation Agreement.
- 4) Where no street tree exists, the owner shall provide payment in an amount to cover the cost of planting a street tree abutting the site to the satisfaction of the General Manager of Parks, Forestry and Recreation.

A clearance letter will be issued once the required conditions are fulfilled.

Applicants requiring additional information, please call 416-395-6670 or forward inquiries to tpprnorth@toronto.ca – one (1) week following hearing date.

cc: Forestry File
Committee of Adjustment

March 19, 2014 cont'd:

10:00AM

<u>File #</u>	<u>ADDRESS</u>	<u>WARD #</u>	<u>CONDITION OF URBAN FORESTRY</u>			
			1	2	3	4
1. B004/14NY	425 PATRICIA AVE	10	<input type="checkbox"/>	<input checked="" type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
2. A799/13NY	230 GLENFOREST RD	25	<input checked="" type="checkbox"/>	<input checked="" type="checkbox"/>	<input checked="" type="checkbox"/>	<input type="checkbox"/>
3. A800/13NY	232 GLENFOREST RD	25	<input checked="" type="checkbox"/>	<input checked="" type="checkbox"/>	<input checked="" type="checkbox"/>	<input type="checkbox"/>
4. A069/14NY	174 ALEXANDRA BLVD	16	<input checked="" type="checkbox"/>	<input checked="" type="checkbox"/>	<input checked="" type="checkbox"/>	<input type="checkbox"/>
5. A070/14NY	1731 – 1733 EGLINTON AVE W	15	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
6. A071/14NY	48 DE VERE GDNS	16	<input checked="" type="checkbox"/>	<input checked="" type="checkbox"/>	<input checked="" type="checkbox"/>	<input type="checkbox"/>
7. A072/14NY	530 BROOKDALE AVE	16	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input checked="" type="checkbox"/>
8. A073/14NY	182 BANBURY RD	25	<input checked="" type="checkbox"/>	<input checked="" type="checkbox"/>	<input checked="" type="checkbox"/>	<input type="checkbox"/>

March 19, 2014 cont'd:

11:30AM

<u>File #</u>	<u>ADDRESS</u>	<u>WARD #</u>	<u>CONDITION OF URBAN FORESTRY</u>			
			1	2	3	4
9. A074/14NY	32 MOBILE DR	34	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
10. A075/14NY	421 BEDFORD PARK AVE	16	<input checked="" type="checkbox"/>	<input checked="" type="checkbox"/>	<input checked="" type="checkbox"/>	<input type="checkbox"/>
11. A076/14NY	43 WOBURN AVE	16	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
12. A077/14NY	42 DANESBURY AVE	15	<input checked="" type="checkbox"/>	<input checked="" type="checkbox"/>	<input checked="" type="checkbox"/>	<input type="checkbox"/>
13. A078/14NY	98 PICOLA CRT	24	<input checked="" type="checkbox"/>	<input type="checkbox"/>	<input checked="" type="checkbox"/>	<input type="checkbox"/>
14. A079/14NY	192 CAMERON AVE	23	<input type="checkbox"/>	<input checked="" type="checkbox"/>	<input type="checkbox"/>	<input checked="" type="checkbox"/>
15. A080/14NY	151 AIRDRIE RD	26	<input checked="" type="checkbox"/>	<input type="checkbox"/>	<input checked="" type="checkbox"/>	<input type="checkbox"/>
16. A081/14NY	18 LITTLE BLVD	15	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
17. A082/14NY	16 TANAGER AVE	26	<input checked="" type="checkbox"/>	<input type="checkbox"/>	<input checked="" type="checkbox"/>	<input type="checkbox"/>
18. A083/14NY	330 HOPEWELL AVE	15	<input type="checkbox"/>	<input checked="" type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
19. A084/14NY	229 ELLERSLIE AVE	23	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>

March 19, 2014 cont'd:

1:30PM

<u>File #</u>	<u>ADDRESS</u>	<u>WARD #</u>	<u>CONDITION OF URBAN FORESTRY</u>			
			<u>1</u>	<u>2</u>	<u>3</u>	<u>4</u>
20. A085/14NY	40 BRADGATE RD	25	<input checked="" type="checkbox"/>	<input type="checkbox"/>	<input checked="" type="checkbox"/>	<input type="checkbox"/>
21. A086/14NY	14 KAPPELE AVE	25	<input checked="" type="checkbox"/>	<input checked="" type="checkbox"/>	<input checked="" type="checkbox"/>	<input type="checkbox"/>
22. A087/14NY	20 LUMLEY AVE	26	<input checked="" type="checkbox"/>	<input checked="" type="checkbox"/>	<input checked="" type="checkbox"/>	<input type="checkbox"/>
23. A088/14NY	205 ST LEONARDS AVE	25	<input type="checkbox"/>	<input checked="" type="checkbox"/>	<input type="checkbox"/>	<input checked="" type="checkbox"/>
24. A089/14NY	252 SPRING GARDEN AVE	23	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input checked="" type="checkbox"/>
25. A091/14NY	254 CODSELL AVE	10	<input checked="" type="checkbox"/>	<input checked="" type="checkbox"/>	<input checked="" type="checkbox"/>	<input type="checkbox"/>
26. A092/14NY	51 BEDFORD PARK AVE	16	<input checked="" type="checkbox"/>	<input checked="" type="checkbox"/>	<input checked="" type="checkbox"/>	<input type="checkbox"/>
27. A093/14NY	92 MASON BLVD	16	<input checked="" type="checkbox"/>	<input checked="" type="checkbox"/>	<input checked="" type="checkbox"/>	<input type="checkbox"/>
28. A095/14NY	49 RUMSEY RD	26	<input checked="" type="checkbox"/>	<input checked="" type="checkbox"/>	<input checked="" type="checkbox"/>	<input type="checkbox"/>
29. A096/14NY	40 WINLOCK PK	24	<input checked="" type="checkbox"/>	<input type="checkbox"/>	<input checked="" type="checkbox"/>	<input type="checkbox"/>
30. A097/14NY	99 PARKHURST BLVD	26	<input checked="" type="checkbox"/>	<input checked="" type="checkbox"/>	<input checked="" type="checkbox"/>	<input type="checkbox"/>
31. A098/14NY	60 BURNCREST DR	16	<input checked="" type="checkbox"/>	<input checked="" type="checkbox"/>	<input checked="" type="checkbox"/>	<input type="checkbox"/>

March 19, 2014 cont'd:

3:00PM

<u>File #</u>	<u>ADDRESS</u>	<u>WARD #</u>	<u>CONDITION OF URBAN FORESTRY</u>			
			<u>1</u>	<u>2</u>	<u>3</u>	<u>4</u>
32. A099/14NY	76 KINGSDALE AVE	23	■	■	■	□
33. A100/14NY	34 GRANLEA RD	23	■	■	■	□
34. A869/13NY	193 WILFRED AVE	23	□	■	□	■
35. A899/13NY	140 HADDINGTON AVE	16	■	■	■	□
36. A023/14NY	26 TOBRUK CRES	24	□	■	□	■
37. A870/13NY	180 ROE AVE	16	■	■	■	□
38. A479/13NY	28 HENDON AVE	23	□	■	□	■
39a. A741/13NY	28 HEDGEWOOD RD (PART 1)	25	■	■	□	■
39b. A742/13NY	28 HEDGEWOOD RD (PART 2)	25	■	■	□	■
40. B075/13NY	68 FLORENCE AVE	23	□	■	□	■
40a. A846/13NY	68 FLORENCE AVE (PART 2)	23	□	■	□	■
40b. A847/13NY	68 FLORENCE AVE (PART 1)	23	□	■	□	■
41. A884/13NY	5 CLARKHILL ST	23	□	□	□	■
42. A015/14NY	172 ST GERMAIN AVE	16	■	□	■	□
43. A041/14NY	402 GLEN PARK AVE	15	□	■	□	■
44. A148/14NY	103 STRATFORD CRES	25	□	□	□	□

TAB 5

Ontario Municipal Board
Commission des affaires municipales
de l'Ontario



ISSUE DATE: October 24, 2014

CASE NO(S): PL140486

PROCEEDINGS COMMENCED UNDER subsection 53(19) of the *Planning Act*, R.S.O. 1990, c. P. 13, as amended

Applicant and Appellant: Aboohamid Ehsani-Armaki
Subject: Consent
Property Address/Description: 28 Hedgewood Road
Municipality: City of Toronto
Municipal File No.: B059/13NY
OMB Case No.: PL140486
OMB File No.: PL140486

PROCEEDINGS COMMENCED UNDER subsection 45(12) of the *Planning Act*, R.S.O. 1990, c. P. 13, as amended

Applicant and Appellant: Aboohamid Ehsani-Armaki
Subject: Minor Variance
Variance from By-law No.: 7625
Property Address/Description: 28 Hedgewood Road
Municipality: City of Toronto
Municipal File No.: A-742/13NY
OMB Case No.: PL140486
OMB File No.: PL140488

PROCEEDINGS COMMENCED UNDER subsection 45(12) of the *Planning Act*, R.S.O. 1990, c. P. 13, as amended

Applicant and Appellant: Aboohamid Ehsani-Armaki
Subject: Minor Variance
Variance from By-law No.: 7625
Property Address/Description: 28 Hedgewood Road
Municipality: City of Toronto
Municipal File No.: A-741/13NY
OMB Case No.: PL140486
OMB File No.: PL140487

Heard: October 1 and 2, 2014 in Toronto, Ontario

APPEARANCES:

Parties

Counsel

Aboohamid Ehsani-Armaki and
Narges Ehsanil-Armaki

Bruce Ketcheson

City of Toronto

Mathew Longo

Rena and Meyer Godfrey
Donna Lynn Porter
John Zechner
Sid and Lindsay McMurray
John and Melinda Thompson
Graham and Kara Alloway
David and Mandy Meyerowitz
Sam and Roz Nella
Laura Pryde
Laurel and Danny Fleischer
Riva and Menashe Grinshpan
Bonnie and Gary Hurvitz

John Inglis

**DECISION DELIVERED BY J. P ATCHESON AND KAREN KRAFT SLOAN AND
ORDER OF THE BOARD**

[1] This was a hearing in the matter of an appeal by Aboohamid Ehsani-Armaki ("Appellant") from a decision of the City of Toronto's ("City") Committee of Adjustment ("Committee") File Nos. (B059/13NY),(A741/13NY) and (A742/13NY) that refused to grant a consent and refused to authorize variances for a property known municipally as 28 Hedgewood Road ("subject property").

[2] The Appellant applied to the Committee seeking consent to sever the subject site into two residential lots and sought relief from the City's new Harmonized Zoning By-law ("HZBL") No. 569-2013 which is currently under appeal to this Board, and By-law No. 7625 of the former City of North York to permit the construction of a new two-storey detached dwelling on both the proposed severed and retained parcels. The existing dwelling on the property would be demolished.

[3] The consent requested would create two residential lots as follows:

- **RETAINED - Part 1**

Address to be assigned

The lot frontage is 26.53 m and the lot area is 869.19 m². The property will be redeveloped as the site of a new two-storey dwelling requiring variances to the Zoning By-law, as outlined in Application A741/13NY.

- **CONVEYED - Part 2**

Address to be assigned

The lot frontage is 26.53 m and the lot area is 869.19 sq m. The property will be redeveloped as the site of a new two-storey dwelling requiring variances to the Zoning By-law, as outlined in Application A742/13NY.

[4] The variances requested were as follows:

REQUESTED VARIANCES: (A441/13NY) Part 1 retained

- Section 10.5.100, By-law No. 569-2013

The maximum permitted driveway width is 9.0 m. Whereas the proposed driveway width is 9.5 m.

- Section 10.10.40.70(1), By-law No. 569-2013

The minimum required front yard setback is 6.0 m. Whereas the proposed front yard setback is 4.95 m.

- Section 10.5.80.40(1), By-law No. 569-2013

For a lot with a detached house or a semi-detached house and a minimum required lot frontage is less than 24.0 m the maximum combined width of all vehicle entrances through the front main wall of the residential building is 6.0 m. Whereas the proposed combined width of all vehicle entrances through the front main all is 9.75 m.

- Section 12.6, By-law No. 7625

The maximum permitted lot coverage is 30% of the lot area. Whereas the proposed lot coverage is 34.8% of the lot area.

- Section 12.4, By-law No. 7625

The minimum required front yard setback is 5.25 m for a key lot. Whereas the proposed front yard setback is 4.95 m.

- Section 6A (5)a, By-law No. 7625

The maximum permitted driveway width is 9m. Whereas the proposed driveway width is 9.5 m.

REQUESTED VARIANCES: (A7422/13NY) Part 2 Conveyed

- Section 10.10.40.70(1), By-law No. 569-2013

The minimum required front yard setback is 6.22 m. Whereas the proposed front yard setback is 6.00 m.

- Section 10.5.80.40(l), By-law No. 569-2013

For a lot with a detached house or a semi-detached house and a minimum required lot frontage is less than 24.0 m, the maximum combined width of

all vehicle entrances through the front main wall of the residential building is 6.0 m. Whereas the proposed combined width of all vehicle entrances through the front main wall is 6.3 m.

- Section 12.6, By-law No. 7625

The maximum permitted lot coverage is 30% of the lot area. Whereas the proposed lot coverage is 35% of the lot area.

- Section 12.4, By-law No. 7625

The minimum required front yard setback is 6.5 m. Whereas the proposed front yard setback is 6.0 m.

- Section 6A (5)a, By-law No. 7625

The maximum permitted driveway width is 6 m. Whereas the proposed driveway width is 6.3 m.

[5] The Board at the commencement of this hearing on consent granted party status to a group of residents all of whom live on Hedgewood Road represented by Mr. Inglis as set out at Exhibit 2.

[6] Mr. Ketcheson advised the Board that his client wished to amend the variance applications as set out at Exhibit 4. The Board heard from Ms. Janice Robinson a qualified land use planner retained by the Appellant to assist in the matters now before the Board. She reviewed the amended variances as set out at Exhibit 4, which are reflected on a site plan and renderings of the proposed new dwellings as set out in a series of architectural drawings prepared by Mr. Peter Higgins Architect and found at Exhibit 5. The substance of the amendments is to remove the variances associated with the driveway width and the vehicle entrance width in the front wall of the building. The result being the dwelling on Part 1 now has a two-car garage. Ms. Robinson advised the Board that the lot coverage had also

been reduced to 32% for both dwellings. The variances for front yard setbacks for both dwellings remain unchanged.

[7] The amended variances are as follows:

AMENDED VARIANCES: (A441/13NY) Part 1 retained

- Section 10.10.40.70(1), By-law No. 569-2013
- The minimum required front yard setback is 6.0 m. Whereas the proposed front yard setback is 4.95 m.
- Section 12.6, By-law No. 7625
- The maximum permitted lot coverage is 30% of the lot area. Whereas the proposed lot coverage is 32% of the lot area.
- Section 12.4, By-law No. 7625
- The minimum required front yard setback is 5.25 m for a key lot. Whereas the proposed front yard setback is 4.95 m.

AMENDED VARIANCES: (A7422/13NY) Part 2 Conveyed

- Section 10.10.40.70(1), By-law No. 569-2013
- The minimum required front yard setback is 6.22 m. Whereas the proposed front yard setback is 6.00 m.
- Section 12.6, By-law No. 7625
- The maximum permitted lot coverage is 30% of the lot area. Whereas the proposed lot coverage is 32% of the lot area
- Section 12.4, By-law No. 7625
- The minimum required front yard setback is 6.5 m. Whereas the proposed front yard setback is 6.0 m.

[8] The Board's authority to consider an amendment to an application is found at s. 45(18.1) and 45(18.1.1) of the *Planning Act*, ("Act") which states:

Amended application

45 (18.1) On an appeal, the Municipal Board may make a decision on an application which has been amended from the original application if, before issuing its order, written notice is given to the persons and public bodies who received notice of the original application under subsection (5) and to other persons and agencies prescribed under that subsection. 1993, c. 26, s. 56; 1994, c. 23, s. 26 (7).

Exception

(18.1.1) The Municipal Board is not required to give notice under subsection (18.1) if, in its opinion, the amendment to the original application is minor. 1996, c. 4, s. 25 (1).

[9] The Board finds, after considering the submissions of Counsel, and the testimony of Ms. Robinson, that the amended variances are minor and more in keeping with the requirements of the Zoning By-laws and are consistent with the original applications seeking relief to allow a new single family dwelling on each of the proposed lots. The issue of what might occur on the proposed lots is well understood and formed the original basis of the application to the Committee. The Board finds the amended variances to be more in keeping with the requirements of the Zoning By-laws particularly when one notes that both proposed lots meet the lot area and lot frontage requirements of both By-laws.

[10] Mr. Inglis in his submissions did not object to the applications being amended. However his concerns were that his clients did not have sufficient time for them and their planner to review the changes now being proposed and on this basis the Board should adjourn the matter for at least ten days to allow him, his clients, and their planner to review the amended applications.

[11] The City took no position on the amended application. Counsel for the municipality further advised that the City did not intend to call any witnesses.

[12] The Board in considering the submissions of Counsel does not find that an adjournment of the nature requested by Mr. Inglis is warranted. The amended variances now before the Board are lesser but not substantially different from the original applications. The Board finds no prejudice would result to any party by amending the application as requested by the Appellants without further notice and continuing this two day hearing as scheduled.

[13] The Board denied the request to adjourn the matter but granted and extended the noon hour recess to allow the parties to further review their respective positions.

[14] The Board then heard submissions on whether the consent appeals and the variances appeals should be consolidated for the purpose of the hearing. Mr. Ketcheson submitted that if the Board were to adjourn the hearing of the amended variances it should at least consider the consents as they were in full compliance with both By-laws requirements. Counsel for both the City and the residents submitted that the applications should be heard at one time.

[15] The Board determined based upon its decision with respect to the amended variances application that the matters should be consolidated for the purpose of a hearing and that this would be the most efficient use of the Board's time.

[16] The Board ordered that the variances be amended as outlined above without further notice and that the hearing proceed as scheduled.

BACKGROUND AND EVIDENCE

[17] The Board, at the commencement of the hearing, and with the consent of the Parties granted party status to the individuals noted above. All are residents who live on Hedgewood Road and are opposed the proposed applications. The Board heard testimony from five of these residents being Mr. Thompson, Ms. Grinshpan, Ms. Pryde, Ms. Zechner and Mr. McMurray.

[18] The salient concerns raised by these residents may be summarized as follows:

1. The proposed lot areas and lot frontages are too small and do not reinforce the open space character of the area.
2. The lot frontages are not consistent with the existing lot frontage found in the immediate area of Hedgewood Road and that Hedgewood Road is a separate and distinct neighbourhood from the larger neighbourhood to the east along Beechwood Avenue.
3. The approval of these applications will set a precedent for further smaller lot development in the immediate area, which will destabilize this stable large lot single family community with its estate type homes.
4. The rural open space estate lot character of this enclave will be changed if the applications are permitted.
5. The proposed lots are not compatible in their size and dimensions with the existing lots found on Hedgewood Road
6. The proposed smaller lots are not in keeping with the character of streetscape, which is represented by 30 metre frontage lots

[19] The Board, during the course of the hearing, heard evidence from two qualified land use planners. Ms. Janice Robinson was retained by the Appellant after the Committee decision to assist in the matters now before the Board. She supports the applications as amended and provided the Board with a set of conditions to be applied to the consents and to the minor variances (Exhibit 4 revised) in the event the Board was to determine to allow the appeals. The Board also heard from Mr. Max Sherman, a qualified land use planner, who was retained by the residents on the Friday before the commencement of this hearing. He supports the decision of the Committee to refuse the consent and variance applications. City staff provided no planning opinion in its report to the Committee, and Counsel for the

Municipality did not call any witnesses during this hearing.

[20] The planners did not agree initially regarding the consistency of the applications and their conformity with provincial policies, being the 2014 Provincial Policy Statement and the Provincial Growth Plan for the Greater Golden Horseshoe Area. It became clear to the Board after hearing the testimony and cross-examination of Mr. Sherman that there were really no issues of consistency or conformity with these provincial policy documents.

[21] The Board heard no evidence from either planner that there were any planning issues with respect to the 2014 Provincial Policy Statement or with the Provincial Growth Plan for the Greater Golden Horseshoe Area. The Board concludes that the matters before the Board in this case are local in nature, and do not affect any provincial interest and should be considered within the context of the City's Official Plan ("OP"), the zoning currently in place for the area, the character of the neighbourhood and the criteria set out in s. 45(1) and s. 51(24) of the Act.

[22] The Board also had the benefit of the opinions of two qualified Arborist. Ms. Patricia Thomson was retained by the Appellant to inventory the trees on the subject property; her inventory is found at Exhibit 12. Mr. Alexander Satel was retained by the resident and conducted a tree and shrub inventory of the subject property. His inventory is found at Exhibit 15. Both Arborists generally agreed that a Honey Locust tree in the front yard (tree 1 on Satel's inventory) would have to be removed if the project were to go forward and that some other trees on adjacent properties might be injured as a result of construction (trees 14 and 18 Thomson's inventory). Both Arborists agreed that the City has a robust forestry and tree protection régime in place. Both Arborists agreed that the subject property was outside of the ravine protection area.

[23] Ms. Thomson opined that the proposed conditions imposed by the City for tree protection as set out at Exhibit 4 revised, were satisfactory to protect the vegetation on the subject property and were consistent with City's practice and policies for urban forestry related to new development.

[24] Mr. Satel, in his testimony opined that the Honey Locust tree in the front yard was in good health and should not be removed but instead protected. It was his evidence that the replacement of this tree with three smaller caliper trees was not equivalent to the benefit derived from this existing healthy mature tree. It was his opinion that the variances should not be approved and that any new home on the subject property should be sited to protect and preserve this healthy tree. He relies in part on s. 3.1.2.1.d) of the City's OP which states in part:

3.1.2.1 new development will be located and organized to fit with its existing and or planned context... by...

d) Preserving existing mature trees wherever possible and incorporating them into landscaping designs.

[25] He maintained, under cross-examination, that preservation of this tree was preferred to the practice of allowing a healthy tree to be removed and replaced with three new smaller caliper trees.

[26] Ms. Thomson opined that the City has a robust forestry policy in place that required detailed Arborist's reports regarding the removal and replacement of mature healthy trees as part of a new development application, and that the determination of whether a healthy tree could be removed vests with the City's urban forestry department. She testified that the urban forestry department has expressed no concerns with the applications when presented to the Committee other than the recommendation of the imposition of conditions as set out at Exhibit 4 revised.

[27] The subject property is located east of old Yonge Street, and south of York Mills Road. It is zoned R3, under North York Zoning By-law No. 7625, and RD under Toronto Zoning By-law No. 569-2013. The subject property is designated "*Neighbourhoods*" in the City's Official Plan as shown on Land Use Plan Map 16. The applicant proposes to sever the existing lands, creating two building lots, both having a frontage of 26.53 metres ("m") and a lot area of 869.19 square metres ("sq m"). The Appellant proposes the construction of

a new two-storey, detached dwelling on each of the resultant lots. The dwelling on Part 1 would have a floor area of 502.2 sq m (5,405.3 sq. ft.) while the propose dwelling on Part 2 would have a floor area of 461.5 sq m (4,967.7 sq. ft.) as shown on a series of drawings found at Exhibit 5.

[28] The neighbourhood, as defined by Ms. Robinson, is bounded on the north by the extension of the rear lot line of homes on the north side of Beechwood Avenue, on the east by the Birchwood Avenue, on the west by the rear lot lines of the properties on the west side of Hedgewood Road, and on the south by the projection of the rear lot lines of homes backing on a ravine as shown on a property data map prepared by Ms. Robinson (Exhibit 9). Mr. Sherman and the residents in their testimony opined that the study area should be restricted to just those lots on either side of Hedgewood Road from York Mills Road southward to its terminus.

[29] Both the City's new Harmonized Zoning By-law ("HZBL") No.569-2013 and By-law No. 7625, prescribe a minimum lot frontage of 18 m, and a minimum lot area of 690 sq. m for most of the properties along Beechwood Avenue and Hedgewood Road. It would appear from the Board's review of the current By-law (By-law No. 7625) that some of the homes along Hedgewood Road have been assigned a 20 m minimum frontage (Exhibit 3, Tab 6, p. 87) and that some areas along Hedgewood Road, under the HZBL (Exhibit 3, Tab 5, p. 56) may have a 21 m frontage requirement.

[30] It is clear from the Board's review of the zoning documents (Exhibit 3, Tabs 5) that the municipality has created, with some exceptions, a 18 m lot frontage and a 690 sq.m lot area standard in this area. It is important to note that the proposed lots in question exceed these requirements.

[31] This area of the City has had a long development history dating back to the early 1900s (Registered Plan 1750) with much of its development occurring after the Second World War. With a few minor exceptions such as the closing of what was known as Hollywood Avenue (now Beechwood Avenue) along the south side of the subject property,

the original registered plan has been followed very closely.

[32] It is also clear, from the evidence, that the City sold a portion of the unopened Hollywood Avenue road allowance to be attached to the subject lands and that this transaction contained a restrictive covenant that states:

It is understood and agreed that the subject property shall not be used for any other purpose than the purpose in conjunction with the enjoyment of Lots 77 and 78 Plan 1750 located to the north thereof, and without limiting the generality of the foregoing, shall not be used for the purpose of a separate building lot, either by itself or with any other portions of lots 77 and 78 plan 1750 provided, however, that it may be used as a building lot in conjunction with the balance of lots 77 and 78 Plan 1750. This covenant shall run with the lands.

[33] All parties agreed that this covenant must be released by the City if the consent to sever the lot is to be given.

[34] The overwhelming evidence is that the properties located on Hedgewood Road, Beechwood Avenue, Highland Crescent and the connecting north south streets have remained remarkably stable with only a few changes to the lotting pattern as set out in the original plan of subdivision. Where changes to the lotting pattern from the original Registered Plan of Subdivision have occurred these changes have contributed in part to what now makes up the distinctive character of this neighbourhood.

[35] Ms. Robinson provided the Board with an overview of a larger area and more particularly, her study area as set out in Exhibit 9. She also provided a photo study of her study area found at Exhibit 9. It is clear from her evidence that this area of Toronto is a stable, single-family neighbourhood consisting of a wide variety of single-family house types that vary in size, design and character resulting in the very attractive and eclectic character of this mature single family neighbourhood. The majority of the lots on Hedgewood Road and Highland Crescent have large frontages and very large lot areas backing onto ravine lands. The corner lots at York Mills Road and Hedgewood Road (29, 30 and 31 Hedgewood Road) have narrower frontages (15 m) and are similar to lots along Beechwood Avenue.

While these homes at 29, 30 and 31 Hedgewood Road are on these smaller frontage lots, the houses are oriented along their flankage thereby presenting or facing onto Hedgewood Road. This results in a very consistent streetscape along Hedgewood Road for its entire length.

[36] It is equally clear from the photographic evidence of both Ms. Robinson (Exhibit 9) and the photos provided by Mr. Thompson (Exhibit 23) that this neighbourhood is characterized by large lots with generous open space area on each of the properties and that the neighbourhood is undergoing some reinvestment in the form of new homes, and the refurbishment of existing homes. It is this reinvestment that in part, together with the long history of large lot development in this area, that has created this very unique, upscale and attractive residential area of the City with its distinctive character and natural open space appeal.

[37] Both Parties pointed out in their evidence that significant reinvestment is occurring to properties in the area through renovations, and the construction of new, larger, single-family homes.

[38] Both planners agreed that the first issue to address is whether the consent should be given. If the application fails at this level, applying the four tests prescribed by the Act with respect to the minor variances become moot.

[39] Both Ms. Robinson and Mr. Sherman undertook an examination of the lot frontages and lot areas found in their respective study areas. It is the Board's determination that Mr. Sherman's study area, as set out at Exhibit 9, is the area that should be used when one considers the character of the neighbourhood and the relationship and fit of the applications before the Board within this neighbourhood.

[40] Mr. Sherman's study area is somewhat smaller than Ms. Robinson's study area, but in the Board's determination, more accurately reflects the area to be compared and considered when evaluating the merit of the proposed applications and their conformity with the intent and purpose of the City's OP and Zoning By-laws .

[41] The planners' descriptions of the character of the area, as reflected in the photographic displays presented, are remarkably similar. They both agreed that this is a stable, single-family residential area that has and is undergoing, on a limited scale, upgrading to larger homes. Where they differ is that in Mr. Sherman's opinion, this is being achieved largely by a reutilization of the existing large lot fabric on the predominately 30 m and larger lot frontages found in the area and that this form of redevelopment should be maintained. He freely admitted under cross examination, that his lot frontage and lot study analysis was flawed as there were errors in the data he used as set out at Exhibit 27. He conceded under cross-examination that there were smaller frontage lots at the entrance to Hedgewood Road, but that these lots were either existing lots of record, corner lots with large lot areas, that utilized their flankage along Hedgewood Road, as their frontage, all of which in his opinion, reflects unique exceptions but displays a consistent character of the Hedgewood Road streetscape with its predominate large lot character.

[42] It was his testimony that with the exception of the Board's authorized severance at 23 Hedgewood Road, no new smaller lots have been created in the area through consents and that the regeneration that is occurring in this area is utilizing the existing lot fabric. Mr. Sherman testified that the consent applications with their proposed smaller lots frontages and lot areas were not compatible with the existing lot fabric and constitutes an adverse economic impact on the area. He contended that the standard to be applied was that the lot frontages and lot areas that currently exist. He firmly believes that the *status quo* with respect to lot frontages and lot areas should be maintained within his study area as these are the dominate features that characterize this neighbourhood. It was Mr. Sherman's opinion that the requirements of both Zoning By-laws for lot frontage and lot area should be disregarded in this case.

[43] Both planners provided a review of the OP policies that would govern this area and while in the Board's judgement Ms. Robinson evidence was more fulsome, they both agreed that a fundamental principal of the City's OP is that "any new development should respect the existing physical character of the area, and reinforce the stability of the neighbourhood."

[44] The uncontradicted evidence of both planners is that these applications are governed by the City's OP and that the OP must be considered in its entirety. They both noted that the OP in Chapter Two recognized that:

some physical change will occur overtime as enhancements, additions and in fill housing occurs on individual sites. A cornerstone policy is to ensure that new development in our neighbourhoods respects the existing physical character of the area, reinforcing the stability of the neighbourhood.

[45] There was also agreement that in this case, that the OP designates the site and immediate area as "Neighbourhoods" and states that "Neighbourhoods" are considered physically stable areas made up of residential uses in lower scale buildings such as detached houses, and that the development criteria set out at s. 4.1.5 of the OP would apply which states that:

5. Development in established Neighbourhoods will respect and reinforce the existing physical character of the neighbourhood, including in particular:
 - a) patterns of streets, blocks and lanes, parks and public building sites;
 - b) size and configuration of lots;
 - c) heights, massing, scale and dwelling type of nearby residential properties;
 - d) prevailing building type(s);
 - e) setbacks of buildings from the street or streets;
 - f) prevailing patterns of rear and side yard setbacks and landscape open space;
 - g) continuation of special landscape or built-form features that contribute to the unique physical character of a neighbourhood; and
 - h) conservation of heritage buildings, structures and landscapes.

[46] Ms. Robinson opined that the consent applications would meet all of the applicable tests of the City's OP, namely s. 4.1.5 b), c), d), f), and g) and that "Neighbourhoods" while considered stable are not viewed by the OP as static and that in her view this modest intensification would be appropriate, bearing in mind that both the severed and retained lots

substantially exceed the minimum lot frontage and lot area requirements of both By-laws and that the proposed dwellings meet all of the massing requirements of the By-laws. She opined that the variances for front yard setbacks were minor in nature and would be consistent with the orientation of adjacent properties on the street being the flankage lot to the north. She opined that this proposal with the large homes being proposed would reinforce and respect the character of the neighbourhood and on this basis her client's applications should be approved.

[47] Mr. Sherman, on the other hand, opined that the proposed lots were too small and not in keeping with the majority of larger lots found in his study area. He opined that the consent would not meet the development objectives set out in s. 4.1.5, b), e), and f) of the OP to "respect and reinforce the existing physical character of the neighbourhood", and as such the consent would not conform to the spirit and intent of the City's OP and should not be approved.

[48] Both planners also provided a fulsome review of the criteria found in s. 51(24) of the Act. The Board, for the ease of the reader, will reproduce s. 51(24) of the Act, which reads as follows:

Criteria

51(24) In considering a draft plan of subdivision, regard shall be had, among other matters, to the health, safety, convenience, accessibility for persons with disabilities and welfare of the present and future inhabitants of the municipality and to:

- (a) the effect of development of the proposed subdivision on matters of provincial interest as referred to in section 2;
- (b) whether the proposed subdivision is premature or in the public interest;
- (c) whether the plan conforms to the official plan and adjacent plans of subdivision, if any;
- (d) the suitability of the land for the purposes for which it is to be subdivided;
- (e) the number, width, location and proposed grades and elevations of highways, and the adequacy of them, and the highways linking the highways in the proposed

subdivision with the established highway system in the vicinity and the adequacy of them;

- (f) the dimensions and shapes of the proposed lots;
- (g) the restrictions or proposed restrictions, if any, on the land proposed to be subdivided or the buildings and structures proposed to be erected on it and the restrictions, if any, on adjoining land;
- (h) conservation of natural resources and flood control;
- (i) the adequacy of utilities and municipal services;
- (j) the adequacy of school sites;
- (k) the area of land, if any, within the proposed subdivision that, exclusive of highways, is to be conveyed or dedicated for public purposes;
- (l) the extent to which the plan's design optimizes the available supply, means of supplying, efficient use and conservation of energy; and
- (m) the interrelationship between the design of the proposed plan of subdivision and site plan control matters relating to any development on the land, if the land is also located within a site plan control area designated under subsection 41 (2) of this Act or subsection 114 (2) of the *City of Toronto Act, 2006*, 1994, c. 23, s. 30; 2001, c. 32, s. 31 (2); 2006, c. 23, s. 22 (3, 4).

[49] It was Ms. Robinson's opinion that the proposed consent would meet all of the applicable criteria set out in the Act, and that with the imposition of the provisional consent conditions set out at Exhibit 4 revised, and the minor variance conditions set out at Exhibit 4 revised the result would be appropriate development for the area. She confirmed, on questioning from the Board, that her client was prepared to build the homes substantially in the form set out in the elevations and site plans found at Exhibit 5.

[50] Mr. Sherman, on the other hand, testified that in his opinion the proposed lots would not meet the criteria found at s. 51 (24), (c), (d) and (f). It was his opinion that "the dimensions and shapes of the proposed lots" were not in keeping with the majority of lot sizes found in his area, that the creation of the lots being proposed would have a destabilizing effect on this neighbourhood that was not in the public interest, and not in conformity with a full and fair reading of the City's OP. He opined that the proposal would

result in adverse economic impacts that would destabilize this area by setting a precedent for smaller lots being created with his study area and on this basis the consents did not represent good planning and should not be given.

[51] The planners, in conducting their analysis of conformity with the OP and the criteria established by the Act, used different study areas. The substantive difference in their respective approach is that Ms. Robinson expanded her study area eastward to include the smaller lots currently existing within this area. She opined that her study area was a normal walking distance area and that the smaller lots and homes within her study have existed in apparent harmony with other larger lots in the study area of Mr. Sherman's.

[52] Mr. Sherman freely admitted both in direct and under cross-examination, that new single-family redevelopment has occurred within his limited study area on existing lots. Mr. Sherman suggested in his testimony that the consent applications for smaller lots is not the norm noting that no consents have been given in his study area to create smaller lots other than the Board decision for the corner lot at 23 Hedgewood Road. He opined that this decision was a unique situation and not a precedent the Board should rely upon.

[53] Ms. Robinson opined that one needs to look at the total development scheme being proposed in this case. She opined on this basis that the homes being proposed are compatible in both design and in size with other homes in the immediate area. She noted several examples where homes with different lot frontages exist, side-by-side, in harmony with one another and without any adverse impacts being observed. She opined that the development being proposed would be consistent in built form with other developments found in the neighbourhood, would not be precedent setting and would, in his opinion, fit harmoniously into this part of the neighbourhood. She noted that the building envelope for the proposed home as shown at Exhibit 5, was consistent with the homes to the immediate north and south and that in her opinion, no adverse impacts would result from the development being proposed on any adjacent properties and on this basis the variances should be considered as minor.

[54] Ms. Robinson contends that the applications should be viewed as a package and that on this basis, the development resulting would be consistent with existing development in the area, would meet the objectives of the OP to promote stable residential neighbourhoods, and would not result in any adverse impacts to abutting properties. She testified that the applicable criteria and tests of s. 51(24) and s. 45(1) of the Act would be met in that the lots maintain the same general shape of the current subdivision, that the form of development is the same as currently exists (large single-family homes), that municipal services are in place, and on that basis the development is not premature. She opined further that the proposed development would fit harmoniously with the development currently found and occurring in the neighbourhood and would reinforce the stable, single-family residential character of the neighbourhood, as required by the City's OP. She opined on this basis that the development scheme, when viewed in its entirety, was in conformity with the planning objective of the municipality and that on this basis, the consent, subject conditions set out at Exhibit 4 revised should be given.

[55] It was Ms. Robinson's opinion that the proposed dwellings were similar to other new, single-family dwellings being developed on Hedgewood Road, albeit on smaller lots and that with respect to the OP policies found at s. 4.1.5, the proposed development would respect and reinforce the single-family physical character of the neighbourhood and would meet the applicable policy objectives set out in s. 4.1.5 b), c), d), f), and g). It was her opinion that the applications meet the intent and purpose of the OP for the "Neighbourhoods Designation," as it would reinforce the stable character of this single-family, detached neighbourhood and would be compatible with existing development and the redevelopment presently occurring in the area as set out in Ms. Thompson photograph's Exhibit 23.

[56] It was also her contention that the development scheme, when viewed as a package, met the intent and purpose of the Zoning By-law in that the proposed structures would fit within a building envelope similar to the building envelopes found on adjacent properties. She disagrees with the *status quo* application proffered by Mr. Sherman and instead testified that regard should be given to the standards found in both Zoning By-law's when assessing the proposal. She relies in part in s. 4.1.8 of the City's OP, which states:

4.1.8. Zoning by-laws will contain numerical site standards for matters such as building type and height, density, lot size, lot depths, lot frontages, parking, building setbacks from lot lines, landscaped open space and any other performance standards to ensure that new development will be compatible with the physical character of the established Neighbourhoods.

[57] It was Ms. Robinson's opinion the zoning regulations both in force and effect, and being proposed by the new HZBL were benchmarks by which the proposal should be judged and that when the applications were viewed as a complete package, the result was a development that was appropriate and compatible with the existing character and built form found in the immediate area, that no negative adverse impacts would result from the proposed development to any abutting properties and that the variances being sought, both individually and collectively, should be viewed as minor, resulting in a desirable development for the area thus meeting the four tests set out in s. 45(1) of the Act.

[58] Mr. Sherman's opinion resulting from his review of the applications was that the proposed development did not respect the historic relationship of lot sizes found in his study area where the average lot frontage is 31 metres. He contends that the character of the study area and neighbourhood consists of these very large lot sizes and that the changes in lot frontages and lot areas being proposed by these applications were not consistent with the character of the neighbourhood and as such, the consents would not conform to the intent of the City's OP. He opined that the consents would not be in the public interest, would be bad planning setting a precedent for future smaller lot redevelopment and intensification of this neighbourhood not contemplated by the OP, and that the authorizing of the proposed consents would have a destabilizing effect to the large lot character that makes up the neighbourhood by encouraging intensification which he suggests is not contemplated by the City's OP.

[59] The reduction in lot frontages and lot areas being proposed, in his opinion, constitutes an adverse economic impact by establishing a precedent for the creation of other smaller lots for other properties in his study area. He sees the quest for density in this case resulting in lot sizes not in keeping with the established character of the neighbourhood. He relies in part on the fact that no new lots have been created within his

study area by consent beyond the corner lot at 23 Hedgewood Road.

[60] It was his opinion that the variances for the front yard setback results in a built form that is not appropriate or desirable for this part of Hedgewood Road. The proposed lots, in his opinion, do not reinforce the physical character of the neighbourhood as prescribed by the City's OP and the policy directions set out in s. 4.1.5(b), (e), and (f) of that document. He freely admitted that the proposed lots exceed the minimum lot frontage and lot area requirements of both By-law, but contends that these By-law requirements should not be considered in this case.

[61] Mr. Sherman concluded his remarks by indicating that, in his opinion, the consents did not meet the intent and purpose of the City's OP, would create adverse economic impacts, were not consistent with the predominate lot sizes found in his study area. He sees the creation of these two smaller lots in this location as poor planning that is not consistent with the applicable criteria (c), (d) and (f) of s. 51(24) of the Act and not in conformity with the policy direction found at s. 4.1.5 (b), (e), and (f) of the City's OP and on this basis alone the consent application should be refused.

[62] He expressed no major concerns with the amended variances as he opposes the creation of the two lots in the first instance.

[63] Neither Mr. Sherman nor the residents who testified took any serious issues with the proposed homes shown at Exhibit 5, being the site plans and building elevations plans. Their concerns as expressed to the Board dealt with the lot sizes and that the proposed smaller lots would have an adverse impact to the streetscape along Hedgewood Road and would in their opinion have a destabilizing effect on their neighbourhood.

[64] The Board heard no compelling evidence of any adverse impacts on adjacent properties or the neighbourhood beyond the issue that the lots were too small and as such were not in keeping with the character of the neighbourhood.

[65] The uncontradicted evidence of both Arborists was that both the public and private trees in the site and in the immediate area could be adequately protected by the requirements of the City's Urban Forestry Division as set out in the proposed conditions found at Exhibit 4 revised. Albeit Mr. Satel believes the existing healthy Honey Locust tree should be retained.

FINDINGS AND CONCLUSIONS

[66] The Board, after carefully reviewing the evidence, the submissions from the parties and the opinions proffered by the planners and the residents makes the following findings.

[67] The Boards finds that the requirements of the HZBL and By-law No. 7625 are benchmarks established by the municipality that in its judgment reflect the minimum standards to be applied when considering the consent being sought by the Appellant, and while not the only criteria to be considered, these standards clearly reflect the City's built form standards to be applied to applications in this area. The Zoning By-law standards are specific tests designed to implement the policies of the OP as clearly articulated in s. 4.1.8 of that document.

[68] The City Council as recently as May of 2013 could have changed the zoning standards governing Hedgewood Road but determined not to do so. The Board heard no compelling evidence from either planner that the current zoning standards are not appropriate other than all of the lots on Hedgewood Road exceed these standards. Zoning By-laws are Council's expression of what it deems to be appropriate development standards and for such documents to be effective planning tools the public should be able to rely upon them when considering private developments.

[69] It is the Board's conclusion after reviewing the planning documents that these standards are in place to ensure that new development will be compatible with the physical character of the established residential Neighbourhoods as required by s. 4.1.5 and s. 4.1.8 of the OP.

[70] The zoning in this area of the municipality in the Board's judgement is not acting as a development control mechanism whose primary purpose is to provide a public review process for any new applications, but instead are the standards by which the consents applications should be judged.

[71] Clearly the lot frontage and lot area requirements of the By-law in this area are standards that have worked over time in this area and in part have contributed to the open space character of the neighbourhood. The Appellant seeks no relief from the lot frontage or lot areas requirement of the By-laws. The consents if authorized clearly exceed the standards prescribed.

[72] The Board ascribes to the proposition that once one enters the consent and minor variance process for an increase in density, all of the regulations of the By-laws, together with the imposition of site specific conditions, may come to bear and the tests in this case are the requirements of the City's OP, the criteria of s. 51(24), and the four tests set out at s. 45(1) of the Act and that these become the benchmarks against which a project must be judged.

[73] The Board, in this case must view the requested consent and variances based upon the site plan and building plans found at Exhibit 5. Clearly the houses of the size being proposed subject to the variances listed above can be built on the proposed lots. The Board has carefully reviewed the housing types found in the immediate area as set out in Mr. Thompson's Exhibit 23. The evidence is that there currently exists a wide variety of single, family house types ranging in size and built form on Hedgewood Road. It is the Board's determination after reviewing the photographic evidence and the proposed house plans that the two homes being proposed on the proposed lots would be compatible with the other houses along Hedgewood Road. The Board did not hear any serious objections that these houses would not be compatible in their size and built form with the other homes that make up this neighbourhood beyond the fact that they would be located on lots less than 30 metres in width.

[74] In determining whether the proposal meets the test of compatibility as set out in the OP the Board is guided by the long term understanding of the term compatibility as first articulated by Member A.J.L. Chapman who had the following to say on the question of compatibility in *Motisi v. Bernardi* [1987], 20 O.M.B.R.129 at page 136:

In other words, the new development must be compatible with the existing development.

... 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.

[75] There is no compelling evidence before the Board that the two new dwelling are not capable of existing in harmony with the homes that currently existing in the immediate area and along Hedgewood Road.

[76] Mr. Sherman's and the resident's only serious objection to the proposed homes was that they were on smaller lots than the norm (30 m) in this area. The proposed lots have a frontage of 26.53 m and the lot area is 869.19 sq m which is well above the minimum established in both By-laws (18 m and 690.0 sq m) this in the Board's finding is not an adverse impact to the streetscape beyond what could occur as a matter of right under the current zoning.

[77] The Board, in considering the relief sought, as reflected in the site plan and building drawings found at Exhibit 5 prefers the evidence of Ms. Robinson that the proposed new lots will fit harmoniously and will reinforce the existing character of the neighbourhood with its very large lots, which generates the very low density and open space character of the neighbourhood as required by the City's OP. The lots as proposed do not introduce a new standard of development or density that is not sanctioned by the current and proposed Zoning By-laws governing this area of the City.

[78] The Board would note that the City's own OP, in Chapter Three, provides assistance and context with respect to matters of height and density when it states:

Where there are no height or density limits in the Plan, height and density limits of area zoning that implements the Plan will be benchmarks for assessment of those aspects of the planned context...

and further, s. 3.1.2.3 states:

New development will be massed and its exterior façade will be designed to fit harmoniously into its existing and/or planned context...

[79] It is the Board's finding in this specific case, the lot frontages and the lot areas prescribed by both By-laws are the benchmark elements that define character of this neighbourhood. These prescribed standards are being exceeded in this case.

[80] The Board finds that the proposed new homes are not markedly different from what exists today in the area and that these two large homes would not destabilize the neighbourhood. It is the Board's finding that to create two new lots of the size being proposed would respect the intent of the both Zoning By-laws, would maintain the large lot frontage and lot areas that the currently exist and which give the neighbourhood its distinctive character as required by the OP. The Board finds that the magnitude of the variances to the setbacks and coverage to be minor and in fact assist in allowing larger homes on these lots consistent with the style size, and built form of other homes in the area.

[81] The Board, after considering the submissions of the parties prefers the evidence of Ms. Robinson that the size of the proposed lots would not change significantly the character of this neighbourhood and would be in conformity with the intent of the City's OP policies found at s. 4.1.5 and s. 4.18 and that to allow the lots as proposed would not set precedent for new development that would have a destabilizing effect on the character of this residential neighbourhood.

[82] There is no compelling evidence before the Board that the homes and the location and style of driveways being proposed would have a destabilizing effect on the streetscape of the neighbourhood or that they would have had any adverse impacts on the adjoining properties beyond what might occur as a matter of right under current zoning regulations. Whether one likes the design and orientation of the driveways and attached garage is a

matter of individual choice. The Board finds from the photographic evidence provided by Mr. Thompson that a variety of driveway solution are found along Hedgewood Road and that it is this variety that defines the character of the streetscape.

[83] The Board must consider whether the granting of the provisional consents and the authorizing of the variances would have any adverse impacts on the surrounding properties and neighbourhood and whether the proposed development is appropriate for the area within the directions found in the OP and its implementing Zoning By-laws.

[84] The Board finds that when the variances are considered both individually and collectively the end result would meet the intent and purpose of the OP and Zoning By-laws currently in place.

[85] Counsel for the residents submits that the restrictive covenant noted earlier in this decision is a land use control mechanism that the Board should respect and that no decision should be issued until this matter has been finally determined by City Council. Counsel for the municipality submits that the restrictive covenant is a private regulatory tool between the City and the Appellant. He also confirmed that the City is the sole beneficiary of this restrictive covenant. Counsel for the Appellant submits that the reason consents are given on a provisional basis is to create a degree of certainty that if one can fulfill the conditions imposed the consents can be given. The Board has reviewed the conditions set out at Exhibit 4 revised and in particular condition 16 dealing with the lifting of the restrictive covenant. This condition requires the City to remove the restrictive covenant, without this action the entire matter of the consents become moot. The Board in this decision is in no way fettering the determinations of City Council with respect to the restrictive covenant but is merely on a provisional basis allowing the Appellant the opportunity to fulfill this condition. This is common planning practice.

[86] Counsel for the municipality advised the Board that while the City does not support the applications if the Board were to conclude that the appeals should be approved the City would recommend the imposition of the conditions set out at Exhibit 4 revised.

[87] The Board is also satisfied after reviewing Exhibit 4, revised that the conditions being requested are reasonable and will result in good planning for this part of the municipality. In this regard the Board prefers and adopts the evidence of Ms. Robinson and Ms. Thomson. In coming to this determination with respect to the trees on the property the Board would note that s. 3.1.2.1d) of the OP is not mandatory but instead uses the phrase "wherever possible." The Board is satisfied that the three urban forestry conditions being conditions 13, 14, and 15 at Exhibit 4 revised adequately address this provision of the OP and are reasonable and appropriate in this case.

[88] In the Board's judgement the relief being sought is minor in nature and will result in appropriate and desirable development for the part of the municipality that meets in the intent of the OP and the two Zoning By-laws governing this part of the municipality.

[89] The Board understands the concerns of the residents and understands that change can be disconcerting. However the Board is obligated to make its determination based upon the planning policies in place and the zoning regulations imposed by City Council.

[90] It is trite law to say that every application must be considered on its own merits and the particular circumstances that constitute the application. The Board's decision in this case should not be considered precedent setting. Instead it must be viewed on its merits and within the context of the neighbourhood and the planning policies and zoning regulations as they exist today.

[91] The OP when read in its entirety, contemplates modest change over time within neighbourhoods. The test to be applied is whether the changes "will respect and reinforce the existing physical character of the neighbourhood". In making this determination as required by the OP one should not cherry pick one or two items but instead should judge the applications in their entirety and the end product that might result. After reviewing in detail the photographic evidence presented by the Ms. Robinson and Mr. Thompson and the proposed house plans set out at Exhibit 5 for each of the proposed lots, the Board is satisfied that the end result will be a development that is compatible with and will reinforce

the very unique upscale and open space character of this single family neighbourhood.

[92] It is the Board's determination that the proposed lots meet the applicable criteria for lot creation found at s. 51(24) (c), (d) and (f) of the Act, and conform with the purpose and intent of the City's OP and in particular the built form criteria found at s. 3.1.2.1 and the development criteria for "Neighbourhoods" as set out in s. 4.1.5, and s. 4.1.8.

[93] The Board concludes, after a review of all of the evidence and submissions filed that the creation of the two lots as proposed would be good planning for this part of the municipality and should be approved subject to the conditions set out at exhibit 4 revised.

[94] The Board for the reasons contained in this decision is satisfied that the amended variances meet the four tests prescribed by the Act and should be authorized subject to the conditions set out at Exhibit 4 revised.

ORDER

[95] The Board, for the reasons set out in this decision makes the following orders:

1. The Board Orders that the appeal by Aboohamid Ehsani-Armaki from a decision of the City of Toronto's Committee of Adjustment File No. (B059/13NY) is allowed and the provisional consents are given subject to the conditions set out in Attachment 1 to this decision.
2. The Board orders that the appeal by the Aboohamid Ehsani-Armaki from a decision of the City of Toronto Committee of Adjustment File Nos. (A741/13NY) and (A742/13NY), for a property known municipally as 28 Hedgewood Road is allowed in part and the amended variances as set out in this decision are authorized subject to the following condition:
 1. The minor variances are granted subject to the dwellings be built substantially in compliance with the site plan and elevation drawings

prepared by Peter Higgins Architect dated September 2013 set out at
Exhibit 5 in the Board's file.

"J.P. Atcheson"

J.P. ATCHESON
MEMBER

"Karen Kraft Sloan"

KAREN KRAFT SLOAN
MEMBER

Ontario Municipal Board

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ATTACHMENT 1

LIST OF VARIANCES AND CONDITIONS – 28 HEDGEWOOD ROAD

PART 1 (A0741/13NY)

OMB File No: PL140487

REQUESTED VARIANCES TO THE ZONING BY-LAW:

1. Section 10.10.40.70.(1), By-law No. 569-2013
The minimum required front yard setback is 6.0m.
The proposed front yard setback is 4.95m.
2. Section 12.6, By-law No. 7625
The maximum permitted lot coverage is 30% of the lot area.
The proposed lot coverage is 32% of the lot area.
3. Section 12.4, By-law No. 7625
The minimum required front yard setback is 5.25m for a key lot.
The proposed front yard setback is 4.95m.

PART 2 (A0742/13NY)

OMB File No: PL140488

REQUESTED VARIANCES TO THE ZONING BY-LAW:

1. Section 10.10.40.70.(1), By-law No. 569-2013
The minimum required front yard setback is 6.22m.
The proposed front yard setback is 6.00m.
2. Section 12.6, By-law No. 7625
The maximum permitted lot coverage is 30% of the lot area.
The proposed lot coverage is 32% of the lot area.
3. Section 12.4, By-law No. 7625
The minimum required front yard setback is 6.5m.
The proposed front yard setback is 6.0m.

MINOR VARIANCE CONDITION (A0741/13NY and A0742/13NY):

1. Minor variances granted are subject to substantial compliance with the Site Plan and Elevation drawings filed with the Board and contained within Exhibit 5.

CONSENT CONDITIONS (B059/13NY)

OMB File No: PL140486

1. The applicant shall retain a consultant archaeologist, licensed by the Ministry of Tourism, Culture and Sport, under the provisions of the Ontario Heritage Act (R.S.O 1990 as amended) to carry out Stage 1-2 archaeological assessment of the entire development property and follow through on recommendations to mitigate, through preservation or resource removal and documentation, adverse impacts to any significant archaeological resources found. The assessment is to be completed in accordance with the 2011 Standards and Guidelines for Consulting Archaeologists, Ministry of Tourism, Culture and Sport.
2. The consultant archaeologist shall submit a copy of the relevant assessment report(s) to the Heritage Preservation Services Unit in both hard copy format as an Acrobat PDF file on CD.
3. No demolition, construction, grading or other soil disturbances shall take place on the subject property prior to the City's Planning Division (Heritage Preservation Services Unit) and the Ministry of Tourism, Culture and Sport (Heritage Operations Unit) confirming in writing that all archaeological licensing and technical review requirements have been satisfied.
4. A draft Reference Plan of Survey shall be submitted to the Executive Director of Engineering and Construction Services for review and approval, prior to depositing in the Land Registry Office, in metric units and integrated with the Ontario Co-ordinate System, showing as separate parts thereof the lands to be conveyed to the City and the remainder of the site including any appurtenant rights-of way.
The owner shall pay all costs for registration and preparation of reference plan(s).
5. Despite any other general or specific provision in Zoning By-law No.7625 of the former City of North York, enacted under section 34 of the Planning Act or its predecessor section the following shall apply:
 - (1) For a one family detached dwelling, semi-detached dwelling, duplex dwelling, double duplex dwelling, triplex dwelling, multiple attached dwelling, boarding or lodging house, converted dwelling, the elevation of the lowest point of an opening to an area that may be used for parking or storage of a vehicle located inside or abutting the dwelling shall be:
 - a) Higher of the elevation of the street, arterial road or minor arterial road, the lot abuts measured at its centreline directly across from the driveway leading to the parking space; and
 - b) Higher than the elevation of a public lane the lot abuts measured at its centreline directly across from the driveway leading to the parking space.
6. The owner will be required to make application to the Toronto Water Services Division and pay for the installation of City service connection for each building from the property line to the City mains and the abandonment of the old services connections. The owner is responsible to provide for the installation of the water and sanitary service connections from each building to City services at the property line.

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7. The owner shall install a sump pump in the dwellings for the purposes of draining ground water from weeping tiles and any driveway catch basins to grade.
8. The owner should be required to make an application to Technical Services Division, Mapping and Survey Section for revised municipal numbering.
9. All accesses must be at least 1.0 metre from existing utilities and must be explicitly shown on site plan drawings. If required, the relocation of any public utilities would be at the cost of the developer and shall be subject to the approval of the applicable governing agencies.
10. If applicable, the applicant should be required to provide certification to the Executive Director of Engineering and Construction Services and/or the General Manager of Transportation Services accurately indicating the as-built location of any equipment, plant or structure constructed and/or installed within a City street as required by Chapter 743 of the City of Toronto Municipal Code.
11. Part 2 - The proposed variance applies to private property only and does not constitute approval for the proposed greater than 6.0m width on the Public Right-of-Way.
12. Part 1 - The proposed driveway width of 9.50m shall be contained entirely on private property.
13. The owner shall satisfy the City of Toronto Municipal Code Chapter 813, Article II, with respect to City owned trees, to the satisfaction of the Urban Forestry Division.
14. The owner shall satisfy the City of Toronto Municipal Code Chapter 813, Article III, with respect to privately owned trees, to the satisfaction of the Urban Forestry Division.
15. The owner shall provide payment in an amount to cover the cost of planting a street tree abutting the site to the satisfaction of the General Manager of Parks, Forestry and Recreation.
16. The owner shall obtain the release of the Restrictive Covenant registered on Title to the property known as 28 Hedgewood Road, Toronto, legally described as Lots 77 & 78, Pt Beechwood Avenue, Plan 1750, closed up by By-Law No. 31805 (TB845989), PTs 1 & 2, PL 64R-13347, SE PT 2, PL 66R18479, Toronto, City of Toronto."
17. The owner shall confirm payment of any outstanding taxes to the satisfaction of the Revenue Services Division.