

DECISION AND ORDER

Decision Issue Date Thursday, September 21, 2017

PROCEEDING COMMENCED UNDER subsection 53 (19) and 45 (1) of the Planning Act, R.S.O. 1990, c. P.13, as amended (the "Act")

Appellant(s): MD Ajaz Ahmed Khan

Applicant: Cantam Group Ltd.

Counsel or Agent: Max Laskin

Property Address/Description: 116 Poplar Rd

Committee of Adjustment Case File Number: 16 252733 ESC 43 CO (B0061/16SC), 16 252735 ESC 43 MV (A0346/16SC), 16 252737 ESC 43 MV (A0345/16SC)

TLAB Case File Number: 17 170515 S53 43, 17 170516 S45 43, 17 170517 S45 43

Hearing date: Tuesday, September 12, 2017

DECISION DELIVERED BY IAN LORD

INTRODUCTION AND BACKGROUND

1. These matters come before the Toronto Local Appeal Body ('TLAB') by way of appeal on behalf of the owner from refusal decisions by the Scarborough panel of the City of Toronto (the 'City') Committee of Adjustment (the 'Committee'). The request had been for a consent to sever and associated variances to permit construction of two single detached dwellings (the 'Applications').
2. The owner, MD Ajaz Ahmed Khan (the 'Applicant'), intends to demolish an existing single detached dwelling, partially destroyed by fire, and erect two new detached two storey dwellings of contemporary design.
3. The Committee refused an application to sever lands located at 116 Poplar Road (the 'subject lands') located in the West Hill Community planning district of the former

City of Scarborough. The parcels would each have a frontage of 8.305 meters ('m'), a uniform depth of approximately 45.76 m and a lot area of 409.1 square meters ('sq m'). On the uncontested evidence received, lots fronting on Poplar Road running south from Kingston Road, were created through conveyances that did not rely on a registered plan of subdivision process. Rather, post 1914, sequential and progressive lot development in the vicinity of the subject lands occurred in earnest in the pre and post Second World War period.

4. The Committee also refused Application variances as set out in Table 1, below, applicable to both of the proposed parcels sought to be created from the subject lands.

5. As at the Committee, the Applicant withdrew variance requests applicable to the interior side yards of the proposed parcels. As such, it was the Applicants consent that the side yard spacing between dwellings on the proposed lots would be maintained, each at 1.8 m, the standard set in the West Hill Community bylaw. The City of Toronto's new harmonized zoning bylaw 569-2013 remains under appeal.

Table 1:

Variance Requested	West Hill Bylaw 10327	Toronto Bylaw 569-2013	Application
1. Minimum lot frontage	12 m	12 m	8.3 m
2. Minimum lot area	464 sq m	464 sq m	409.1 sq m
3. Maximum building length	–	17 m	18.44 m
4. Minimum side yard	1.8 m	1.2 m	1.22 m*

* Denotes exterior side yard

MATTERS IN ISSUE

6. There was substantial agreement between the Applicant and opposing City representatives. Neither the City nor the four residents who gave evidence challenged the relief sought in respect of building length or reduced exterior side yards.

7. Fundamental to the dispute were the requests generated by the lot division and the resultant consequences for parcel dimensions. In particular, whether those dimensions and the resultant permissible built form maintain the policy of the Official Plan to respect and reinforce the character of the neighbourhood.

JURISDICTION

A decision of the Toronto Local Appeal Body ('TLAB') must be consistent with the 2014 Provincial Policy Statement ('PPS') and conform to the Growth Plan of the Greater Golden Horseshoe for the subject area ('Growth Plan').

TLAB must also be satisfied that a plan of subdivision is not necessary for the orderly development of the municipality pursuant to s. 53(1) of the Act and that the application for consent to sever meets the criteria set out in s. 51(24) of the Act. These criteria require that " 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 of the Planning Act;
- (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;
 - (d.1) if any affordable housing units are being proposed, the suitability of the proposed units for affordable housing;
- (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.

In considering the applications for variances from the Zoning By-laws, the TLAB Panel must be satisfied that the applications meet all of the four tests under s. 45(1) of the Act. The tests are whether the variances:

- maintain the general intent and purpose of the Official Plan;
- maintain the general intent and purpose of the Zoning By-laws;
- are desirable for the appropriate development or use of the land; and
- are minor.

EVIDENCE

8. At the outset of the proceeding, the City raised a preliminary objection to the late filing of two additional documents: a reconstructed area map depicting the locale of transit stops and related facilities, and excerpts from the Housing policy section of the City's Official Plan. Although filed late and not in accordance with TLAB Rule 16.2 respecting document disclosure, the materials were delivered with some several days of notice, had been posted on the TLAB website and had been brought to the attention of the City consultant planner in advance of the sitting.

9. TLAB does not support, particularly from knowledgeable and well represented parties, the failure to meet the disclosure obligations set out in its Rules of Practice and Procedure. These are designed to elicit, in advance, the essence of the case to be met, the objections and their evidentiary base. The purpose of the disclosure Rules is not only to encourage full disclosure, but also to provide a timely opportunity, on the basis of that information exchange, for the parties and participants to consider their respective interests and assess whether and how a response is owing, whether mediation should be supported or whether settlement discussions are a prudent course of action. Open exchanges for these purposes are required; delays limit the utility of the Rules and their purposes.

10. In this case, the parties and the participants were commended on their diligence in their compliance with the Rules. The parties had to the greatest extent prepared and supplied fulsome documentation in the requested format and generally in compliance with the Rules. The exceptions noted by the City were determined not to be prejudicial, were capable of timely absorption, were generally referenced in the filings or were publically available documents. TLAB recognizes that its processes and Rules are new, in transition from longstanding and somewhat differing practices before the Ontario Municipal Board, somewhat rigorous in their own context and deserving, in this instance, of relief under Rule 2.2, in this transitional period.

The City's request to exclude the late filings was denied.

11. In a similar vein, while the participants present had all filed appropriate Notice of Intention (Election) to be a ... Participant, Form 4, none had filed the requisite Participants Statement under Rule 13. This too is a practice not to be encouraged or repeated. Parties of all interests have a legitimate right to know, in advance, the nature and content of submissions and evidence to be tendered. TLAB is an important gatekeeper of that principle. Upon inquiry, a satisfactory explanation as to Rule familiarity was accepted and those who wished to address the panel did so. The appointment of a spokesperson, Enzo Antinucci, who canvassed a range of common concerns was appreciated. This courtesy expedited the consideration of relevant hearing matters.

12. To return to matters of common ground, there was no dispute on several planning assessment considerations as identified by the applicants' planner, Jonathan Benczkowski and acknowledged by the City planner, Alan Young. Both Messrs. Benczkowski and Young were qualified on consent to provide professional land use planning opinion evidence. Both are full members of the Ontario Professional Planners Institute and carry the Registered Professional Planners designation, 'RPP'. Both had completed Form 6, attesting to an expert's duty. The several factors agreed to included: similar references to the Planning Act, Provincial Policy Statements and the City Official Plan; the relevant and applicable considerations and tests for the approvals sought; some aspects of neighbourhood character: including the fact that the 'neighborhood' demonstrated a diversity of lot sizes and frontages; building types; a diversity of built form residential styles and dwelling sizes; and an abundance of 'green space', whether a derivative of building separation, large rear yards or institutional and public facilities in the area.

13. With respect to the subject lands, the parties and participants agreed that the proposal for two lots and two detached residential dwelling units retained large rear yard open space, adequate separation distances as between themselves and adjacent buildings and were allowed by zoning to develop in a two storey built form. Further, that no variance requests were being proposed on regulatory controls over height, built form, landscaping, the provision of parking, density/coverage, front or rear yard depths. It was also acknowledged that the variance sought in respect of side yard setbacks were germane only to the older West Hill Community bylaw, not City bylaw 569-2013, which was acknowledged as being currently on appeal to the Ontario Municipal Board. Finally, both planners noted that their respective lot study areas reflected a conclusion that regeneration activities were widespread and that the community was experiencing re-investment in renovation and redevelopment. As an aside, had the planners met and agreed to these aspects, considerable hearing time might have been saved. TLAB Rules do not mandate the pre-meeting of experts of like disciplines.

14. The areas of agreement were helpful, somewhat specific and somewhat generic. It is in this latter aspect, however, that the professional opinions differed both in respect of conclusions and implications, through contextual expansions.

15. As has become somewhat customary, both planners defined own study area boundaries as an aid to their interpretation and description of neighbourhood character.

Mr. Benczkowski, using an air photo, Exhibit 3, delineated a study area following 3-4 site visits relying heavily on what he described as residents experiences, predominantly walking distances and times to area amenities: schools, parks, transit access. He identified transit accessibility locations and prepared Exhibit 4, a proximity to transit map, to demonstrate the diversity, number and location of access points to different transit opportunities. Some policy support emphasis was laid on the presence of three bus stops within a ten minute walk and a 'GO' station higher order transit facility accessible, within an eighteen minute walk to employment opportunities in downtown Toronto.

16. From this analysis, which included land use and zone category considerations, a study area boundary was depicted within which and from which several opinion and conclusions were derived.

17. The lot study and associated research permitted Mr. Benczkowski to generate advice to the panel not only on the relevance and support of the matters not in dispute identified in paragraphs 12 and 13, above, but also that there were a number of comparable properties to the redevelopment proposed for the subject lands, some quite close by, that demonstrated characteristics of analogous lot frontages, lot area, two storey design and, in at least one proximate circumstance, a semi-detached built form. Particular emphasis was placed on the similarities exhibited by the units at 109 A and B, Poplar Road, and its associated 2006 Ontario Municipal Board decision, about which more is said, below.

18. The Applicants planner reviewed the text of supportive intensification and infrastructure use policies of the Provincial Policy Statements and the Growth Plan for the Greater Toronto area. He applied each of the 'tests' identified in s. 4.1 of the Toronto Official Plan to the development criteria listed in Policy 4.1.5. Indeed, both planners urged upon the panel the importance of the approved City Official Plan, especially the 'Neighbourhoods' commentary and policies reproduced in Exhibit 15, direction and policy assessment criteria: namely, that in 'Neighbourhoods' change will occur gradually (s. 3.2.1), they are to be 'stable but not static' (s. 2.3.1), that the test for change is the application of development criteria (policy 4.1.5) through the permission of development, including infill housing, that is sensitive, gradual and that fits the context of the neighbourhood (paraphrased).

19. It was Mr. Benczkowski's opinion, with which this member agrees, that if the policy and criteria specified in these sections and the specific Policy criteria in s. 4.1.5 are not offended, the policy to "respect and reinforce" the physical character and open space of the area is met by proposed changes. While admitting that only 18% of the lots within his study area were smaller than the 464 sq. m standard set in both bylaws, in his opinion the applicable criteria of the policy were met premised on his findings of the "variety of lot sizes", there being "no one norm" and that specific examples of development, particularly nearby 109 A and B Poplar Road, existed being "essentially the same" as the lots proposed.

20. It was this analysis, applied both in respect of the severance and related variances requested, that led to the overall planning advice and opinion: namely, that the area is experiencing regeneration, that this will continue and that similar examples

to the proposal “are only steps away” from the subject site. The conclusion reached urged that the design and massing of the proposal “will fit in a harmonious and (in a) seamless transition, with no impact on the streetscape...imperceptible from the front itself.” Mr. Benczkowski urged that the test is acceptability and compatibility of the intensification and because of the example nearby, the proposed frontage “would be in keeping with the neighbourhood” and “not constitute overdevelopment”. Again, strong reliance, albeit not exclusive, was placed on the nearby property at 109A and B Poplar Road and its extension to similar units with frontage at 80 B and C Kitchener Road, approved by the Ontario Municipal Board.

21. The Applicants planner urged that the Applications individually and cumulatively constituted good planning and that the appeals should be allowed “subject to conditions on forestry and as the City will provide, with which I agree.” These requested conditions were ultimately tabled on the consent of the parties, with one agreed modification described below, and filed as Exhibit 23.

22. With nothing further, the Applicants evidence presents a compelling case for the approvals requested. However, there was more.

23. In cross examination by Ms. Penner, various admissions were extracted as to the colorations and categorizations of lot frontages in the Applicant’s lot study area map and associate statistics. These specific challenges to area and frontage examples were largely acknowledged or agreed. Namely, that in the absence of source data, specific inclusions were open to question, albeit on individual parcels. As well, zone category changes and zone exception provisions were identified that were permissive of different or special use (and possibly standards) permissions, in terms of dwelling types. Some uncertainty was demonstrated as to whether the performance measures of lot frontage and lot area, as depicted in Exhibit 17, were properly coloured and counted comparable to the subject zoning. It is not necessary to conclude on the weight of this evidence as Mr. Benczkowski was frank to acknowledge that the predominant neighbourhood character of lot sizes and lot frontages, was other than that demonstrated by the often referenced example of 109 A and B Poplar Road.

24. With the consent of the parties, the Board heard, prior to the City’s evidence, from area residents: Enzo Antinucci, Norah Veronica Guertin, Sandra Manley and Kenneth Esson. As general spokesperson, in his deputation and on questioning, Mr. Antinucci, among other matters, raised and maintained the spectre of precedent as is often the circumstance when applications representing change are afoot. Mr. Antinucci was present at and reflected on aspects of the Ontario Municipal Board decision applicable to 109 A and B Poplar Road. I place no weight on these recollections advanced in respect of that hearing or, for that matter, on the commentary from counsel or otherwise, on the implications, or evidentiary considerations advanced at or from that decision. In so commenting, it must be stated that this is not a reflection on any aspect of the decision. Indeed, an Ontario Municipal Board decision, including one from a senior member of the Board, is an important contribution to the field of administrative law and deserving of close scrutiny and attention for any bearing it may have on the proceeding extant. That said, such decisions are not binding on TLAB or, indeed, that Board itself. Every matter that comes before both tribunals must be examined in the light of their individual circumstances. That said, not just Mr. Antinucci and his

reflections but also the parties themselves, for their respective purposes, referenced multiple passages from that Board's decision. As such, a close reading of the decision, in light of the evidence heard at this hearing, warrants general comment.

25. It is correct that in 2006, the Ontario Municipal Board, over the City's opposition and having regard to the then pending (now in force) City Official Plan, allowed lot division and frontages of 8.05 m to permit the construction of two detached two storey dwellings on Poplar Road. And it is true that these parcels are in relatively close proximity to the subject lands, in the same zone category and that the resultant housing exists as constructed and depicted by photographs in Ex. 10. On the evidence I heard, affirmed in the Board Decision, the lot history and related considerations differ from the subject lands. The exact record was not described, but essential details are not disputed: the parcel, now developed as 109 A and B Poplar Rd and 80 B and C Kitchener Road as through lots, were part of a former road allowance declared surplus by the municipality and had contributed a lot addition to neighboring lands. A public walkway, also running as a thoroughfare between the two public roads, some 3.6 m in width, was retained along the south limit. Private development interests were ultimately successful in achieving development rights on the residual parcel for the considerations and reasons accepted by Mr. Rossi. The evidence heard by the Ontario Municipal Board in 2006 is not the evidence presented to TLAB, despite the effort to draw comparisons. The parties differ, the witnesses differ, the study areas differ, the applications differ in context, the in force policy regime has advanced and this panels obligation is to consider the evidence today and not be bound by a past record. The decision is instructive, but not determinative of the matters in issue.

26. For the reasons described, there are sufficiently different elements, including time and history to the matters at hand to distinguish the Ontario Municipal Board decision on 109 A and B Poplar Road. This is not to diminish the presence these four units contribute to the inventory analysis of the neighbourhood.

27. Mr. Antinucci, an area resident since at least 1987, said he came to 'accept' the development at 109 A and B Poplar Road but went on to elicit 'lessons learned' by the neighbourhood, in the form of raised awareness and consciousness: single lane driveways; raised grades; increased on-street and widened driveway parking demands; loss of landscaped open space –green space footprint - to garage and access pathways to recessed entrances; pedestrian safety. These matters were raised and maintained as elements of precedent but under the legitimate land use planning question of: "What about tomorrow?" He suggested a potential of 30-40 houses with similar or greater lot frontages and areas than the subject lands were capable of replicating the Applications on Poplar Road. The concern expressed, of course, was a request to think of the future. He urged the need for careful control to protect the neighbourhood from the potential of cumulative negative impacts. In a manner reminiscent of the explanatory language of the Official Plan, Mr. Antinucci's evidence described a consistent neighborhood of 'good frontages and 12 feet between houses, an immediate neighborhood capable of being eroded piece meal by negative impacts that can change the community'. He suggested the proposal takes a parcel in a community 'where there are no buildings not on 40 foot lots', and offers units better suited to an inner City location, such as Ossington and Dundas.

28. It is important that allegations of fear and the alleged opening of a ‘pandora’s box’ alone not drive deliberative planning decisions. Traditionally, land use tribunals eschew such apprehensions and provide the rubric and acknowledgement that each application must be considered on its own merit. That such individual consideration is the safeguard that guarantees, or at least offers, the check valve on change that the Official Plan suggest should be gradual.

29. Such safeguards however do not impede the obligation to consider whether there is merit in examining the case for intensification and its implications on the character and elements of the locality. Planning is nothing if it does not have at least one eye on the future. Planning at its fundamental best is to consider the best long term interests of the site, in the context of its surroundings and the public interest, expressed in authorized planning instruments and generally accepted principles of proper community planning.

30. The City’s planning evidence was tendered through Alan Young whose expert Witness Statement is found in Ex. 20 and was filed on consent but without leave of TLAB on August 14, 2017, a week later than prescribed. He too garnered his neighborhood impressions through the construction of a study area the boundaries of which are depicted in Ex. 20 at page 177. As distinct from that of Mr. Benczkowski, the Young study area was primarily premised on zoning categories tempered by built form, variations in recognizable subdivision lot patterns and, to a lesser degree amenity features and walking distances. While a comparison of the two study areas could be laborious, there is little to choose between them in size or locations that was not explored and identified in the evidence of the planners or admissions in cross examination. Both selected the bulk of Poplar Road and Kitchener Street, the parallel road to the east, being the lots described by Mr. Young as evolving through a variety of transfers, not a planned subdivision process. It is this essential orbit from both planners that this member accepts as appropriate in the circumstances of the Applications.

31. At the outset, a site visit by the panel was disclosed as consistent with Council’s directions in the constitution of TLAB. While no distinguishing comments were described, the site visit did provide an appreciation as to built form, spacing and general characteristics of both study areas, all of which was reinforced by other evidence of the witnesses.

32. Alan Young clearly described his appreciation of the appropriate neighborhood for Official Plan policy application in this circumstance to relate to the historical (and current) zoning permission for detached housing, on 12 m minimum lot frontages with area minimums of 464 sq. m. He distinguished the site specific use and zoning standards of areas both within and outside his study area and those employed in Mr. Benczkowski’s on the basis: “It makes no sense to include an area for semi’s to consider whether a proposal respects and reinforces an area where only singles are permitted.” In cross examination, Mr. Young eschewed the use of walking patterns and amenity desire lines to determine the scope and character assessment base of an area or neighbourhood. He said they did not drive his definition of area character boundaries as it meant the boundaries would “float” dependent on the arbitrary use of walking times, amenities chosen and the location of the anchor property. He described such criteria alone as unworkable.

33. In Mr. Young's opinion evidence, the Official Plan's admonition to ensure change 'respect and reinforce' physical character meant that the area boundary delineation must have regard to the land use pattern, including lot sizes and frontage as observed "in the field". His lot study area, Ex. 17, delineated in blue a prevailing pattern of lot frontages equal to or in excess of the bylaw standard of 12 m. His study area and description, Ex. 21, being somewhat smaller than that supported by Mr. Benczkowski, comprised 198 lots, 94% of which met the criteria of 12 meters in width, with the overall average being in excess of 15 m. His advice was the effect that the acknowledged diversity demonstrated and extended to reveal that the diversity was above the zoning minimum, with only five very exceptional lots involving site specific histories, falling below. In reference to his Witness Statement and the area policies, Ex. 22, he noted the Official Plan and zoning direction to consider the criteria of lot frontage and area and concluded his advice that the old and new zoning standards of 12 m and 464 sq. m were and remained appropriate standards that were reflective of and character of the area and its neighbourhood.

34. The planner Young in his Witness Statement and evidence reviewed the age, location, the applicable policy regime, site specific zoning and built form existing both of the lots within his study area that were below the bylaw standards, as well as those identified by the planner Benczkowski to support the general statement of 'variety' and 'examples.' Mr. Young's advice to the panel was threefold: there have been relatively few severances and regeneration has taken place through redevelopment that is replacement and renovation on existing lots of record (points with which Mr. Benzkowski did not disagree); second, that the character, unit type, frontages and lot areas of the majority of the study area were similar and consisted of bungalows and newer two storey detached house forms; third, that it would not be appropriate to use house forms, such as semi-detached dwellings found in different zone categories, or the circumstance of 109 A and B Poplar Road, derived from circumstances that are not characteristic of the study area. It was his opinion these latter examples should not be transposed into an area where they do not exist. His opinion that there was no neighbourhood character diversity in prevalent lot sizes and frontages was not shaken in cross examination; nor was there concurrence with the findings put to him in the 2006 decision of the Ontario Municipal Board, respecting 109 A and B Poplar Road.

35. His review of the exceptions both in respect of applicable zone regulations with variance reductions demonstrated that lot frontage relief, where granted in the past, had been minimal, generally maintaining a standard in excess of 10 m. Further, that all the circumstances the lot areas met or exceeded the bylaw minimum of 464 sq. m, set for West Hill - and repeated in the applicable new City zoning bylaw.

36. In referencing his Witness Statement, Mr. Young identified four of the criteria in s.51 (24) of the Planning Act, above, being (b), (c), (f) and (g) which, he concluded, "all came down to the same thing". Namely, he concluded that the lot sizes and frontages as envisaged in the Applications: did not reflect the 'shape and feel' of the study area or neighborhood character; would not respect and reinforce the physical character, buildings and streetscape of his physically stable study area; and did not reflect a 'sensitive, gradual and fitting change to the existing physical pattern of development', contrary to applicable commentary and policies in Sections 2.3.1.1, 4.1.1 and 5 of the City's Official Plan. The 'same thing' he emphasized was the 'size and character' of the

proposed lots. He opined that the changes sought by the Applications dealt with criteria specifically identified in the statute, the Official Plan and the applicable zone categories, were not minor or desirable, were 'discernable and transforming' and did not respect and reinforce the character of the area. As such, he recommended they should fail.

37. Mr. Young was asked whether the Official Plan exhibited area specific policies of relevance in further direction of the determination of the definition of the 'Neighbourhood' or 'neighbourhood', being plan terminology used. He indicated that there were no site specific Official Plan policies in place, but that expanded policy direction was expressed in Official Plan Amendment 320 ('OPA 320'). OPA 320 had been adopted by Council, approved by the Minister and appealed to the Ontario Municipal Board. Mr. Laskin argued against any reference to OPA 320 on the basis both of that appeal and its agreed potential of being modified or rejected. While the future of OPA 320 is indeed uncertain, as with the urging by Mr. Laskin to weigh Mr. Rossi's consideration and use, in 2006, of the now current Official Plan, then under appeal, in respect of 109 A and B Poplar Road, the text was admitted and spoken to without reply. As well, TLAB is obliged to consider the decisions of Council and while the matter of OPA 320 approval is 'in the wind', its language falls within the ambit of 'relevant but not determinative' consideration. OPA 320, on the evidence of Mr. Young was said to provide Council's reaffirmation and recognition that the small 'n' use of the term 'neighbourhood' in the approved Official Plan was problematic and worthy of further direction. Namely, that the delineation and definition of the relevant neighbourhood for the consideration and application of policy direction to 'respect and reinforce' protection of Toronto's neighbourhoods needed added new direction. Excerpts from OPA 320 are found in the Witness Statement of Alan Young, Ex. 20, p.104 and paragraph 7.1.

38. Mr. Young described this direction as being a recent expression by Council that the obligation to 'respect and reinforce' the protection of neighbourhoods in the process of change, including land use planning approvals, is carried forward. Further, that the delineation of that applicable area for consideration can be narrowed in appropriate circumstances even to the same block and facing street. Further, it defines and adds 'prevailing' characteristics to be evaluated as being the most predominant. The planner Young expressed this direction as important and consistent with his delineation of area boundaries and relevant to his assessment of lot areas and frontages. He said, however, that he did not rely on OPA 320 in his opinion and recommendation as to the unsuitability of the Applications.

39. This member appreciates that despite the differences in their requested outcomes, the parties had worked together to formulate conditions of approval to ensure the Applications are fully and finally dealt with in one sitting. Mr. Young tendered Ex. 23, being a set of conditions that the parties had agreed upon should the Applications be allowed. Also on consent, Ex. 23, paragraph 1 was agreed to be modified by adding the following: "with the exception of the interior side yard setbacks, which will be to the zoning bylaw standard of the West Hill Community zoning bylaw, at 1.8 m."

ANALYSIS, FINDINGS, REASONS

40. The resolution of the appeals of these applications is a determination as to what constitutes good planning in the circumstances. Not only does the statute, above, in s. 51(24) provide a list of criteria on the issues of the consent, but also s. 45 sets out the tests applicable to the requested variances, all of which must be satisfactorily concluded.

41. The party's witnesses despite having differing boundaries, agreed that the neighbourhood is what exists and that the real contest between them is limited to the proposed lot areas and frontages and their implications. There was substantive agreement on other matters, as above identified.

42. I agree with Mr. Laskin that the concerns expressed by most residents respecting height, the juxtaposition of two stories in a row of detached bungalows, the loss of greenspace, increased parking and storm water management experiences are all issues for which no relief is requested or, indeed, can fall outside the TLAB jurisdiction on these Applications.

43. The issues of lot area and frontages and their relevance need to be considered in context. As a matter of provincial policy they are identified only obliquely. There is no doubt that policy support exists for intensification, the protection of communities and the direction that local planning instruments provide more specific direction. It is instructive that the Planning Act, in s. 51 (24) (f) and (g), the Official Plan, Policy 4.1.5 (b) and both zoning bylaws include lot area and frontages as criteria for examination in the evaluation of change. That evaluation is directed to be conducted in the context as to whether the change respects and reinforces the existing physical character of the neighbourhood.

44. The statute, also requires I have regard for the decisions of Council or the Committee on matters that touch upon the Applications.

45. I accept that the subject lands are found within an older established neighbourhood, the character of which was set through conveyancing transactions as distinct from the application of universal subdivision control, a now accepted route to planned communities. I also accept and find that successive Councils, through zoning, have established and reconfirmed lot area and frontage controls, at 12 m and 464 sq m minimums respectively, applicable to the subject lands and a significant area surrounding. This is not a case of the subject lands being located in a peripheral location, topographical change, dramatic swings in lot characteristic or other considerations that might, in different circumstances, differentiate the subject lands from the surrounding environment. I find that the 'bones' of the West Hill Community bylaw, and the newer City bylaw identified and continue to reflect an appreciation for these two performance standards or regulations, as essential character attributes. Both planners agreed, as relayed above, that despite their differentiating study area boundaries, the prevalent characteristic of lot areas and frontages 'on the ground' meet and exceed the standards set in these bylaws. Indeed, where there are variations, either in built form of unit type or reductions in these standards, I find they have been addressed with one exception by site specific Council decisions to rezone or variations that have been

granted in only one of the attributes, lot frontage, and then to a degree significantly less dramatic than envisaged by the Applications.

46. In close proximity to the Applications are four parcels of uniquely similar attributes to the proposal. That similarity extends to lot area and frontages, single detached dwellings of two storeys and of a modern, near identical design to that proposed. The approvals at 109 A and B Poplar Road and 80 B and C Kitchener Road were granted over City and neighbourhood opposition, by the Ontario Municipal Board, in 2006. From this approval, TLAB is urged to conclude that the decision should be given persuasive consideration, that the evidentiary support findings within it should be accepted, as they were by the member, and that the existence of the dwellings on the ground influences the character of the neighbourhood and have done so for years, without suggesting unacceptable adverse impact.

47. While there is much to be said for these submissions, it is incumbent through the Official Plan direction to examine their substance. This examination is warranted as the analogized properties are essentially the substantial and often repeated justification by the Applicants representatives to support several propositions. These include advice to reject 'formalistic' considerations of surrounding zoning, to recognize that there is physical diversity from that prevalent in the neighbourhood and that the influence of their existence without undue adverse impact is supportive of the compatibility of their repetition.

48. Apart from the Applications themselves, I find that there are no distinguishing characteristics, history or compelling public interest that warrant that special consideration be given to the subject lands as distinct from any other similarly sized lot in the neighbourhood consisting of a minimum 12 m lot frontage, 464 sq m lot area, or greater. No evidence was called to differentiate the subject lands from its neighbours in either of the defined study areas. While there is little doubt that the subject lands could physically carry the development of two detached dwellings, the issue is whether it is appropriate to accommodate the lot division and variances necessary at this location.

49. While I am to examine the Applications before me, as an aside, I have no basis to differentiate them from any others that could occur as of right respecting existing lots of similar or greater measurement characteristics. I find that the applicable neighbourhood is comprised of a predominant uniformity of lot sizes and frontages similar or greater in these measures to that of the subject lands. I find that these proposed variances from that uniformity, as a principle of good community planning, generates legitimate considerations and concerns that might better be the prerogative of Council, where the larger considerations raised by the witness Antinucci can be considered. I am directed in this regard by the criteria listed and tests identified in s. 51 (24) and s. 45 (1) of the Planning Act, above recited, including whether the Applications conform to the Official Plan.

50. It was the evidence of the planner Young that within his definition of the neighbourhood, 94% have frontages that meet the zoning requirement of 12 m. Of those 186 lots, 22% have frontages of 20 m or more, 35% are within the range 15 to 19.99 m and 35% within the range 12- 14.99 m. He found the average lot frontage is 15.8 m. This essential finding, while diluted by a larger study area and full inclusion of

properties by Mr. Benczkowski, was not seriously challenged as to the substance of its message. Similarly, Mr. Young found that on the data available, 97% of his study area lots met the minimum lot area requirement of 464 sq m with an average of 767 sq m. I find that this prevalence is a characteristic of the physical presentation of this neighbourhood. While I have the jurisdiction to start (or continue) the erosion to a new standard, I am more inclined to the view that such should not be the role of TLAB in such circumstances. I accept the opinion of Mr. Young that the standards set in the zone category are appropriate to the area. They have essentially been confirmed twice by Council in recent times (Official Plan and zoning) and the redevelopment that is occurring is almost exclusively on lots of record.

51. The City Official Plan directs that development 'respect the existing physical character' in a neighbourhood (s. 2.3.1). I agree with Mr. Young that the overall policy direction sets up stronger direction than mere compatibility. The environs of the subject lands are an interesting amalgam of original, regenerated, new additions and redeveloped lots possessing a lively individuality and character of their own that only time, resources and stability of enterprise can generate. I find that that physical character is not respected and reinforced by a lot division with dimensions and parameters significantly different than the standards in effect. The proposed lots, in shape and dimension, are out of keeping with the physical character of the neighbourhood, are not characteristic and are contrary to the expressed policy intent of the City Official Plan, s. 4.1.5.

52. The Applications, which seek severance approval for two lots of 8.305 m lot frontage and 409.1 sq m area are not to be justified by two such lots on the opposite block face in close proximity. The lot frontage proposed is well below the bylaw standard of 12 m and sample average of 15.8 m and the areas would be the smallest lot area in the neighbourhood. On the evidence, the building built form would have a width of approximately 5 m and front yard spaces comprised principally of driveway and pedestrian access hard 'landscaping'. Development at that configuration and scale in neither consistent nor prevalent, as considerations. I find that the lot dimensions proposed would neither be minor, desirable nor in keeping with the intent and purpose of the Official Plan or the zoning by-law.

DECISION AND ORDER

For the reasons expressed, the requested consent and variances are refused and the appeals from the Applications as determined by the Committee, are dismissed.

X

A handwritten signature in black ink that reads "Ian Lord". The signature is written in a cursive style and is positioned above a horizontal line.

Ian Lord

Chair, Toronto Local Appeal Body

Signed by: Ian Lord