

DECISION AND ORDER

Decision Issue Date Tuesday, January 02, 2018

PROCEEDING COMMENCED UNDER subsection 45(12) and Section 53 of the Planning Act, R.S.O. 1990, c. P.13, as amended (the "Act")

Appellant(s): LOVELY YESMIN and ZAKIR HUSSAIN

Applicant: CANTAM GROUP LTD

Property Address/Description: 83 SANDOWN AVE and 85 SANDOWN AVE

Committee of Adjustment Case File Number: 16 267985 ESC 36 CO
17 125188 ESC 36 MV
17 125190 ESC 36 MV
16 267996 ESC 36 CO
17 125198 ESC 36 MV
17 125202 ESC 36 MV

TLAB Case File Number(s): 17 170540 S53 36 TLAB
17 170544 S45 36 TLAB
17 170546 S45 36 TLAB
17 170559 S53 36 TLAB
17 170560 S45 36 TLAB
17 170561 S45 36 TLAB

Hearing date: Tuesday, November 28, 2017

DECISION DELIVERED BY Ian James Lord

INTRODUCTION

These are appeals to the Toronto Local Appeal Board ('TLAB') from a series of decisions of the Scarborough District Committee of Adjustment ('COA') on May 11, 2017, refusing applications to sever and for variances to two properties located at 83 and 85 Sandown Avenue (the 'subject properties') in the City of Toronto ('City').

Decision of Toronto Local Appeal Body Panel Member: Ian Lord
TLAB Case File Number: 17 170540 S53 36 TLAB et al

The subject properties are currently developed and occupied as single detached one-storey dwellings. The dwellings face west and the lots are configured east/west, with the narrowest width dimension, lot frontage, on Sandown Avenue.

The application for consent in respect of each of the subject properties was to sever each into four near identical parts to be combined together on a north/south axis to create four building lots fronting on Aylesworth Avenue to the south.

A Lot Division Plan for the subject properties is Attachment 1 hereto and forming part of this decision.

Variances are sought to permit the construction on the reconfigured lots of four two-storey detached dwellings. With slight variations, including a recently determined corner rounding requested by the City, the variances requested engage the parcels identified in Attachment 1, in respect of the following matters:

- a) Lot coverage increases.
- b) Maximum floor area increases.
- c) Minimum lot area reductions.
- d) Side lot line reductions from internal side lot lines.
- e) Front yard parking location and access relief (westerly corner parcel only).
- f) Side lot line setback reduction abutting a street (westerly corner parcel only).

The requested variances were generally similar and applicable to City Zoning By-law 569-2013 (the 'New By-law') - which is under appeal and not yet in force, and the former City of Scarborough By-law 9364 (the 'Cliffside By-law').

Additional relief under the Cliffside By-law included:

- g) Minimum lot depth reductions.

The specifics of the relief requested for each of the proposed reconfigured four lots are set out in Attachment 2 hereto and forming part of this decision.

Max Laskin represented the appellants calling Jonathan Benzczkowski for professional land use planning evidence ('Applicants/Appellants counsel and planner', respectively).

Alexander Suriano represented the City calling Cecilia Wong for professional land use planning advice ('City counsel and planner', respectively).

Both planners were qualified as expert witnesses, without objection.

No other evidence was called. No member of the public remained to make known their comments and concerns although Sigrit Sommer and Gord Munro were able to observe much of the day.

BACKGROUND

At the commencement I indicated that pursuant to Council's expectation, I had visited the subject properties and vicinity and had generally familiarized myself with the extensive filings.

The appeals had benefited from a revised Zoning Examiners Notice and, earlier, an adjournment had been granted on consent to allow for new Notice of the variance revisions. The Appellant filed an Appellants Document Book which was accepted as Exhibit 1, subject to proof of referenced content. At Tab 30, documented evidence of the posting and sending of revised variance information as a new Notice was accepted. As such, the revised variance information did not require consideration or allowance under s. 45 (18.1.1) of the Planning Act.

Both counsel provided opening statements and clearly described their respective and opposing positions on the approvals requested, recited below.

MATTERS IN ISSUE

On behalf of the applicant owner, Appellants counsel asserted the proposed consent had had regard for s. 51(24) matters elicited in the Planning Act, as well as City Official Plan policies, respecting lot aspects and applicable policies. Further, that the variances met the statutory tests without impact as demonstrated by the lack of any neighbourhood opposition evidenced to date.

The City counsel claimed opposition not to intensification but focused on the severance plan to create four reoriented lots to face the flanking street. The consequence of a new lot pattern yielded the request for variances respecting lot area, lot depth, rear yard character and setbacks which were said to 'go too far' and are all opposed. Appropriate intensification in a different format was described that avoided the out of character orientation proposed.

It was the City planners' proposition that a more appropriate form of intensification would be the division of the subject properties into three lots fronting onto Sandown Avenue. The Appellants planner stated in cross examination that he was not opposing that opinion, agreeing that such would be an intensification and is more in keeping with by-law standards. The City called evidence on this scenario and the City Planner was cross examined on her preference for it and her opinion in support.

However, the matter before the TLAB is not that of an alternative redevelopment scenario but rather solely the proposed severances and variances described in the above Introduction section. As such, the City alternative is not further discussed.

JURISDICTION

Provincial Policy – S. 3

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').

Consent – S. 53

TLAB must 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. 1994, c. 23, s. 30; 2001, c. 32, s. 31 (2); 2006, c. 23, s. 22 (3, 4); 2016, c. 25, Sched. 4, s. 8 (2).

Minor Variance – S. 45(1)

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

The two planners were qualified to give independent professional planning opinion evidence. Both accepted that intensification was an objective of the Provincial Policy Statements and the Growth Plan for the Greater Toronto Area and took no issue with their application. Both agreed that it was the City Official Plan that was to be regarded as to the implementation of the provincial policy documents. The City planner added that the subject properties were not found in any identified intensification area supported by the Official Plan but that the applicable 'Neighbourhoods' designation contemplated intensification and infill housing, subject to the application of evaluation criteria and related policies.

It is in this latter arena that the planners differed in the emphasis and application of the criteria, as relevant to the assessment of both the severances proposed and the variance tests – leading to opposite opinions on the suitability of the applications.

The Applicants planner concluded that the applications constituted good planning, represented appropriate additions to the housing stock, provided efficient development with no undue adverse impact and that the proposed lots and built form would be in keeping and fit with the context of the area.

The City planner concluded that the development pattern proposed was not in keeping with the Official Plan policies on lot configuration and streetscape, that the by-law variances would not respect and reinforce the neighbourhood, with particular

emphasis on streetscape, lot size, depth, lot pattern and the open space character of the Neighbourhood.

In summary, while not expressed directly as such, the planners dueled principally on the application of Official Plan policies (which, as stated, they agreed to be the most important assessment vehicle) and various by-law performance standards applicable to the merits assessment of both the consent and variance applications.

It is therefore incumbent to examine closely the evidence generally and focus more specifically on their areas of opinion departure.

The Appellants planner was retained after the COA refusal and following extensive site investigation. He established a Study Area that was not seriously disputed, bounded by the GO tracks to the north, McIntosh Street to the south, Sharpe Street and Heale Avenue, respectively to the west and east. From within this area he postulated several conclusions based on example properties documented by City statistics, site photographs, own observations and an extensive record of COA and OMB decisions, demonstrating redevelopment activity, diversity and development standards. These conclusions included:

- a. the Official Plan, s. 3.2.1.1.2 encourages new housing supply with consistency of infill housing that is clearly evident throughout the study area;
- b. the Official Plan, s. 2.3.1 in its text describes Neighbourhoods as being 'stable but not static' and that the proposal merely implements, even 'mirrors' similar acceptable activity that is taking place;
- c. the Official Plan, s.2.3.1.1 requires development to be consistent with and respect and reinforce the physical and open space patterns of the neighbourhood, which he found the proposal to satisfy in terms of example sites of housing orientation, built form (new single detached two-storey dwellings), and front and rear yard compliance with zoning regulations;
- d. the Official Plan, 4.1 in its text requires permitted change to be sensitive, gradual and 'fit', which he claimed is met by the detailed consideration an comparable assessment of defined criteria;
- e. the Official Plan, s. 4.1.5 defines development criteria, which he applied to the proposal and opined were met, principally through maintenance of by-law standards complying with height, minimum lot frontage and, generally, minimum rear yards, all as indicia of character of the area that were being replicated. For those zoning standards sought to be varied as defined in Attachment 2, he provided multiple examples of approvals and built form in the 614 lot Study Area demonstrating deficient lot areas created by recent severance activity, reduced setbacks, corner driveway configurations, and reduced floor area standards. He pointed to examples of established orientation similarities to the proposal and to vehicular access examples, applicable to the proposed westerly corner lot.

He concluded that there was no consistent pattern of built form, no discernable impact on area character such that with the examples chosen there was assurance that the north/south orientation proposed respected and reinforced the lot pattern and frontage seen 'on the ground, as experienced from the street'. He opined that the

height, mass and scale of the proposed buildings will not 'stick out' and will fit harmoniously with many shared architectural features of new area developments, including integral garages. On the proposed flank and internal side yard reductions, he provided examples within the Study Area that demonstrated reduced side yards and provided the opinion that the 'prevailing character (of recent severance activity) consists of reduced side yards, at .6 m (2 feet) in new dwellings sufficient to allow rear yard access.' From this evidence and associated photographs and decisions, he stated:

- f. the Official Plan, s. 3.1.2.3, supportive of physical compatibility and a harmonious fit, was met.

The Appellants planner urged approval given no neighbourhood interest let alone expression of impact, an improved building distance setback condition to the north with abutting rear yards, no material adverse impact to privacy and views and the agreement with Engineering Services Staff that the owner/applicant be required to pay the capital cost of a watermain service extension along Aylesworth Avenue, to be secured by condition.

In cross examination, the Appellants planner acknowledged:

- a) lotting on Sandown, north and south of the site is predominantly east/west in orientation;
- b) the relationship to surrounding properties is relevant;
- c) current lotting provides visible front and rear yard green space both north and south of Aylesworth Avenue;
- d) only 4.4% (6 lots) of the lots in the study area are smaller than those proposed;
- e) many of the comparative examples relevant to lot size and floor area were semi-detached units, subject to different zoning performance standards, or located on a curve, compromising lot dimensions and characteristics;
- f) the Cliffside by-law had a different rear yard lot depth provision, reflective of the area character of deep lots;
- g) the prevalent lot pattern is one of having larger areas and depths than the proposal;
- h) the Official Plan, s. 4.3.1.2 policy direction is to , through the zoning by-law, that development is compatible and consistent with the Plan; that intensification "is not a blank cheque";
- i) in Exhibit 1, Tab 53, his Chart, in terms of numerical standards compliance with zoning by-law provisions, the proposal stood 'right at the top' in terms of lot coverage, third in line for floor space index and the third lowest for lot area;
- j) the proposal would destroy the consistency of front yards on Sandown by placing the proposed westerly lot and building beyond the main front walls of existing residences and with a reduced side yard on Sandown;
- k) the proposal would add 12 windows looking into the rear yard of 87 Sandown Avenue;
- l) the proposal had potential for the replication of the reorientation of corner lots and in fact, he had applied for a zoning examination, Exhibit 7, of 48 and 50 Atlee, to the east and rear of the subject properties and their severance for

reorientation southerly to Aylesworth Avenue, consistent with the subject proposal.

The Appellants planner re-emphasized that in the Study Area there are many examples of 'rear yard to side yard' relationships that form the character of the area and the 'real exercise' is to determine if this type of built form is not present. To answer that direction, he opined that a predominant lot feature to the south was a north/south lot orientation and that the proposal was not introducing something that does not already exist in the area.

The City Planner, in turn, provided a concise Summary Presentation (Exhibit 8) of her three Witness Statements/revisions necessitated by her earlier discovery of additional required variances for lot depth and flankage side yard setback and their assessment.

A principle point of contention began with the observation that the proposed lot pattern was not in keeping with the streetscape or Official Plan principle of respecting and reinforcing the existing physical character of the area. Coupled with that was her opinion that the performance standards of the zoning by-laws, designed to protect neighbourhood character, were also being varied in a manner that would fail to reinforce the lot patterns and streetscape of the area. In acknowledging that development has occurred by severance, she said the proposed lot pattern was not common. For the one example of four detached north/south oriented lots repeatedly referenced by the Appellants planner diagonally opposite the proposed reconfigured lots, she said that they had occurred via a consent application that were approved (but not built) for semi-detached units on January 19, 1982, significantly prior to the development of the current Official Plan.

She introduced a City Document Book, Exhibit 5 and referenced where she had established a Study Area that was not seriously disputed, but somewhat smaller than that of the Appellants planner. She indicated no material difference in the generated use of both Study Areas. She postulated several conclusions based on example properties documented by City statistics, site photographs, own observations and an extensive record of COA and OMB decisions, demonstrating redevelopment activity, diversity and development standards. These conclusions included:

- a. in the Official Plan, s. 2.3.1, regarding the shape and feel of respecting and reinforcing area character, she maintained that on Sandown Avenue the houses were generally aligned, maintained 6 m front yard setbacks with landscaping and a pattern of open space on both sides of the street, in front, between buildings and in generous rear yards, extending for lots south of Aylesworth Avenue. The proposal does not replicate that shape and feel.
- b. in the Official Plan, s. 2.3.1.1, she opined the flankage proposal did not respect and reinforce the existing streetscape and open space patterns;
- c. in the Official Plan, s.4.1 she said the reorientation of lots was not sensitive, gradual or a 'fit' for the character of the area;
- d. in the Official Plan, s. 4.1.5, she identified clauses b), e), and f) wherein she challenged the general conformity of the applications stating that the general lot pattern of the neighbourhood is an east/west orientation which tended to

- reinforce setbacks and the pattern of lots and open space providing a pattern of rear and side yard setbacks, consistently zoned that were not being maintained by the proposal. In her opinion, the presence of the existing corner lot orientation permitted the consistent perception of lot depth along Aylesworth being replicated by housing fronting on Atlee, the north/south street to the east.
- e. in Official Plan Amendment 320, she acknowledged that the Minister approval was currently on appeal but urged that the policy intent, being “relevant but not determinative”; it added ‘prevailing’ to the test criteria in s. 4.1.5., (respecting lot size and setbacks) and defining the same as to be those ‘most frequently occurring’. She said the proposal would not conform to this most recent expression of policy intent;
 - f. for the consents requested, she said the proposal fails to satisfy s.51 (24) c) and f), above. She said, using Exhibit 8a Attachment 1, of 1032 lots, only 19 lots or 1.4% of the Study Area matched the lot depths of the proposal; of 1061 lots, only 125 lots or 11.78% of the Study Area matched the lot area of the proposal. As such, she described the proposal as having the shallowest lot depths and some of the smallest lot areas contrary to the statutory direction and contrary to the variance test of maintaining the general intent and purpose of the Official Plan to respect and reinforce the existing physical character of the area. The shallow lot depths, less separation between buildings and less landscaped open space in the rear yards were clear departures, in her view, from the prevailing lot patterns in existence. She attributed these deficiencies to the reorientation of the lot pattern also giving rise to the needed parking relief and the extension of municipal communal water service infrastructure.
 - g. For the variances requested, related to zoning, she said the above mentioned changes do not meet the general intent and purpose of the zoning by-law to achieve consistent lot patterns and streetscape, that the changes would be noticeable and significant. She pointed to the reduction in average lot depths (at 38 m) to the proposed 27 m as being noticeable. The by-law standard is 35 m.
 - h. In addressing ‘desirability’, she opined that the breaking of the ‘side yard flankage’, the requirement of a watermain extension and the proposal to create back yard to rear yard relationships with shallower lots was inappropriate, avoidable, precedent setting and neither desirable nor appropriate, being contrary to the direction to not make decisions that fail to respect and reinforce the Neighbourhood principles.
 - i. She maintained that the reductions proposed for lot area, lot depth and setbacks were not minor, fail to meet the tests of s. 45 of the Planning Act, above and did not constitute good planning.

In cross examination, the City planner acknowledged:

- a) she had no concerns respecting floor area, side yard variances or lot coverage;
- b) no ‘open space’ variance was being sought;
- c) lot frontages differ in the area and the proposal exceeds the zoning requirement;

- d) on Park Street there is a prevalent north/south lot orientation in the area, including side yard to rear yard orientation, but at a greater lot depth whereas the proposal is in a much closer relationship. Park Street is a through street with transit service and a central orientation on Sandown Park.

ANALYSIS, FINDINGS, REASONS

The applications on appeal for severance and associated variances present a somewhat unusual circumstance not often encountered. They call for the reorientation of an established lot pattern at a corner location by a ninety degree swing counterclockwise, to permit frontage on a different street. The orientation has consequences: permitting application for the creation of four lots from the previous two, as well as calling for departures from several performance standards in applicable zoning and the extension of public communal services.

The change in lot dimensions is, of course, expected with a severance application. Lot division characteristically involves the creation of new lots or lot additions that have the consequential effect of modifying lot dimensions, if not shapes, sizes, frontages and depths. The distinction in the applications is the very dramatic change in lot orientation; it is that distinction that is at the crux of many of the differences as between the planning witnesses and it is that distinction that in this circumstance gives rise to the resulting requested variances.

The statutory directions, or tests, to be observed are identified in the Jurisdiction section, above recited. In short, the TLAB as appellate authority is directed to consider the consistency of the applications with the Provincial Policy Statements ('PPS') and their conformity with the Growth Plan. I am also to have regard to the decision of the COA and whether the applications call for or require a plan of subdivision application and meet all applicable statutory considerations.

For the reasons above generally concurred in by the planners, I am content that the PPS and Growth Plan present no obstacle to the applications: they encourage intensification in proper locations that is transit supportive and makes use of available infrastructure.

There is agreement that it is the Official Plan of the City that is the prime determinant of policy direction governing the applications and to which the consent applications must generally conform and that the variances must maintain its intent and purpose.

Both planners urged upon me similar sections of the City Official Plan resulting in different interpretations, opinions and ultimate advice as to the appropriate disposition of the applications.

Neither asserted that the matters at hand should be pursued through a registered plan of subdivision approval process. I agree that a decision can be reached and

secured as necessary, without resorting to the more cumbersome process of a plan of subdivision application process. There may be instances in the future wherein the principles engaged here necessitate a more comprehensive plan of subdivision approval process.

A purposive review of the Official Plan is therefore required. A principle focus of that inquiry is in respect of the evidence directed at the issue of lot configuration and orientation and whether the Official Plan provides direction in that regard. The focus also includes how the Official Plan fundamentally identifies and directs the application of criteria to assess compatible development.

The TLAB is mindful of the direction in s.4.1.5 of the Official Plan that:

“No changes will be made through...minor variance, consent...that are out of keeping with the physical character of the neighbourhood.”

Both planners directed my attention to s. 2.3.1, concerning “Healthy Neighbourhoods” and other relevant and repeated policies and text, above identified. The subject properties are located within a *Neighbourhoods* designation in the Official Plan. I accept that the neighbourhood in question has a significant areal extent of mainly detached and semi-detached residences and related uses demonstrating a variety of lot sizes, frontages, architectural designs, building heights, styles and lot configurations.

Section 2.3.1 in its policy language provides:

“1. *Neighbourhoods* ...are considered to be physically stable areas. Development...will respect and reinforce the existing physical character of buildings, streetscapes and open space patterns in these areas.”

In Section 3, Building a Successful City, the text provides:

“The existing context of any given area refers to what is there now. The planned context typically reinforces the existing context.”

The use of the term ‘existing’ is continued elsewhere.

Section 3.1.2 in its policy language provides:

“1. New development will be located and organized to fit with its existing and/or planned context:

- a) ...with a consistent front yard setback
- b) ...give prominence to the corner

2. ...will organize vehicle parking, vehicular access...to improve the safety and attractiveness of adjacent streets.

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

will limit its impact on neighbouring streets...open spaces and properties by:

- a) massing of new buildings to frame adjacent streets...in a way that respects existing and/or planned street proportion;

While not entirely 'design' policies, the foregoing directions are instructive of the arena of attention to be paid to elements of the proposal to gauge compliance or departure from the language of the Official Plan. In so doing, it is instructive to always remember the context of the Official Plan, stated in Section 5.6 Interpretation, namely, that it is to be read as a whole, consistent with the applicable accepted standard for statutory interpretation to read the document liberally, in its ordinary and grammatical context and in its entirety, consistent with the objectives of the document and the intention of its legislative foundation.

Section 4.1, *Neighbourhoods* was referenced extensively by both planners. Its text provides:

"The stability of our *Neighbourhoods*' physical character is one of the keystones to Toronto's success". (p.4.3)

Physical changes to our established *Neighbourhoods* must be sensitive, gradual and generally fit the existing physical character. A key objective of this Plan is that new development respect and reinforce the general physical patterns in a Neighbourhood."

The qualitative and quantitative assessment criteria for approvals within this designation were applied by both planners. The language more germane to their positions is found in the following Policy language:

Section 4.1.5 in its policy language provides:

"Development in established Neighbourhoods will respect and reinforce the existing physical character of the neighbourhood, including in particular:

- b) Size and configuration of lots;
- c) Heights, massing, scale and dwelling type of nearby residential properties;
- e) Setbacks of buildings from the streets;
- f) prevailing patterns of rear and side yard setbacks and landscaped open space;

Section 4.1.8 in its policy language for matters in issue, provides:

“Zoning by-laws will contain numerical site standards for matters such as...density, lot sizes, lot depths ... parking, building setbacks from lot lines ...to ensure that new development will be compatible with the physical character of established residential Neighbourhoods.”

(Note: underlining has been added to extracts)

Finally, provision is also made in Section 4.1 for consideration of projects having intensification characteristics different than the designation and zone category in which the subject property is found, on intensification and infill grounds. I have not considered this sufficiently relevant or determinative given the location of the subject properties internal to established subdivision plans and the consistency of the designation and zoning affecting the subject properties.

I find that the Official Plan is clear in its emphasis on protecting the continued stability of designated *Neighbourhoods*, including the one in which the subject properties are located. That ‘stability’ intent is not only general in its conceptualization but it is made specific in a number of discrete ways and is to be applied in even more directed criteria for assessment.

‘Stability’ is focused on the physical built form of the existing physical character of the neighbourhood, and includes such matters as buildings, streetscape and open space patterns. ‘Existing’, as indicated, encapsulates what is there now and what is planned to reinforce it.

This has a number of implications for the proposal as the base consideration of the evaluation of change requires the evaluation of the design criteria above identified in Section 3 and 4 of the Official Plan, but also the application of the criteria identified in Section 4.1.5., including, among others, ‘the size and configuration of lots’. (again, my underlining)

I accept, as urged upon me by the City representatives, that the existing orientation/configuration of lots presents itself as well in the physical pattern of development.

It is the existing physical pattern of lots and the improvements constructed thereon that present a significant component of character of an area or neighbourhood that is to be ‘respected and reinforced’.

In common parlance, ‘configuration’ refers to the arrangement, in this case of lots or the lot pattern and the buildings thereon, in a particular form, figure or combination. Synonyms, some of which were used descriptively in evidence include: arrangement, layout, organization, appearance, structure and orientation.

In viewing the lot pattern of the neighbourhood, as described by either planner, there are a variety of configurations present. In my view, however, I agree with the planning opinion evidence of the City that the existing physical character of buildings, streetscape and open space pattern in the vicinity of the subject properties is a configuration or orientation to an abutting street with opposing frontages on either side.

Such is the case for Sandown Avenue.

Sandown Avenue demonstrates a historical and existing physical pattern of east/west oriented lots from north/south streets that are common to the neighbourhood. While exceptions exist, they either harbor obvious rationales of geography, open space proximity, major collector street functions, public infrastructure or individual circumstances whose formation predate the Official Plan.

I come to this conclusion consistent with but independent of any special weight to be attributed to the recent policy clarification expressed in OPA 320.

It is on this base that it is incumbent, by virtue of s. 4.1.7, above, of the Official Plan, to consider whether the proposals respect and reinforce this existing physical pattern of lot configuration, or constitutes a departure that takes it out of general conformity of its intent and purpose, as the Plan relates to the Neighbourhood designation.

For the subject properties, the proposal for four lots provides intensification and additional dwelling units for a type consistent with the neighbourhood. To accomplish this however, there are several substantive sacrifices identified by the City planner:

- 1) The new development is not located or organized to fit with the existing or planned context, not only of lots that front on Sandown Avenue but of a representative lot pattern in the area. A configuration of four lots fronting on Aylesworth Avenue alters the existing physical pattern, removes a consistent front yard setback on Sandown Avenue, reduces the prominence of the corner by reduced side yard setbacks, presents a massing of side and rear yard presentation contrary to the existing face to face entrances and abutting side yards of the established building pattern and introduces multiple entrances and reconfigured access and parking at the corner property with no evidence of improvement to the attractiveness of adjacent streets. There was no evidence that this massing change was evaluated as to how it respects existing street proportions.
- 2) The size and configuration of the lots, a criteria set by section 4.1.5, does not respect and reinforce the existing physical character of the neighbourhood. While some examples of similar lot sizes were in evidence, their significance was effectively marginalized by their low proportion of occurrence (1.4%), their association with semi-detached dwelling types and their location on curvatures of streets reducing effective lot areas. I accept that the primary example of nearby lots configured to front on an east/west street such as proposed, was created prior to the governing and relevant Official Plan policies, or are examples that are otherwise tied to more major thoroughfares, than is Aylesworth Avenue.
- 3) I find that the height, massing and scale of the proposal constitutes in the limited space available such a departure from the existing pattern of development as to create unacceptable conditions both for the future occupants of the proposed units and the abutting property. The parcels would be a dominating isolated cluster facing a side yard across the street and backing onto a rear yard to the north with proximity and minimal rear yards

that, while they are consistent with the New Zoning By-law standard, are significant reductions from the rear yards required under the Cliffside By-law or the existing physical pattern and size of rear yards found generally in the neighbourhood. The configuration of lots proposed, turned to face south, disengages from the historical relationship between facing lots and effectively undermines the streetscape, an important Official Plan consideration. The proposal masses new construction without any relationship attributes; to succeed, it requires area standards reductions in lot size/area, lot depth and the prevailing pattern of building separation distances. I fully appreciate from the evidence of the Appellants' planner that there are instances of interior side yard reductions in approved, severed, new builds in the neighbourhood. However, I am not convinced they came about with anything near both the reduced lot areas and lot depths demonstrated by the applications. The test is more than the presence of examples - as demonstrated both by the cross examination and evidence of the City representative.

- 4) I accept the evidence of the City planner that the reduced exterior side yard and building for the proposed corner lot not only materially undermines the symmetry of the Sandown Avenue streetscape, but also presents a built form that is disruptive, incompatible in scale, massing and access considerations such as to detract from and not respect and reinforce the existing physical pattern of the neighbourhood. I appreciate that the City planner acknowledged no individual objection to the variances of lot coverage, building area and interior setbacks.
- 5) I also accept that the rear yard setback of the proposed lots, while compliant with New Zoning By-law standards represents such a departure from both the Cliffside By-law and area observed standards that prevail, so as to constitute a change that cannot be said to respect and reinforce the existing physical pattern of the neighbourhood. The orientation of the lots removes the internal view corridors and hides the essential character of area lots: deep, landscaped rear yards. While it may be that area residents perceive lots and built form premised on the appearance of lot frontage (from which no variation is sought) it is also true that the future residents of the proposal need to be given due regard in the evaluation of the severance. With only two foot corridors to their minimal rear yards, the proposed units are not being afforded anything near the standards of the existing physical pattern of the neighbourhood on the criteria of rear and side yard setbacks. The welfare of future residents is a relevant land use planning concern worthy of evaluation or consideration at the outset of a severance decision. I find no compelling basis in the proposal to create two additional lots, to compromise zoning standards to the disadvantage and inconvenience both of the privacy of existing residents to the north and to the future inhabitants of these and adjacent properties.
- 6) I accept the evidence of the City planner that zoning standards under the Official Plan are intended to direct compatibility of new development with the existing physical character of the neighbourhood. I find that the effect of the variances sought in Attachment 2, individually and collectively act against the Official Plan objective, not in support of it. While the number of the variances is not excessive, their effect on project presentation are significant, not minor

or desirable. In particular, the substandard lot areas, reduced lot depths and reduced setbacks mitigate against a project on the evidence that 'fits' in appearance, scale, configuration, access and appropriateness.

- 7) The project necessitates the extension of a public communal service, water, for the four proposed houses and, presumably, fire protection. These services are on Sandown, but not Aylesworth Avenue. I accept that the undertaking of the applicant is to pay for the capital cost of this service and that that can be secured by an appropriate condition. The text of agreed conditions was filed as Exhibit 6. While it may be that ongoing maintenance and replacement of this service to only four properties can be recouped from the water rate, there is no evidence to that effect or any condition that can secure that recovery. It is unusual to have a service extension of this nature to service only four properties. Arising as it does as a consequence of the severance application and the configuration and orientation of the lots from historical and existing patterns, it is a factor that mitigates against a finding of reinforcing the existing physical pattern of the neighbourhood.
- 8) I have received evidence of the inquiry by the Appellants planner to repeat the substance of the applications before me to the two adjacent properties to the east (Exhibit 7). I accept that precedent is a concern of the City and an applicable consideration in administrative law terms. In the circumstances, it is not necessary to apply a measure of weight to this aspect in this instance as it is considered a relevant but not a determining factor.

It is on the basis of the foregoing that I find that the requested pattern of severances, designed to sever two laterally configured existing lots into four parcels each then to be reconfigured and assembled into four longitudinal lots, to be not in the public interest, not in general conformity with the Official Plan, not in keeping with the streetscape or physical area and not meeting the enumerated criteria of s.51(24) of the Planning Act, especially subsections b), c), f) and i).

On the same basis, above, I find that the requested variances in Attachment 2 do not, individually or collectively, adequately or otherwise satisfy the tests of meeting the intent and purpose of the Official Plan and applicable zoning by-laws or present appropriate, desirable or minor revisions to those by-laws.

DECISION AND ORDER

The appeal is dismissed and the decision of the Committee of Adjustment is confirmed.

X



Ian James Lord

Panel Chair, Toronto Local Appeal Body

Signed by: Ian Lord

PLAN OF SURVEY OF
PLAN OF LOT 151
REGISTERED PLAN M-388
CITY OF TORONTO
FORMERLY CITY OF SCARBOROUGH



METRIC: DISTANCES AND COORDINATES SHOWN ON THIS PLAN ARE IN METRES AND CAN BE CONVERTED TO FEET BY DIVIDING BY 0.3048

Attachment 1

I REQUIRE THIS PLAN TO BE DEPOSITED UNDER THE LAND TITLES ACT.

DATE: _____

ANNA AKSAN
Ontario Land Surveyor

PLAN 66R-

RECEIVED AND DEPOSITED:

DATE: _____

DRAFT

REPRESENTATIVE FOR LAND REGISTRAR
FOR THE LAND TITLES DIVISION OF THE
TORONTO REGISTRY OFFICE No. 66

SCHEDULE				
PART	PART OF LOT	PLAN	ALL OF PIN	AREA (m ² .)
1	151	M-388	PIN 06434-0286 (LT)	143.3
2				126.4
3				126.4
4				126.4
5	151	M-388	PIN 06434-0285 (LT)	125.1
6				125.1
7				125.1
8				141.7

- LEGEND:
- DENOTES SURVEY MONUMENT FOUND
 - DENOTES SURVEY MONUMENT PLANTED
 - IB DENOTES IRON BAR
 - SIB DENOTES STANDARD IRON BAR
 - SSIB DENOTES SHORT STANDARD IRON BAR
 - CC DENOTES CUT CROSS
 - CP DENOTES CONCRETE PIN
 - WIT DENOTES WITNESS MONUMENT
 - O/U DENOTES ORIGIN UNKNOWN
 - N DENOTES NORTH
 - S DENOTES SOUTH
 - E DENOTES EAST
 - W DENOTES WEST
 - Fc DENOTES FENCE
 - WMG DENOTES WINTERS, MAUGHAN & GLENDAY, O.L.S. (OCT.20, 1972)
 - UME DENOTES UNWIN MURPHY & ESTEN, O.L.S. (APRIL 14, 1959)
 - CR DENOTES C.REUBEN, O.L.S. (OCT.16, NOV.8 1947; FEB.25, 1972)
 - PLAN DENOTES REGISTERED PLAN M-388
 - P1 DENOTES PLAN 66R-6333
 - PROP DENOTES PROPORTION
 - REC DENOTES PARCEL REGISTER
 - FDL DENOTES FOUNDATION
 - ORP DENOTES FOUNDATION
 - UP DENOTES UTILITY POLE

BEARING NOTE:

BEARINGS ARE MTM GRID, DERIVED FROM GNSS OBSERVATIONS, USING A REAL TIME KINEMATIC SERVICE, ON MONUMENTS 1 & 2, SHOWN HEREON, HAVING A BEARING OF N76°51'10"E, AND ARE REFERRED TO THE CENTRAL MERIDIAN OF MTM ZONE 10 (79°30' WEST LONGITUDE) NAD83 (CSRS) (1997.0).

NOTES:

DISTANCES ARE GROUND AND CAN BE CONVERTED TO GRID BY MULTIPLYING BY THE COMBINED SCALE FACTOR OF 0.9999.

POINT ID	NORTHING	EASTING
1 ORP	484,1486.77	324,728.62
2 ORP	484,1507.63	324,817.95
3	484,1502.72	324,768.69
4	484,1491.45	324,732.34
5	484,1517.55	324,724.36

COORDINATES ARE TO URBAN ACCURACY AS IN SEC.14(2). OF O.REG. 216/10, AND CANNOT, IN THEMSELVES, BE USED TO RE-ESTABLISH CORNERS OR BOUNDARIES SHOWN ON THIS PLAN.

SURVEYOR'S CERTIFICATE:

ICERTIFY THAT:

1. THIS SURVEY AND PLAN ARE CORRECT AND IN ACCORDANCE WITH THE SURVEYS ACT, THE SURVEYORS ACT AND THE LAND TITLES ACT AND THE REGULATIONS MADE UNDER THEM;

2. THE SURVEY WAS COMPLETED ON THE 7th DAY OF NOVEMBER, 2015.

NOVEMBER, 2016

DATE

ANNA AKSAN
Ontario Land Surveyor

DRAFT

AKSAN PILLER CORPORATION LTD

ONTARIO LAND SURVEYORS

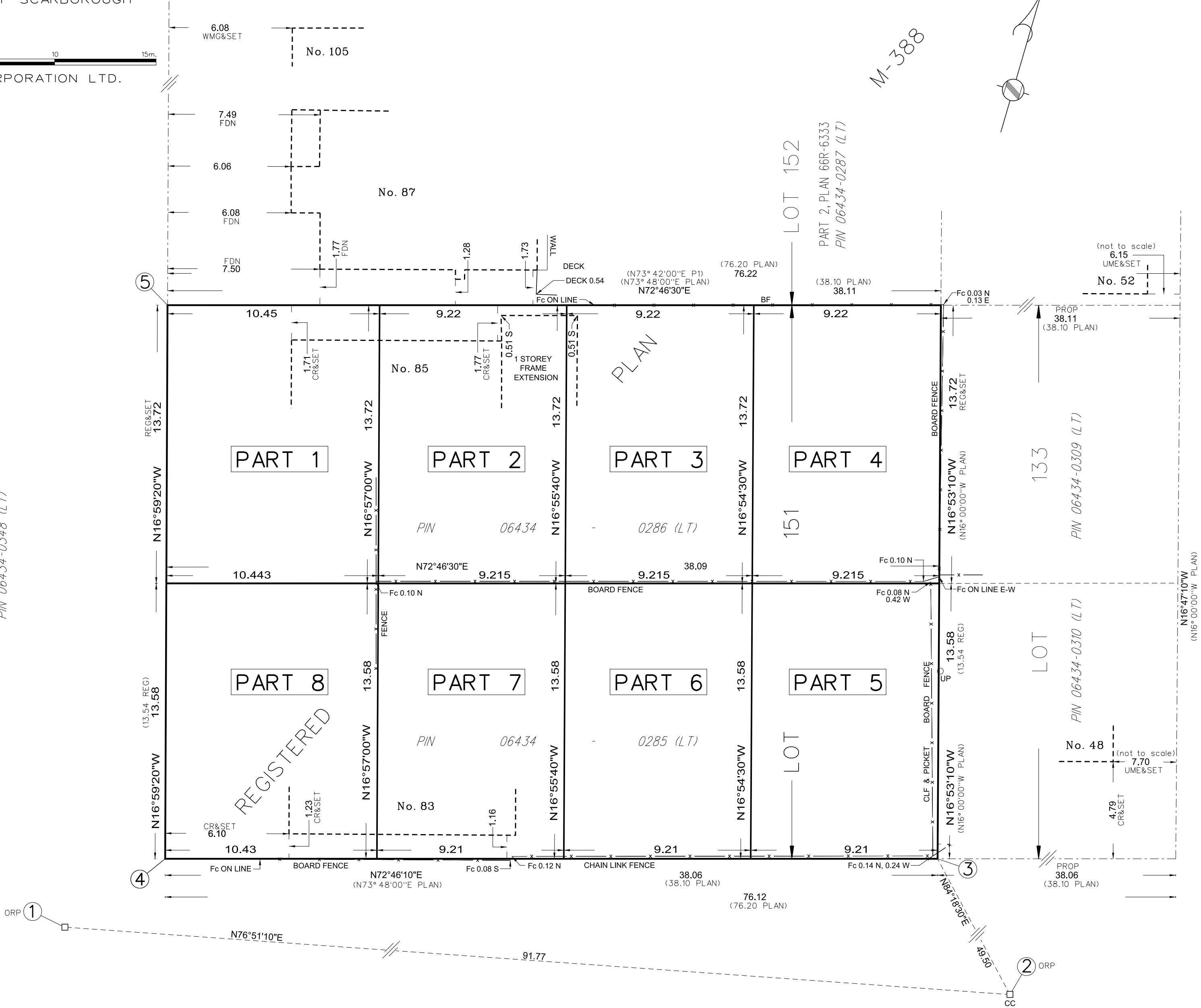
943 MT PLEASANT ROAD, TORONTO, ONTARIO, M4P 2L7

(T) 416-488-1174 (F) 416-488-7843 (E) ap@apsurveys.ca www.apsurveys.ca

CALC.: MU DRAWN: KZ CHECKED:

REFERENCE No. 15-20-10764-RPLAN

SANDOWN AVENUE
BY REGISTERED PLAN M-388
PIN 06434-0348 (LT)



AYLESWORTH AVENUE
FORMERLY PRESTON STREET
BY REGISTERED PLAN M-388
PIN 06434-0363 (LT)

Summary of Requested Variances**Parts 1 & 8 (A0076/17SC)****By-law No. 569-2013**

1. To permit the proposed 35.7% lot coverage, whereas the Zoning By-law permits a maximum 33% lot coverage. **Revised lot coverage increased from originally proposed lot coverage of 35%**
2. To permit the proposed 175 square metres floor area, whereas the Zoning By-law permits maximum 171.1 square metres floor area.
3. To permit the proposed 279.6 square metres lot area, whereas the Zoning By-law requires a minimum 325 square metres lot area. **Revised lot area reduced from originally proposed lot area of 285.2 square metres.**
4. To permit the proposed 0.61 metres east building setback from a side lot line, whereas the Zoning By-law requires a minimum 0.9 metres building setback from a side lot line.
5. To permit access to the proposed parking space through the front yard, whereas the Zoning By-law requires on a corner lot in the Residential Zone category, a parking space must be: (A) in a building or structure; (B) in a rear yard; or (C) in a side yard that does not abut a street.
6. To permit access to the proposed parking space through the front yard, whereas the Zoning By-law requires in the Residential Zone category, vehicle access to a parking space on a corner lot must: (A) be from the lane, if the lot abuts a lane; (B) be from a flanking street that is not a major street on the Policy Areas Overlay Map, if the lot does not abut a lane; and (C) in all other cases, may be from the street on which the lot fronts.
7. To permit a minimum building setback from a side lot line that abuts a street of 1.85 metres, whereas the Zoning By-law requires a minimum setback of 3.6 metres

By-law No. 9364

8. To permit the proposed 35.7% lot coverage, whereas the Zoning By-law permits a maximum 33% lot coverage. **Revised lot coverage increased from originally proposed lot coverage of 35%**
9. To permit the proposed 173 square metres floor area, whereas the Zoning By-law permits maximum 171.1 square metres floor area.
10. To permit the proposed 279.6 square metres lot area, whereas the Zoning By-law requires a minimum 325 square metres lot area. **Revised lot area reduced from originally proposed lot area of 285.2 square metres.**

11. To permit the proposed 0.61 metres east building setback from a side lot line, whereas the Zoning By-law requires a minimum 1.5 metres building setback from a side lot line.
12. To permit a minimum building setback from a side lot line that abuts a street of 1.85 metres, whereas the Zoning By-law requires a minimum setback of 3.6 metres
13. To permit the proposed minimum lot depth of 27.30 metres, whereas the Zoning By-law requires single-family lots shall have a minimum depth of 33.5 metres.

Parts 2 & 7 (A0075/17SC), Parts 3 & 6 (A0074/17SC) and Parts 4 & 5 (A0073/17SC)

By-law No. 569-2013

1. To permit the proposed 39% lot coverage, whereas the Zoning By-law permits a maximum 33% lot coverage.
2. To permit the proposed 175 square metres floor area, whereas the Zoning By-law permits maximum 151 square metres floor area.
3. To permit the proposed 251.7 square metres lot area, whereas the Zoning By-law requires a minimum 325 square metres lot area.
4. To permit the proposed 0.61 metres building setback from a side lot line, whereas the Zoning By-law requires a minimum 0.9 metres building setback from a side lot line.

By-law No. 9364

5. To permit the proposed 40% lot coverage, whereas the Zoning By-law permits a maximum 33% lot coverage.
6. To permit the proposed 176 square metres floor area, whereas the Zoning By-law permits maximum 151 square metres floor area.
7. To permit the proposed 251.7 square metres lot area, whereas the Zoning By-law requires a minimum 325 square metres lot area.
8. To permit the proposed 0.61 metres building setback from a side lot line, whereas the Zoning By-law requires a minimum 1.5 metres building setback from a side lot line.
9. To permit the proposed minimum lot depth of 27.30 metres, whereas the Zoning By-law requires single-family lots shall have a minimum depth of 33.5 metres.