

DECISION AND ORDER

Decision Issue Date Thursday, March 15, 2018

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

Appellant(s): MIZANUR CHOWDHURY, AMBER STEWART

Applicant: ERIKA STRANGIS

Property Address/Description: 94 PITT AVE

Committee of Adjustment Case File Number: 17 189161 ESC 35 CO, 17 189158 ESC 35 MV, 17 189160 ESC 35 MV

TLAB Case File Number: **17 239902 S53 35 TLAB**

17 239908 S45 35 TLAB

17 239906 S45 35 TLAB

Hearing date: Tuesday, March 13, 2018

DECISION DELIVERED BY T. Yao

INTRODUCTION

Mr. Chowdhury seeks to sever 94 Pitt Ave into two lots, demolish the existing house and replace it with two new single family dwellings. Each new dwelling requires eight variances.

Table 1 Variances requested		
By-law 569-2013		
	By-law Standard	Proposed for each lot
Lot frontage	12 m (40 feet)	7.62 m (25 feet)

Table 1 Variances requested		
Lot area	371 m ²	246 m ²
Lot coverage	33%	38%
Min. first floor area close to first floor front wall	10 m ²	7.3 m ²
By-law No. 8978		
Lot frontage	12 m (40 feet)	7.62 m (25 feet)
Lot area	371 m ²	246 m ²
Lot coverage	33%	39 ¹ %
Min. parking space dimensions	3.3 x 5.6 m	3.2 x 6 m

On September 7, 2017, the Committee of Adjustment denied Mr. Chowdury's requests. He appealed and so this matter came before the TLAB with a hearing set for March 7, 2018. No persons, including the City of Toronto, have elected to be participants or other parties. On January 15, 2018, Mr. Chowdhury brought a motion to adjourn the hearing because of a scheduling conflicts encountered by Ms. Stewart (his lawyer) and his planner, Mr. Romano. The hearing was adjourned to this date and was to be heard by telephone rather than as an in-person hearing.

I qualified Mr. Romano as an expert witness entitled to give opinion evidence and asked him a small number of specific questions arising from his pre-filed witness statement. Although the telephone conference call number was posted in advance no one other than Mr. Romano and Ms. Stewart called in.

MATTERS IN ISSUE

In granting or not granting a consent (i.e., a severance) the TLAB must "have regard for" certain matters in the *Planning Act*; in this case I consider the most relevant matters are conformity with the Official Plan and the size and shape of the lots.²

¹ By law 8978 measures projections as counting toward lot coverage whereas By-law 569-2013 does not.

² The 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,

In considering the applications for variances from the Zoning By-laws, the TLAB Panel must be satisfied that the applications conform to the Growth Plan and are consistent with the Provincial Policy Statements as well as meeting 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.

ANALYSIS, FINDINGS, REASONS

Pitt Avenue is the first north-south street east of Victoria Park Avenue. As explained by Mr. Romano in his written and oral testimony, the relevant neighbourhood “consists of detached and semi-detached residential interspersed with apartment buildings, institutional and open space uses” and is bounded by Victoria Park and Pharmacy, Dawes Road and Donside Drive. Under the zoning by-laws, the minimum frontage for residential lots is 12 m (40 feet) but approximately 34% of the lots within the study area are less wide than the by-law standard. A summary of the evidence leading to that conclusion is shown in Table 2 below.

Table 2. Undersized frontages	
	Percentage of frontages less than 12 m (percentage of frontages 7.62 m or less)
Bexhill Ave.	39.8% (8.5%)
Donside Dr.	36.8% (0.0%)
Maybourne Ave.	30.8% (13.7%)
Pitt Ave.	36.1% (18%)
Westbourne Ave.	30.2% (13.8%)

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- (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)
 - (c) whether the plan conforms to the official plan.

 - (f) the dimensions and shapes of the proposed lots;

Table 2. Undersized frontages	
All streets totaled	33.9% (13.8%)

Mr. Chowdhury proposes to divide 94 Pitt Avenue, a fifty foot lot, into two 25 foot lots. Pitt Avenue already has a higher than average number of 25 foot lots than other streets in the study. I find that this severance reflects and reinforces the existing physical character of the neighbourhood and fits in with general physical patterns and therefore complies with the Neighbourhoods Official Plan policies.

This conclusion is consistent with several Ontario Municipal Board decisions for properties in Mr. Romano’s study area:

Table 3. Consistency with other severances in the Clairlea neighbourhood	
	OMB comments on “fitting in”
47A and 47B Donside Drive, Sept 14, 2012, PL12603, C. Hefferon	Two 7.81 m (25.6 feet) wide lots. The developer “proposes to develop two, 2-story single detached homes of GFA 190 m ² each (compared to 186 m ² for 94 Pitt Avenue), which he (Mr. Romano, the same planner as in this case) characterized as complementary and compatible with the homes in the area.” (page 4)
5 Donside Drive, May 30, 2014, PL131136, J. McKenzie	Proposal involved three 9 m frontage lots, with 40% coverage (30% allowed). “With the benefit of photographs, he (Mr. Morris, the planner) provided the Board with examples of redevelopment within the study area that are virtually identical to Ms. Fetterly’s proposal and the type of detached dwelling she proposes on each new lot.” (para. 6)
46 Maybourne Ave. September 11, 2014, PL140299, K. Kraft-Sloan, M. Sills	The proposal was to create two 7.6 m wide lots with houses that were 3 stories high (2 stories permitted) as well as number of other variances. “The photographs provided by Mr. Christou (the planner) not only confirm as much, they demonstrate that much of the new development is similar, if not identical to the development form being proposed by the current applications.” (page 9)

Table 3. Consistency with other severances in the Clairlea neighbourhood	
34 Maybourne Ave. October 7, 2015, PL150423, M. Carter-Whitney	“Mr. Christou (the planner) testified that in 1996, Scarborough council (sic.) approved the Clairlea Secondary plan to provide for a density of 41 units per hectare that recognized 7.6 m frontages and 240 sq m lot areas as appropriate for single detached dwellings. Since that time many 15.2 (sic.) lots have been subdivided and the lot frontages in the neighbourhood range from 7.6 m to 15.2 m.” (page 5)
June 23, 2017, 59 Bexhill Avenue, PL161104, L. Bruce	Two 7.62 m wide lots with 42 and 43% coverage (current proposal 38 and 39%). “Mr. Fiacconi provide evidence the Board adopts that this is a neighbourhood in transition with many new or renovated houses and there are several examples, including immediately next door where larger lots have been severed to provide a modest form of intensification in a neighbourhood with access to transit”. (page 10)

A second aspect of “compatibility” is the juxtaposition of a new 7.62 m frontage lot with an older wider lot. This this already occurs at 67A and 67 Pitt Avenue (inset photo below), 74 and 74A Pitt Avenue, 93 and 95 Pitt Avenue and 97 and 99 Pitt Avenue.



13 67A, 67 Pitt Avenue

Mr. Romano listed all the frontages for Pitt Avenue. The list shows that 7.62 m frontage and lot area of 245 sq m is a “floor” for a minimum lot size and so lots in the 11, 12 and 13 m range, which are common, would not be capable of further subdivision unless assembled. This is a demonstration of the “stable but not static” policy of the Official Plan. Thus, on the grounds of “reflecting and reinforcing neighbourhood character”, “stable”, and “fitting in”, I find the Official Plan intent has been met.

I also find that a plan of subdivision for two lots is not required for the proper and orderly development of Toronto. I find that the Provincial Policy Statement and the 2017 Growth Plan for the Greater Golden Horseshoe are not applicable here. I further

find that the four tests for minor variances, individually and cumulatively meet the general intent and purpose of the Clairlea Community Zoning By-law (S, Single Family Residential Zone) and the current City-wide Toronto Zoning By-law (RD – Detached Residential). I further find that the variances are minor and are desirable for the appropriate development of the land, particularly in the light of the comments by OMB members speaking about other proposals virtually identical to Mr. Chowdhury's.

DECISION AND ORDER

I give approval to the consent for the severance and authorize the variances in Table 1 upon the following conditions:

Consent Conditions

- (1) Confirmation of payment of outstanding taxes to the satisfaction of Revenue Services Division, Finance Department.
- (2) Municipal numbers for the subject lots indicated on the applicable Registered Plan of Survey shall be assigned to the satisfaction of Survey and Mapping Services, Technical Services.
- (3) Prior to the issuance of a building permit, the applicant shall satisfy all conditions concerning City owned trees, to the satisfaction of the Director, Parks, Forestry & Recreation, Urban Forestry Services.
- (4) Where no street trees exist, the owner shall provide payment in an amount to cover the cost of planting a street tree abutting each new lot created, to the satisfaction of the General Manager, Parks, Forestry and Recreation.
- (5) Two copies of the registered reference plan of survey integrated with the Ontario Coordinate System and listing the Parts and their respective areas, shall be filed with City Surveyor, Survey & Mapping, and Technical Services.
- (6) Three copies of the registered reference plan of survey satisfying the requirements of the City Surveyor, shall be filed with the Committee of Adjustment.
- (7) Within ONE YEAR of the date of the giving of this notice of decision, the applicant shall comply with the above-noted conditions and prepare for electronic submission to the Deputy Secretary-Treasurer, the Certificate of Official, Form 2 or 4, O. Reg. 197/96, referencing either subsection 50(3) or (5) or subsection 53(42) of the Planning Act, as it pertains to the conveyed land and/or consent transaction.

Variance Condition

The owner shall build in substantial compliance with the site plan and elevations filed at the Committee of Adjustment and which are a matter of public record.

If there is difficulty with a condition or with the wording of this Order could Ms. Stewart please speak with me.

X

Ted Yao

Ted Yao
Panel Chair, Toronto Local Appeal Body
Signed by: Ted Yao