

DECISION AND ORDER

Decision Issue Date **Wednesday, May 23, 2018**

PROCEEDING COMMENCED UNDER Section 53, subsection 53(19), and Section 45(12), subsection 45(1) of the Planning Act, R.S.O. 1990, c. P.13, as amended (the "Act")

Appellant(s): HAMED ISMAILZADEH

Applicant: RUBINOFF DESIGN GROUP

Property Address/Description: 116 BOGERT AVE

Committee of Adjustment Case File Number: 17 135252 NNY 23 CO (B0024/17NY), 17 135260 NNY 23 MV (A0299/17NY), 17 135265 NNY 23 MV (A0300/17NY)

TLAB Case File Number: **17 235745 S53 23 TLAB, 17 235746 S45 23 TLAB, 17 235749 S45 23 TLAB**

Hearing dates: Wednesday, February 21, 2018, Monday, May 07, 2018, Friday May 11, 2018

DECISION DELIVERED BY S. MAKUCH

APPEARANCES

Name

| | |
|------------------|---|
| Amber Stewart - | Solicitor for the Appellant |
| Daniel Elmadany- | Solicitor for the City of Toronto |
| Franco Romano - | Expert Planning Witness for the Appellant |
| Victorias Fusz - | Expert Planning Witness for the City of Toronto |

INTRODUCTION

This is an appeal, by the owner of a lot in a residential neighbourhood, of a decision by the Committee of Adjustment refusing a consent to divide the lot into two and further refusing to approve minor variances to permit the construction of a detached residential dwelling on each lot. A copy of the consent and variance applications are attached as Appendix 1 to this decision.

BACKGROUND

This appeal is rather typical of those in low density residential areas designated “Neighbourhoods”. This Neighbourhood is situated at the southwest of the corner of Sheppard Ave. and Yonge St. The Sheppard Lansing Secondary Plan separates the area designated Neighbourhoods from Sheppard Ave. The North York Centre secondary Plan governs the lands fronting Yonge St.

The essential questions are: (1) whether, in this “Neighbourhood”, the consent which would create two lots with frontages narrower than permitted by the zoning bylaw (7.62m) should be permitted and if so, (2) are the variances appropriate. These two issues are closely intertwined.

Planning staff oppose the applications while the West Lansing Community Association submitted correspondence which was not in opposition. The City is appearing in opposition to the applications as a result of the councillor for the ward submitting a request to Council that the City solicitor be authorized to attempt to settle the matter and, failing a settlement, to oppose the applications before TLAB. That request was silent on the reasons for the request.

MATTERS IN ISSUE

The matters in issue are not complex. With respect to the consent, the primary issue is whether granting the consent “will respect and reinforce the existing physical character of the neighbourhood”, as required by section s.4.1.5 of the Official Plan. This is also the major issue with respect to the granting of the variances. This issue is further narrowed to one of lot frontage; that is whether the proposed lot frontage “will respect and reinforce the existing character of the neighbourhood”. Indeed, the Planning Report to the Committee of Adjustment, based on a study done by staff, focused virtually exclusively on that issue. The bulk of the evidence of both parties at the TLAB hearing also focused on the “physical character of the neighbourhood” as determined by the lot frontage studies prepared by each party. There was also some disagreement on the issue of compliance with the built form policy as set out in the Official Plan. This will also be addressed in this decision.

However, other issues raised will not be considered in detail as they were all incidental to and dependent on the resolution this fundamental issue of whether the new lots and

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dwellings will “respect and reinforce the physical character of the neighbourhood”. Those other issues related to: Official Plan policies on intensification and dwelling targets; proximity to a major transit station; the relevance of transition in the Neighbourhood designation from adjacent designated areas; the origin of lot sizes (plan of subdivision or consent); and the housing and intensification policies of the Provincial Policy Statement (PPS) and the Growth Plan of the Greater Toronto Golden Horseshoe (the Growth Plan).

In my view the approvals of the consent and variances would meet the requirements related to the PPS and Growth Plan as required by the Planning Act, only if those approvals also conformed with the Official Plan. There is no doubt in my mind that the new lots and dwellings could not be justified in this “established Neighbourhood” on the basis that they constitute a transition in development from the West Lansing Secondary Plan Area or the North York Centre Secondary Plan area to this Neighbourhood. Moreover, in my opinion the Official Plan does not direct intensification to this Neighbourhood for housing purposes or to meet any detached dwelling target. Similarly, there is no policy to intensify or to encourage the intensification of this Neighbourhood simply because of its proximity to a transit station.

The only real and fundamental issue in this case, therefore, is whether the applications meet the Neighbourhood policies of the Official Plan with respect to lot frontage and if so, do they also conform to the built form policies.

JURISDICTION

Given my conclusions regarding the issues as outlined above, the following sections of the Planning Act are relevant to the jurisdiction of the TLAB.

Consent – S. 53 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,

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

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

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.

Provincial Policy – S. 3A 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').

EVIDENCE

As stated above the evidence in this case focused primarily on the issue of lot frontage, although I note that lot frontage is not mentioned "in particular" in s.4.1.5 of the Official Plan. Both parties entered lot frontage studies of the Neighbourhood into evidence. Those studies did not disagree significantly with respect to the boundaries of the Neighbourhood nor the actual lot sizes within the Neighbourhood.

The fundamental disagreement was with respect to the interpretation and application of the information provided by the studies. This resulted in very different findings as to the physical character of the Neighbourhood.

The City's evidence was that the relevant physical character was one of larger lot frontages than the 7.62 m frontage of the lots sought to be created, and, therefore, the applications should be denied. This opinion was based on the following: (1) the location and concentration of different lot frontages within the Neighbourhood; (2) consideration of whether the lots were created by consent or plan of subdivision; and (3) the zoning of areas within the Neighbourhood, including a recent rezoning of an area recommended by staff.

As a result of this analysis, Ms. Fusz's opinion was that the Neighbourhood has three distinct sub-areas, each with its own character:

- a. A western sub-area, where: the majority of the lots, either comply or exceed the frontage requirements in the zoning by-laws applicable to their sites; there are very few undersized lots; and lots are generally historic in nature and have no record of land division.
- b. The central sub-area, in which the subject property is situated, where: there are more undersized lots and a greater range of zones in the zoning by-laws. Lot areas are generally reflective of the zones in which they are located, except for one street where they are the product of consents.
- c. The eastern sub-area where the lots are the subject of a recent City-initiated zoning study. Based on this report North York Community Council proceeded on May 2, 2018 to approve of the rezoning of a majority of this sub-area to 7.5 m lot frontages. This sub-area has the most 7.62m lots created by consent.

The applicant's planning evidence, as stated, did not significantly differ factually from the information provided by the City. For example, the applicant's study found 70 lots of 7.62 m frontage in the Neighbourhood, while the City's study found 75 such lots. The applicant's planner found 27 lots with a frontage in the range of 7.63 - 9.45 m. while the City's study did not include such a range, but the City did not contradict that figure.

The difference in the evidence regarding lot frontages was that the applicant's evidence considered the Neighbourhood as a whole and considered lots with 7.62 m frontage as part of the physical character of the Neighbourhood as a whole.

With respect to the issue of built form, the City's evidence was that the proposed new dwelling on the eastern lot to be created was inappropriate for its location on a corner lot as it displayed a blank wall to the street. Section 3.1.2.1 (a) of the Official Plan states that such a building should give prominence to the corner. The appellant's planner did not agree with this concern. Changes in the wall such as adding windows to address the City's concern are certainly possible. In my opinion a condition requiring windows in this wall would be appropriate.

ANALYSIS, FINDINGS, REASONS

I find that the appeals should be allowed and the consent and variances approved.

The reason for this is found in my conclusion regarding the Official Plan. In my view, it is the primary consideration because of the fundamental issue of lot frontage. On the evidence of both parties, and my visit to the site, the consent and variances, individually and cumulatively, conform to the Official Plan; meet requirements regarding the PPS and the Growth Plan; and meet the general intent of the zoning by law, which, in my view, is to implement the policies of the Official Plan. This proposal, moreover, in this case, is appropriate development of the land and is minor given its conformity with the Official Plan, as described below.

At the basis of any determination of whether to allow this appeal is this simple question: do the proposed 7.62m lots and the resulting development on them: "respect and reinforce" the existing character of the Neighbourhood. The answer to this question is yes for a number of reasons.

Firstly, there is currently, on the property in question, a dwelling unit which is off centre. This effectively results in the appearance of an empty narrow lot beside the existing dwelling. Given that empty lots are not common in the Neighbourhood, the granting of a severance and variances to permit the construction of a dwelling unit on that empty space will respect and, indeed, reinforce the physical character of the Neighbourhood; which is to have dwellings cantered on lots no matter their frontage. Indeed, it will respond to a particular criterion in s.4.1.5, "prevailing patterns of ...side yard setbacks". This application, if approved, will in effect remove a gap in the streetscape. The gap, the City has pointed out, is at an important location, a street corner worthy of special built form attention.

Secondly, detached dwelling units on the proposed lots will be in keeping with the "prevailing building type" in the Neighbourhood which is a particular criterion under section 4.1.5 of the Official Plan as well. Detached dwelling units are without doubt the prevailing building type throughout this Neighbourhood. There was no evidence demonstrating that there was any other "predominant form of development" in the Neighbourhood.

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Thirdly, in my view the City's evidence was that this is a Neighbourhood undergoing change to smaller lots and its physical character is one of change. More so, in in the south east sub-area and part of the central sub-area. And less so in the remainder of the central sub-area and western sub-area. In my opinion the City's Small Lot Study and descriptions of the sub-areas provide evidence that the Neighbourhood is changing. This cannot be denied. That is why the West Lansing Study was undertaken and the zoning bylaw amendment was recommended in it. However, the study and bylaw provide a static picture of an on-going occurrence and should not be used to freeze all changes to smaller lots of 7.62m frontage. The report itself makes no suggestion that an area specific amendment to the Official Plan should be considered to prevent further change. The fact that the report recommends that the eastern sub-area be rezoned to encourage change in the Neighbourhood to occur there demonstrates: (1) that such change is occurring throughout the Neighbourhood; that is why it needs to be directed, and (2) that an official plan amendment was not necessary or appropriate to prevent it.

Fourthly, since the Official Plan and zoning bylaw for the remainder of the Neighbourhood are unchanged, there is no fear, in my view, that future consent applications will not be gradual and sensitive. Any consent or variance application will have to consider at least: the property itself and its suitability for the consent and variances sought; the location of the application in the Neighbourhood and the effect of the proposed new West Lansing Bylaw, if any, on the choice of that location; and the physical character of the Neighbourhood at that time.

In this case, the property itself has an off centre dwelling and thus has the appearance of an apparent empty lot which is not in keeping with the physical character of the neighbourhood. In addition, it is adjacent to an undersized lot. It is located where some change is occurring and has occurred with townhouses having been approved on a neighbouring block, without an Official Plan amendment. Finally the physical character of the Neighbourhood is one where the "prevailing" character is one which includes single detached dwellings such as in this application.

DECISION AND ORDER

I approve the consent and variance applications set out in Appendix 1. The consent approval is subject to the standard conditions set out in Appendix 2. The variance approvals are subject to the condition that two windows above the basement are included in the eastern wall.

X 

S. Makuch
Panel Chair, Toronto Local Appeal

APPENDIX 1, 116 BOGERT AVE.

THE CONSENT REQUESTED:

To obtain consent to sever the property into two undersized lots.

CONVEYED - Part 3

Part 3 has a proposed lot area of 255.8 m². The proposed lot frontage is 7.62 m. The property will be redeveloped as the site of a new detached dwelling requiring variances to the applicable zoning By-law(s) as outlined in application A0299/17NY

RETAINED - Part 1 & Part 2

Part 1 and Part 2 have a proposed lot area of 255.8 m². The proposed lot frontage is 7.62 m. The property will be redeveloped as the site of a new detached dwelling requiring variances to the applicable zoning By-law(s) as outlined in application A0300/17NY

File Numbers B0024/17NY, A0299/17NY, A0300/17NY will be considered jointly.

REQUESTED VARIANCE(S) TO THE ZONING BY-LAW - 116 BOGERT AVE – Part A :

1. Chapter 10.5.4.010.(5), By-law No. 569-2013

A minimum of 10 m² of the first floor area must be within 4 m of the front wall.
There is 4.2 m² proposed within 4 m of the front wall.

2. Chapter 10.5 40.60.(1), By-law No. 569-2013

A platform without main walls, attached to or less than 0.3 m from a building, with a floor no height than the first floor of the building above established grade may encroach into the required rear yard setback 2.5 m if it is no closer to a side lot line than 1.36 m.
The proposed platform encroaches 2.1 m into the required rear yard setback and is **0.9 m** from the west side lot line.

3. Chapter 10.20.30.10.(1), By-law No. 569-2013

The required minimum lot area is 550 m².
The proposed lot area is 255.8 m².

4. Chapter 10.20.30.20.(1), By-law No. 569-2013

The required minimum lot frontage is 15 m.
The proposed lot frontage is 7.62 m.

5. Chapter 10.20.30.40.(1), By-law No. 569-2013

The permitted maximum lot coverage is 30% of the lot area.
The proposed lot coverage is **32 %** of the lot area. Decision Notice - MV.doc Page 2

6. Chapter 900.3.10(5), By-law No. 569-2013

The required minimum side yard setback is 1.8 m.
The proposed east side yard setback is **1.2 m**.

7. Chapter 900.3.10(5), By-law No. 569-2013

The required minimum side yard setback is 1.8 m.
The proposed west side yard setback is **0.9 m**.

8. Section 13.2.1, By-law No. 7625

The minimum required lot frontage is 15 m.
The proposed lot frontage is 7.62 m.

9. Section 13.2.2, By-law No. 7625

The minimum required lot area is 550 m².
The proposed lot area is 255.8 m².

10. Section 13.2.3(a), By-law No. 7625

The minimum required front yard setback is 7.5 m.
The proposed front yard setback is 4.57 m.

11. Section 13.2.4, By-law No. 7625

The maximum permitted lot coverage is 30% of the lot area.
The proposed lot coverage is **32%** of the lot area.

12. Section 13.2.6, By-law No. 7625

The maximum permitted building height is 8.8 m.
The proposed building height is 9.17 m.

13. Section 6(30)a, By-law No. 7625

The maximum finished first floor height is 1.5 m.
The proposed finished first floor height is 2.06 m.

14. Section 6(8), By-law No. 7625

The minimum lot width is not to be less than the lot frontage for the zone in which the building is to be constructed.

15. Section 6A(2)a, By-law No. 7625

The minimum required number of parking spaces is 2 spaces.
The proposed number of parking spaces is 1 space.

16. Section 13.2.3(b), By-law No. 7625

The minimum required side yard setback is 1.8 m.
The proposed east side yard setback is **1.2 m**

17. Section 13.2.3(b), By-law No. 7625

The minimum required side yard setback is 1.8 m.
The proposed west side yard setback is **0.9 m**.

18. Section 6(24)(d), By-law No. 7625

In the rear yard, unexcited porches and decks attached to or detached from the main building shall be located no closer to the side lot lines than the minimum side yard setback for the main building. The minimum side yard setback is 1.8 m.

The proposed deck is located **0.9 m** from the side lot line.

REQUESTED VARIANCE(S) TO THE ZONING BY-LAW 116 BOGERT AVE – Part B:

1. Chapter 10.5.4.010.(5), By-law No. 569-2013

A minimum of 10 m² of the first floor area must be within 4 m of the front wall.
There is 3.44 m² proposed within 4 m of the front wall.

2. Chapter 10.5 40.60.(1), By-law No. 569-2013

A platform without main walls, attached to or less than 0.3 m from a building, with a floor no height than the first floor of the building above established grade may encroach into the required rear yard setback 2.5 m if it is no closer to a side lot line than 2.2 m.
The proposed platform encroaches 2.1 m into the required rear yard setback and is **0.9 m** from the west side lot line.

3. Chapter 10.5.50.10.(1), By-law No. 569-2013

A minimum of 75% of the required front yard landscaping must be soft landscaping.
The proposed front yard soft landscaping area is 52%.

4. Chapter 10.20.30.10.(1), By-law No. 569-2013

The required minimum lot area is 550 m².
The proposed lot area is 255.8 m².

5. Chapter 10.20.30.20.(1), By-law No. 569-2013

The required minimum lot frontage is 15 m.
The proposed lot frontage is 7.62 m.

6. Chapter 10.20.30.40.(1), By-law No. 569-2013

The permitted maximum lot coverage is 30% of the lot area.
The proposed lot coverage is 32 % of the lot area.

7. Chapter 900.3.10(5), By-law No. 569-2013

The required minimum side yard setback is 1.8 m.
The proposed east side yard setback is **0.9 m**.

8. Chapter 900.3.10(5), By-law No. 569-2013

The required minimum side yard setback is 1.8 m.
The proposed west side yard setback is **1.2 m**.

9. Chapter 10.20.40.10.(2), By-law No. 569-2013

The permitted maximum height of all side exterior main walls facing a side lot line is 7.5 m
The proposed height of the side exterior main walls facing the west side lot line is 8.53 m.

10. Section 13.2.1, By-law No. 7625

The minimum required lot frontage is 15 m.
The proposed lot frontage is 7.62 m.

11. Section 13.2.2, By-law No. 7625

The minimum required lot area is 550 m².
The proposed lot area is 255.8 m².

12. Section 13.2.3(a), By-law No. 7625

The minimum required front yard setback is 7.5 m.

The proposed front yard setback is 4.57 m.

13. Section 13.2.3(b), By-law No. 7625

The minimum required side yard setback is 1.8 m.

The proposed east side yard setback is **0.9 m**.

14. Section 13.2.3(b), By-law No. 7625

The minimum required side yard setback is 1.8 m.

The proposed west side yard setback is **1.2 m**.

15. Section 13.2.4, By-law No. 7625

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

The proposed lot coverage is 32% of the lot area.

16. Section 13.2.6, By-law No. 7625

The maximum permitted building height is 8.8 m.

The proposed building height is 9.43 m.

17. Section 6(30)a, By-law No. 7625

The maximum finished first floor height is 1.5 m.

The proposed finished first floor height is 1.77 m.

18. Section 6(30)a, By-law No. 7625

The maximum finished first floor height is 1.5 m.

The proposed finished first floor height is 1.77 m.

19. Section 6A(2)a, By-law No. 7625

The minimum required number of parking spaces is 2 spaces.

The proposed number of parking spaces is 1 space.

20. Section 7.4A, By-law No. 7625

The minimum required soft landscaping is 75%.

The proposed soft landscaping is 52%.

21. Section 6(24)(d), By-law No. 7625

In the rear yard, unexcited porches and decks attached to or detached from the main building shall be located no closer to the side lot lines than the minimum side yard setback for the main building. The minimum side yard setback is 1.8 m.

The proposed deck is located **0.9 m** from the side lot line.

Appendix 2: Standard 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.