

DECISION AND ORDER

Decision Issue Date **Thursday, July 5, 2018**

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

Appellant(s): GUY SHRAM

Applicant: ALEX BOROS

Property Address/Description: 12 KATHERINE RD

Committee of Adjustment Case File Number: 17 222158 NNY 09 CO, 17 222178 NNY 09 MV, 17 222172 NNY 09 MV

TLAB Case File Number: **18 109800 S53 09 TLAB, 18 109807 S45 09 TLAB, 18 109806 S45 09 TLAB**

Hearing date: Monday, June 04, 2018

DECISION DELIVERED BY S. Makuch

APPEARANCES

Name	Role	Representative
Alex Boros	Applicant	
Linda Petersen	Owner	
Guy Shram	Appellant	J. Hoffman
City of Toronto	Party	Adrienne DeBacker
Michael Goldberg	Expert Witness	
Donald Di Prospero	Participant	
Angela Di Prospero	Participant	

INTRODUCTION

This is an appeal of three decisions of the Committee of Adjustment, one refusing a consent to sever the property at 12 Katherine Rd. (subject property) into two undersized lots for the purpose of constructing a detached residential dwelling on each and the other two decisions refusing minor variances to permit the construction of those dwellings.

BACKGROUND

The only persons in opposition to the applications at the Committee of Adjustment were Angela and Donald Di Prospero who are joint owners of 6 Katherine Rd. with their elderly mother/mother-in-law who lives at that location. 6 Katherine Rd. is adjacent to the subject property, on the east. The Di Prospero's appeared in opposition to the applications at this hearing. Their concerns can be summarized as follows: the impact on light and a shadow on the kitchen window at 6 Katherine Rd.; the narrow lot frontage of the proposed lots; the failure of the new dwellings to fit within the character of the neighbourhood; the location of the proposed driveways; a reduction in privacy; noise, and pollution from the additional house; the failure of the variances to meet the purpose of the bylaw and the size of the variances.

The City Solicitor informed the hearing that she did not intend to call any evidence but would only cross examine. City Planning, City Construction and Engineering, and City Forestry had all corresponded with the Committee of Adjustment and had no objections to the severance and variance applications and had suggested certain conditions should the applications be approved.

The appellant's solicitor called one witness, Mr. Goldberg, a qualified and respected expert in planning who has given planning evidence numerous times before both the Toronto Local Appeal Body (TLAB) and the Ontario Municipal Board.

MATTERS IN ISSUE

The matters in issue, focus on three major concerns of the Di Prosperos: (1) whether the proposed dwellings fit within the character of the neighbourhood, particularly with respect to lot frontage; (2) the impact of the new dwelling on the house at 6 Katherine Rd. and (3) the size of the variances.

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 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, among other matters, the following:

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

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

Mr. Goldberg described the proposal as follows. The consent application is to sever the property into two residential lots: Part 1 (East Lot – 12A Katherine) - 368.2 sq. m area with 9.13m frontage; Part 2 (West Lot – 12B Katherine) - 368.2 sq. m with 9.13 m frontage. The proposal is to demolish the existing dwelling and detached garage and construct, on each new/proposed lot, a 2-storey dwelling with an attached at-grade front facing 1-car integral garage. 2 parking spaces are to be provided on each lot, one in the garage and one on the driveway. The Gross Floor Area (GFA) of the dwellings would be 238.7 sq. m (2,569.34 sq. ft.) or 0.648 FSI. Lot Coverage is to be 121.6 sq. m (1,308.89 sq. ft.), 33% The front setback for the dwellings is to be 8.50 m. This is to generally provide a transition from the existing lots on either side while minimizing the extent of building length and depth adjacent to the adjacent rear yards of 6 and 14 Katherine Road. The rear yard setback is to be 15.02 m for each dwelling; while the external side yard setbacks are to be 1.21m and the internal side yard setback for each dwelling is to be 1.00 m. Building length and depth is to be 16.76 m for the two storey

portion of the dwellings plus a 1.98m 1-storey rear extension, for a total building length of 18.74 m. This depth is fully compliant with both by-laws except that the height of the 1 storey rear addition is 5.61 and 5.64 m whereas both by-laws limit the 1 storey extension to a height of 5.0 m. Building Height is to be 2 storeys and 9.30 m to the top of roof, which complies with by-law 569-2013, and 8.80 m to the mid-point of the roof which complies with by-law 7625. Side Exterior Main Wall Height is 7.47 m on both side walls proposed for each dwelling which complies with the maximum permitted height under by-law 569-2013. Landscaped open space and front yard soft landscaping are fully compliant with zoning by-laws.

He also pointed out that two additional variances for each proposed lot, which were previously overlooked, were being sought as a result of obtaining Zoning Notices since the Committee of Adjustment hearing. The additional variances for Part 1 & 2 are:

- a) A height variance for the permitted rear 1-storey addition. Under By-law 569-2013 the maximum permitted height is 5.0 m while the proposed height is 5.61m.
Under By-law 7625 the maximum permitted height is 5.0 m while the proposed height is 5.64 m.
- b) side yard setback variance for the canopy and front porch.
Under By-law 569-2013 the required side yard setback for a canopy is 1.8 m. whereas the proposed canopy side yard setback is 1.0 m. Under By-law 7625 the required side yard setback for a porch and canopy is 1.8 m whereas the proposed porch and canopy side yard setback is 1.0 m.

The additional variances arise as stated from requesting Zoning Notices, which identified two additional variances for each proposed lot but do not, in Mr. Goldberg's opinion, alter the substance of the proposal. I agree.

His evidence was that the Zoning Notices also removed variances for both Parts 1 and 2 with respect to minimum lot area and minimum lot frontage under By-law 7625. This is because the provisions for minimum lot area and lot frontage under By-law 569-2013 are now in full force and effect.

He further stated that the plans presented to the Committee of Adjustment have not been amended.

This evidence was uncontradicted and unchallenged. He also gave evidence that, based on his study of the neighbourhood, the consent conformed with the official plan and the variances met the four tests of the Planning Act. This is clearly set out in Exhibit 1, Mr. Goldberg's witness statement. City planning Staff undertook a study of the lotting pattern in the neighbourhood and found that the proposed consent is consistent with the intent and purpose of the official plan.

Both Angela and Donald Di Prospero gave evidence. They live on a street close by and are concerned about preserving the character of the neighbourhood, particularly for the elderly who live in it. They presented photos of new dwellings constructed in the

neighbourhood and were concerned about the narrow widths of the proposed lots. They also prepared a map and chart of lot frontages and new developments. With respect to impact they also raised issues of the blockage of a view from and the shadow created at the kitchen window at 6 Katherine Rd. These concerns arose from the length, height and depth of the proposed dwellings and they presented a photo taken from the kitchen window to demonstrate their concern . As mentioned above they were also concerned about the proposed driveways, noise and pollution, and a loss of privacy. Their opposition was clear when they stated that they prefer one large building with no variances on an undivided lot' to the the two smaller dwellings on the smaller lots, as the variances were simply not minor and should not be granted. They held this position although the length of the main building which was the cause of their concerns was not in excess of the length permitted by the bylaw, and two smaller dwellings were less massive in their appearance.

ANALYSIS, FINDINGS, REASONS

I cannot agree with the Di Prosperos that a larger home without variances is to be preferred to two smaller dwellings given that a larger building would have substantially the same impact on the kitchen window at 6 Katherine which was the basis of their concern respecting impact. Moreover, they were not forthcoming with evidence that the window had a substantial set back and overhang. Their other concerns respecting impact were also without a compelling evidentiary foundation - concerns respecting pollution, noise, driveways, loss of privacy. All of these would be substantially the same with one large building instead of two smaller ones.

With regard to the character of the neighbourhood their photos did not demonstrate an unbiased review of new construction in the neighbourhood. Both Mr. Goldberg's study and the City's survey demonstrated the applications fit within the character of the neighbourhood and were consistent with the official plan. Moreover, the larger building would not respect the character of the neighbourhood any more than two smaller ones.

The evidence of Mr. Goldberg in Exhibit 1, his witness statement, supports adding the additional variances without further notice. Exhibit 1 also supports the conclusion that the three applications meet the tests under the relevant sections of the Planning Act set out above, including that they are consistent with the Provincial Policy Statement and conform with the Growth Plan. His chart, demonstrating lot frontages in the neighbourhood, Exhibit 3 supports his conclusions.

DECISION AND ORDER

As a result of the evidence outlined above, I approve the consent set out in Appendix 1 to this decision; and the minor variances set out in Appendix 2. The approval of the consent is subject to the conditions set out in Appendix 3, and, as requested by Urban Forestry, subject to the payment of a \$1166.00 New City Tree Fee and the conditions contained in the Engineering and Construction correspondence in Appendix 4.


Decision of Toronto Local Appeal Body Panel Member: S. Makuch

TLAB Case File Number: 18 109800 S53 09 TLAB

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All approvals are subject to the condition that the dwellings are constructed substantially in accordance with the plans for 12A and B, Katherine Rd. prepared by Alex Boros and submitted with this application to the Committee of Adjustment.)

X 

S. Makuch

Panel Chair, Toronto Local Appeal

APPENDIX 1. CONSENT Conveyed - Part 2

Address to be assigned

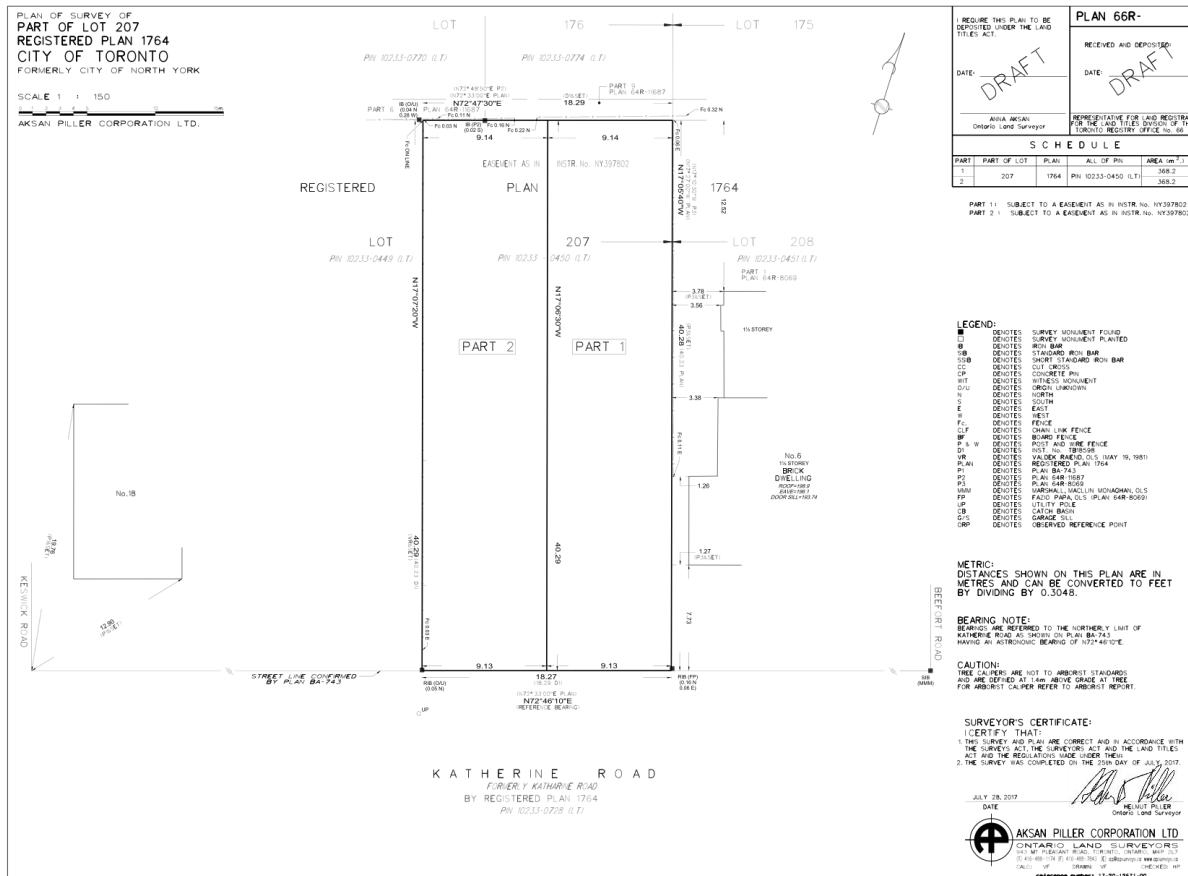
The proposed lot frontage is 9.13 m and the proposed lot area is 368.0 m². The property will be redeveloped as the site of a new detached single family dwelling requiring variances to the applicable zoning By-law(s)

Retained - Part 1

Address to be assigned

The proposed lot frontage is 9.13 m and the proposed lot area is 368.0 m². The property will be redeveloped as the site of a new detached single family dwelling requiring variances to the applicable zoning By-law(s)

Draft R Plan



APPENDIX 2 MINOR VARIANCES

Revised List of Minor Variances 12A Katherine Road (Part 1)

CITY OF TORONTO ZONING BY-LAW 569-2013

1. Chapter 10.5.40.60(1)(A)(i)
The minimum required west side yard setback to the front platform is 1.8 m WHEREAS the proposed west side yard setback to the front platform is 1.0 m
2. Chapter 10.5.40.10.(5) and Section 9 (5) By-Law No. 1676-2013
A minimum of 10 m² of the first floor must be within 4.0 m of the front main wall WHEREAS a proposed 2.7 m² of the first floor is within 4.0 m of the front main wall
3. Chapter 10.20.30.20(1)(A)
The minimum required lot frontage is 15.0m WHEREAS the proposed lot frontage is 9.13 m
4. Chapter 10.20.30.10(1)(A)
The minimum required lot area is 550.0m² WHEREAS the proposed lot area is 368.2 m²
5. Chapter 10.20.40.70(1)
The minimum front yard setback is 8.72m WHEREAS the proposed front yard setback is 8.5 m
6. Section 900.3.10(5)
The minimum required west and east side yard setback is 1.8 m WHEREAS the proposed west side yard setback is 1.0 m and the proposed east side yard setback is 1.21 m
7. Section 10.20.40.20.(2)
The permitted maximum building length is 19.0 metres provided the extension to the building is less than 5.0 metres in height and is one storey
WHEREAS the proposed extension to the building is 5.61 metres in

height

8. Section 10.5.40.60.(2)

The proposed canopy required setback is 1.8m

WHEREAS the proposed canopy covering the platform setback is 1.0m

FORMER CITY OF NORTH YORK ZONING BY-LAW 7625

9. Section 13.2.3

The minimum required west and east side yard setback is 1.8 m

WHEREAS the proposed west side yard setback is 1.0m and the proposed east side yard setback is 1.21 m

10. Section 6(9)(f)

Porches and decks, either excavated or unexcavated, and canopies permitted to project no closer to the side lot line than the minimum side yard setback for the main building

WHEREAS the proposed front porch and canopy is 1.0m from the side yard where 1.8m is required

11. Section 13.2.5A(3)(c)

The maximum height of a 1 storey rear extension to the length of the dwelling is 5.0 m WHEREAS the proposed height of the rear extension is 5.99m

Revised List of Minor Variances 12B Katherine Road (Part 2)

CITY OF TORONTO ZONING BY-LAW 569-2013

1. Chapter 10.5.40.60(1)(A)(i)

The minimum required east side yard setback to the front platform is 1.8m WHEREAS the proposed east side yard setback to the front platform is 1.0 m

2. Chapter 10.5.40.10.(5), and Section 9 (5) By-Law No. 1676-2013

A minimum of 10 m² of the first floor must be within 4.0m of the front main wall WHEREAS a proposed 2.7 m² of the first floor is within 4.0m of the front main wall

3. Chapter 10.20.30.20(1)(A)

The minimum required lot frontage is 15.0m WHEREAS the proposed

lot frontage is 9.13 m

4. Chapter 10.20.30.10(1)(A)
The minimum required lot area is 550.0m² WHEREAS the proposed lot area is 368.2 m²

5. Section 900.3.10(5)
The minimum required west and east side yard setback is 1.8m
WHEREAS the proposed east side yard setback is 1.0m and the proposed west side yard setback is 1.21m

6. Chapter 10.20.40.70(1)
The minimum front yard setback is 8.72m WHEREAS the proposed front yard setback is 8.5m

7. Section 10.20.40.20.(2)
The permitted maximum building length is 19.0 metres provided the extension to the building is less than 5.0 metres in height and is one storey.
WHEREAS the proposed extension to the building is 5.64 metres in height

8. Section 10.5.40.60.(2)
The proposed canopy required setback is 1.8m.
WHEREAS the proposed canopy covering the platform setback is 1.0m

FORMER CITY OF NORTH YORK ZONING BY-LAW 7625

9. Section 13.2.3
The minimum required west and east side yard setback is 1.8 m
WHEREAS the proposed east side yard setback is 1.0 m and the proposed west side yard setback is 1.21 m

10. Section 13.2.5A(3)(c)
The maximum height of a 1 storey rear extension to the length of the dwelling is 5.0m. WHEREAS the proposed height of the rear extension is 5.98 m

11. Section 6(9)(f)

Porches and decks, either excavated or unexcavated, and canopies permitted to project no closer to the side lot line than the minimum side yard setback for the main building

WHEREAS the proposed front porch and canopy is 1.0m from the east side yard where 1.8m is required

APPENDIX 3: 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.

APPENDIX 4 ENGINEERING AND CONSTRUCTION CONDITIONS

- 2 -

A. RECOMMENDATIONS

Engineering and Construction Services Division wish to advise that we have no objections to the subject consent and minor variance applications, subject to the following conditions being satisfied:

1. Transportation Services

Transportation Services has no objections to the consent (B0052/17NY) and minor variance (A0775/17NY and A0776/17NY) applications.

2. Engineering & Construction Services

Engineering and Construction Services Division wishes to advise that we have no objections to the subject consent.

3. All conditions listed above must be satisfied within one year of the Committee of adjustment or Ontario Municipal Board Approval.

B. ADVISORY OF OTHER CITY APPROVALS & REQUIREMENTS

Should this application be approved the applicant is to be advised of the following requirements in writing:

1.0 Site Servicing Connections

Municipal Sanitary and Watermain are available on Katherine Road to serve the subject lands.

The owner will be required to make application to the Toronto Water Services Division, North York Civic Centre, 5100 Yonge Street 2nd Floor and pay for the installation of City service connections for each building from the property line to the City mains, water meters, and the abandonment of the old service connections. The owner is responsible for the installation of the water and sanitary service connections from each building to the City services at the property line. It is the responsibility of the owner to ensure that the elevations of the sewers are compatible with the intended use of the property. Separate water and sanitary sewer connections will be required for each dwelling or parcel of land. For further information, please contact Toronto Water at 416-395-0682

2.0 Storm Sewer Connection

The City Sewer Use By-Law prohibits connections to a storm sewer from single family residential dwellings. Although there is a storm sewer available on Katherine Road to serve the sites, a connection to the storm sewer will not be permitted for the proposed lots. Foundation drains for the new dwellings are to be pumped to grade and roof drains are to discharge onto a landscaped area.