

DECISION AND ORDER

Decision Issue Date Monday, July 30, 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): 167 Armour Boulevard Inc.

Applicant: Urbanscape Group

Property Address/Description: 167 Armour Blvd

Committee of Adjustment Case File Number: 17 258482 NNY 10 CO (B0067/17NY), 17 258497 NNY 10 MV (A0981/17NY), 17 258505 NNY 10 MV (A0982/17NY)

TLAB Case File Number: 18 131328 S53 10 TLAB, 18 131324 S45 10 TLAB, 18 131326 S45 10 TLAB

Hearing date: Tuesday, July 10, 2018

DECISION DELIVERED BY G. Burton

REGISTERED PARTIES AND PARTICIPANTS

Applicant	URBANSCAPE GROUP	ali@urbanscapedgroup.com
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Party (TLAB)	CITY OF TORONTO	
Party's Legal Rep.	MATT SCHUMAN	matt.schuman@toronto.ca

INTRODUCTION

This was an appeal by the owner, 167 Armour Boulevard Inc., to the Toronto Local Appeal Body (TLAB) from decisions of the Committee of Adjustment (COA) dated February 28, 2018. These had refused applications for a consent to permit the severance of the property, and for the variances required to construct a two storey detached dwelling on each of the severed lots. The City of Toronto filed notice of its intent to become a Party to the appeal, and several neighbours also filed their intent to appear at the TLAB.

There was a preliminary Motion by the applicant/appellant resulting in a Decision by the TLAB of June 18, 2018. This allowed the slight alteration of one variance, and a change in the status of three individuals who had asked for Party status, granting them Participant status instead. This also provided that the hearing would be by personal attendance and not by teleconference and affidavit evidence, as had been requested. The reason was that there were more than two persons who wished to participate in the hearing.

BACKGROUND

The subject property is in North Toronto, between the northern terminus of Avenue Road to the east and Bathurst St. to the west, and north of Highway 401. It is triangular in shape, located at the rather acute angle where Westgate Boulevard meets Armour Boulevard, the point of the triangle facing north. It is designated Neighbourhoods under the Official Plan (OP) and zoned R3 under North York Zoning By-law No. 7625 (NY By-law) and RD (f15. 0; a600)(x5) under City of Toronto Zoning By-law No. 569-2013 (the New By-law).

As mentioned in the Planning Staff Report (Exhibit 6), the subject property is irregularly shaped. The staff pointed out that it is also presently oversized, both in comparison to surrounding lots in the neighbourhood, and to the lot frontage and area requirements under the zoning By-laws. Many neighbours had opposed the severance and variances at the COA. Four expressed interest in appearing at the TLAB hearing of the appeal. The City itself appeared by counsel in opposition to the appeal.

MATTERS IN ISSUE

The issues to be determined are whether, first the severance and, if granted, the variances meet all of the applicable tests in the Act. For the reasons below, I have found that all applications satisfy the tests.

JURISDICTION

On an appeal of a consent application, the TLAB must be satisfied that the relevant provisions of subsection 51(24) of the Act are satisfied. It is also applicable to severances. Subject to editorial deletions of certain clauses (based on my assessment of the evidence provided) the subsection reads:

“51 (24) In considering a draft plan of subdivision, 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;

(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;.....

(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;

(i) the adequacy of utilities and municipal services;

(j) the adequacy of school sites;.....”

Respecting the variance appeals, the TLAB must ensure that each of the variances sought meets the tests in subsection 45(1) of the Act. This involves a reconsideration of the variances considered by the Committee in the physical and planning context. It is a hearing *de novo*, as if the COA hearing had not occurred. The subsection requires a conclusion that each of the variances, individually and cumulatively:

- is desirable for the appropriate development or use of the land, building or structure;
- maintains the general intent and purpose of the official plan;
- maintains the general intent and purpose of the zoning by-law; and
- is minor.

These are usually expressed as the “four tests”, and all must be satisfied for each variance.

In addition, TLAB must have regard to matters of provincial interest as set out in section 2 of the Act, and the variances must be consistent with provincial policy statements and conform with provincial plans (s. 3 of the Act). Therefore a decision of the TLAB must be consistent with the 2014 Provincial Policy Statement (‘PPS’) and conform to (or not conflict with) any provincial plan such as the Growth Plan for the Greater Golden Horseshoe (‘Growth Plan’) for the subject area.

Under s. 2.1(1) of the Act, TLAB is also to have regard for the earlier Committee decision and the materials that were before that body.

EVIDENCE

The owner’s evidence was presented by two witnesses: land use planning by Mr. David Brown and the transportation evidence by Mr. Alun Lloyd. Both filed expert witness statements and were qualified as experts due to their long and extensive experience in their respective fields.

Mr. Brown had appeared at the COA hearing and so has long been familiar with this application. He stressed the size of this unusual lot, now underutilized, in this pleasant residential neighbourhood. The plan of survey (Exhibit 2) illustrates this. The parcel at present contains a single dwelling facing toward Armour Boulevard, with a through driveway between Westgate Boulevard and Armour and a garage on the Westgate side. There is an extensive City-owned boulevard to the north where the two streets meet. The Westgate Boulevard is wider than that on the Armour side.

The consent requested would result in the following parcels (as illustrated in Exhibit 3, Revised Site Plan for Part 1 and Part 2, filed April 27, 2018):

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Conveyed - Part 1 (to the north)

The lot frontage is 15.00 m and has a lot area of 437.9 m².

Retained - Part 2 (to the south)

The lot frontage is 12.02 m and has a lot area of 437.7 m².

Mr. Brown indicated that the Zoning By-laws both require a minimum lot frontage of 15.0 m., and a lot area of 600 sq. m.

These are the variances required to authorize the proposed dwellings, as stated by the owner (Exhibit 4):

Variances for Conveyed Lands (Part 1)

1. Chapter 900.3.10.(5), By-law 569-2013

Proposed south side yard setback of 1.22m whereas a minimum setback of 1.80m is required

2. Chapter 10.5.40.50.(2), By-Law 569-2013

Proposed rear deck side yard setback of 1.22m, whereas a minimum setback of 1.80m is required

3. Chapter 10.20.30.10.(1), By-Law 569-2013

Proposed lot area of 437.9m², whereas a minimum lot area of 600m² is required

4. Chapter 10.20.30.40.(1), By-Law 569-2013

Proposed lot coverage of 33.81% of the lot area, whereas a maximum lot coverage of 30% of the lot area is permitted

5. Chapter 10.5.50.10.(1), By-Law 569-2013

Proposed front yard landscaping of 51.7%, whereas a minimum front yard landscaping area of 60% of the front yard is required

6. Chapter 10.20.40.70.(1)(B), By-Law 569-2013

Proposed front yard setback of 1.33m, whereas a minimum front yard setback of 6.00m is required

7. Section 12.4(a), By-Law 7625

Proposed front yard setback of 1.33, whereas Zoning By-law 7625 requires a minimum front yard setback of 6.50m

8. Section 12.4(c), By-Law 7625

Proposed rear yard setback of 5.93m whereas a minimum rear yard setback of 9.5m is required

9. Section 12.4(b), By-Law 7625

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Proposed south side yard setback of 1.22m whereas a minimum setback of 1.80m is required.

VariANCES for Retained Lands - Part 2

1. Chapter 900.3.10.(5), By-law 569-2013

Proposed north side yard setback of 1.22m whereas a minimum setback of 1.80m is required

2. Chapter 900.3.10.(5), By-law 569-2013

Proposed south side yard setback of 1.57m whereas a minimum setback of 1.80m is required

3. Chapter 10.5.40.50.(2), By-Law 569-2013

Proposed rear deck north side yard setback of 1.22m, whereas a minimum setback of 1.80m is required

4. Chapter 10.20.30.40.(1), By-Law 569-2013

Proposed lot coverage of 32.93% of the lot area, whereas a maximum lot coverage of 30% of the lot area is permitted

5. Chapter 10.20.30.20.(1), By-Law 569-2013

Proposed lot frontage of 12.02, whereas a minimum lot frontage of 15.0 m is required

6. Chapter 10.20.30.10.(1), By-Law 569-2013

Proposed lot area of 437.7m², whereas a minimum lot area of 600m² is required

7. Chapter 10.20.40.10.(2), By-Law 569-2013

The proposed height of the west side exterior main walls facing a side lot line is 8.53 for 12.9% of the width of the wall, whereas a maximum height of 7.5m is permitted

8. Section 12.4(b), By-Law 7625

Proposed north side yard setback of 1.22m whereas a minimum side yard setback of 1.57m is required

9. Section 12.5A, By-Law 7625

Proposed building length is 17.61m, whereas a maximum building length of 16.8m is permitted

While this appears to be nine variances for Part 1, it must be noted that variances 1 and 9, and 6 and 7 are duplicates, because of the application of the two By-laws. There is a similar duplication for Part 2, variances 1 and 8.

Mr. Brown chose an area for comparison and evaluation of the Neighbourhood context (as is required by the OP) shown on Exhibit 5, a Lot Study Area Map. His larger area is also triangular in shape, following the street patterns – from east of the structures on Bathurst, south along the edge of the easterly greenspace, and westerly again along the

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north side of Highway 401. Here single dwellings of about two storeys greatly predominate. There is a school nearby on Armour. He testified as to the established character of this neighbourhood, with a mix of older and renovated or renewed dwellings.

During the review of the application, City staff had suggested that the proposed Part 2, the southerly lot, be shifted to front onto Armour rather than on Westgate. The applicant did this, and thus altered the driveway to exit onto Armour. The northerly Part 1 meets the frontage requirement, but Part 2 requires a variance for a reduced frontage of 12.02 m, rather than the required 15 m. (more on this frontage figure later).

There are 9 variances requested for each of the severed lots. As mentioned, one was varied in a TLAB decision on a written Motion. This resulted from an inaccurate computation by City staff of the frontage required (Part 2, Variance 5.) At the hearing, the applicant put forward an additional alteration or addition to Variance 7 for Part 2 (in bold above). I accepted this as a minor alteration for which no further notice was required under s. 45(18.1.1) of the Act. Mr. Brown provided the explanation for this change when discussing each of the variances.

Mr. Brown provided his opinion that the severance would meet the criteria for consent set out in subsection 51(24) if the Act, and included above. The severance would comply with the OP and neighbourhood lot patterns (c), it is suitable (d), the roads are sufficient (e), the shapes and dimensions are appropriate (f). Thus in general, this unique parcel can accommodate the proposed residential development on each of the proposed lots. It has proper regard to the criteria in subsection 51(24), in his view.

He also testified that he had considered compliance with the “high level” provincial policies as required by s. 2 of the Act, and was satisfied that the proposal met the emphasis therein on building where there is existing infrastructure and other efficiencies.

Respecting the City OP policies, the property is designated Neighbourhoods. Policy 2.3 for Neighbourhoods states that they are considered physically stable areas, made up of residential uses in lower scale buildings such as detached houses. I will set out the policies in some detail, as Mr. Schuman for the City cross examined Mr. Brown at length on most of them.

Policy 4.1 5 states that development will respect and reinforce the existing physical character of the neighbourhood, including in particular;

- a) patterns of streets, blocks and lanes, parks and public building sites;
- b) size and configurations of lots;
- c) heights, massing, scale and dwelling type of nearby residential properties;
- d) prevailing building types;
- e) setbacks of buildings from the street or streets;
- f) prevailing patterns of rear and side yard setbacks and landscaped open space;
- g) continuation of special landscape or built form features that contribute to the unique physical character of a neighbourhood;

Mr. Brown testified that the proposal accords with the physical character of the surrounding neighbourhood. He went back to Policy 2.3 of the Plan entitled 'Stable But Not Static: Enhancing Our Neighbourhoods and Green Spaces'. The sidebar there states that neighbourhoods will not stay frozen in time... some physical change will occur over time as enhancements, additions and infill housing occurs on individual sites. A cornerstone policy is to ensure that new development in neighbourhoods respects the existing physical character of the area, reinforcing the stability of the neighbourhood.

Policy 2.3.1 sets out that development in Neighbourhoods must respect and reinforce the existing physical character of buildings, streetscapes and open space patterns. In Mr. Brown's opinion the proposed lot sizes and configurations do respect the existing physical character of the area. The prevailing building type is two-storey houses, of varying architectural styles. The proposed would also be two-storeys, and the setbacks would generally maintain the prevailing pattern of setbacks in the area. However, section 2.3 recognizes that neighbourhoods will evolve, and the OP provides for renewal in an established neighbourhood.

This proposal will comply with lot patterns in this area, he testified, as it will create infill on a large lot, and respect the existing physical structure of the area. Mr. Brown then addressed the requested variances, which are similar but not identical for the two proposed lots. He focused on lot frontage and area.

Mr. Brown stated that the property is zoned RD (f15.0: a600)(X5) under the New By-law, and R3 under the former NY By-law. The New By-law requires a 15 m frontage along Armour, while on this section of Westgate Boulevard only a 12 m frontage is required by the same New By-law. This historical difference continues to affect lot sizes, and also the character of the neighbourhood. He later confirmed that there were various pockets of 12 m and 15 m frontage requirements elsewhere in "zoning polygons" shown on the map (Exhibit 5), making even the identification of the "neighbourhood" somewhat problematic.

His Lot Study (Exhibit 1, Schedule A, Attachment 5) illustrates the variety of sizes in the entire lot study area. It can be seen that with the existing frontage of 35.3 m and area of 853 sq. m, this parcel is among the largest. The current frontage is larger than 97% and the area larger than 89% of the others in the study area. The results of past applications are shown in the chart in Exhibit 1, Schedule A, Attachment 6. The lots and homes backing on to the ravine to the northeast are much larger than those in the immediate neighbourhood. He included 818 lots in his study area, but found that taking an average size was not an efficient way to assess the proposal because of the large range in lot sizes. Rather, he used median lot size, which results in a frontage of 14.73 m and an area of 577 sq. m. If the larger lots to the northeast are removed, the median frontage is 14.38 m and area is 568 m. Some 291 of the 818 (35% of those in the neighbourhood) are less than the frontage requested for Part 2 (12.02 m.) Respecting lot area, 49 of the 818 are smaller than 450 sq. m. (437.9 and 437.7 sq. m. are sought.)

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Mr. Brown stated that past COA decisions have usually permitted coverages of 35%, a depth or length of up to 20 m. (no variances for depth are sought here), and side yard setbacks of about 1.5 m. The COA decisions are relatively evenly distributed, and thus no area is undergoing more development or renewal than another.

He addressed the individual variances. Respecting the south side yard setback for Part 1 (the northerly lot proposed), he pointed out that two variances under the applicable By-laws (Nos. 1 and 9) are similar. The requested 1.22 m is appropriate, as the side yard setback on Westgate is 1.2 m, and this would apply only between the two new dwellings. This pattern is seen elsewhere and will not affect the streetscape. He offered the original COA decision from 1986 (Exhibit 1, Attachment 7) that allowed a severance of the lots to the south, the original lot at 165 Armour being divided to create the current 91 Westgate (now owned by the Salvaggios at #165 and the Cohens at #91). The approximate lot areas are 356.55 and 344.84 sq. m., smaller than those sought in this appeal. The Westgate lot was also approved for a front yard setback of 3.05 m. The COA concluded there that the proposal would be “in keeping with the general pattern of development of the property.”

Variances under the New By-law (variance 2 for Part 1, and 3 for Part 2) relate to a setback for the rear decks, so that they would align with the setback of the walls to which they are attached. This is a technical variance, he testified.

Variances for lot areas under the New By-law (variance 3 for Part 1 and 6 for Part 2) may appear to be significant numerically, at 437.9 and 437.7 sq. m., as compared to the 600 sq. m. required by the By-law. Mr. Brown pointed out that this would create lots close to the median lot area size in the neighbourhood of 450 sq. m., and again, that the two neighbouring lots are less than 400 sq. m. in area. The proposed variances are therefore appropriate.

Respecting lot coverage variances, they are not unusual at 33.81 and 32.93%, as increases of 33% are within the range that he found that the COA had approved. The New By-law limit is 30%.

For Part 1 only, a variance is proposed for front yard landscaping, of 51.7% whereas 60% is required under the New By-law. Mr. Brown opined that this reduction would be somewhat compensated for by the existence of greenspace in the generous City boulevard to the north.

The front yard setback requested for Part 1 is caused by the house design and location, coming to a point at the north front corner, with additional step backs as the north wall continues to the rear. This minimizes the massing as well. There is no overall height variance. The front yard setback variance would be 1.33 m rather than 6 m., but only at this corner point, which he termed a pinch point. The dwelling was brought somewhat forward on the lot to provide for parking and, more critically, greater amenity space in the rear yard. The front entrance would not be in active use as an entryway to actual living space behind, but only as an entrance hall.

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A rear yard setback would be required for Lot 1, under the NY By-law only. The proposed setback of 5.93 m is needed because of the somewhat triangular shape of the proposed dwelling, and would achieve the desired increase in rear amenity space. A 9.5 m rear setback is required by the By-law.

Specifically for the lot to the south, Part 2, the north side yard setback is proposed at 1.22 m versus the 1.8 m required. This is between this dwelling and the new one to the north. Its proposed south side yard setback is 1.57 m, whereas a minimum setback of 1.80 m is required, but only by the NY By-law. In his opinion these reductions would have no adverse impact on the Participants to the south, as the total distance between the dwellings (i.e., the side wall of Part 2 and the north sides of #91 and #165) would be 2.4 m in total. The COA decisions predominantly have allowed 1.5 m.

Even if a new single dwelling were to be built on the existing parcel, Mr. Brown stated, it would of necessity be located close to the front, rear and side setbacks proposed for these two homes.

The measurement of the lot frontage for Part 2 is the result of a somewhat unusual circumstance. It requires creating a line from the mid-point of the front lot line to the mid-point of the rear lot line, then measuring from the front setback, perpendicular to that line, and the result is the lot "frontage" measurement required. Here it is 12.02 m. There had been a miscalculation by staff of this measurement, and this was corrected in the earlier Motion decision. The requested 12.02 m is appropriate here, Mr. Brown opined, because of the 12 m requirement on Westgate, and because it will have no impact on the area.

The variance for Part 2 for the height of exterior main walls under the New By-law is required only for the height of the dormer window in the northerly side of the dwelling. There is no dormer at the south side. This is measured from the established grade to the underside of the eave. The wording of this variance will be altered to better reflect and clarify this, as City staff have requested, and is usual in NY By-law matters. I determined under section 45(18.1.1) of the Act that no further notice is required for this alteration. It is purely a technical one resulting from the reorienting of the building on Part 2, and will have no adverse effect on any neighbouring properties, as it will be between the two new homes. The revision is reflected in the Decision below.

There is a length variance under the former By-law for only a portion of the building on Part 2, the farthest forward point to the farthest back, for 17.61 m (16.8 m is required). The wall closest to the neighbours, to the south, requires no variance as it is 16.18 in length (Part 2, Variance 9).

Mr. Brown emphasized the favourable opinion in the Planning Staff Report written for the COA hearing, Exhibit 6. On the fundamental question of the severance, the staff had said:

"Staff conducted a review of lot frontages and lotting patterns for nearby residential properties generally bounded by Sandringham Drive to the north, Ridley Boulevard to the east, Highway

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401 to the south, and Bathurst Street to the west. Staff are of the opinion that the proposed lots are consistent with the size and configuration of lots within the surrounding neighbourhood. Although the subject property is zoned R3 and RD (f1 5.0; a600)(x5), properties surrounding the subject site to the north, south, east and west are zoned R6 and RD (f12.0; a370)(x1463), these zones require a minimum lot frontage of 12.0 metres. Of the 413 lots assessed as part of the lot study, only 2 lots have frontages of 11.9 metres or less, 275 lots have frontages between 12.0 and 14.9 metres, and 136 lots have frontages of 15.0 metres or greater. **Therefore, the proposed lot frontages of 15.0 and 12.63 metres are in keeping with the character of the size of lots within the surrounding neighbourhood.**" (p. 5),
And further:

Staff are of the opinion that the consent and related minor variance applications are in keeping with the existing physical character of both Armour Boulevard as well as the broader neighbourhood." (p. 6) (emphasis added.)

Mr. Brown discussed the neighbours' submissions to the COA. These were principally on the issues of density, traffic impact, pedestrian safety, need for sidewalks, and spacing of the parcels. On the tests in subsection 45(1), he concluded that the parcels would conform quite closely to the OP and the zoning By-laws. There would be no grading or other changes, or effect on infrastructure. It would conform to the requirements for Neighbourhoods in the OP by generally "fitting in" with lot size and configuration, building type, prevailing pattern of setbacks, and the mixture of styles and materials. The areas of the two proposed lots would each be greater than the areas of the properties to the south at 91 Westgate and 165 Armour.

The variances would actually enhance the neighbourhood's character. His lot study (Exhibits 1 and 5) illustrates the existing trends in COA approvals. The application is desirable in order to utilize a large underdeveloped lot. Development Engineering had no issue with the severance. The neighbour's concerns about reduced sunlight from the south wall of Part 2 were not valid as the sun is located mainly in the southern sky. An as-of-right structure could be built very close to this south lot line.

In his assessment the variances are indeed minor, both individually and collectively. He stressed that the latter portion of the test is not mandatory, but is common practice. Frontages, areas, front and rear yard setbacks are close to the By-laws, and two variances are duplicates, to be eliminated when the New By-law is fully approved. There will be no adverse impacts.

Mr. Schuman asked many careful and detailed questions in his cross examination. On the question of the severance of this odd-shaped lot, he asked about any other similar severances or lots in the area. Mr. Brown emphasized the unusual road pattern here. It in fact winds through the area, leading to other quite narrow lots. A similar configuration to the north at the corner of York Downs and Armour, was not created by consent but was actually part of the original subdivision. There is great variety in this area in both frontage and areas, although more so in frontages. Shifting the lots here to two facing Armour would not really alter the lotting pattern. There are two lots to the south on Armour where the lot line is not perpendicular to the street line. Thus this severance would just maintain the tapering pattern. Mr. Brown testified that the new lot configuration is different from the rest to the south in that it was not possible to follow

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the existing pattern, given the shape of this unique lot. A back to back configuration had been considered, but no dwelling could be devised that fit on north/south lots with the necessary dimensions. He testified that even if only one new dwelling were to be placed on the unsevered lot, rear and front yard variances would still be required. There is already a “sawtooth pattern” of front yards along Armour, so that front walls cannot be lined up as elsewhere. Mr. Brown was of the opinion that the proposal met each of the OP policies mentioned above, especially when including the entire study area that he proposed. Even though what Mr. Schuman termed “the vast majority” of the lot sizes exceeded the proposed (about 600 out of 818), Mr. Brown’s opinion was that the sizes proposed would in fact respect and reinforce the existing physical character of the neighbourhood.

Mr. Schuman explored the rationale behind many of the variances, commencing with the soft landscaping – Variance 5 for Part 1. Mr. Brown replied that permanent pavers would mitigate storm water runoff there, but are not needed for Part 2. The addition of a percentage of the side wall in Variance 5 for Part 2 would ensure that the height variance would apply only to the dormer in the north-facing side wall. Not tying the approval to an elevation drawing for that wall would also facilitate any minor alterations required by the Building Department at permit time. Respecting the small front yard setback on Part 1, this was not caused by a desire to create living space by the front door; the entrance as designed would not permit a room by the front door. The setback for the pinch point resulted only from the placement of the entire structure closer to Armour to permit more rear yard amenity space. There would be some front yard space. The condition for permanent pavers would absorb any runoff. The proposal did not rely on the existence of the City boulevard to the north for greenspace. This wide area would merely mitigate any loss of such space. The side wall of Part 2, next to the neighbours, would require a small variance for setback but not for length; nor would there be rear or front yard setbacks.

Mr. Brown was asked about space for a future City sidewalk, and assured us that there was sufficient for it – Mr. Lloyd would discuss this factor. He also pointed out that area residents would protest any loss of sidewalk potential, so that this was not likely.

The general intent of the Zoning By-law side yard setback requirements could be to maintain more open space between dwellings, Mr. Brown agreed. Side yard requirements came from the older By-law, but have now been replaced with more permissive numbers. These enable replacement homes to utilize existing land and maintain the character of neighbourhoods, but with newer styles. The photos supplied in Exhibit 8 illustrate the diverse styles, heights and setbacks, and varied frontages, that create interest along the streetscape.

Taken through the applicable subsections of subsection 51(24) tests for severances, Mr. Brown reiterated that they were satisfied. There are really no comparables, as this lot and corner location are unique. The NY By-law would permit a 3 m setback, so the one variance for front yard setback only at the pinch point on Part 1 is acceptable.

Mr. Alun Lloyd, an experienced transportation planner and engineer, provided expert evidence on this subject for the proposal. He is a principal at BA Group. He prepared a

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Functional Road & Signage Plan (Exhibit 8), Aerial Map with photographs (Ex. 9) and a Witness Statement (Ex. 7). He had undertaken traffic and pedestrian activity surveys at the Armour Boulevard / Westgate Boulevard intersection, as this was a concern of residents and the Councillor.

He testified that Armour Boulevard is classified as a collector road, while Westgate is a local road. Despite this difference each street has a 26 m right of way, which is very wide for their classifications. There is more than enough space to widen or create a left turn lane on Armour should the City desire. Pavement on both is 8 ½ m wide with a significant boulevard space, permitting sidewalk construction when desired, as mocked up on Exhibit 8, Functional Road and Signage Plan. The boulevard width on the west side of Armour is 5 m, but it is varied from south to north, so future intersection design or sight lines might possibly be affected. The intersection is an all-way stop. Some persons expressed concerns about traffic and pedestrian safety. Because the streets meet at an acute angle, Mr. Lloyd's opinion is that a driver must inevitably slow in order to see oncoming traffic and around the corners. His diagram of the intersection illustrates his opinion that no change to the proposal is required from a safety perspective.

He testified that concerns about pedestrian safety are not well founded. The sight lines are acceptable because of the position of the stop bars. There is thus no real barrier to proceeding with this application. The City Transportation Department had no objections to the proposal. The intersection has long existed in its present configuration, and there had been only 2 'fender-benders' there in the 2014-2017 time frame. He carefully studied both traffic and pedestrian volumes (Ex. 7, pp. 6 and 7), finding them to be moderate to low. Having the two driveways on Armour might even assist from a safety aspect, as they would be even further from the intersection than the one at present. The proposal would have a negligible effect on traffic or safety in the area.

Participants Ms. Amy Beth Cohen and Mr. Joseph Salvaggio attended the hearing. Ms. Cohen resides at 91 Westgate Boulevard to the south and west, and Mr. Salvaggio at 165 Armour Boulevard to the south and east. They are therefore the immediate neighbours. Ms. Cohen provided all of their presentations, as Mr. Salvaggio had to leave before the hearing ended. She read the statement prepared by her husband Mr. Stacey Matthew Cohen, with some of Mr. Salvaggio's submissions as well.

Ms. Cohen stressed the impact of the proposal on the immediate community, the loss of green space, trees and neighbourhood "feel". She foresees significant loss of privacy and sunlight with the south wall of Part 2 so close to her property and Mr. Salvaggio's. She had observed the owner cutting down a tree damaged by wind, without a permit, but one that a forester had said was healthy. There has been no consultation with the community for this proposal, despite a petition to the COA from about 270 concerned persons, and the appearance of 30 persons at the COA hearing. The proposal is excessive, given the number of variances requested, and the variances are not minor. She believes that some of the more permissive provisions of the New By-law favour builders over neighbourhoods. The new driveway would exacerbate an intersection "already challenged on safety".

Mr. Schuman asked some clarifying questions. She has lived at 91 Westgate for 7 years. Asked if she felt the neighbourhood would change with this proposal, she expressed concern about the fact that there are many 40 to 50 foot lots in the area, and this would provide a precedent for further divisions. She sees many three-storey homes being built elsewhere on small lots. She also sees more open space between the houses in the area which would be lost here. In cross examination, she stated that the Cohens have had their home for sale for a few months.

ANALYSIS, FINDINGS, REASONS

In my opinion it is very important in assessing this application to carefully consider the Report of the Planning Staff to the COA. Staff was supportive of both severance and variance applications. The Report reinforces the expert evidence of Mr. Brown. I note that the City did not provide any countervailing professional evidence. While the staff's study area consisted of fewer lots, I do not find that anything turns on this fact. Indeed it may provide an even better definition of the "neighbourhood" for evaluation purposes. I agree with Ms. Piurko that this is a very unique lot – both oversized and unusually shaped. While the median standard used by Mr. Brown yielded only a minority of lot frontages and areas of the size proposed, this is not determinative in my view. It is not only a numbers game.

Even if one concludes, as Mr. Schuman does, that application cannot meet the OP test in Policy 4.1.5 of respecting and reinforcing the existing physical character of the neighbourhood, including;

- a) patterns of streets, blocks and lanes, parks and public building sites;
- b) size and configurations of lots;
- e) setbacks of buildings from the street or streets;
- f) prevailing patterns of rear and side yard setbacks and landscaped open space;

this would be due almost entirely to its unusual size and shape. No physical "fit", as in close duplication, is possible. There is no evident "pattern" to which two lots on this unusual property could comply. The applicant tried and failed to locate two dwellings on lots severed north to south that maintained the pattern to the south. Even if one argues that this mitigates against two lots, Planning staff found that the proposed lot frontages "...are in keeping with the character of the size of lots within the surrounding neighbourhood" and the lots are "...consistent with the size and configuration of lots within the surrounding neighbourhood."(Ex. 6, p. 5). Mr. Brown went so far as to say that the proposal in fact ensures the stability of the area.

The COA process allowed the necessary consultation, and potential impacts were mitigated. I am persuaded by the only professional planning evidence presented.

I find that the applications support and implement the policies of the PPS and the Growth Plan. The proposed development would be an efficient use of a large underutilized residential property, would provide additional housing, utilize the existing infrastructure and introduce a new energy efficient home where an older home currently exists. It would also meet the development criteria in Policy 4.1.5 of the OP, to the extent that this is possible given the very unusual shape of the present property. The lot

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sizes and configuration would respect the existing physical character of the area, where the prevailing building type is also two-storey homes of varying architectural styles. The setbacks generally maintain the prevailing pattern. Section 2.3 of the Plan recognizes that neighbourhoods evolve, and the Plan makes provision for this type of renewal in an established neighbourhood.

Mr. Schuman submitted that he was exercising the City's right to put forward its case by means of cross examination rather than through a witness, and I agree that this is acceptable. However, it is notable that no expert evidence was tendered to counter the owner's evidence from qualified professionals. City planning staff, also professional experts, had in fact supported the application. Mr. Schuman submitted that the residents' passionate evidence coming from their lived experience of the neighbourhood should be accorded a great deal of weight. I prefer the expert evidence received.

I have read and carefully considered the objectors' submissions to the COA and to TLAB (as required by subsection 2.1(1) of the Act, and have reached the same conclusion.

He also argued that the new lots would be undersized, as there would be only 49 out of 800 or so of comparable size in the area. Weight should also be given to this factor, as undersized lots do not conform to the OP as is required. Similarly, variances for reduced setbacks on the lots should be refused, even if there are no height or length variances. The reductions mean that there is no compliance with the OP policies. He pointed out that the COA panel had refused the application. In the alternative, should the application be approved, the City believes the conditions proposed are appropriate.

Respecting the neighbours' seeming objection to any variances at all, I point to Mr. Brown's argument that an application for minor variances and the COA process was established to permit a property owner to alter the general provisions of the By-law in specific circumstances. It is understood and provided for that changes to zoning by-laws may occur, following consultation and a supporting rationale.

Ms. Piurko submitted many OMB decisions in support of her arguments. I will not cite the specifics on some subjects. I agree that petitions should not be given much weight, and that, as mentioned, an owner has the right to request variances from the zoning By-laws (see: York South Association for Community Living v. Richmond Hill (Town) [1989] O.M.B.D. No. 434, p. 3; Re Butkovik 2007CarswellOnt 3440, p. 6), and Re St. George's Golf and Country Club 2012 CarswellOnt 2292, para. 31 to 34).

It is also acknowledged that there is no test for "need" in considering a minor variance application. That is, the applicant has no burden of proof to demonstrate why they are requesting a variance, but just whether it meets the statutory tests (Re Stonehouse 2011 CarswellOnt 14745, 71 O.M.B.R. 99, p. 5).

On what appeared to me to be the City's critical issue here, compatibility as the OP requires, I am satisfied that the test of compatibility or "fit" with the existing physical character of the neighbourhood is met for this proposal. While the resulting lots and some variances may be outside the mid-range of the COA decisions cited by Mr. Brown, the test is not a numerical one alone. I find that they will be acceptable lot sizes,

and dwellings that will fit into the neighbourhood by respecting and reinforcing its physical character. There will be no unacceptable adverse impact on the neighbourhood or the neighbours. As Member Denhez states in Booth v. Toronto (City), [2011] O.M.B.D No. 46, 2011 CarswellOnt 148, s at p. 6:

“42. What is relevant is that the criteria, in that Policy [4.1.5], calls on projects to “respect and reinforce the existing physical character” (“heights, massing, scale...”), including “continuation of special built-form features.” That is the OP standard whose “intent and purpose” is to be “maintained” under the statutory test.

43. One of the specified components of this standard, aside from “heights”, “scale” and “continuation”, is “massing”. Although the word “massing” is used repeatedly in the Toronto OP, it is not defined. It is, however, usually associated with the deployment of volume and the arrangement of three-dimensional shapes. As a defined component of “character”, at least in the Toronto OP, those aspects too are integral to the assessment of the OP’s intent and purpose.” (p. 6)

In my opinion the proposed massing and positioning of the dwellings on the proposed lots are also appropriate, and meet the general intent and purpose of both the OP and the applicable zoning by-laws.

DECISION AND ORDER

The TLAB orders that:

1. The appeal is allowed and provisional consent is given to sever 167 Armour Boulevard into two Parts in accordance with the Revised Site Plan for Lots 1 and 2 shown as Attachment 1 to this Decision (Exhibit 3), and subject to the following conditions:

Conveyed Lands - Part 1
Lot Frontage: 17.32 m
Lot Area: 437.9 m²

Retained Lands - Part 2
Lot Frontage: 12.02 m
Lot Area: 437.7 m²

Conditions of Provisional Consent:

- 1) Confirmation of payment of outstanding taxes to the satisfaction of Revenue Services Division, Finance Department.

- 2) A draft Certificate of Official, as prescribed in O. Reg. 197/96 as Form 2 or 4, in a form satisfactory to the Deputy Secretary-Treasurer, that includes a completed and registerable description of the land that is the subject of the consent, shall be submitted to the Deputy Secretary-Treasurer within one year of the date of the giving of this Notice of Decision.

3) Copies of the deposited Reference Plan of Survey, integrated with the Ontario Coordinate System, and clearly delineating the parcels of land and their respective areas approved by the Toronto Local Appeal Body, shall be filed with the City Surveyor, Survey and Mapping, and Technical Services.

4) A copy of a letter from the Executive Director of Engineering and Construction Services advising that the applicant has obtained the necessary adjustment to the municipal addressing of the land. The application for municipal addressing must be accompanied by a copy of the deposited Reference Plan of Survey, integrated with the Ontario Co-ordinate System, and specify the PART numbers that will comprise each of the new parcels.

5) This Decision shall become null and void within 12 months of the date of the giving of this Notice of Decision, unless the applicant complies with the above-noted conditions, and the Certificate of the Committee of Adjustment is affixed to the relevant documents.

2. The variances to the North York Zoning By-law No. 7625 as follows are authorized, subject to the conditions in No. 4 below:

Part 1 –

1. Section 12.4(a), By-Law 7625

Proposed front yard setback of 1.33, whereas Zoning By-law 7625 requires a minimum front yard setback of 6.50m

2. Section 12.4(c), By-Law 7625

Proposed rear yard setback of 5.93m whereas a minimum rear yard setback of 9.5m is required

3. Section 12.4(b), By-Law 7625

Proposed south side yard setback of 1.22m whereas a minimum setback of 1.80m is required.

Part 2 –

1. Section 12.4(b), By-Law 7625

Proposed north yard setback of 1.22m whereas a minimum side yard setback of 1.57m is required

2. Section 12.5A, By-Law 7625

Proposed building length is 17.61m, whereas a maximum building length of 16.8m is permitted

3. The variances to the City of Toronto Zoning By-law No. 569-2013 as follows are authorized, contingent upon the relevant provisions of this By-law coming into force and effect, and subject to the conditions in No. 4 below:

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Part 1 –

1. Chapter 900.3.10.(5), By-law 569-2013

Proposed south side yard setback of 1.22m whereas a minimum setback of 1.80m is required

2. Chapter 10.5.40.50.(2), By-Law 569-2013

Proposed rear deck side yard setback of 1.22m, whereas a minimum setback of 1.80m is required

3. Chapter 10.20.30.10.(1), By-Law 569-2013

Proposed lot area of 437.9m², whereas a minimum lot area of 600m² is required

4. Chapter 10.20.30.40.(1), By-Law 569-2013

Proposed lot coverage of 33.81% of the lot area, whereas a maximum lot coverage of 30% of the lot area is permitted

5. Chapter 10.5.50.10.(1), By-Law 569-2013

Proposed front yard landscaping of 51.7%, whereas a minimum front yard landscaping area of 60% of the front yard is required

6. Chapter 10.20.40.70.(1)(B), By-Law 569-2013

Proposed front yard setback of 1.33m, whereas a minimum front yard setback of 6.00m is required

Part 2 -

1. Chapter 900.3.10.(5), By-law 569-2013

Proposed north side yard setback of 1.22m whereas a minimum setback of 1.80m is required

2. Chapter 900.3.10.(5), By-law 569-2013

Proposed south side yard setback of 1.57m whereas a minimum setback of 1.80m is required

3. Chapter 10.5.40.50.(2), By-Law 569-2013

Proposed rear deck north side yard setback of 1.22m, whereas a minimum setback of 1.80m is required

4. Chapter 10.20.30.40.(1), By-Law 569-2013

Proposed lot coverage of 32.93% of the lot area, whereas a maximum lot coverage of 30% of the lot area is permitted

5. Chapter 10.20.30.20.(1), By-Law 569-2013

Proposed lot frontage of 12.02, whereas a minimum lot frontage of 15.0 m is required

6. Chapter 10.20.30.10.(1), By-Law 569-2013

Proposed lot area of 437.7m², whereas a minimum lot area of 600m² is required

7. Chapter 10.20.40.10.(2), By-Law 569-2013

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The proposed height of the west side exterior main walls facing a side lot line is 8.53 for 12.9% of the width of the wall, whereas a maximum height of 7.5m is permitted.

4. Conditions of Variances for Parts 1 and 2:

Conditions – Part 1 Variances

1. The proposed driveway be constructed of permeable pavers.
2. The proposal be developed in accordance with the site plan drawing submitted to the Committee of Adjustment, date stamped as received by the City of Toronto Planning Division, February 12, 2018.

Conditions - Part 2 Variances

1. The proposal be developed in accordance with the site plan drawing submitted to the Committee of Adjustment, date stamped as received by the City of Toronto Planning Division, February 12, 2018 (Attachment 1).

Any other variances that may appear on this plan that are not listed in this Decision are not authorized.

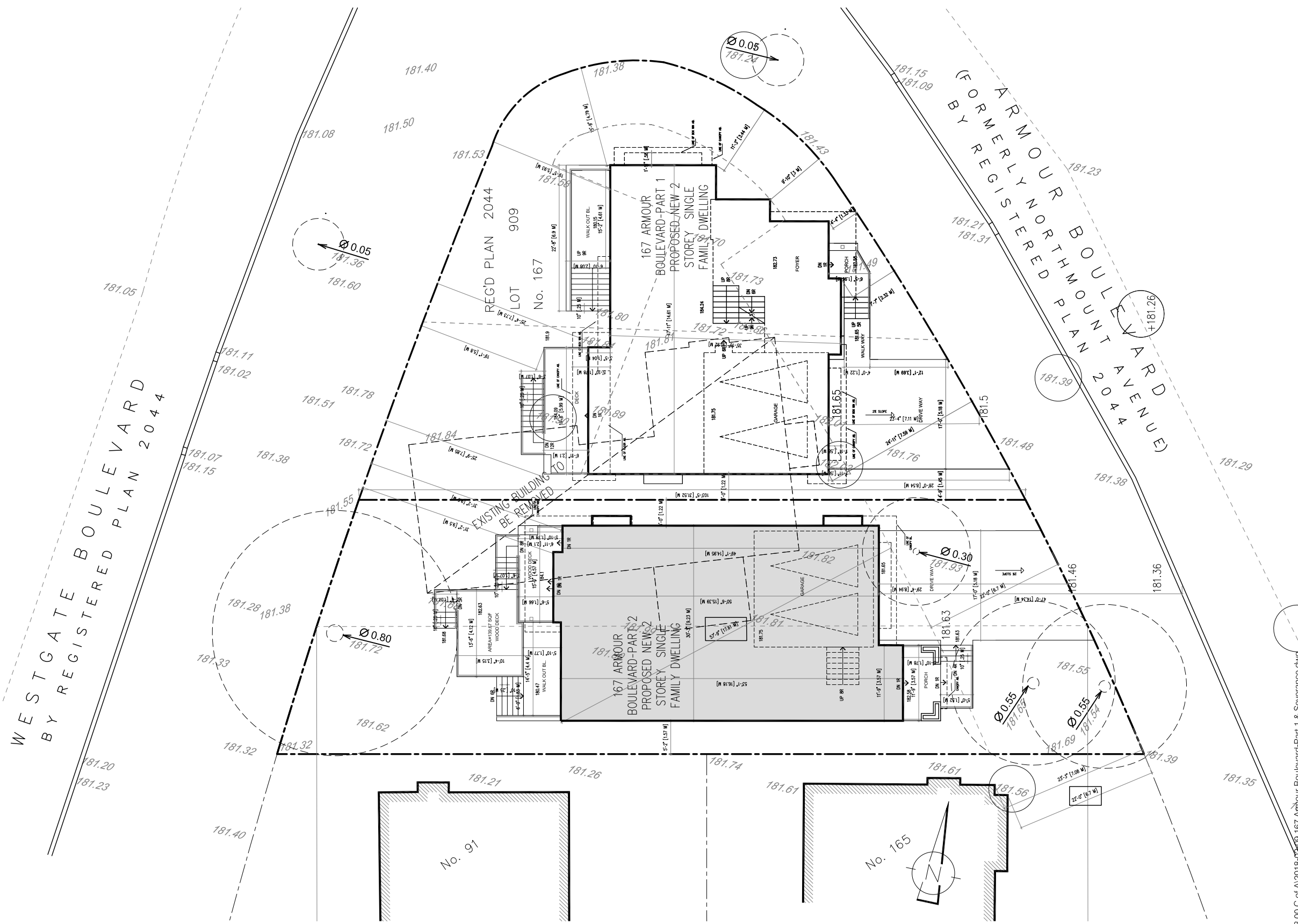
ATTACHMENT 1 – REVISED SITE PLAN – PARTS 1 AND 2

X 

G. Burton

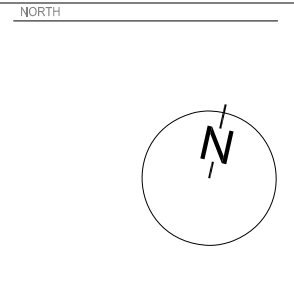
Panel Chair, Toronto Local Appeal Body

LOCATION MAP



NO.	DATE	REVISION DESCRIPTION	NOTE
1	2017-07-27	ISSUED FOR CLIENT REVIEW	CLIENT
2	2017-09-18	ISSUED FOR ZCC	CITY
3	2017-10-26	ISSUED FOR COA	CITY
4	2018-02-09	REVISED AS PER COMMENT	CITY

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PROJ./REV. NO. USG 210-17
 SHEET TITLE SITE PLAN FOR SEVERANCE
 SCALE 1/16"=1'
 PROJECT 167 ARMOUR BLVD.-PART 1 & 2
 167 ARMOUR BOULEVARD, TORONTO, ON, M3H 1M1

DWG NO. S0
 11"x17" SHEET SIZE

DESIGN

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