

DECISION AND ORDER

Decision Issue Date Monday, July 30, 2018

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

Appellant(s): FRANK PLESKO

Applicant: EPIC DESIGNS INC

Property Address/Description: 56 FRANCES AVE

Committee of Adjustment Case File Number: 17 119727 WET 05 CO, 17 119731 WET 05 MV, 17 119732 WET 05 MV

TLAB Case File Number: **17 216598 S45 05 TLAB, 17 216599 S45 05 TLAB, 17 220424 S53 05 TLAB**

Hearing date: Friday, March 09, 2018

DECISION DELIVERED BY S. Gopikrishna

APPEARANCES

Name	Role	Representative
Epic Designs Inc.	Applicant	
Andrew Alfredo Lazzaro	Owner	
Frank Plesko	Appellant	
Jose Goncalves	Party/Primary Owner	Russell Cheeseman
Franco Romano	Expert Witness	
Grace Rubba	Participant	
Raymond Jackson	Participant	

Name	Role	Representative
Robert Colbourne	Participant	

INTRODUCTION AND BACKGROUND

Jose Goncalves is the owner of 56 Frances Avenue, located in Ward 5 of the City of Toronto. He applied to the Committee of Adjustment (COA) to sever the property at 56 Frances and build a new house on each of the severed lots, each of which required variances. The COA considered the application on 27 July, 2017, and approved the severance as well as the variances for the proposed houses on the 2 lots.

Frank Plesko, the neighbor at 58 Frances Ave, appealed the decision to the TLAB on 22 August, 2017. The appeal was originally scheduled to be heard on 15 January, 2018. However, the applicant's lawyer filed a Motion requesting for a postponement of the scheduled hearing because of their unavailability on 15 January, 2018. My colleague, Ms. Laurie McPherson, granted the Motion, which was heard in writing, and adjourned the hearing to 9 March, 2018.

MATTERS IN ISSUE

To obtain consent to sever the lot into two undersized residential lots, with attendant variances:

Retained - Part 1

Address to be assigned

The lot frontage will be 7.62 m and the lot area will be 325.14 m². The existing dwelling will be demolished and the property will be developed as the site of a new detached dwelling with an attached garage and will require variances to the Zoning By-law, as outlined in Application A0162/17EYK.

Conveyed - Part 2

Address to be assigned

The lot frontage will be 7.62 m and the lot area will be 325.14 m². The existing dwelling will be demolished and the property will be developed as the site of a new detached dwelling with an attached garage and will require variances to the Zoning By-law, as outlined in Application A0163/17EYK.

56 FRANCES (PART 1)

REQUESTED VARIANCE(S) TO THE ZONING BY-LAW:

1. Section 10.20.30.10.(1)(A), By-law 569-2013

The minimum required lot area is 510 m².

The new lot area will be 325.14 m².

2. Section 10.20.30.20.(1)(A), By-law 569-2013

The minimum required lot frontage is 13.5 m.

The new lot frontage will be 7.62 m.

3. Section 10.20.30.40.(1)(A), By-law 569-2013

The maximum permitted lot coverage is 33% of the lot area (107.3 m²).

The new dwelling will cover 37.65% of the lot area (122.4 m²).

4. Section 10.20.40.40.(1)(A), By-law 569-2013

The maximum permitted floor space index 0.45 times the area of the lot (146.3 m²).

The new dwelling will have a floor space index of 0.65 times the area of the lot (210.28 m²).

5. Section 10.20.40.70.(3)(C), By-law 569-2013

The minimum required side yard setback is 1.2 m.

Section 320-42.1.C.(1)

The minimum required side yard setback is 0.9 m and the aggregate width of both yards shall not equal less than 2.1 m.

Section 10.20.40.70.(3)(C), By-law 569-2013 and Section 320-42.1 C (1)

The new dwelling will be located 0.45 m from the south side lot line and 1.22 m from the north side lot line and will have an aggregate side yard setback of 1.67 m.

6. Section 10.20.40.20.(1), By-law 569-2013

The maximum permitted building length is 17 m.

The new dwelling will have a length of 18 m

7. Section 10.20.40.10.(4)(A), By-law 569-2013

The maximum permitted height for a flat roofed dwelling is 7.2 m.

Section 320-42.1.B.(2)

The maximum permitted height for a flat roofed dwelling is 6.5 m.

Section 10.20.40.10.(4)(A), By-law 569-2013 and Section 320-42.1.B.(2)

The new dwelling will have a flat roofed height of 9.36 m.

8. Section 10.5.40.10.(5), By-law 569-2013

A minimum of 10 m² of the first floor must be within 4 m of the front main wall.

A total of 3.7 m² of the first floor will be located within 4 m of the front main wall.

56 FRANCES AVE (PART 2)

REQUESTED VARIANCE(S) TO THE ZONING BY-LAW:

1. Section 10.20.30.10.(1)(A), By-law 569-2013

The minimum required lot area is 510 m².

The new lot area will be 325.14 m².

2. Section 10.20.30.20.(1)(A), By-law 569-2013

The minimum required lot frontage is 13.5 m.

The new lot frontage will be 7.62 m.

3. Section 10.20.30.40.(1)(A), By-law 569-2013

The maximum permitted lot coverage is 33% of the lot area (107.3 m²).

The new dwelling will cover 37.46% of the lot area (121.79 m²).

4. Section 10.20.40.40.(1)(A), By-law 569-2013

The maximum permitted floor space index 0.45 times the area of the lot (146.31 m²).

The new dwelling will have a floor space index of 0.65 times the area of the lot (211.27 m²).

5. Section 10.20.40.70.(3)(C), By-law 569-2013

The minimum required side yard setback is 1.2 m.

Section 320-42.1.C.(1)

The minimum required side yard setback is 0.9 m and the aggregate width of both yards shall not equal less than 2.1 m.

Section 10.20.40.70.(3)(C), By-law 569-2013 and Section 320-42.1 C (1)

The new dwelling will be located 1.22 m from the south side lot line and 0.45 m from the north side lot line and will have an aggregate side yard setback of 1.67 m.

6. Section 10.20.40.20.(1), By-law 569-2013

The maximum permitted building length is 17 m.

The new dwelling will have a length of 18 m.

7. Section 10.20.40.10.(4)(A), By-law 569-2013

The maximum permitted height for a flat roofed dwelling is 7.2 m.

Section 320-42.1.B.(2)

The maximum permitted height for a flat roofed dwelling is 6.5 m.

Section 10.20.40.10.(4)(A), By-law 569-2013 and Section 320-42.1.B.(2)

The new dwelling will have a flat roofed height of 9.7 m.

8. Section 10.5.40.10.(5), By-law 569-2013

A minimum of 10 m² of the first floor must be within 4 m of the front main wall.

A total of 3.7 m² of the first floor will be located within 4 m of the front main wall.

7. Section 10.20.40.10.(4)(A), By-law 569-2013

The maximum permitted height for a flat roofed dwelling is 7.2 m.

Section 320-42.1.B.(2)

The maximum permitted height for a flat roofed dwelling is 6.5 m.

Section 10.20.40.10.(4)(A), By-law 569-2013 and Section 320-42.1.B.(2)

The new dwelling will have a flat roofed height of 9.7 m.

8. Section 10.5.40.10.(5), By-law 569-2013

A minimum of 10 m² of the first floor must be within 4 m of the front main wall.

A total of 3.7 m² of the first floor will be located within 4 m of the front main wall.

JURISDICTION

Provincial Policy – S. 3

A decision of the Toronto Local Appeal Body ('TLAB') must be consistent with the 2014 Provincial Policy Statement ('PPS') and conform to the Growth Plan of the Greater Golden Horseshoe for the subject area ('Growth Plan').

Consent – S. 53

TLAB must be satisfied that a plan of subdivision is not necessary for the orderly development of the municipality pursuant to s. 53(1) of the Act and that the application for consent to sever meets the criteria set out in s. 51(24) of the Act. These criteria require that " regard shall be had, among other matters, to the health, safety, convenience, accessibility for persons with disabilities and welfare of the present and future inhabitants of the municipality and to,

- (a) the effect of development of the proposed subdivision on matters of provincial interest as referred to in section 2 of the Planning Act;
- (b) whether the proposed subdivision is premature or in the public interest;
- (c) whether the plan conforms to the official plan and adjacent plans of subdivision, if any;
- (d) the suitability of the land for the purposes for which it is to be subdivided;
 - (d.1) if any affordable housing units are being proposed, the suitability of the proposed units for affordable housing;
- (e) the number, width, location and proposed grades and elevations of highways, and the adequacy of them, and the highways linking the highways in the

proposed subdivision with the established highway system in the vicinity and the adequacy of them;

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

(g) the restrictions or proposed restrictions, if any, on the land proposed to be subdivided or the buildings and structures proposed to be erected on it and the restrictions, if any, on adjoining land;

(h) conservation of natural resources and flood control;

(i) the adequacy of utilities and municipal services;

(j) the adequacy of school sites;

(k) the area of land, if any, within the proposed subdivision that, exclusive of highways, is to be conveyed or dedicated for public purposes;

(l) the extent to which the plan's design optimizes the available supply, means of supplying, efficient use and conservation of energy; and

(m) the interrelationship between the design of the proposed plan of subdivision and site plan control matters relating to any development on the land, if the land is also located within a site plan control area designated under subsection 41 (2) of this Act or subsection 114 (2) of the City of Toronto Act, 2006. 1994, c. 23, s. 30; 2001, c. 32, s. 31 (2); 2006, c. 23, s. 22 (3, 4); 2016, c. 25, Sched. 4, s. 8 (2).

Minor Variance – S. 45(1)

In considering the applications for variances from the Zoning By-laws, the TLAB Panel must be satisfied that the applications meet all of the four tests under s. 45(1) of the Act. The tests are whether the variances:

- maintain the general intent and purpose of the Official Plan;
- maintain the general intent and purpose of the Zoning By-laws;
- are desirable for the appropriate development or use of the land; and
- are minor.

EVIDENCE

The hearing was held on 9 March, 2018. The Appellant, Frank Plesko and Participants Grace Rubba and Frank Colbourne represented themselves. The Applicant and Respondent to the Appeal, Jose Goncalves, was represented by Mr. Russell Cheeseman, lawyer and Mr. Frank Romano, planner.

Mr. Plesko presented his case first by virtue of being the Appellant. He recited the list of variances in their entirety and described the immediate vicinity of the property. Mr. Plesko described the neighbourhood as a short street with 17 homes on the east side and 17 homes on the west side. According to Mr. Plesko, there are five lots with 50 foot frontages on each side, all of which are on the north end of the street. The remainder of the lots on Frances Ave. have frontages which range from 25 to 45 feet. He added that the subject lot is in between two 50 foot lots, including 58 Frances Ave, which belongs to him.

Mr. Plesko was opposed to the severance because dividing the 50 foot lot would set a “precedent “ and result in the division of the remaining 50 foot lots on the street. He stated that the division of lots had become a regular occurrence in other neighbourhoods such as Long Branch, Alderwood, and on the west side of Mimico Creek, and saw the proposal as a continuation of what he perceives to be an unwanted trend of severances of lots. As a resident of Frances Avenue since 1967, Mr. Plesko’s preference would be for 56 Frances Avenue to remain a 50 feet by 140 feet lot and developed accordingly. Furthermore, Mr. Plesko questioned the need for severances on Frances Ave when “there is plenty of intensification in the area”, as exemplified by “Condominiums at the intersection of Parklawn Road and Lakeshore Blvd and townhouses at Grand Avenue and The Queensway.” Based on the existence of these condominiums in the vicinity of the subject property, Mr. Plesko asked if it was necessary to “ruin established neighbourhoods” with the proposed division and severances? Mr. Plesko also stated that the new houses had a “soldier like form” and were therefore not integrated well into the neighbourhood. He also stated that the height of the buildings would have significant impact in terms of shadowing and loss of sunlight in his back yard as well as loss of privacy. Given these impacts, Mr. Plesko concluded that the COA decision ought to be reversed and that the variances, as well as the consent to sever, be rejected in their entirety.

Mr. Cheeseman cross-examined Mr. Plesko. He asked Mr Plesko if he was a land use planner to which Mr. Plesko replied in the negative. Mr. Cheeseman then asked Mr. Plesko if he was aware of other 25 ft. lots in the community. Mr. Plesko replied that he was aware of such lots but asserted that they had not been severed. When Mr. Cheeseman asked Mr. Plesko the reason behind the assertion, Mr. Plesko said that he had been living in the community since 1967 and that the 25 feet lots being referred to by Mr. Cheeseman existed before he moved into the community. Mr Cheeseman suggested that the lots had not been severed after Mr. Plesko’s moving into the community but there was no evidence to demonstrate that the severances had not taken place before Mr. Plesko’s residing in the community. Mr. Cheeseman then asked Mr. Plesko if the variances before the TLAB were the same as what had been requested earlier of the COA, based on the zoning notice. Mr. Plesko said that he did not look at the zoning notice. Lastly, Mr. Cheeseman asked Mr. Plesko if he could agree that 56 Frances was not part of the Mimico community, to which Mr. Plesko agreed.

Mr. Romano, expert land use planner, was then introduced by Mr. Cheeseman. I qualified Mr. Romano as an Expert Witness in land use matters after Mr. Cheeseman reviewed Mr. Romano's academic and professional qualifications. Mr. Romano began his Examination- In- Chief with a description of the area in which the subject site was located. The Subject Site is located within the former municipality of Etobicoke; and may be broadly defined as the Humber Bay Neighbourhood which lies north of Queensway, east of Park Lawn Road and is bounded by Mimico Creek on the South and Humber River on the West. Frances Avenue is a local road that runs generally north-south within two blocks of Queensway. The neighbourhood's local road network consists of a mixed grid and curvilinear pattern interspersed with crescents and cul-de-sacs. The neighbourhood is also well-served by transit; TTC surface bus transit is available along both the Queensway and Park Lawn Road, providing connections to subway services.

Mr. Romano described the neighbourhood as including detached and semidetached residences interspersed with places of worship, library, retail, school, and parks, both within the interior and at the edges of the neighbourhood. According to Mr. Romano, the detached residential lots within the neighbourhood are varied in terms of lot size and configuration. He said that regardless of location within the neighbourhood, it is quite common to find lots that are undersized relative to the zoning by-law standards for lot frontage and/or lot area, though they co-exist in harmony with one another without any destabilizing impact. Mr. Romano then described how houses with different architectural styles co-existed with each other. For example, 52 Frances has side yard parking while 58 Frances is a recent construction with a two car integral garage with a sloped roof design. 53 Waniska has a 2 car garage at the back of the house. 69 Ringley has a predominantly flat roof, though one side is sloped

Commenting about how many lots complied with the standard lot frontage, Mr. Romano stated that over 79 % of the lots within the study area are below the required lot frontage of 13.5m applicable to the subject site. As it relates to 510 sq. m. lot area zoning provision, Mr. Romano stated there were "many undersized lots" and remarked that lot area data is not readily available for many lots. According to Mr. Romano, the absence of surveyed information leaves one with an approximate value only, especially for irregular shaped lots.

Speaking to how the community has been changing and evolving, Mr. Romano stated that the neighbourhood lot fabric has not remained static and that new lots have been created in the evolution of the neighbourhood. The new lots that have been created contribute to the varied lot size that is in keeping with the neighbourhood's lot fabric which includes lot frontages and/or lot areas that are undersized relative to the zoning by-law standards. He pointed out that a recent example of a similar severance is at 222 Park Lawn Road, to the west of the Subject Site.

Mr. Romano reiterated that the neighbourhood has also been experiencing reinvestment and regeneration in the form of new dwellings and building additions. This

investment typically results in dwellings that are larger in footprint, mass and/or scale, and occupy more space on each lot and are generally built to occupy the front central portion of the lot with modest side yard setbacks. Landscaped open space is typically located within the front and rear yards with the latter forming the main amenity space for individual properties. Mr. Romano opined that the more recent trend as it relates to parking solutions is to incorporate integral garages as part of a dwelling's built form, which may result in a split level first floor and influences the height of the dwelling.

Coming to the proposal itself, Mr. Romano stated that the proposal is to subdivide the existing lot into two and construct a new two storey detached dwelling upon each lot; the frontage and dimensions of each lot are: Lot frontage 7.62m, Lot depth 40.27m and Lot area 325.14 sq. m.

Mr. Romano then described the features of each of new two storey detached dwelling with an integral garage, proposed to be constructed on the severed lots:

- Front yard setback of 6.46m to create an appropriate front wall alignment along Frances Avenue.
- Side yard setbacks of complying exterior 1.22m, interior 0.45m and aggregate side yard setback on each lot of 1.67m.
- Rear yard setback of approximately 16.5m.
- Building length from front wall to rear wall of 16.9m to 17.8m, which also reflects the articulated building footprints.

Mr. Romano then described the heights of the proposed buildings and said that each building was two storeyed and at their highest points, would 9.36 m and 9.7 m, respectively. These highest portions are small, internally-oriented rooftop projections that accommodate parapet and atrium built form elements which contribute to the articulated building design. He pointed out that the building heights to the top of the roof measured from grade are, for 9.1 m for Part 1 and 9.4 m for Part 2. Each house would be provided with an integral garage ; and the houses will have gross floor areas of about 210 sq. m and 211 sq. m, representing a floor space index of 0.65 times the lot area. The front wall of the proposed homes aligns with that of neighbouring properties which results in a uniform streetscape.

Mr. Romano continued to describe the house and said that each house would be 18 m at the widest. Each house would have a "variation" between the 1st and 2nd floors, meaning that the floors would be of unequal length. The setbacks with neighbouring properties comply with the by-laws; the requested setback variances are on the inside between the new properties. Discussing the site plan, Mr. Romano stated that there are 2 levels of living space over an integral garage. The foyer is 1.2 m above grade. The edges of the building would be sloped and have eaves close to the lot line and the

height variances are caused by the integral garage. Mr. Romano stated that the outside yard setbacks, numbers of stories, soft landscaping and balcony size are also compliant. Referring to the harmonized bylaw, Mr. Romano explained the basis of the 7.2 m height limitation and said that it assumed that the garage was on the side without any consideration for an integral garage.

Addressing the Staff Report dated 11 July, 2017, Mr. Romano stated that the staff had no objections to the severance or variances excepting the height of the building. According to Mr. Romano, "it is there that there was a difference of opinion between the Applicants and the City staff". Mr. Romano read out the following sentence from the Staff Report "*However, staff still have concerns with the variances requested for building height, as they do not respect and reinforce the existing physical character of the neighbourhood*", and interpreted this to represent a comment not related to the four tests because there was no explicit reference to the 4 tests under Section 45(1). He pointed out that as documented in the application processing, the proposal did undergo revisions to reduce the height, size and scale of the proposed dwellings and minor variances. Mr. Romano reiterated that none of the circulated departments and agencies raised any concerns with the severance proposal, and pointed out that the Planning Staff report stated that "Staff do not object to the proposed consent to sever the property into two residential lots".

Mr. Cheeseman requested Mr. Romano to then review some of the height variances that had been approved for the community, as culled from the COA decisions. Mr. Romano's open remark focused on the reason for the 7.2 m height restriction under By-law 569-2013 and the 6.5 m restriction under the Etobicoke By-law 320 stating it was to restrict the construction of buildings with three storeys in a residential community dominated by two storeys, and that the heights referred to sloped roofs. He explained that the 7.2 m height assumed 2 storeys at 3 m each and 1.2 m for the height of the basement above ground. I asked Mr. Romano to classify the COA decisions that he referred to in his submissions into flat and pointed roofs. Mr. Romano responded by saying that while he researched COA decisions to identify comparators, he did not make site visits to establish the actual type of roof that the building had. However, in this case, it was possible to make a reasonable guess based on references to "soffits" in the decisions. The reference to soffits, according to Mr. Romano, was common under the Etobicoke zoning by-law, and could be used to identify sloped roofs since a soffit is associated only with a sloped roof. Of the examples provided by Mr. Romano, 233 Parklawn Ave., with a main wall height of 8.1 m and building height of 9.98 m, 61 Guthrie with an overall height of 9.67 m, 40 Guthrie with a main wall height of 8.53 m and overall height of 9.8 m, 39 Guthrie with an overall height of 7.92 m, were all identifiable as "sloped roof" because they all referred to soffits. The exceptions was 67 Ringley and 31 Smithfield with an overall height of 7.03 m and 8.1 m, which Mr. Romano opined, were "probably" flat roofed.

Referring to the Policy and Regulatory context, Mr. Romano stated that proposal is consistent with the 2014 Provincial Policy Statement (PPS), in particular Policies in Section 1.1.1 from 1.1.1.1. to 1.1.1.4 , Sections 1.4, 1.6 and 4.0 because the proposal properly implements the policy thrust and directions articulated in the PPS, through achieving an appropriate mix and range of housing, optimizing the use of land and making better, more efficient use of existing infrastructure.

Mr. Romano then addressed the Growth Plan for the Greater Golden Horseshoe (2017) and stated that the proposal was consistent with the Growth Plan because it implements intensification policies that achieve the objective of complete communities with transit-oriented growth focused within settlement areas, where a diverse range and mix of land uses residential is to be achieved.

Mr. Romano then discussed the proposal's ability to satisfy the 4 tests under Section 45(1) of the Planning Act.

According to Mr. Romano, the proposal confirms to, and maintains the general intent and purpose of the Toronto Official Plan (OP), because it satisfies the Planning Act consent criterion and first of the "four tests" for minor variance applications. He pointed out that the Subject Site has a "Neighbourhoods" Official Plan designation. Mr. Romano explained that the Official Plan contains policies that recognize that change within neighbourhoods will occur over a period of time and that such change should respect and reinforce the existing physical character of the neighbourhood. He also stated that Neighbourhoods policies do not require replication of existing physical character, but instead provide that new development should fit the general physical patterns of a neighbourhood implying that different patterns can be found within, and contribute to the character of a neighbourhood.

Mr. Romano pointed out specific policies in the Toronto Official Plan (OP) which permit modest intensification within "Neighbourhoods" in accordance with the urban structure policies in Section 2.3.1, the housing policies in Section 3.1.2, and development criteria found in Section 4.1 . Referring specifically to Built Form policies, Mr. Romano explained that the buildings will be oriented towards the street and preserve existing trees. Expanding on the concept of "fit", Mr. Romano emphasized that fenestration, as opposed to flat roofs and sloped roofs, is what needs to be examined to determine fit with this policy. In this instance, the proposed lot frontage, lot depth and lot area fit in well with those found in the neighbourhood. Mr. Romano then opined that the proposed building siting, size, height, scale and massing is appropriately proportionate to each proposed lot and compatible with the neighbourhood, and that proposed rear and side yard setbacks fit within the prevailing neighbourhood patterns. Mr. Romano then said that the Official Plan emphasized new development respecting and reinforcing the physical characteristics of buildings, streetscapes and open space patterns in the neighbourhood. The proposal appropriately addresses the built form policies, which effectively direct a compatibility assessment. . Mr. Romano also referred to Section 4.1.1 of the OP which discusses physically stable neighbourhoods, which he interpreted

to mean that houses are not homogenous nor cookie cutter type houses to respect and reinforce neighbourhood stability. Mr. Romano then interpreted Policy 4.1.5, where the notable points are that “prevailing” type of housing was interpreted to mean “detached” while Sections e- f were interpreted to refer to the prevailing side yard setbacks which are tight to modest.

Based on these discussions, Mr. Romano concluded that the proposals for the 2 houses complied with the Official Plan.

Mr. Romano then addressed the 2nd test to demonstrate consistency with zoning. He said that the zoning for this house came under R2 zone under the Etobicoke Zoning Code and RD zoning under 569-2013. In his opinion, the proposed variances, individually and cumulatively, meet the general intent and purpose of the Etobicoke Zoning Code 320 and Zoning By-law 569-2013, as amended, satisfying the second test for minor variance. He opined that the proposal reflects a reasonable and appropriate site development condition that is appropriate with this urban environment and individual performance standards applicable to the site development. With respect to the height variance, Mr. Romano noted that the proposed height for each lot still maintained a low rise, two storey residential built form not dissimilar to other dwellings in the neighbourhood nor to what could be constructed with a more sloped, or hybrid roof architectural design.

Specifically discussing some of the variances, Mr. Romano said that in the case of Variance no 4, the intent of the standard is to deploy the area over 2 floors and that the FSI was therefore reasonable. Likewise in the case of Variance 5, the purpose is to achieve appropriate spatial separation for cleaning purposes. In the case of Variance 6, the purpose is to ensure that the building does not “move” into the backyard, which is satisfied here. The standard behind variance 7 is to achieve a two storeyed building, which is fulfilled here

Mr. Romano then discussed the proposal’s being compatible with the test of being minor. He stated that in his opinion, the proposal creates no unacceptable adverse impact. The proposed lot size and built form condition is one that is reasonable within the Subject Site's physical context. The building siting and built form is reasonable and commensurate with any site redevelopment, particularly in the context of this urban neighbourhood. The proposal will not cause any unacceptable adverse impacts such as shadowing, privacy or overlook.

In Mr. Romano’s opinion, the order of magnitude of the minor variance request is reasonable and maintains a compatible detached residential land use that can be suitably accommodated on the Subject Site.

Lastly, referring to the test for appropriate development, Mr. Romano asserted that the proposal represents an appropriate, reasonable and compatible site development for this neighbourhood. He said that the proposal will contribute to the mixed housing

character of the neighbourhood while incorporating compatible and complementary built form and site design characteristics. Mr. Romano opined that the variances would facilitate, for this lot, a reasonable-sized home with appropriate standards, interface and a functional design that is compatible with recent development trends. He emphasized that the kinds of variances requested in the proposal exist in the neighbourhood. In his opinion, the proposal is within the planning framework, and the public interest, and is desirable for the appropriate use and development of the land.

At this stage, Mr. Cheeseman remarked that the evidence had satisfied the requirements of the *De Gasperis* decision.

Summarizing his opinion, Mr. Romano stated that the Subject Site's physical and planning instrument context support the proposal. The proposed consent and minor variances, he asserted, would result in a lot size reflective of the neighbourhood's physical context in a manner that respects and reinforces that context with no unacceptable adverse impact. He conceded that there would be an increase in impact with reference to shadowing and overlook from windows and decks. However, there is no impact on privacy as a result of the requested height increase, in Mr. Romano's opinion. He therefore concluded that the proposal satisfied all the consent criteria and all four tests for a minor variance. The proposal represents good planning. The consent should be approved subject to the conditions imposed by the COA and the list of variances should also be approved as contained in the COA decisions, subject to standard conditions contained therein.

Mr. Cheeseman then asked Mr. Romano to briefly speak to the consent to sever with specific reference to Sections 53 and 51(24) of the Act. He asked Mr. Romano if a Plan of Subdivision was necessary for this proposal to which Mr. Romano replied in the negative. Referring to the consent criteria listed in Section 51(24), Mr. Romano spoke very briefly to the criteria and asserted that the proposal satisfied all the criteria under Section 51(24). Mr. Cheeseman asked him if some of the criteria labelled (a)- (m) under Section 51(24) were relevant. Mr. Cheeseman agreed that not all criteria are relevant and recited the relevant criteria in quick succession, such as Provincial interest, gentle intensification, consistency with the Official Plan, no changes to lot patterns and the lack of site plan control. Mr. Romano then quickly reviewed the Consent Conditions and stated that these conditions were standard conditions imposed on any severance and that there was no condition unique to the proposed severance of 56 Frances. The conditions referred to confirmation of payment of outstanding taxes, assignment of municipal numbers to the satisfaction of relevant authority, forestry conditions, submission of copies of the registered reference plan in the appropriate numbers of paper and electronic versions, and the need to fulfill the aforementioned conditions within one year.

Based on this discussion, Mr. Romano concluded that the severance of the property satisfied all provincial criteria, provisions under Section 51(24) and was in the public

interest. Based on these conclusions, he recommended that the TLAB approve the consent to sever the property.

Mr. Plesko then cross-examined Mr. Romano by virtue of being the Appellant. Mr. Plesko commenced his questioning by referring to the summary chart presented by Applicants. He asked Mr. Romano about the numbering system for houses built next to each other, on severed lots. Mr. Romano responded by saying that the City would assign a number to the houses. Mr. Plesko then asked if one could infer that there were no severances where the houses had consecutive even numbers (e.g. 222, 224 and 226). Mr. Romano responded by saying that no such inferences could be drawn. Mr. Plesko then asked Mr. Romano about one of the houses the latter had referred to in his examination in chief, 67 Ringley Road. Mr. Plesko asked Mr. Romano to clarify if 67 Ringley had a flat roof or a sloped roof? Mr. Romano brought up a picture of 67 Ringley and said that the picture demonstrated a flat roof interpretation and not a sloped roof, based on his understanding. Mr. Plesko then pointed out that the 2nd floor of the proposed building was higher than the 2nd floor of his house and questioned Mr. Romano about the mutual compatibility of the two houses. Mr. Romano said that the proposed build had no shadowing impact on the neighbouring houses and was therefore compatible with the neighbourhood. Mr. Plesko then pointed out that difference of height of 2.1 m between the buildings equalled a floor and asked Mr. Romano to comment on this. Mr. Romano said that the garage was essentially "bumping" up the height

The last witness to speak was Ms. Grace Rubba. She stated that she was the owner of 219 Park Lawn Road, Etobicoke, which had been residential home for 20 years. She said that her property, located behind 56 Frances Avenue and that the backyards abutted each other. She stated that she was opposed to the Notice of Decision – Consent issued by the Committee of Adjustments dated 27 July, 2017, specifically in relation to the heights of the two (2) new detached flat-roofed dwellings proposed for 56 Frances Avenue. Referring to the zoning requirements, Ms. Rubba stated that the proposed dwelling height on the north side of 56 Frances Avenue will be 9.36m which is 2.16m over the maximum limit, and the proposed dwelling height on the south side will be 9.7m which is 2.5m over the maximum limit.

Ms. Rubba went on to interpret Section 4.1.5 of the Official Plan and stated that proposed heights of the new dwellings on 56 Frances Avenue well exceeds the maximum limit provided for by the by-laws and as a result, would greatly diminish the enjoyment of her property in many ways. She was concerned with large shadow cast by the proposed houses onto her backyard, which would significantly reduce the amount of sunlight received in the morning. With such large windows and decks on the back of the new dwellings, the heights of these windows and "floor to ceiling glass doors", she was concerned that the residents of the dwellings to be built on the severed lots at 56 Frances would have an unobstructed "bird's eye" view into her bedroom, with a very severe adverse impact on her privacy.

Lastly, Ms. Rubba referred to the Staff Report on the COA Application dated 11 July, 2017, where they were “of the opinion that the variances requested for building height for each of the proposed new dwellings are not in accordance with the general purpose and intent of the Official Plan and Zoning By-law(s)” and recommended that the application be deferred. Based on this, she asked that the height variances be refused.

In his cross examination, Mr. Cheeseman showed Ms. Rubba the picture below and stated that there was a 16 m separation between the house and the property line. He added that the picture had been taken from the house at 56 Frances looking out at the west lot line and asked Ms. Rubba to identify her house in the picture.



Ms. Rubba began by saying that she couldn't identify her house because she couldn't see it. She pointed to the tree that appears prominently in the backyard (editorial comments: this is the tree with a path leading to it, the path can be seen on the side of the shed) and commented that the tree no longer existed. She then wanted to know when the picture had been taken. Mr. Plesko stated from the audience that the tree in the background no longer existed and that one couldn't see Ms. Rubba's house in this picture. I ruled Mr. Plesko out of order and asked him not to interfere with the exchange between Ms. Rubba and Mr. Cheeseman. Mr. Cheeseman then stated that he didn't have to answer Ms. Rubba's question and then repeated his question to Ms. Rubba about pointing out the location of her house. Ms. Rubba stated that it was somewhere behind the tree in the picture but the house couldn't be seen because of her tree. She reiterated that the tree had been cut down, and that her house would have been visible in an updated photograph.

Mr. Cheeseman asked Ms. Rubba if she had trees on her side of the property line if privacy was an issue. Ms. Rubba stated that she had to cut the tree at the back of her property because it was old and had not replaced it. Mr. Cheeseman then discussed building as of right and asked Ms. Rubba if she knew that one can build a huge house pursuant to the by-law and peaked roof with large windows and the impact would not be any different from what was proposed because of the placement and size of the windows. Ms. Rubba said that she did not know the answer to Mr. Cheeseman's question, and said that she knew that somebody could look into her backyard from the existing house but what troubled her was that people could look straight into her bedroom. Mr. Cheeseman asked her if she closed her blinds because "it was a bedroom" to which Ms. Rubba applied in the affirmative, after which Mr. Cheeseman concluded his cross examination.

Mr. Plesko then asked Ms. Rubba an incomprehensible question along the lines of "where would one have to be to get at the balcony"? Ms. Rubba said that she didn't know. I got Mr. Plesko to repeat the question twice in order to understand what he was getting at but couldn't understand the question.

Mr. Jackson, who had registered as a Participant, said that he had nothing to add.

The two Parties summarized their arguments. Mr. Plesko said that the Appeal should be allowed and the request to sever refused because the 50 foot lots should be left intact. He disagreed with the height comparison because the comparators were 2 storey buildings with peaked roofs. He then stated that the soffit of his house was at the same height as the second floor of the planned building and they had a whole floor higher than that which was excessive from Mr. Plesko's perspective.

Mr. Cheeseman pointed out that land use evidence provided by the Expert Witness Mr. Romano was uncontroverted and should therefore be accepted. He stated that criteria set out in Section 51(24) had been met. He stated that no evidence had been presented by the Appellants about their soffit having the same height as the 2nd floor of the

proposal. He ended by stating that the appeal should be refused in its entirety and that the COA decision should be allowed to stand.

ANALYSIS, FINDINGS, REASONS

I begin with an analysis of the consent to sever followed by the variances. The reason behind this is that the discussion of approving the variances becomes redundant if the consent to sever application is unsuccessful.

There are 2 different perspectives regarding the consent to sever: Mr. Plesko's perspective about not severing the property is rooted in his fears of seeing the community morph into the next Mimico, where despite a strong polarization of community opinion on the issue of consents to sever, there have been a number of successful severances. He wants to retain the existing property at 56 Frances as is and asks why properties in his neighbourhood have to be divided to create more houses when there is such a proliferation of condos on arterial roads in the vicinity. These perspectives, which range from speculative to rhetorical, share a common property; namely the preservation of properties in their present state, which contradicts the premise of provincial and official policies, which arguably support, intensification and gradual change, in some circumstances.

The alternative perspective on the severance was provided by Mr. Romano whose discussion of the application of Section 51(24), was very brief, and did not provide any significant depth. Notwithstanding this critique, it is noted that Mr. Romano is an Expert Witness, whose perspectives on planning were not challenged in any way by the other Parties and Participants. His discussion of Section 51(24), however brief, contrasts with the rhetoric of Mr. Plesko's argument, and is consistent with the pyramid of policies, provincial and local. Mr. Romano's analysis of the lot sizes in the community demonstrated that the majority of lots area are smaller than the prescribed frontage and that the frontage of the severed properties as proposed, would be closer to the norm rather than the exception. Based on the statistical analysis and adherence between the proposed severance and the policy framework, the consent to sever may be granted.

In other words, on the matter of the consent, the decision of the COA to grant the severance, dated 27 July 2017, is herewith affirmed, along with conditions to be imposed. I agree with Mr. Romano that the conditions to be imposed are standard and are not unusual in any form; further, the conditions are acceptable to the Applicants and can therefore be imposed without any concerns.

The standard conditions, as suggested by Mr. Romano, may therefore be imposed on the consent to sever the property

I then turn to the variances, which relate to FSI, lot coverage, frontage, area and height. Mr. Romano's evidence was for the most part, not contradicted, and demonstrated compatibility between the proposal and the existing policy framework. The frontage and area variances were effectively considered and approved when the severance was

supported, and therefore need not be re-examined in this discussion. The impact of the setbacks between the houses can't be determined because they have not been built; however the mutual impact on each other seems comparable to what already exists. It is also important to note that the opposition, consisting of Mr. Plesko and Ms. Rubba, did not complain about any of the variances with the exception of the height variances. The height variances need to be examined closely, for a number of reasons, including concerns expressed by neighbours and the City.

One experiences a certain discomfort after reading the City staff report from mid-2017 which regarded the heights as being excessive, even after they were reduced by the applicants. When asked to discuss the Staff Report, Mr. Romano stated that there was "a difference of opinion" between the Applicants and City Planners. He read out the following extract from the report:

"However, staff still have concerns with the variances requested for building height, as they do not respect and reinforce the existing physical character of the neighbourhood".

Mr. Romano then interpreted the comments, as not being germane to the 4 tests. I disagree with his conclusion since the Staff report continues to state the following:

"Building height provisions are devised, in part, to maintain a consistent pattern of development. The maximum permitted building height for flat roof dwellings is 7.2 metres under the City-wide Zoning By-law No. 569-2013 and 6.5 metres under the Etobicoke Zoning Code. The proposed building heights of the detached dwellings are 9.36 metres (Part 1) and 9.7 metres (Part 2). Planning staff are of the opinion that the variances requested for building height for each of the proposed new dwellings are not in accordance with the general purpose and intent of the Official Plan and Zoning By-law(s)."

The last sentence demonstrates the nexus between the expressed concerns and the 4 tests under Section 45(1).

The evidence regarding granting of height related variances from the corpus of COA decisions was largely slanted towards sloped roofs rather than the flat roofs sought by the applicants. The flat roof related height variances granted by the COA are significantly lower than what is sought by the applicants. However, the more important aspect to be examined is the actual impact of the variances, as opposed to numbers.

On the matter of impact arising from the requested height, Ms. Rubba asked that the height variances be refused because of the reduction in sunlight and privacy, because it enabled the residents of the proposed houses to stare into her bedroom from their decks which had ceiling to floor glass doors. The fact that there would be an increased impact was not disputed by the Applicants; Mr. Romano conceded the same in his discussion of the 4 tests, though his depiction of the impact in his narrative was significantly less intense when compared to Ms. Rubba.

To clinch the issue of impact, the applicants introduced the picture included in this decision, to demonstrate the vast distance between the houses, and how this attenuated the impact. They were trying to demonstrate the distant and obscure nature of the mutual visual impacts. In keeping with the adage about a picture being worth a thousand words, the picture may have clinched the visual impact issue except for Ms. Rubba's insistence that her house could not be seen because the tree that dominates the background of the picture no longer exists. The fact that the tree does not exist any longer was not explicitly challenged by the Applicants. Even if I discount Mr. Plesko's vigorous protests from the audience in support of Ms. Rubba, I can't help but conclude that the tree in the background, which effectively contributes to a visual barrier between the houses, no longer exists. There was no other visual evidence to demonstrate the lack of impact on Ms. Rubba's privacy.

In the absence of pictorial information, it is difficult to determine whether one can look into Ms. Rubba's bedroom. The remedy of closing the blinds or drapes to protect one's privacy in the bedroom, is not preferred, because it places the onus on the respondent and not on the Applicant. While one can extrapolate the impact of how houses would mutually look when separated by 16 m, extrapolation is no substitute for actual evidence, especially in relation to sensitive matters such as privacy.

The unease about the impact of the heights of the proposed houses on the neighbour's privacy, has resulted in an enhanced concern as I analyzed more evidence. This concern has not been allayed by the evidence in terms of pictures or explanations about the City reports, or reliance on separations of 16 m or more. Based on this reasoning, I conclude that it would be advisable to err on the side of caution, and refuse the height variances. I note that both the building length as well as the height can impact the privacy issue, but restrict the refusal only to the height variances, since there was no concern related to the length related variances by the Respondents or the City.

The other variances are approved since they have satisfied the 4 tests based on the evidence from Mr. Romano, which I accept; they have not been significantly challenged by the opposition.

Given that the height of the building was caused mainly by the presence of the integral garage, it may be necessary to redesign the houses. As a result, the standard condition about construction in strong conformity with the site plans and elevations is not included, nor are the Site and Elevation Plans included with the Decision at this point in time. The Applicant is given 3 (three months) to submit revised elevation plans for Part 1 and Part 2 consistent with the approved variances herein, which will then become part of this Decision. The Applicant may contact TLAB to discuss any difficulties arising from the decision herein, including the requirement to produce compliant elevation plans. In the absence of receipt of revised elevations plans, appeal respecting variances may be allowed in its entirety, which means that all the requested variances are refused. The Decision respecting the severance, would however not be impacted, should such a scenario arise.

DECISION AND ORDER

1. The Appeal is allowed in Part, with respect to the height variances, which are refused.
2. The decision of the Committee of Adjustment is confirmed with respect to the consent to sever the properties:

Retained - Part 1

Address to be assigned

The lot frontage will be 7.62 m and the lot area will be 325.14 m². The existing dwelling will be demolished and the property will be developed as the site of a new detached dwelling with an attached garage and will require variances to the Zoning By-law, as outlined in Application A0162/17EYK.

Conveyed - Part 2

Address to be assigned

The lot frontage will be 7.62 m and the lot area will be 325.14 m². The existing dwelling will be demolished and the property will be developed as the site of a new detached dwelling with an attached garage and will require variances to the Zoning By-law, as outlined in Application A0163/17EYK.

3. The following variances are approved:

56 FRANCES (PART 1)

REQUESTED VARIANCE(S) TO THE ZONING BY-LAW:

1. Section 10.20.30.10.(1)(A), By-law 569-2013

The minimum required lot area is 510 m².
The new lot area will be 325.14 m².

2. Section 10.20.30.20.(1)(A), By-law 569-2013

The minimum required lot frontage is 13.5 m.
The new lot frontage will be 7.62 m.

3. Section 10.20.30.40.(1)(A), By-law 569-2013

The maximum permitted lot coverage is 33% of the lot area (107.3 m²).
The new dwelling will cover 37.65% of the lot area (122.4 m²).

4. Section 10.20.40.40.(1)(A), By-law 569-2013

The maximum permitted floor space index 0.45 times the area of the lot (146.3 m²).
The new dwelling will have a floor space index of 0.65 times the area of the lot (210.28 m²).

5. Section 10.20.40.70.(3)(C), By-law 569-2013

The minimum required side yard setback is 1.2 m.

Section 320-42.1.C.(1)

The minimum required side yard setback is 0.9 m and the aggregate width of both yards shall not equal less than 2.1 m.

Section 10.20.40.70.(3)(C), By-law 569-2013 and Section 320-42.1 C (1)

The new dwelling will be located 0.45 m from the south side lot line and 1.22 m from the north side lot line and will have an aggregate side yard setback of 1.67 m.

6. Section 10.20.40.20.(1), By-law 569-2013

The maximum permitted building length is 17 m.

The new dwelling will have a length of 18 m

8. Section 10.5.40.10.(5), By-law 569-2013

A minimum of 10 m² of the first floor must be within 4 m of the front main wall.

A total of 3.7 m² of the first floor will be located within 4 m of the front main wall.

56 FRANCES AVE (PART 2)

REQUESTED VARIANCE(S) TO THE ZONING BY-LAW:

1. Section 10.20.30.10.(1)(A), By-law 569-2013

The minimum required lot area is 510 m².

The new lot area will be 325.14 m².

2. Section 10.20.30.20.(1)(A), By-law 569-2013

The minimum required lot frontage is 13.5 m.

The new lot frontage will be 7.62 m.

3. Section 10.20.30.40.(1)(A), By-law 569-2013

The maximum permitted lot coverage is 33% of the lot area (107.3 m²).

The new dwelling will cover 37.46% of the lot area (121.79 m²).

4. Section 10.20.40.40.(1)(A), By-law 569-2013

The maximum permitted floor space index 0.45 times the area of the lot (146.31 m²).

The new dwelling will have a floor space index of 0.65 times the area of the lot (211.27 m²).

5. Section 10.20.40.70.(3)(C), By-law 569-2013

The minimum required side yard setback is 1.2 m.

Section 320-42.1.C.(1)

The minimum required side yard setback is 0.9 m and the aggregate width of both yards shall not equal less than 2.1 m.

Section 10.20.40.70.(3)(C), By-law 569-2013 and Section 320-42.1 C (1)

The new dwelling will be located 1.22 m from the south side lot line and 0.45 m from the north side lot line and will have an aggregate side yard setback of 1.67 m.

6. Section 10.20.40.20.(1), By-law 569-2013

The maximum permitted building length is 17 m.

The new dwelling will have a length of 18 m.

8. Section 10.5.40.10.(5), By-law 569-2013

A minimum of 10 m² of the first floor must be within 4 m of the front main wall.

A total of 3.7 m² of the first floor will be located within 4 m of the front main wall

4. The following variances are refused:

56 FRANCES (PART 1)

7. Section 10.20.40.10.(4)(A), By-law 569-2013

The maximum permitted height for a flat roofed dwelling is 7.2 m.

Section 320-42.1.B.(2)

The maximum permitted height for a flat roofed dwelling is 6.5 m.

Section 10.20.40.10.(4)(A), By-law 569-2013 and Section 320-42.1.B.(2)

The new dwelling will have a flat roofed height of 9.36 m.

56 FRANCES AVE (PART 2)

7. Section 10.20.40.10.(4)(A), By-law 569-2013

The maximum permitted height for a flat roofed dwelling is 7.2 m.

Section 320-42.1.B.(2)

The maximum permitted height for a flat roofed dwelling is 6.5 m.

Section 10.20.40.10.(4)(A), By-law 569-2013 and Section 320-42.1.B.(2)

The new dwelling will have a flat roofed height of 9.7 m

5. The following conditions are imposed on the consent to sever:

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

b) 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, Engineering Services, Engineering and Construction Services.

- c). The applicant shall satisfy all conditions concerning City/Private owned trees, to the satisfaction of Urban Forestry Services.
- d). 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 Urban Forestry Services.
- e). **Two copies of the registered reference plan of survey** integrated to NAD 83 CSRS (3 degree Modified Transverse Mercator projection), delineating by separate Parts the lands and their respective areas, shall be filed with the Manager of Land and Property Surveys, Engineering Services, Engineering and Construction Services.
- f). **An electronic copy of the registered reference plan of survey** satisfying the requirements of the Manager of Land and Property Surveys, Engineering Services, Engineering and Construction Services, shall be filed with the Committee of Adjustment.
- g). 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 and submit 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.

6. The following conditions are imposed on the variances which were approved for both the retained and conveyed parts, 56 Frances (Part 1), and 56 Frances (Part 2), respectively:

- a). The variances approved by this decision are subject to the Applicant providing revised elevation plans for Part 1 and Part 2 consistent with the approved variances herein, within **three (3) months of the date** of this decision, failing which the appeal is allowed in its entirety and the variances are refused. Such elevations, upon receipt, shall form part of the Decision and Order as Attachment 1. In the event there is difficulty arising from the decision herein, including the requirement to produce compliant elevation plans, the TLAB may be spoken to.'

X



S. Gopikrishna
Panel Chair, Toronto Local Appeal Body