

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): SHAIRYAR AHMED MALIK

Applicant: NADEEM IRFAN

Property Address/Description: 686 COSBURN AVE

Committee of Adjustment Case File Number: 17 229100 STE 31 CO, 17 229141 STE 31 MV, 17 229150 STE 31 MV

TLAB Case File Number: **18 110743 S53 31 TLAB, 18 110752 S45 31 TLAB, 18 110755 S45 31 TLAB**

Motion Hearing date: Tuesday, July 03, 2018

DECISION DELIVERED BY D. Lombardi

APPEARANCES

Name	Role	Representative/Counsel*
Shairyar Ahmed Malik	Primary Owner	
Nadeem Irfan	Applicant	
Deepak Bhatt	Applicant's Expert Witness	
City of Toronto	Party	D. Elmadany*
Stephanie Hong	Expert Witness (City of Toronto)	
Carmelo Perricone	Participant	
Sarah Evans	Participant	

INTRODUCTION

By decision dated January 10, 2018, the Toronto and East York Panel of the Committee of Adjustment (COA) of the City of Toronto (City) dismissed applications for the severance of 686 Cosburn Avenue (subject property) and associated variances. The applicant proposed removal of an existing two storey single detached residence and its replacement by two new three-storey single detached dwellings on the divided lot.

The subject property is located on the north side of Cosburn Avenue in the former Borough of East York, now within the City. Immediately to the west of the subject property is the East York Collegiate Institute as well as the East York Alternative School lands.

The property is designated "*Neighbourhoods*" in the Official Plan, which requires new development in established residential areas to respect and reinforce the existing physical character of the surrounding neighbourhood, including scale and massing of buildings. The property is zoned R1A in Zoning By-law 6752 (the existing By-law) of the former Borough of East York and RD (f(.0; a280; d0.45) in Zoning By-law 569-2013 (the new By-law). The purpose of the Zoning By-law is to respect and reinforce a stable built form and to limit the impact of new development on adjacent properties.

BACKGROUND

A previous application (COA File No. B0067/16TEY) for a severance, with associated minor variance applications (COA File No. A0983/16TEY and A0984/16TEY) was refused before the COA on November 30, 2016.

For the purposes of the proposal, the owners of the subject property filed three applications to the COA on November 27, 2017, which represent the current proposal before the TLAB. The three applications can be summarized as follows:

- a) An application for consent to sever the subject property into two lots comprised of four parts on a draft reference plan being identified as: the conveyed lot designated as Part 2 and Part 3; and, the retained lot being designated as Part 1 and Part 4. Part 3 and Part 4 will be a 1.44 metres portion of land dedicated to the City for a future road widening on Cosburn Avenue (COA File No. B0092/17TEY);
- b) An application to vary the new By-law, as amended, and the existing By-law in respect of the lot to be conveyed (being Part 2 and Part 3) as a result of the consent application for the subject property; and
- c) An application to vary the new By-law, as amended and the existing By-law in respect of the lot to be retained (being part 1 and part 4) as a result of the consent to sever application for the subject property.

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More specifically, the owners sought the approval to sever one lot into two, and to construct upon each a three-storey, single detached dwelling for a total of two new buildings. The variance Applications sought the approval of eighteen individual variances in order to permit the proposed development. The relief being sought included permission for:

- i. Increased roof eaves projections;
- ii. Substandard parking space located in front of the main front wall;
- iii. Substandard lot area;
- iv. Substandard lot frontage;
- v. Increased lot coverage;
- vi. Increased building height;
- vii. Substandard side yard setbacks;
- viii. Increased floor space index;
- ix. Increased number of storeys; and
- x. Substandard front yard setbacks.

The COA received comments from City Planning staff related to the consent and minor variance applications.

City Planning staff, in their report dated December 21, 2017, noted that the proposed severance did not meet the provisions of Section 51(24) of the *Planning Act* (the *Act*), particularly Sections 51(24) (c), (f) and (g) addressing conformity to the Official plan and dimensions and shapes of the proposed lots, and restrictions on the land proposed to be subdivided, respectively.

Staff was of the opinion that the two lots being created do not match the size and configuration of lots found in the area. Staff noted that the subject property is zoned R1A/RD in the two By-laws, which allow for lots to have a minimum lot frontage of 9.0 m and a minimum lot area of 280 m², whereas the proposed lot frontages are 6.24 m and 6.26 m, and the lot areas are 167.7 and 173.80 m², respectively.

Given that the proposed lots are deficient in size and area for the zoning category of the subject property, staff noted that they are also deficient when compared to the south side of Cosburn Avenue where a denser form of development is permitted. In this regard, Planning staff was of the opinion that the proposed severance does not respect and reinforce the existing physical character of the neighbourhood. As such, the severance does not have regard for s. 51(24) of the *Act*.

Planning staff also noted concern with the density proposed for the severed lots. Staff suggested that density is indicative of 'overdevelopment' and opined that the proposed density is much greater than the maximum permitted 0.45 times the area of the lot and is greater than any approved variances in the neighbourhood. Planning staff noted that a search of nearby approvals in the R1A/RD zone showed no COA minor variance approvals higher than 0.81 times the area of the lot.

I highlight these comments from Planning staff as they are relevant to the City's objection to this development and are addressed in testimony given by City's land use

planning expert, who authored the Staff report and which is referenced later in this decision.

On January 10, 2018, the COA refused the consent and associated minor variance applications, and the owners subsequently appealed the COA's refusal decision to the TLAB on January 29, 2018. The TLAB set a hearing date of July 3, 2018 to hear the appeal.

The owner, Mr. Shairyar Ahmed Malik, who is also the Appellant in this matter, filed a Notice of Appeal (Form 1) on February 22, 2018, outlining the grounds for the appeal. These grounds are listed in Part 6 of the Notice, and specifically in Paragraph C), and can be summarized as follows;

1. The proposed consent conforms to the 'Infill and Intensification' policies of the Provincial Policy Statement 2014 (PPS), The Growth Plan for the Greater Golden Horseshoe (Growth Plan), and the Building Better Communities Act 2017.
2. The consent application is in the public interest and will not set a precedent for the neighbourhood as there is no other property in the area with similar irregular dimensions.
3. The proposed development conforms to the '*Neighbourhoods*' policies in the City's Official Plan and is similar to development on the south side of Cosburn Avenue.
4. The proposed lot sizes are suitable for development and utilize available infrastructure.
5. The proposed dwellings will be energy efficient.
6. The dedication of the 1.44m road widening to the City will contribute to a safer street and pedestrian-friendly movements.

The City of Toronto noted its opposition to the applications through a Notice of Intention to be a Party filed on January 29, 2018. In addition, Mr. Carmelo Perricone, residing at 60 Binswood Avenue, also expressed objection to the proposed development and filed a Notice of Intention to be a Participant on March 14, 2018.

MATTERS IN ISSUE

The applications and appeal before the TLAB were neither novel nor complex. In my view, at issue was whether the Appellant's severance of the lot for the purpose of introducing infill housing in the form of 'gentle' intensification in this East York neighbourhood was appropriate and fit the physical character of the area.

Resulting from the severance was the need to address zoning relief in the form of minor variances to permit construction on the undersized lots of the specific dwellings proposed. The requested variances from the pending new Zoning By-law and the specific provisions of the existing By-law are set out in Attachment 1 to this decision.

From a planning perspective, a number of questions arise as a result of the proposed severance and corresponding variances; the key one being whether both of

the lots being created by the severance are considered substandard in size. And, more importantly, do the proposed lot sizes respect and reinforce the established dimensions and configuration of the existing lots in the neighbourhood, particularly as they relate to those on the north side of Cosburn Avenue.

In opening remarks, the contrasting positions of the Appellant and the City were succinctly stated by the City solicitor, Mr. Elmadany. Namely, new lots optimizing in a modest way the efficient use of land through the demolition of a substandard, dilapidated dwelling and the introduction of compatible 'infill' housing; versus, it is not good planning to permit oversized homes on undersized lots that are not reflective of the unique character of the neighborhood on the north side of Cosburn Avenue.

From the City's perspective, the question is whether the resulting development will fit the context of the neighbourhood given that area north of Cosburn Avenue is contextually different in built form and the prevailing building type to the area on the south side.

The City raised the issue of the visceral look and feel of the established neighbourhood and questioned whether the overall neighbourhood character of larger lots and detached homes considered the norm north of Cosburn Avenue would be altered by allowing smaller lots and narrower homes more typical of a distinctive area south of Cosburn Avenue.

The Appellant and the City agreed to disagree on the aspects of this divide. They also disagreed on the applicability of OPA 320, an adopted policy initiative of the City that updates the Plan's '*Neighbourhoods*' policies that was under appeal. The City indicated that it would not substantially rely on this documentation, but not that it was not applicable.

I ruled that OPA 320 would be admissible, that its weight was a matter for the evidence but that it would not be determinate of the matters in issue. Ultimately, OPA 320 was discussed by the City and does appear later as part of these reasons.

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,

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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 Applicant, Mr. Nadeem Irfan, called Deepak Bhatt to provide expert land use planning evidence in support of the consent and minor variances being requested by the Appellant.

Prior to Mr. Bhatt's testifying, the City solicitor questioned Mr. Bhatt's Curriculum Vitae (Exhibit H) and requested clarification regarding his relationship to the Applicant, as well as his professed experience in the preparation of planning documents (i.e., Official Plan and Zoning By-law Amendments) in the City of Toronto.

With respect to the former, Mr. Bhatt confirmed that he is currently employed as Policy Planner II for the City of Pickering and that he was retained as a planning consultant by the Applicant shortly after the appeal was filed with the TLAB. He confirmed that he has been given authorization by his current employer to work on this project.

As to the latter, Mr. Bhatt referenced Paragraph 1.1.5 of his CV (Exhibit H) and confirmed that he had prepared an Official Plan Amendment for an area in the northeast section of the City and that he was familiar with the City's Official Plan.

While I found Mr. Elmadany's probative queries were informative they were nevertheless inconsequential to me, as I advised counsel that Mr. Bhatt's testimony and evidence would be of far greater weight, and potentially instrumental in the determination of the matters at issue.

I qualified Mr. Bhatt as a professional land use planner capable of giving expert opinion evidence on land use planning matters. Mr. Bhatt was initially retained by the Applicant to provide land use planning support for the proposed development and his retainer was extended to include providing fair, objective and non-partisan opinion evidence in support of the appeal before the TLAB.

In his witness statement (Exhibit H) and evidence set out in a chart (Exhibit B), Mr. Bhatt summarized the dimensions of the subject property and outlined the proposal. He described the subject property as an *'irregular shaped'* lot containing a fifty year old one storey residential dwelling that he noted is legal non-compliant to the current Ontario Building Code requirements for insulation, energy and accessibility criteria. The

subject property has a lot frontage of 12.52 m and a lot area of approximately 353.83 m².

In attempting to relate the proposed development to the neighbourhood context, Mr. Bhatt established what I would characterize as a rather constrained Study Area, the boundaries of which were noted as being within a 100 metres radius of the subject property. More specifically, Mr., Bhatt identified the Study Area boundaries as Coxwell Avenue to the west, Fairside Avenue to the east, Roblin Avenue to the north, and Virginia Avenue to the south.

Mr. Bhatt readily acknowledged the limitations of his Study Area. He admitted that it was a small, focused area and that the boundaries were determined based on the notification radius used by the COA to notify residents of this proposal.

He confirmed that he examined 50 lots in total, tending to concentrate his analysis on lots along Cosburn Avenue specifically. Using the Lot Frontage Chart and attendant colour mapping in Exhibit C, Mr. Bhatt highlighted 16 lots in the Study Area that he suggested were comparative lot frontages and areas similar to those being proposed for the subject property.

In addition, Mr. Bhatt referenced compendium documents, COA/TLAB Decisions for Comparative Evidence 2014 to 2017 (Exhibit D), and Ontario Municipal Board (OMB) Decisions Approving Minor Variances (Exhibit E). These documents, and corresponding photographs, were used by Mr. Bhatt to highlight six particular properties in the vicinity of the subject property where similar consent and minor variances requests as those being proposed on the subject property have been approved.

The witness identified the following properties as having approved variances for lot coverage, dwelling height and length, FSI, and side yard setbacks, similar to the proposed development:

- 105 Binwood Avenue;
- 217 Woodmount Avenue;
- 321 Wood mount Avenue;
- 195 Holborne Avenue;
- 465A&B Cosburn Avenue; and
- 971 Cosburn Avenue.

In addressing the criteria for severance and variances, Mr. Bhatt employed his Study Area map to demonstrate that a number of the identified lots were equal to the lot area proposed and were well disposed, although he provided no statistical analysis. Similarly, he suggested that the six properties that had frontages similar to the 6.24 m and 6.26 m frontages being proposed that he had identified were, in his words, 'sprinkled' geographically throughout the neighbourhood. He suggested that although his statistics included different zone categories, the proximity of the properties would be part of the daily experience of residents.

Mr. Bhatt reviewed the Exhibit C which highlighted seven minor variance applications approved by the OMB from 2008 to 2017 within the neighbourhood. He

concluded from an analysis of these applications support and maintenance of other similar lots to those requested. From this analysis, he also concluded the proposal permitted an appropriate relationship to the street, a mass and scale that relates, and replicated examples of proposed height and massing within the range that is occurring. As such, he opined that the proposal can be seen to 'fit' with the existing and evolving character of the area.

In summary, Mr. Bhatt asserted compatibility of the proposal, that they met the statutory severance criteria and demonstrated compliance with the four tests for the variances being sought. With respect to examples of comparative lot frontages and areas that had been approved and exist in the neighbourhood, he opined that the proposed lots reflect a frontage and lot area that in the context of this diverse neighbourhood were minor and acceptable.

He further opined that the height and setback variances, individually and cumulatively, can function well on the lot. Mr. Bhatt suggested that the proposal represents reinvestment in the area, with the replacement of the existing detached dwelling with two new detached dwellings *"that fit the neighbourhood character and are compatible with its immediate and broader area environment. Such reinvestment is desirable and appropriate for the building and the land."*

With respect to the severance evaluation under section 51(24) of the *Planning Act* (the *Act*), Mr. Bhatt referenced the extensive assessment in his Witness Statement and the absence of any negative comments from the City's Development Engineering Division. Of particular interest in this regard, Mr. Bhatt reference the *Metrolinx Act* as a provincial planning document for which regard must be had. He suggested that the proposed development had regard for the *Metrolinx Act* and its transportation policies which promote higher densities along the transportation network, bus stops and within intensification areas in the City. Mr. Bhatt opined that the subject property's unique location along Cosburn Avenue and near a bus stop would assist in achieving the provincial policies noted in that document.

In concluding his testimony, Mr. Bhatt opined that the proposed form of development will respect and fit within the neighbourhood character. He noted that the subject property and existing dwelling have been, in his words, *"a historical anomaly within this neighbourhood as a function of the smaller lot size, corner location and irregular lot shape, nonetheless they have co-existed with the many other conventional lots and houses in the neighbourhood without any unacceptable adverse impacts."*

He suggested that as the neighbourhood has matured, many of the adjacent properties have undergone renovations or replacement with larger homes which have added value to the area without destabilizing the neighbourhood. Consequently, he was of the opinion that the proposed development represented good land use planning and recommended approval of the consent and minor variance applications.

In cross examination by Mr. Elmadany, he acknowledged that the locational distribution of undersized lots was quite different than the immediate area of the subject property and that, in fact, there was a contextual difference between the north and south sides of Cosburn Avenue.

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Mr. Bhatt agreed that the properties highlighted in Exhibit H (Maps 1 &2) and recent OMB/COA/TLAB decisions referenced by the witness were all well outside of his Study Area and what Mr. Elmadany termed the 'immediate area of influence'. As such, he agreed that for the purpose of delineating neighbourhood character the analysis he had undertaken had resulted in a questionable planning analysis, although he argued that the properties he had identified were still comparable and applicable to his evaluation.

He also agreed that the six properties highlighted in his Study Area were, in fact, situated in a different zoning category and/or not all reflective of the variance permissions being sought by the Appellant. In particular, he agreed that the following examples he had employed in his lot study analysis were not relevant:

- 105 Binswood Avenue – does not include a consent application but only included minor variances. The approved lot coverage is smaller (35% which includes an integral garage) and the lot frontage (11.07m) exceeds the required zoning standard.
- 105 Holborne Avenue – is considerably south of the subject property in the South Character Area. The FSI permission in this zoning category begins at 0.75 times the area of the lot which is much higher than what is permitted on the subject property.
- 465A & B Cosburn Avenue – are two semi-detached dwellings that are again outside the Study Area in the South Character Area. The zoning designation in the South Character Area is different than the North Character Area as it allows semi-detached and single detached dwellings. Permitted lot frontages range from 5.79m for semi-detached dwellings to 10.5m for lots with single detached dwellings.
- 971 Cosburn Avenue – This was an approval to legalize an alteration to an existing dwelling.

Mr. Bhatt further agreed that: the Official Plan is the most important policy document; that the local context is important; and, that one must be mindful of the Official Plan and consider its policies accurately. He acknowledged that policy 4.1.5 c) requires a focus on '*nearby residential properties*' and that his evidence was based on lots well removed from the subject property and in areas with completely different standards and building typologies as a rationale for many of the variances.

He agreed that in the examples you referenced in Exhibit D, none had a density that exceeded 0.7 times the area of the lot, which is in contrast to the new standard of 1.15 and 1.24 times the area of the lot being sought in the proposed development.

He agreed that OPA 320 (Exhibit I – Tab 23) introduced the word 'prevailing' as it relates to the development criteria found in the Neighbourhoods policies of the Official Plan. He agreed that 'prevailing' is defined as 'most frequently occurring' and the intent of this policy is to achieve 'prevailing size and configuration of lots, height, massing and scale, density and dwelling type to nearby residential properties' in the neighbourhood. Mr. Bhatt acknowledged that his analysis included properties on the south side of Cosburn Avenue where the prevailing building type is semi-detached dwellings.

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In re-examination, Mr. Bhatt felt the 3 or 4 lots immediately to the east of the subject property on the north side of Cosburn Avenue were comparative, as they had lot frontages less than 9m, even though they are considered historical lots of record that are exempt from the lot frontage standards in the new Zoning By-law.

Carmelo Perricone provided Participant evidence as a courtesy of counsel and in advance of the City due to a scheduling conflict. As a resident of 60 Binswood Avenue for approximately four years, Mr. Perricone's property abuts the rear yard of the subject property and he submitted a letter of objection to the COA and attended the TLAB hearing to oppose the proposed development.

Reading from a prepared text, which was submitted as Exhibit K, Mr. Perricone stated that the main reason for moving to this area was the nature of the neighbourhood north of Cosburn Avenue which he characterized as low density residential detached development with spacious setbacks. He noted that the proposed development and the resulting increased density would dramatically impact the enjoyment of his backyard and that he had concerns related privacy and shadows.

He concluded his testimony by stating that the consent and minor variance applications for the subject property represented 'overdevelopment', are not minor in nature, do not meet the intent of the Official Plan and the Zoning by-laws, and if approved would destabilize the neighbourhood.

I heard from Mr. Peter Sakkas, the resident at 688 Cosburn Avenue, the property immediately abutting the subject property to the east. Mr. Sakkas rose on a general invitation to hear from individuals who were present with an interest in the matter and his ability to give testimony at the hearing was uncontested.

Mr. Sakkas stated that he has been a resident of the neighbourhood for over 20 years and is retired. He is an avid gardener and was concerned that if built the two proposed three storey dwellings would impact the amount of natural sunlight his rear garden receives. He also express a concern for privacy as he suggested that the third storey walk out balcony proposed for each dwelling would overlook a significant portion of his property. He concluded his testimony by stating that there were no other three storey residential dwellings on Cosburn Avenue or on Binswood Avenue.

I then heard evidence from the City's expert planning witness, Ms. Stephanie Hong. Ms. Hong is currently an Assistant Planner in the Community Planning Division of the City's Planning Department. Although not a Registered Professional Planner (RPP) or member of the Canadian Institute of Planners, Ms. Hong is a Pre-candidate member of the Ontario Professional Planners Institute (OPPI). Her curriculum vitae, work experience and familiarity with the East York setting permitted her qualification to give expert land use planning opinion evidence and advice.

I recite here some of those areas of evidentiary departure from Mr. Bhatt that Ms. Hong called to the TLAB's attention.

On the Study Area, Ms. Hong identified a larger Neighbourhood Study Area and context within which she noted there were two more distinct study areas; the North Character

Area and the South Character Area. She noted that the subject property is located in the North Character Area, an area which includes all properties on the north side of Cosburn Avenue.

Employing a Lot Study Data analysis and attendant colour maps (Exhibit N) for the Larger Neighbourhood and both for the North Character Area and South Character Area, showing lot frontages as well as other lot characteristics such as depth, area, total GFA and number of dwelling storeys, she formulated several observations (evidence and Witness Statement – Exhibit L paragraphs 26-30, 44-72, and maps and photos):

1. Larger Neighbourhood

She opined that the larger neighbourhood is bounded by Coxwell Avenue to the west, O'Connor Drive to the north, Woodbine Avenue to the east, and Holborne Avenue to the south. This study area includes approximately 852 lots, consisting of a variety of one-storey, one and one half-storey and two storey detached and semi-detached dwellings.

Lots in this larger neighbourhood are subject to the same land use designation within the Official Plan as the subject property. However, the lots are subject to different zoning categories, ranging between R1A and R2A under the former By-law and RD (f9.0; a280;d0.45) and RS (f10.5; a0.75)(x312) under the new By-law.

She suggested in her analysis that this neighbourhood can be further divided into two distinct character areas based on Cosburn Avenue as the divide. She opined that the most notable distinction was the lot frontage and area requirements noting that of the 852 lots in the larger neighbourhood, 567 lots or 66% have frontages of 9.1 m or greater which is generally consistent with the zoning requirements.

2. North Character Area

The Lot Study analysis identified 522 lots located north of Cosburn Avenue and zoned R1A/RD (f9.0; a280; d0.45), which allows lots with a minimum frontage of 9.0 m and a minimum lot area of 280 m². The prevailing building type is single detached dwellings of which 474 lots or 91% have frontages of 9.1 m or greater and only one lot has a frontage less than 6.26 m.

In addition, Ms. Hong suggested that only 9% (48 lots) have frontages less than 9.1 m standard. She noted these lots are substandard historic lots not created by consent.

3. South Character Area

Ms. Hong identified 330 lots in this Area, with the prevailing building type being one and two-storey single and semi-detached dwellings. She noted that the lots are zoned R2A or RS with narrower lot frontages and the physical character, specifically lotting pattern and configuration, varying significantly from the North Character Area.

Her analysis illustrated that 51 lots or 15% had lot frontages less than 6.26 m, but that these lots are compliant with the 6.0 m frontage requirement for single detached dwellings. She opined that lots with a frontage less than 9.1 m were compliant with the zoning but would be considered substandard in the North Character Area.

In her view, the proposed dwellings represented an increase in density, massing and scale not suitable for the area character and the change proposed by the applications was neither sensitive, gradual nor respectful of the criteria for consideration in section 4.1.5, sections b), c), and d), and policy 4.1.8.

She opined that:

- a. The proposed FSI of 1.15 and 1.20 times the area of the lot is indicative of overdevelopment on the undersized lots, and there are no approvals greater than 0.81 times the area of the lot in the neighbourhood;
- b. The size of the proposed lots does not fit the existing physical character of residential properties within the North Character Area; and
- c. The proposed dwellings would not reflect the prevailing building type found in the North Character Area, which is the appropriate comparable neighbourhood.

She concluded that the Official Plan conformity was not met due to substandard lot frontages, lot areas and pattern of distribution and, as such, the applications on the subject property failed to respect and reinforce the existing physical character of the neighbourhood. Ms. Hong opined that the variances failed the Official Plan criteria and policies cited, countered the area specific character preservation standards in zoning, particularly as they relate to the North Character Area, and were not minor, desirable, sensitive or gradual.

Her evidence on meeting the four tests of a minor variance application dealt with many of the same matters, emphasizing in her opinion elements of contrast between the applications and the existing physical character of the area. She opined that the applications cumulatively would result in dwellings that differ from the prevailing lotting pattern and configuration in the North Character Area and would impact the rhythm of the established streetscape along Cosburn Avenue.

Her expert opinion was that the appeal of the COA's decision to refuse the consent and minor variance applications should be dismissed.

ANALYSIS, FINDINGS, REASONS

As stated under 'Matters in Issue', the applications before this Body are, in my opinion, neither novel nor complex; a severance approval with corresponding variances to permit the construction of two single detached residential dwellings.

The City's solicitor, Mr. Elmadany, cited three cases for guidance for which I am very appreciative of the assistance: one recent decision from the former OMB; and two fairly recent TLAB decisions. I note, however, that ultimately the determination of the appeal must bear strong bonds to the evidence heard.

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I briefly summarize the cases below and refer to them by their popular names. All three cases cited involve appeals on applications for consent and associated variances to construct a detached residential dwelling on each lot:

- i. *Inacio v. Toronto (City) 2018 CarswellOnt 471 (Inacio) re 96 John Street;*
- ii. *116 Poplar Road, TLAB Case File No. 17 170515 S53 43, 17 170516 S45 43, 17 170517 S45 43, MD Ajaz Ahmed Khan, Decision Date September 21, 2017;*
- iii. *Guiducci, Re, 2018 CarswellOnt 4719, March 7, 2018 (TLAB 17 201219 S53 06, TLAB 17 201220 S45 06, TLAB 17 201221 S45 06)*

In *Inacio – 96 John Street*, which is one of the last decisions of the former OMB, Member Lanthier identified the three main issues in the case as: a) whether the creation of two undersized lots from a larger municipal lot and the consequential development of two detached family dwellings on smaller lots were consistent with the established character and lot patterns of the neighbourhood; b) whether a proper planning analysis of existing narrower lots was undertaken; and, c) whether the requested variances meet the four test set out in s. 45(1) of the *Act*.

In his decision, Member Lanthier wrote (paragraph 36), *“In the Board’s view, to allow this consent would thus represent a significant departure from the lot fabric of lot sizing and lot configuration that exists as part of the physical character of the Weston neighbourhood.”* In addressing the issue of a fulsome planning analysis of existing lots in his decision, Member Lanthier wrote at paragraph 37, *“...the creation and existence of such limited-frontage lots clearly did not have the benefit of being evaluated against the planning policies that now come into play in the appeal.”*

Finally, in paragraph 38, the Board Member wrote, *“A failure to go beyond the mere existence of smaller lots in the neighbourhood to examine such evidence, may affect the credibility of the planning analysis and opinion that flows from a limited and narrowly-focused conclusion that: “smaller lots exist in the neighbourhood”* “. The Board dismissed the appeals of the decisions of the COA, and did not grant the applications for consent or authorize the variances requested.

In the *TLAB Decision Re 116 Poplar Road*, Member Lord found that fundamental to the dispute in issue in this appeal were the requests generated by the lot division and the resultant consequences for parcel dimensions and, in particular, whether those dimensions and the resultant permissible built form maintain the policy of the Official Plan to respect and reinforce the character of the neighbourhood.

Member Lord wrote in paragraph 29 that, *“Planning at its fundamental best is to consider the best long term interests of the site, in the context of its surroundings and the public interest, expressed in authorized planning instruments and generally accepted principles of proper community planning.”* The TLAB refused the requested consent and variances.

In the third case cited, *Guiducci, Re – 38 Thirty Sixth Street*, TLAB Chair Lord addressed a number of OMB cases in his decision. While I will not attempt to provide any in-depth analysis of each or recite their conclusions at this point, I note that all of

the cases referenced speak to relevant issues such as ‘intensification’, ‘neighbourhood destabilization’, ‘neighbourhood character’ and ‘precedent’.

There is no debate, from the evidence of Mr. Bhatt, that if the consent was granted, two contemporary residential dwellings as proposed could be constructed on the resultant lots and they could function independently. The capability to erect the dwellings on the proposed lots and their ability to accommodate a dwelling was not the issue in this matter. The challenges to the applications, rather, focused on policy direction, suitability, assessment criteria, and locational context. These are the issues that need to be resolved within the scope of the statutory considerations and the evidence.

I accept the general concurrence of both planners that the *Provincial Policy Statement (PPS), 2014* and the *Growth Plan for the Greater Golden Horseshoe (the Growth Plan, 2017)*, are the applicable provincial policies. I also accept that both planners concur that the applications propose a form of intensification which is promoted in both the PPS and the Growth Plan.

In addition, although there is agreement that the applications conform to, and are generally consistent with the PPS and the Growth Plan, it is important to note the following policies which caused debate between the planners and led to opposing interpretations and opinions.

Policy 4.7 of the *PPS* under the Implementation and Interpretation Sections states:

“The official Plan is the most important vehicle for implementation of this Provincial policy statement. Comprehensive, integrated and long-term planning is best achieved through official plans.”

Policy 4.8 of the *PPS* continues to state that:

“Zoning and development permit by-laws are important for implementation of this Provincial policy Statement. Planning authorities shall keep their zoning and development permit by-laws up-to-date with their official plans and this Provincial Policy Statement.”

The *PPS* emphasizes the importance of the official plan in ensuring long-term planning is comprehensive and integrated and, therefore, the use of zoning and development permit by-laws are important to implementation.

Policy 5.2.5.8 of the *Growth Plan* under the Targets Section states:

“The identification of strategic growth areas, delineated built-up areas, and designated greenfield areas are not land use designations and their delineation does not confer any new land use designations, nor alter the existing land use designation. Any development on lands within the boundary of these identified areas is still subject to the relevant provincial and municipal land use planning policies and approved processes.”

This policy of the *Growth Plan (2017)*, which came into effect on July 1, 2017, clearly identifies that any lands within delineated built-up areas, such as the subject property, remain subject to the relevant municipal land use planning policies. In this regard, I agree with the suggestion made by Ms. Hong in paragraph 80 in her Witness Statement that while the subject property is located within a delineated built-up area, the underlying land use designation of *Neighbourhoods* as identified in the Official Plan is still applicable when contemplating any development of these lands.

Further, I agree with Ms. Hong that one of the goals of the provincial policies is to promote intensification and the aforementioned policies retain a municipality's flexibility in determining where intensification should occur and to what degree on individual sites.

I find that the following text in the City Official Plan to be an appropriate starting point. For the severance, regard must be had to whether the plan conforms to the Official Plan pursuant to section 51(24) c), and for the variances, in the testing of each element in maintaining the general intent and purpose of the Official Plan.

While the policy language of the Official Plan is extensive, I provide a summary of the relevant sections which the evidence must resolve.

Chapter 2, City Building

There is no contest that the subject property is designated *Neighbourhoods* in the Official Plan. Section 2.3.1 of the Official Plan recognizes *Neighbourhoods* as physically stable areas which are made up of residential uses in lower scale buildings. Development will respect and reinforce the existing physical character of buildings, streetscapes, and open space patterns in these areas.

Chapter 4, Land Use designations

Section 4.1 Neighbourhoods

Section 4.1 of the Official Plan states that physical changes to established Neighbourhoods must be sensitive, gradual, and generally 'fit' the existing physical character. A key objective of the Plan is to ensure that new development respects and reinforces the general physical patterns in the neighbourhood, and policy 4.1.5 sets out criteria for evaluating development proposals on land within *Neighbourhoods* designations. Of the development criteria listed in policy 4.1.5, the following criteria are relevant:

- *the size and configuration of lots;*
- *heights, massing, scale and dwelling type of nearby residential properties;* and
- *prevailing patterns of rear and side yard setbacks and landscaped open spaces*

The prevailing building type will be the predominant form of development in the neighbourhood. Some *Neighbourhoods* will have more than one prevailing building type and in such cases a prevailing building type in one neighbourhood will not be considered when determining the prevailing building type in another neighbourhood.

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Policy 4.1.8 also contemplates that Zoning By-laws will contain numerical site standards for matters such as building type and height, density, lot sizes, lot depths, lot frontages, parking, building setbacks from lot lines, landscaped open space and any other performance standards to ensure that new development will be compatible with the physical character of established residential *Neighbourhoods*.

On July 4, 2016, the Minister of Municipal Affairs and Ministry of Housing approved Official Plan Amendment No. 320 to amend the City of Toronto's Official Plan *Neighbourhoods* policies. With regard to the development criteria identified above in policy 4.1.5, OPA 320 incorporated the word '*prevailing*' into the development criteria of 'size and configuration of lots'.

I accept that this reflects City Council's direction with respect to changing the *Neighbourhoods* policies and that, although under appeal, the TLAB should have regard to the decisions of Council. While not determinative, I accept Ms. Hong's proposition that the proposed size and configuration of lots, as well as the height, massing, scale and dwelling type do not fit the existing character of the neighbourhood and do not meet the intent and purpose of the Official Plan or OPA 320. .

Clearly, the City Official Plan holds out special attention to be paid to its *Neighbourhoods* as they are not targeted for robust waves of intensification. Change is to be sensitive and gradual, just as these neighbourhoods have been developed and built up in the past. The general intent and purpose of this designation is to create and define stable residential areas within the City to ensure compatibility of land uses and built form.

The planners agreed that the *Neighbourhoods* designation is not one to be frozen in time or to be held '*static*'. The delicate balance to which attention is called in this appeal is in the manner and means as to how this change occurs.

Both planners identified a Study Area by which they sought to assess a norm or descriptor of the character of the neighbourhood. The Official Plan encourages this effort and even refines it through emphasis that the policy obligation of planning decisions is to 'respect and reinforce the existing physical character of buildings, streetscapes and open space patterns'. That definition is further honed by intended references to attributes, measures and features that are describable and replicable.

I find that the delineation of a study area is a necessary first step by planning practitioners to attempt to encapsulate measures that replicate the existing physical character of a neighbourhood. In my view, a character assessment must be open, fluid, encompassing and accurate but not '*descriptive to a finite degree*'. While the debate amongst planners as to whether the size of a chosen Study Area is good or bad for assessment has always existed, I think the more important aspect is that it must be of a scale sufficient to take the pulse of the neighbourhood's physical character.

In this case, I agree with the City solicitor's proposition that Mr. Bhatt's Study Area was relatively small and scoped as compared to the broader study area provided by Ms. Hong. I accept Mr. Elmadany's proposition that Mr. Bhatt's Study Area created a small

sample size and provided very little opportunity for planning analysis as the quantity and quality of the lots available for comparison were limited.

More importantly, I agree that Mr. Bhatt was forced to rely on properties well outside of his Study Area for evaluative purposes leading to a questionable planning analysis of neighbourhood character and context as it relates to the subject property. I am unable to accept that the analysis and opinion relating to the physical character of this neighbourhood provided by Mr. Bhatt, and his conclusions that smaller lots of the kind proposed by the Appellant are 'representative of the area' or that such narrow lot frontages are truly a 'part' of that character, and that these conclusions are unsupported by the evidence.

In contrast, I find that the larger Neighbourhood Study Area offered by Ms. Hong is a more appropriate approach and provides more extensive data that are of greater relevance to determining prevailing neighbourhood character and development impact. I agree with Ms. Hong that within this larger Study Area there are two further distinct Study Areas identified as the North Character Area and the South Character Area and I accept her proposition that there are well-defined differences between the two in terms of building typology and lot characteristics.

I accept Ms. Hong's proposition that the vast majority of lots in the North Character Area, within which the subject property is located, either comply with or exceed the minimum lot frontage requirements of 9.0 m of both the existing and new by-laws. I also accept her finding that with few exceptions the undersized lots found in this part of the neighbourhood are generally historic and have no record of land division.

I further accept Ms. Hong's opinion that the context for lots within the South Character Area, south of Cosburn Avenue, is that of narrower frontages, with some that are pre-existing conditions or that have been created through applications for consent. More importantly, I find that the physical character, specifically the lotting pattern and lot configuration, varies significantly from the North Character Area.

The proposed severance would create two considerably undersized lots, as per the zoning by-law standards, with significant narrower frontages and smaller lot areas. I accept Ms. Hong's proposition that the proposed lots would be the smallest residential single detached lots created by consent on the north side of Cosburn Avenue in the North Character Area. I agree that the proposed lot dimensions are not reflective of, or consistent with the existing lots in this Area.

I accept Ms. Hong's opinion that the significantly substandard lot frontages of the proposed lots, 6.24 m on the retained lot and 6.26 m on the conveyed lot, whereas 9.0 m is required under the RD zone, would be noticeable from the street and would begin to change the streetscape of Cosburn Avenue specifically, and the North Character Area in general. I also accept her conclusion that the proposed FSI of 1.15 and 1.20 times the area of the lot would be the highest approved density variance within the larger Study Area.

I find that there has been no pattern of occasional smaller lot development occurring through severance approvals in the larger Study Area that could be found to be

'sensitive and gradual' and therefore reasonable. As such, the requested severance and variances requested for this development cannot be found to be consistent with, or part of, an historical trend or pattern of severance approvals.

For the reasons noted, I find that the form of proposed intensification on this street, narrow lots and taller units, is not consistent with the area character despite the type of dwelling proposed, single detached, being common. I find on the evidence that the subject property presents no compelling rationale supportive of the suitability for severance.

I accept the points made by the neighbourhoods, Mr. Perricone and Mr. Sakkas that the proposed dwellings would result in a loss of privacy and sunlight, and an absolute loss of the sense of physical openness enjoyed to date.

In summary, on this basis, and for the reasons given, I conclude that the Appellant's proposed severance does not satisfy the criteria set out in s. 51(24) of the Act and, in particular, s. 51(24) c), f) and g). The proposed severance does not conform to the Official Plan including those policies governing Neighbourhoods, does not have regard for the dimensions and shapes of the proposed lots relative to the lot patterns that exist in the surrounding area and would not represent a sensitive and gradual change that would suggest good land use planning.

Further, the proposal and associated variances do not meet the intent and purpose of the zoning By-laws, are not desirable for the appropriate development of the land, and are not minor in nature.

DECISION AND ORDER

The appeal is dismissed; the decision of the COA is confirmed.

X 

Dino Lombardi
Panel Chair, Toronto Local Appeal Body