

DECISION AND ORDER

Decision Issue Date Thursday, September 20, 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): JENNIFER RACHEL KIRBY

Applicant: CANTAM GROUP LTD

Property Address/Description: 64 POPLAR RD

Committee of Adjustment Case File: 17 213249 ESC 43 CO (B0046/17SC), 17 213266 ESC 43 MV (A0312/17SC), 17 213262 ESC 43 MV (A0300/17SC)

TLAB Case File Number: 18 112946 S53 43 TLAB, 18 112950 S45 43 TLAB, 18 112948 S45 43 TLAB

Motion Hearing date: Monday, August 27, 2018

DECISION DELIVERED BY S. MAKUCH

APPEARANCES

Applicant	Cantam Group Ltd
Appellant	Jennifer Rachel Kirby
Party/ Owner	Abu Taher Bhuyan
Party's Legal Rep.	Eric Gillespie
Participant	Kateryna Valtina
Participant	Kelly Cole
Participant	Aaron Soroka
Participant	Vladislav Germanovsky
Participant	Michael John Daniels
Participant	Steven Smith
Participant	Jeffrey Dell
Participant	Mari-Lynn Dell
Participant	Robert Taylor-Vaisey

INTRODUCTION

This is an appeal, by a neighbour, of a consent granted by the Committee of Adjustment to permit the severance of one lot (the subject site), in the Guildwood Village, into two. It is also an appeal of the granting of four variances for each lot, to permit: the frontage to be 10.95 metres instead of the permitted minimum 12 metres; the front yard setback to be 12.55 metres instead of the permitted minimum of 16.5 metres and the lot width at the front yard setback line to be 10.95 metres instead of the permitted minimum of 13.5 metres.

BACKGROUND

The City was not a party to the proceedings and there was no report to the Committee of Adjustment from City Planning. Development Engineering and Construction Services did not object to the application while Urban Forestry objected to the consent. Expert evidence was presented in favour of the application by a qualified planner, while three residents of the area gave evidence in opposition.

MATTERS IN ISSUE

Having heard the evidence of all the parties it was clear that the fundamental issues were the lot width and the loss of a mature tree in the rear yard. The front yard setback was not of concern and it seems all parties agreed that in the neighbourhood there was a "sawtooth" pattern in those setbacks. The expert evidence was that the lot frontage at the front yard setback was irrelevant in today's planning regime and no one disagreed.

The issue of lot frontage and tree preservation revolve around the issue of conformity with the Official Plan; both with respect to the consent and with respect to the approval of the variances. In my opinion, however, if the variances are not granted the consent cannot be granted, as the lots created would be prohibited by the zoning bylaw. Moreover, if the variances are not granted because they do not meet the general intent of the Official Plan then there is no need to address provincial compliance.

JURISDICTION

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

With respect to a consent application, 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).

In considering the applications for variances from the Zoning By-laws, the TLAB Panel must also 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 evidence presented by the qualified planner was quite clear. There are no lots with frontages less than twelve metres in width in the neighbourhood south of the railway tracks which are immediately to the north of the subject site. Indeed, a recent plan of subdivision approved and fronting on Portia St., very close to the site, has minimum lot frontages of twelve metres. The neighbour's evidence was that the character of the neighbourhood, is one of large lots, with no lots narrower than twelve meters and this resulted in the Portia St. lots being approved at a minimum of twelve metres frontage. This evidence was uncontradicted. The neighbour's evidence was also that the large lot frontages created the character of the neighbourhood which consisted of the properties on Poplar Rd and it neighbouring streets south of the railway tracts. That character they agreed was one of a sense of large lots with green space and trees, which created the neighbourhood's charm. The evidence of the residents was that the Guildwood Village was a neighbourhood of large lots with many trees and a significant tree on the lot in question. The "Village" was designed to be different from the compact urban development of the more central part of the City. My visit to the area confirmed the neighbour hood was one of large lots, with trees and that it was "green" in character.

ANALYSIS, FINDINGS, REASONS

Although the planner was the only expert to give evidence and he did so concluding that the consent and variances should be approved I do not agree with him for a number of reasons. 1) his evidence was not totally reliable. He stated that the City endorsed the applications; whereas that was not true. Planning gave no comment, engineering commented but did not endorse the applications and Urban Forestry, had concerns about the application. 2) He gave no significant evidence to rebut the Urban Forestry comment which was: "Several bylaw-protected trees exist on and adjacent to the site. Approval of the requested Consent will result in the creation of new lots that if built upon as shown will require the removal of several healthy privately owned trees. More trees would need to be removed with the Consent and Variances than if the site was redeveloped with one single family dwelling, with additional trees to be removed that include a Norway maple tree measuring about 50 cm in diameter located in the backyard. This tree is a valuable part of the Urban Forest and should be retained". 3) he did not acknowledge that large lots and trees were a part of the physical character of the neighbourhood, but focused only on residential dwellings as determining that character and 4) included an area north of the tracks as part of the neighbourhood without a persuasive justification.

As a result of visiting the neighbourhood I find that the evidence of the residents is more persuasive. The physical character south of the tracks is of large lots and with many trees as well as single dwellings. The proposed variances do not respect or reinforce that character. I therefore am not prepared to approve the variances. The consent to create two lots cannot be granted as the proposed lots would not be permitted by the zoning bylaw without approval of the variances. Moreover since two lots do not conform with the Official Plan they cannot be said to conform with provincial policy which is to be implemented through the Official Plan.

DECISION AND ORDER

The appeal is allowed, the decision of the Committee of Adjustment is overturned, and the variances and consent refused.

X 

S. Makuch
Panel Chair, Toronto Local Appeal