

DECISION AND ORDER

Decision Issue Date Friday, September 21, 2018

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

Appellant(s): 2590801 ONTARIO INC

Applicant: URBAN ADVISORS

Property Address/Description: 100 BROOKVIEW DR

Committee of Adjustment Case File Number: 17 270834 NNY 15 CO, 17 270843 NNY 15 MV, 17 270864 NNY 15 MV

TLAB Case File Number: 18 154514 S53 15 TLAB, 18 154518 S45 15 TLAB, 18 154520 S45 15 TLAB

Hearing date: Tuesday, September 11, 2018

DECISION DELIVERED BY LAURIE MCPHERSON

APPEARANCES

Name	Role
Urban Advisors	Applicant
2590801 Ontario Inc.	Appellant
Tae Ryuck	Expert Witness
David Bronskill	Applicant/Appellant Legal Rep

INTRODUCTION AND BACKGROUND

This is an appeal to the Toronto Local Appeal Body (TLAB) by the owner (Applicant) of the refusal by the Committee of Adjustment for the City of Toronto (Committee) of applications for consent to sever one lot into two lots and associated minor variances to construct two single detached dwellings (the proposal).

The property is located at 100 Brookview Drive (subject lands).

The subject lands are designated Neighbourhoods in the City of Toronto Official Plan (the Official Plan) and are zoned RD under Zoning By-law No. 569-2013 (By-law 569-2013) and R6 under North York Zoning Bylaw No. 7625 (By-law 7625).

The proposed lots would have a frontage of 10.52 m. A variance for lot area is not required. The minor variance applications would permit the development of a single 2-storey detached residential dwelling with an integral garage on each lot. The proposed variances are as follows:

100A Brookview Drive (Part 1)

Zoning By-law 569-2013

1. Chapter 10.20.40.10. (2)

The maximum height of all front exterior main walls permitted is 7.5 m.

The height of the front exterior main walls proposed is 9.82m.

2. Chapter 10.20.40.20. (1)

The maximum building length permitted is 17.0 m.

The building length proposed is 19.08 m.

3. Chapter 10.20.40.30. (1)

The maximum building depth permitted is 19.0 m.

The building depth proposed is 19.08 m.

4. Chapter 10.20.30.40. (1)

The maximum lot coverage permitted is 35% of the lot area.

The lot coverage proposed is 37.8% of the lot area.

5. Chapter 10.20.40.70. (1)

The minimum front yard setback required is 7.58 m.

The front yard setback proposed is 7.5 m.

6. Chapter 10.20.40.10. (1)

The maximum height permitted is 10.0 m.

The height proposed is 10.10 m.

7. Chapter 10.20.30.20. (1)

The minimum lot frontage required is 12 m.

The lot frontage proposed is 10.52 m.

Zoning By-law 7625

1. **Section 14-A (8)**
The maximum building height permitted is 8.8 m.
The building height proposed is 9.7 m.
2. **Section 14-A (9)**
The maximum building length permitted is 15.3 m.
The building length proposed is 19.08 m.

100B Brookview Drive (Part 2)

Zoning By-law 569-2013

1. **Chapter 10.20.40.20. (1)**
The maximum building length permitted is 17.0 m.
The building length proposed is 19.08 m.
2. **Chapter 10.20.40.30. (1)**
The maximum building depth permitted is 19.0 m.
The building depth proposed is 19.08 m.
3. **Chapter 10.20.40.70. (1)**
The minimum front yard setback required is 7.58 m.
The front yard setback proposed is 7.49 m.
4. **Chapter 10.20.30.40. (1)**
The maximum lot coverage permitted is 35% of the lot area.
The lot coverage proposed is 37.8% of the lot area.
5. **Chapter 10.20.40.10. (4)**
The maximum height permitted is 7.2 m.
The height proposed is 8.9 m.
6. **Chapter 10.20.30.20. (1)**
The minimum lot frontage required is 12 m.
The lot frontage proposed is 10.52 m.

Zoning By-law 7625

1. **Section 14-A (8)**
The maximum building height permitted is 8.0 m.
The building height proposed is 9.4 m.
2. **Section 14-A (9)**
The maximum building length permitted is 15.3 m.
The building length proposed is 19.08 m.

There were no other Parties to the Hearing. There was one Participant, a neighbour, who withdrew his Participant status as his concerns were addressed by the Applicant by switching the style of dwelling that would be adjacent to his house. This issue does not result in any changes to the variances but is addressed on the plans.

MATTERS IN ISSUE

The primary issue in this appeal is whether the creation of two undersized lots and the resultant single detached dwellings respect and reinforce the existing physical character of the neighbourhood.

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 TLAB heard from the Applicant's professional land use planner Mr. Tae Ryuck. Mr. Ryuck was qualified to give professional planning opinion evidence. He described the subject lands and the surrounding area (Exhibit 1 Expert Witness Statement, Exhibit 2 – Area Context Map, Exhibit 3 Subject Site and Photos, Exhibit 4 – Shadow Studies, Exhibit 5 -Site Plans).

The subject lands have a frontage of 21.04 m and contain a 1 storey single detached dwelling with a driveway accessed from Brookview Drive. proposal is to sever the existing property to permit the construction of two new 2-storey single detached dwellings with an integral garage.

In Mr. Ryuck's opinion, the proposed lots and homes are of a size and character that is consistent with and fits within the physical characteristics of the existing neighbourhood and area context. He noted that City Planning staff did not object to the proposal and recommended certain conditions that are acceptable to the Applicant.

The study area for the purposes of his analysis are bounded by Regina Avenue to the north, Bathurst Street to the east, Lawrence Avenue West to the south, and Varina Drive to the west. The subject lands are located in a stable residential neighbourhood consisting of single-detached dwellings of 1 and 2 storeys. The neighbourhood is experiencing regeneration in the form of redevelopment and additions. There are a mixture of lot sizes and frontages within the neighbourhood. To the east and south on Bathurst Street and Lawrence Avenue West there is a mixture of commercial uses including retail uses and within walking distance from the subject property in addition to public transit. As such, the neighbourhood is very well served by local services and public transit.

The proposed development would result in the following:

- a. Lot Coverage of 37.8% (both lots)
- b. Proposed height of 10.10 m (100 A) and 8.9 m (100 B)
- c. Lot Frontage – 10.52m (both lots)
- d. Lot Depth - 36.58m (both lots)
- e. Building Length – 19.08m (both lots)
- f. Building Depth – 19.08m (both lots)

Mr. Ryuck noted that the variance for coverage was inadvertently missed on one of the lots in the Committee decision although it had been on the plans and always part of the proposal.

The front and rear walls of the proposed buildings are consistent with dwellings in the neighbourhood.

The property information provided demonstrated that there are a wide range of lots frontages in the area. The subject lands have a frontage of over 20 m and a lot area of over 765 m² which is unusually large for the street and the neighbourhood. Planning staff indicated in their report to the Committee "it is the opinion of planning staff that the proposed lots meet the intent of the Zoning By-laws and Official Plan. Staff indicate in their lot study that less than 3% of the lots in the study area have a frontage over 19.8 m with an area over 700 m², such as the subject lands. Further staff stated, "the

requested building length is for a one-storey addition only and does not project beyond the rear wall of the existing dwelling on the lot or beyond either neighbouring dwelling. Planning staff recommended a condition to ensure that the length beyond 17 m is one-storey with a setback of at least 1.93 m as shown on the plans.

With respect to provincial policy, Mr. Ryuck referred to the PPS and Growth Plan and summarized that the policies promote:

- a. optimizing the efficient use of land, resources and infrastructure, including existing and planned public transportation.
- b. Compact form.
- c. Redevelopment and intensification.
- d. Mixed uses at densities that make efficient use of land, resources and infrastructure.

In Mr. Ryuck's opinion, the proposal is consistent with the applicable policies of the PPS and in conformity with the Growth Plan.

The subject lands are designated Neighbourhoods in the Official Plan. Mr. Ryuck referred to Sections 2.3, 4.1, 4.1.5 and 4.1.8. He advised that the Official Plan recognizes that Neighbourhoods are stable but not static and "A cornerstone policy is to ensure that new development in our neighbourhoods respects the existing physical character of the area, reinforcing the stability of the neighbourhood." Further, physical change in established neighbourhoods must be sensitive, gradual and generally fit the existing physical character. A key objective is that new development respect and reinforce the general physical patterns in a Neighbourhood. The development criteria and assessment are set out in Section 4.1.5 as follows:

- a) patterns of streets, etc. – speaks more to reconfiguration of blocks that will affect street patterns, etc. – not applicable
- b) size and configuration of lots – the proposed lot areas are consistent with others found throughout the neighbourhood and reflective of approvals granted by the City
- c) heights, massing, scale – the proposal is consistent with other heights/massing/scale and in zoning limits for many areas i.e. side yard setbacks and lot area–The proposed heights are consistent with adjacent dwellings on the street. From a streetscape perspective the proposal integrates into the neighbourhood and provides architectural character to the streetscape
- d) prevailing building types –the proposed dwellings are single detached dwelling consistent in form and massing with other homes in the area context.
- e) setbacks of buildings from the street – front yard setbacks are consistent with the street and adjacent dwellings.
- f) prevailing patterns of rear and side yard setbacks and landscaped open space – the proposed is reflective of the prevailing building setbacks. (Area Context Map- Exhibit 2). In addition, there is no front yard, rear yard and landscape open space variances.

- g) not applicable
- h) not applicable.

In summary, Mr. Ryuck's stated that the proposed lots and dwelling represents the general physical patterns of the neighbourhood. The design and orientation of the home is consistent with any other homes within the neighbourhood. The proposed will result in a consistent street frontage and same building envelope reinforcing the physical character and streetscape.

In his opinion, the proposed variances individually and cumulatively meet the general intent and purpose of the OP.

Mr. Ryuck advised that the purpose and intent of the zoning by-law was to ensure compatible built form within an area and ensure there are no unacceptable adverse impacts on the streetscape or on adjacent properties. In summary, Mr. Ryuck advised that:

- the Lot Coverage has been deployed on the property and within a built form that is consistent with the homes within the neighbourhood. There have been other approvals within the neighbourhood of Lot Coverage up to 38%.
- Integral garages are permitted and exist in the neighbourhood
- The side yard setbacks meet the zoning standards
- The proposed heights do not result in a built form that is out of character with the immediate adjacent properties or the neighbourhood.

In Mr. Ryuck's opinion, the proposal maintains the intent and purpose of the by-laws and does not introduce an inappropriate building form that creates any adverse impacts to the neighbourhood.

Mr. Ryuck advised that the dwellings have been designed to be compatible with the adjacent properties and the neighbourhood. They do not create any material changes with respect to privacy, views and enjoyment currently experienced by the adjacent neighbours. In his opinion, the proposal is a form of intensification that is appropriate given the surrounding context and existing neighbourhood and is desirable.

In terms of minor, Mr. Ryuck advised that the test for minor is not no impact but whether the impact is considered unacceptable. The proposed variances are in the range of other approvals. In his view, proposal has been designed in a manner that does not create adverse overlooks, shadows, building form, massing and height that is uncharacteristic of the streetscape or neighbourhood. In this regard, Mr. Ryuck referred to Exhibit 4 – Shadow Studies to demonstrate that the shadow impact is minor and acceptable. In his opinion, the proposed variances are minor in nature, both quantitatively and qualitatively.

With respect to the consent application, in summary, Mr. Ryuck advised that the

consent is not premature as there are existing roads and services. The proposed use is a suitable form of development and the dimensions of the lots are within the range of others in the neighbourhood. The proposal conforms to the Official Plan and addresses provincial policy. There were no concerns from technical services. The proposal will utilize existing infrastructure and be built to higher standards of efficiency. In his opinion, a plan of subdivision is not required.

In conclusion, Mr. Ryuck recommended that the consent and minor variances be approved subject to the conditions contained in the staff report and the standard City conditions.

ANALYSIS, FINDINGS, REASONS

The key issue in this Hearing is whether the creation of two lots with a frontage of 10.52 m conforms the Official Plan direction that new development respect and reinforce the physical character of the neighbourhood. The framework for this assessment is set out in Section 4.1.5. In addition, any proposal must have regard for the Built Form policies of the Official Plan.

In terms of the consent application, the panel must consider Section 51(24) of the Planning Act with particular regard to (c) whether the plan conforms to the official plan and adjacent plans of subdivision; and (f) the dimensions and shapes of the proposed lots. The panel is satisfied that a plan of subdivision is not required for the subject lands.

The lot studies also demonstrate that there are a variety of lot sizes including significantly smaller lots within the vicinity of the subject lands. The panel finds that, in the context of the site's location, the proposed severance would fit within the pattern of development and would respect and reinforce the existing physical character of the neighbourhood. The proposal maintains the predominant built form of detached dwellings. The subject lands are very large in terms of both lot frontage and lot area compared to the street and the overall neighbourhood.

The remaining issues relate to whether the proposed variances satisfy the four tests under s. 45(1) of the Act. The panel accepts the uncontradicted evidence of Mr. Romano. The coverage variances is minimal, the proposed setbacks have been approved before in this area, the front door will address the street with a small landing, the side wall height variance is for only a portion of the side wall.

I accept that the proposed revisions are minor from the Application before the Committee and no further notice or consideration is required under s. 45 (18) 1.1 of the Planning Act.

The TLAB is satisfied that the variances, both individually and cumulatively, maintain the general intent and purpose of the standards set out in the Zoning By-laws are minor and desirable for the reasons reported.


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In addition, the TLAB is satisfied that the Applications are consistent with the 2014 Provincial Policy Statement and conform to the 2017 Growth Plan.

DECISION AND ORDER

The TLAB orders:

1. The appeals are allowed and provisional consent is granted subject to the conditions set out in Schedule A, attached, as well as those indicated in Schedule B, attached. To the extent there is any distinction or difference in requirements, the more prescriptive requirement shall govern.
2. The variances to the Zoning By-laws set out in Schedule B, attached, are authorized, subject to the condition contained therein.

X 

Laurie McPherson
Panel Chair, Toronto Local Appeal Body

Schedule A: Standard Consent Conditions

- (1) Confirmation of payment of outstanding taxes to the satisfaction of Revenue Services Division, Finance Department.
- (2) Municipal numbers for the subject lots indicated on the applicable Registered Plan of Survey shall be assigned to the satisfaction of Survey and Mapping Services, Technical Services.
- (3) The applicant shall satisfy all conditions concerning City owned trees, to the satisfaction of the Director, Parks, Forestry & Recreation, Urban Forestry Services.
- (4) Where no street trees exist, the owner shall provide payment in an amount to cover the cost of planting a street tree abutting each new lot created, to the satisfaction of the General Manager, Parks, Forestry and Recreation.
- (5) Two copies of the registered reference plan of survey integrated with the Ontario Coordinate System and listing the Parts and their respective areas, shall be filed with City Surveyor, Survey & Mapping, and Technical Services.
- (6) Three copies of the registered reference plan of survey satisfying the requirements of the City Surveyor, shall be filed with the Committee of Adjustment.
- (7) Within ONE YEAR of the date of the giving of this notice of decision, the applicant shall comply with the above-noted conditions and prepare for electronic submission to the Deputy Secretary-Treasurer, the Certificate of Official, Form 2 or 4, O. Reg. 197/96, referencing either subsection 50(3) or (5) or subsection 53(42) of the Planning Act, as it pertains to the conveyed land and/or consent transaction.

Schedule B

LIST OF REQUESTED VARIANCES

100A Brookview (Part 1)

Zoning By-law 569-2013

1. Chapter 10.20.40.10.(2)

The maximum height of all front exterior main walls permitted is 7.5 m.

The height of the front exterior main walls proposed is 9.82m.

2. Chapter 10.20.40.20.(1)

The maximum building length permitted is 17.0 m.

The building length proposed is 19.08 m.

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The maximum building depth permitted is 19.0 m.

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The maximum lot coverage permitted is 35% of the lot area.

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2. Section 14-A(9)

The maximum building length permitted is 15.3 m.

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100B Brookview (Part 2)

Zoning By-law 569-2013

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Zoning By-law 7625

1. Section 14-A(8)

The maximum building height permitted is 8.0 m.

The building height proposed is 9.4 m.

2. Section 14-A(9) The maximum building length permitted is 15.3 m.

The building length proposed is 19.08 m.

CONDITIONS OF APPROVAL –MINOR VARIANCES

1. Any building length approved beyond 17.0 metres be for a one-storey extension that is setback at least 1.93 metres from any side lot line.

CONDITIONS OF APPROVAL – CONSENT

1. Confirmation of payment of outstanding taxes to the satisfaction of Revenue Services Division.

2. A draft Certificate of Official, as prescribed in O.Reg. 197/96 as Form 2 or 4, and in a form satisfactory to the Deputy Secretary-Treasurer that includes a completed and

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registerable description of the land that is the subject of the consent, shall be submitted to the Deputy Secretary-Treasurer within one year of the date of the giving of notice of this decision.

3. Copies of a deposited Reference Plan of Survey, integrated with the Ontario Co-ordinate System, and clearly delineating the parcels of land approved by the Committee of Adjustment. A listing of the PARTS and their respective areas is required.

4. A copy of a letter from the Executive Director of Engineering and Construction Services advising that the applicant has obtained the necessary adjustment to the municipal addressing of the land. Contact Survey and Mapping Services, Engineering and Construction Services at (416) 392-7755. The application for municipal addressing must be accompanied by a copy of the deposited Reference Plan of Survey, integrated with the Ontario Co-ordinate System, and specify the PART numbers that will comprise each of the new parcels.

5. This decision shall become null and void within 12 months unless the Certificate of the Committee of Adjustment is affixed to the relevant documents.