

DECISION AND ORDER

Decision Issue Date Tuesday, September 11, 2018 and amended pursuant to Rule 30.1 on Monday, October 1, 2018

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

Appellant(s): PETER PITINO

Applicant: MARTIN RENDL ASSOCIATES

Property Address/Description: 0 MARLENA DR

Committee of Adjustment Case File Number: 17 275852 ESC 43 CO, 17 275860 ESC 43 MV, 17 275861 ESC 43 MV

TLAB Case File Number: **18 140604 S53 43 TLAB, 18 140606 S45 43 TLAB, 18 140607 S45 43 TLAB**

Hearing date: Friday, September 07, 2018

DECISION DELIVERED BY T. YAO

APPEARANCES

Name	Role	Representative
Pitinotwentyten Inc.	Owner	
Peter Pitino	Appellant	
Martin Rendl	Expert Witness	

INTRODUCTION

Pitinotwentyten Inc. (referred to from now on as "Mr. Pitino") wishes to sever a remnant Scarborough lot into two and build two two-storey houses. Because the

remnant lot is wide and shallow, the new buildings will have very little rear yard but one ample side yard each.

Table 1. Variances sought for 0 Marlana (two lots)			
		Required	Proposed for lot under file A0484 (file A0485)
Variances from City-wide harmonized By-law 569-2013			
1	South (north) side yard setback	1.2 m	0.65 m (0.65 m)
2	(gross) floor area	204 m ²	245 m ² (no floor area variance sought) ¹⁾
3 (2)	Minimum lot area	464 m ²	404 m ² (331 m ²)
4(3)	Front yard setback	8.02 m	5.73 m (6 m)
5	Rear yard setback	7.5 m	1.26 m (1.27 m)
6(4)	Building height	9 m	9.83 m (9.72 m)
Variances from former Scarborough West Hill Zoning By-law 10327			
7(6)	Lot area	464 m ²	404 m ² (331 m ²)
8	Front yard setback	6.0 m	5.73 m (setback complies)
9(8)	South (north) side yard setback	1.8 m	0.65 m (0.65 m)
10 (9)	Rear yard setback	7.5 m	1.26 m (1.26 m)
11(10)	Building height	9 m	9.85 m (9.74 m)
12	(gross) floor area	204 m ²	227.6 m ² (no floor area variance sought) ¹⁾

The proposal requires a consent for severance and two sets of variances, one set for each lot. Marlana is a north-south street ending at its northern end in a bulb

shaped cul-de-sac; the remnant is a long vertical parcel at the four o'clock position. The north lot is identified in Table 1 as File A0484 and the south lot as File A0485 (variances for the south lot appear in brackets after the number for the north lot). The Committee granted the consent to sever and all the variances except one. Mr. Pitino appealed the variance that was turned down, but not the consent, which is therefore now final. However, the consent decision requires that these appeals of the refused variances succeed, or the consent will be ineffective. Thus, the minor variances alone are before the TLAB.

MATTERS IN ISSUE

I must be satisfied that the applications meet the four tests under s. 45(1) of the *Planning 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

I heard from Martin Rendl, Mr. Pitino's land use planner, whom I qualified as able to give opinion evidence in the area of land use planning.

ANALYSIS, FINDINGS, REASONS

The only area of concern is the distance between the two houses; that is the **south** sideyard setback of the north lot and the **north** sideyard setback of the south lot. The Committee of Adjustment intended that this proposal go forward but with building to-building distances of 2.4 m (about 7.87 feet), whereas Mr. Pitino wishes it be 1.3 m (0.65 + 0.65 m, or 4 feet in total). I regard the Committee of Adjustment panel as extremely experienced and I have tried to carefully understand its decision. Unfortunately, I cannot reconcile the rejection of variance 1 with the rest of the Committee's decision.

Diagram 1. North Lot

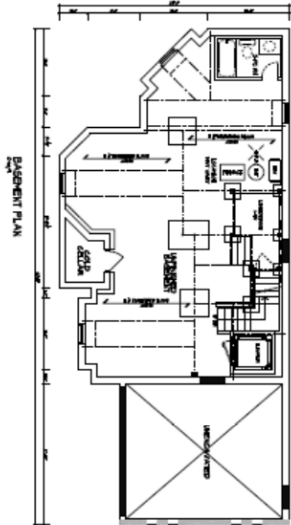
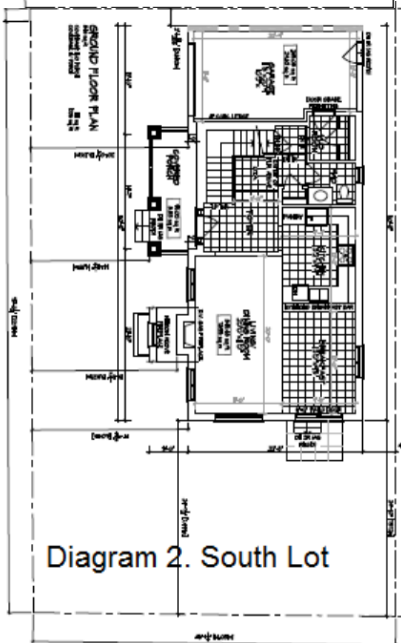


Diagram 2. South Lot



First, I agree with the overall decision to have granted a severance into two lots and to site the buildings to create large side yards, one each abutting the existing north and south neighbours (numbers 135 and 127 Marlana). It is common in Toronto severances for the new lots to "defer" to existing neighbours and "scrimp" on internal side yard setbacks that affect only the other newly severed property.

The Committee of Adjustment's decision to refuse variance 1 (bolded in Table 1) is illogical, given its granting of the same variance in line 9(7) (also bolded). For the south lot, it granted a variance for 0.65 m, which is a deviation of 1.15 m) from the 1.8 standard in the West Hill by-law but denied a deviation of 0.55 m from the City-wide harmonized by-law. The location of the problem setbacks is shown by double ended arrow in Diagrams 1 and 2, below.

In order to try to ascertain the Committee's thinking, I reviewed all the letters of opposition, to see if this was an issue. No persons appeared at hearing, nor did anyone other than Mr. Pitino indicate an intention to become a party. There were two consistent issues, a regret at the loss of open space as a place for children to play and a concern that the new premises would become rooming houses.

The subject lands have been vacant space in this community for 43 years, according to David and Kristine Milne, 35 Marlana. But, this is private land; Mr. Pitino says he pays someone to mow the grass every two weeks. As for a possible future conversion to a rooming house, this is a complicated issue, since there are *Planning Act* policies favouring secondary suites in detached homes, semis and townhouses. A rooming house conversion, if it happened, would also require Building Code and municipal licensing

involvement, which are not issues that the TLAB has jurisdiction over. I am only concerned with the building-to-building distance between the two proposed houses.

The local Councillor wrote the only letter that mentions this issue:

The lack of sufficient setbacks between the new dwellings, rear yard and front yard may significantly impact the properties with respect to drainage and other grading and optical issues, as well as the visual appearance of the proposed dwellings resulting in loss of value to the surrounding properties.

Each of these objections was rebutted by Mr. Rendl; a drainage plan would be approved by the City under the building permit process; the visual appearance of the houses would not be affected; all that would happen would be that the two buildings moved slightly farther apart, with no difference in the elevation plans and that it is doubtful that two two-storey homes in an area of predominantly bungalow/split level homes would result in loss of value to the surrounding properties. Neither the Milnes nor the neighbour to the south mention loss of value; indeed, the southern neighbor asked if Mr. Petino was interested in selling a 10-foot strip of property so he could add to his lot. Of course, I have had the benefit of a morning of planning evidence; the neighbours and Councillor did not have the benefit of the full picture.

Mr. Rendl said the purpose of these side yards is to gain access to the rear yard; which is accomplished by the 4 feet proposed. There may be also a need for maintenance, that is to place a ladder between the buildings. Mr. Rendl said that when he needed roof repairs, the worker put that ladder at the most accessible location and walked over the roof to inspect the side gutter.

I will now briefly set out why I feel the four tests are met. The proposal conforms and is consistent with higher order Provincial policies, encouraging better use of infrastructure¹. I find the proposal maintains the Official Plan intent of a project that is sensitive, gradual and fits in. The **Official Plan** specifically mentions "gaps" in the lotting fabric that become infill

¹ Mr. Rendl's witness statement states in paragraph 27: "The minor variances are consistent with the PPS' policies for managing and directing land use to achieve efficient and resilient development and land use patterns. Specifically, the proposed development:

- Promotes efficient development and land use patterns (PPS Policy 1.1.1(a));
- Promotes cost-effective development patterns and standards to minimize land consumption and servicing costs (PPS Policy 1.1.1(e));
- Is an efficient use of land (PPS Policy 1.1.3.2(a)1);
- Efficiently uses the infrastructure and public service facilities which are available (PPS Policy 1.1.3.2(a) 2)."

projects later². The massing, privacy, light and sky views is adequate, and the many other criteria satisfied.

Mr. Pitino is a real estate agent and experienced builder, as is his son. The plans indicate an elevator serving all three levels in both buildings will be installed. They have recognized in their business that there is a need for a range of housing options and a two-storey dwelling with an elevator in this area serves a need that a bungalow does not, for example a couple with an older relative who requires wheelchair accessibility. This accessibility will be carried forward into the design of corridors and bathrooms etc. I applaud Mr. Pitino's efforts to meet this provision of the Official Plan:

The vision of the Plan is about creating an attractive and safe city that evokes pride, passion and a sense of belonging - a city where people **of all ages** and abilities can enjoy a good quality of life.

A city with:

vibrant neighbourhoods that are part of **complete communities**;

affordable housing choices that meet the needs of everyone **throughout their life**; (page 1.2, my bold)

The intent of the **zoning by-law** is to create 4-foot side yard setbacks; this is the same standard for the as built bungalows and split levels that characterize this post WW2 area.

² Scattered throughout many Neighbourhoods are properties that differ from the prevailing patterns of lot size, configuration and orientation. Typically, these lots are sites of former non-residential uses such as an industry, institution, retail stores, a utility corridor, or are lots that were passed over in the first wave of urbanization. In converting these sites to residential uses, there is a genuine opportunity to add to the quality of Neighbourhood life by filling in the "gaps" and extending streets and paths. Due to the site configuration and orientation, **it is often not possible or desirable to provide the same site standards and pattern of development in these infill projects as in the surrounding Neighbourhood**. Special infill criteria are provided for dealing with the integration of new development for these sites, . . .

4.1.9

Infill development on properties that vary from the local pattern in terms of lot size, configuration and/or orientation in established Neighbourhoods will: have heights, massing and scale appropriate for the site and compatible with that permitted by the zoning for adjacent and nearby residential properties;

provide adequate privacy, sunlight and sky views for residents of new and existing **buildings by ensuring adequate distance and separation between building walls** and using landscaping, planting and fencing to enhance privacy where needed;

front onto existing or newly created public streets wherever possible, with no gates limiting public access; and

locate and screen service areas and garbage storage to minimize the impact on existing and new streets and residences. (my bold)

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Both existing neighbours will benefit from very generous side yards, far more than the required minimum; number 35 will have a side yard of 6 m and number 27 a side yard of 7.5 m.

I find that the general intent of the zoning is maintained. Having particular regard to the accessible features of the homes, the variances are **desirable for the appropriate use of the land**. The two side yard setbacks have no real drawbacks and add to the side yards, which are more important. I agree that these are **minor variances**. Individually and collectively the variances meet the statutory tests.

DECISION AND ORDER

I authorize the variances set out in Table 1 on condition that the owner of the lands construct in substantial compliance with the plans filed with the Committee of Adjustment under files A0484 and A0485.

X

Ted Yao

Ted Yao
Panel Chair, Toronto Local Appeal Body
Signed by: Ted Yao