

# DECISION AND ORDER

**Decision Issue Date**      Tuesday, November 27, 2018

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

Applicant/Appellant: Peyman Ghorbankhani

Property Address/Description: 317 Homewood Avenue Parts 1 & 2

Committee of Adjustment Case File: 17 276847 NNY 10 CO (B0078/17NY)

TLAB Case File Number: 18 191774 S53 10 TLAB

**Hearing date:**      Monday, November 19, 2018

**DECISION DELIVERED BY S. GOPIKRISHNA**

## APPEARANCES

Cherian Mathew  
Dan Styrian  
Kim Ironmonger

Participant  
Participant  
Participant

## INTRODUCTION AND BACKGROUND

Peyman Ghorbankhani is the owner of the lots respecting 317 and 319 Homewood Avenue, in the northern part of the former City of North York. In order to create 3 lots from the existing 2 lots at 317 and 319 Homewood Ave, he applied to the Committee of Adjustment (COA), and build a detached house on each of the 3 lots. Mr. Ghorbankhani applied to the Committee of Adjustment (COA), which considered the applications for consent to sever the lots and associated variances for the houses on June 13, 2018, and refused both the consent to sever the 2 existing properties, as well as the variances requested for the 3 detached houses to be built on.

The Decisions respecting the severances on the 2 lots at 317 and 319 were appealed to the Toronto Local Appeal Body (TLAB), as separate applications; the variance applications were not appealed. Notwithstanding the absurdity in moving forward with only one lot at a time when the two lots had to be combined in order to consider the

possibility of creating three lots, no attempt was made at any stage to combine the Appeals.

A hearing date of 19 November, 2018, was set for the property respecting 317 Homewood Ave.

## **MATTERS IN ISSUE**

### **CONVEYED - Part 2**

Part 2 has a lot frontage of 6 m and a lot area of 233.76m<sup>2</sup>. Part 2 will be added to the Part 3 (severed from B0079/17NY) to create a new building lot with a frontage of 11.68 m and a lot area of 479.25 m<sup>2</sup>. Parts 2 and 3 will be redeveloped with a new detached residential dwelling. (A01114/17NY)

### **RETAINED - Part 1**

Part 1 has a lot frontage of 11.68 m and a lot area of 479.25 m<sup>2</sup>. The lot will be redeveloped with a new detached residential dwelling (A1113/17NY).

## **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;

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- (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).

## **EVIDENCE**

It may be noted that there were no submissions made whatsoever by the Appellant at any point time in the proceeding. The Appeal ( Form 1) filed to the TLAB stated that the request for postponing the proceeding in order to retain a Planner had been turned down, and that the Appellant did not feel comfortable expressing himself in English.

On 19 November, 2018, the hearing was attended by Mr. Cherian Mathew, of 74 Dewlane Avenue, Mr. Dan Styrian of 315 Homewood Avenue , and Ms. Kim Ironmonger of 321 Homewood Avenue. Mr. Ghorbhanhkhani did not attend the hearing. We waited an extra 15 minutes after the scheduled start time of 9:30 AM, in case he was late.

While Mr. Mathew had completed the paperwork for election as a Participant, Mr. Styrian and Ms. Ironmonger had not completed the requisite paperwork. Mr. Styrian said that he had a medical problem involving his eyes; both he and Ms. Ironmonger had

attended and/or sent in letters to the COA. I allowed Mr. Styrian and Ms. Ironmonger to become Participants, notwithstanding the lack of paperwork.

I drew the attention of the opposition members to the fact that letters submitted to the COA, and resubmitted to the TLAB, had focused on the 78 variances required to construct the 3 detached homes, but these objections were moot to the TLAB proceeding because the variances had not been appealed. I explained to the opposition that the only issue before me was the severance application at 317 Homewood, and the two practical issues in making a decision on the severance, the first being the absence of the Appellant, and second being the exclusion of the corresponding application respecting 319 Homewood Ave.

I proposed to adjourn the hearing in order to better understand why it had not been combined with the Appeal at 319 Homewood Ave., as well as provide an opportunity to Mr. Ghorbhakhani to advance his case since nothing was provided by way of explanation to the TLAB.

The disappointment and frustration of the opposition members in attendance, was stated in no uncertain times. Pointing out that they had to take time off work in order to attend the hearing, they complained very strongly about the Appellant's seeming indifference to the proceeding by not appearing at the hearing. I told them that I empathized with their frustration, but that the Appellant had to be given a fair chance to state his case, and given that I wasn't aware of why he wasn't in attendance, I preferred to adjourn the hearing and provide the Appellant an opportunity to participate.

Mr. Styrian asked to submit a letter to me at the hearing explaining his opposition; I accepted the letter into the record and requested the TLAB staff to upload the letter onto the corresponding file on the TLAB website. Ms. Ironmonger stated that she would be out of the country in March 2019, and asked if we could hold the hearing after her return so that she could participate. Mr. Mathew asked if they could submit new witness statements which addressed the consent to sever, since that was the only issue at hand. I replied in the affirmative to both the questions, and adjourned the hearing until further notice.

## **ANALYSIS, FINDINGS, REASONS**

There were two major issues before me in proceeding with this issue: the absence of the Appellant, and the logical and practical impossibility of considering an improbable solution implementable solution when only one of the plots has been appealed, and when the two plots have to be combined to create the three lots, as requested by the Appellant.

Rather than dismiss the matter outright, I believe that is important to give the Appellant at the very least, an opportunity to understand the process, follow the Rules of the TLAB, consolidate the Appeals, and facilitate a meaningful processing of the Appeals by this tribunal.

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On the matter of the Appellant's not showing up at the hearing nor sending out any communication prior to the hearing, I share the thoughts of my colleague, Mr. Ian James Lord, who adjudicated the Appeal respecting 319 Homewood, heard on 21 November, 2018, where the Appellant again was a no show. I excerpt the following quote from his Decision

*"A hearing before the TLAB is not an inconsequential matter. It is not to be considered lightly but rather is to be prepared for with an abundance of caution, including respect for and adherence to the Rules. Not only is the tribunal itself inconvenienced by allocating valuable time and resources for the full consideration of matters put in issue by the Parties and Participants, but the public itself is inconvenienced by obligations and attendances that are commitments deserving of respect, not to mention the loss of available hearing time lost and delayed for other file matters."*

I herewith urge the Appellant to demonstrate good faith by following through on the TLAB's Rules respecting timely submissions, in order for this Appeal to go forward.

I would also urge the Appellant to review the Rules, with specific reference to the Section on Consolidation, and Consecutive Appeals. I reiterate that it is impossible to proceed on any one of the 2 Appeals individually, since the Appeal looks to use the two existing, neighbouring lots together to create three new lots. It is important for the Appellant to contact the TLAB at the earliest possible opportunity, and make a sincere effort to follow through on submissions, including the possible consolidation of the two Appeals. I note that the TLAB Member hearing the Appeal may hear the two Appeals consecutively, should they not be consolidated.

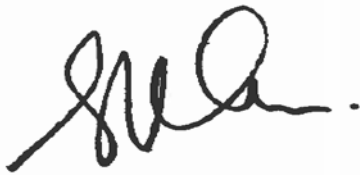
## **DECISION AND ORDER**

1. The appeal matter respecting 317 Homewood Avenue is adjourned.
2. The TLAB shall, in the normal course, issue a new Notice of Hearing specifying the requisite dates for compliance and a rescheduled Hearing of not less than two (2) days.
3. The new Hearing Date shall be sufficiently far in the future to permit the Applicant to bring, forthwith, any required variance applications and any appeal thereof to accommodate their consideration at the same proceeding as the consent matters. The bifurcation of required approvals shall not be allowed.
4. If both appeals are to continue to a new Hearing, they shall be heard together, either through voluntary consolidation or to be heard consecutively by the same Member, all at the discretion of the Member hearing the matters.
5. A strict adherence to the Rules respecting the Applicants disclosure and the filings required of any Party or Participant is required. Such filings shall be

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supplemental to any materials now posted and on file at [www.toronto.ca/tlab](http://www.toronto.ca/tlab),  
applicable to both 317 and 319 Homewood Avenue.

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S. Gopikrishna  
Panel Chair, Toronto Local Appeal Body