

# DECISION AND ORDER

**Decision Issue Date** Thursday, November 22, 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: 319 Homewood Avenue Parts 3 & 4

Committee of Adjustment Case File: 17 276903 NNY 10 CO (B0079/17NY)

TLAB Case File Number: 18 191782 S53 10 TLAB

**Hearing date:** Wednesday, November 21, 2018

**DECISION DELIVERED BY** Ian James LORD

## APPEARANCES

None

## INTRODUCTION AND BACKGROUND

This appeal, in respect of 319 Homewood Avenue (subject property), arises from the severance refusal by the North York Panel of the City of Toronto (City) Committee of Adjustment (COA).

The subject property is located west of Yonge Street, south of Steeles Avenue West and east of Bathurst Street in an exclusively residential neighbourhood, with associated uses. Located on the south side of Homewood Avenue five doors west of Chelmsford Avenue, it is situate beside 17 Homewood Avenue, the neighbouring property to the east, also currently before the Toronto Local Appeal Body (TLAB) on a severance appeal by the same Applicant.

A survey plan on file indicates the intention to sever portions of both existing lots, combine the severed portions into a third parcel and, following demolition, construct a detached residence on each of the three parcels so created.

Both appeals were scheduled for the same week although they were neither consolidated nor listed consecutively. Member Gopikrishna convened a Hearing on the

consent appeal for 17 Homewood Avenue on November 19, 2018. That matter is the subject of a separate disposition; the Applicant /Appellant did not appear and several persons present had their attendance recorded but not employed.

It appears that if there were associated variances with the appeals on either property, the decision thereon, if any, was not the subject of any appeal(s). It is, however, clear from the filings above described that the lots so proposed to be created will require the consideration of variance relief to enable construction thereon.

What is unclear is as to how this could be accomplished under separate, distinct, disjointed and potentially incomplete appeal files.

## **JURISDICTION**

In addition to compliance with Provincial Policy found in the Provincial Policy Statements (2014) and the Growth Plan for the Greater Golden Horseshoe (2017), an application for consent must meet statutory considerations, below.

### **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;

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- (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**

This Member attended on the Hearing of the matter at the appointed hour having read the pre-filed material and conducted a site visit, as per Council's directive.

The sitting in respect of 19 Homewood commenced and was held open for 15 minutes.

There were no persons who appeared, Party or Participant, or in any other capacity.

I was provided by TLAB Staff with the advice that the TLAB had received an email communication on Wednesday, November 21, 2018 at 8:40 am from the Applicant, Peyman Ghorbankhani, advising as follows, and addressed to: To Whom It May Concern:

"I called about two months ago, and I asked to postpone the hearing, I was under the impression that my hearing has been postponed, I am out of the country, and I can not attend the hearing.

Is there anyway that I can ask to postpone the hearing please. Thank you"

This email arrived 40 minutes before the sitting was convened.

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With no one in attendance and no evidence to address, as indicated I closed the sitting after waiting 15 minutes for any potential latecomers.

On inquiry, I have been advised that there is no record of any such communication on record with the TLAB Staff. I also note that there were no filings made available to be posted on the TLAB website in the nature of an Applicants disclosure, a Witness Statement or any expression of the intention to call any expert testimony. In like manner, none of the identified Participants had filed a Participants Statement.

## **ANALYSIS, FINDINGS, REASONS**

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.

Both consent appeal files applicable to 317 and 319 Homewood Avenue appear to be the subject of this criticism.

In this case, none of the required dates set out in the Notice of Hearing were adhered to, there was no disclosure or any communication indicating the connectivity between separate appeal files for 317 and 319 Homewood Avenue and no evidentiary filing indicating how the multiple statutory considerations imposed on a consent application were intended to be addressed.

The lack of preparation, inattentiveness and casual manner in which this appeal has been approached by the Applicant/Appellant is palpable.

But for the stalwart, 11th hour email attributable to the Appellant, this matter should be dismissed.

However, as Member Gopikrishna also has a parallel appeal to consider and in light of the email above referenced, an opportunity can be afforded the Applicant/Appellant to 'right the ship', perform in accordance with the Rules, and consider whether both matters should proceed at all in the absence of formal applications for variances, if required, to permit a full consideration of all files on their merit.

It is in the public interest that all matters related to an appeal be considered together as either a consolidated matter or to be heard consecutively.

The TLAB has no interest or intention of conducting partial, disjointed or incomplete proceedings.

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If this matter is to be pursued and brought back on for a hearing, the TLAB underscores, below, the expected requirements to be met by the Applicant/Appellant and any other person having an interest in the matter.

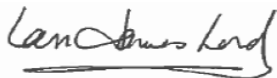
## **DECISION AND ORDER**

This matter is disposed of on the following terms:

1. The appeal matter respecting 319 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. Subject to the disposition by Member Gopikrishna on the appeal matter respecting 317 Homewood Avenue, 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 supplemental to any materials now posted and on file at [www.toronto.ca/tlab](http://www.toronto.ca/tlab), applicable to 317 and 319 Homewood Drive.

This Member is not seized.

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I. Lord  
Panel Chair, Toronto Local Appeal Body  
Signed by: Ian Lord