Toronto Local Appeal Body

40 Orchard View Blvd, Suite 211
Toronto, Ontario M4R 1B9

Telephone: 416-392-4697
Fax: 416-696-4307
Email: tlab@toronto.ca
Website: www.toronto.ca/tlab

DECISION AND ORDER

Decision Issue Date Tuesday, March 26, 2019

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): 2513620 ONTARIO INC

Applicant: TOM VANLE

Property Address/Description: 291 CRAVEN RD

Committee of Adjustment Case File: 18 131657 STE 32 CO, 18 131664 STE 32 MV, 18 131665 STE 32 MV, 18 131666 STE 32 MV

TLAB Case File Number: 18 239599 S53 32 TLAB, 18 239600 S45 32 TLAB, 18 239603 S45 32 TLAB, 18 239605 S45 32 TLAB

Hearing date: Monday, March 18, 2019

DECISION DELIVERED BY S. GOPIKRISHNA

APPEARANCES

NAME	ROLE	REPRESENTATIVE
2513620 ONTARIO INC	APPELLANT/OWNER	TOM VANLE

INTRODUCTION AND BACKGROUND

Karshana Balagangadharan is the owner of 291 Craven Road, located in the Beaches-East York Municipal Ward of the Municipality of the City of Toronto. He applied to the Committee of Adjustment (COA) to sever the property at 291 Craven into three undersized lots, and to request for variances for buildings to be constructed on each of the three plots to be created. The COA heard the application on 20 September, 2018, and rejected the severance request, as well as the variance requests for houses on each of the three lots.

On 9 October, 2018, the Applicant appealed the COA's decisions to the Toronto Local Appeal Body (TLAB), which scheduled a hearing on 18 March, 2019.

MATTERS IN ISSUE

The details of the consent to sever and the variances requested for each of the houses to be built on the severed lots appear in the Attachment Appendix A.

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 form 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 hearing held on 18 March, 2019, was attended by the owner, Mr. Balagangadharan and his agent, Mr. Tom Truong Vanle. Mr. Vanle was the only witness to give evidence. After being sworn in, Mr. Vanle stated that he was an architect by training, and was responsible for the design of the three houses , each of which was to be constructed on each of the three lots to be formed.

Mr. Vanle provided me with a description of the floor plans of the planned houses, as per the plans submitted to the COA, and subsequently showed me the floor plans of the planned houses, as modified for the TLAB hearing- the main difference between the plans for each of the houses, between what was submitted to the COA and the updated submission to the TLAB, was that the utilities room in the basement of the house had been eliminated. Mr. Vanle also said that the "basement had been depressed from 5 feet 6 inches at grade to 3 feet 11 inches, which meant that the basement would no longer contribute towards the GFA.". He stated that the plans submitted to the TLAB

had been modified to be consistent with the recommendations in the COA Staff report, as submitted at the time of the COA hearing held on 20 September, 2018.

Mr. Vanle briefly described the site statistics and said that the current site had a frontage of 15.24 metres in an area where the expected frontage was 6 m. He drew my attention to a compilation of decisions made by the COA to demonstrate that there were 3 properties with frontages of less than 6 m, approved by the COA in the last 10 years. Mr, Vanle also drew my attention to a thirty or so properties in the same area, where lots of 6 m or less of frontage, which he said, "had been grandfathered" into the lot pattern area of the community. He added that the area was zoned "RD0.6, R2(ZZC)".

He stated on the basis of the aforementioned information, the TLAB should grant the appeal.

In response to my question about the compatibility between the proposal and Section 51(24) of the Planning Act which governed severances, Mr. Vanle repeated the information above. I then pointed out to him that his evidence focused on the Site plan, and specifically on the variances, and had not addressed the consent to sever at all; and that the consent to sever had to succeed in order for the granting of variances to be meaningful. After repeating the question about Section 51(24), and getting no response from Mr. Vanle, I asked him to explain the rationale for creating lots with a frontage of 5.08 metres, when the majority of the plots were more than 6 m, based on the evidence from the COA decision table. I pointed out that, as an option, they had the option of severing the lot into 2 portions, each with a frontage of 7.62 m, instead of the 3 lots proposed, and asked them to explain their reasons underlying the request for three lots . Mr. Vanle replied that the housing market was such that buyers were looking for "affordable housing", and it therefore "made sense" to sever the lot into three lots, rather than two lots. He emphasized that their market research had demonstrated that the size, and shape of the houses that they planned to build, on, were ideal on undersized lots, from a sales perspective. When asked if he had anything more to add, Mr. Vanle replied in the negative.

I ended the hearing by requesting Mr. Vanle to submit the exhibit consisting of the modified plans as presented to the TLAB, as well as the COA decision table, that he had discussed earlier.

ANALYSIS, FINDINGS, REASONS

I would like to begin by pointing out that no witness statements were submitted by the designated deadline, nor were many of the exhibits. However, the late submissions are of no significant consequence since there were no other Parties involved in the Appeal, and consequently no assertions of prejudice.

The evidence put forward by the Appellants was brief- it focused on a discussion of the Site Plans, and how they reflected changes recommended by the Staff report put forward at the COA hearing. Notwithstanding my specifically drawing the Appellants'

attention to the need for discussing the compatibility of the requested consent with Section 51(24) of the Planning Act, there was absolutely no response, leading to me conclude that the Appellants were completely unfamiliar with Section 51(24) of the Planning Act. While the logic behind deciding the frontage of the houses based on market trends is comprehensible from a sales perspective, it cannot be used to justify the severance to the TLAB, which looks at consents to sever lots solely through a planning lens, and eschews economics based explanations. I take this opportunity to point out that the expression “affordable housing” has a specific usage, and unique recognition, in the City of Toronto’s Official Plan(OP). It is not be interpreted arbitrarily to mean anything else other than the very specific usage established in the OP.

The lack of discussion about Section 51(24) means that the consent to sever is not supported by planning principles, and therefore deserves to be refused. Since the approval of the consent to sever is necessary to create three lots and consequently build three residences, one may conclude that the refusal of the variances is a corollary to the refusal of the consent to sever. However, in this case, I have decided to look at the variances separately, through the prism of Section 45.1, to determine if they can be approved.

Given the symmetry of the requested lot sizes, shape and the variances themselves, I conclude that a decision may be arrived at regarding the variances for all three lots, by examining the variances requested on any of the three plots.

The use of COA decisions to justify the requested frontage overlooks the fact that the corpus of COA decisions does not constitute precedent because of the need to contextualize information, and treat every proposal on its own merit. Applicants should not assume that what is good for the goose is good for the gander. In addition, a mere 3 or 4 decisions over a 10 year period does not, in my mind, quantify the concept of “gradual change” which is necessary to ensure that communities are stable without being static.

Given that no policies in the Neighbourhoods section of the OP were alluded to, let alone discussed, there was no evidence to demonstrate that the requested variances are supported by the Official Plan. There was no reference whatsoever to performance standards, as required of By-laws regulating different aspects of the building to be constructed. There was no clear evidence offered , even by way of assertion, to demonstrate that the requested variances , were individually and cumulatively, minor, or desirable by way of development. While the variance requests are arguably nullified as a result of my refusing the consent to sever, it is important to note that they also fail on each lot, as a result of paucity of evidence related to Section 45 of the Planning Act.

It is trite law to state that the onus of proof relating to the severance, and variances, rest firmly with the Appellant, a burden that has not been fulfilled in this case. Given the evidence and my discussion above, it is only a corollary to conclude that the Appellant has not been able to satisfy the requirements of Sections 51(24) and 45.1 of the Planning Act. The appeals are therefore refused in their entirety.

DECISION AND ORDER

1) The Appeals are refused in their entirety. This means that the consent to sever the property, as well as the requested variances for each of the buildings to be built on each of the three lots that would have resulted from the severance, are refused in their entirety.
2) The Decision of the Committee of Adjustment dated 20 September, 2018, is confirmed.

So orders the Toronto Local Appeal Body

X 

S. Gopikrishna
Panel Chair, Toronto Local Appeal Body

APPENDIX A

291 CRAVEN ROAD – HEARD 18 MARCH, 2019

CONSENT AND VARIANCES SOUGHT IN THE APPLICATION

PURPOSE OF THE APPLICATION:

THE CONSENT REQUESTED:

To obtain a consent to sever the property into three undersized residential lots.

Retained – Part 1, Draft R-Plan

Address to be assigned

The lot frontage is 5.08 m and the lot area is 113.27 m². A new three-storey detached dwelling will be constructed and will require variances to the Zoning By-law, as outlined in application number A0295/18TEY.

Conveyed- Part 2, Draft R-Plan

Address to be assigned

The lot frontage is 5.08 m and the lot area is 113.26 m². A new three-storey detached dwelling will be constructed and will require variances to the Zoning By-law, as outlined in Application number A0296/18TEY.

Conveyed- Part 3, Draft R-Plan

Address to be assigned

The lot frontage is 5.08 m and the lot area is 113.24 m². A new three-storey detached dwelling will be constructed and will require variances to the Zoning By-law, as outlined in Application number A0297/18TEY.

To construct a new three-storey detached dwelling on each of the lots described in Consent Application B0032/18TEY.

REQUESTED VARIANCE(S) TO THE ZONING BY-LAW:

A) **A new three-storey detached dwelling will be constructed and will require variances to the Zoning By-law, as outlined in Application number A0295/18TEY**.

1. **Chapter 10.10.30.10.(1)(B), By-law 569-2013** The minimum required lot area is 180 m². The area of the retained lot will be 113.27 m².

2. **Chapter 10.10.30.20.(1)(B), By-law 569-2013** The minimum required lot frontage is 6 m. The frontage of the retained lot will be 5.08 m.

3. **Chapter 10.10.40.10.(4), By-law 569-2013**

The maximum permitted roof slope above the second storey is 5.0 vertical units for every 3.0 vertical units. The roof slope above the second storey will have 7.5 vertical units for every 3.0 horizontal units.

4. **Chapter 10.10.40.40.(1)(A), By-law 569-2013**

The maximum permitted floor space index of a detached dwelling is 0.6 times the area of the lot (67.97 m^2). The new detached dwelling will have a floor space index equal to 1.71 times the area of the lot (193.4 m^2).

5. **Chapter 10.5.40.60.(7), By-law 569-2013**

Roof eaves may project a maximum of 0.9 m provided that they are no closer than 0.3 m to a lot line. The roof eaves will project 0.2 m and will be located 0.25 m from the north side lot line and 0.26 m from the south side lot line.

6. **Chapter 200.5.10.1.(1), By-law 569-2013**
   A minimum of one parking space is required to be provided. In this case, zero parking spaces will be provided.

B) A new three-storey detached dwelling will be constructed and will require variances to the Zoning By-law, as outlined in Application number A0296/18TEY

1. **Chapter 10.10.30.10.(1)(B), By-law 569-2013** The minimum required lot area is 180 m². The area of the retained lot will be 113.27 m².

2. **Chapter 10.10.30.20.(1)(B), By-law 569-2013** The minimum required lot frontage is 6 m. The frontage of the retained lot will be 5.08 m.

3. **Chapter 10.10.40.10.(4), By-law 569-2013**

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6. **Chapter 200.5.10.1.(1), By-law 569-2013**
   A minimum of one parking space is required to be provided. In this case, zero parking spaces will be provided.

C) **A new three-storey detached dwelling will be constructed and will require variances to the Zoning By-law, as outlined in Application number A0297/18TEY**

1) **Chapter 10.10.30.10.(1)(B), By-law 569-2013** The minimum required lot area is 180 m². The area of the retained lot will be 113.27 m².

2) **Chapter 10.10.30.20.(1)(B), By-law 569-2013** The minimum required lot frontage is 6 m. The frontage of the retained lot will be 5.08 m.

3) **Chapter 10.10.40.10.(4), By-law 569-2013**

The maximum permitted roof slope above the second storey is 5.0 vertical units for every 3.0 vertical units. The roof slope above the second storey will have 7.5 vertical units for every 3.0 horizontal units.

4) Chapter 10.10.40.40.(1)(A), By-law 569-2013

The maximum permitted floor space index of a detached dwelling is 0.6 times the area of the lot (67.97 m^2). The new detached dwelling will have a floor space index equal to 1.71 times the area of the lot (193.4 m^2).

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