

DECISION AND ORDER

Decision Issue Date Friday, April 05, 2019

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

Appellant(s): HEKBER ARSLAN

Applicant: MICHAEL FORTE

Property Address/Description: 19 WINDSOR RD

Committee of Adjustment Case File Number: 18 162510 WET 02 CO, 18 162520 WET 02 MV, 18 162521 WET 02 MV

TLAB Case File Number: 18 255065 S53 02 TLAB, 18 255067 S45 02 TLAB, 18 255068 S45 02 TLAB

Hearing date: Wednesday, March 06, 2019

DECISION DELIVERED BY TED YAO

APPEARANCES

Name	Role
Hekber Arslan, Suna Yegen	Appellants/Owners (They did not choose to have a legal representative)
Michael Forte	Applicant/Architect
Terry Marchese	Real Estate Agent

INTRODUCTION

Hekber Arslan wishes to sever his 22.834 m lot into two 11.41 m lots. In imperial measurement terms he has an almost **75-foot lot** with a 163 ft depth, which he wants to divide into two lots slightly less than 37 and a half feet wide. To accomplish this goal, he needs a severance and variances. The depth will not be affected. In October 2018,

the Committee of Adjustment refused his application. Mr. Arslan appealed, and thus this matter comes before the TLAB.

BACKGROUND

The following variances will be required:

Table 1. Variances sought for Part 1 of 19 Windsor (Part 2 in brackets)			
From City wide zoning By-law 569-2013			
		Required	Proposed
	A severance is required		
	Lot frontage	13.5 m (44.29 ft)	11.41 m (11.41 m) or 37.43 ft
	Floor space index	45% of lot area	51% of lot area (51%)
	Side yard setback	1.2 m	Originally 1.19 m from north side lot line (0.91 m from south lot line); please see sentence in bold at the end of this section.

Only variances from the City-wide Zoning By-Law 569-2013 are needed. However, the architect, Michael Forte, has not submitted the latest revision of the plans to the zoning plan examiner. Apparently, the floor space index plans for the new houses have been reduced from some earlier figure by a few percentage points. **I have relied on the Committee of Adjustment’s written Notice of Decision dated October 25, 2018 for the information in Table 1 because I could not be sure that Mr. Forte’s estimation of floor space index will be consistent with what the plan examiner will find.**

MATTERS IN ISSUE

In my view, the severance is the most important issue which is tied to the zoning variance for lot frontage. A partial list of the applicable *Planning Act* tests for the severance alone¹ would include:

¹ The *Planning Act* has separate tests for a severance and variances and does not have any special tests when both are sought, as in this case.

- adherence to higher level Provincial Policies;
- matters of provincial interest as referred to in Section 2 of the *Planning Act*;
- the size of the lots; and
- Official Plan conformity.

Specific matters of Provincial interest in Section 2 would include the location of growth and promotion of development designed to support public transit. The Official Plan speaks directly to both the severance and the minor variances. Both are considered “development” and the Official Plan states:

4.1.5. Development in established Neighbourhoods will respect and reinforce the existing physical character of the neighbourhood, including in particular

b) size and configuration of lots; . . .

The variance also requires conformity to the Official Plan. The variances must:

- 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 two witnesses, who did not seek to be qualified as expert planning witnesses. Mr. Forte, Mr. Arslan’s architect, and Terry Marchese, Mr. Arslan’s real estate agent. No one appeared in opposition. In addition, I had the planning report of October 18 2018, author Allison Smith, City planner, which report was discussed by Mr. Forte in his oral evidence. I consider that Ms. Smith, even though she did not appear, to be qualified to give opinion evidence in land use planning. At the end of the day, I must be independently satisfied as to the above tests and Mr. Arslan understood that there was no guarantee despite the lack of opponents. He said, “there are two sides to every story”.

Insufficient detail as to frontage measurements

The Official Plan requires a determination of the physical character of the neighbourhood which Mr. Forte did not do; at most, he showed that some “narrow, long lots” exist in close proximity to the subject. He said:

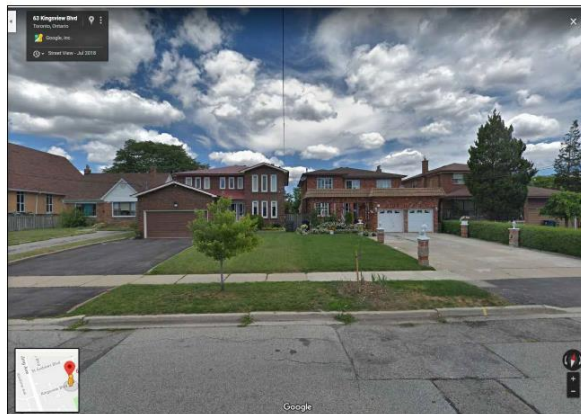
Basically, what I did [in the Picture 1, above] is I took that exact same footprint and just showed it at multiple locations, just for reference and just to show that the depth of the lot is pretty consistent with many of the lots that are in the surrounding neighbourhood. So, I found several examples of that, match both **the length of the lot, the width of the lot, and the density**, I think, you know, just on a graphical basis, you can see by just looking that it’s obvious it’s **pretty close** to what’s there now. . . .So, in the presentation

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[Picture 1 below], the subject is the asterisk and A, B, C, D, are just some examples of similar sized lots.



Mr. Forte went on to say that, “they’re **all in the neighbourhood of 13.5 m (44.29 ft)**” and showed four examples of “narrow and long lots” with a “minimal setback” between each pair of houses. Pair C, 64 and 64A Kingsview, is shown above. No dimensions were given for the frontages of any of the pairs.



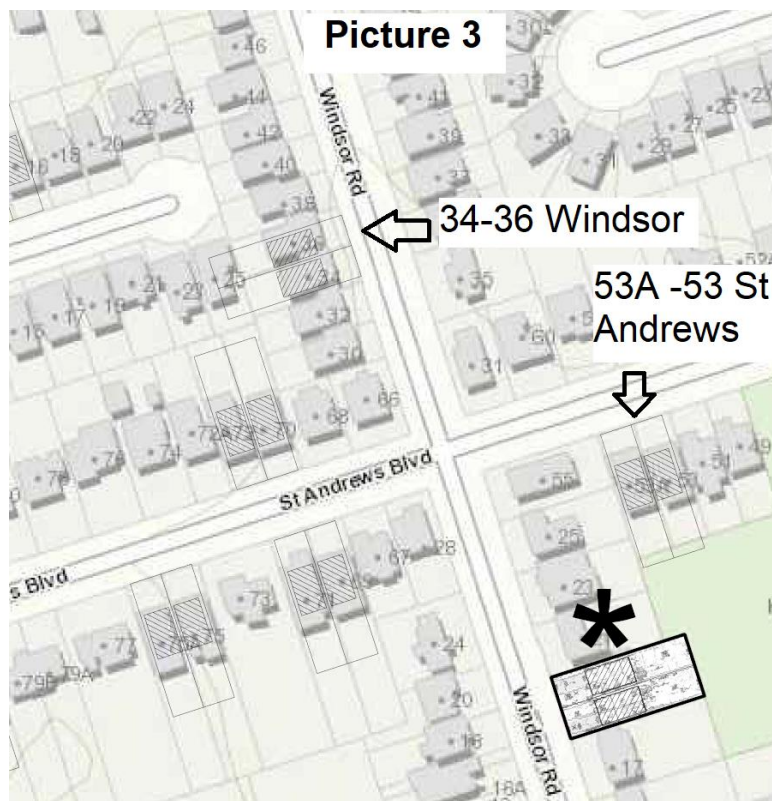
C 64 & 64A KINGSVIEW BLVD

To determine whether the proposed lots respect and reinforce the existing physical character of the neighbourhood, it is necessary to describe the existing character and to do that is to ascertain the makeup of frontages and whether they mostly comply with the zoning frontages and floor space indexes, or not. The evidence on frontages was sketchy, and on floor space indexes non-existent. Even if I assume

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some number of frontages are “narrow”, Mr. Forte never went further in stating what the character of the neighbourhood was and then show how the “narrow” lots respected and reinforced that character. This is a requirement of the Official Plan.

In Picture 3, I have blown up part of Picture 2, which shows 34-36 Windsor extends into the rear property on Byworth. Clearly not all lots in the neighbourhood have similar **depths**. Nor can I tell from this undimensioned picture anything except, perhaps, that the frontages at 34-36 Windsor or 53A-53 Andrews **might be** in the 11.4 to 13.5 m range. This is not the test. I assume that the remaining properties, that is ones without lots superimposed, are 13.5 m, or plus; otherwise Mr. Forte would have highlighted them as well. I find the evidence is imprecise and falls short of meeting the Official Plan test.

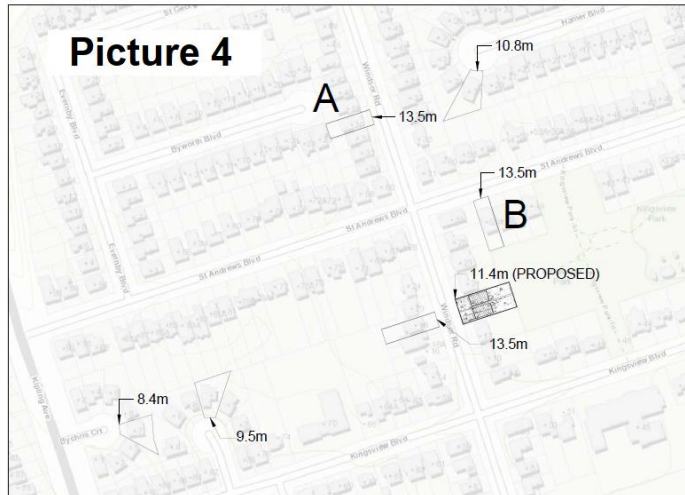


The only specific numbers are shown in Picture 4 (next page):

- a 10.8 m, off of Hamer Boulevard,
- 9.5-m at number 8 Lanni Court
- “less than 10 m”, on Bicrist Court.

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These are all cul-de-sacs, with a different configuration than the pattern on rectilinear streets such as Windsor. Mr. Forte said that compared to these very small frontages, his proposed frontages were at midpoint between them and the minimum frontage of 13.5 m:



The only thing I am trying to show with this diagram, if you took an average between the smallest existing frontages in this quadrant, if you will and I would say, you know... **11.4 is in the middle**, it's certainly a lot closer to 13.5 than it is to 9 or 8. So in that light not only is the lot size consistent with the other lots in the neighbourhood, it's not even the least frontage.

Ms. Smith²'s planning report states:

Planning Staff have concerns with the proposal. A review of the existing lot pattern via lot study of the area shows that the majority of properties have large frontages, predominantly in keeping with or larger than the minimum required lot frontage.

Mr. Forte rebutted:

I think I've demonstrated that that's not the case. The vast majority of lots are the minimum size. And that's clearly obvious when you look at the plan. There's a very small minority of wide lots and, you know, for me it's impossible to make that argument; it's so overwhelming, when you look at the plan of the subdivision.

I disagree that the vast majority of lots are the minimum size. The evidence is insufficient for me to come to any conclusion. The planning report

² She is the City Planner who was not in attendance at the TLAB hearing but whose report was prepared for the Committee of Adjustment.

continued:

There is a small minority of lots with frontages less than or equal to 11.41 metres. These are mostly pie-shaped lots located around the bulbs of cul-de-sacs. As such, Staff is of the opinion that the creation of lots with frontages of 11.41 metres would not be in keeping with the lot pattern of blocks and streets within the immediate surrounding area. Further, the applications, if approved, would create increased pressure for future severances on similar sized lots in the area, of which there are over thirty.

I agree with Ms. Smith that it appears the smallest frontages in the neighbourhood are selected from pie shaped lots, which are anomalous. "Size of lots", that is, frontage, is specifically mentioned in s. 4.1.5 of the Official Plan. The one non-pie lot, 34 Windsor, is shown by Mr. Forte as 13.5 m, which further supports the City planner Ms. Smith's conclusion

Ms. Marchese (Mr. Arslan's realtor) said that the original subdivision was subdivided into one acre lots and then progressively smaller lots.

So, in the last 15 years I believe there have been...(because I'm aware of every single property) that is developed and there has been approximately thirty new houses, just on my street alone there have been I believe two more new houses being built. They're demolitions, they were double lots, they were severed into single lots, the new lots} are between **40 and 45**, I can tell you the dimension of right across the street from me it was a triple lot, believe the frontages are **42.66**. [13.00 m]. So, most of these were frame house built in the 1940's, 1950's, a bit of an eyesore, so I guess most of the people from Kingsview Village would welcome any new construction that you know really beautify the landscape.

All of Ms. Marchese's examples are above the proposed frontages of **11.4 m** or 37.5 feet. I find the witnesses failed to put their minds as to how the proposed severance would respect and reinforce the existing physical character of the neighbourhood. I accept planner Ms. Smith's conclusion that the proposal would be destabilizing and not in keeping with the intent and purpose of the Official Plan and Zoning By-law.

The proponent of a development has an obligation to meet the statutory tests, even if no person appears in opposition. This is because the TLAB process requires the decision maker to consider all the tests and come to an independent conclusion. I find Mr. Arslan has failed to discharge the onus on him under the *Planning Act*.

DECISION AND ORDER

The appeal is refused, and the Committee of Adjustment decision of October 2018 is upheld. The consent is not given, and the variances are not authorized.

X

Ted Yao

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