

Toronto Local Appeal Body

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# **DECISION AND ORDER**

Decision Issue Date Tuesday, April 03, 2018

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): CITY OF TORONTO

Appellants' Legal Rep: Ben Baena

Applicant: Farnaz Bigdeli

Property Address/Description: 91 Amsterdam Ave

Committee of Adjustment Case File: 18 182970 STE 31 CO (B0061/18TEY), 18 182971 STE 31 MV (A0611/18TEY), 18 182972 STE 31 MV (A0612/18TEY)

# TLAB Case File Number: 18 243567 S53 31 TLAB, 18 243569 S45 31 TLAB, 18 243570 S45 31 TLAB

Hearing date: Wednesday, March 20, 2019

DECISION DELIVERED BY S. Talukder

# APPEARANCES

- Applicant Farnaz Bigdeli
- Appellant City of Toronto
- Appellant's Legal Rep. Ben Baena
- Party Amir Khazaneh
- Party's Legal Rep. Amber Stewart
- Expert Witness Franco Romano

# INTRODUCTION

- 1. This is an appeal by the City of Toronto (City) of the decisions of the Committee of Adjustment (COA) consenting to the severance of the property at 91 Amsterdam Avenue (subject property) into two undersized residential lots and approving the variances to construct a new two-storey detached dwelling with an integral garage on each of the severed parcels of land.
- 2. The subject property is located in a residential neighbourhood just west of Victoria Park Avenue and east of O'Connor Drive, and north of St. Clair Avenue East.
- 3. There are only two parties in this appeal the City and the Applicant.
- 4. At the hearing, the parties informed me that they reached a settlement. As such, the hearing proceeded as a settlement hearing to determine whether the terms of settlement satisfied the statutory criteria for consent and variance applications.

# **MATTERS IN ISSUE**

- 5. The settlement agreement is based on a Revised Site Plan and Elevation prepared by ArchEng Design & Construction, revision dated February 27, 2019 (Revised Site Plan), which is part of settlement package provided by the parties (Exhibit 1).
- 6. The two dwellings in the Revised Site Plan are identical.
- 7. The City's zoning examiner issued a Zoning Notice based on the Revised Site Plan on March 18, 2019, which is part of the settlement package (Exhibit 1). The variances in this Zoning Notice are different in some aspects from the variances requested at the COA. The settlement agreement addresses the variances in the Zoning Notice as well as conditions of approval for the consent and for the variances.
- 8. I note that the consent conditions of approval include the standard set of conditions as per the TLAB's practice directions, with the inclusion of "Privately owned trees" in paragraph 3 (Exhibit 1).
- 9. The list of variances for the two severed properties, the conditions for approval for these variances and for consent, and the Revised Site Plan which are in Exhibit 1, are included as part of this decision as Attachment 1.
- 10. The settlement of matters between parties is encouraged. However, despite the presence of a settlement proposal, which should be given great weight, the Toronto Local Appeal Body (TLAB) must still be satisfied that the considerations raised by provincial policy, subsection 51(24) and subsection 45(1) of the *Planning Act* (as set out below), are satisfactorily met by the settlement proposal and that the public interest is served.

- 11. The difference between the variances requested at the COA and at the TLAB are as follows (for building 91A or Part 1):
  - a) Maximum permitted building height

At the COA: Chapter 10.20.40.10.(4)(A), By-law 569-2013: The maximum permitted building height is 7.2 m.

The detached dwelling will have a height of 8.48 m.

At the TLAB: Chapter 10.20.40.10.(1), By-law 569-2013: The maximum permitted building height is 8.5 m.

The detached dwelling will have a height of 8.91 m.

Section 7.3.3, By-law 6752: The maximum permitted building height is 8.5 m.

The proposed building height is 9.14 m.

b) Rear Yard Setback

At the COA: none

At TLAB: Chapter 10.5.40.60.(1), By-law 569-2013: A platform without main walls, attached to or less than 0.3 m from a building, with a floor no higher than the first floor of the building above established grade may encroach into the required rear yard setback 2.5 m if it is no closer to a side lot line than 3.41 m.

The proposed platform is 1.46 m from the east side lot line.

c) Maximum height of the front, rear and side exterior main walls.

At the COA: none

At the TLAB: Chapter 10.20.40.10.(2), By-law 569-2013: The permitted maximum height of all front, rear, and side exterior main walls is 7.0 m.

The proposed height of the front and rear exterior main walls is 8.60 m. The proposed height of the west side exterior main wall is 7.69 m and the proposed height of the east side exterior main wall is 7.39 m.

12. Counsel for the Applicant, Ms. Stewart, provided submissions that:

a. The proposed driveway for 91B Amsterdam Avenue shall be at a minimum of 2m from the trunk of the existing tree in the front yard, as part of the conditions of approval. To satisfy this condition, the driveway alignment of the

east severed lot is slanted as opposed to the straight driveway in the original plan.

- b. The change in the variance for permitted building height under both By-law 569-2013 and By-law 6752 arose because of the configuration of the roof in the Revised Site Plan. The roofline in the Revised Site Plan is a modern pitched roof while the original plans included a flat roof. The height of the building including the roof is 8.91m while the maximum height for a pitched roof is 8.5 m under By-law 569-2013.
- c. The rear yard setback variance arose for the rear deck. The decks as they are currently configured in the Revised Site Plan were shown on the original plans before the COA. The zoning examiner did not note any variances with respect to these decks for the original plans. However, this variance was flagged when the Revised Site Plan was submitted for examination even though the designs for the decks were not changed.

# JURISDICTION

- 13. A decision of the 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), pursuant to section 3 of the Act.
- 14. The 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 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;

(I) 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).

- 15. In considering the applications for variances from 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

- 16. The Applicant called Mr. Franco Romano, a Registered Professional Planner, who I accepted as qualified to give professional land use planning opinion evidence. Mr. Romano provided the sole source of viva voce evidence, without questions or clarification from the City. There was no contrary evidence presented.
- 17. The subject property is located west of Victoria Park Avenue and midway between Eglinton Avenue East and St. Clair Avenue East. The subject property is in an area

designated as a neighbourhood in the Official Plan and zoned as residential -RD under the City by-laws.

- 18. The proposed severance line bisects the subject property to create two lots of 7.62m lot frontage and 232.26 sq. m.
- 19. Mr. Romano considered the study area for his analysis to be the area bounded by Victoria Park Avenue (east), Westview Boulevard (west), Holland Avenue (north) and Tiago Avenue (south).
- 20. Mr. Romano referred to photographs of several properties in the study area as provided in his witness statement (Exhibit 3). The neighbourhood has mostly detached single dwellings with rectangular lot patterns with some irregular lot sizes at Westview Boulevard. The detached dwellings have varied architectural typology, site design and building heights, including one or two storey dwellings. Some of the buildings have integral garages and some have side garages. Buildings can occupy much of the width of the lot or a smaller width to allow for driveways when there are side garages.
- 21. Mr. Romano noted that many of the first-generation older houses have been replaced or improved over the last several years, including creation of new lots through severance. New construction is typically larger and taller, occupying more space on a lot than older buildings, which are typically bungalows. There are examples of several severances in Mr. Romano's witness statement. For example, 86 and 88 Amsterdam Avenue and 98A and 98B Galbraith Avenue are dwellings on severed lots. Mr. Romano believes that these replacement or improvement of the dwellings result in a stable residential neighbourhood.
- 22. There are different mixes of lot sizes in the study area as well as in the immediate area surrounding the subject property that results in different lot coverage, frontage and floor space index (FSI) variances. Mr. Romano indicated that 49% of the lots in the study area have lot size less than 370 sq. m.
- 23.Mr. Romano provided the following statistics on the neighbourhood in his expert witness statement:
  - Lot frontage ranges from:

6.42m to 20.24m. Along Amsterdam Avenue: 7.62m to 15.24m (excluding the irregularly shaped property at 16 Amsterdam which has 32.18m)

• Lot area ranges from:

232.2m2 to 464.5m2

Along Amsterdam Avenue: 232.2 sq. m. to 464.5 sq. m. (excluding the irregularly shaped property at 16 Amsterdam which has1464.3 sq. m.).

- 24. Mr. Romano reviewed a summary of COA decisions on variances and consent applications from the last ten years (Exhibit 3) for properties in the study area. Based on this summary, he noted that requests for variances related to FSI, lot coverage, lot frontage and side yard setbacks were common in the study area. He opined that the variances requested at the hearing were well represented in the summary table or in the physical characteristics of the neighbourhood as shown in the photographs in his witness statement (Exhibit 3).
- 25. Mr. Romano concluded that the proposed severance and the variances satisfied the statutory criteria set out in the Act. In reaching these conclusions, he advised of the following in his oral testimony and in his witness statement (as they relate to the variances that are not changed because of the Revised Site Plan):
  - a. The proposed buildings exhibit lot size, site design and built form features which manifest themselves in a manner that respects and reinforces the physical patterns of this neighbourhood. The proposed buildings in the severed lots are similar and compatible with all of the neighbourhood features discussed above. The proposed buildings will achieve an appropriate form of intensification as per the various policies in the Official Plan (Section 3.1.2, 3.2.1, 4.1.1, 4.1.5 and 4.1.8).
  - b. The proposed lot frontage and lot area, individually and cumulatively, meet the general intent and purpose of the zoning by-laws to achieve an appropriately modest-sized lot within the subject property's area. The proposal achieves a lot size that will fit in well with the mixed undersized and larger lot fabric that is represented within the neighbourhood.
  - c. The proposed lot coverage meets the general intent and purpose of the zoning by-laws as a modest amount of the lot is covered so that the property can accommodate other features such as amenity, servicing and setback components. The proposed lot coverage provides for ample open space on the lot ensuring that the proposal is not an overdevelopment.
  - d. The proposed FSI meets the general intent and purpose of the zoning bylaws to ensure that the floor area of the dwelling is appropriate for the lot. The proposed floor area is reasonably deployed on the lot in a manner that is anticipated to be occupied by a low-rise residential building. Further, the proposed GFA and FSI is compatible with the GFA and FSI represented elsewhere within the subject property's physical context.
  - e. The proposed side yard setbacks for each dwelling meets the general intent and purpose to provide for adequate space to facilitate access, maintenance and servicing. There is appropriate and adequate space on both sides of each dwelling.

- f. The requested variances are minor. The proposal will not cause any unacceptable adverse impacts such as shadowing, privacy or overlook or any related to site design features such as parking.
- g. A plan of subdivision is not necessary to facilitate the severance proposal or the proper and orderly development of the Subject Site. There is no road or other widening required and the neighbourhood contains other lots created by severance of a similar size and configuration.
- h. With respect to the criteria set out for consent applications (section 51 of the Act), he opined that the lands are physically suitable for the proposed residential development as they have been used for the same purpose.

# ANALYSIS, FINDINGS, REASONS

- 26. I am satisfied that the applications and particularly the amendments resulting from the Revised Site Plan and the revised variances, meet the requirements of s.45(18.1.1) of the Act and that no further notice is required.
- 27.1 have accepted Mr. Romano's testimony.
- 28. Based on the evidence before me and based on the submissions of the Applicant's counsel, I am satisfied that the settlement terms meet the conditions and criteria for consent to sever the subject property, as per s.53(1) and s. 51(24) of the Act. I am also satisfied that the statutory criteria including the four tests for minor variance for both buildings on the severed properties are met.

# **DECISION AND ORDER**

- 29. The application for consent to severance is approved subject to the conditions as set out in Attachment 1.
- 30. The applications for variances are approved and are subject to the conditions listed in Attachment 1.

S. Talukder Panel Chair, Toronto Local Appeal Body

Toronto Local Appeal Body

## EXHIBIT # 1

18 243567 S53 31 TLAB et al.

91 Amsterdam Ave.

March 20, 2019

#### 91 Amsterdam Avenue Property Address: List of Revised Varia

- Chapter 10.20.30.10.(1)(A), By-law 569-2013
   The minimum required lot area is 370 m<sup>2</sup>. The area of the conveyed lot will be 232.26 m<sup>2</sup>.
- Chapter 10.20.30.20.(1)(A), By-law 569-2013
   The minimum required lot frontage is 12 m.
   The frontage of the conveyed lot will be 7.62 m.
- Chapter 10.20.30.40.(1), By-law 569-2013
   The maximum permitted lot coverage is 35% of the lot area (81.29 m<sup>2</sup>).
   The lot coverage will be equal to 40% (93.21 m 2) of the lot area.

#### 4. Chapter 10.20.40.10.(1), By-law 569-2013

The maximum permitted building height is 8.5 m. The detached dwelling will have a height of 8.91 m.

#### 5. Chapter 10.20.40.40.(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  $(139.36 \text{ m}^2)$ .

The detached dwelling will have a floor space index equal to 0.78 times the lot area (181.75 m<sup>2</sup>).

#### 6. Chapter 10.20.40.70.(3)(C), By-law 569-2013

The minimum required side yard setback is 1.2 m. The detached dwelling will be located 0.92 m from the west side lot line and 0.75 m from the east side lot line.

#### 7. Chapter 10.5.40.60.(1), By-law 569-2013

A platform without main walls, attached to or less than 0.3 m from a building, with a floor no higher than the first floor of the building above established grade may encroach into the required rear yard setback 2.5 m if it is no closer to a side lot line than 3.41 m. The proposed platform is 1.45 m from the east side lot line.

#### 8. Chapter 10.20.40.10.(2), By-law 569-2013

The permitted maximum height of all front, rear, and side exterior main walls is 7.0 m. The proposed height of the front and rear exterior main walls is 8.60 m. The proposed height of the west side exterior main wall is 7.69 m and the proposed height of the east side exterior main wall is 7.39 m.

#### 9. Section 7.3.3, By-law 6752

The maximum permitted building height is 8.5 m. height is 9.14 m.

#### 91 Amsterdam Avenue – Part 2 List of Revised Variances

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 The minimum required lot area is 370 m<sup>2</sup>.
 The area of the conveyed lot will be 232.26 m<sup>2</sup>.

# Chapter 10.20.30.20.(1)(A), By-law 569-2013 The minimum required lot frontage is 12 m. The frontage of the conveyed lot will be 7.62 m.

#### 3. Chapter 10.20.30.40.(1), By-law 569-2013

The maximum permitted lot coverage is 35% of the lot area (81.29 m<sup>2</sup>). The lot coverage will be equal to 40% (93.21 m<sup>2</sup>) of the lot area.

#### 4. Chapter 10.20.40.10.(1), By-law 569-2013

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#### 6. Chapter 10.20.40.70.(3)(C), By-law 569-2013

The minimum required side yard setback is 1.2 m. The detached dwelling will be located 0.75 m from the west side lot line and 0.92 m from the east side lot line.

#### 7. Chapter 10.5.40.60.(1), By-law 569-2013

A platform without main walls, attached to or less than 0.3 m from a building, with a floor no higher than the first floor of the building above established grade may encroach into the required rear yard setback 2.5 m if it is no closer to a side lot line than 3.41 m. The proposed platform is 1.46 m from the west side lot line.

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The permitted maximum height of all front, rear, and side exterior main walls is 7.0 m. The proposed height of the front and rear exterior main walls is 8.60 m. The proposed height of the west side exterior main wall is 7.39 m and the proposed height of the east side exterior main wall is 7.69 m.

#### 9. Section 7.3.3, By-law 6752

The maximum permitted building height is 8.5 m. The proposed building height is 9.14 m.

#### **Consent Conditions of Approval**

- 1. Confirmation of payment of outstanding taxes to the satisfaction of Revenue Services Division, Finance Department.
- 2. Municipal numbers for the subject lots indicated on the applicable Registered Plan of Survey shall be assigned to the satisfaction of Survey and Mapping Services, Technical Services.
- 3. Prior to the issuance of a building permit, the applicant shall satisfy all conditions concerning City owned trees and Privately owned trees, to the satisfaction of the Director, Parks, Forestry & Recreation, Urban Forestry Services.
- 4. Where no street trees exist, the owner shall provide payment in an amount to cover the cost of planting a street tree abutting each new lot created, to the satisfaction of the General Manager, Parks, Forestry and Recreation.
- Two copies of the registered reference plan of survey integrated with the Ontario Coordinate System and listing the Parts and their respective areas, shall be filed with City Surveyor, Survey & Mapping, and Technical Services.
- 6. Three copies of the registered reference plan of survey satisfying the requirements of the City Surveyor, shall be filed with the Committee of Adjustment.
- 7. Within ONE YEAR of the date of the giving of this notice of decision, the applicant shall comply with the above-noted conditions and prepare for electronic submission to the Deputy Secretary-Treasurer, the Certificate of Official, Form 2 or 4, O. Reg. 197/96, referencing either subsection 50(3) or (5) or subsection 53(42) of the Planning Act, as it pertains to the conveyed land and/or consent transaction.

#### **Minor Variance Conditions of Approval**

#### Applicable to both Lots

1. The proposed dwellings shall be constructed substantially in accordance with the Site Plan and Elevations prepared by ArchEng Design & Construction, revision dated February 27, 2019 and filed as Exhibit 1.

#### Applicable to Lot 91B (East Lot)

2. The proposed driveway shall be a minimum of 2.0 m from the trunk of the existing tree in the front yard.











































