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 Friday, August 30, 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, as amended (the "Act")

Appellant(s): MARIANA BOCKAROVA

Applicant: MARIANA BOCKAROVA

Property Address/Description: 14 GRANTBROOK ST

Committee of Adjustment Case File Number: 17 237010 NNY 23 CO, 17 237018 NNY 23 MV, 17 237028 NNY 23 MV

TLAB Case File Number: **17 275185 S53 23 TLAB, 17 275190 S45 23 TLAB, 17 275194 S45 23 TLAB**

Hearing dates: Wednesday, May 10, 2018

Friday, September 7, 2018

Wednesday, November 7, 2018

DECISION DELIVERED BY S. GOPIKRISHNA

APPEARANCES

Name	Role	Representative
Mariana Bockarova	Applicant/Owner/Appellant	Amber Stewart
City of Toronto	Party	Sara Amini
Aristotle Christou	Expert Witness	Mariana Bockarova
Jenny Choi	Expert Witness	City of Toronto

INTRODUCTION AND BACKGROUND

Mariana Bockarova is the owner of 14 Grantbrook Ave, located in the Willowdale area of the City of Toronto (Toronto). She applied to the Committee of Adjustment to sever the property into two lots, and build a single detached dwellings on each of the resulting lots . The applications were refused by the Committee of Adjustment (COA) on November 23, 2017, and were refused in their entirety.

Ms. Bockarova appealed the decisions to the Toronto Local Appeal Body (TLAB), which scheduled a hearing on May 7, 2019. Hearings were held on May 10, 2018, September 7, 2018 and November 7, 2018.

MATTERS IN ISSUE

The consent to sever, and the variances requested on both lots are recited in **Attachment A**, appended as a separate attachment to this Decision.

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 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

At the Hearings held on May 10, 2018, September 7, 2018 and November 7, 2018, the Appellant was represented by Ms. Amber Stewart, a lawyer, and Mr. Aristotle Christou, a planner, while the City of Toronto was represented by Ms. Sara Amini, a lawyer, and Ms. Jenny Choi, a planner. There were no Participants, or other Parties, involved in the Hearing. I advised the Parties at the beginning of the Hearing that I had conducted site visits to "understand how the community looked, and felt".

Mr. Christou was sworn in, and recognized as an Expert Witness. His evidence consisted of the following:

The property is located north of Finch Avenue West, between Yonge St and Bathurst St, and is the third house north of Finch Avenue. The surrounding area consists of small one, and two-storey detached dwellings constructed in the 1950's and 1960's. A three-storey office building is situated at the northwest corner of Finch Ave. West, and Grantbrook St. A low-rise apartment building, and townhouses are proposed on the large property at the northeast corner of Finch and Grantbrook, known as 172-180 Finch Ave & 1-11, 23 Grantbrook St.

There is an incursion of existing, and proposed townhouse developments extending northward from Finch Ave up to Hendon Avenue . Similar development patterns also exist east of Carney Road (at 9, 11, 13, 15, and 19 Altamont Road). The OP Land Use Plan Map, designates properties on the north and south sides of Finch Ave, as Mixed Use Areas, providing for a variety of commercial and residential uses, meant to achieve the guidelines for "Avenues", as expressed in the City's Official Plan. It is important to note that the Mixed Use Area designation and commercial zoning, immediately south of 14 Grantbrook, creeps northward on the west side of the street and increases significantly in its northward extent on the east side of the street- this is exemplified by 23 Grantbrook St. property.

The Growth Plan for the Greater Golden Horseshoe (2017) ("Growth Plan") provides a strategic framework for managing growth in the Greater Golden Horseshoe region including:

- Setting minimum density targets within settlement areas and related policies direction municipalities to make more efficient use of land, resources and infrastructure to reduce sprawl, cultivate a culture of conservation and
- Promote compact built form and better-designed communities with high quality built form and an attractive and vibrant public realm established through site design and urban design standards
- Directing municipalities to engage in an integrated approach to infrastructure planning and investment optimization as part of the land use planning process

- Building complete communities with a diverse range of housing options, public service facilities, recreation and green space that better connect transit to where people live and work

The Growth Plan provides a framework for managing growth, including the provision of infrastructure, to support growth, and the provision of housing options to meet the needs of all people. The Growth Plan requires municipalities to accommodate a significant proportion of new growth in built up areas through intensification. The consent application before this Tribunal represents appropriate but modest residential addition, that will enhance the neighbourhood, and is consistent with the Growth Plan e. The site is located in a Settlement Area with existing municipal infrastructure – roads, water, sewers, parks, schools, and bus and potential LRT transit. The application is consistent with the PPS and conforms to the Growth Plan.

However, the statutory requirement for Notice of the Consent and variance application must be given to properties within 120 m radius from the property, which more accurately reflects the character of the neighbourhood and the “edge” context of this site.

Based on the Staff Planning Report, the City has undertaken a very extensive lot area analysis that contains 274 properties. Centering on 14 Grantbrook, and using the city’s measuring tool on its website, the City choses an area which extends 682 m to the northwest to Ancona St, 280 m to the north to the designated transit corridor; 380 m to the northeast; 355 m southeast to Finch Avenue and Carney Rd., and about 100 m to the south to Finch Avenue. The area has a perimeter of 2.76 km and an area of 354,000 m2 or 35.4 hectares (87.5 acres), which in Mr. Chrsitou’s considered opinion, is an excessive study area, which is not reflective of the site’s context. However, the City did not include any of the smaller properties fronting on Finch Avenue, and properties included in the public notice. However, they found 9 properties had frontages of less than 14.8 m, including 14 and 16 Carney Rd.

Mr. Christou said that he had requested a copy of the City’s selected area lot information from the City planner on January 22, 2018, but was not permitted access to the” public Document, that otherwise should have been provided to the applicant before the COA meeting”. In the absence of the public information, he said that he had assumed from the site investigation, that it may have included properties in this area that “may be large and small, wide and shallow, regular and irregular lots of a variety of shapes, and may include several lots of “similar” size as the subject property”.

In Mr. Christou’s opinion, if planners are to ascertain what is a reasonable neighbourhood area surrounding the property, then they must consider whether the proposed development would be: “in keeping”, “compatible with”, “maintain”, “reflect”, and “respect” the neighbourhood, when assessing the suitability of development against the neighbourhood character. The tests should also involve other land uses, or

housing forms that exist and/or are planned for in the vicinity. All of these tests may be summarized as how well a development will "fit" with the character of the existing neighbourhood.

Mr. Christou's study area for establishing neighborhood character, included properties within an approximately **120 m radius** centered on 14 Grantbrook Street, which he believed, to be a more contextually appropriate area in this case. It includes properties with 37 detached dwellings, and 7 townhouses, as well as the existing, proposed commercial and multiunit commercial/residential properties on both sides of Finch Avenue, and on the east side of Grantbrook. According to Mr. Christou, it is the total development character of the area that makes up a reasonable neighbourhood, and the character of the area does not stop at the zoning boundary of single detached dwellings, or the boundary of an OP land use designation- "It is what one observes while walking or driving in the area, and must include as a consideration, the immediate context of the site".

Mr. Christou said that there are 9 properties in the vicinity of 14 Grantbrook, with less than 14.8 m frontage, (between 10.5 m and 14.8 m) which the City identified in its "accounting exercise". Therefore, given that lots with frontages as small as 10.5 m exist in the area, Mr. Christou opined that, there is no "precedent" being created by this proposal that is unique or unusual or inconsistent with other lots in the area. Mr. Christou claimed that the proposed development would be: "in keeping", "compatible with", "maintain" and "respect" the single detached character of the area, and "reflect" the existing residential fabric of the area , "which is one of mixed commercial, higher density residential, and detached dwellings.

Mr. Christou said that the text of the OP speaks to "the size and configuration of the lots", and does not specifically refer to lot frontage. Pointing out that the proposed lots are regular in shape, he said that the City's planning report wrongly considered lot frontages to be the only determining factor for lot size, and does not take into consideration any other factors in the vicinity and most importantly the context.

Mr. Christou asserted that the City's lot frontage accounting exercise, and conclusions are not as relevant, in the context of the property's location, which is next to an "Avenue", directly across the street from a large mixed use designation, with higher density residential development; situated between two major public transit infrastructure corridors (Finch Ave. and Hydro). These factors, in conjunction with the fact that Grantbrook Ave is a bus route. Mr. Christou opined , was the most "important context".

He then discussed how the proposal was compatible with the Official Plan, and Adjacent Plans of Subdivision. Noting that the OP designates the subject property "Neighbourhoods", Mr. Christou explained that the designation provides for residential uses in lower scale buildings (detached, semi-detached, townhouses and walk-up apartments), as well as services and facilities for the residents and community- he said

that the proposed severance, which intends to create one additional lot for detached houses, supports and maintains this use.

He said that Chapter 2.3 of the Official Plan recognized that physical changes in the neighbourhood, such as infill housing, should, and would happen with time, so long as the new development respects the existing physical character of the area, and reinforced the stability of the neighbourhood. According to Mr. Christou, the physical character of the immediate area of the site, comprised of detached dwellings on a variety of lot sizes and frontages, and mixed commercial and residential uses, would reinforce the character of the community. He said that the proposal which would bring about regeneration, and investment in new housing stock. In response to the severance criteria of Policy 4.1.5, Mr. Christou said that the application had no impact on the patterns of streets, blocks and lanes. The size and configuration of the proposed lots is similar to the surrounding lots, and would be in line with several properties in the immediate vicinity.

Referring to the side bar on Prevailing Building Types of Chapter 4, of the Official Policy, Mr. Christou said that the description of what constitutes “the established physical character of the neighbourhood”, did not speak to lot frontages. The physical character of the neighbourhood is: a variety of detached houses on a variety of lot sizes, existing commercial and townhouses, as well as proposed low rise apartments, stacked townhouses and townhouses across Grantbrook St.

According to Mr. Christou “It is the mix of small and large, old and newer detached dwellings, which characterize Grantbrook Street. The variety of lot sizes and architectural styles in the immediate area is reflective of the evolution of housing needs, and trends over the last several decades.” Mr. Christou added that he thought it “ nonsensical to suggest the severance, which very clearly provides for detached houses, does not conform to the OP, particularly when the city has recently approved townhouses in the Neighbourhood designation in the vicinity” , “because the dimensions and shapes of the lots is (*sic)* similar to, and appropriate in the context of what exists in the immediate vicinity”.

According to Mr. Christou, Section 45 of the Planning Act addresses the very essence of a minor variance- namely ” not to strictly apply the wording of the OP policies, but to consider what the **general** intent and purpose of the whole OP is”. In this case, the general intent and purpose is to provide low-density detached houses.

In Mr. Christou’s opinion, the simple majority of lot frontages in a “purposely-selected very large and homogeneous area”, does not determine the character of the block, as the City planning staff report suggests. He said that the height of the proposed houses, would be within the maximum height permitted in the by-laws, and is similar to what the COA has recently approved in the community. The proposed two storey single detached dwelling’s massing and scale, would be compatible with and consistent with surrounding properties.. The zoning permits two-storey single detached dwellings as of

right. The proposed houses would fit harmoniously with adjacent low scale dwellings. The scale is appropriate, and the dwellings would be compatible with adjacent properties.

Based on these observations, Mr. Christou concluded that the new lots would conform to the OP and adjacent plans of subdivision.

Mr. Christou then spoke about similar frontages that had been allowed in the community e.g. 14 & 16 Carney and 98, 100, 104 and 104A Hendon Ave. The lot would be rectangular, the lot even if the area would be somewhat short of the By-law requirement.

Mr. Christou then referred to the City's submission, which relied on OPA 320 , and said that OPA 320 could not be applied, because of the Clergy Principle, as well as the fact that no decision had been made about OPA 320 by the LPAT, as of the day of the Hearing of the Appeal respecting 14 Grantbrook St.

By way of editorial comment, Mr. Christou's criticism of the inadequacies of OPA 320 is not reproduced here, because he had concluded that it could not be applied to this proposal.

Mr. Christou concluded his evidence with respect to the Consent to Sever by stating his professional opinion, that the consent application to sever the lot at 14 Grantbrook St. in two parcels, would meet each of the tests and the proposal satisfies all the criteria in the Planning Act and the development criteria in the OP.

Mr. Christou then discussed the relationship between the proposal, and the 4 tests under Section 45(1) of the Planning Act.

Mr. Christou then said that built form objectives and policies, contained in Section 3.1.2 of the OP, emphasize the importance of ensuring that new development fits within its existing and/or planned context, while limiting (but not eliminating) impacts on neighbouring streets, parks, and open spaces. The objective is that new infill developments fit in, respecting and improving the character of the surrounding area. He asserted that the proposed development fits in with both the existing and planned context of the neighbourhood, and thus complies.
By way of editorial comment, there is substantial repetition of how the proposal is consistent with the OP, because the OP is also pertinent to Section 51(24) of the Planning Act. I reproduce discussions of only those policies below which were briefly mentioned in passing earlier, or not dissected in adequate detail.

Mr. Christou referred to Policy 4.1.8, which stated:

The Official Plan relies on the numerical standards of the zoning by-law to

ensure new development is compatible with the physical character of established residential neighbourhoods. These standards for development deal with building type, height, density and building setbacks from lot lines.

Mr. Christou commented on the above policy, as well as the Zoning By-laws, and asserted that they were generic documents, and in many occasions throughout the City contributed to the maintenance of the *status quo* regardless of underlying development structure of the area, current provincial policy, trends or needs. He then concluded that the requested variances would result in" a gentle change, that is in keeping with the physical character of the neighbourhood, and would not threaten the stability of the neighbourhood".

Based on this discussion, Mr. Christou concluded that the requested variances were consistent with the intent, and purpose of the Official Plan.

Mr. Christou then discussed the compatibility between the proposal, and the Zoning By-Laws, and began by stating that in his opinion, the variances individually and collectively maintained the general intent, and purpose of Zoning By-law 569-2013, and Zoning By-law 7625.

Mr. Christou provided historical context on the North York By-laws, and stated that they were originally written in the early 1960s based on development standards of the 1950s, with very large lots that are no longer practical, or appropriate; and well before the enactment of the recent Provincial Policies, which argue for more compact development standards, and intensification where public services and infrastructure exist. He opined that By-law 569-2013 was intended primarily as a harmonization exercise, and consequently largely carried forward the zoning standards, in the former municipal by-laws. According to Mr. Christou, By-Law 569-2013 was not intended to provide a comprehensive consideration of the appropriateness of zones, and standards in the City.

Mr. Christou discussed how the intent of the zoning provisions for (building length, building depth, coverage, building height and side yard setbacks) are to "ensure proportion, through controlling the massing of a house, on a given lot". The general intent and purpose of the minimum lot area requirement, is to ensure that sufficient space is provided for the dwelling, private open space, and separation from adjacent properties, and from the street. He said that the proposed lot areas would fit well into the neighbourhood, which contains detached dwellings, a variety of lot sizes and shapes as well as more densely developed townhouses, and apartments. The lots meet the front, and rear yard setback requirements. The proposed houses will be set back sufficiently, from each other, to meet building code requirements. Based on this evidence, Mr. Christou concluded that the general intent and purpose of the By-law, would be maintained, as two lots would be of sufficient area to accommodate modern houses, while maintaining more than adequate private open space, for the enjoyment of the residents.

Mr. Christou then discussed how the variances respecting lot frontage, were consistent with the By-Laws. He said that the intent of the minimum frontage requirement is to ensure that sufficient space is provided for the dwelling, and to accommodate access to the required parking. It is also intended for access to the rear yard and for separation from other dwellings. The lots would contain 7.46 m (25 ft.) wide dwellings, with an integral car two-garage and would have approximately 239 m2 (2570 sq. ft.) of livable floor space.

Mr. Christou asserted that the 9.215 m lot frontage is similar to several other lots in the vicinity, and that "reduced frontages are usually permitted throughout the City. where there is constant and increasing demand for generally "more" affordable housing". He said that the proposed frontage would be consistent with the frontages of properties on the street, and the vicinity, and would not create any adverse impacts, as the houses would exist harmoniously with the development in the immediate area.

Based on this discussion, he concluded that the general intent and purpose of the By-law, particularly with respect to lot frontage, would be maintained, as the two lots would be of sufficient frontage to accommodate modern houses with integral garages, similar to other houses on the street. By way of editorial comment, it may be added that Mr. Christou, corrected himself later in the Hearing, and said that since the expression "Affordable Housing" has a very specific meaning in the context of the City of Toronto's OP, and that the proposal did not contemplate "Affordable Housing", but housing that is affordable.

Mr. Christou went on to state that Grantbrook St. "was established at an angle, and is not perpendicular to Finch Avenue". This angular setting provides a frontage of 9.215 m, which is marginally larger than the lot width at 9.14 m. He said that "the purpose of the lot width regulation, in the By-law is not defined, nor identified, and its rationale was not scientifically established". He said that this regulation only applied to the North York By-law, and has not been implemented in the new Toronto By-law, and added that the COA, and the tribunals have approved many such variances over the years.

He also pointed out that both by-laws required a lot coverage of 30%, and requested that an extra variance be added to this effect. However, according to Mr. Christou, the zoning examiner had failed to include the coverage requirement under By-law 7625 to the list of variances, and asked the TLAB to add variances corresponding to the lot coverage area, to the list of variances which had to be approved. Mr. Christou asserted that the notice required no further notice pursuant to Section 45(18.1.1) of the Planning Act, because it is "minor". Given that there were no objections from the City, I waived the notice requirement under Section 45(18.1.1), and added the variances to the list that needed to be approved by the TLAB.

Mr. Christou explained that the proposed lots had coverage of 31% and 31.82% respectively, instead of the 30% allowed under the By-Laws. He said that the general

intent and purpose of the By-law, in limiting lot coverage, is to ensure that sufficient space remains between buildings, and from the street. It also allows for private open space in the rear yard, for access, privacy, and building separation. Lot coverage and building setbacks are zoning tools, that collectively direct the appropriate scale and siting of land development. He also drew my attention to the approvals of a number of variances for 32% coverage "in this part of the City", as seen in a chart of "Similar COA Approved Variances".

He then noted that the "**Height Overlay"** of By-law 569-2013, indicates building height to be 10 m, and 2-storeys in this area. However, the zoning examiner stated that: "*The maximum permitted building height is 8.8 m*"; Mr. Christou added that "Out of an abundance of caution, we are compelled to rely on the zoning examiner's notice for the sake of obtaining a building permit".

Mr. Christou said that the marginally increased building height difference between 8.92 m, and 8.93 respectively for the two houses, corresponds to 12 and 13 centimeters, respectively. The proposed building height facilitates slightly higher ceilings for the first floor, which "have become more prevalent in new construction". The proposed height is consistent throughout the entirety of the dwelling, maintaining a two-storey appearance. On the basis of these observations, Mr. Christou insisted that, "whether viewing the dwelling from the rear yard, or the street, the dwelling will look and feel in harmony with the neighbourhood." He said that the design of the dwellings would ensure that the heights of the buildings, would not adversely impact the neighbouring properties.

Mr. Christou next addressed the variances pertaining to the Building Length, and how they corresponded to the intent, and purpose of the By-Laws. He said that the purpose of the Building Length , is to control the size and location of the louse on the lot. In this case, the houses would be 16 m in length, which complies with the By-law standard of 16.8 m. The houses are purposely set back further on the lot in order to protect the boundary trees located on the north and south property lines., and added that the variance is "technical" in nature.

The proposed dwellings match the design, scale and massing of already redeveloped lots throughout this general area. The proposed variance would provide for a compatible, desirable and appropriate renewal and reinvestment. Therefore the general intent and purpose of the zoning By-law would be maintained. The variance would be appropriate for the development of the land and it would be minor, because it would not be recognizable from the street, it would be similar to other houses in the area, and it would not affect any of the neighbours.

Speaking next to the Building depth variance, Mr. Christou described the variance as being analogous to the building length variance, and said that the reason for requesting the variance was to protect the existing trees on the property. He added that the variance was technical in nature.

By way of information, Mr. Christou, explained that the houses would be setback approximately 12 m from the street. Emphasizing that the rear yards at 13.65 m, and 12.6 m, respectively exceed the By-law requirements, Mr. Christou said that the proposed building depth of 21.19 m would be appropriate for these houses, because the "front yard, and rear yard would still meet, and exceed the By-Law requirements". He asserted that the requested building length, and depth, would not result in overdevelopment.

Based on this discussion, Mr. Christou concluded that the requested depth variances, maintained the intent, and purpose of the By-Laws.

Mr. Christou then spoke to the general intent, and purpose of the side yard setbacks. He asserted that the general intent is to provide sufficient space between buildings for access, and proper drainage, and appropriate spatial separation, between dwellings.

He explained that side yard setback requirement in the RD zone under By-Law No. 569-2013, varied according to the lot frontage. As an example, a side-yard setback of 1.2 m was required, where the lot frontage is between 12 m and 15 m, whereas a setback of only 0.9 m was required, where the lot frontage is between 6 m and less than 12 m. He also said that By-law 569-2013, also provides for 0.45 m setbacks, if there are no windows, or doors, facing the setback.

Mr. Christou then asserted that the internal side yard setbacks, of 0.46 m (between the two buildings), "would be similar to many recent redevelopments, across the City approved by the Committee, the OMB and the tribunal, which have not created any adverse impacts", and added that no windows are proposed in this area. He added that the external side yard setback of 1.22 m, would provide sufficient access to the rear yard, and asserted that the setbacks were consistent with the way in which development is accommodated on narrower lots throughout the City, including in this area According to Mr. Christou, By-law 569-2013, intended that on lots of less than 12 m frontage, a 0.9 m side yard setback is appropriate.

Lastly, Mr. Christou spoke to the variance respecting the First Floor Area, and said that this variance was required because the garages were required to be at grade, and that the liveable space is usually above the garage. He pointed out that the first floor, by definition, is the closest level to the ground, which in this case, would manifest itself in the form of the small foyer, beside the garage. Claiming that this type of variance "is very common in modern house construction", and that the COA and the tribunal "routinely authorize these variances", he said that "the difference between the 10 sq. m zoning requirement, and the 7.64 sq. m foyer is marginal" , and "that this variance would be imperceptible from the outside, because it was internal to the building".

Based on this discussion, Mr. Christou concluded that the requested variances, maintained the purpose, and the intent of the Zoning By-Laws.

The compatibility between the proposal, and the test of appropriate development, was discussed next.

Mr. Christou said that the neighbourhood was experiencing gradual renewal, and reinvestment, and opined that this process of change and reinvestment, in mature and stable neighbourhoods, is supported by the policies of the Official Plan, as long as it respects, and reinforces the character of the area and does not create adverse impacts. He asserted that the variances respect and reinforce the existing physical character of the neighbourhood with regard to the configuration and siting of the houses, the bulk and height, and the setbacks from lot lines and other houses. He discussed the privacy impacts of the requested variances, and said that there were no unacceptable, adverse impacts, created as a result of the requested variances. Based on this evidence, he concluded that the proposal fulfilled the test of appropriate development.

Lastly, he spoke to how the proposal was consistent with the test of minor department. Mr. Christou said that the generally acknowledged test of whether a variance is minor, is the nature, and extent of any adverse impacts or effects on adjacent properties. It is important to understand that the minor test for this development is not a test of "no impact", but impact that rises to the level of being unacceptable, and adverse, from a planning perspective. The variances to allow detached dwellings in this particular location are minor, as they would coexist with similar type of housing, in a changing environment.

Based on this evidence, Mr. Christou concluded that the proposal met the test of being minor.

Mr. Christou then presented his summary opinion, wherein he asked that the Appeal be allowed, and the consent to sever be granted, followed by the approval of the requested variances.

Ms. Amini started her cross examination by asking Mr. Christou the reason behind his choosing a 120 m radius as the "study area". Mr. Christou said that the reason was because the notices for a severance application would be sent to properties within a 120 m radius, but conceded that this practice did not arise out of a statute. On the matter of the lot analysis, Mr. Christou said that he had requested the City's planner on the file for 14 Glanbrook St to share the study , but she had refused to oblige him. When Ms. Amini asked if the lot information could be obtained for a fee, Mr. Christou's answer was "that would be really fantastic!". Ms. Amini asked questions about where other planners obtained the information to perform lot analyses, Mr. Christou said that he did not know the answer.

By way of an editorial note, I have taken the liberty of using the expression "exemplar" in place of "precedent" i.e. an example of a certain build, or a given type of dwelling, to distinguish them from "precedent", as in *stare decisis*.

Ms. Amini's next set of questions concentrated on the various exemplars that Mr. Christou had referred to in his Examination-in-chief, and asked him to pinpoint the geographical location of the same. In some cases, the exemplars lay in the same ward as the property, in other cases, they lay in a different district in the former City of North York, while a couple lay in Scarborough; however, none lay within the 120 m radius that Mr. Christou identified as his "study area". When asked how these could possibly be used as exemplars, Mr. Christou insisted over and over, that these exemplars were valid, because they were used in projects similar to the Subject Property. When asked the source of his information, Mr. Christou referred to his own career lasting multiple decades, and said that he based his conclusions on the basis of his experience.

On the question of what "prevailing" meant, Mr. Christou said that it referred to something that existed in the community, and disagreed with Ms. Amini's suggestion that the expression meant "most frequently ocurring". When specifically asked about how a 45 cm setback could be referred to as "prevalent" for detached dwellings, when there were no exemplars in the immediate vicinity, Mr. Christou said that he used the standard for semi-detached houses, which lay in the vicinity of the Subject Property. When asked the reason behind applying the standards of a semi-detached dwelling to a detached dwelling, Mr. Christou's answer was that the "character" of the community, which consisted of detached and semi-detached dwellings had to be considered, instead of the individual type of dwelling.

Ms . Amini then asked about Mr. Christou's characterization of the Subject Property as being in an "edge condition", and asked him about his use of the expression, when the Subject Property was in the middle of a community, as opposed to being on an arterial road. Mr. Christou said that the Subject Property was in an "edge condition" because it is close to a point where is transition between the Neighbourhood, and a Mixed Use Area. When asked if there was anything in the Official Policy about an edge condition, Mr. Christou agreed that there was no policy. On the matter of the property's upholding the Central Secondary Finch Plan, Ms. Amini asked if the language in the Official Policy was written such that the high intensity area would not "creep" outwards, and the intention was to "protect whatever was inside", to which Mr. Christou said that all that was proposed was an extra single family detached dwelling, which did not disturb the neighbouring community. When asked if there were policies which promoted intensification as a result of being close to a transportation route, Mr. Christou's answer was that what was proposed was a severance, which is different from intensification, and that "transportation" was merely the context.

In response to a question about what he meant by "similar developments", Mr. Christou replied that a town house was "similar", comparable to a detached house, because both were part of the same neighbourhood.

In the discussion about size and frontages, Mr Christou said that the shape was respected because what was being proposed was a rectangular lot. When asked if dividing the existing lot into 4 rectangles, instead of 2 rectangles, would still respect the

shape of the lots, Mr. Christou countered by saying that this was a hypothetical question.

Mr. Christou then tried to explain the housing as being an example of affordable housing, but then corrected himself, to say that this was "housing which affordable", when reminded that the expression "affordable housing" has a very specific meaning in the OP.

In response to Ms. Amini's question about the relevance of By-Laws , Mr. Christou questioned their relevance, and appropriateness , because they had been written for houses constructed at a very different point in time, compared to what we have with us today". When asked if larger lots are not appropriate because they are not affordable, , Mr. Christou said that larger lots are not affordable, and consequently not appropriate, based on his reading of the PPS and the Growth Plan. He also said that the side yard setbacks, are in line with what the Building Code recommends, but then agreed that the Building Code is not relevant for planning discussions.

On September 7, 2018, the second day of the Hearing, the City presented its case. Ms. Jenny Choi, a junior planner, took the stand.

By way of an editorial comment, Ms. Choi's evidence has been deliberately condensed, with only the salient points presented. The reason for this is discussed in the Analysis Section.

After being sworn in to provide evidence, Ms. Choi's credentials to be recognized as an Expert Witness, were questioned by Ms. Stewart, on the grounds that Ms. Choi was not a full-fledged member of the OPPI, and had not completed the OPPI's courses on ethics. Ms. Stewart opined that Ms. Choi was not bound by the code of ethics that the OPPI required its members to adhere to, and questioned Ms. Choi's adherence to ethical behaviour. Ms. Choi said that she had completed courses on ethics as part of her training to be a planner at the City of Toronto, and was familiar with the ethical requirements that the OPPI required of its members, and would abide by the same. When I said that I was willing to recognize Ms. Choi as an Expert Witness in the area of land use planning; Ms. Stewart said that she reserved the right to make submissions later about the weight to be assigned to Ms. Choi's evidence, based on her observations, made hitherto.

Ms. Choi said that she was not involved with the COA hearing, but following the reassignment of the file to her from a different planner, had undertaken the following steps to familiarize herself with the file.

- Conducted a site visit, and took pictures of the Subject Site and surrounding area
- Reviewed the Applications, and land use planning legislation, as well as applicable Official Plan policies , Zoning by-laws and associated documents; and
- Directed the preparation of document disclosure and visual exhibit relevant to her opinion

Ms. Choi said that her professional opinion, was in substantial agreement, with the conclusions in the Staff Report, dated November 15, 2017, which had recommended refusal of the proposal, in its entirety. By way of information, the Staff Report in question, was included in the submissions before the commencement of the Hearing.

Ms. Choi started by describing the location of the Site Property, and described the nature of the request. Ms. Choi defined her Study Area as being the neighbourhood, bounded generally by the Hydro Corridor to the north, Ancona Street to the west, Altamont Road to the east and the north boundary of the Central Finch Secondary Plan to the south. The majority of the lots in the neighbourhood, have large frontages that either meet, or exceed zoning by-law requirements, all of which follow a consistent pattern established along a grid-like street network. The neighbourhood consists of approximately 352 detached houses located within the neighbourhood. These houses are subject to the same land use designation within the Official Plan and are subject to the same zoning standards under both Zoning By-law Nos. 7625 and 569-2013. The zoning within the neighbourhood is *R4* under Zoning By-law No. 7625 and ***RD(f15.0;a550)(x5)*** under Zoning By-law No. 569-2013.

Ms. Choi stated that the proposed two new lots have narrower frontages, and smaller lot areas than what is permitted under both Zoning By-law No. 569-2013 and No. 7625. She pointed out that the proposal also sought relief of all side yards, for the new dwellings to be constructed on the new lots. In particular, the application sought a reduction of the south side yard setback of 0.46 metres for the retained lot (Part 1), and a reduction of the north side yard setback of 0.46 metres for the conveyed lot (Part 2).

Ms. Choi pointed out that the physical character of the neighbourhood is defined entirely by one prevailing building type, namely, single detached houses, and that the Appeal before the Toronto Local Appeal Body, proposed two lots with frontages, smaller than what is found at this size within the neighbourhood.

Ms. Choi then referred to the townhouses at 11, 13, 15 and 19 Altamount Road, and stacked townhouses for the properties known as: 172, 176 and 180 Finch Avenue West; One through 11 and 23 Grantbrook Street by pointing out these were the result of an Ontario Municipal Board decision, and distinguished them from the proposal before the TLAB by pointing out that these properties, do not have the same developmental standards, as the subject site, by virtue of being under the Central Finch Secondary Plan.

Ms. Choi then referred to basic definitions under the former City of North York Zoning By-law No. 7625, and discussed the definitions for lot frontage, and width

(a) ***Lot frontage*** is measured as the horizontal distance between the side lot lines; where such lot lines are not parallel, the lot frontage shall be the distance between the side lot lines measured on a line 7.5 metres back from the front lot line and parallel to it.
(b) ***Lot width*** is measured as the horizontal distance between side lot lines; the distance shall be measured perpendicularly from the line joining the centre of the front, and rear lot lines at a point 7.5 metres from the front lot line.

She then referred to the definitions of Lot Frontage, and Lot Area, as defined under the City wide By-Law 569-2013.

(i) ***Lot frontage*** is measured as the horizontal distance between the side lot lines of a lot, or the projection of the side lot lines, measured along a straight line drawn perpendicular to the lot centreline at the required minimum front yard setback.
(ii) ***Lot area***, in both zoning by-laws, includes the total horizontal area within all the lot lines of a lot.

Ms. Choi then said that all of the 342 lots in the Study Area are larger, than the lots proposed by the Applications, and added that there are no lot frontages less than 10.2 metre within the study area, out of which only three lots within the study area have a lot frontage of 10.5 to 10.8 metres located at 14 Carney Road, 16 Carney Road and 14 Saber Court.

The lot study reveals that an overwhelming majority, 311 lots or 91% of the lots have a frontage that meet or exceed 15 metre, one of the performance standards in the neighbourhood. Approximately 9% of the lots do not meet the minimum 15 metre lot frontages, under the applicable Zoning By-laws.

Ms. Choi said that in her considered opinion, the Consent Applications failed to satisfy the criteria at paragraphs (c) and (f) of Section 51(24) of the Planning Act, which governed the severance of the lot. Those paragraphs read as follows:

(c) “Whether the plan conforms to the Official Plan and adjacent plans of subdivision; if any”, and

(f) “The dimensions and shapes of the proposed lots”.

The subject property is designated *Neighbourhoods* in the City of Toronto's Official Plan. Section 2.3.1 of the Official Plan recognizes *Neighbourhoods* as physically stable areas where development is to respect and reinforce the existing physical character of buildings, streetscape, and open space patterns in these areas. Section 4.1 of the Official Plan states that physical changes to established *Neighbourhoods* must be sensitive, gradual, and generally 'fit' the existing physical character. A key objective of

the Plan is that new development respects and reinforces the general physical patterns in a *Neighbourhood.*

Ms. Choi then discussed OPA 320, and said that it provides a policy direction to assess a development on three concentric scales: the block, street, and geographic neighbourhood. The study area includes the block, street and geographic neighbourhood of the subject site. She noted that while OPA 320 had been approved, with modification by the Province in July 2016, it was under appeal at the Ontario Municipal Board.

Ms. Choi said that the proposed lots are not consistent with the character of the area within the Neighbourhood designation, because they would be the smallest lots created on the street, the block and the geographic neighbourhood of the study area. The undersized nature of the lots does not respect, nor reinforce the existing physical character of buildings, streetscape and open space patterns in the neighbourhood.

Ms. Choi next discussed the shape, and size of the proposed lots. She said that the proposed severance would create two considerably undersized lots, as per the zoning by-law standards, with significantly narrower frontages and smaller lot areas. The proposed lot frontages of 9.14 metres would be the smallest single detached lots in the study area. Ms. Choi opined that the significantly substandard lot frontages of the proposed lots would be noticeable from the public realm, as they would be inconsistent with the lot patterns, and at a size not found on Grantbrook Street or within the study area.

Based on these observations, Ms. Choi concluded that the proposal would result in significantly undersized lots, which did not meet the relevant criterion under Section 51(24).

Ms. Choi then discussed the Healthy Neighbourhoods policies in Section 2.3.1 of the Official Plan, and said that *Neighbourhoods* are considered to be physically stable areas. Development within these areas needs to respect and reinforce the existing physical character of buildings, streetscapes, and open space patterns in these areas. She then referenced Policy 4.1.5 of the Plan, which set out criteria for evaluating development proposals on land within the *Neighbourhoods* designation. The policy states that development will “respect and reinforce the existing physical character of the neighbourhood” and identifies eight criteria. Of the development criteria listed in Policy 4.1.5, Ms. Choi identified the following criteria as being relevant to this appeal:

(b) Size and configuration of lots;

(f) Prevailing setbacks from the street, or streets

Applying the above criteria to the proposal, Ms. Choi said that the proposed side yard setback of 0.46 metres “interrupts the rhythmic pattern of Grantbook Street”, which is

characterized by single detached dwellings, with larger side yard setbacks. According to Ms. Choi, this separation would not allow for sufficient landscaping, separation distances between dwellings, and adequate space for maintenance. She emphasized that the dwellings within this “character area” are able to maintain a pattern of abundant landscaping, throughout the side and front yards.

Ms. Choi expressed concerns that if the proposed frontages were deemed appropriate, then the physical character of this portion of Grantbrook Street could be significantly altered. Due to the prevailing size of the single family detached lots on Grantbook Street and within the study area, the lot frontages, and area of the subject application, would be out of character. Based on this discussion, Ms. Choi concluded that the proposal was consistent with the By-Laws.

Ms. Choi next discussed the relationship between the proposal, and the Zoning By-Law.

Ms. Choi said that the general intent and purpose of the zoning by-laws are to regulate the use of the land, such that development both fits on a given site, and within its surrounding context, and minimizes adverse impacts on adjacent properties. As previously identified, the subject properties are zoned (R4, under the former City of North York Zoning By-law No. 7625, and RD(f15.0; a550.0)(x5) under the City of Toronto Zoning By-law No. 569-2013.

Ms. Choi said that minimum standards for lot frontage and lot area, regulate the size of lots within a given neighbourhood, and ensure adequate open space to preserve the look and feel of established streetscapes. Further, numerous zoning provisions regulate the size of structures that can be built on these lots.

She opined that frontages of the proposed lots are not consistent with the minimum frontage requirements identified under either Zoning By-law. The majority of lots within both the character area, and neighbourhood, are all reflective of the zone in which they are located. As a result, the proposed lots do not maintain the same development patterns as lots within the character area and neighbourhood.

Based on this discussion, Ms. Choi said that the Applications do not meet the intent of the Zoning By-laws.

Ms. Choi then discussed the compatibility between the proposal, and the test for desirable, and appropriate development of the land

She said that requested variances, with reference to the minimum lot frontages, minimum lot, and minimum side yard setbacks, are not desirable, nor appropriate for the development of the land. She said that physical change should be gradual, and generally 'fit' the existing physical character, and said that the proposed 18 variances requested for Part 1, and the proposed 19 variances for Part 2, represent overdevelopment, and are not minor. Should the Applications be approved, the

cumulative impact of the requested 18 to 19 variances upon the proposed two, reduced, undersize lots will introduce a new built form that is not appropriate for this site.

Lastly, Ms. Choi discussed the relationship between the proposal, and the test of being minor. She said that the zoning bylaws aim to provide consistent development standards that shape built form and land use. She then drew attention to the fact that there are 18 variances requested on Part 1, and 19 variances on Part 2. She said that the proposed lots would be the smallest lots in the neighbourhood, and would not be in accordance with the standard sized plots, which characterize the area. Stating that the narrow side yard setbacks would interrupt the rhythm of the established streetscape, she concluded that the cumulative impact of the variances is not minor, because they interrupt the rhythm of the established streetscape.

Based on these conclusions, Ms. Choi said that the Appeal, and the proposal, should be refused, because of the proposal's inability to be consistent with Sections 51(24), and 45.1 of the Planning Act.

Ms. Choi was then cross examined by Ms. Stewart. By way of editorial comment, it is important to separate the cross examination into two very separable components- the first part focused on conventional planning rationale, while the second part focused on the allegations of plagiarism. As has happened with Ms. Choi's Examination in Chief, I present the cross examination at a fairly high level, for reasons explained in the Analysis Section.

Ms. Choi agreed with Ms. Stewart on many overarching principles of the planning process, including the fact that the Official Policy has to be consistent with the higher level Provincial Policies, whereas the latter did not have to defer to the Official Plan. She also agreed that "delineated built up areas" were recognized as a Secondary Target growth area in the Official Plan.

Ms. Choi did not agree with Ms. Stewart's suggestion that "nothing in the OP actually looks at the lot size", but agreed that there was no issue with the configuration of the lots. She also agreed with Ms. Stewarts observations that townhouses were allowed on Altamount Ave., though the latter is in the Neighbourhoods designation, and that no zoning amendment was necessary for the stacked townhouses at 11-19 Altamount Ave.

When asked about her reluctance to share the lot analysis material with Mr. Christou, Ms. Choi said that she believed that every witness was responsible for their own research, and that she was "not sure", and "afraid" about how the material would be used, had the material been shared.

It is important to note that at two different stages, Ms. Choi said that she had "had a long day", and seemed confused, because she stated at one stage that the Official Plan took precedence over the Provincial Policies, before being corrected by Ms. Stewart.

In the second part of the cross-examination, Ms. Stewart brought forward a Planning Staff Report authored by Ms. Victoria Fusz, respecting 116 Bogert Ave. By way of comment, Ms. Fusz is a planner with the City of Toronto, and a colleague of Ms. Choi. Ms. Stewart drew my attention to the expression “Character Area”, and asked Ms. Choi what the difference between a Character Area, and the Study Area, was, to which the latter replied that they were essentially the same. Ms. Amini objected to the line of questioning given that the Staff Report respecting 116 Bogert had not been disclosed earlier; however, Ms. Stewart said that the enormity of what had happened “literally hit her this morning” (i.e. the day of the Hearing), and that a cross examination regarding the document was “crucial” to the Appellant’s case. I allowed the Staff Report respecting 116 Bogert to be introduced as an exhibit. Ms. Stewart then stated that there were “more than 80 examples of identical paragraphs” between the two documents, and proceeded to list half a dozen of the identical paragraphs. After each paragraph, Ms. Choi insisted that the reason for the paragraphs being similar, if not identical, was that the Planning Department provided their planners with a common template, to be used for writing reports. According to Ms. Choi, the template provided text, and sentences into which the planners inserted addresses, numbers, and other information, specific to the property in question.

It may be noted that Ms. Amini objected numerous times to this line of questioning, and made a submission, where she confirmed Ms. Choi’s account of how the planners wrote Staff Reports, and how they relied significantly from pre-circulated templates. I informed Ms. Stewart that, after being led through half a dozen examples of similar phrases, and sentences in the reports written by Ms. Choi and Ms. Fusz for different properties, I was willing to take at face value, her contention, that there were “eighty plus examples of similar sentences, and paragraphs”. I also clarified to the Parties that accepting that there were “eighty plus examples”, was not tantamount to arriving at a conclusion on whether the report had been plagiarized.

On day three of the Hearing, Ms. Stewart had a very lengthy closing argument. In addition to drawing my attention to important features, and facets of the perspectives on this case, she also made the argument that Ms. Choi’s evidence should be given less weight than the evidence of Mr. Christou, because she did not have his experience, nor the credentials, including being a full-fledged Registered Professional Planner. To substantiate the charges of plagiarism, Ms. Stewart introduced a four page document, amounting to guidelines on detecting plagiarism, authored by the Oxford University, obtained from the internet. When I asked Ms. Stewart if she could draw my attention to jurisprudence on the topic of plagiarism, she said that she could not find anything, and opined that this was probably because no plagiarism had occurred before, with the result that there was no need for such jurisprudence. Ms. Amini, in her submission, highlighted what the City saw as the lack of compatibility between the proposal, and planning principles, pointed out that Ms. Fusz had been the planner acting on the file respecting 14 Grantbrook, before it was transferred to Ms. Choi, and reiterated earlier information about how the City’s planners used templates to prepare their reports.

ANALYSIS, FINDINGS, REASONS

It is important to address, what may be described colloquially, as the elephant in the room in this Appeal, namely the Appellants' charges of plagiarism against the City's expert witness, Ms. Jenny Choi. The charges of plagiarism rest on three elements:

- The Expert Witness Statement of Ms. Victoria Fusz, the City's planner in the Appeal respecting 116 Boggert, "
- "Eighty (80) examples" of similarities between the Witness Statements of Ms. Choi, respecting 14 Grantbrook, and Ms Fusz respecting 116 Bogert
- A document, obtained through the internet, from Oxford University describing how plagiarism may be detected.

A substantial portion of the Appellants' cross examination of the City's witness, as well as oral argument, was spent on discussing various examples of the alleged plagiarism, and why this was a strong reason for assigning the City's evidence, little, if any weight.

In response to the charge of "eighty, or more common statements, between her Statement respecting 14 Grantbrook , and Ms. Fusz's Statement respecting 116 Bogert, Ms. Choi repeatedly stated that the practice at the City's Planning Department was to circulate a general template, for the use of their planners, to draw up witness statements. When this practice is juxtaposed on the fact that the initial staff report submitted to the COA, dated November 15, 2017, was written by Ms. Fusz, it makes sense to conclude that the similarity in style, and content, is the consequence of the reports respecting 116 Bogert, and 14 Grantbrook, being authored by the same planner. The latter fact was not challenged by the Appellants; in fact, during oral argument, Ms. Stewart herself alluded to the Witness Statement having been "adopted" by Ms. Choi, because Ms. Fusz, was the original planner who had worked on the report.

While Ms. Choi did not explicitly state in so many words, that she had "adopted" Ms. Fusz's statement, she did state that "she had reviewed, and agreed with the work of "another planner", who had written the original report, recommending refusal of the proposal to the COA. These lead to the conclusion that two different planners worked on the proposal respecting 14 Grantbrook, at different points in time, and that the second planner agreed with the findings of her predecessor, who had worked on the same file.

When a Witness Statement is "adopted", one should not be surprised if the original, and adopted statements correspond a 100% to each other, because "adopting" means agreeing with the previous planner's analysis, and conclusions, and *inter alia*, possible use of the same sentences and words. To reiterate, the similarity between the concepts, and words, if not fulsome paragraphs, between the Staff reports for 14 Grantbrook, and 116 Bogert, may be explained by the fact that they were written by the same planner,

and that the second planner, agreed with the findings of the first planner, and "adopted" the formers statement.

The similarity that results from "adoption" needs to be distinguished from "plagiarism" through the application of a rigorous legal test. Since the TLAB does not have the jurisdiction, nor the expertise, to determine the test for plagiarism, I asked Ms. Stewart to assist with jurisprudence on this matter, and was advised that none existed, "probably because nobody has plagiarized before". I am highly skeptical of this answer, since it is not backed up by research, not to mention the underlying circular logic (i.e. no instances of prior plagiarism translates into no pre-existing jurisprudence, while the fact that no jurisprudence is available is interpreted to mean that there are no previous cases of plagiarism) . It may be noted that the guidelines from Oxford University, are mere guidelines, and do not rise to the level of jurisprudence on plagiarism.

The lack of jurisprudence on determination of plagiarism, means that there is no methodology to distinguish Ms. Choi's Witness Statement as plagiarism, which is distinct from adoption .

I find that the charges of so called plagiarism make a mountain of a molehill, when not exemplifying what Shakespeare referred to as "much ado about nothing" . No weight is assigned to the allegations of plagiarism.

The Appellants also flaunted the experience of their Expert Witness, his professional qualifications, and experience, and contrasted it with the relative inexperience of the City's Witness, and asked that no weight be assigned to the latter's evidence, because she was not a Registered Professional Planner, and did not have to adhere to the ethical standards of professional planners, giving evidence before a tribunal . I accept Ms. Choi's stating that she is familiar with the ethical standards that RPPs are held up to, and that she would endeavour to uphold these standards, while giving evidence, because none of the issues brought forward by the Appellants about the quality of Ms. Choi's work, convinced me that there were issues with her credibility.

I also take this opportunity to point out that I have a profound philosophical disagreement with the argument about according evidentiary weight based on a witness' professional qualifications and length of experience, because the *ratio decidendi* make no reference to a nexus between evidentiary weight, and the witness' *curriculum vita*. By way of an *obiter* remark, I cannot but help add, that while old (as in experienced) may be proverbially gold, there is nothing in front of me which suggests that young (as in a fresh perspective) cannot become platinum.

Notwithstanding the above conclusions, I note that irrespective of the Expert Witness' CV, the onus of proving one's case rests with the Appellants, especially when they are also the Applicants, and not with the opposition.

Perusing the Appellants' Examination in chief, reveals that substantial effort was put into criticizing the City's submissions, and alleged deficiencies in the existing By-Laws,

rather than an effort to demonstrate compatibility between the proposal, and relevant tests under the Planning Act. As an example, the Appellants criticized Ms. Choi's unwillingness to share her Study with them, but did not put forward a lot analysis study of their own, within the 120 m radius "Study Area" that they chose. Likewise, notwithstanding a lengthy discussion about the perceived shortcomings of the analysis of City's frontages , and how this did not speak to lot "Size", as discussed in Section 51(24), the Appellants did not put forward any data based analysis to demonstrate that the lot size of the proposed lots is compatible to what exists on the ground, for the purpose of constructing detached houses. I was mystified by Mr. Christou's response was that he had no idea of other planners completed lot analyses, when cross-examined on this topic, by Ms. Amini,.

The constant criticism of the City's position did not convince me about the soundness, or the appropriateness of the Appellant's case. It is important that Parties appearing before the TLAB have the sagacity to recognize that evidence is not a zero sum game, where disproving the other Party's case, or even impeaching the opposing Party's witnesses, does not proves one's case, nor precludes the need to provide meaningful evidence, in support of ones position.

I return to the Study Area, and note that the Appellants' Study Area extends over an area with a 120 m radius, around the Subject Property. The rationale for the study area, as provided by Mr. Christou, was it corresponded to the area, in which the COA provides notice to residents, in the case of an application with a consent to sever a property, and attempted to justify it later with references to an "edge condition", where "one must include as a consideration, the immediate context of the site."

However, Mr. Christou agreed with Ms. Amini, that the area for providing notice is not legally defined by way of statute, as well as that there are no policies specific to an "edge condition". I cannot help note that the 120 m radius chosen by the Appellants, allows for the inclusion of townhouses, with smaller frontages, and smaller lot sizes, which they then use to justify their choice of detached homes.

The Study area chosen by the Appellants does not provide one with a flavor of the community, as experienced through "an evening walk", "or walking one's dog", as cited in numerous authorities. The area covered during the course of an evening walk offers a more fulsome perspective on the community to determine fit, rather than the restrictive definition used by the Appellants. This perspective is buttressed with my own site visits during the course of the Hearing, I concluded that a circle with a 120 m radius is not adequate to capture the experiences of the residents, with respect where they shop, walk, work, or indulge in other day to day activities.

It is also expected that exemplars similar to what is proposed, be provided from within the "Study Area", in order to help determine the fit between the proposal, and what exists on the ground, as well as adverse impacts, if any. The Appellants' approach of picking exemplars from locations as far as Scarborough, with none from the immediate community, much less their own stated Study Area, furthers my concern about

determining the impact of substandard lots with detached houses, with specific reference to unacceptable adversarial impact. I am particularly perturbed by the Appellants' planner relying on " his own experience with similar projects, across the City", when asked to justify narrow, hitherto unexperienced side yard setbacks of 0.46 m for the houses to be built on the 2 severed lots.

Based on the above discussion, I disagree with both the choice of the Study Area, and consequently, the exemplars of similar variances approved by the COA, outside the Study Area, which means that I do not have an independent, reliable means , to test the compatibility between the proposal, and what exists on the ground.

I will now test the evidence in support of the severance. The two important clauses that are of interest to this analysis are Parts (c) and (f) of Section 51(24):

- Conformity with the Official Plan and adjacent plans of subdivision
- Dimensions , and shapes of the proposed lots

As stated earlier, the Appellants did not bring forward a lot study, which means that there is no direct evidence to demonstrate the fit between the proposed lot sizes with detached houses, and what exists in the community. They asserted on numerous occasions, that the lot sizes "fit" into the community, on the basis of what seemed to be actual, physical observation from the street. I note that this methodology relies on the perception of lot size rather than the actual size; however, the test emphasizes the actual size, as opposed to how it is perceived.

Based on this reasoning, I conclude that there is no evidence to support that the lot size is consistent with what exists on the ground today, for the purpose of building detached houses.

While the Official Plan is largely written with a qualitative, as opposed to quantitative perspective, Section 4.1.8 upholds the importance of numerical standards, as stated in the Zoning By-Law that governs the Subject Property. I note that By-Law 569-2013, specifically refers to frontage, area, and setbacks, which are not met by the Subject Property. In response to the apparent inadequacy of the proposed site, the Appellants questioned the very basis of the Zoning By-law, by speaking to its alleged inadequacies, and what their planner believed, to be its archaic nature. Nothing in the Planning Act, allows for the Zoning to be ignored, or disregarded, on the basis of its supposed inadequacy or archaic nature, which results in my concluding that the proposal does not satisfy Section 4.1.8 of the Official Plan.

There are no specific, or pertinent policies in the OP pertaining to "Mixed Zones" , or the interface between a Neighbourhood, and a Secondary Plans- in this case, the Subject property is designated "Neighbourhoods", and is close to the area covered by the "Mixed Use Finch Secondary Plan". The OP designates properties, as "Neighbourhoods" or "Mixed Use Zone", and asks that relevant policies governing the designation, be applied to the property in question, irrespective of its proximity to a

different category. I therefore don't understand why the OP is seen as being inadequate in terms of analyzing the Subject Property, when it contains specific policies, that are applied time and again to all properties, located in the "Neighbourhoods" category.

Based on the earlier discussion about shape, and lot sizes, the proposal is not consistent with Section 4.1.5(b) of the Official Plan.

On the matter of fit between what exists, and what is proposed, the Appellants consistently, and constantly drew attention to how detached, semi-detached, and other types of houses, can "fit" together to form the fabric of a community. While I don't disagree with the argument that different built forms, can co-exist in a community, and result in an eclectic mix , I would like to point out that the much vaunted eclecticism is scale-predicated, or relies on the logic of cutting the coat to match the available cloth, rather than the other way round i.e. semi-detached houses exist on smaller plots appropriate for semi-detached houses, while bigger lots have detached houses built on them, rather than detached houses existing on lots appropriate for lots appropriate for townhouses. I note that no exemplar was provided of a detached house, that has been approved for a lot size appropriate for a townhouse.

Based on this reasoning, I struggle to make sense of the Appellants' contention that it is "nonsensical for the City to argue that the proposal is not consistent with the Official Policy", and conclude that the proposal fails the test of being consistent with the Official Policy.

While the proposal may not be inconsistent with the PPS, as a result of the granularity, I remain unconvinced of the need to directly link the PPS to this Proposal, on the grounds of alleged inadequacies in the OP. The Appellants also specifically looked to the PPS' injunction to create affordable housing, to support their position of creating two houses on two adjacent plots, in place of the existing plot. The issue with this position is that they interpret the expression "Affordable Housing" literally- this confusion was evident in Mr. Christou's evidence in chief, though he later corrected himself to state that the expression "Affordable Housing" had a specific definition in the City of Toronto's Official Plan, and suggested that the proposal would create housing that was affordable. There is no demonstrated nexus between the proposal, and the PPS, on the basis of the creation of "affordable housing".

The Appellants rely on the OMB's Decision respecting 13 Altamont, where townhouses were allowed on smaller lots, to justify their request for a detached house.. I have carefully read the text of the Decision of 13 Altamont, and have carefully listened to the audio tapes numerous times, but fail to understand how the OMB's refusal of the City's asking for a Zoning Amendment on the lots, and the construction of townhouses on them, translates into support for detached houses, on substandard lots.

At one stage, the Appellants spoke to why an "apples to apples" comparison is important to making a decision. While there is no little to dispute about the logic of an "apples to apples" comparison *prima facie*, the question before me is how does the

proverbial apple manifest itself where the development of a property is considered- is it merely comparing the sizes, and types of the dwellings against what exists in the neighbourhood, or is it the "package" of the type and size of the dwelling, *juxtaposed* (my emphasis) on the size of the plot? The concept of performance standards, and its importance in analysis in the context of Zoning, points in the latter direction, rather than the former. I conclude that it is the "package", and not the individual dwelling, that we should compare. In this case, the contrast between what exists on the ground today, and what is proposed, is as incongruent as lemons and melons, together, rather than an "apples and apples" comparison.

The above analysis demonstrates why the proposal is not consistent with different clauses within Section 51(24), one which requires compatibility with existing lot sizes, and another requires that the OP be upheld. On the basis of this analysis, I find that the consent to sever the property should not be granted.

I would also like to discuss my concerns with the overall methodology followed by the Appellants.

The Appellants' approach of relying on exemplars from communities far away from the Subject Property, or pointing to the alleged inadequacy of the Zoning Plan for determination of adequate standards for contemporary houses, may raise interesting questions, but does not demolish, nor disprove the need for proposals to uphold the intention of the Official Plan. The well-known, and accepted practice of an individual's being deemed to be innocent, until proven guilty, may be extended to the Official Plan, or a Zoning By-Law. Vigorously questioning the adequacy of the Official Plan, or emphasizing its allegedly archaic nature, does not mean that it can be discarded, because Section 45(1) states in no certain terms that the intent and the purpose of the By-law be upheld.

It must be remembered that the commonality of planning concepts, and ideas introduced through the Official Policy, and numerical Zoning Standards are the framework of a replicable, and uniformly applicable planning process, that is key to the decisions made by the COA, and the TLAB. Arbitrarily setting aside Zoning standards, or a planning concept, however allegedly obsolescent, makes it difficult to demonstrate overall procedural fairness in the decision making process of any tribunal, and results in "planning anarchy", where a Party need not defer to authority, by the virtue of simply pointing fingers at the latter.

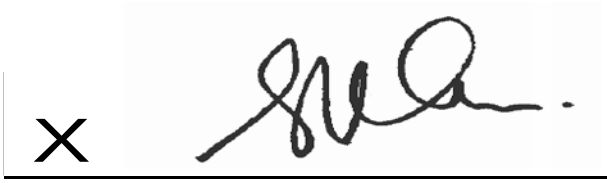
I firmly believe that the process of attempting to prove one's case, by disproving the authority, is not in the public interest..

To summarize my findings, I find that the proposal is not consistent with various clauses discussed in Section 51(24) of the Planning Act. . Aside from the finding, that has already been made about the proposal's not being consistent the Official Plan, there is no need to delve into the other tests under Section 45.1, because the variances

requested are related to the consent to sever; refusing the latter is tantamount to refusing the former.

DECISION AND ORDER

1) The Appeal respecting 14 Grantbrook Ave. is refused, and the decision of the Committee of Adjustment dated November, 23, 2017, is confirmed.



S. Gopikrishna
Panel Chair, Toronto Local Appeal Body

SCHEDULE A

14 GRANTBROOK STREET- REQUIRED CONSENT AND VARIANCES

THE CONSENT REQUESTED:

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

Conveyed - PART 2

PART 2 - The proposed lot frontage is 9.14 m and the proposed lot area is 375.5 m². A new detached residential dwelling is proposed, requiring variances to the applicable zoning by-law(s) as recited below.

Retained - PART 1

PART 1 - The proposed lot frontage is 9.14 m and the proposed lot area is 385.8 m². A new detached residential dwelling is proposed requiring variances to the applicable zoning by-law(s) as recited below.

14 Grantbrook Street – Part 1 (North Lot) Revised List of Variances

1. **Chapter 10.5.40.50, Zoning By-law No. 569-2013**

A platform without main walls, such as a deck, porch, balcony or similar structure, which is not encroaching as permitted, and attached to or within 0.3 m of a building, must comply with the required minimum building setbacks for the zone. The proposed front yard platform is 0.69 m from the south side lot line where 1.8 m is required.

2. **Chapter 10.5.40.50, Zoning By-law No. 569-2013**

A platform without main walls, such as a deck, porch, balcony or similar structure, which is not encroaching as permitted, and attached to or within 0.3 m of a building, must comply with the required minimum building setbacks for the zone. The proposed rear yard platform is 0.46 m from the south side lot line, whereas 1.8 m is required.

3. **Chapter 10.20.40.30.(1), Zoning By-law No. 569-2013**

The permitted maximum building depth for a detached house is 19.0 m. The proposed building depth is 20.89 m.

4. **Chapter 10.20.30.10.(1), Zoning By-law No. 569-2013**

The required minimum lot area is 550 m². The proposed lot area is 385.88 m².

5. **Chapter 10.20.30.20.(1), Zoning By-law No. 569-2013**

The required minimum lot frontage is 15.0 m. The proposed lot frontage is 9.14 m.

6. **Chapter 10.20.30.40.(1), Zoning By-law No. 569-2013**

The permitted maximum lot coverage is 30 % of the lot area. The proposed lot coverage is 31 % of the lot area

7. **Chapter 900.3.10, (5) Exception RD 5, Zoning By-law No. 569-2013**

Despite regulation 10.20.40.70 (3), the minimum side yard setback is 1.8 m. The proposed south side yard setback is 0.46 m.

8. **Chapter 900.3.10, (5) Exception RD 5, Zoning By-law No. 569-2013**

Despite regulation 10.20.40.70 (3), the minimum side yard setback is 1.8 m. The proposed north side yard setback is 1.22 m.

9. **Section 13.2.3(b), Zoning By-law No. 7625**

The minimum required side yard setback is 1.5 m. The proposed south side yard setback is 0.46 m.

10. **Section 13.2.3(b), Zoning By-law No. 7625**

The minimum required side yard setback is 1.5 m. The proposed north side yard setback is 1.22 m.

11. **Section 13.2.6, Zoning By-law No. 7625**

The maximum permitted building height is 8.8 m. The proposed building height is 8.92 m.

14 Grantbrook Street – Part 2 (South Lot) Revised List of Variances

1. **Chapter 10.5.40.50, Zoning By-law No. 569-2013**

A platform without main walls, such as a deck, porch, balcony or similar structure, which is not encroaching as permitted, and attached to or within 0.3 m of a building, must comply with the required minimum building setbacks for the zone. The proposed front yard platform is 0.69 m from the north side lot line where 1.8 m is required.

2. **Chapter 10.5.40.50, Zoning By-law No. 569-2013**

A platform without main walls, such as a deck, porch, balcony or similar structure, which is not encroaching as permitted, and attached to or within 0.3 m of a building, must comply with the required minimum building setbacks for the zone. The proposed rear yard platform is 0.46 m from the north side lot line, whereas 1.8 m is required.

3. **Chapter 10.20.40.30.(1), Zoning By-law No. 569-2013**

The permitted maximum building depth for a detached house is 19.0 m. The proposed building depth is 20.89 m.

4. **Chapter 10.20.30.10.(1), Zoning By-law No. 569-2013**

The required minimum lot area is 550 m². The proposed lot area is 375.6 m².

5. **Chapter 10.20.30.20.(1), Zoning By-law No. 569-2013**

The required minimum lot frontage is 15.0 m. The proposed lot frontage is 9.14 m.

6. **Chapter 10.20.30.40.(1), Zoning By-law No. 569-2013**

The permitted maximum lot coverage is 30 % of the lot area. The proposed lot coverage is 31.82 % of the lot area.

7. **Chapter 900.3.10, (5) Exception RD 5, Zoning By-law No. 569-2013**

Despite regulation 10.20.40.70 (3), the minimum side yard setback is 1.8 m. The proposed north side yard setback is 0.46 m.

8. **Chapter 900.3.10, (5) Exception RD 5, Zoning By-law No. 569-2013**

Despite regulation 10.20.40.70 (3), the minimum side yard setback is 1.8 m. The proposed south side yard setback is 1.22 m.

9. **Section 13.2.3(b), Zoning By-law No. 7625**

The minimum required side yard setback is 1.5 m. The proposed north side yard setback is 0.46 m.

10. **Section 13.2.3(b), Zoning By-law No. 7625**

The minimum required side yard setback is 1.5 m. The proposed south side yard setback is 1.22 m.

11. **Section 13.2.6, Zoning By-law No. 7625**

The maximum permitted building height is 8.8 m. The proposed building height is 8.93 m.