

DECISION AND ORDER

Decision Issue Date **Tuesday, October 15, 2019**

PROCEEDING COMMENCED UNDER Section 53, subsection 53(19), and Section 45(12), subsection 45(1) of the Planning Act, R.S.O. 1990, c. P.13, as amended (the "Act")

Appellant(s): HONGYU ZHANG

Applicant: GOLDBERG GROUP

Property Address/Description: 37 WILKET RD

Committee of Adjustment Case File: 18 139777 NNY 25 CO, 18 139770 NNY 25 MV

TLAB Case File Number: 18 243170 S53 25 TLAB, 18 243167 S45 25 TLAB

Hearing date: Thursday, June 27, 2019

DECISION DELIVERED BY STANLEY MAKUCH

APPEARANCES

Name	Role	Representative
Goldberg Group	Applicant	
Hongyu Zhang	Owner/Appellant	Jason Park
Janny Vincent	Party	Brad Teichman
City of Toronto	Party	Michael Mahoney
Michael Goldberg	Expert Witness	
Franco Romano	Expert Witness	
Yougen Pan	Participant	
Dongyu Pan	Participant	
Mehdi Hassanloo	Participant	

Name	Role
Oliver Haaslo	Participant
Arezou Hanson	Participant
Amir hassanloo	Participant
David Haaslo	Participant
Abie Hanson	Participant
Zara Haaslo	Participant
Syedeh Zanjani	Participant
Jinmei Ma	Participant
Beini Ke	Participant

INTRODUCTION

This is an appeal of a decision refusing a consent to sever a property and refusing to grant a minor variances for the construction of a new detached dwelling on the retained lot. The property fronts on two streets Wilket Ave and Bayview Ave. The consent would create two lots; one facing Bayview Ave. and the other fronting on Wilket Ave.

BACKGROUND

The appeal is complicated by a number of factors: 1) An application for a rezoning and site plan approval for a townhouse development on the created lot has been withdrawn and there is no plan currently submitted for the development on the created lot, which could apparently be a townhouse development or a detached dwelling; 2) The created lot is to front on Bayview Ave., an arterial road along which there is a .3 metre reserve and a mix of different land uses. 3) The lot to be retained would continue to front and have access to the residential neighbourhood interior to Bayview Ave.; that neighbourhood consists of stately single detached dwellings on large lots.

MATTERS IN ISSUE

There were many matters in issue, however the following are fundamental to any decision to grant the consent and variances. They are: (1) Prematurity - is it premature to approve a consent without having any plans for the proposed development on the lot to be created ? Is it premature to create a lot which does not have access to a road

because of the .3 metre reserve? (2) Urban Forest Impact - the zoning bylaw applying to the created lot would result in the right to destroy numerous regulated trees on the site. Would such impact be in conformity with relevant Official Plan policies? (3) Impact on Neighbouring Properties - Would it be appropriate to enable a change in the land use permissions on the lot to be created by creating that lot on an arterial road? Would there be a negative impact on the properties to the north and east? (4) Neighbourhood Character - Will the developments on each lot respect and reinforce the character of the area?

As will be discussed some of these issues are interrelated and overlap.

JURISDICTION

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 for the Greater Golden Horseshoe for the subject area ('Growth Plan').

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).

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

The major evidence was presented by two well respected and knowledgeable planners who have appeared before TLAB and the former OMB on numerous occasions: Mr. Greenberg for the appellant, and Mr. Romano for the owner of 36 Wilket Rd. Both planners filed comprehensive witness statements which I have relied upon and which I refer to in as much as they are relevant to the issues. Needless to say their opinions and conclusions were not in agreement although there was no significant disagreement on the facts.

Ms. Haaslo a participant and owner of 2533 Bayview Ave, the property adjacent to 37 Wilket Ave. to the north, also gave evidence. Her evidence was in opposition to the appeal. She had four concerns: the density of a possible town house development, traffic, impact on the character of the area, and precedent. The City, while represented by two legal counsels in opposition to the appeals, called no evidence. City Planning and Transportation staff had no objection to the consent application which was submitted with a zoning bylaw amendment application and site plan approval application. The latter two applications were withdrawn.

The evidence related to the issues may be summarized as follows.

1) Prematurity. The evidence respecting prematurity relates to the lot facing Bayview Ave. The townhouse development application was withdrawn although it might still proceed by way of rezoning and there was no specific plan for a proposed detached dwelling presented. The lot to be created would not front on Bayview Ave. because of a 3 metre reserve in place along that road. The Bylaw 569-2013 s.5.10.30 specifically prohibits development on lots subject to such a reserve. Both lots, however, meet bylaw standards in terms of lot size and specific variances are sought based on plans submitted for the dwelling to be constructed on the retained lot .

2) Urban Forest. The evidence is that the created lot has numerous trees and an arborist report indicated that the zoning bylaw provisions for a detached dwelling would result in the right to destroy thirteen regulated trees. In addition, this evidence – indicated a total of thirty trees could be injured and twenty eight removed.

3) Impact on Neighbouring Properties. The evidence demonstrates that a lot created on an arterial road such as Bayview Ave. under s.4.1.3 of the City's Official Plan has the potential for a more intense form of development. The lot to be created would thus be eligible for denser development as a result of the consent. The detached dwelling for which there are no plans, but which could be built as of right would have a rear lot line at the side lot line of 36 Wilket and a house forward of the house at 2533 Bayview Ave. The proposed house on the retained parcel would be of a size and location in keeping with the character of the interior neighbourhood.

4) Character of the Area. The evidence of Mr. Romano included the Bayview Townhouse Design Guidelines Study, which addressed the construction of townhouses on Bayview Ave. Mr. Goldberg did not address this study in his evidence in chief. That study would appear to prohibit development of a townhouse on the created lot, although no permission is being sought to construct such a development. The creation of a detached dwelling unit on each of the lots in question would appear to respect and reinforce the character of the interior neighbourhood.

ANALYSIS, FINDINGS, REASONS

Based on the evidence in the witness statements, presented orally and seen visually, it appears to me that many of the issues overlap and are interrelated. As a result they lead me to the conclusion that the applications which I am viewing as a whole (consent and variances) are premature and neither the consent nor, therefore, the variances should be granted. I cannot be certain as to what is to be constructed on the created lot and thus cannot determine if the consent should be granted. Although the evidence was that the application for townhouses has been withdrawn to enable the construction of the new house on the retained lot to proceed more quickly, it appears to me that this could be achieved by simply seeking variances for the construction of a replacement house on the existing lot. .

Moreover, I am being asked to grant consent to create a lot which has no frontage on a street. The frontage may appear to be a technical requirement, but I am not prepared to grant consent without having detailed information as to the proposed

development including the specifics of access and ingress/egress. I also note that granting the consent creates a right to destroy trees on the created lot based on the current bylaw governing the property. This may not be appropriate in that a site specific bylaw may be desirable for the protection of more trees.

I do not find that protection of the urban forest has been fully examined as required by s. 3.1.2 of the Official Plan. I note as well that it is unclear as to what impact the variances for the house on the retained lot will have on the urban forest.

While I find that the proposed new home, for which plans were submitted, appears acceptable and respects and reinforces the character of the area I cannot reach the same conclusion for the other dwelling. Its location is problematic, and given that if the consent is granted a denser form of development could be sought, I am not willing to approve the consent. In the absence of the consent I am not willing to approve variances for a dwelling on a lot which has not been created.

In conclusion, the consent, having regard to s. 51(24) (b) of the Planning Act, should be dismissed because it is premature and lacks specificity respecting the proposed development which is to occur on the lot to be created. In addition, having regard to s. 51 (24) (h) respecting natural resources, and s. 51 (24) (c) respecting conformity with the Official Plan, the consent should be refused as it does not take appropriate consideration of the preservation of the urban forest as required by the Official Plan s. 3.1.2.

Finally, the consent should be refused taking into account s.51 (24) (e) and (g) , the adequacy of highways and restrictions on the land because there is no access to a highway by virtue of the restriction of the .3 metre reserve. Given the refusal of the consent to create two lots, in my view it is inappropriate to approve variances for a dwelling on a lot which is not created.

DECISION AND ORDER

The appeals are dismissed and the decisions of the Committee of Adjustment are affirmed.

X 

S. Makuch
Panel Chair, Toronto Local Appeal