

DECISION AND ORDER

Decision Issue Date Thursday, October 31, 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): CARLA HANNEMANN-STIRRAT

Applicant: IN ROADS CONSULTANTS

Property Address/Description: 62 CAVELL AVE

Committee of Adjustment Case File: 18 188813 WET 06 CO, 18 188822 WET 06 MV, 18 188832 WET 06 MV

TLAB Case File Number: 19 141720 S53 03 TLAB, 19 141723 S45 03 TLAB, 19 141724 S45 03 TLAB

Hearing date: Thursday, September 26, 2019

DECISION DELIVERED BY S. GOPIKRISHNA

APPEARANCES

Name	Role	Representative
In Roads Consultants	Applicant	
Carla Hannemann-Stirrat	Appellant/Owner	Amber Stewart
Neil Stirrat	Party	
Franco Romano	Expert Witness	

INTRODUCTION AND BACKGROUND

Neil Stirrat and Carla Hahnemann- Stirrat are the owners of 62 Cavell Ave., located in Ward 3 (Etobicoke-Lakeshore), of the City of Toronto. They applied to the Committee of Adjustment (COA) to sever the plot into two parts, and construct a dwelling on each of the two resulting lots. The COA heard the application on April 5, 2019, and refused the application in its entirety. On April 17, 2019, the applicants

appealed the COA decision to the Toronto Local Appeal Body (TLAB), which scheduled a hearing for September 26, 2019.

MATTERS IN ISSUE

Conveyed - Part 1

Address to be assigned

The lot frontage will be 7.62 m and the lot area will be 289.7 m². The existing dwelling will be demolished and the property will be redeveloped as the site of a new detached dwelling with an integral garage, requiring variances to the Zoning By-law, as outlined in Application A0544/18EYK.

Retained - Part 2

Address to be assigned

The lot frontage will be 7.62 m and the lot area will be 290.1 m². The existing dwelling will be demolished and the property will be redeveloped as the site of a new detached dwelling with an integral garage, requiring variances to the Zoning By-law, as outlined in Application A0545/18EYK.

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

1. Section 900.6.10.(22)(B), By-law 569-2013

The minimum required lot frontage is 10.5 m.

The new lot will have a lot frontage of 7.62 m.

2. Section 900.6.10.(22)(A), By-law 569-2013

The minimum required lot area is 325 m².

The new lot will have a lot area of 289.7 m².

3. Section 10.80.40.40.(1)(A), By-law 569-2013

The maximum permitted floor space index is 0.6 times the area of the lot (173.82 m²).

The new dwelling will have a floor space index of 0.72 times the area of the lot (208.98 m²).

4. Section 900.6.10.(22)(D), By-law 569-2013

The minimum required side yard setback is 0.9 m.

The new dwelling will be located 0.45 m from the east side lot line.

5. Section 10.80.40.10.(2)(A)(i), By-law 569-2013

The maximum permitted height of all exterior main walls is 7 m.

The new dwelling will have an exterior main wall height of 8.32m.

6. Section 320-42.1.(2)

The maximum permitted height of a flat roof dwelling or the soffit of the eaves overhang for peaked roofed dwellings shall not exceed 6.5 m.

The new dwelling will have a height of 8.32m

7. Section 10.80.40.50.(1)(B), By-law 569-2013

The maximum permitted area of each platform at or above the second storey is 4 m².

The proposed second storey balcony will have an area of 7.64 m².

8. Section 10.5.40.50.(4)(C), By-law 569-2013

The level of the floor of a platform may project 2.5m from the rear main wall if it is no higher than the level of the floor from which it gains access.

The proposed rear deck projects 2.52m from the rear main wall and is 2.1m above the ground.

9. Section 10.5.40.60.(7)(B), By-law 569-2013

The eaves of a roof may encroach into a required minimum building setback a maximum of 0.9 m, if they are no closer to a lot line than 0.3 m.

The eaves will be located 0.15 m from the west side lot line.

PART 2— RETAINED

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

1. Section 900.6.10.(22)(B), By-law 569-2013

The minimum required lot frontage is 10.5 m.

The new lot will have a lot frontage of 7.62 m.

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The proposed second storey balcony will have an area of 7.64 m².

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The level of the floor of a platform may project 2.5m from the rear main wall if it is no higher than the level of the floor from which it gains access. The proposed rear deck projects 2.52m from the rear main wall and is 2.1m above the ground.

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The eaves will be located 0.15 m from the west side lot line.

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 for 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 hearing held on September 26, 2019, the Appellants were represented by Ms. Amber Stewart, a lawyer, and Mr. Franco Romano, a land use planner. It may be noted that there were no other Parties, or Participants, in opposition to the proposal. After Mr. Romano was sworn in, and recognized as an Expert in land use planning matters, he provided an introduction to the Site, and his Study Area.:

The Subject Site, at 62 Cavell Avenue, is located between Gardiner Expressway, and Lake Shore Boulevard West, east of Royal York Road, and southeast of the Mimico GO Station, within the Mimico community, of the former municipality of Etobicoke. Cavell Avenue is a local road with a southwest to northeast alignment. It operates in a one-way direction towards Royal York Road, until Station Road at which point, two-way traffic is permitted. The neighbourhood has experienced gradual regeneration, with well maintained properties, which are being enlarged, or improved, with building additions. The regeneration also includes lot creation by way of severance, and the regeneration activity is distributed throughout the neighbourhood.

Mr. Romano described the variances, as recited in the Matters in Issue Section. also spoke to a new variance respecting the eaves' projections, which had not been

identified by the Examiner. However, according to Mr. Romano, the Examiner had agreed on the validity of the variance being included in the application before the TLAB, when his attention (i.e. Examiner) was drawn to the same. This variance is:

*The eaves of a roof may encroach into a required minimum building setback a maximum of 0.9 m, if they are no closer to a lot line than 0.3 m.
The eaves will be located 0.15 m from the west side lot line*

Mr. Romano said that no new notice for this variance was necessary because the only parties to be impacted by the variance would be the new residents of the houses, after the latter had been constructed. I agreed with the reasoning, and ruled that no new notice was necessary.

Mr. Romano opined that proposal was consistent with the Settlement Area-related policies of the 2014 Provincial Policy Statement, particularly as it related to achieving an appropriate mix and range of housing, optimizing the use of land and making better, more efficient use of existing infrastructure. Mr. Romano discussed relevant (e.g. Policies 1.1.1, 1.1.2, 1.1.3.1, 1.1.3.2) to demonstrate the compatibility between the proposal and the PPS..

Mr. Romano also emphasized that the proposal conforms to, and does not conflict with, the Settlement Area, Delineated Built Up Area policies of the 2019 Growth Plan for the Greater Golden Horseshoe. The proposal implemented intensification policies, which achieve the objective of complete communities optimize land use and infrastructure, particularly where lands are well served by public transit.

Mr. Romano then discussed how the proposal fulfilled the test of satisfying the Official Policy, which is pertinent to the severance application, as well as the requested variances on the buildings to be built.

Mr. Romano stated that the Subject Site was designated “Neighbourhoods” under the Official Plan. The Official Plan recognized that change within neighbourhoods would occur over time, and that such change should respect, and reinforce the existing physical character of the neighbourhood. Mr. Romano emphasized that the neighbourhoods policies did not require replication of existing physical character, but required new development to fit the general physical patterns. He also said that the Official Plan recognized that ‘existing’ did not refer to a singular point in time, and that “stable” did not mean no activity. Mr. Romano opined that the proposal exhibited physical characteristics, including lot size, lot configuration, site design and built form features, which manifest themselves in a manner, which respected and reinforced the physical patterns of this neighbourhood. He demonstrated that 41.5% of the lots in the Study Area, and 30.9% of the lots on Cavell Ave, have frontages of between 7.62-9.14 m, and 13.3% of the houses in the Study Area, and 17.6% of the houses on Cavell Ave., have areas of 290.1 sq.m, or smaller. Consents to sever the property had been approved at 148 and 150 Queens Ave., 212 Queens Ave and 15 Stanley Ave, 152 Stanley Ave. to create substandard lots, as proposed in this application.

He said that the proposal would result in a development, that would fit in well with the existing and/or planned context of this neighbourhood including all aspects expressed by the Official Plan.

Mr. Romano discussed various policies such as the healthy neighbourhoods and urban structure policies in Section 2.3.1 followed by the housing policies found in Section 3.2.1 which refer to residential supply, mix, maintenance, replenishment, infill and intensification; Section 3.4, which referred to the natural environment policies, and Section 4.1, the Neighbourhoods development criteria which refer to physical features and permissions.

Mr. Romano briefly addressed how the proposal interacted with OPA 320, with specific reference to how it would require a delicate balance of physical character. He said that the proposal respected, and reinforced the physical characteristics of the neighbourhood, and smaller geographic areas, as they currently exist, and concluded that the proposal would satisfy OPA 320, if the latter would followed..

On the basis of this evidence, Mr. Romano concluded that the proposal upheld the intention and purpose of the Official Plan.

The compatibility between the proposal, and the Zoning By-Laws was discussed next. Mr. Romano said that Subject Site had a RM (multiple residential zoning) pursuant to the Toronto harmonized bylaw 569-2013, and R2 pursuant to the Etobicoke Zoning Code. He pointed out that the overall general intent and purpose of the applicable zoning is to achieve an orderly, compatible form of low rise residential housing, and that the proposal achieved this purpose through proposing detached residential, conventional form of lowscale detached residential houses on lots, which were appropriately sized to respect, reinforce, and be compatible with the Subject Site's physical context.

Mr. Romano discussed how the requested variances fulfilled the corresponding performance standards. He said that the proposed lot frontage and lot area variances, individually and cumulatively, met the general intent and purpose to achieve an appropriately modest-sized lot within the Subject Site's physical context. Mr. Romano asserted that the proposal achieved a lot size, compatible with lot sizes, present in the neighbourhood, which included lots that were comparably smaller than the general zoning requirement..He added that the proposed FSI met the general intent, and purpose of the By-Law, by ensuring that the floor area of the dwelling was appropriate for the lot, while providing adequate living space for the family living in the house. The proposed floor area was" reasonably deployed on the lot , such that was anticipated to be occupied by a low-rise residential building". The single side yard setback variance proposed for each dwelling. met the performance standard by providing adequate space to facilitate access, maintenance and servicing

Mr. Romano said that the proposed main wall height variance limited the height of the main walls, thereby achieving a context suitable for a low-rise residential building., while simultaneously satisfying the the performance standard of minimizing the extent to which walls may rise to create inappropriate upper levels (such as third storeys in areas where two storeys are regulated, or disproportionate flat roofs where pitched roofs are encouraged). The proposed soffit height variance met the general intent and purpose to achieve a low profile, low-rise residential building in a manner similar to the above-described main wall height standard. The intent of the platform size performance standard was to minimize impacts associated with elevated platforms, and that this was satisfied because the platforms were located off the master bedroom, which was not a primary living nor entertainment space. He added that the presence of privacy screens on the platforms minimized the impact further.

The proposed eaves met the intent of the by-law to ensure because eaves are lower than the dwelling roof, and are removed suitably from the property line. The intent of the ground related deck performance standards is satisfied because the rear deck is “subordinate” to the dwelling, and lot and located off of the ground floor. On the basis of this, Mr. Romano concluded that the general intent, and purpose of the Zoning By-Law, was individually, and cumulatively satisfied.

Mr. Romano discussed the compatibility between the proposal, and the test of minor. He asserted that the proposal created no unacceptable adverse impact. While conceding that the proposal resulted in a site development that occupied more space on the lot, Mr. Romano opined that the site of the proposed building, and built form condition were to be anticipated in the redevelopment of this Subject Site. He said that the proposal would not cause any unacceptable adverse impacts such as shadowing, privacy or overlook or any related to site development feature, and that the proposed severance would continue the evolution of this neighbourhood, where lots have been altered, and created since the inception of the plans of subdivision. Mr. Romano said that the transition from larger lots into smaller lots had occurred gradually, and was as one of a multitude of diverse site development choices taken by landowners. He said that prior severances, and development of houses on the smaller lots, did not demonstrated any adverse impact, on the basis of which he concluded that the proposal would have minimal impact

Mr. Romano then referred me to a minor variance decision summary sampling table, which illustrated that the proposed variances were consistent with the numeric range of approvals within the neighbourhood. Based on this evidence, he concluded that the proposal satisfied the test of minor.

Mr. Romano then discussed the test of desirable development. He said that the proposal introduced compatible lot size, site design and built form features, which are within the planning, and public interest, and were desirable for the appropriate use, and development of the land. He said that the proposal contributed to the mix of housing choices in this neighbourhood such that the existing physical character was reflected,

and reinforced. On the basis of this evidence, Mr. Romano concluded that the proposal satisfied the test of appropriate development

Mr. Romano then recited Section 51(24), before discussing how the proposal was consistent with this Section. He said that there were no substantive implications on matters identified under a number of the listed criteria. Mr. Romano said that a plan of subdivision was not necessary to facilitate the severance proposal, or the proper and orderly development of the Subject Site.

Given the urban setting of the proposal, there is no road or other widening required; the neighbourhood contains other lots created by severance of a similar size and configuration. Mr. Romano opined that the proposal was not premature, because services were readily available to accommodate the residential development. Mr. Romano said that the proposal was within the public interest, because it promoted a gentle intensification, that was reflective of, and represented elsewhere in the Subject Site's physical context. The lands were physically suitable for the proposed residential development, and the proposed site design reflected a context-appropriate, and sensitive development, which was compatible with the Subject Site's surroundings.

Mr. Romano then said that the dimensions of the proposed lots were compatible with, and similar with the dimensions of other lots, in adjacent plans of subdivision. He added that the rectangular shape of the proposed lots was consistent with the shapes of other lots in adjacent plans of subdivision.

Based on this, Mr. Romano concluded by stating that the Appeal should be allowed, and that the consent to sever the property, as well as the variances should be approved. In terms of conditions, he suggested that the standard conditions governing a consent to sever a property be imposed, in conjunction with a condition to developing the properties in substantial accordance with submitted plans and elevations.

I thanked Mr. Romano, and Ms. Stewart for their presentation, and asked that the updated list of variances be submitted, along with updated set of conditions, and the most updated set of plans. While the changes to the conditions to be applied to the variance were minor (I suggested the use of "properties" instead of "property" in the condition, since there were two properties being developed.), I believe that it is important to have the appropriate plans and elevations drawings resubmitted by the Appellant, so that the TLAB can satisfy itself that the appropriate sets of drawings are attached. This issue is expanded upon in the Analysis, Findings and Reasons section.

I stated that I would reserve my decision, and would wait for the aforementioned documents to be submitted, before sending out a final Decision and Order.

ANALYSIS, FINDINGS, REASONS

The reasoning behind my ruling that no new notice was necessary under Section 45.18.1.1 of the Planning Act for Variance Number 9., for both lots, is stated in the Evidence Section, and is therefore not repeated here.

The uncontroverted evidence provide by the Expert Witnes, Mr. Franco Romano was fulsome, and provided evidence about how the proposal fulfilled the Growth Plan, and the Provincial Plan Statement. I am also satisfied by the evidence that the proposed severance, while resulting in substandard lots, will not destabilize the area.

Mr. Romano drew my attention to other examples of similar severances which had been granted, in the neighbourhood, including one set of dwellings practically opposite the Subject Site. I conclude that the requested severance satisfies Section 51(24), and may be allowed.

The requested variances are consistent with the Official Plan, and were demonstrated to have satisfied the requisite performance standards, as stated in Mr. Romano's commentry. The tests of minor, and appropriate development, are satisfied because the evidence in front of me does not suggest any unacceptable adverse impact, and the numbers of examples of similar variances which were granted in the neighbourhood. I find that the variances satisfy the four tests under Section 45.1 of the Planning Act, and the Appeal may be consequently allowed.

I find that the Appeal may be allowed in principle.

In order to obtain the final Decision and Order, it is important that the Appellants submit the final list of requested variances, suggest appropriate language for conditions, and submit a copy of the most updated Plans and Elevations of the drawings. I acknowledge that the Appellants' list of suggested conditions refers to "*Elevations and Drawings prepared by Giancarlo Garofalo, dated September 20, 2018, and updated June 12, 2019*". However, a closer perusal of these drawings and elevations, demonstrates that there are 13 drawings for Lot 1 (numbered A0- A11, including A1 and A1b), and 12 drawings for Lot 2 (numbered A0, A1a, A1b, followed by A12- A20), followed by an identical set of drawings for Lots 1 and Lot 2 (i.e. the same drawings in the same order) resulting in a duplicate set of identical plans and elevations. Given that the variances are similar for both the severed lots, I am confused by the lack of symmetry in the elevation and plans (13 drawings for Lot 1 versus 12 drawings for Lot 2), and the duplicate submission of elevations and plans

To resolve this confusion, I herewith ask the Appellants to submit the most updated Plans, and Elevations, and ensure that there is no more than a single set of submissions for Plans & Elevations of the buildings to be constructed on severed Lots 1 and 2.

As such, I remind the Appellants that I had asked for the variances, suggested conditions, and plans and elevations of proposed buildings to be submitted at the end of

the Hearing, on September 26, 2019, and was assured that a submission would be made. The final Decision and Order will be issued after the requisite submissions, as listed above, are completed.

INTERIM DECISION AND ORDER

1. The Appeal respecting 62 Cavell Ave, is allowed in its entirety, and the decision of the Committee of Adjustment dated April 17, 2019, is set aside.
2. The consent to sever the property, and the variances required to build the dwellings on each of the severed lots, are approved in principle.
3. The final Decision and Order, will be issued, after the submission of the final list of variances, suggested language for conditions, and updated Plans and Elevations. The reasons for these submissions is listed in the Analysis, Findings, and Reasons Section, as well as direction to the Appellants, at the end of the Hearing on September 26, 2019.

So orders the Toronto Local Appeal Body



X

S. Gopikrishna
Panel Chair, Toronto Local Appeal Body