

DECISION AND ORDER

Decision Issue Date Monday, December 02, 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): CITY OF TORONTO

Applicant: GRANT MORRIS

Property Address/Description: 1972 BRIMLEY RD

Committee of Adjustment Case File: 18 244204 ESC 41 CO, 18 244209 ESC 41 MV, 18 244215 ESC 41 MV

TLAB Case File Number: 19 116569 S53 23 TLAB, 19 116567 S45 23 TLAB, 19 116568 S45 23 TLAB

Hearing date: Wednesday, June 05, 2019

DECISION DELIVERED BY SHAHEYNOOR TALUKDER

APPEARANCES

Name	Role	Representative
Grant Morris	Applicant	
Jagwinder Johal	Owner/Party	Meaghan McDermid
City of Toronto	Appellant	Michael Mahoney
Martin Rendl	Expert Witness	
Desiree Liu	Expert Witness	
Stephen Casselman	Participant	
Gary Loughlin	Participant	
Sheila White	Participant	

INTRODUCTION

1. The City of Toronto (City) appeals the decisions of the Committee of Adjustment (COA) which approved the consent application for the property at 1972 Brimley Road (Subject Property). The COA approved the severance of the Subject property into two lots each with single family dwellings. The existing building on the Subject Property is to be demolished. The COA also approved the variances for lot area and lot frontage for each of the two proposed lots.
2. The Applicant, Jagwinder Johal, is the owner of the Subject Property. Three participants, Gary Loughlin, Seven Casselman and Sheila White testified at the two-day hearing.
3. I informed those present at the hearing that I had visited the site of the Subject Property to familiarize myself with the neighbourhood of the Subject Property.

MATTERS IN ISSUE

4. At issue on appeal is whether the decisions of the COA with respect to consent to sever the Subject Property and the application for variances for the proposed lots should be upheld.
5. The COA approved the consent to sever subject to the standard conditions imposed by the COA.
6. The requested variances for both lots (Part 1 and Part 2) are:

By-law No. 569-2013:

- 1) The proposed lot area is 562.62 m²
Whereas the required minimum lot area is 696 m²
- 2) The proposed lot frontage is 11.61 metres
Whereas the required minimum lot frontage is 15.0 metres

JURISDICTION

Provincial Policy – S. 3

7. 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

8. 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)

9. 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 (OP);
- 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

Martin Rendl

10. The Applicant called Mr. Martin Rendl, a registered professional planner. Mr. Rendl was qualified to provide expert opinion evidence in land use planning.
11. Mr. Rendl testified that the Subject Property is in the area of Brimley Road – Sheppard Avenue East in Scarborough. The Subject Property is south of Sheppard Avenue East and north of Pitfield Road. Brimley Road is a Major Street under the OP that functions as a major north-south link across Highway 401 and provides access to various key activity areas. The Subject Property has a lot frontage of 23.22m, a lot depth of 48.46m and an area of 1025.24m². The proposed development on the Subject Property is two detached houses each with sloped roof style and an integral two car garage. Mr. Rendl noted that the design of these houses is similar to the ones in the neighbourhood.
12. The Subject Property is in a stable and mature residential neighbourhood with low density single detached homes. This area has been undergoing reinvestment through the replacement of old dwellings with larger buildings. Mr. Rendl reviewed photographs of the neighbourhood and noted that the area has a range of scale, height, massing and appearance due to the juxtaposition of new larger dwellings interspersed with smaller older houses. As such, the neighbourhood is not uniform as it consists of buildings that range in floor area and lot frontages. In addition to larger new houses on individual lots, the area also experienced new home development through plans of subdivision.
13. Mr. Rendl defined his neighbourhood study area (NSA) to be bounded by Sheppard Avenue East in the north (excluding commercial properties on this street), Highway 401 on the south and Garden Park Avenue and Marilake Drive on the west. The properties that are approximately 150 metres east of Brimley Road form the east boundary. Mr. Rendl justified the delineation of his study area by taking into consideration that the properties in this NSA are zoned for Residential Detached (RD) and the properties are within walking distance of the Subject Property. According to Mr. Rendl, this NSA represents an area and scale that corresponds with regular daily experience and social networks of a resident. The map for Mr. Rendl's NSA can be found in Appendix D of his witness statement (Exhibit 1).
14. Mr. Rendl referred to the Scarborough Official Plan, which though no longer is in force, provides historical context as to why the NSA was chosen. The Subject Site was planned and developed in accordance with the policies of the

Scarborough Official Plan. The policies in the Scarborough Official Plan were based on the concept of a neighbourhood unit where a neighbourhood is focused on a park or school, and organized to minimize the need for children to cross heavy traffic roads to get to parks and schools. Mr. Rendl believes that his assessment of the NSA follows the same principles. The school, C.D. Farquharson Jr. Public School and the Farquharson Park, located across the Subject Property, is at the core of the NSA as well.

15. The NSA contains approximately 409 lots with detached one or two storey dwellings with integral or detached garages. Based on his lot study, he noted that there is a variety of lots with average lot frontages of 15.01m and lot area of 647.4m². Mr. Rendl's expert witness statement (Exhibit 1) provides a table showing the statistics of the lot study. I note that 159 lots in this NSA have a frontage of 15m or less and 135 properties with lot frontage with 11.61m or less. There are 253 lots with a lot area of 696m² or less and 179 lots with a lot area of 562.63m² or less.
16. Mr. Rendl reviewed the criteria for consent set out under subsection 51(24) of the Act and noted that this consent for residential development is not premature, as it is in an established residential neighbourhood with full municipal services. The Subject Property is across a school. The proposed dimensions of the lots are consistent with the surrounding lots and the consent and proposed buildings conform to the OP. The rectangular lot of the Subject Property will be divided into half, as rectangular lots, which are similar to the lots in the surrounding area. Mr. Rendl opined that the criteria under subsection 51(24) were satisfied and the consent application should be approved by the TLAB.
17. With respect to the OP, Mr. Rendl testified that the Subject Property is designated as "Neighbourhoods" in the OP. The general intent and purpose of the Neighbourhoods designation is to maintain stable, low density neighbourhoods. Mr. Rendl referred to the definitions for "respect," "compatible" and "fit" in OP policy 2.3. As the definitions for these terms are not contested, I summarize his testimony as "respect" does not mean duplication of what is existing in the neighbourhood and "compatible" does not mean same or similar to what is existing in the neighbourhood. Mr. Rendl noted that the OP envisions changes in the Neighbourhood which should be sensitive, gradual and should generally fit with the existing physical characteristics of a neighbourhood.
18. Mr. Rendl opined that the proposed development maintains the stability of the neighbourhood and respects and reinforces the existing physical characteristics in the neighbourhood. He noted that the development criteria in OP 4.1.5(b) and (d) are met. The proposed lots on the Subject Property are consistent with the variety of the lot area and sizes in the NSA, an area where there is a range of lot sizes with a significant number of lots with less than 15m lot frontages and 696m² as lot area. The proposed dwellings will conform to the prevalent building type in the NSA, which is a single detached dwelling. There are large and small lots mixed in the NSA and creating two smaller lots will not create instability in the neighbourhood.

19. Mr. Rendl referred to OP 4.1.7, which explicitly does not encourage intensification of land on major streets such as Brimley Street. Such intensification must satisfy OP policy 4.1.5, which in Mr. Rendl's opinion, has been satisfied.
20. Mr. Rendl opined that the requested variances satisfy the zoning by-law. The general intent and purpose for lot frontage and lot area restrictions by zoning by-law is to ensure residential lots are of adequate size to accommodate dwellings permitted by the zoning by-law. In this case, the severed lots will be of sufficient size to accommodate two detached houses that fully comply with all zoning by-law requirements for the buildings. Both lots and the houses are compatible with the surrounding lots.
21. Mr. Rendl also opined that the proposed development is an appropriate and desirable development on the Subject Property. The proposed dwellings are examples of types of houses existing in the neighbourhood and continues a trend of replacing older houses with a two-storey house with integrated garages.
22. Mr. Rendl opined that the variances for lot frontage and lot area do not create any adverse impacts in terms of privacy, overlook and shadowing. The proposed dwellings comply fully with the development standards as set out in the zoning by-law. According to Mr. Rendl, these variances, if approved, would not result in instability in the neighbourhood. As such, the variances were individually and cumulatively minor for Mr. Rendl.
23. Mr. Rendl commented about the study area outlined by the City's expert witness, Ms. Desiree Liu. Ms. Liu's study area differs than Mr. Rendl's, as Ms. Liu's study area is larger with over 700 lots included. He noted that a part of the neighbourhood with 9m lot frontages were excluded from Ms. Liu's study area. He believed that Ms. Liu recommended refusal of the applications because she considered the 15m frontage to be the correct frontage for the neighbourhood and that deviating from the 15m frontage would lead to instability. It would also set a precedent for further severance activity in the neighbourhood. Mr. Rendl indicated that that this is a very limited view of planning in an established neighbourhood. There are many variance requests in the City of Toronto and variation from the zoning by-law is sometimes appropriate given the context of the neighbourhood. He noted that the area in question is not an area of intense activity.
24. During cross-examination, Mr. Rendl agreed that the 18 lots at Terryhill Crescent (which is at the south-east corner of Mr. Rendl's NSA) are semi-detached and have smaller lot frontages. Mr. Rendl opined that despite this, they are still part of the neighbourhood. He used the criteria that the areas which are within walking distance from the Subject Property should be part of the NSA. He also agreed that intensification as defined in PPS and Growth Plan can occur without a severance of a lot.

Desiree Liu

25. The City called Ms. Desiree Liu, Assistant Planner for the City as their witness. Ms. Liu was qualified to provide expert opinion evidence in the area of land use planning.
26. Ms. Liu did not support the applications for severance and minor variances. She opined that the consent application does not satisfy subsection 51(24) of the Act, as the application does not conform to the Official Plan (sub-paragraph c) and the dimension and the shapes of the proposed lots are not in keeping with what is in the neighbourhood (sub-paragraph f). Accordingly, Ms. Liu opined that the variance applications should be denied as they fail the four tests. Ms. Liu commented that approval of these applications will set a dangerous precedent in the neighbourhood as it will provide for an incentive to owners of other properties to apply for lot severance. This will ultimately result in substandard lot frontages in the new severed lots that will weaken the physical character of the neighbourhood.
27. Ms. Liu noted that the area around Brimley Road and Pitfield Road have experienced steady reinvestment in the form of new two-storey, single detached dwellings. These developments comply with the zoning lot frontage requirements. She agreed with Mr. Rendl that the predominant building type is single detached homes.
28. Ms. Liu defined her neighbourhood study area (NSA) as an area bounded by Tidworth Square, Gordon Park Avenue and Sonmore Drive to the north, Keyworth Trail to the east, and with some exceptions, Pitfield Road to the south. She provided a map of the NSA in her witness statement.
29. Ms. Liu's NSA is wider and larger than Mr. Rendl's NSA and consists of 711 lots designated as Neighbourhoods under the OP and zoned as Residential Detached under zoning By-law 569-2013. In defining the boundaries of her NSA, Ms. Liu considered the following:
- a. Natural boundaries such as Highway 401 in the south and McCowan Road to the east.
 - b. Exclusion of pockets of areas where the zoning by-law requirement for lot frontages are different, such as Salome Drive, Groveleaf Road, Rubic Crescent, and areas in the south west corner of the NSA.
 - c. Exclusion of areas with different zoning categories such as Residential Semi-Detached and Residential Multiple Dwelling Zone.
30. Ms. Liu identified that the NSA as described above is mostly characterized by lots with large frontages around 15m that progressively grow as one approaches the neighbourhood centre, such as where the Subject Property is located. Ms. Liu reviewed the COA decisions in the last 10 years within the NSA and noted that there have been no consent applications approved. There was only one

consent application in the last 10 years with respect to 1993 Brimley Road, which was denied.

31. Ms. Liu conducted a lot study based on her NSA, which showed that 483 (68% of 711 lots) have frontages above the minimum required 15m. 672 lots in the NSA have lot frontages greater than the proposed 11.61m. She further noted that most of the properties that have lot frontages less than 15m front onto curvilinear streets on the edges of the neighbourhood. All the 26 lots along Brimley Road exceed the required lot frontage of 15m with an average lot frontage of 19m. Ms. Liu noted that there are 4 lots in her NSA that had lot frontages that were less than the proposed 11.61m. One such lot is a corner lot with a unique lot orientation. The other three lots are 12, 14 and 16 Groveleaf Road which have lot frontages of 10.15m. These three lots mirror the lot types in the area south of Groveleaf Road, which was excluded from Ms. Liu's NSA, as the properties in this area have lot frontages that are consistently narrower.
32. With respect to the application for consent for severance, Ms. Liu opined that the application does not satisfy sub-paragraphs (c) and (f) of subsection 51(24). The Subject Property is designated Neighbourhoods under the OP where new development should respect and reinforce the physical character of buildings, streetscapes and open space patterns. The NSA has streetscapes featuring consistently large lot frontages. The proposed severed lots will not fit into the existing streetscapes and will be more similar to the narrow lots in Groveleaf Road. The application is not sensitive to the zoning criteria and the immediate context, given that all the properties along Brimley Road have wide frontages. She also noted that under the OP policy 4.1.7, intensification along a major road, such as Brimley Road, is not encouraged.
33. Ms. Liu opined that based on her evidence, the applications for minor variances fail all four tests. The proposed lot frontages will be much smaller than the average lot frontage in her NSA, which is 19m. As such, the variance application fails OP policy 4.1.5(b) as the size and configuration of the proposed lots do not respect and reinforce the existing physical character of the neighbourhood, specifically that of Brimley Road itself, where the average lot frontage is 18.98m.
34. Ms. Liu stated that the Subject Property is zoned Residential Detached under By-law 569-2013, with exception number 267, which requires a minimum lot frontage of 15m. The neighbourhood surrounding the Subject Property consists of Residential Detached zoned areas with other different exceptions such as 265 and 270. Ms. Liu opined that the intent of the zoning by-laws, in coordination with the various exceptions, is to maintain the existing character of the neighbourhood that features larger lots in the centre of the neighbourhood, which is where the Subject Property is located. She provided examples by reviewing the photographs she took of the neighbourhood. She pointed out that the lots on Brimley Street exceed 15m in lot frontages while lots away from the core of the neighbourhood, such as 12 and 14 Groveleaf Road, have lot frontages of 10.15m with more dominant driveways.

35. Ms. Liu noted that the purpose of the minimum lot frontage requirement under the zoning by-laws is to preserve the consistency in look and feel of a neighbourhood from the streetscape. The severed lots will not be consistent with the streetscape on Brimley Road, which being the centre of the neighbourhood, has larger lot frontages.
36. The lots arising out of the severance will not be desirable for the appropriate development of land as it will be out of character in the surrounding neighbourhood context. This development has the potential to destabilize the neighbourhood and compromise its physical character by setting a precedent for further consent applications to sever lots into undersized lots. The inconsistent lot frontage size in Brimley Road and the corresponding destabilizing effect are not minor in nature.

Participants - Stephen Casselman, Sheila White and Gary Loughlin

37. Mr. Stephen Casselman testified as a participant at the hearing. Mr. Casselman is a resident of the C.D. Farquharson Community where his family has lived since 1973. This community comprises of 28 streets surrounding the public school and which developed throughout a 30-year period. He is also a member of the C.D. Farquharson Community Association and volunteers by providing reports on transportation, affordable housing, high rise development, etc. to the association. He opposes the applications before the TLAB.
38. Mr. Casselman testified that the community itself is composed of several neighbourhoods. The neighbourhood where the Subject Property is located comprises of six streets, which is Brimley Street on the east border and Garden Park Avenue being the west border and Pitfield Road and McDarmid Street on the south. He noted that this neighbourhood is characterized by a large lot area and lot frontages. He does not believe that the other 12 streets that Mr. Rendl included in his NSA fall within the neighbourhood, as they are areas which developed at different times with different development parameters. The neighbourhood described by Mr. Casselman has 185 homes with only two sets of properties having lot frontages of less than 3m. These three properties are in McDarmid Street. The other 183 homes have frontages over 15m. The proposal for 11.61m lot frontages is a shortfall of about 24%, which is not minor in change and therefore the lot frontage variance is not minor.
39. The lot area request for 562.62m² is about 19% smaller than the zoning by-law requirement of 696m². The average lot sizes of the 34 properties on Brimley Street is about 992m². About half of the houses in the six streets that form the neighbourhood have been re-built with 15m or greater frontages. The lot sizes of all the properties follow the zoning by-law requirement, except for one property. There are approximately 43 properties with lot frontages of 22.85m or greater. Mr. Casselman expressed concern that if the severance of the Subject Property is allowed, then the approval will set for a precedent allowing developers to sever the other larger lots in the neighbourhood.
40. Ms. Sheila White, a community member of the C.D. Farquharson Community Association and residing at 14 Murray Avenue, also testified at the hearing. She

also opposed the application. She provided a history of how applications for development are dealt with in the neighbourhood, which included review of newsletters and area development reports. She provided examples of how the community was intimately involved with the development of the neighbourhood through engagement with the COA hearings and the City's planning staff. She noted that Brimley Road was one of the six original streets that was carved out from farming land. Fifty-foot lot frontages is the norm in the neighbourhood as described by Mr. Casselman. There is an expectation by the community that they will reside in large lots. The variances requested by the Applicant will be a major shift and different from the historical rejections for severances in this area. She considers the Subject Property to be in a de facto heritage district because of the location of the heritage property at 33 Murray Avenue in the neighbourhood.

41. Mr. Gary Loughlin, a resident of the C.D. Farquharson Community Association, testified that he supported the application. He owns the property located at 2008 Brimley Road. Having lived at Brimley Road for about 40 years, Mr. Loughlin noticed many changes in the neighbourhood. He noted that Brimley Road is a street with tired old homes with a lot of unkept properties. He has renovated his own property himself and believes that the unkept properties on Brimley Street devalues properties like his where money was spent for the upkeep of the property. He believes the application to tear down the old house and build two new ones will benefit the community.

ANALYSIS, FINDINGS, REASONS

42. I am satisfied that the applications for consent and variances satisfy the policy criteria in the PPS and the Growth Plan.
43. A well-defined and well thought out study area for the Subject Property is essential, as the proposals for severance and variances are to be compared against the neighbourhood's physical characteristics as defined by the study area. I have accepted Mr. Rendl's NSA to be a more suitable study area. Ms. Liu's NSA has an obvious bias for larger lot frontages. By excluding areas with properties with smaller lot frontages, such as Groveleaf Road and Rubic Crescent, but are close to the Subject Property, Ms. Liu has limited her NSA to mostly properties with large lot frontages. Ms. Liu also included a larger area east and west of the Subject Property, such as Sonmore Drive, Midcroft Drive, Lawnmere Crescent and Charterhouse Road to encompass properties with larger lot frontages. If these areas are included in a study area, then properties with Residential Detached zoning which are much closer to the Subject Property, such as those in Groveleaf Road, should also have been included irrespective of their lot frontages. The corresponding lot analysis by Ms. Liu is skewed in favour of larger lot frontages, as the data is derived from only areas that have mostly large lot frontages.
44. The determination of a neighbourhood study area should be a logical and straightforward process. At the most basic level, a neighbourhood is a small area within a larger town or city context, where a resident can reasonably be expected

to believe that this “neighbourhood” is his or her community. In the planning context, it is logical that commercial and mixed-use properties should be excluded in determining the study area for this application, even though a resident may assume that these properties are part of her neighbourhood. This is because physical characteristics, planning parameters and zoning performance standards are grossly different for commercial and residential detached designated properties. The resident can also expect that smaller, newer or narrower residential properties with detached houses are part of his or her neighbourhood. In the context for reviewing an application for a detached residential dwelling, it is not beneficial to remove these smaller, newer or narrower properties from the study area just because they do not match the zoning parameters applicable to the Subject Property.

45. With respect to the application for consent to sever, I have considered the criteria set out in subsection 51(24). I accept Mr. Rendl’s testimony that the consent criteria are satisfied. The Subject Property will be severed for two residential detached dwellings and there are no concerns with respect to access of municipal services or school services. The severed lots with areas of 562.62m² and with lot frontages of 11.61m will fit into the neighbourhood. As per Mr. Rendl’s evidence, about 135 lots out of 409 lots have a lot frontage of equal or less than 11.61m and 179 lots have a lot area equal or less than 562.62m². Brimley Road itself has large lot frontages; however, the physical characteristics of the neighbourhood must be considered. The proposal for severed lots does not result in an exact duplication of the characteristics of the lots on Brimley Street but results in a gradual change with two smaller lots, examples of which are present in Mr. Rendl’s neighbourhood study area. Such a change will fit in the neighbourhood and respect and reinforce the characteristics of smaller lots already seen in the neighbourhood.
46. With respect to the applications for variance to permit the lot frontages and lot areas of the severed lots, the four tests must be considered. The first test refers to whether the proposed variances maintain the general intent and purpose of the OP. The evidence provided by both expert witnesses with respect to this test also relates to one of the criteria for consent approval, as discussed above. The general intent and purpose for Neighbourhood designation of lands by OP is to maintain stable low density neighbourhoods, with development in the neighbourhood respecting and reinforcing the existing physical characteristic patterns of the neighbourhood. The OP policy 4.1.5(b) is a relevant consideration which deals with the size and configuration of lots. As discussed in the preceding paragraphs, the proposed lot frontage and area of the severed lots will fit into the neighbourhood that encompasses a range of lot sizes, many of which are less than the required zoning criteria of 15m lot frontage and 696m² lot area. Accordingly, the general intent and purpose of the OP is met by the application.
47. Mr. Rendl proposed that the general intent and purpose for lot frontage and lot area restrictions by zoning by-law is to ensure residential lots are of adequate size to accommodate dwellings permitted by the zoning by-law. Ms. Liu opined that the intent of the zoning by-laws, in coordination with the various exceptions, is to maintain the existing character of the neighbourhood that features larger lots

in the centre of the neighbourhood, which is where the Subject Property is located. The applicable performance standards are under By-law No. 569-2013. This By-law is applicable to the whole city and not just specific to Scarborough or a specific part of Scarborough. As such, the intent and purpose of the by-laws which is applicable to the whole city is to restrict the size of lots, so that the residential lots are sufficient in size to accommodate suitable houses for residential living. The two variances satisfy the general intent and purpose of the zoning-by, as the buildings to be constructed on the proposed severed lots do not themselves require any relief from the zoning by-law constraints, such as relief with respect to height, lot coverage or set backs from lot lines.

48. One of the City's main points of opposition for the proposed development is that an approval would result in a negative precedent. It would result in a flood gate of severance applications from a neighbourhood with large lot sizes. This is a factor that can be considered when considering whether the proposed development is desirable for the appropriate development of the land and whether the variances are minor.
49. This concern was also shared by the participants in the hearing, who also held the view that approval of the severance into smaller lots will result in a precedent being created for this neighbourhood, allowing other property owners to bring in applications to sever their properties into smaller lots. Once a precedent is created, there will be unimpeded severance activities that will result in destabilization of the neighbourhood. This is a factor that is relevant when considering whether the variances are minor and whether they are desirable for the appropriate development of the land, given that previously approved consent applications in a neighbourhood are routinely used as examples for other consent applications in the neighbourhood.
50. Each application for severance and/or minor variance must be reviewed on its merits for whether the application satisfies the criteria set out in the Act. If an example of a previously approved severance is sufficient to justify the criteria set out in the Act, then there would be no need for COA or TLAB to review each application on its merits. The approval process for severance or variance would be an administrative in nature as long as there are examples in the neighbourhood. A severance application approval by itself cannot result in a precedent or an example for the whole neighbourhood. This is especially true for the Subject Property and the proposed development. The lot size of the Subject Property is sufficiently large enough to sever into two smaller lots that can fit two detached buildings that do not require any variances. The variances requests are limited to the size of the lots themselves. Not all proposals in the neighbourhood can have variance requests limited to the lot frontage and lot area.
51. While there are many neighbourhoods in Toronto that are experiencing significant severance and minor variance activities, the neighbourhood where the Subject Property is located is not such an area. As described by both expert witnesses, the development in the neighbourhood has mostly been in the form of rejuvenation of the properties into larger one or two storey buildings. There has been only one severance application in the last 10 years which was denied.

52. The variances are appropriate as the outcome of the approval will be two two-storey detached dwellings that are compatible with the predominant building type in the neighbourhood. These dwellings conform to all zoning requirements, whereas the individual severed lots require relief from the zoning standards. The severed lots can accommodate suitable residential dwellings. Evidence regarding adverse impacts on neighbouring properties arising out of the variances for lot frontage and lot area, such as privacy or overlook were not explored by Ms. Liu. Ms. Liu's main objections were the issue of precedent and the issue of having undersized lots on Brimley Street and in the neighbourhood. I have addressed both these issues in the preceding paragraphs.
53. The residents and locals are divided in whether the proposal is good planning or beneficial for their community. I will not repeat in detail the testimony of the participants, which have already been detailed in the "Evidence" section. Some of the participants opposed the proposal because they believe that severing the lot into smaller lots will be against the historical nature of the neighbourhood, which is consistent with large lot sizes. It would also be a departure from the historical rejections for severances in this area. The TLAB's jurisdiction is defined by the Act and the criteria set out in the Act. The criteria are what the TLAB must consider when reviewing consent and minor variance applications. Historical information is only relevant when they fall within the criteria set out in the Act.
54. Based on the foregoing, the consent application is approved subject to the COA standard conditions. I am also satisfied that the variances taken individually and collectively meet the four tests.

DECISION AND ORDER

The appeal by the City is denied. The decision of the COA with respect to the consent application and minor variance applications for the two severed lots are upheld.

X 

Shaheynoor Talukder
Panel Chair, Toronto Local Appeal Body
Signed by: Shaheynoor Talukder