

## DECISION AND ORDER

**Decision Issue Date** Monday, December 16, 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): ADELINO LOPES

Applicant: MANNY MARCOS

Property Address/Description: 135 JOHN ST

Committee of Adjustment Case File: 17 250374 WET 11 CO (B0093/17EYK), 17 250382 WET 11 MV (A0899/17EYK), 17 250383 WET 11 MV (A0900/17EYK)

**TLAB Case File Number: 18 128861 S53 11 TLAB, 18 128863 S45 11 TLAB, 18 128864 S45 11 TLAB**

Hearing dates: Wednesday October 31, 2018

Thursday March 28, 2019

Friday, March 29, 2019

Thursday August 22, 2019

**DECISION DELIVERED BY S. Makuch**

## APPEARANCES

Owner	Catherine Travers
Applicant	Manny Marcos
Appellant	Adelino Lopes
Appellant's Legal Rep.	Amber Stewart
Party	City of Toronto
Party's Legal Rep.	Adrienne deBacker
Participant	Dino Buset
Participant	Cherri Hurst
Participant	Cristina Buset
Participant	Cathy-Ann Cope
Participant	David John O'Hanlon
Participant	Dave Bennett

## INTRODUCTION

This is an appeal by the applicant from a decision of the Committee of Adjustment refusing a consent to create two lots and refusing variances to permit the construction of a detached dwelling on each lot. The City and a number of neighbours appeared in opposition to the appeal while one neighbour appeared in support.

## BACKGROUND

The property to be severed (the property) is in the Weston area, north-east of Lawrence Ave. West and Weston Rd. The Hearing was spread over a long period of time. During that period some variances withdrawn, some were reduced, and some were unchanged. Lot frontage and lot area variances were unchanged: the lot frontage variance sought was 8.075m while 12m was required and the lot area variance sought was 295.1 sq. m while 370m sq. m. was required. However, other variances were improved or eliminated. The FSI variance was reduced to 0.67 from 0.69 while an FSI of 0.4 is permitted. The interior side yard variance was changed to 0.76m from 0.61m while a 1.2 m set back is required. Variances related to building length, the foyer and landscaping were eliminated. These changes did not require new notice pursuant to s.45(18.1.1) of the *Planning Act*.

## **MATTERS IN ISSUE**

The matters in issue related to: 1) whether the lot size and frontage and corresponding building size and appearance respected and reinforced the character of the area as set out by s. 4.1 of the Official Plan; and 2) whether the proposed development conforms to the Official Plan requirements of s. 3.4.1(d) regarding tree preservation.

Other issues were also raised such as heritage conservation, precedent and the application of OPA 320. I find that these other issues were not determinative and did not assist in my evaluation of the consent or variances. Similarly, I do not need to address conformity to the Growth Plan or consistency with the Provincial Policy Statement.

## **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 of 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).

**Decision of Toronto Local Appeal Body Panel Member: S. Makuch**  
**TLAB Case File Number: 18 128861 S53 11 TLAB,**  
**18 128863 S45 11 TLAB,**  
**18 128864 S45 11 TLAB**

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 first issue relating to the Official Plan is whether the variances respecting lot frontage, lot size and FSI should be granted. I find that if the variances should not be granted the consent would not conform to the Official Plan and should not be granted. The evidence in favour of these variances is set out in detail in the Witness Statement filed by Mr. Romano, a qualified land use planner.

It may be summarized as follows. There are some lots in the neighbourhood which are as narrow and small as those proposed and some homes with an FSI as high as what is proposed. Therefore, this is an area where the physical character is one of a mix of lot frontages, lot sizes and home sizes and this proposal respects and reinforces that character. He also noted that one cannot determine lot size from the street. In his opinion even though the actual number of lot sizes and lot frontages and home sizes similar to what is proposed is not large, those lots are sufficient in number to be part of the area's character. Thus, the proposal reinforces and respects that character. He also points out that physical character of the area is one of detached dwellings which is the built form proposed and that there are some dwellings with integral garages as the proposed dwellings. Again, in his opinion the proposal respects and reinforces this character.

Mr. Young, the qualified land use planner for the City has a different opinion. In his opinion the character area is one of larger lots than proposed with wider frontages. That is its character as there are not many narrow lots similar in size to what is proposed. He also is of the view that the homes on smaller lots are smaller in size so there are not many dwellings with an FSI as large as the proposed dwellings. He also noted that there are few newly constructed dwellings in the area and thus very few integral garages.

Given the clear difference of opinion between the two planners my site and neighbourhood visit to this area was critical. I found the area to be one of stately traditional homes with few integral garages and few narrow homes on narrow lots. Its character I find is very much in keeping with the description given by Mr. Young.

With respect to the issue of tree preservation, there was no evidence that any attempt was made to preserve the silver maple on the site. Mr. Dida, the City arborist gave evidence as to the importance of saving this tree, as every healthy tree counts in the urban forest. Mr. Romano, a planner, gave architectural and engineering evidence that it was unreasonable to save the tree as it was in the centre of an as of right location for a dwelling if the lot were not severed. He also gave evidence of the need to tear down the existing dwelling because of its deteriorated condition.

## **ANALYSIS, FINDINGS, REASONS**

As a result of my site and neighbourhood visit I find the evidence of Mr. Young more persuasive than that of Mr. Romano. I agree with his opinion and the opinion of the neighbours in opposition and find that the physical character of the area is one of larger lots with wider frontages than those proposed. I therefore find that granting the variances would result in lots and dwellings out of keeping with that physical character.. The variances respecting lot size, width and FSI, therefore, do not meet the general intent of s. 4.5 of the Official Plan.

In addition, I find that the granting of the variances would result in dwellings with integral garages which I do not find appropriate development in such a traditional neighbourhood. The variances therefore do not meet the general intent of the Official Plan and are not appropriate for the development of the land as required by the *Planning Act*.

With respect to the preservation of the silver maple I find there has been no attempt to develop a proposal that would protect that tree. Policy 3.1.2.1(d) of the Official Plan requires that a criterion for evaluating development is an attempt to preserve existing mature trees wherever possible and incorporating them into landscaping designs. There was no convincing evidence from an architect or arborist that an attempt had been made to design a dwelling which would preserve the tree or that an attempt was made to incorporate the tree into a landscape design. The evidence was that the existing dwelling had to be destroyed and a new building could be constructed as of right where the tree was located. However, there was no persuasive evidence that the existing house had to be demolished, as Mr. Romano is not qualified to give evidence as an architect or engineer, and there were no plans presented to construct one new dwelling on the existing lot.

Since the proposal does not meet the tests for approval of the variances for lot frontage, lot size, and FSI, and does not meet the general intent of Policy 3.1.2.1(d) of the Official Plan I do not grant the consent.

## DECISION AND ORDER

The appeal is dismissed, and the consent and variances denied.

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S. Makuch  
Panel Chair, Toronto Local Appeal