

DECISION AND ORDER

Decision Issue Date Thursday, January 02, 2020

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): Herminio Oliveira

Applicant: Michael Manett

Property Address/Description: 10 Academy Rd

Committee of Adjustment Case File: 18 102888 WET 11 CO (B0004/18EYK), 18 102894 WET 11 MV (A0029/18EYK), 18 102894 WET 11 MV (A0029/18EYK)

TLAB Case File Number: 18 249773 S53 11 TLAB, 18 249774 S45 11 TLAB, 18 249774 S45 11 TLAB

Hearing dates

Thursday, March 28, 2019

Friday, March 29, 2019

Monday, June 10, 2019

Friday, June 21, 2019

DECISION DELIVERED BY S. Gopikrishna

REGISTERED PARTIES AND PARTICIPANTS

Appellant	Herminio Oliveira.
Appellants' Legal Rep.	Phil Pothen
Party	City of Toronto
Party's Legal Rep.	Sara Amini, Marc Hardiejowski and Jason Davidson
Participant	Maria Maiolo
Participant	Antonietta Whyte
Expert Witness	Olivia Antonel
Expert Witness	Michael Manett

INTRODUCTION AND BACKGROUND

Daniela Oliviera and Herminio Oliveira are the owners of 10 Academy, located in Ward York South-Weston, of the City of Toronto. They applied to the Committee of Adjustment (COA) to sever the lot at 10 Academy Road into two lots, as well as variances to build a new storey house, detached dwelling with an integral garage, on each of the resulting lots. The COA heard the application on October 11, 2018, and refused the application in its entirety. The Applicants appealed the Decision to the Toronto Local Appeal Body (TLAB) on October 30 2018, which scheduled Hearings on March 29, 2019, and March 30, 2019. The City of Toronto put forward a Motion to elect for Party Status after missing the deadline through my Decision dated January 29, 2019. Hearings were subsequently scheduled for March 28, 2019, and March 29, 2019 as well as June 20, 2019, and June 21, 2019.

Two of the neighbours, Ms. Maria Maiolo, and Ms. Antonietta Whyte elected for Participant status.

MATTERS IN ISSUE

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

Conveyed - Parts 2 & 3 Address to be assigned

The lot frontage will be 9.91 m and the lot area will be 377.5 m². The existing dwelling will be demolished and the property will be redeveloped as the site of a new detached dwelling with an attached garage, requiring variances to the Zoning By-law, as

was outlined in Application A0028/18EYK to the Committee of Adjustment. Any existing easements will be maintained.

Retained - Parts 1 & 4 Address to be assigned

The lot frontage will be 9.91 m and the lot area will be 377.5 m². The existing dwelling will be demolished and the property will be redeveloped as the site of a new detached dwelling with an attached garage, requiring variances to the Zoning By-law, as outlined in Application A0029/18EYK to the Committee of Adjustment. Any existing easements will be maintained.

Parts 1 & 4 – Proposed South Lot – 9.91 metres of 10 Academy Road

- i. **Section 10.20.30.20.(1)(A), By-law 569-2013**
The minimum required lot frontage is 15 m. The new lot will have a frontage of 9.91 m.
- ii. **Section 10.20.30.10.(1)(A), By-law 569-2013**
The minimum required lot area is 550 m². The new lot will have an area of 377.5 m².
- iii. **Section 900.3.10.(5)(A), By-law 569-2013**
The minimum required side yard setback is 1.8 m. The new dwelling will be located 1.2 m from the south side lot line and 1.5 m from the north side lot line.
- iv. **Section 13.2.6, By-law 7625**
The maximum permitted number of storeys is two. The new dwelling will have three storeys.

Parts 2 & 3 – Proposed North Lot – 9.91 metres of 10 Academy Road

- v. **Section 10.20.30.20.(1)(A), By-law 569-2013**
The minimum required lot frontage is 15 m. The new lot will have a frontage of 9.91 m.
- vi. **Section 10.20.30.10.(1)(A), By-law 569-2013**
The minimum required lot area is 550 m². The new lot will have an area of 377.5 m².
- vii. **Section 900.3.10.(5)(A), By-law 569-2013**
The minimum required side yard setback is 1.8 m. The new dwelling will be located 1.2 m from the north side lot line and 1.5 m from the south side lot line.
- viii. **Section 13.2.6, By-law 7625**

The maximum permitted number of storeys is two. The new dwelling will have three storeys.

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

The Hearings respecting 10 Academy Rd., were held on March 28, 2019, and March 29, 2019, June 21, 2019, and June 21, 2019. The Appellants were represented by Mr. Phil Pothen, a lawyer, and Mr. Michael Manett, a planner, while the City of Toronto, was represented by Ms. Sara Amini, and Messrs. Marc Hardiejowski, and Jason Davidson, all of whom are lawyers, and Ms. Olivia Antonel, a planner. While Ms. Amini and Mr. Hardiejowski represented the City on March 28, 2019, and March 29, 2019, Messrs Hardiejowski, and Davidson represented the City on June 10, 2019, and June 21, 2019.

Mr. Manett was recognized as an Expert Witness in the area of Land Use Planning. His evidence was as follows:

The subject site is located within the Pelmo Park-Humberlea Neighbourhood within the former City of North York – the Study Area is bounded by Highway 401, runs south to Queenslea Avenue, extends west to the CP Railway tracks which run north-south, parallel to Weston Road, and extends east to Deerhust Avenue.

The Primary building type within the neighbourhood are single detached residences, however, there are a mix of other residential building types found in the neighbourhood, including semi-detached homes and townhouses, located 150 m from the site. There are also industrial uses found within the neighbourhood located

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approximately 300 m from the subject property. There are two TTC bus stops located within 100 m of the site, which provide direct access to the greater TTC transportation network.

Mr. Manett said that the area was developed with “large lots in the 1950s and 1960s, with large and detached homes” but had now evolved as a result of regeneration, and was home to smaller houses and replacement homes, which made a more efficient use of the land. The efficient use of land has also been brought about through lot severances, infill developments and larger replacement homes.

Mr. Manett also added that while the study area and surrounding community had experienced some redevelopment, it was not at the same rate as other parts of Toronto. He said that while many of the buildings were original buildings from the 1950s, with large lots, and buildings one storey in height. However, he also said that it would be reasonable to expect that the character of this neighbourhood would change, through reinvestment.

Each of the proposed dwellings that the Appellant wants to build is 377.5 m² in area, and has a frontage of 9.91 m. Mr. Manett discussed the history of the application, and said that as a result of postponements at the COA, and discussions with the Planning Department, the following changes were made to the applications

- Reduced overall mass of the buildings
- Reduced building length
- Increased side yard setbacks to the neighbouring properties
- Reduced size of the rear yard deck
- Reduced building heights

He recited the variances, as had been submitted to the TLAB.

Mr. Manett reviewed a Lot Study with the City’s Property Data Information, and past Committee of Adjustment decisions within this neighbourhood. There were a total of 806 properties in the Study, of 195 properties have properties of less than 9.91m (24.9%) , 260 properties (32.4%) with a frontage between 9.91 m and 15 m, while the standard according to the Zoning is 15 m frontage (42.7%). Likewise , there are 137 properties with lot areas between 550 m² but more than 377 m², but 240 properties with lot areas less than 377.5 m², while the minimum requirement under the By-Law is 550 m².

Mr. Manett then spoke to the Planning Act, and how it applied to the Site Property. After reciting the Act in its entirety, he said that the clauses that applied to the severance were as follows:

- Whether the proposed subdivision (in this case consent) or premature or in the public interest
- Whether the plan conforms to the Official Plan, and adjacent plans of subdivision, if any;
- The dimensions and shapes of the proposed lots

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The proposed reduced frontages and lot sizes are not premature as they are within the range of lot sizes, found within the range of lot sizes, within the neighbourhood. It is in the public interest to provide for investment in the neighbourhood, and provide for new single detached housing for families in the community.

Mr. Manett asserted that the proposal conformed to the Official Plan, and stated that it was key to the determination of the size and configuration of the lots, and added that the evidence in support of this conclusion would be offered, when the OP would be discussed alongside the 4 tests under Section 45.1

He then discussed conformity between the 2014 PPS and discussed Policies 1.1.1, 1.1.2, 1.1.3.1, 1.1.3.2, 1.1.3.3, 1.1.3.4, 1.4.1, 1.4.3., 1.6 and 4.0, and the applicable definitions, and then demonstrated that the proposal would achieve an appropriate mix, and range of housing, optimizing the use of land, and making better, more efficient use of existing infrastructure.

He then spoke about the compatibility between the proposal and the Growth Plan for the Golden Horseshoe (2017). He referred to Policies 1.2.1, 2.2.1, 2.2.2, 2.2.6, 5.1, 5.2 and the applicable definitions. To demonstrate compatibility, and specifically emphasized that Policy 2.2.2.4 encourages intensification to reflect the desired urban structures which is implemented by the detached residential built form.

Mr. Manett next discussed the Official Plan, and how the proposal corresponded to the OP. He stated that while he had used the former Official Plan, he had also subsequently evaluated the proposal against OPA 320 (the new Official Plan), and had concluded that it complied with both OPs.

He said that the proposal was in the area designated as "Neighbourhoods", and spoke to the Healthy Neighbourhoods Policy 2.3.1, followed by a discussion of how the proposal conformed to this policy. He said that the proposed development respected the existing physical character of the area, and said that the sizes of the proposed were similar to other lots in the neighbourhood, including the lots directly west of the site. The design and overall massing of the proposed dwelling of the proposed lots are consistent with other developments, at similar locations in the greater neighbourhood and represent an appropriate redevelopment of the subject property. Mr. Manett emphasized the importance of change not destabilizing the neighbourhoods but evolving to accommodate current needs, and allow "two families to move into an area populated by one family".

Mr. Manett then referred to Policy 4.1.5, and recited the Policy in its entirety. He said that criteria (a)-(e) and (f) would apply to this proposal.

He said that (b) related to the size and configuration of the lots, and asserted that the proposed lots were within the range of lot sizes found within the neighbourhood. Criterion (c) related to the heights, massing, scale and dwelling type of nearby residential properties. The only variance for the subject application involves building height, which requires a variance from the North York By Law. Criterion (d), which refers to prevailing building types, is satisfied because two single detached residential

homes are being created on two new lots, in an area that is zoned single detached residential.

Criteria (f) relates to the prevailing patterns of rear and side yard setbacks. Mr. Manett said that development, as proposed, would reduce the side yard setbacks between the subject lot, and the lots to the north and south.

Mr. Manett then spoke to OPA 320, and how it defined a geographic neighbourhood in the immediate vicinity of the Site Property. He said that OPA 320 did not provide a clear direction about what constitutes “prevailing” within a neighbourhood, and said that the determination of “prevailing” requires a balanced consideration of the physical character of the neighbourhood in question, and that the neighbourhood could have more than one character. He then spoke of infill development in Section 4.1.9, and explained how the proposal was compatible, because it did not create negative impacts. He then spoke to Policy 4.1.9(a), which relates to infill development, massing and scale appropriate for the site and spoke to how the requested height of the buildings was the only pertinent parameter relevant to this Policy, and stated that this was a consequence of how the height of the building was calculated under the North York By-Law. Lastly, he said that OPA 320 changed the wording in Section (a) from “Appropriate for the site, and compatible with”, and replaced them with the words “proportionate to, and respectful of”. He asserted that the proposal was “proportionate to, and respectful of” the immediate neighbourhood, and concluded that the proposal satisfied the intent, and purpose of the Official Plan.

Mr. Manett then discussed how the proposal was consistent with the Zoning By-Laws.

He discussed the performance standards for each of the requested variances, including lot area, and lot frontage, setbacks, and building height (under the former North York by-law).He said that the variances to permit the construction of the tow new dwellings on the two new lots, will have no negative impact on the immediate neightbours, and neighbourhood, as a whole. They meet the performance standards, and are “reasonable” for the proposed dwellings. Based on this description, Mr. Manett concluded that the proposal satisfied the intent, and purpose of the Zoning By-Laws.

Mr. Manett next discussed how the proposal was consistent with the test of appropriate development of the Site. HE said that the proposed dwellings were designed with a massing hat fits comfortably on the new lots, and are consistent with modern building lots. The proposed development is appropriate since the created lots, and proposed dwellings, are similar to other developments in the area. He asserted that the proposed development will have no negative impact on the neighbouring properties, or the neighbourhood. Based on this explanation, Mr. Manett concluded that the proposal satisfied the test of appropriate development.

Lastly, Mr. Manett discussed how the proposal satisfied the test of minor. He asserted that the proposed development will have no adverse impacts on adjacent properties, or the neighbourhood, as a whole, and will provide for an appropriate reinvestment in the neighbourhood. He therefore concluded that the proposal satisfied the test of minor.

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Based on these explanations, Mr. Manett concluded that the proposal satisfied the test of minor. Given that the proposal satisfied the four tests under Section 45.1 of the Planning Act, and relevant tests under Section 51(24), Mr. Manett asked that the proposal be approved, and the Appeal allowed.

Mr. Manett was cross examined by Ms. Amini, and Mr. Hardiejowski on behalf of the City. Mr. Manett was asked if the expression “modest intensification” existed in the OP, to which he replied in the negative- however, he added that the expression was used frequently by planners, and why. He distinguished the expression from “major intensification”, which he defined to be increasing the density, as well as the type of housing, with a significant impact on the neighbourhood. The next set of questions tested Mr. Manett’s defined study area through the zoning lens- it was pointed out that the study area encompassed different zones (e.g. R, RD etc), and questions were asked about how could a Study Area maintain the same character, while crossing zones. Mr. Manett’s answers centred on how a visitor to the area would notice the eclecticism of the area, rather than the zoning, and how it was the arrangement of houses that gave the area a distinct character, rather than the zoning. Notwithstanding this statement, Mr. Hardiejowski took Mr. Manett through the zoning on each street (e.g. Portage, Gary, Palet) to demonstrate that the streets were zoned RD, even if the allowable frontage, and area changed, depending on the street. The question then dwelt on the inclusion of Telco Crescent, on the periphery of, but included in the Study Area, which is zoned RM, with minimum frontages of 18m. Mr. Hardiejowski made the point that house numbers 16-52 on Telco crescent, were triplexes, or duplex townhouses, and not detached homes, which is a different situation than what exists at 10 Academy Road, to which Mr. Manett repeated his earlier statement about the eclectic nature of the community, and how the observer would perceive the built form of the houses, rather than the zoning. Mr. Hardiejowski then suggested that the proposed house would be more appropriate at a different location within the Study Area, such as Gary and Portage, to which Mr. Manett replied that it would be just as appropriate at the proposed location, on Academy Road.

. However, Mr. Manett did agree that there was no house on Academy Road with a frontage of less than 15 m, and less than 550 sq.m. lot area. Mr. Manett repeatedly made the point that 2 houses with 2400 sq ft on the lot were more desirable than a single 4800 sq. foot house, on the existing lot, that could be built as of right. There was vociferous disagreement on whether the Appellants could construct a house of 4800 sq. ft, with a circular driveway, as of right. By way of editorial comment, the disagreement became so acrimonious that Ms. Amini insisted that everybody “stand down, so that a Zoning Notice could be obtained to verify the Appellants’ claim that a large house, with a circular driveway could be built as of right”. I advised the Parties that, since the 4800 sq. ft. house, with a circular driveway was not in front of me, there was no point in delving into this matter further. I advised the Parties that , solely for discussion purposes, they could use a 4800 sq foot house on the existing lot as a hypothetical comparator, and insisted that the Appellants had to convince me that the proposal would fit better into the community than a single large house with 4800 sq. ft. Mr. Manett then discussed how the proposed houses would co-exist with what already existed on Academy by pointing to the houses on neighbouring Wendell Ave, where houses

similar to the proposal before the TLAB, already exist, to which Mr. Hardiejowski said that the examples referred to, and the corresponding lots, predated the Zoning By-Law, and didn't have to abide by the By-Law.

Returning to Policy 4.1.5, Mr. Manett explained the distribution of different sized lots on the basis of the expression "scattered throughout the Neighbourhood" found in the narrative above the section, to which Mr. Hardiejowski said that this was the explanatory narrative, as opposed to actual Policy. There was disagreement about the applicability of Section 4.1.9 of the new Official Policy, which Mr. Hardiejowski insisted applied only to infill housing. Mr. Manett said that even if the proposal wasn't an example of infill development, the ideas found in 4.1.9 were relevant, and applicable to the proposal, to which Mr. Hardiejowski said that he found the response "very interesting".

The question of the size, and shape of the lots was discussed next- on the question of how important the neighbourhood was in this context, there ensued a prolonged discussion on how the neighbourhood chosen by Mr. Manett fit the 10 minute dog walk principle, to which Mr. Manett pointed out it was a "concept" . Mr. Manett suggested that there were many alternatives and choices, all of which are simultaneously valid, that fit the 10 minute walk around the neighbourhood. I understood this to mean that , pedestrian connectivity is an important parameter to study, and understand a community, including the immediate vicinity.

There was disagreement with how to interpret the expression "prevailing"- Mr. Manett disagreed with the notion that if a certain dwelling type constituted 51% or more of the dwellings in a community, it effectively constituted the prevailing type. There was also disagreement on including townhouses in the Study Area, because Mr. Manett's position was that the smaller lot sizes on which the townhouses are an inherent feature of the eclecticism he had referred to, whereas the City's position was that there had to be a common attribute (such as zoning, dwelling type) between the proposal, and the comparator in question . In response to the City's questions about introducing an existing dwelling-type, but with a different size, on Academy Road and the significant impact it would cause, Mr. Manett countered by saying that these different types could co-exist, without having a significant, adverse impact on each other.

On the question of how one looked at the Study Area under OPA 320, Mr. Manett disagreed with both Mr. Hardiejowski that the Study Area would be different under the former OP, and OPA 320. Mr. Manett suggested that the Study Area did not have to change under OPA 320, though the immediate context had to be given more weight. By way of editorial comment, this difference was reinforced when Ms. Amini repeated the same question a little later in the cross examination, eliciting the same response from Mr. Manett.

It was also suggested that the proposal was an example of Affordable Housing, which Ms. Amini objected to, because the expression "Affordable Housing" was specifically defined in the Official Plan. It was then suggested that the proposal was an example of housing which was affordable. After a lively discussion how affordability influenced housing, I pointed out that the TLAB did not have jurisdiction, nor the expertise to address the affordability of housing, and encouraged the Parties to move on from a

discussion of affordability. Mr. Manett suggested that a discussion of affordability had a nexus to public interest, because houses were becoming increasingly expensive to afford.

I asked Mr. Manett about his definition of Public Interest, to which he said that “Public interest, in this case is looking at creating opportunities to allow people live close to amenities, and their place of work.”. When asked who represented public interest, Mr. Manett said that no single individual, or City department could speak for public interest; however the City was an important player in deciding what the public interest was, to which Ms. Amini said that if required, she would be willing to put her instructions from the City as an Exhibit, in order to show what the City’s position on this particular matter.

Ms. Olivia Antonel, a planner for the City of Toronto, was sworn in, and recognized as an Expert Witness. She described the subject property in as being rectangular in shape, with a lot frontage of 19.82 metres, a lot depth of approximately 38 metres and a lot area of approximately 755 square metres. She said that the property is located within the interior of a low-rise residential neighbourhood, which is primarily comprised of one and two-storey detached dwellings on large lots with generous landscaped front yards, mature trees and vegetation. A walk through the neighbourhood demonstrated that while there are some smaller lots with frontages of generally 12.0 metres (40 ft), the overwhelming majority of lots in the neighbourhood have wide lot frontages of 15.0 metres (50 ft) or greater, which are consistent with the zoning standards for this neighbourhood.

There has been ongoing reinvestment in the neighbourhood through additions, renovations and the construction of new dwellings being built on the large lots within this neighbourhood. The majority of the original homes within this neighbourhood were built in the 1950s and 1960s, with the property fronting onto the west side of Academy Road. Ms. Antonel added that Academy Road is a stable residential street, that is made-up of large lots with one-storey detached bungalows, as well as side-split detached dwellings, with primarily integral garages. When walking along Academy Road, it is evident that all of the lots on the street have wide lot frontages, which range between 15.24 metres (50 ft) and 21.15 metres (69 ft), with wide landscaped front yards and ground floor windows located at-grade.

The applications seek permission to sever the existing property into two undersized residential lots, and to construct two new detached dwellings on each of the proposed lots. The existing detached dwelling located on the existing lot would be demolished. Each of the proposed dwellings would contain an integral garage with driveway access off of Academy Road.

Ms. Antonel provided the following definitions for lot frontage, and depth:

Lot frontage and lot area data for the lots within the study area were measured in accordance with the City of Toronto Zoning By-law No. 569-2013. According to Section 800.50(445) of Zoning By-law No. 569-2013:

Lot Frontage means 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.

Under Section 800.50(430) of Zoning By-law No. 569-2013:

Lot Centreline means a straight line joining the midpoint of the front lot line and the midpoint of the rear lot line.

Further, under Section 800.50(290) of Zoning By-law No. 569-2013:

Front Yard Setback means a horizontal distance on a lot measured at a right angle from the front lot line to the nearest main wall of a building or structure.

In accordance with Section 10.5.40.70(1) of Zoning By-law No. 569-2013:

In the Residential Zone category, if a lot is:

- a) beside one lot in the Residential Zone category, and that abutting lot has a building fronting on the same street and that building is, in whole or in part, 15.0 metres or less from the subject property, the required minimum front yard setback is the front yard setback of that building on the abutting lot; and*
- b) between two abutting lots in the Residential Zone category, each with a building fronting the same street and those buildings are both, in whole or in part, 15.0 metres or less from the subject lot, the required minimum front yard setback is the average of the front yard setbacks of those buildings on the abutting lots.*

Ms. Antonel said that her lot study area was bounded by Gary Drive to the south, Galewood Drive and Wendell Avenue to the west, Limerick Avenue to the north, and Langside Avenue to the east. She added that this lot study area contained a total of 288 lots, all of which were subject to similar zoning categories as the Subject Property. These lots were zoned Residential Detached [RD (f15.0; a550) (x5)] under the City of Toronto Zoning By-law No. 569-2013 and One-Family Detached Dwelling Fourth Density (R4) or One-Family Detached Dwelling Fifth Density (R5) under the former City of North York Zoning By-law No. 7625. Ms. Antonel stated that the RD (f15.0; a550)(x5), R4 and R5 zoning categories all required a minimum lot frontage of 15.0 metres, and a minimum lot area of 550 square metres. This study area was delineated, in particular, in accordance with the zoning category boundaries to ensure that properties were compared against the same standards.

According to Ms. Antonel, the lands to the north, northwest and southwest of the lot study boundaries are zoned Residential Multiple Dwelling [RM (f.18.0; a665; u2)] , under the City of Toronto Zoning By-law 569-2013 and Multiple Family Dwellings Second Density (RM2) under the North York Zoning By-law No. 7625, and are subject to different standards. The lots within the RM (f.18.0; a665; u2) and RM2 zones are composed primarily of semidetached dwellings. In the RM (f.18.0; a665; u2) zone under the City of Toronto Zoning By-law No. 569-2013, the minimum required lot frontage is 18.0 metres and the minimum required lot frontage for each half of a semi-detached house is 9.0 metres. The minimum required lot area is 665 square metres and the minimum required lot area for each half of a semi-detached house is 332.5 square

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metres in the RM (f.18.0; a665; u2) zoning category. In the RM2 zone under the North York Zoning By-law No. 7625, the minimum required lot frontage is 8.5 metres for each semi-detached dwelling unit and 18.0 metres for each semi-detached dwelling (i.e. not the unit but the dwelling, taken as a whole). The minimum lot area is 300 square metres for each semi-detached dwelling unit ,and 665 square metres for each semi-detached dwelling in the RM2 zone.

Areas to the southeast of the study area boundaries are of different zoning categories as well. Blocks to the southeast, including along Portage Avenue and Langside Avenue, are zoned RD (f12.0; a370) under the City of Toronto Zoning By-law No. 569-2013 and R6 under the North York Zoning By-law No. 7625, and have considerably smaller standards for lot frontage and area. The minimum required lot frontage is 12.0 metres under the RD (f12.0; a370) and R6 zones, as established by both zoning by-laws. The minimum required lot area is 370 square metres in the RD (f12.0; a370) zone under Zoning By-law No. 569- 2013, and 371 square metres in the R6 zone under Zoning By-law No. 7625.

Immediately west of the study area, the lands are zoned RD (f9.0; a275)(x680) under the City of Toronto Zoning By-law No. 569-2013 and R7 (9) under the former City of North York Zoning By-law No. 7625. These zoning categories also have substantially smaller standards for lot frontage and area. As established by both zoning by-laws, the minimum required lot frontage is 9.0 metres and the minimum required lot area is 278 square metres in the RD (f9.0; a275)(x680) and R7 (9) zones.

Further west of the study area, the lands are zoned Residential Townhouse [RT (au140.0)(x168)] under the City of Toronto Zoning By-law No. 569-2013, and Multiple-Family Dwellings First Density [RM1 (31)] under the North York Zoning By-law No. 7625, and are comprised of townhouses. In the RT (au140.0)(x168) and RM1 (31) zones, the minimum required lot area for each dwelling unit in a townhouse is 140.0 square metres.

Under Zoning By-law No. 569-2013, the minimum required lot frontage is 6.0 metres for each dwelling unit for a lot with a townhouse, with every dwelling unit fronting directly on the street. Under Zoning By-law No. 7625, the minimum required street frontage is 30 metres per building on a street contiguous to the lands on which the building is erected. Also, further south of the study area, the lands on the south side of Queenslea Avenue, west of Rosemount Avenue are of different zoning categories as well, and are accordingly subject to different standards with significantly smaller requirements for lot frontage and lot area. These lands are zoned RD (f19.0; a275)(x678) under the City of Toronto Zoning By-law No. 569-2013, and R7 (3) under the former City of North York Zoning By-law No. 7625.

Ms. Antonel then presented the results of her lot frontage analysis. She said that the results of the lot frontage analysis indicated that the overwhelming majority of lots, a total of 249 lots out of 288 lots (86.5%), have lot frontages of 15.0 metres or greater. All of the lots fronting on Academy Road, including the subject property, have lot frontages of at least 15.0 metres. As mentioned, the minimum required lot frontage under the

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RD(f15.0; a550)(x5), R4 and R5 zoning of this area is 15.0 metres, as established by both the harmonized Zoning By-law No. 569-2013 and the former City of North York Zoning By-law No. 7625.

Out of the 288 lots within the study area, Ms. Antonel emphasized that only one lot, 212 Gary Drive, had a lot frontage equal to or less than 9.99 metres, similar to the proposed lots which each have a lot frontage of 9.91 metres. She described the lot as an “anomaly”, as could be ascertained by the fact it had a lot frontage of 5.03 metres, was a “irregular” lot with the shape of a flag tied to a pole, with the frontage being restricted to a driveway, through which the house is accessed at the back of the lot. The unusual nature of this house is accentuated by the fact that notwithstanding its “fronting” onto Gary Drive, the detached dwelling located on this lot is not visible from Gary Drive.

Within the lot study area, 9 lots out of a total of 288 lots (3.1%) have a lot frontage between 10.0 metres and 11.99 metres; four of which have a lot frontage of approximately 11.4 metres and are located on the east side of Wendell Avenue. Ms. Antonel emphasized that while these lots are a part of the neighbourhood, they have a different character than the Academy Road streetscape, with narrower lot frontages and smaller separation distances between dwellings. These lots are not representative of the predominant lot pattern of the neighbourhood.

In the study area, 29 lots (10.1%) have a lot frontage between 12.0 metres (40 ft) and 14.99 metres (49 ft). These lots are located on Gary Drive, Wendell Avenue, Snowberry Avenue and Howbert Drive. While these lots have a frontage of less than 15.0 metres, they are considerably wider than the proposed lots which would each have a lot frontage of 9.91 metres (32.5 ft).

No lots fronting on Academy Road have a frontage of less than 15.0 metres. The lots fronting on Academy Road are between 15.24 metres (50 ft), and 21.15 metres (69 ft) wide. The proposed lots would have significantly and noticeably narrower lot frontages of 9.91 metres (32.5 ft).

With the exception of one lot, 212 Gary Drive, all of the lots within the lot study area (99.7%) have a lot frontage greater than the lot frontages of the proposed lots. The lot area analysis reveals that 247 lots (86.4%) have a lot area of 550 square metres or greater, complying with the minimum required lot area for the RD (f15.0; a550) (x5), R4 and R5 zoning categories as established by both the City of Toronto Zoning By-law No. 569-2013 and the former City of North York Zoning By-law No. 7625.

All of the lots located along Academy Road have lot areas greater than 550 square metres, ranging between 579 square metres and 799 square metres, similar to the subject Property which has a lot area of 754 square metres. The proposed lots would have significantly smaller lot areas of 377.5 square metres.

Within the lot study area, there are no lots that have a lot area of 377.5 square metres or less, similar to the proposed undersized lots. The lot area analysis reveals that there are 39 lots (13.6%) with lot areas between 377.6 square metres and 549.99 square

metres, with the smallest lot area being 421 square metres. Within this category, the majority of lots have lot areas of 500 square metres and greater. Ms. Antonel concluded that all of the lots within the lot study area have a lot area greater than the proposed lots, with the overwhelming majority of lots having a lot area of 550 square metres and greater.

Ms. Antonel then addressed the question of whether the proposal conformed to the OP, and adjacent plans of subdivision.

She pointed out that the Property is designated *Neighbourhoods* which are considered to be “physically stable areas made-up of residential uses in lower scale buildings”. She said that her analysis of the properties utilized the new Official Plan, which became determinative after the LPAT’s order of December 2018.

She recited Policy 4.1.5, as modified by the LPAT order, and said that neither the Official Plan, nor the Zoning By-law standards, promote the creation by consent of substandard lots which are not in keeping with the surrounding pattern of development. Development within *Neighbourhoods* is to respect and reinforce the existing physical character of the neighbourhood. Ms. Antonel reiterated that the large majority of lots within the area have a lot frontage of at least 15.0 metres, and a lot area of at least 550 square metres. More specifically, within the immediate context, all of the properties that face Academy Road, in the same block and the block opposite of the Property, as well as all of Academy Road, have a lot frontage of 15.0 metres or greater and a lot area of 550 square metres or greater, which are compliant with the zoning standards. She concluded that the severance did not uphold the purpose of the OP.

Ms. Antonel then discussed whether the proposal fulfilled the test of the dimensions and shape of the lots. She reiterated that the subject property is zoned Residential Detached [RD (f15.0; a550) (x5)] under the City of Toronto Zoning By-law No. 569-2013 and One-Family Detached Dwelling Fourth Density (R4) under the former City of North York Zoning By-law No. 762, and that both zoning by-laws set minimum performance standards for lot frontage and lot area to regulate the size of lots within a given neighbourhood to ensure consistent and compatible patterns of development and open space; this preserves the look and feel of established streetscapes. The proposed lots that would be created, as a result of the consent application, would each have a lot frontage of 9.91 metres and a lot area of 377.5 square metres, which is substantially less than the minimum standards established by both zoning by-laws.

Ms. Antonel next spoke to minimum performance standards, and said that minimum performance standards for lot frontage and lot area regulate the size of lots within a given neighbourhood to ensure consistent and compatible patterns of development and open space; which preserves the look and feel of established streetscapes. The lot frontages and lot areas of the proposed residential lots are not consistent with the minimum requirements as established by both the City of Toronto Zoning By-law No. 569-2013, and the former City of North York Zoning By-law No. 7625. The majority of lots within the area comply with the minimum required lot frontage and lot area provisions, and are reflective of the zone in which they are located. All of the properties

on Academy Road comply with the minimum required lot frontage and lot area provisions. In her opinion the applications are not in keeping with the general purpose and intent of the Zoning By-laws, as the proposed lots represent a departure from the existing lot fabric of Academy Road and the neighbourhood, both quantitatively and qualitatively. She concluded that the proposed substandard lots and resulting built form would alter the look and feel of the established streetscape in this area, and would not uphold the intent, and purpose of the By-Law.

Ms. Antonel next spoke to the test of whether the variances are desirable for the appropriate development of the land. She said that the requested variances are neither desirable nor appropriate for the development of the land as the proposal would result in a development that is not in keeping with the existing physical character of this established neighbourhood. She said that the neighbourhood has experienced reinvestment in the form of renovations and replacement housing, indicating that the area is desirable due to its existing physical character which predominately contains large lots, and opined that these lots offer opportunity for larger landscaped open spaces, and varied housing styles and features.

Lastly, Ms. Antonel spoke to the test of whether the variances satisfied the test of minor. She reiterated that granting the variances for lot frontage and area would create the smallest lots, along all of Academy Road and in the Study Area, and that the proposed lots are considerably smaller than the minimum zoning by-law requirements, as well as the large majority of lot sizes in the neighbourhood represented in the lot study. From a qualitative perspective, the proposal would impact the existing physical character of the area, particularly as perceived from the street, as the proposed lots would interrupt the rhythm of the established Academy Road streetscape which is comprised of wide lots. The applications cumulatively look to permit lot sizes and dwellings that differ from the prevailing lot pattern in the neighbourhood, including within the immediate context, the properties that face the same street as the Property on the same block, the block opposite and on all of Academy Road.

Through his cross-examination, Mr. Pothen pointed out that Ms. Antonel had come to conclusions about the tree canopy notwithstanding her not having the requisite expertise as an arborist. He then expanded on this point, and stated that trees form part of the physical character of neighbourhood, as a result of which Ms. Antonel's conclusions about the physical character of the neighbourhood, were not accurate. Mr. Pothen next asked questions of Ms. Antonel to establish that what the variance listed as an ostensible third storey, is in fact a second storey- the top storey's being classified as a third storey, is a consequence of the topography of how the land rose from the street, to the house, and the basement qualifying as an extra storey because of its proximity to the grade. Mr. Pothen contended that if the "crown of the road were elevated, then the third storey would be counted only as a second storey building", to which Ms. Antonel agreed somewhat reluctantly. This was followed by a discussion of the desirability of smaller side yards, in a neighbourhood of bigger side yards given the history of the houses being built in the 1950s., in which Ms. Antonel persisted with her conclusion that the smaller side yard setbacks were not desirable, because they introduced a new feature not found earlier on Academy Road. She also disagreed with the bulkiness of

the hypothetical proposal to build the as of right 4800 sq ft, and insisted that such a building would not fit into the neighbourhood, and insisted that two lots with a 32.5 sq. ft. frontage would “stand out” on a street with bigger lot frontages, irrespective of how the building was designed. In response to a question about if there would be a concern about the size of the lots in the absence of variances impacted by the Built Form Policies, Ms. Antonel insisted that the size of the lots, by and of itself, was the bigger concern.

Mr. Pothen then pointed out that Ms. Antonel had carved out Pelmo Park (i.e. the actual park) out of her Study Area, and asked her to explain the reason for this. Ms. Antonel responded by saying that she concentrated more on the zoning to define her geographic neighbourhood, and paid less attention to the “rhythm of the streets and parks”. She explained her choice to exclude Pellat Avenue, Telco Crescent, and other streets due to a change in the zoning. Mr. Pothen pointed out that Ms. Antonel’s choice of a geographic neighbourhood overlooked other important parameters for delineating the geographic neighbourhood, such as pedestrian connectivity .

This was followed by a discussion about the walkability of the community – Mr. Pothen pointed out that while Ms. Antonel’s geographic neighbourhood ended some four houses away from the Subject Property, it still did not include houses that were “1-2 minutes walk away”, to which Ms. Antonel repeated that her choice was made on the basis of zoning. Mr. Pothen made the point that Ms. Antonel had disregarded pedestrian connectivity, by analyzing various alternatives, to a route that reached the school from the subject property, instead of a route that went through her geographic neighbourhood. Ms. Antonel demonstrated various routes and parks for recreation purposes, to which Mr. Pothen pointed out that these amenities lay outside her geographic neighbourhood. Ms. Antonel disagreed with Mr. Pothen’s contention that a big building on a big lot would look like “two different buildings” if there was one big unified building. Ms. Antonel agreed with Mr. Pothen that there were no softscape issues. Mr. Pothen asked Ms. Antonel if she agreed that the existing houses on Academy Rd did not “maximize land consumption”, as advised by the PPS, to which the latter disagreed. In response to a question about a single large house on the large lot, and a second suite, fulfilling the same purpose as two houses, on two lots, Ms. Antonel said that she had no opinion. Ms. Antonel also explained why the proposal was not in the public interest because it would bring about a significant change in the community, without necessarily establishing any positive impact. As a planner, Ms. Antonel said, that she would not be in favour of any change that challenged prescribed performance standards, unless there was a solid rationale, which did not exist in this case.

Ms. Antonel’s cross examination was followed by brief statements from the community residents, Ms. Maria Maiolo, and Ms. Antonietta (Tony) Whyte.

Ms. Maiolo said that she lived at 2 Chantilly Crescent, and discussed her involvement in the local community, including being a member of the Board of Directors of a local residents’ association . She described her community (including Academy Avenue) as a community of wide lots, no sidewalks, because the boulevards have mature trees with a thick tree canopy. She distinguished between streets on the exterior of the

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neighbourhood, with the interior of the neighbourhood, through various parameters, such as the existence of commercial businesses, traffic and other variables. Ms. Maiolo then discussed her lot analysis of the “interior streets” i.e. Limerick Avenue, Academy Road, Chantilly Gardens, and Wendell Ave, consisting of 119 properties. Ms. Maiolo provided her perspective on various streets in the neighbourhood, and repeatedly made the point that there were no lots on Wendell Ave with frontages of less than 40 feet, and no lots on Academy with frontages of less than 50 feet.. She pointed out that in the entire community, the smallest lots were two 35 feet lots on Pellat Avenue. Ms. Maiolo concluded by stating two “thin” houses on 32 feet lots on Academy Road, surrounded by 50 feet lots, would “destabilize” the area, and were not consistent with Section 51(24), as well as Section 45.1 of the Planning Act.

Ms. Whyte said that she lived at 12 Academy Road with her husband, and that they had purchased their house in the year 2000. She too spoke of Academy Road as having large lots, significant tree canopy and the ability to construct houses, where the owner’s privacy could be protected. She said that two undersized lots in the midst of a community with wide lots would “erode” the character of the community, and act as a “precedent” for similar divisions throughout the larger Weston-Pelmo Park community. She referred to the Public Consultation meeting, facilitated by the local Municipal Councillor, Ms. Nunziata in February 2019, where community members were “vociferous in their objection” to the proposal at 10 Academy Road. Ms. Whyte provided examples of what she saw as “successful intensification projects” in the neighbourhood, and contrasted them with the proposal at 10 Academy Road. She also discussed how a similar proposal (i.e. consent to sever the property, with a detached house built on both lots) at 104 Wendell Ave. had been refused by the Ontario Municipal Board, and said that the proposal at 10 Academy Road, should be refused for the same reasons. She distinguished the proposal before the TLAB, from the successful appeal at 241 Pellat, where the OMB had allowed the severance of a 21.34 m lot into two equal parts, because the lot “was opposite an industrial lot, on the exterior of the community”.

During the course of re-examination of Mr. Manett, Mr. Pothen suggested that a condition respecting softscape, (which had not been discussed before) could be included as a condition to be imposed on the severance. Mr. Hardiejowski objected to the inclusion of such a condition, because the introduction of such a condition, prior to closing meant that it could not be commented upon by the City’s Witness. I ruled that that a written submission could be made by the City within a week, with comments on the soft scape condition, and admonished the Appellants for not bringing up the condition earlier on in the Hearing, which could have provided opportunity for a more fulsome discussion. On June 27, 2019, the TLAB forwarded me an email stating that the City did not object to the softscape condition being imposed as a condition of approval, in case the proposal was approved.

The oral argument concentrated on the application of the Clergy Principle, and a number of cases were cited by both Parties in support of their respective positions.

ANALYSIS, FINDINGS, REASONS

It may be noted that while the Appellants argued their case on the basis of the former OP, as well as OPA 320, the City relied solely on OPA 320. It is also to be emphasized that while Mr. Manett, the planner for the Appellants, stated that while he had consulted OPA 320, and was confident that the proposal would meet the requirements of OPA 320, his preference was that the proposal be looked at through the prism of the former Official Plan (OP). As noted earlier, the Clergy Principle was argued in detail by both Parties.

Notwithstanding my respect for Mr. Manett's experience and wisdom, and my awareness of the importance of the Clergy Principle, I believe that it is possible to arrive at a decision, through a demonstrable and replicable analysis of the evidence, without splitting hairs about the Clergy Principle. My approach to analysis of the evidence is a consequence of how thorough Mr. Manett's evidence was with respect to the former OP, and OPA 320 .

I therefore propose the following methodology to address whose evidence to accept with respect to the Official Plan

- Examine the Appellants' evidence through the lens of the former OP, and determine if the evidence demonstrates that the proposal satisfies the former OP. The City did not offer any evidence in this regard. In other words, there is no need to "prefer" any Party's evidence, should the Appellants' evidence uphold the intention, and purpose of the former OP.
- Examine the Appellants' evidence, through the OPA 320 to determine if they pass. If their evidence is found to have adequate merit, then the City's evidence regarding OPA 320, needs to be looked at to determine whose evidence is to be preferred.

Under these circumstances, an actual determination about the Clergy Principle would have to be made only if the former method favours the Appellants, and the latter favours the City. It is important to note that I am not proposing a new test with this methodology, but am merely rearranging the sequence of steps in the conventional decision making process. I also take this opportunity to point out that building the proposed dwellings becomes practically possible, if and only if the consent to sever the property is successful- I would therefore like to make a decision about the severance first, followed by an analysis of the variances, only if necessary.

I would first like to address the test of the size and shapes of lots.

One of the key arguments put forward by the Appellants to demonstrate that their proposal satisfies the test about the shapes, and sizes of the plots, as stated in Section 51(24), is their reliance on the Built Form Policy. Both the Expert Witness Statement, and the oral evidence emphasized that the Built Form Policies in the Official Plan are important, or crucial to proving that the proposal satisfies the test of shapes and sizes- in fact , Mr. Manett used the expression "bridge" to describe the importance between

the connection between the Built Form Policy, and the test of the size, and shapes of lots.

A careful reading of the tests under Section 51(24) makes me conclude that the various components of Section 51(24) are independent, and mutually exclusive – in other words, they are not interdependent on each other. The independence of the various tests also means that they can be taken up in any random order- i.e. a Party does not have to address component (a) first before addressing components (b)- (m). The path taken by the Appellants, where it is crucial to pass the tests regarding Official Policy (both the former OP, and OPA 320) to being the “bridge” to satisfy the test about the size and shape of the plots, contradicts the notion of the tests being independent, as well as the ability to address the tests in any random order. The analysis is predicated on the test of OP being addressed before the test of Shape and Sizes of the plots. The use of such a methodology concerns me since it contradicts the mutual exclusivity of the various components under Section 51(24).

In addition, using the Building Form Policies to justify a detached on a substandard plot, diverts attention from the size of the plot onto the appearance of the house when compared to its neighbours, notwithstanding the difference in size- effectively, what this analysis achieves is it concentrates on the *perception* (my emphasis) of the size and shapes of the lots, as opposed to the *actual* (my emphasis) sizes and shapes of the lots, which is what I understand the test to be. Essentially, accepting the evidence of the Appellants on this issue substitutes, or creates a new test, at the exclusion of the existing test.

On the basis of these reasons, I disagree with the methodology, as well as the results arrived at by the Appellants, regarding the shape and size of the lots- I find that the proposal does not satisfy the test of satisfying the sizes and shapes of the plots, as stated in Section 51(24).

I note that a lot analysis in the next section pertaining to the Official Plan (OP), supports the above conclusion about the proposal not satisfying the test of the shapes, and sizes of lots.

I now examine the question of whether the proposal satisfies the purpose and intent, of the former OP, and OPA 320

Another important test that the proposal needs to pass is the test of the Official Plan. When assessing any proposal in the “Neighbourhoods” designation, the OP assumes that the area is not “frozen” and advises that change in the Neighbourhoods should be “stable but not static”. The Appellants conceded that this neighbourhood has experienced “some reinvestment”, but “not at the same rates found in similar neighbourhoods” throughout the City. In his verbal evidence, Mr. Manett spoke to how many of the houses in the neighbourhood dated back to the 1950s when the neighbourhood was first developed, and the neighbourhood “ is expected to change through regeneration”. He then spoke about the shortage of housing in the community,

and how two houses in this neighbourhood, would be better than the standing house, because more families could be housed.

From this evidence, there emerges a picture of a community that has experienced little change since the 1950s, where regeneration is used in the future tense. While the description is qualitative, it becomes important for me to ask the question if this neighbourhood has seen so little change that approving the proposal has a significant impact of a negative nature.

Quantitatively, it emerges that there were 806 properties in the Appellants' Study Area, of which there were 240 properties with smaller lot areas, than what is proposed at the Site, while 137 properties have areas between the requested 377.5 sq. m, but less than the required 550 sq. m. Likewise, there are 195 properties with a frontage at, or below the requested 9.91 m, with 260 properties, with frontages between 9.91 m and 15 m. While these numbers do not provide information about how many detached, semi-detached homes, or town-house sit on the lots, it would be safe to conclude that 351 properties have a frontage greater than 15 metres, making it the single largest group, when the properties are categorized by frontages. A similar analysis of the lot areas in the Appellants' lot area demonstrates that there are 429 properties with areas above 550 sq. m, while there are 137 properties with lot areas between 550 m² but more than 377 m², and 240 properties with lot areas less than 377.5 m². This demonstrates that the lots that confirm to the requisite lot area requirement are again the single largest group in the Study Area. In response to a specific question from me about how many properties had lot frontages smaller than the area for each of the proposed houses, as well as had lot areas less than what was requested, Mr. Manett provided me with the figure of 150 lots, though it is not clear about how many of these 150 properties have detached homes on them. From these statistics, it is easy to see that the lot frontages, and the lot areas requested by the Appellants, constitute a minority of the lots. Since it is not known how many of the small, substandard lots house detached homes, I believe that it is important to err on the side of caution, and conclude that approval of detached homes on substandard lots will effectively propagate, if not introduce a new pattern into the community. Given that there is no evidence about how this new pattern will help reinforce the stability of a community that has seen little change, I believe that approving the proposal goes against the planning mantra of "stable, but not static".

It is also important to note that the above lot size analysis is relevant to, and fortifies my earlier finding about the test of shapes and sizes of the lots.

It would also be important to analyze the methodology preference put forward by the Appellants to define a Geographic Neighbourhood. Their evidence with respect to OPA 320, stated that the Study Area would not change, though it would impact how one defined the immediate context. Their evidence about how the rule of thumb about a dog walk translated into a discussion of walkability and pedestrian connectivity, as well as the cross examination of the City's Witness, demonstrates that they see pedestrian connectivity, as an important parameter to delineate the immediate context/Geographic Neighbourhood. While this perspective does not contradict the definition of a Geographic Neighbourhood, no explanation was offered to see how pedestrian

connectivity can be defined, in the context of a street with no sidewalks. The explanations of Both Ms. Whyte and Ms. Maiolo, the community members who participated in the Hearing, made it clear that one of the distinguishing features of Academy Road, is the absence of sidewalks. I believe that the local resident's evidence about experiencing the local community is of paramount importance in the definition of a Geographic Neighbourhood. In this context, it is reasonable to adhere to the City's chosen parameter of Zoning to determine a Geographic Neighbourhood, given that it is a definable, objective measure, as opposed to the subjectivity of pedestrian connectivity, for which there is no defined test, and applicability is nebulous in the absence of sidewalks.

Given this perspective, I find that the proposal does not satisfy OPA 320.

Based on these findings, I conclude that the proposal does not satisfy the former OP, or OPA 320. I emphasize that given these conclusions, which are mutually consistent, no independent finding needs to be made about the Clergy Principle.

The Appellants also stated that there were four lots on Academy Road of a similar, or larger size as the Subject property. Should we consider Academy Road to the immediate neighbourhood, then the proposed severance has the potential impact of creating eight more lots on a short street, completely changing the character of the street, and thereby impacting its stability negatively. Such division would also not be in the public interest, because at the local level, it unleashes potentially unfettered change, when not creating a local avalanche of severance applications in the larger Study Area, all of which are detrimental to the stability of the community.

In the context of the larger Study Area, approving the severance to construct detached homes on a sub-standard plot, results in a hitherto unknown phenomenon being introduced into the community, that has witnessed little change over many decades, with little compelling rationale. It is in the public interest that such a significant change, be looked at in the context of the larger picture of evolution in the Study Area, as opposed to a single, isolated issue. It is important that a significant change, with the ability to nucleate a chain reaction of similar changes, offer a strong rationale for initiation, in order to be approved. Having heard no compelling argument about how the benefits of introducing such change would help preserve the community's stability, I conclude that the proposal also fails the test of fulfilling the public interest.


Given the above, the proposal to sever the existing land, and build two detached homes on the resulting plots, fails the test of the Official Plan (i.e. both the OP and OPA 320), the test of the shapes, and sizes of the Lots, as well as the test of public interest, as stipulated under Section 51(24) of the Planning Act. As noted at the beginning of this section, the severance of the lots is key to assessing how the proposed buildings are consistent with Section 45.1; the latter does not have to be analyzed since the consent to sever has failed.

The Appeal is consequently refused, and the decision of the Committee of Adjustment dated October 11, 2018, is confirmed.

DECISION AND ORDER

1. The Appeal respecting 10 Academy Road, is refused in its entirety, and the decision of the Committee of Adjustment, dated October 11, 2018, is confirmed.

So orders the Toronto Local Appeal Body.



X

S. Gopikrishna
Panel Chair, Toronto Local Appeal Body