

DECISION AND ORDER

Decision Issue Date: Friday, May 22, 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): AFROZA SHAHIN

Applicant: ARC DESIGN GROUP

Property Address/Description: 50 HOLLAND AVE

Committee of Adjustment Case File: 18 103218 STE 31 CO, 18 103220 STE 31 MV, 18 103221 STE 31 MV

TLAB Case File Number: 18 195271 S45 31 TLAB, 18 195280 S45 31 TLAB, 18 195287 S53 31 TLAB

Hearing date: Monday September 23, 2019

DECISION DELIVERED BY STANLEY MAKUCH

APPEARANCES

Name	Role	Representative
ARC Design Group	Applicant	
Afroza Shahin	Appellant/Owner	Amber Stewart
City of Toronto	Party	Marc Hardiejowski/Roman Ivanov
Jonathan Benczkowski	Expert Witness	
Derrick Wong	Expert witness	
Francois Trottier	Participant	
Vijaya Kissoon	Participant	

Name	Role	Representative
Alex Campbell	Participant	
Kathleen Campbell	Participant	

INTRODUCTION

This is an appeal from a decision refusing a consent and ~~minor~~ variances to divide 50 Holland (the subject property) into two lots to permit the construction of a detached dwelling with integral garage on each lot. The variances sought are listed in Appendix 1 below. They are reflective of some revisions to the original application. Those revisions do not require new notice by virtue of s. 45(18.1.1) of the Planning Act.

The appeal was opposed by a number of residents in the area and by the City.

BACKGROUND

The subject property is located in a residential area of the former Municipality of East York between Victoria Park Ave and O’Conner Dr. As can be seen from Appendix 1, the variances requested are the same for each of the proposed lots and dwellings and relate to: substandard lot area, lot frontage, and side yard setback, as well as excessive lot coverage, building height, and density, all under the City of Toronto’s current zoning bylaw. In addition, a variance is sought for the building height of each dwelling under the East York bylaw.

MATTERS IN ISSUE

While there were many issues raised at the hearing of this matter, they may be summarized as follows: Did the proposed development of the subject property respect and reinforce the physical character of the neighbourhood as required by the Official Plan? In particular, would the reduced lot frontages stand out and result in lots not fitting in the with the lots in the vicinity and in the wider neighbourhood? This in turn resulted in a concern as to whether the reduced frontage, lot area, side yard setbacks, excessive density, and integral garage (which is permitted) would result in dwellings which appear to be over development of the lots to be created.

In contrast, was the issue of whether the neighbourhood was one of a “mixed” character that is a character of a mix of: lot frontages, lot areas and dwellings sizes, which the variances respected and reinforced. Concern was also raised regarding the impact of the proposed development on 48 Holland Ave, the adjacent property to the east.

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

Expert evidence was presented on behalf of the applicant/appellant by an excellent land use planner, J. Benczkowski, and on behalf of the City by D.Wong, also an excellent planner, who had a great deal of experience in the neighbourhood as he had been the neighbourhood planner for a number years. In addition, evidence was given in opposition to proposed development by Mr. and Mrs. Campbell, who own and reside at 48 Holland Ave., adjacent to the subject property, and by Mr. Gaw who lives well south of the subject property.

I am not repeating the evidence of the expert witnesses which sets out study areas and includes calculations of the number of properties of various sizes. That information is stated clearly in their witness statements on file with the Toronto Local Appeal Body (TLAB). Those calculations and quantities led to certain conclusions which I find may be summarized as follows:

Mr. Benczkowski's opinion is that the character of the neighbourhood is a mixture of lot frontages, sizes, setbacks and dwellings, (i.e., including two story dwellings with integral garages). That mixture in his opinion is its character. Therefore, the proposal met the criteria required under the Planning Act for a consent and for approval of the minor variances as it conformed with the Official Plan. In particular, he believed that the proposal respects and reinforces the physical character of the neighbourhood in terms

of frontages, lot areas and side yard setbacks, building appearance and size, because the neighbourhood is such a mixture.

Mr. Wong, on the other hand, gave evidence that there are no lots on Holland Ave. with frontages as small as the proposed lots and, moreover, that the proposed lots would be the smallest lots in the neighbourhood. Moreover, in his opinion, the character of Holland Ave is one of bungalows and one and a half story dwellings and lots with large frontages which the proposal would not reflect and reinforce. Perhaps most importantly, in his opinion, there are not a sufficient number of lots with a reduced frontage and a sufficient number of dwellings to create the character espoused by Mr. Benczkowski.

I find that in his opinion the small lots and new dwellings with integral garages in the neighbourhood are not of sufficient number to establish a character which is respected and reinforced by creating 7.26m lots with such dwellings.

Mr. and Mrs. Campbell gave evidence respecting the impact of the shadow of the proposal on their rear yard and opposing the height and size of the proposed dwellings and their “ugly” appearance. A concern was also raised concerning flooding. Mr. Gaw’s evidence related to the small side yard setback, and the lack of a side driveway to the rear of the dwellings

ANALYSIS, FINDINGS, REASONS

I do not find the evidence of Mr. and Mrs. Campbell helpful. 48 Holland is to the east of the proposal and thus I am not persuaded shadowing would be a significant negative impact. Moreover, there was no variance requested as to the length of the proposed dwellings. I also note that it is not within TLAB’s jurisdiction to determine whether a building is “ugly” and that there was no reliable evidence respecting flooding.

Concerns with respect to height and size in and of themselves are not sufficient reason to refuse the appeal. Mr. Gaw’s evidence similarly is not useful in making a determination on whether to grant the appeal. The lack of a driveway to the rear yard and reduced side yard set backs are not in themselves reason to refuse the appeal.

I find, however, that two important factors lead me to conclude that the appeal should be dismissed. (1) My preference for the evidence of Mr. Wong in this case. (2) My visits to the street and the neighbourhood.

(1) Mr. Wong’s evidence

The evidence of both planners was very good. While they had different study areas, there was not a significant difference in those areas in my mind. They did not disagree on the numerical analysis of lot frontage and sizes and building types and sizes within the areas. They did, however, as indicated above, reach different conclusions. Mr. Wong concluded that the proposed frontages did not respect and reinforce the

character of the neighbourhood, as they would be the narrowest on Holland Ave. and in the broader neighbourhood.

Moreover, in his opinion, the dwellings proposed on each of the created lots would result in an over development of the lots as they would have the appearance of three story buildings, with two stories above an integral garage, and narrow side yard setbacks. He noted that almost all the lots on Holland Ave. conformed or were close to the frontage requirements of the zoning bylaw and that Holland Ave. was primarily a street of bungalows and one and a half story dwellings. The proposal would create the smallest lots on the street and result in two buildings that clearly have the appearance of three stories. Moreover, in his opinion, this area of the neighbourhood was not one where a sufficient mixture of lot sizes and dwellings with integral garages had occurred thereby creating a mixed character to support the application. Indeed, in his opinion, the proposal would not only adversely impact the rhythm of the lots and buildings on the street but be out of keeping with the overall character of the neighbourhood.

It is important to note, as stated above, that Mr. Wong has had four years of experience in evaluating proposals in the area and was very knowledgeable and sensitive with respect to development within it. His evidence was accepted by TLAB in the case before TLAB respecting 148 Tiago Ave., a street four blocks to the south of Holland Ave. In that case he undertook a similar analysis and reached a similar conclusion.

In deciding to accept the evidence of Mr. Wong over that of Mr. Benczkowski, I am not rejecting Mr. Benczkowski's analysis. There are, indeed, lots that are smaller than the zoning bylaw permits in the area but not none as small as proposed. I note, as well, that there are dwellings with integral garages, as he has demonstrated, but not so numerous as to establish them as significant in defining the character of the neighbourhood. I note, finally, that in my view Holland Ave, is a street which contributes in a significant manner to the character of this neighbourhood.

Under s.4.9 of the City Official Plan the proposed variances must respect and reinforce the character of the area. In this case that character includes a street that has an original character of large lots and bungalows and one and a half story homes. Whether I consider the immediate context of the one street alone, Holland Ave., or the wider study area of either planner, my conclusion is the same based on the evidence of Mr. Wong. The variance respecting lot frontage alone results in a proposal out of keeping with the character of the neighbourhood. I find the additional variances being requested respecting height and side yard setback result in an over development of the lots and buildings which are also out of keeping with the character of the neighbourhood. Since I will not grant the variances, I will not approve a consent which would be contrary to the zoning bylaw and would not conform to the Official Plan.

(2) My Visits

I took the unusual step of visiting the area between Victoria Park Ave. and O' Conner Dr. and Holland Ave. and Tiago Ave., not once, but twice, and found that the area is a special neighbourhood with some with smaller lots and homes with integral garages in some locations. However, it is a neighbourhood with an area which is not significantly

changed by new development and frontages narrower than permitted under the zoning bylaw. These visits confirmed for me Mr. Wong's analysis, as I found that the proposal would not respect and reinforce the character of the Holland Ave. or the character of the neighbourhood to the south. As a result my visits confirm my decision to not approve the variances and consent.

The Official Plan directs me to consider the immediate context, and the wider area around the subject property. In both respects. I find that the proposal fails to meet the standard of respecting and reinforcing the character of the neighbourhood. The street has lot frontages which largely conform with the zoning bylaw and the dwellings on those lots are primarily bungalows or one and a half stories with spacious side yards. The proposal would result in a development with much narrower lots and dwellings with an integral garage and the appearance of three stories with narrow side yards. Similarly, the neighbourhood to the south cannot be said to have a neighbourhood character of such narrow, overdeveloped lots.

I therefore find that the variance respecting lot frontage alone should not be granted. Moreover, I find that the additional variances permitting the construction of the dwellings should not be granted. I do not need to address in detail the reasons for refusing the consent since the zoning bylaw without the lot frontage variance would not permit the lot to be created. As a result of these conclusions I need not address compliance with provincial policy.

DECISION AND ORDER

The appeal is dismissed, and the decision of the Committee of Adjustment is confirmed.

X 

S. Makuch
Panel Chair, Toronto Local Appeal

Revised List of Variances – 50 Holland AVE (Part 1)

REQUESTED VARIANCES TO THE ZONING BY-LAW:

BY-LAW 569-2013

1. The minimum required lot area is 370.0 m².
The area of the retained lot will be 255.52 m².
2. The minimum required lot frontage is 12.0 m.
The frontage of the retained lot will be 7.62 m.
3. The maximum permitted lot coverage is 35% of the lot area (89.43 m²).
The lot coverage will be equal to 40% of the lot area (101.39 m²).
4. The maximum permitted building height is 8.5 m for a detached dwelling
The new detached dwelling will have a height of *8.94 m*.
5. The maximum permitted floor space index of a detached dwelling is 0.6 times the area of the lot (153.31 m²).
The new detached dwelling will have a floor space index equal to 0.77 times the area of the lot (197.97 m²).
6. The minimum required side yard setback is 1.2 m.
The new detached dwelling will be located 0.8 m from the west side lot line and 0.92m from the east side lot line.

BY-LAW 6752

7. The maximum permitted building height is 8.5 m.
The new detached dwelling will have a height of 9.15 m.

Revised List of Variances – 50 Holland AVE (Part 2)

REQUESTED VARIANCES TO THE ZONING BY-LAW:

BY-LAW 569-2013

1. The minimum required lot area is 370.0 m².
The area of the retained lot will be 255.52 m².
2. The minimum required lot frontage is 12.0 m.
The frontage of the retained lot will be 7.62 m.
3. The maximum permitted lot coverage is 35% of the lot area (89.43 m²). The lot coverage will be equal to 40% of the lot area (101.39 m²).
4. The maximum permitted building height is 8.5 m for a detached dwelling
The new detached dwelling will have a height of *8.99m*.
5. The maximum permitted floor space index of a detached dwelling is 0.6 times the area of the lot (153.31 m²).
The new detached dwelling will have a floor space index equal to 0.77 times the area of the lot (197.97 m²).
6. The minimum required side yard setback is 1.2 m.
The new detached dwelling will be located 0.8 m from the west side lot line and 0.92m from the east side lot line.

BY-LAW 6752

7. The maximum permitted building height is 8.5 m.
The new detached dwelling will have a height of 9.15 m.