

DECISION AND ORDER

Decision Issue Date Thursday, January 14, 2021

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): Ridgestone Homes LTD

Applicant: Franco Romano

Property Address/Description: 71 Poyntz Ave

Committee of Adjustment Case File: 17 277496 NNY 23 CO (B0081/17NY), 17 277503 NNY 23 MV (A1123/17NY), 17 277500 NNY 23 MV (A1122/17NY)

TLAB Case File Number: 20 119211 S53 18 TLAB, 20 119208 S45 18 TLAB, 20 119207 S45 18 TLAB

Hearing date: November 19, 2020

DECISION DELIVERED BY A. Bassios

APPEARANCES

Appellant	Ridgestone Homes LTD
Appellant's Legal Rep.	Amber Stewart
Applicant	Franco Romano
Participant	Diane Blair

INTRODUCTION

This is an appeal by Ridgestone Homes (Appellant) of the North York Panel of the Committee of Adjustment's (COA) refusal of the consent to sever the property at 71 Poyntz Avenue (subject property), and associated variances to construct two new dwellings on the proposed resultant lots.

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The subject property, 71 Poyntz Avenue, is located in the West Lansing neighbourhood of North York, west of Yonge St and south of Sheppard Ave West. It is designated *Neighbourhoods* in the City Official Plan (OP) and zoned RD(f15.0; a550)(x5) under Zoning By-law No. 569-2013 and R4 under the former North York Zoning By-law No. 7625.

The COA had before it an application for consent to sever the subject property into two lots, and applications for a total of fourteen variances to construct a new dwelling on each of the anticipated newly created lots.

THE CONSENT REQUESTED

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

RETAINED – PART 1

The lot frontage is 7.62 m, and the lot area is 255.48 m².
The property will be redeveloped as the site of a new detached dwelling, requiring variances to the Zoning By-law(s), as outlined below.

CONVEYED – PART 2

The lot frontage is 7.62 m, and the lot area is 255.48 m².
The property will be redeveloped as the site of a new detached dwelling, requiring variances to the Zoning By-law(s), as outlined below.

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

71 Poyntz Avenue (Part 1)

To construct a new dwelling.

1. Chapter 10.20.30.10.(1), By-law No. 569-2013

The minimum required lot area is 550 m². The proposed lot area is 255.48 m².

2. Chapter 10.20.30.20.(1), By-law No. 569-2013

The minimum required lot frontage is 15 m. The proposed lot frontage is 7.62 m.

3. Chapter 10.20.30.40.(1), By-law No. 569-2013

The maximum permitted lot coverage is 30% of the lot area. The proposed lot coverage is 31.9% of the lot area

4. Chapter 900.3.10(5) and 10.5.40.50(2), By-law No. 569-2013

The minimum required side yard setback is 1.8 m.

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The proposed east side yard setback is 0.6 m to the proposed dwelling, front porch, and rear deck.

5. Chapters 900.3.10(5) and 10.5.40.50(2), By-law No. 569-2013

The minimum required side yard setback is 1.8 m. The proposed west side yard setback is 1.2 m.

6. Chapter 10.20.40.10.(2), By-law No. 569-2013

The maximum permitted height of all side exterior main walls facing a side lot line is 7.5 m.

The proposed side main wall height is 8.46 m for a portion of one side main wall and 7.89 m and 7.68 m for the remaining portions of the side main walls.

7. Section 13.2.6, By-law No. 7625

The maximum permitted building height is 8.8 m. The proposed building height is 9.15 m.

71 Poyntz Avenue (Part 2)

To construct a new dwelling.

1. Chapter 10.20.30.10.(1), By-law No. 569-2013

The minimum required lot area is 550 m². The proposed lot area is 255.48 m².

2. Chapter 10.20.30.20.(1), By-law No. 569-2013

The minimum required lot frontage is 15 m. The proposed lot frontage is 7.62 m.

3. Chapter 10.20.30.40, By-law No. 569-2013

The maximum permitted lot coverage is 30% of the lot area. The proposed lot coverage is 31.9% of the lot area.

4. Chapter 900.3.10(5) and 10.5.40.50(2), By-law No. 569-2013

The minimum required side yard setback is 1.8 m.

The proposed west side yard setback is 0.6 m to the proposed dwelling and rear deck.

5. Chapters 900.3.10(5) and 10.5.40.50(2), By-law No. 569-2013

The minimum required side yard setback is 1.8 m.

The proposed east side yard setback is 1.2 m to the proposed dwelling and front porch.

6. Chapter 10.20.40.10.(2), By-law No. 569-2013

The maximum permitted height of all side exterior main walls facing a side lot line is 7.5 m.

The proposed side exterior main wall height is 8.38 m for a portion of the side main wall and 7.89 m and 7.68 m for the remaining portions of the side main walls.

7. Section 13.2.6, By-law No. 7625

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The maximum permitted building height is 8.8 m. The proposed building height is 9.25 m.

The hearing of this matter occurred by Electronic Hearing on November 19, 2020. In attendance electronically via WebEx were: Amber Stewart, the Owners' Legal Representative; Franco Romano, Action Planning Consultants, the Applicant, and expert witness; and Diane Blair a neighbouring resident.

The Hearing dates originally set for this matter were June 2 and June 15, 2020. On April 24, 2020, the TLAB issued a *Notice of Postponement* due to the COVID 19 pandemic Order, suspending timelines in the matter and advising that a new *Notice of Hearing* would be issued. On September 16, 2020, a new *Notice of Hearing* was issued, setting November 19, 2020 as the Hearing date and detailing new deadlines for the filing of submissions. A *Notice of Remote Hearing* was issued on November 10, 2020, which notified that the in-person Hearing scheduled for this matter had been converted to an electronic format.

I advised that I had reviewed the pre-filed material and had conducted a site visit of the subject property and surrounding neighbourhood.

Prior to commencing the Hearing of evidence, there were two preliminary issues to deal with. Ms. Stewart requested an immediate recess for a period of approximately one hour as Mr. Romano was required, unexpectedly, to appear before the Committee of Adjustment on another matter.

The second matter dealt with Ms. Blair's status as a Participant.

I recessed the Hearing until 10:45 a.m. and advised that I would rule regarding Ms. Blair's participation and status when the Hearing was reconvened.

On November 18, 2020, the day prior to the Hearing, Ms. Blair had submitted Form 4 to the TLAB, indicating an intention to be a Participant, and a written statement outlining her concerns and objections to the application(s). The *Notice of Hearing*, issued on March 2, 2020, set April 1, 2020 as the last day for filing a Notice of Intention to be a Party or Participant. Ms. Blair said that she did not receive the *Notice of Hearing* emailed by the TLAB on March 2, 2020, nor the revised *Notice of Hearing* issued on September 16, 2020, which set the due dates for filing a Notice of Intention to be a Party or Participant as no later than October 05, 2020.

Ms. Blair advised she only became aware of the Hearing for this matter when she received the *Notice of Remote Hearing* on November 10, 2020, which notified that the in-person Hearing scheduled for this matter had been converted to an electronic format. Another neighbour, Mr. Sdao, had also written to the TLAB indicating that he had not received Notice and had experienced difficulty getting a response from TLAB staff during the COVID 19 pandemic lockdown period.

After hearing from Ms. Stewart, I ruled that Ms. Blair would be allowed Participant status in the Hearing. I reiterated that all interested parties participating in hearings before the Tribunal are responsible for monitoring the TLAB's website for updates on the progress of potential Appeals. However, given the quick adjustments that have had to be made in the pandemic situation, I allowed Ms. Blair Participant status at the Hearing. I was also cognizant that there were no other residents in attendance.

For those reasons, I advised that I would allow Ms. Blair to make a statement and further informed Ms. Blair that she could expect that Ms. Stewart would be given an opportunity to cross examine her and that I would allow Ms. Stewart some time review the statement that Ms. Blair had submitted the previous evening.

I advised that I would weigh Ms. Blair's evidence mindful that it had not been available prior to the day of the Hearing.

BACKGROUND

The Applicant seeks to sever the subject property into two lots and construct a new detached dwelling upon each new lot. There have been revisions to the design of the two proposed dwellings during the processing of the COA application, resulting in removal or reduction of variance requests. The revisions also avoided the City tree removal to which the Urban Forestry branch had previously objected. The severance proposal has not been revised. A previous, similar application for consent to sever the subject property was submitted in 2016 and refused by the COA in July 2017.

MATTERS IN ISSUE

Of the criteria regarding consents to sever listed under s.53 of the Planning Act, only 53(24)(c) is pertinent for this application - whether the application conforms to the Official Plan. The primary issue in the Appeal is whether a consent to sever the subject property into two undersized lots "will respect and reinforce the existing physical character of the neighbourhood" as required by section 4.1.5 of the Official Plan.

A second issue is whether the variances sought to permit the construction of the proposed dwellings, one on each of the severed lots, individually and collectively, meet the policy considerations and the four statutory tests of the Planning Act, (outlined below).

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').

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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

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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).

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

Ms. Stewart made an opening statement in which she emphasized that the application had been filed in 2017, before Official Plan Amendment 320 (OPA 320) came into force and indicated that although Mr. Romano would address both versions of the Official Plan (OP) in his evidence, that the Clergy principle should be kept in mind. (The Clergy principle requires that an application be assessed on the basis of the policies in effect at the time of application). Ms. Stewart advised that this Willowdale pocket has evolved significantly and that severances in the neighbourhood have occurred steadily over time. She and Mr. Romano have worked on a number of severance applications in this area, all of which have been contested by the City and most of which have been approved. (Ms. Stewart has provided a brief of previous cases and tribunal decisions).

I qualified Mr. Franco Romano to give expert opinion evidence in the discipline of land use planning. Mr. Romano's witness statement was entered as Exhibit A and formed the basis of his evidence.

Mr. Romano referenced a previous, similar application filed in 2016 by a previous owner and noted that although it was refused by the COA, Planning staff had recommended conditions of approval for that application. The COA refusal of that application was not appealed.

Mr Romano reviewed the neighbourhood context of the subject property and noted that it is adjacent to the North York Centre (an urban growth area), and an intensification corridor (Sheppard Ave). The North York Centre begins some 50 m to the east of the subject property at Frizzell Road. Poyntz Avenue is an east-west local street that intersects with Yonge Street at a signalized intersection. The subject site is located within the capture area of a Major Transit Station Area (MTSA), as defined by the Growth Plan, although the City has yet to delineate MTSA's as part of its OP Review currently on-going.

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Mr. Romano's testimony was that both at the neighbourhood level and in the immediate context of the subject site, it is common to see properties with similar or different physical characteristics (height, mass, scale, density and lot size) abutting, adjacent or distant from one another. He noted that the neighbourhood has been experiencing gradual and varied "regeneration," typically resulting in residential buildings that "differ and occupy more space than the development that is being replaced or improved upon." This includes lot creation by means of lot severance. He provided extensive photographic evidence as well as a table of COA decision statistics illustrating this diversity of form. He traced the history of zoning instrument changes since the original plan of subdivision was approved for this area and noted that the original subdivision plan layout had an "abundant supply of 7.62 m (25 ft) lots." He concluded that "this neighbourhood has long consisted of lot fabric that is not consistent".

Mr. Romano reviewed the proposed lot dimensions of the two severed parcels and the comparable statistics for properties in the geographic neighbourhood and within the immediate context. He reviewed the Zoning By-law requirements and identified where variances would be required. He concluded that while certain individual characteristics may be the same, similar or different from what can be found in the geographic neighbourhood and in the immediate physical context, the overall physical built form attributes of the proposal are "well represented within the Subject Site's physical contexts." It is his opinion that the proposed character attributes will respect and reinforce the physical characters of the geographic neighbourhood, both the broader neighbourhood and immediate physical contexts and that the proposal conforms to the Official Plan which recognizes that similar and different physical characteristics contribute to an overall respectful and reinforcing physical character.

Mr. Romano referred to a recent zoning change resulting from the City-initiated West Lansing Zoning Study. The Study resulted in the City passing By-law 644-2018 on May 24, 2018, revising zoning standards for an area that abuts the rear lot line of the subject property but does not include it. (See page 5 of the Witness Statement entered as Exhibit A for a map). It is his opinion that the zoning change in this contiguous area, to allow 7.5 m lot frontages, 300 m² lot areas and other amended performance standards, is further evidence of the neighbourhood's evolution.

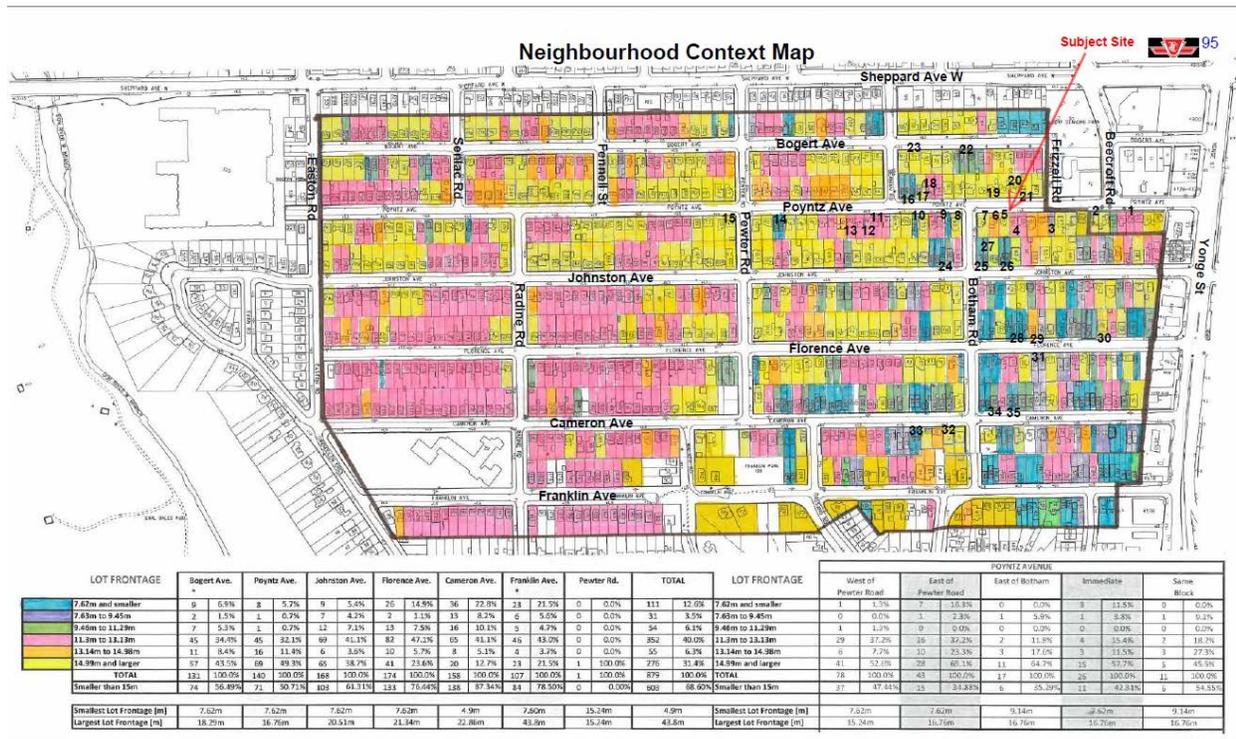
Mr Romano addressed the Planning Staff Report to the COA that recommended refusal (page 153 in Exhibit A). The staff report refers to OP Policy 4.1.5 which requires that "development in established Neighbourhoods will respect and reinforce the existing physical character of each geographic neighbourhood, including, in particular – b) prevailing size and configuration of lots; and g) prevailing patterns of rear and side yard setbacks and landscaped open space." The staff report goes on to quote a part of the policy which states that "Proposed development within a Neighbourhood will be materially consistent with the prevailing character of properties in both the broader and immediate contexts. In instances of significant difference between these two contexts, the immediate context will be considered to be of greater relevance."

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The staff report reviews the lot frontage statistics of the immediate context, being the same block and the block opposite the subject property. It concluded this analysis with the statement that “Staff are of the opinion that the proposed severance would not respect and reinforce the existing prevailing physical character of the geographic neighbourhood as it relates to lot size.” Mr Romano refuted the conclusion of Planning Staff in the report, pointing out that the priority given to the immediate context in Policy 4.1.5 only came into effect through OPA 320, which postdates the filing of the application. He contends that even under OPA 320, the proposal is not required to be the same as the most frequently occurring lot frontage in the immediate context or in the geographic area, and that there are a substantial number of lots of a similar size/ frontage in the immediate context and the geographic area east of Botham Ave.

The provisions of OP Policy 4.1.5 require that development in established *Neighbourhoods* will respect and reinforce the existing physical character of the neighbourhood and Mr. Romano takes issue with the Planning Staff approach which he says depends too simply on a mathematical calculation in defining physical character. In his professional opinion, the proposal conforms to the OP, and in particular, to the versions of OP Policy 4.1.5 in force both before and after the adoption of OPA 320.

Mr. Romano provided a Neighborhood Context Map and site statistics to illustrate the variety of lot sizes and lot frontages in the neighbourhood. By his calculation, 68% of the lots in his defined area have frontages less than the 15 m that the By-law requires for the subject property and he notes that half of the lots on Poyntz Ave have lot frontages smaller than the 15 m that the By-law requires for the subject property. The lot plan exhibits what could be described as a staggered grid. The pattern of lot distribution is such that lots with less than 7.6 m frontages are generally found east of Pewter Rd, (i.e., between Pewter and Yonge) with the greatest concentration of lot frontages less than 7.6 m, as well as the greatest variety of lot frontages, concentrated between Botham and Yonge. (For a full sized colour version of the figure below please see Exhibit A, page 95 in Exhibit A)



With regard to the requested variances from the Zoning By-law, Mr. Romano reviewed the requested variances and concluded that the general intent and purpose of the Zoning By-laws is maintained. His opinion is summarized below:

- lot frontage and/or lot area** (7.62m whereas minimum 15 m is required; 255.48 m2 whereas minimum 550 m2 is required)

the proposal “meets the general intent and purpose to achieve a modest-sized lot within the Subject Site’s physical contexts. The proposal achieves a modest size that will fit in well with the intermingling of lot sizes...”;
- lot coverage** (31.9% whereas maximum 30% is permitted)

an appropriate amount of the lot is covered so that the property can accommodate other features and ample open space;
- side yard setback** (1.2 m and 0.6 m whereas minimum 1.8 m is required)

there is appropriate and adequate space on both sides of the dwelling and that the neighbourhood includes smaller side yard setbacks;
- main wall height** (Part 1= 7.68 m, 7.89 m and 8.4 6m; Part 2 =7.68 m, 7.89 m and 8.38 m, whereas maximum 7.5m is permitted)

the proposal maintains an appropriate low rise, two storey height level
- building height** (Part 1 9.15m and Part 2 9.25m whereas maximum 8.8m is permitted)

the proposed numeric roof height meets the general intent and purpose to achieve a low profile, low rise residential building and that the dwelling complies with the By-law in terms of the number of storeys, with modest floor-to-ceiling heights.

It is Mr. Romano’s opinion that the proposal is minor, creates no unacceptable adverse impact and is desirable for the use of the land. He concludes that the proposal and the applications for consent and associated variances satisfy all consent criteria, all four

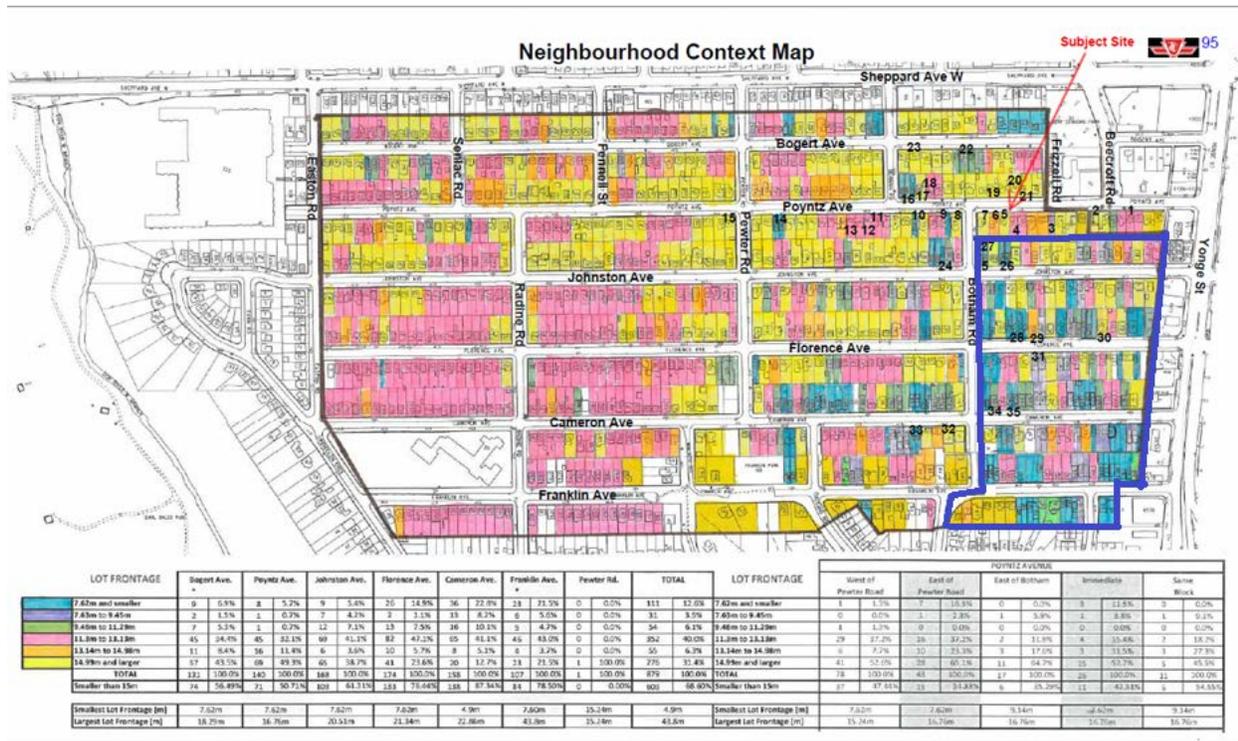
statutory tests, represent good planning and should be approved subject to standard conditions.

Ms. Diane Blair gave testimony based on the letter she submitted to the TLAB dated November 17, 2020, entered as Exhibit C. It is Ms. Blair's opinion that the variances requested are *not* minor and that they are excessive and unreasonable due to the proposed severance of single property that is too small to be subdivided. Ms. Blair expressed concern regarding the appearance of the structures and the limited separation between the structures that would "create the appearance of a single, massive building in terms of width, height and imposing scale." Ms. Blair stated that protecting the unique character of this distinctive enclave has been a point of note by members of the COA Decision Panel, which did not approve the last two very similar applications for the subject property.

She also asserted that the building height variances have been further increased since the application before the COA. Ms. Blair does not agree that the proposed redevelopment reflects and reinforces the physical characteristics of the neighbourhood.

ANALYSIS, FINDINGS, REASONS

It is readily apparent that there is a process of change happening in this broader neighbourhood as evidenced by the number of applications for severances and variances over the last few years. This shift is likely to be accelerated by the recent adoption of the "West Lansing" zoning by-law (By-law 644-2018) which allows reduced standards for as-of-right severance of some properties. The subject property is not located within that amended zoning by-law area, but its rear lot line forms part of the boundary of the area governed by the revised zoning standards. (Refer to Exhibit A page 5 for the limits of the West Lansing study area that I have inked in on the figure below).



As more severances and variances in the broader neighbourhood are approved, whether as-of-right, through the COA, or via appeal to the TLAB, the organic process of incremental change steadily influences the physical character of the neighbourhood. By reducing the lot frontage requirements from 15 m to 6.2 m (amongst other revised requirements) By-law 644-2018 is both a reaction to development pressures and may result in more severances of this nature, which in turn, levers an influence on the prevailing physical character.

I accept Mr. Romano's evidence that the majority of lots in the neighbourhood context have lesser frontages than the 15 m that is required by the Zoning By-law for the subject property and that there is a distributed mix of lot frontages found, especially in the blocks between Pewter Ave and Yonge St. I find that the physical character of the broader neighbourhood is not defined or characterized by 15 m or greater lot frontages. Nonetheless, the predominant physical character in the broader neighbourhood at this time is of lots with frontage greater than the 6.72 m that are proposed for the subject property. I do, however, concur with Ms. Blair that what she refers to as the "distinctive enclave" of the homes between Pewter and Botham, facing on to Poyntz Ave - the immediate context - has a physical character that *is* generally characterized by lot frontages of 15 m or greater.

OP Policy 4.1.5 requires that development in established Neighbourhoods will respect and reinforce the existing physical character of each geographic neighbourhood. In this neighbourhood of variable lot frontages, lot sizes and dwelling designs, I agree that "physical character" can encompass lots and designs as proposed for the subject

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property. However, I must consider the requirements of OP Policy with regard to the immediate context of the subject property as well, even as I am mindful that this application is subject to the pre-OPA 320 version of Policy 4.1.5.

There is a concentration of lots with 6.2 m frontage and below in the blocks that are closest to Yonge St. As might be expected, smaller lots and tighter fabric in neighbourhoods have tended to be located closest to major centres and corridors both by planning policy and by the redevelopment process. The subject property is located in the first block of Poyntz Ave off Yonge St and is within the capture area of a Major Transit Station Area, as defined by the Growth Plan, warranting higher population and employment densities. In the transition from the intensity of Yonge St to the neighbourhood characterized by large lots and detached dwellings, the first blocks west of Yonge St, (east of Botham Rd) are most immediately implicated in the transition from high intensity uses to Neighbourhood characteristics, followed thereafter by the blocks between Botham Rd and Pewter Rd.

From a Planning perspective, it is helpful to establish an idea of where the influence from the *Corridor* to the *Neighbourhood* ends. While it has been argued that line is east of Pewter Rd, or east of Botham Rd, I am of the opinion that the shadow of influence from the context of Yonge St and the North York City Centre should end at Botham Rd, and not extend further into the neighbourhood. Even with this stricter allowance, the subject property falls within this first block, between Botham Rd and Yonge St. In addition, I do not see that there is anything different about the terrain or planning context of this block of Poyntz Ave that has given rise to this “enclave” and I ascribe the fact that more severances have not manifested in this block to the generally sporadic nature of second-generation development. I therefore find that the physical character in the immediate context of the subject site is not distinct from the planned future and the physical character of the neighbourhood.

A final note regarding the analysis of the consent to sever application. The preceding analyses and findings are focused on the metric of the lot frontages in the neighbourhood. While the lot frontage is the aspect of the property that is most apparent and most impactful to the street and the neighbourhood, and therefore the physical character of the neighbourhood, the matter of lot size is a factor in this analysis since it is a constraint on the size of structure that can be appropriately accommodated on the property. The lot area(s) of this proposal are deficient, at 255.48 m², whereas the By-law requires a lot area of 550 m². I note that the proposal for the subject property would not comply with the requirements of the adjacent revised “West Lansing” by-law (By-law 644-20-18) either, which has a minimum lot size requirement of 300 m².

I note from Mr. Romano’s witness statement that fewer than 2% of the lots in the geographic neighbourhood are 255.48 m² or less. I am of the opinion that the reduced lot size can only be supported with the proviso that the proposed dwellings are appropriately scaled considering the undersized lot.

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In conclusion, for the reasons outlined above and with the qualifications stated, I find the proposal meets the criteria for consent to sever set out in s. 51(24) of the Act.

In addition to lot area and lot frontage, additional variances to the By-law are requested.

Chapter 10.20.30.40.(1), By-law No. 569-2013

The maximum permitted lot coverage is 30% of the lot area.

- The proposed lot coverage is 31.9% of the lot area (**Part 1 and 2**).

I find that the variance for lot coverage is appropriate for these smaller lots and appropriately allows for open space and other features on the properties.

Chapters 900.3.10(5) and 10.5.40.50(2), By-law No. 569-2013

The minimum required side yard setback is 1.8 m.

- The proposed east side yard setback is 0.6 metres to the proposed dwelling, front porch, and rear deck. The proposed west side yard setback is 1.2 metres (for **Part 1**).
- The proposed west side yard setback is 0.6 metres to the proposed dwelling and rear deck. The proposed east side yard setback is 1.2 metres to the proposed dwelling and front porch (for **Part 2**).

I find that the proposed side yard setbacks are cumulatively not appropriate or desirable. Adequate space between the building and the lot line on at least one side is required for access the rear yards and for building maintenance. Side yard setbacks of 0.6 m from the lotline between the newly created lots are acceptable but only if the west side yard setback for Part 1 and the east side yard setback for Part 2 are maintained at the required By-law minimum of 1.8 m. The refusal of variances for the west side yard setback for Part 1 and the east side yard setback for Part 2 maintains a more consistent rhythm with the existing streetscape.

Chapter 10.20.40.10.(2), By-law No. 569-2013

The maximum permitted height of all side exterior main walls facing a side lot line is 7.5 m.

- The proposed side main wall height is 8.46 m for a portion of one side main wall and 7.89 m and 7.68 m for the remaining portions of the side main walls (**Part 1**).
- The proposed side exterior main wall height is 8.38 m for a portion of the side main wall and 7.89 m and 7.68 m for the remaining portions of the side main walls (**Part 2**).

Section 13.2.6, By-law No. 7625

The maximum permitted building height is 8.8 m.

- The proposed building height is 9.15 m (**Part 1**).
- The proposed building height is 9.25 m (**Part 2**).

The harmonized City of Toronto Zoning By-law 569-2013 permits, for the subject property, the height of a sloped roof to be 10 m, but that requirement is coupled with a maximum permitted height of 7.5 m for side exterior main walls facing the side lot line. (The maximum height for a

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“flat” roof (10.20.40.(4)) is 7.2 m). The purpose of these dual requirements is to control the use of vertical space while accommodating different roof pitches. These provisions of By-law 569-2013 are under appeal and therefore the proposal is subject to the former North York Zoning By-law 7625, as amended. The maximum permitted building height for a sloped roof under North York Zoning By-law 7625 is 8.8 m and for a flat roof, 8 m. The height of walls is not regulated under the former North York Zoning By-law.

The proposed dwellings exceed the maximum permitted height of the former North York Zoning By-law. While the proposal complies with the maximum height for a sloped roof building under the harmonized City of Toronto By-law, it does not comply with the countervailing requirement that side exterior walls not exceed 7.5 m. I find that the requested variance to exceed the maximum permitted height of side exterior main walls not appropriate or desirable. I find the proposed building height to be appropriate only under the proviso that the heights of the exterior main walls remain within the maximums allowed by Zoning By-law No. 569-2013. The refusal of the requested variances for height of side exterior main walls reduces the massing and scale of the proposed buildings so that they would be less imposing to the street, more appropriate for the undersized lot, and would fit more harmoniously with the existing physical streetscape. It is my opinion with that the elimination of the variances for the side exterior main walls, the full height provision for a pitched roof allowed by the harmonized City of Toronto By-law, at 10 m, is appropriate and I find that the increase of the permitted height, to 10 m, to be minor and not require further notice as might otherwise be relevant under s. 45(18.1.1.) of the Planning Act.

For the reasons stated above, I find that the proposal is consistent with the 2014 Provincial Policy Statement (‘PPS’) and conforms to the Growth Plan for the Greater Golden Horseshoe for the subject area (‘Growth Plan’). With regard to the application for consent to sever, I find that the proposal meets the criteria set out in s. 51(24) of the Act and further, that the plan conforms to the Official Plan.

I find that with regard to the variances requested for;

- lot area,
- lot frontage,
- lot coverage,
- the east side yard setback for Part 1,
- the west side yard setback for Part 2, and
- along with a maximum building height of 10 m,

individually and cumulatively meet all of the four tests under s. 45(1) of the Act: that they are desirable for the appropriate development of the land, that they maintain the general intent and purpose of the Official Plan, and that they maintain the general intent and purpose of the Zoning By-laws.

For the requested variances to:

- the west side yard setback for Part 1,
- the east side yard setback for Part 2,
- the maximum permitted height of side exterior main walls facing a side lot line,

I find that these requested variances (west side yard setback for Part 1, east side yard setback for Part 2 and maximum permitted height of exterior main walls) are not desirable for the appropriate development of the land and that they do not maintain the general intent and purpose of the Zoning By-laws.

DECISION AND ORDER

The appeals from the decision of the Committee of Adjustment are allowed, in part and:

1. the application for consent to sever the subject property is granted subject to the conditions set out in Attachment A;
2. The variances to the appeals are allowed in part and the variances to the Zoning By-laws set out in Attachment A are authorized, subject to the conditions contained therein.

ATTACHMENT A

CONDITIONS OF CONSENT APPROVAL

The Consent Application is Approved on Condition

The TLAB has considered the provisions of Section 51(24) of the Planning Act and is satisfied that a plan of subdivision is not necessary. The TLAB therefore consents to the transaction as shown on the plan filed with the TLAB or as otherwise specified by this Decision and Order, on the condition that before a Certificate of Official is issued, as required by Section 53(42) of the Planning Act, the applicant is to fulfill the following conditions to the satisfaction of the Deputy Secretary-Treasurer of the Committee of Adjustment:

- (1) Confirmation of payment of outstanding taxes to the satisfaction of the Revenue Services Division, in the form of a statement of tax account current to within 30 days of an applicant's request to the Deputy Secretary-Treasurer of the Committee of Adjustment to issue the Certificate of Official as outlined in Condition 6.
- (2) Municipal numbers for the subject lots, blocks, parts, or otherwise indicated on the applicable registered reference plan of survey shall be assigned to the satisfaction of the Supervisor, Surveys, Engineering Support Services, Engineering and Construction Services.
- (3) One electronic copy of the registered reference plan of survey integrated to NAD 83 CSRS (3 degree Modified Transverse Mercator projection), delineating by separate Parts the lands and their respective areas, shall be filed with, and to the satisfaction of, the Manager, Land and Property Surveys, Engineering Support Services, Engineering and Construction Services.
- (4) One electronic copy of the registered reference plan of survey satisfying the requirements of the Manager, Land and Property Surveys, Engineering Support Services, Engineering and Construction Services shall be filed with the Deputy Secretary-Treasurer of the Committee of Adjustment.
- (5) Prepare and submit a digital draft of the Certificate of Official, Form 2 or 4, O. Reg. 197/96, referencing either subsection 50(3) or (5) of the Planning Act if applicable as it pertains to the conveyed land and/or consent transaction to the satisfaction of the Deputy Secretary-Treasurer of the Committee of Adjustment.

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- (6) Once all of the other conditions have been satisfied, the applicant shall request, in writing, that the Deputy Secretary-Treasurer of the Committee of Adjustment issue the Certificate of Official.
- (7) Within ONE YEAR of the date of the giving of this notice of decision, the applicant shall comply with the above-noted conditions.

APPROVED VARIANCES AND CONDITIONS OF VARIANCE APPROVAL:

71 Poyntz Avenue (Part 1)

(Being the Part on the west side of the property)

VARIANCES:

1. Chapter 10.20.30.10.(1), By-law No. 569-2013

The minimum required lot area is 550 m². The approved lot area is 255.48 m².

2. Chapter 10.20.30.20.(1), By-law No. 569-2013

The minimum required lot frontage is 15 m. The approved lot frontage is 7.62 m.

3. Chapter 10.20.30.40.(1), By-law No. 569-2013

The maximum permitted lot coverage is 30% of the lot area. The approved lot coverage is 31.9% of the lot area

4. Chapter 900.3.10(5) and 10.5.40.50(2), By-law No. 569-2013

The minimum required side yard setback is 1.8 m.

The approved east side yard setback is 0.6 m to the proposed dwelling, front porch, and rear deck.

- This variance for side yard setback is granted only on the condition that no other side yard setback is obtained for Part 1.

5. Section 13.2.6, By-law No. 7625

The maximum permitted building height is 8.8 m. A variance to allow a building height of 10 m is approved.

- The variance for building height is approved only on the condition that the maximum heights of all exterior main walls do not exceed the provisions of By-law 569-2013.

CONDITIONS:

1. The approval of the east side yard setback to 0.6 m is granted on condition that no other side yard setback is obtained for Part 1, 71 Poyntz Avenue.
2. The approval for maximum building height of 10 m is approved on condition that the maximum heights of all exterior main walls do not exceed the provisions of By-law 569-2013.
3. Prior to the issuance of a building permit, the applicant shall satisfy all conditions concerning City owned trees, to the satisfaction of the Director, Parks, Forestry & Recreation, Urban Forestry Services.
4. Where no street trees exist, the owner shall provide payment in an amount to cover the cost of planting a street tree abutting each new lot created, to the satisfaction of the General Manager, Parks, Forestry and Recreation.

71 Poyntz Avenue (Part 2)

(Being the Part on the east side of the property)

VARIANCES:

1. Chapter 10.20.30.10.(1), By-law No. 569-2013

The minimum required lot area is 550 m². The approved lot area is 255.48 m².

2. Chapter 10.20.30.20.(1), By-law No. 569-2013

The minimum required lot frontage is 15 m. The approved lot frontage is 7.62 m.

3. Chapter 10.20.30.40, By-law No. 569-2013

The maximum permitted lot coverage is 30% of the lot area. The approved lot coverage is 31.9% of the lot area.

4. Chapter 900.3.10(5) and 10.5.40.50(2), By-law No. 569-2013

The minimum required side yard setback is 1.8 m.

The proposed west side yard setback is 0.6 m to the proposed dwelling and rear deck.

- This variance for side yard setback is granted only on the condition that no other side yard setback is obtained for Part 2.

5. Section 13.2.6, By-law No. 7625

The maximum permitted building height is 8.8 m. The approved building height is 10 m.

- The variance for building height is approved only on the condition that the maximum

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heights of all exterior main walls do not exceed the provisions of By-law 569-2013.

CONDITIONS:

1. The approval of the west side yard setback to 0.6 m is granted on condition that no other side yard setback is obtained for Part 2, 71 Poyntz Avenue.
2. The approval for maximum building height of 10 m is approved on condition that the maximum heights of all exterior main walls do not exceed the provisions of By-law 569-2013.
3. Prior to the issuance of a building permit, the applicant shall satisfy all conditions concerning City owned trees, to the satisfaction of the Director, Parks, Forestry & Recreation, Urban Forestry Services.
4. Where no street trees exist, the owner shall provide payment in an amount to cover the cost of planting a street tree abutting each new lot created, to the satisfaction of the General Manager, Parks, Forestry and Recreation.

If difficulties arise regarding this Decision and Order, the TLAB may be spoken to.



A. Bassios
Panel Chair, Toronto Local Appeal Body