

DECISION AND ORDER

Decision Issue Date **Friday, April 16, 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): DARYLE MOFFATT, CITY OF TORONTO

Applicant: CUNHA DESIGN CONSULTANTS LTD

Property Address/Description: 38 THIRTY FIRST ST

Committee of Adjustment Case File: 17 186733 WET 06 CO, 17 186731 WET 06 MV, 17 186732 WET 06 MV

TLAB Case File Number: 18 173153 S53 06 TLAB, 18 242672 S45 06 TLAB, 18 242684 S45 06 TLAB

Hearing date: Monday, April 01, 2019
 Friday, August 02, 2019
 Wednesday, December 18, 2019
 Tuesday, April 14, 2020
 Tuesday, October 07, 2020
 Friday, October 09, 2020
 Thursday, January 14, 2021
 Monday, February 22, 2021

DECISION DELIVERED BY STANLEY MAKUCH

APPEARANCES

Name	Role	Representative
Cunha Design Consultants	Applicant	
Terra Heights Developments Inc	Owner	
City of Toronto	Appellant	Laura Bisset/ Roman Ivanov
Daryle Moffatt	Appellant	
Carmine Cesta	Party	Mary Flynn-Guglietti

Franco Romano	Expert Witness
Tom Bradley	Expert Witness
Max Dida	Expert Witness
Ian Gram	Expert Witness
David Godley	Participant
Alexander Donald	Participant
Catherine Rezler	Participant
Giselle Goncalves	Participant
Adam Kataoka	Participant
Christine Mercado	Participant

INTRODUCTION

This was a very long and rather complex hearing respecting whether to grant a consent to sever a lot in the Long Branch Neighbourhood south of Lakeshore Boulevard into two and to grant variances to construct a single detached dwelling with integral garage on each lot. Variances are required to permit the proposed lot frontages and to permit the proposed dwellings to be constructed on each lot. The consent was approved by the Committee of Adjustment but appealed by a neighbour. Variances were originally refused, then revised and approved and appealed by the City and the neighbour.

BACKGROUND

The consent and variances are opposed not only by neighbours but also by the Long Branch Neighbourhood Association, and the City of Toronto. The proponent was represented by legal counsel and an expert land use planner as was the City. The neighbours, the Neighbourhood Association and participants represented themselves. The proponent and the City also relied on the evidence of arborists. Neighbouring property owners also provided evidence. The consent and variances sought are attached as Appendix 1.

MATTERS IN ISSUE

The major matters in issue were not unusual: (1) was the frontage of each proposed lot, which was narrower than permitted by the bylaw, too narrow in that it did not respect and reinforce the physical character of the neighbourhood; and, (2) did each of the proposed dwellings, requiring a number of variances, including, FSI, side yard setbacks, and building length, respect and reinforce the physical character of the neighbourhood. These two issues were made more complex by two additional issues relating to: the application of Amendment 320 to the City's Official Plan; the applicability of the Long Branch Neighbourhood Guidelines which had been adopted by council; and Official Plan Policies and City Regulations related to the preservation of trees.

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

(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:

- o maintain the general intent and purpose of the Official Plan;
 - o maintain the general intent and purpose of the Zoning By-laws;
 - o are desirable for the appropriate development or use of the land;
- and
- o are minor.

EVIDENCE

The evidence was extensive in this hearing which lasted over 10 days. It is not necessary to repeat all the evidence in this decision as the written evidence is available online in the form of witness statements and disclosures and the proceedings are recorded. More importantly, the relevant evidence relating to the issues and this decision are summarized below.

With respect to first issue, lot frontage, the evidence of the planner for the proponent was clear and comprehensive and lead directly to the conclusion that the area was eclectic in nature; made up of large and small lots with a mixture of dwellings sizes. His expert opinion was that the lots with a proposed frontage of 7.6 m as opposed to the 12 m frontage required by the bylaw would respect and reinforce the eclectic physical character of the area which included lots of that size. His neighbourhood study supported that conclusion.

The evidence of the planner retained by the City, as a City staff planner was not called to give evidence, was not in total conflict with this evidence. In his opinion, the area had a “cottage feel” of a mixture of lot sizes and dwelling sizes and types. However, in his opinion, based on his neighbourhood study, lots with narrow frontages had smaller dwellings than proposed and narrow lots with larger dwellings, as proposed, are out of character with the neighbourhood. In summary his opinion was that the pattern in the area was one of small houses on large lots with wide frontages and that the proposal did not fit this pattern.

Both planners acknowledged that the fundamental provision of the Official Plan applicable in this case is policy 4.1.5 which basically provides that the proposal must respect and reinforce the character of the area. In particular, the massing and scale of the dwellings have to be considered as do the size and configuration of the lots. While their study areas, statistics and examples differed, their fundamental difference was their opinion on whether the proposal fit in the neighbourhood. The other witnesses were of the opinion that the proposal would not respect and reinforce the character of the neighbourhood.

Evidence respecting the zoning bylaw was similarly presented. The proponent’s planner noted and relied on the provision that the zoning bylaw, legalized all lot frontages existing at the time the bylaw was passed and, thus, narrow lots were acceptable. Therefore, such lots not only existed but were legal and approved by the zoning bylaw which conformed with the Official Plan. Those in opposition relied on the zoning bylaw prohibiting lot frontages of less than 12 m. The zoning bylaw, as the Official Plan, in their opinion did not intend lots to be 7.6 m.

With respect to the second issue there was also a divergence of opinion between the planner for the proponent and those witnesses in opposition. The planning evidence in favour of the application was based on the existence of dwellings of a similar and larger FSI (0.5 and 0.52) in the neighbourhood; as well as similar setbacks as proposed, while those in opposition gave evidence supporting the opinion that the permitted FSI of

0.35 was common as were more substantial setbacks. In the opinion of the opponents the higher FSI and smaller setbacks resulted in a lessening of the “cottage feel” of the neighbourhood as there would be an overbuilding on the narrow lots to be created.

Evidence was also given respecting the applicability of OPA 320 and whether it should apply and how the proposal fit into the neighbourhood both in its immediate context and the broader area. The proponent’s planner, unlike those in opposition, ultimately concluded that the proposal met the provisions.

With respect to the issue of the Lon Branch Neighbourhood Character Guidelines, the proponent’s planner gave evidence that the Guidelines did not have Official Plan status and were guidelines only. In any event, his evidence was that the proposal complied with the Character Guidelines when evaluated under the Guidelines. The opponents strongly suggested that the Guidelines should be applied to evaluate the proposal and that the proposal did not meet them.

The Guidelines themselves, approved by City Council state on page 1 that they “will serve as an implementation tool for the City of Toronto Official Plan and zoning bylaw in the evaluation of development applications”. The Guidelines further state that “The objective of the Guidelines is to identify the neighbourhood’s key character-defining qualities and to ensure that future developments are designed in a manner which is contextually sensitive and responsive the neighbourhood character in keeping with policy 4.1.5 of the City’s official Plan.” At page 24 they further state (in Section 2.2.1, Neighbourhood Configuration, Frontage and Severances) “Recent lot severances, which are disbursed throughout the neighbourhood, produce... narrow frontages (6.0 m - 8.0 m) that do not meet the intent of the Zoning Bylaw.”

Finally with respect to the issue of the trees, evidence was presented regarding the importance of the tree canopy to the character of the neighbourhood and the importance of protecting trees and preventing injury to them. The evidence was clear that trees are a part of the character of the neighbourhood and that the tree canopy was important part of that character. Two witnesses provided expert evidence regarding tree preservation. Both were arborists who provided evidence that certain trees would be destroyed and replaced in accordance with City bylaw requirements. Neither, however gave clear enough evidence as to the impact that Official Plan policy 3.1 which states that “building activities and changes to the built environment will be environmentally friendly based on:...(d) preserving and enhancing the urban forest by: i providing suitable growing environment for trees; ii increasing tree canopy and diversity; iii regulating the injury and destruction of trees.” It was, however, clear that trees would be destroyed and replaced with smaller trees and that that the proposal would have an immediate impact on the tree canopy.

My own visit to the site and the neighbourhood confirmed that area does indeed have a cottage like character with a mixture of large and small lots. Houses with the appearance and size of the proposed dwellings on lots with small frontages are not common and small houses on large lots make up part of the character of the area.

Although my visit was in the winter it is clear from, photos presented at the hearing and from visiting the area that trees and their canopies help form the character of the area.

ANALYSIS, FINDINGS, REASONS

Based on the evidence presented and my visit to the site and the area I find that the consent and variances should not be approved. I reach these conclusions for a number of reasons.

Firstly, as stated, my visit confirms, as a result of my observation, the evidence of those is opposition. The proposed dwellings on the lot frontages requested would not fit the character of the area. Indeed, rather than respecting and reinforcing the character of the area they would diminish its cottage like atmosphere and reduce its feeling of openness and harmony.

I find this regardless of the numerical percentages of large and small lots. This is a subjective rather than an objective judgement. I also find that the Official Plan policies as amended by OPA 320 applies and that the proponent was aware of the policies and indeed gave evidence that the proposal conformed to OPA 320. I do not agree that the prevailing character of the area, either in the immediate or wider context, includes large homes on small lot frontages. In this case lot size is not relevant as it is not visible from the street.

I also find that the Long Branch Neighbourhood Character Guidelines are very helpful and should be used to assist in the evaluation of the proposal. The proponent was aware of them in preparing for the hearing and also evaluated the proposal using the Guidelines. The Guidelines are, indeed, a very useful evaluation tool in addressing consent and variance applications as they relate to the Official Plan and Zoning Bylaw. In applying the Guidelines I find that the statement in the Guidelines noted above, that narrow frontages of 6 m - 8 m "...do not meet the intent of the Zoning Bylaw", is very helpful in determining the general intent and purpose of the Zoning Bylaw; and, since that Bylaw must conform with the Official Plan under s. 24 of the *Planning Act*, the Guidelines are also very helpful in determining the general intent and purpose of the Official Plan. My own observations that the physical character of the area is not one of narrow lots or one of narrow lots with large dwellings conform with this statement in the Guidelines. The Guidelines do not describe the character area as an eclectic one in which such lots and dwellings should be permitted and my observations along with the evidence of many witnesses confirm this.

As a result, I find that the proposal does not conform with the Official Plan as required by s 51 (c) and the variance required to sever the lot does not maintain the general intent of the Official plan and Zoning Bylaw.

While this finding is sufficient to refuse all aspects of the proposal, I would also note that I have serious a concern regarding tree preservation. I believe the general intent of the policy 3.1 of the Official Plan referred to above is to require the design of a

dwelling to take into account tree protection and tree canopy preservation when the design is being initially prepared and not after the design has been completed. The design of a dwelling from its inception should attempt to ensure tree preservation and canopy enhancement. In this case such an attempt was not undertaken and I do not have sufficient evidence before me that the relevant tree preservation policies in the Official Plan have been addressed adequately. Thus, this proposal fails to maintain the general intent and purpose of policy 3.1 of the Official Plan.

DECISION AND ORDER

The appeals are allowed and the consent and variances are refused.

X 

S. Makuch
Panel Chair, Toronto Local Appeal

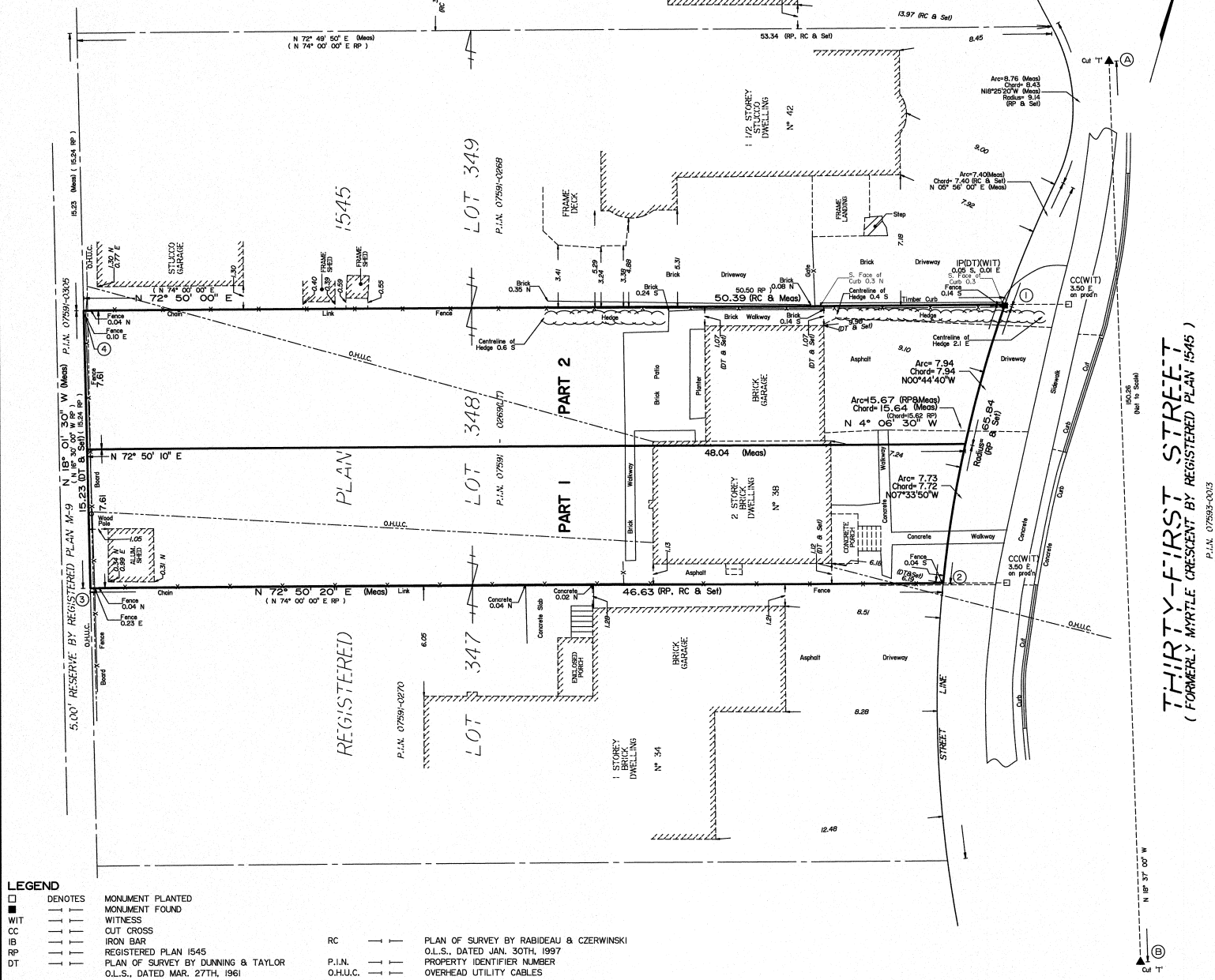
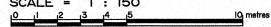
APPENDIX 1

CA Draft R Plan

Minor Variances

PLAN OF SURVEY OF
LOT 348
REGISTERED PLAN 1545
 CITY OF TORONTO
 (FORMERLY CITY OF ETOBICOKE)
 SCALE = 1 : 150

METRIC
 DISTANCES AND COORDINATES SHOWN HEREON
 ARE IN METRES AND CAN BE CONVERTED
 TO FEET BY DIVIDING BY 0.3048



I REQUIRE THIS PLAN TO BE DEPOSITED UNDER THE LAND TITLES ACT.

PLAN 66R-

RECEIVED & DEPOSITED

DATE : _____

DRAFT

PETER J. HOMER
 ONTARIO LAND SURVEYOR

DATE : _____

DRAFT

REPRESENTATIVE FOR LAND REGISTRAR
 FOR THE LAND TITLES DIVISION OF THE
 TORONTO REGISTRY OFFICE (NO. 66)

SCHEDULE

PART	REG'D PLAN	LOT(S)	PROPERTY IDENTIFIER	AREA (m ²)
1	1545	All of 348	All of 07591-0269(LT)	359.9
2				374.1

BEARING NOTE
 BEARINGS ARE MTM GRID, DERIVED FROM OBSERVED REFERENCE POINTS A & B, BY REAL TIME NETWORK (RTN) OBSERVATIONS MTM ZONE 10, NAD83 (CSRS) (2010.0)

DISTANCES SHOWN HEREON ARE GROUND DISTANCES AND CAN BE CONVERTED TO GRID DISTANCES BY MULTIPLYING BY THE COMBINED SCALE FACTOR WHICH IS 0.99999.

CO-ORDINATE TABLE

OBSERVED REFERENCE POINTS : MTM ZONE 10 NAD83 (CSRS) (1997.0)
 COORDINATES TO URBAN ACCURACY PER SEC 14 (2) OF O.REG. 216/10

POINT	NORTHING	EASTING
A	4 828 036.65	302 402.52
B	4 827 894.26	302 450.48
1	4 828 022.22	302 400.87
2	4 828 006.62	302 401.99
3	4 827 992.86	302 357.43
4	4 828 007.34	302 352.72

COORDINATES CANNOT, IN THEMSELVES, BE USED TO RE-ESTABLISH CORNERS OR BOUNDARIES SHOWN ON THIS PLAN.

- LEGEND**
- DENOTES MONUMENT PLANTED
 - MONUMENT FOUND
 - WIT WITNESS
 - CC CUT CROSS
 - IB IRON BAR
 - RP REGISTERED PLAN 1545
 - DT PLAN OF SURVEY BY DUNNING & TAYLOR O.L.S., DATED MAR. 27TH, 1961
 - RC PLAN OF SURVEY BY RABIDEAU & CZERWINSKI O.L.S., DATED JAN. 30TH, 1997
 - P.I.N. PROPERTY IDENTIFIER NUMBER
 - O.H.U.C. OVERHEAD UTILITY CABLES

THIRTY-FIRST STREET
 (FORMERLY MYRTLE CRESCENT BY REGISTERED PLAN 1545)
 P.I.N. 07593-0013

SURVEYOR'S CERTIFICATE

I CERTIFY THAT :

- THIS SURVEY AND PLAN ARE CORRECT AND IN ACCORDANCE WITH THE SURVEYS ACT, THE SURVEYORS ACT, THE LAND TITLES ACT AND THE REGULATIONS MADE UNDER THEM.
- THE SURVEY WAS COMPLETED ON MARCH 1ST, 2017.

MARCH 2ND, 2017 DATE

PETER J. HOMER
 Ontario Land Surveyor

LSG | LAND SURVEY GROUP
 ONTARIO LAND SURVEYORS

777 THE QUEENSWAY, UNIT 1, TORONTO, ONTARIO, M8Z 1N4
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DRAWN : R. M. RILLERA CHECKED BY : P.J.H. PLAN # : LSG-3918

REQUESTED VARIANCE(S) TO THE ZONING BY-LAW FOR PART 1

1. Section 10.20.30.20.(1).(A), By-law 569-2013

The minimum required lot frontage is 12 m. The new lot frontage will be 7.61 m.

2. Section 10.20.30.10.(1)(A), By-law 569-2013

The minimum required lot area is 370 m². The new lot area will be 359.9 m².

3. Section 10.20.40.40.(1).(A), By-law 569-2013

The maximum permitted floor space index is 0.35 times the area of the lot (125.96 m²). The proposed dwelling will have a floor space index equal to 0.52 times the area of the lot (187.72 m²).

4. Section 10.20.40.70.(3).(C), By-law 569-2013

The minimum required side yard setback is 1.2 m. The proposed dwelling will be located 0.61 m from the north side lot line and 0.91 m from the south side lot line.

5. Section 10.20.40.20.(1), By-law 569-2013

The maximum permitted dwelling length is 17 m. The proposed dwelling will have a length of 17.3 m.

6. Section 10.5.40.60.(7).(B), By-law 569-2013

The minimum required side yard setback for eaves is 0.3 m. The eaves of the proposed dwelling encroach 1.02 m from the required side yard setback, project 0.43 m and will be located 0.19 m from the north side lot line.

REQUESTED VARIANCE(S) TO THE ZONING BY-LAW FOR PART 2

1. Section 10.20.30.20.(1).(A), By-law 569-2013

The minimum required lot frontage is 12 m. The new lot frontage will be 7.61 m.

2. Section 10.20.40.40.(1).(A), By-law 569-2013

The maximum permitted floor space index is 0.35 times the area of the lot (130.93 m²). The proposed dwelling will have a floor space index equal to 0.5 times the area of the lot (187.74 m²).

3. Section 10.20.40.70.(3).(C), By-law 569-2013

The minimum required side yard setback is 1.2 m. The proposed dwelling will be located 0.61 m from the south side lot line and 0.91 m from the north side lot line.

4. Section 10.20.40.20.(1), By-law 569-2013

The maximum permitted dwelling length is 17 m. The proposed dwelling will have a length of 17.3 m.

5. Section 10.5.40.60.(7).(B), By-law 569-2013

The minimum required side yard setback for eaves is 0.3 m. The eaves of the proposed dwelling encroach 1.02 m from the required side yard setback, project 0.43 m and will be located 0.19 m from the south side lot line.