

# INTERIM DECISION AND ORDER

**Decision Issue Date**      Friday, July 09, 2021

PROCEEDING COMMENCED UNDER Section 53, subsection 53(19), Section 45(12), subsection 45(1) of the Planning Act, R.S.O. 1990, c. P.13, as amended (the "Act")

Appellant(s): LUCAS BASCIANO

Applicant(s): NICK BASCIANO

Property Address/Description: 37 GORT AVE

Committee of Adjustment File

Number(s): 20 186495 WET 03 CO, 20 186508 WET 03 MV, 20 186525 WET 03 MV

**TLAB Case File Number(s): 21 115156 S53 03 TLAB, 21 115157 S45 03 TLAB, 21 115158 S45 03 TLAB**

**Hearing date: June 30, 2021**

**DECISION DELIVERED BY TED YAO**

## REGISTERED PARTIES AND PARTICIPANTS

Name	Role	Representative
Nick Basciano	Applicant	
Rose Trenchard	Owner/Primary Owner	
Lucas Basciano	Appellant	Amber Stewart
Franco Romano	Expert Witness	

## INTRODUCTION

Mr. Basciano wishes to sever his lot at 37 Gort Ave and construct two semidetached houses, one on each severed lot. Currently the lot frontage is 13.33 m (43.7 ft) and each new lot will be 6.67 m if the severance is granted. The zoning plan examiner stated that By-law requires 18 m, although as I explain later on page, there is some difficulty with this. To accomplish what he wants to do, Mr. Basciano must obtain a severance and the variances in Table 1 below. He was unsuccessful at the

Committee of Adjustment in January 2021, Mr. Basciano appealed, and so this matter comes before the TLAB.

After the Committee hearing, there were changes in the requested variances which I will outline in the Analysis Section. Because these changes occurred after the Committee of Adjustment hearing, Ms. Stewart requested an order under s. 45(18.1.1) of the *Planning Act*<sup>1</sup>, which permits an owner to dispense with notice of such after the fact changes, if the decision-maker considers that the new modifications are minor.

<b>Table 1. Variances sought for 37 Gort Ave</b>			
		Required/Permitted	Proposed (Parts 1 (south) and 2 (north))
<b>Variances from Zoning By-law 569-2013</b>			
1	Frontage	18 m (59 ft) for a semi-detached house (see footnote)	Parts 1 and 2 – 6.66 m (21.9 ft)
2	Lot Area	665 m <sup>2</sup>	Parts 1 and 2 – 270.2 m <sup>2</sup>
3	Coverage	0.33 times the lot area	Both Parts 0.373 times the lot area
4	Floor Space Index	0.40	0.65
5	Side Yard Setback	1.5 m	Both Parts .91 m (but new plans will offer neighbours more setback)
6	Building Length	17 m	Both Parts 18.28 m (Originally 17.98 m)
7	Building Depth	19 m	Part 1 19.3 m; Part 2 19.7 m (Originally no depth sought)

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<sup>1</sup> Both length and depth refer to a front to back measurement. Depth is measured in relation to neighbours' front walls and attempts to prevent a building that is too far back from the street as compared to "length", which tries to prevent a building that is too long front to back.

## MATTERS IN ISSUE

This case involves a request for a severance and variances and the *Planning Act* has separate tests for each and does not contain any integrated test when both are sought. All TLAB decisions are subject to higher level Provincial Policies. Both the Provincial Policy Statement and the Provincial Growth Plan contain a high level of generality. For example, the Policy Statement discourages lot creation on prime agricultural land and prefers municipal water and sewage over private systems; neither policy is relevant to a development in Toronto. The Growth Plan which refines the Provincial Policy Statement with special reference to urban and rural lands from Peterborough to Niagara Falls.

### Severance test

The test for a severance is found in sections 53(12) and 51(24) of the *Planning Act*. S. 53(12) permits an owner of land to apply to the Committee of Adjustment for a severance (called a “consent”), using the same criteria as if the owner were applying for a plan of subdivision. S. 51(24) lists fifteen factors the Committee must have “have regard to” but the extent of this regard is left to be weighed on the particular circumstances of each severance. Some of the other factors to be considered are important, but generally stated, such as “the welfare of the present and future inhabitants”. Others are inapplicable, such as the adequacy of municipal services or the adequacy of school sites are rarely deciding factors for a single lot severance. The factors that are typically most relevant in an urban and built up area are set out in 51(24)(c) and (f):

- Official Plan conformity;
- the “dimensions and shapes” of the lots; . . .

### Variance tests

The variances from Zoning By-law 569-2013 must cumulatively and individually:

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

### Official Plan

The *Planning Act* requires compliance with the Official Plan for both issues. For a severance, I must have regard as to whether it “conforms “ to the Official Plan,

whereas for the variances, I should be of the opinion that the variances maintain the general intent of the Official Plan. Second, the “dimensions” of the lots appear specifically as a criterion in 51(24)(f) of the *Planning Act* for a severance whereas for the variances, I am to consider the “prevailing size and configuration of lots”. The tests are similar but not identical.

The proponent (Mr. Basciano) must satisfy the decision-maker that these tests are met; there is no right to a variance or a severance.

## **EVIDENCE**

I qualified Mr. Romano as an expert witnesses in land use planning. No one else gave evidence. However, I reviewed the concerns expressed in writing by Urban Forestry and the Planning Department. Neither department appeared.

## **Member’s Site visit**

As required by my conditions of employment I visited the site for the sole purpose of better assessing the evidence given at the hearing.

## **ANALYSIS, FINDINGS, REASONS**

I first consider the Growth Plan, then changes to the design after the Committee of Adjustment decision and my rationale for an order under s. 45(18.1.1) of the *Planning Act* dispensing with further notice. I then consider the City concerns as expressed in writing and finally compare two other comparable semis which have been built on lots of similar size to Mr. Basciano’s.

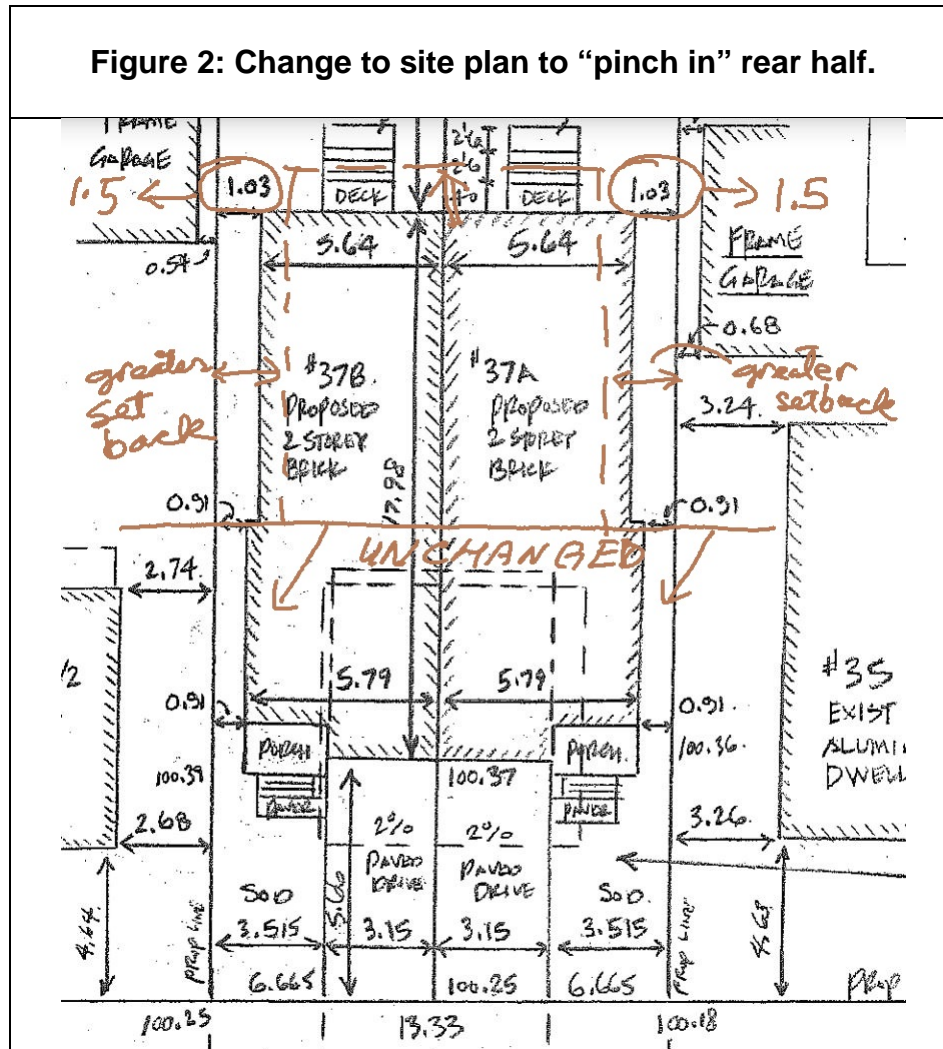
## **Provincial Policy**

Under s. 2.2.4.2 of the Growth Plan, Toronto is required to plan for minimum density targets of 150 residents per hectare, within walking distance of Go stations (“major transit station areas”) on “priority transit corridors”.<sup>2</sup> This site is two blocks north

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<sup>2</sup> For major transit station areas on priority transit corridors [that is the line from Union Station to Hamilton] . . . , [Toronto] . . . , will delineate the boundaries of major transit station areas in a

of the Long Branch Go Transit station, (across Alcan and Enfield Ave) that meets these criteria. I find this lot is within walking distance and that the proposal is therefore consistent with and conforms to higher level Provincial policies.



**Order under 45(18.1.1) of the *Planning Act***

Mr. Basciano's design has had three iterations:

transit-supportive manner that maximizes the size of the area and the number of potential transit users that are **within walking distance** of the station. (my bold)

A: the front face of the two buildings was exactly even with the adjoining front walls of the neighbours' houses;

B: At the request of the City, the front wall was moved back a metre. This allowed for a car parked on the driveway to be located entirely on private property and yet was commensurate with the range of varying front yard depths for Gort Avenue.

C: At my suggestion, Mr. Basciano made two further "tweaks". He has agreed to shrink the driveway width to 2.6 m, in order to allow for more soft landscaping in the front yard. This does not affect any variance but will be controlled by a condition when the final order is issued. The second modification will be to increase the side yard setback but increase the building length in compensation.

The changes to side and building length are shown on Figure 2 (previous page). Because the side yards at the front of the building are unchanged, the side yard setback variance of 0.91 will remain. The change I suggested will be controlled by a new side plan and that is the reason for this being an interim decision; new plans have to be drawn up and everything double checked with the plans examiner. In order to keep the "before" and "after" square footage the same, I am prepared to decide that Mr. Basciano would be permitted to increase the building length from 17.98 m to 18.38 m. For Design "B", there was no depth variance, now there will be one. Overall, this is a better design for the neighbourhood and respects the current pattern of ample spaces between buildings on Gort Ave.

The jurisprudence<sup>3</sup> says that where variances are eliminated or reduced, this will automatically be considered minor and no further circulation is required under s 45(18.1.1) of the *Planning Act* is needed. In my estimation, because this improves the situation for the neighbours, I find the changes are minor and an overall "betterment" even though a new variance is introduced.

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<sup>3</sup> *Bickham v. Hamilton (City)*, 2016 CanLII 72356 (ON LPAT) "The Board found that the second variance of the side yard would, escalate, rather than diminish, the potential impact of the sunroom addition, an outcome clearly at odds with the intent and purpose of s. 45(18.1.1) . [...] *Serpa v Toronto (City)*, 2017 CanLII 74744 (ON LPAT) "This revision to the variances, pursuant to s. 45(18.1.1) of the *Act* was allowed because it involved a reduction of the requested variances. . ." *Dong v. Toronto (City)*, 2016 CanLII 8496 (ON LPAT) The Board finds that as the application as modified, represents a betterment in the relief being sought, pursuant to s. 45(18.1.1) of the *Planning Act* , no further notice is required. [...] The Board explained that not only is this common practice, but it is also something that is permitted by the *Act* (s. 45(18.1.1) ).[...]

### Urban Forestry concerns

Urban forestry was concerned that the increased front yard decreased soft landscaping, although Mr. Romano states this was misunderstood and actually increased soft landscaping because a deeper front yard offers more opportunity for soft landscaping. The agreed to change by Mr. Basciano to narrow the driveways increases soft landscaping even further .

### Planning Dept concerns

The key Official Plan policy is that the proposal must fit into the physical characteristics of the neighbourhood, while recognizing that the neighbourhood is evolving from a postwar lotting pattern and low density forms to higher densities.

The zoning is RM with an exception for this area of South Alderwood. It requires 18 m lot frontage<sup>4</sup> for the pre-severance lot containing a semi-detached house<sup>5</sup>. The Planning Department considered this to be equivalent to 9 m for each semi and pointed out that the present smallest frontages are 7.47 m. These frontages area even smaller, at 6.66 m<sup>6</sup>. Mr. Romano agreed that this statement is true, but he said this fails to take into account the lot is located near the Go transit station. Also, the present bungalow

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<sup>4</sup> B) The minimum **lot frontage** is:

- (i) 12.0 metres for a **detached house**;
- (ii) 10.5 metres for each **dwelling unit** of a **semi-detached house**;
- (iii) 15.0 metres for a **duplex**;
- (iv) 18.0 metres for a **triplex**; and
- (v) 21.0 metres for a **fourplex**;

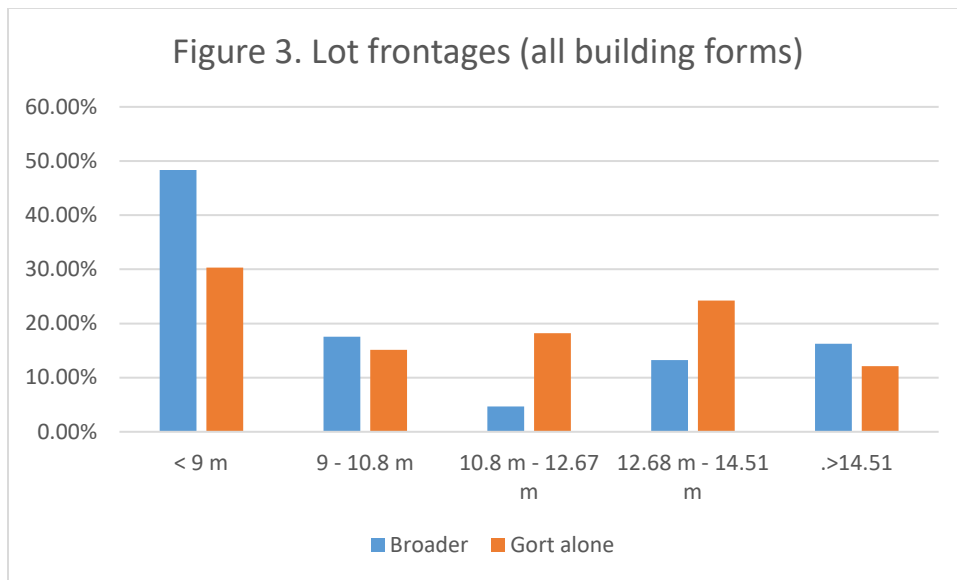
<sup>5</sup> Semi-Detached House means a building that has two dwelling units, and no dwelling unit is entirely or partially above another

<sup>6</sup> Staff are of the opinion that the two proposed lots, each with frontages of 6.66 metres are **not** in keeping with the prevailing character of the neighbourhood, which is composed of lots with larger frontages. Specifically, within the immediate context, which the Official Plan refers to as the properties that face the same street as the proposed development in the same block and the block opposite the proposed development. Within the immediate context there are no lots that have frontages measuring less than **7.47 metres**. (my bold) The lots within the immediate block consist of frontages measuring between 7.47 and 15.4 metres. Further, staff notes that though there are examples of lots developed with semidetached dwellings within the broader context of the lot study area, the lot frontages for these lots range between 7.62 and 12.19 metres. Additionally, there is only one semidetached dwelling within the immediate context, and each lot has a frontage measuring 9.14 metres

has two rear yard buildings; one a garage and the other has habitable space. While the existing bungalow has a frontage of 13.33 m and thus complies with the zoning requirement, if the second accessory building were included and considered a house, it would have zero frontage. Mr. Romano said that all forms of buildings were typically on smaller than permitted frontages: 88% of semis; 33% of detached; and all multiplexes were smaller than the by-law standard.

The Official Plan requires that the proposal be measured against an immediate context (Gort Ave itself) and a “larger context” of a few blocks in all directions. Mr. Romano’s lot frontage distributions bear out his assertion and I find this to be true — that the prevailing lotting patterns for semis and form of multi-residential are on smaller fronts and the dimensions and shapes of these lots are appropriate in this context.

Figure 3 shows percentages of lots having the range of frontage mentioned. The left bar is for the “broader context” (536 properties); the right bar is for Gort Avenue alone (33 properties). I accept Mr. Romano’s choice of study areas and refer the reader to footnote 4 for the range of zoning requirements.



There are other examples of multiple-unit dwellings in this area, for example 26 Gort, which is 15.24 m frontage, but has the same 18 m minimum frontage requirement.

In my view, within this context of generally sub-sized frontages as depicted in Figure 3, the critical factor is that a **semidetached** design has been chosen, which suggests that the although the dwellings are not affordable, they will likely be more



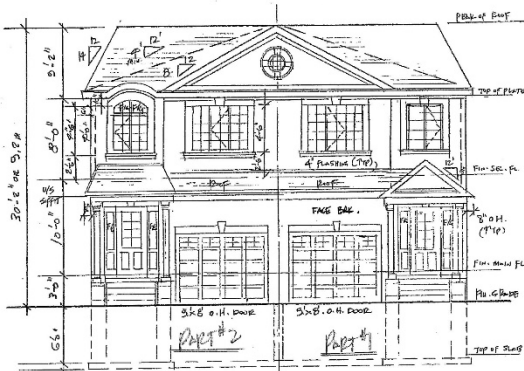




Fig 4. Front elevation

affordable than two single detached homes. I find as well that a pair of semis is a more efficient use of land and responds more fully to Provincial and Official Plan policies encouraging integration of land use and transit.<sup>7</sup> It also better meets the other variance tests as being minor and an appropriate development of the land.

**Two nearby examples**

Figure 4 to the left shows what Mr. Basciano proposes as the front elevation. There are two other similar buildings in close proximity and with comparable frontages.

<b>Figure 5. Comparable properties</b>	
 <p>16. 88, 90 Gort Ave.</p>	 <p>78 A and B Foch</p>

#88-90 Gort is an earlier approval, with no date given. Mr. Romano lists the frontages as 6.73 for both units.

<sup>7</sup> 2.2 Structuring Growth In the City: Integrating Land Use And Transportation

In keeping with the vision for a more liveable Greater Toronto Area, future growth within Toronto will be steered to areas which are well served by transit, the existing road network and which have a number of properties with redevelopment potential.

# 78A and B Foch (right) is a 2018 refusal by the Committee. In March 2019, TLAB member Makuch reversed the Committee refusal and it is now built (June 2021). The FSI is 0.67 and frontages are 6.75 m (v 6.66 for the subject). Mr. Romano was the planner in that TLAB hearing and he says the same Acting Director of Community Planning had no objection to the lot frontages in her report.

The subject proposal has superior massing; giving the appearance of a two storey building at 37 Gort whereas the photos depict a current two storey-over-garage design, a three storey appearance. As I stated, the most compelling argument in favour of the severance and variances is the semidetached design. These two examples illustrate that the Basciano design will fit in and given in that it is less aggressive than the two already built examples, will reinforce the existing physical pattern in a neighbourhood in transition.

Therefore, I find that the Official Plan test for severance and variances of respecting and reinforcing the existing physical character is met. I will await revised plans before issuing a final order.

## ORDER

I make an Order under s. 45(18.1.1) of the *Planning Act* that the changes are minor and no further notice is required.

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Ted Yao  
Panel Chair, Toronto Local Appeal Body