

# DECISION AND ORDER

**Decision Issue Date**      Wednesday, October 20, 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): SEPEHR ZIAIE

Applicant(s): MARCUS GAGLIARDI

Property Address/Description: 83 FLORENCE AVE

Committee of Adjustment File

Number(s): 20 201757 NNY 18 CO, 20 201762 NNY 18 MV, 20 201765 NNY 18 MV

**TLAB Case File Number(s): 21 122171 S53 18 TLAB, 21 122172 S45 18 TLAB, 21 122173 S45 18 TLAB**

**Hearing date: July 7, 2021 AND September 9, 2021**

**Deadline Date for Closing Submissions/Undertakings: September 23, 2021**

**DECISION DELIVERED BY D. LOMBARDI**

## **REGISTERED PARTIES AND PARTICIPANTS**

Applicant	MARCUS GAGLIARDI
Appellant	SEPEHR ZIAIE
Appellant's Legal Rep.	MARISA KEATING
Party	CITY OF TORONTO
Party's Legal Rep.	JASON DAVIDSON
Participant	MARSHALL MEDNICK
Expert Witness	MICHAEL ROMERO
Expert Witness	ELDON THEODORE

## **INTRODUCTION**

This is an appeal from a decision of the North York Panel of the City's Committee of Adjustment (COA) refusing a severance of the lot at 83 Florence Avenue (subject property) and associated variance permissions to each of the two proposed lot so created (Applications).

The subject property is located on the south side of Florence Avenue, southwest of Yonge Street and Sheppard Avenue West, within the Willowdale are of the City as specifically within the Lansing-Westgate Neighbourhood. It is designated *Neighbourhoods* in the City Official Plan (OP) and zoned RD(f12.0; a370) under the City's harmonized Zoning By-law 569-2013 (new By-law) and R6 under the former City of North York Zoning By-law 7625 (former By-law).

The Applicant/Appellant/Owner (these terms will be used interchangeably) in this matter, Sepehr Ziaie, and the City which elected Party status and is in opposition, were represented by counsel and each provided land use planning opinion in respect of their positions on the appeals. The only other person in attendance was Marshall Mednick, who elected Participant status after the due date for the election of status as outlined in the Notice of Hearing issued on March 19, 2021.

At the outset, I indicated that I had visited the subject property, walked the neighbourhood, and had generally familiarized myself with the pre-filed materials, but that the matters of interest to the Parties needed to be brought forward as part of the specific evidentiary record.

The COA had before it an application for consent to sever the subject property into two undersized lots each with a lot frontage of 7.62 m and the lot to be conveyed (Part 1) having a lot area of 299.4 m<sup>2</sup> and the lot to be retained (Part 2) having a lot area of 299.8 m<sup>2</sup>. The Applicant also filed applications for a total of fourteen (14)

variances to construct a new 3-storey dwelling on each of the anticipated newly created lots.

## **BACKGROUND**

The hearing of this matter occurred by electronic (remote) Hearing over two, non-consecutive days on July 7, 2021, and September 9, 2021. In attendance virtually via WebEx were Mr. Ziaie, Ms. Marisa Keating, the Owner's legal Representative (Cassels Brock & Blackwell LLP), and Mr. Eldon Theodore, the Owner's expert land use planner (MHBC Planning Limited).

Also, in attendance were Mr. Jason Davison, the City's legal Representative, and Mr. Michael Romero, the City's land use planning expert. Mr. Marshall Mednick, a neighbour and Participant, was also in attendance but only on Hearing Day 1.

Prior to the hearing of evidence, I was required to deal with a preliminary matter raised by Ms. Keating. She objected to Mr. Mednick's participation in the Hearing given that he was late in filing his intention to elect Participant status (Form 4) with the TLAB. That filing was due by no later than April 19, 2021, but Mr. Mednick, who is in opposition to the Applications, filed his Form 4 on May 19, 2021, a full month after the due date.

Mr. Mednick advised that he was not familiar with the TLAB process and apologized for the late filing of his Election form.

On my inquiry as to the City's position with respect to Mr. Mednick's presence and participation in the Hearing, Mr. Davidson advised that the City had no objection to his continued presence and to making a Participant's statement at the appropriate time.

After considering the position of all Parties, I ruled that Mr. Mednick would be allowed Participant status in the Hearing. I noted that the TLAB is supportive of hearing from all those who would like to participate in any matter before the Tribunal and considers this participation to arrive at a fulsome consideration and disposition of appeals before it.

For that reason, I advised that Mr. Mednick would be allowed to make a statement at the appropriate time and that his statement would go to weight. However, I also advised him that he could expect that Ms. Keating would be given an opportunity to cross-examine him, if necessary, and that I would allow some latitude in that effort. In the end, Mr. Mednick did not attend Hearing Day 2 and, therefore, he provided no oral Participant's statement to the Tribunal in this matter.

### ***Proposal***

The Applicant is proposing to demolish the existing one and a half storey home, sever the property into two parcels and construct a new, three-storey residential dwellings on each of the newly created lots. However, the original Plans (Exhibit 2, Tab

8) and the variances that were before the COA have now been revised by the Applicant since the Applications were refused by the Committee on February 11, 2021.

As part of the circulation of the original Application, the City Community Planning Department reviewed the Plans and prepared Staff Reports (Exhibit 2, Tabs 10, 12, and 13) recommending refusal of the Applications. The City Report dated February 1, 2021, stated that City Planning Staff were of the opinion that the requested variances and consent are not in keeping with the general intent of the Official Plan and Zoning By-law and should be refused.

The Committee also received four (4) letters of support from neighbours for the proposal. The COA received one additional letter of support (87 Florence Ave.) but with expressed concerns related to privacy. In that letter, the abutting neighbour requested that the Applicant “flip” the elevated rear deck to the east side of the rear elevation, prepare a landscape plan, and provide further clarification regarding the dimensions of the proposed windows along the westerly façade of the proposed home on Part 1.

Since the COA hearing, the Applicant has revised their proposal to address City staff and residents’ concerns. The revised Plans and Zoning Notices showing the revised proposal are included in Exhibit 2 at Tabs 17 and 18, respectively. The resulting changes include:

- *Reduction in the maximum building height from 9.58 m to 9.28m for Part 1 and from 10.02m to 9.21m for Part 2 under By-law 7625;*
- *Reduction in the maximum wall height from 8.87m to 8.56m for both parts under By-law 569-2013; and,*
- *Reduction in Lot Coverage from 32.38% to 32% for both parts under By-law 569-2013.*

The revised proposal, however, will continue to support the original consent to sever the subject property into two lots as described above.

The Parties in this matter had pre-filed numerous evidentiary materials in support of their respective positions. The following list represents the documents filed and entered into evidence during the Hearing and identified with an exhibit identifier:

- Exhibit 1 – Site Plan Drawings – Part 1 & 2 (May 13, 2021)
- Exhibit 2 – Applicant’s Document Disclosure Book (May 18, 2021)
- Exhibit 3 – Mr. Theodore’s Expert Witness Statement (May 18, 2021)
- Exhibit 4 – Mr. Theodore’s Responding Expert Witness Statement (June 2/21)
- Exhibit 5 – Committee of Adjustment Decision Analysis Chart (Appendix A)
- Exhibit 6 – Comparative Elevations (Ex. 3, Appendix E)
- Exhibit 7 – Mr. Romero’s Expert Witness Statement (May 18, 2021)
- Exhibit 8 – City’s Document Disclosure Book (May 18, 2021)
- Exhibit 9 – City Planning Staff Report – Expanding Housing Options in

Neighbourhoods (June 26, 2021)  
Exhibit 10 – City Planning Staff Report – Expanding Housing Options in  
Neighbourhoods (June 14, 2021)  
Exhibit 11 – OMB Decision Re Zoning By-law 569-2013 (March 2018)  
Exhibit 12 – LPAT Decision Re Zoning By-law 569-2013

## **MATTERS IN ISSUE**

The Applicant/Appellant supports the approvals given as being representative of good community planning. The City opposes the Applications principally on the basis that the severance and resulting variances would constitute a division of land inconsistent with the general character of the area, inclusive of the proposed construction of the two defined detached residences.

## **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).

### **Variance – S. 45(1)**

In considering the applications for variances from the Zoning By-laws, the TLAB Panel must be satisfied that the applications meet all of the four tests under s. 45(1) of the Act. The tests are whether the variances:

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

### **EVIDENCE**

The Applicant called Eldon Theodore, without challenge, to provide professional land use planning expert opinion evidence. Mr. Theodore is a Registered Professional Planner (RPP) with extensive planning experience having appeared and been qualified

on many occasions before various Ontario tribunals, including the TLAB. I qualified him to provide expert opinion evidence on land use planning matters.

Mr. Theodore accepted his retainer on March 15, 2021; he did not participate in the COA decisions on the Applications.

On the subject of the Appeals, Mr. Theodore provided a thorough area description and context aptly documented in Exhibits 2 and 3. He advised that the subject property is currently occupied by a one and a half-storey single detached residential dwelling with an attached garage, with frontage on the south side of Florence Avenue. Access to the property is provided via a driveway to/from that street.

He described the subject lands as being within a 2-to-5-minute walk from a variety of retail shops and services along Yonge Street and Sheppard Avenue West, as well as being 3-to-6-minutes to bus routes and the Yonge subway line.

He highlighted a geographic *Neighbourhood Study Area* (NSA) for the purposes of evaluating the consent and variance applications as required by the OP and as an appropriate baseline for assessment of the proposal relative to the OP policies. His neighbourhood assessment included both a Broader Context (as per OPA 320) and Immediate Context. The 'hard edges' (his term) for the Broader Context included Earl Bales Park to the west, Gwendolen Park/Don Valley Golf Course and HWY 401 to the south, mixed-use buildings on Yong Street to the east, and mixed-use buildings along Sheppard Ave. to the north (Exhibit 2, Tab 4).

The Immediate Context included lots fronting Florence Avenue between Pewter Road and Botham Road, representing the properties facing the same street as the subject property in the same block and the block opposite. Mr. Theodore highlighted an extensive photographic survey of the NSA in his Document Disclosure Book (Exhibit 2, Tab 4) which he asserted illustrates a neighbourhood that he characterized as being stable but not static.

He submitted that photographic survey suggests a neighbourhood that is experiencing numerous renovations and additions to existing homes as well as the construction of new homes that include varied architectural styles. Building typologies range in size from bungalows to 1 to 3 storey homes with the latter being referred to as 'tall houses' (his term) incorporating integral garage. Design aspects included peaked, shallow, and flat roofs, as well as building materials of stucco, masonry all within homes that are found and co-exist both in the Immediate and Broader neighbourhood contexts.

He described the Applications and the dwellings to be constructed as emulating those in the neighbourhood, in a complementary style but with a differentiated design manner. The front elevations incorporate a blend of contemporary and modern elements, peaked/gable roof designs for both and minimal use of exterior fenestration on exterior elevations similar to recent in-fill construction in the area.

In his Expert Witness Statement and evidence, Mr. Theodore provided comprehensive descriptions, opinion evidence, including a detailed review and opinion on the severances and variances being sought, including those areas where they were not required (Ex. 3, para. 11.1).

He asserted support for the Applications from a range of perspectives:

- With respect to lot size and configuration, they would respect the existing lot fabric found in the existing neighbourhood and are in keeping with existing and approved lot sizes and configurations within the Broader Context.
- In his view, independent of the size of study areas including the application of the more immediate area supported by OPA 320, it is common to find lots undersized relative to their applicable zoning.
- While the proposed lot areas are smaller than the By-law requirement, the resulting lots will allow for built form that is reasonable, appropriate and that 'fits' the neighbourhood character.
- In relation to 4.1.5 c), the height, massing, density and scale criteria, the proposed density will continue to respect the existing character of the neighbourhood.
- Relative to height, the proposal represents dwellings that are comparable to those within the Broader and Immediate Contexts which contain a mix of one to three storey dwellings.
- Relative to Policy 4.1.5 (g), the variances for setbacks respect the existing character as reduced side yards are prevalent and recognize the built form within the neighbourhood and will be imperceptible.
- OPA 480 updated policies to be complementary to the assessment criteria in s. 4.1 of the OP regarding 'fit' and 'respect and reinforce' and development can 'co-exist' in harmony if it does not result in unacceptable adverse impacts on neighbours. The subject proposal is compatible with existing and recently approved massing and scale of development in the neighborhood and is similar to recent proposed developments at 84 and 88 Florence.
- An analysis of COA decisions in the past 10 years found 43 examples of approved lot area variances within the Broader Context and 7 approvals within his Immediate Context similar to what is being proposed.
- Additionally, his analysis found 58 variances approved in the Broader Context and 7 within the Immediate Context identical to, or less than that being sought by the Applicant.



- In total, he found 168 COA decisions in his NSA similar to the requested variances for the subject lands.
- He concluded that what this assessment demonstrates is that “this neighbourhood illustrates one of the highest levels of change and evolution by way of consent and minor variance (sic).” (Ex. 3, para. 7.6)

On these considerations, by a detailed review of Provincial Policy and the City OP framework (including OPA 320), both in evidence and the Expert Witness Statement, he concluded the Applications are consistent with the PPS and conform to the Growth Plan and OP policies.

He was of the opinion that a plan of subdivision was not required and that the Applications would result in a development and built form that would respect and reinforce the street and neighbourhood in a manner that would be compatible and consistent with its physical characteristics. He opined that the variances requested, similar for each lot, were minor and desirable individually and collectively and, reflected substantial compliance with By-law 569-2013.

He concluded that the resultant approvals would yield a prevailing pattern of rectangular lots with a low-rise, built form. He examined the purpose and intent of each zoning by-law regulation sought to be varied and concluded satisfactory compliance, individually and collectively. This analysis included his consideration of lot area and frontage, building height and number of storeys, side yards, and lot coverage (32% v. 30%), and incorporated tests of minor, and desirable. He also found that the variances do not create impact that rises to the level of being unacceptable adverse impacts of a planning nature, including with respect to shadowing, privacy, or overlook.

He opined that the resulting built form of the two dwellings were appropriate and contributory to the redevelopment of the subject property, would not be precedent setting and are reflective of the existing and approved development in the neighbourhood.

With respect to the applicable consent considerations above listed, Mr. Theodore concluded that the proposed severance and associated variances, while not exactly replicating development, do exhibit a physical character that is compatible and respects and reinforces the existing physical character of the neighbourhood, both at a local and broader area level.

It was Mr. Theodore’s expert opinion that the variances represent good planning, have regard for matters of provincial interest, are consistent with the PPS and conform to the Growth Plan, do not create any undue impacts and are sensitive and fit the existing physical character of the neighbourhood. In his opinion, the requested variances satisfy the four tests set out in s. 45(1) of the *Planning Act*.

The afternoon of Hearing Day 1 concluded with the cross-examination of the witness by the City solicitor, Mr. Davidson. In questioning prompted by Mr. Davidson,

Mr. Theodore agreed that provincial policy and the Growth Plan must be read in their entirety and the duty lies with the local municipality in its Official Plan as the 'most important vehicle' to identify locations for intensification.

On the issue of severances, although there was agreement that intensification can be achieved without consents, Mr. Theodore asserted that severances do represent one way to achieve this. In questioning, Mr. Theodore confirmed his opinion that the underlying historical plan of subdivision for this area which contemplated lotting patterns of 7.62 m frontages for the subject property and the properties abutting to the rear, was of material importance. Mr. Davidson countered, and Mr. Theodore concurred, that this underlying historical lotting is indiscernible when walking the area and that there are new planning instruments and policies now in place. Nevertheless, Mr. Theodore continued to assert that this historical plan of subdivision was relevant as reflective of a lotting pattern previously contemplated for this area.

On questioning regarding the West Lansing Zoning Study Area (WLZSA), Mr. Theodore disagreed with Mr. Davidson that the neighbourhood outside of the WLZSA was also exhibiting a "*significant amount of change*" through consent and variance approvals and that the WLZSA boundary "*was not broad enough to capture the full extent of the change occurring.*" (Ex. 3, para. 7.26) There was significant disagreement whether Council was being proactive in focusing intensification to the WLZSA and whether intensification was contemplated outside of that area. Mr. Davidson suggested that City Council had not supported any consent applications outside of this area since the By-laws were approved (2018), Mr. Theodore held a contradictory position.

Mr. Theodore agreed that OPA 320 clarified the meaning of 'prevailing' and that the physical character of the 'geographic neighbourhood' includes the immediate and broader contexts. With respect to the "materially consistent with the prevailing physical character" component under the same policy, he asserted that 'materially consistent' does not mean identical to, but rather ensuring compatibility with the physical character as observed in both contexts.

On questioning, he eschewed numerical measures as an opinion foundation. He agreed that there is a lotting pattern in the neighbourhood but that it *is "an evolving pattern...through a process of change,"* that there are no determinative value criteria set or directed by OP policy in respect of 'prevailing' or other policy criteria, and it is the totality of physical character elements that are required to be examined in formulating opinion analysis and advice.

### ***Hearing Day 2 (September 9, 2021)***

The 2<sup>nd</sup> Hearing Day in this appeal commenced with the same attendees as at Hearing Day 1, but without Participant Marshal Mednick.

The City called Michael Romero, an Assistant Planner in the North York District of the City's Planning Division. He confirmed executing an Acknowledgment of Expert's Duty (Form 6) and filing an Expert's Witness Statement as required by the Tribunal, and I qualified him to provide expert testimony of a land use planning nature on the appeals.

Mr. Romero confirmed conducting a site visit of the subject property and the surrounding area, and his visual evidence included a photo book (Ex. 7, Appendix F) consisting of some 31 photographs, in total, highlighting properties within the immediate and broader neighbourhood. His analysis also included reviewing COA decisions within the past 20 years for properties within the neighbourhood for lot coverage, and variances approved for side exterior main wall and side yard setbacks and data on lot frontages and dimensions.

He provided a brief overview of the Applications and highlighted the revisions made to the requested variances for proposed lot coverage, side exterior main wall height under the new By-law and for maximum building height measured under the former By-law. Without limiting or acknowledging that these were his only considerations, Mr. Romero concentrated on two consent criteria, above listed, being sections 51 (c) and (f)

He identified a Neighbourhood Study Area (NSA) for the purpose of a descriptive analysis of area character, as required by OP Policy 4.1.5, bounded by Gwendolen Crescent to the west, Bogert Avenue to the north, Yonge Street to the east, and Cameron Avenue to the south. His NSA, which is a smaller area than that of Mr. Theodore, included 846 properties and consisted of properties generally facing north-south in a 'mostly grid-like' street pattern and with the same or similar zoning standards. He excluded the residential area along Franklin Avenue and further south due to a curvilinear road pattern and the presence of semi-detached dwellings along Linelle Street.

The 'Boarder Context' within his NSA contains lots specifically between Yonge Street, Botham Road, Johnson Avenue and Cameron Avenue, which Mr. Romero noted were part of the comprehensive WLZSA, an area that was rezoned to permit a minimum lot frontage and area of 7.5 m and 300 m<sup>2</sup>, respectively, as well as side yard setbacks of 1.2 m and 0.9 m. He asserted that the intent of this planning exercise by the City was to direct intensification within this area where it was deemed appropriate to more accurately reflect the frontage and area of lots that currently exist.

In noting that the subject property is not within the WLZSA, he submitted that the site was not similarly rezoned "*as the character of the subject block and the block opposite had not evolved in the same manner as the first block west of Yonge Street* (Ex. 7, para.29)." He opined that the results of the study outlined in the City's Planning Staff Report (Ex. 8, Tab 21) found that the lot patterns specifically within the first block west of Yonge Street and east of Botham Road had a "unique" (his term) lot pattern, with smaller and narrower lots than in the wider neighbourhood and, as a result, lead the City to rezone the lots "*in order to preserve the shape and feel of the broader West*

*Lansing neighbourhood, and to ensure that new development respects the existing physical character of the area (Ex. 7. Para. 39)."*

Within his NSA context, Mr. Romero prepared a Lot Study Analysis to understand and assess the character of the neighbourhood as it related to the lot pattern. He concluded from this analysis that the "overwhelming majority of lots," representing 74% of the 846 total lots in the NSA broader context have frontages that meet or exceed 12.0 m. More broadly, of the 110 total lots that have a lot frontage of 7.62 m or less, 61 are located within the area subject to the West Lansing Zoning Study.

Of the remaining 49 comparable lots, he noted that 9 lots are on Florence Avenue (west of Botham) and the rest on various streets throughout the NSA such as Cameron, Johnston, Poyntz and Bogerts.

In the Immediate Context, of the 45 total lots, only 13% (or 8) have 7.62 m lot frontages or less. He suggested that there are two existing lots on the subject block with a comparable frontage of 7.62 m, but that both of those were due to the configuration set out on the original plan of subdivision. He opined that these "undersized" (his term) frontages do not have a significant presence on the subject block and the block opposite on the north side of Florence Ave.

He highlighted his photographic survey and Lot Frontage mapping (Ex. 7, Appendix E) to reinforce his position that *"the overwhelming majority of the lot frontages meet the minimum frontage requirements of its respective Zoning By-law and that the overwhelming majority of lots in the neighborhood study area exceed 12.0 metres."* (Ex. 7, para. 51)

In Mr. Romero's view, the Applications while generally consistent and not in conflict with the PPS and the Growth Plan respecting the form of intensification promoted, it is the *'Neighbourhoods'* policies of the OP that govern location and degree. He asserted that the approval of the Applications would be inconsistent with the historical physical stability and character of the neighbourhood premised on the wording of section 4.1 of the OP, as well as the supported intention of OPA 320, considering the importance of the 'immediate context'.

In his opinion, following both a qualitative and quantitative assessment of the Neighbourhood's physical characteristics, the proposed frontages of 7.62 m do not respect and reinforce the prevailing physical character within the immediate context and are not 'materially consistent' with the geographic neighbourhood or contemplated by the existing zoning by-law. Furthermore, the proposed land severances do not conform to the policies of the OP and adjacent plans of subdivision, and the proposed lot dimensions would not be in keeping with the existing lot fabric found along Florence Avenue.

Mr. Romero provided opinion evidence on the variances requested. He opined that the Variance Applications, namely the proposed frontages, side yard setbacks, side exterior main wall height, and number of storeys do not satisfy the four tests as set out

in the *Planning Act*. Of the nine (9) development criteria under Policy 4.1.5 in the OP, he highlighted and opined on the following two (2) as of most importance:

*b) Prevailing size and configuration of lots*

The requested consent to sever does not respect and reinforce the prevailing size and configuration of lots and would not be in keeping with the neighbourhood lot pattern since the majority of lots (35, or approximately 79% of the total number of lots) meet or exceed the frontage of 12.0 m.

*d) Prevailing patterns of rear yard and side yard setbacks and landscaped open space*

A review of 73 decisions for increased side exterior main wall height within the NSA, several approvals were subject to conditional approvals tied to a set of elevation plans with architectural features, bay windows, or roofline designs to accommodate fenestration.

Given that the Variance Applications propose three storeys where the Zoning By-law permits a maximum of two, the side exterior main wall heights required to accommodate the three storeys above established grade do not share the same characteristics and would introduce a massing that does not respect and reinforce the character of the neighbourhood. Only three COA decisions to permit three storeys within the NSA (Ex. 7, Table 4), at 160 Bogert Ave., 233 Poyntz Ave., and 123 Johnston Ave., were found which are considered in his opinion 'technical' (his term) in nature (i.e., required to permit a landing area, or a raised basement).

With respect to the proposed side yard setback reductions, Mr. Romero asserted that a review of variance applications in the Immediate Context indicated that the majority were approved with setbacks of 1.2 m or greater. He opined that the side yard setbacks being requested are not consistent with the prevailing side yard setbacks in the Immediate Context and, together with the reduced lot frontages, would alter the existing open space and streetscape pattern in a manner that is inconsistent with this portion of Florence Avenue.

On similar grounds, he felt the Variance Applications do not meet the intent of the zoning by-laws as the variances related to lot frontage, side yard setback, side exterior main wall height, and the number of storeys, individually and collectively, depart from the zoning permissions, and was of the opinion that they are not desirable or minor, and a departure from area character.

He respectfully requested that the TLAB uphold the COA's decision to refuse the consent and variance applications and dismiss the appeal.

In cross-examination, Mr. Romero acknowledged and agreed that his NSA data excluded lots on Franklin and further south but did include Gwendolyn Crescent even though that roadway does not follow a grid street pattern. Additionally, he agreed that lots north of Franklin Avenue, east of Botham were originally part of the WLZSA and

that some of those lot frontages are less than that being proposed. He also agreed that the OP directs that the lot pattern in proximity to the subject property is important when determining the neighbourhood study area.

Mr. Romero acknowledged that since the West Lansing Zoning Study was initiated in 2017 there have been consent approvals on Florence Avenue west of Botham Road and that the Study did not preclude consents outside of the WLZSA. On the issue of the historical plan of subdivision for this area (Ex. 8, Tab 20), although he conceded that some 7.5 m lot frontages exist these were either part of original plan of subdivision or were created through lot severance.

Mr. Romero agreed that there is no variance for overall height under the new Zoning By-law. He accepted that Mr. Theodore's Comparative Elevation drawing illustrating the front elevations of 83, 84 and 88 Florence Avenue suggest two levels of living space above an integral garage, which are similar to what is being proposed, would be interpreted as such by pedestrians. He disagreed that the dwelling at 233 Poyntz Avenue would also look similar because of the architectural break in the front elevation.

Finally, Mr. Romero accepted that there are examples of side yard setbacks ranging from 0.4 m to 0.63 m in the NSA and that the proposed variances for side yard setback are for interior setbacks only.

## **ANALYSIS, FINDINGS, REASONS**

First, a brief discussion regarding the purpose of a Zoning By-law, which is to serve as an articulation of community standards within the policy context provided by the OP. Compliance with the standards set out in the By-law allows a person to apply for a building permit without any further planning process or requirement for public process (as of right). Development in the City of Toronto which proposes to go beyond the By-law maximums and minimums is generally required to obtain authorization for variances from the COA or, on appeal, from the TLAB.

Both Mr. Theodore and Mr. Romero are to be commended for their patient, thorough and expert explanations to the TLAB of land use planning legislation, policy, and regulations. Their explanation of the regulatory context was helpful for those in attendance to clarify the basic framework within which variances are to be adjudicated.

The appeals before this Tribunal challenge the Applicant's desire to sever the subject property and to construct two detached residential dwellings with attributes of built form acknowledged by the Applicant's expert planning witness as existing in redevelopments of neighbouring properties over time.

The existing zoning standard for the subject property requires a minimum lot frontage of 12.0 m and lot area of 370 m<sup>2</sup>. The Applications propose lot frontages of 7.62 m and lot areas of 299.4 and 299.8 m<sup>2</sup>, respectively. At issue is whether these

distinctions, and the associated variances attendant each newly created lot, satisfies the direction of the relevant statutory considerations outlined in this decision.

Since the Applications were heard by the COA and refused, the Owner has revised their proposal by reducing the maximum building height of the two proposed dwellings and the side exterior main wall heights, as well as the lot coverage for both dwellings to be constructed. I find these revisions received fulsome evidence and discussion, represent reductions in the numeric magnitude of the variances being sought and, therefore, are minor and there is no need to consider further notice under section 45 (18.1.1) of the *Planning Act*.

In quoting the former Chair of the TLAB, Ian Lord, "*Planning decisions in Ontario are not matters that start or end with arbitrary discretion. Both the COA and the TLAB do not wander in the wilderness addressing statutory authority decisions on whim; however, administrative decision making ultimately involves the resolution of a multiplicity of often competing views, statistics, opinions and policy interests, public and private.*" I agree. And, to further expound on his proposition, I concur that the task of the Tribunal is not simply a test of 'feasibility' but rather the application of policy direction and evidence to the attributes of the site and its surroundings, variously defined.

Policy leadership begins with directions found in the PPS and the Growth Plan. I accept, as did the planning witnesses, that these documents aid in the approach and remain relevant throughout to deciding the issue as to whether the intent of the Applications are consistent and conform to each, respectively. I accept that the PPS and Growth Plan support intensification through 'Built Up' areas, which attempt to project, provide direction, and allocate population and employment growth targets and set geographic distributions in that regard.

I also concur that these specific, yet broad provincial directives are subject to qualifiers such as development is to occur 'where appropriate' and that determinations of local land use priorities and the implementation of the mandates and policy priorities espoused, except in retained areas, are to be the prerogative of the local municipal Official Plan. In other words, it is the City OP that, by PPS direction and approval pursuant to statutory processes, is the principal policy document of relevance to the subject Applications.

In this regard, the OP clearly holds out for special attention to be paid to its '*Neighbourhoods*'; they are specifically not targeted for robust waives of intensification. Change is to be gradual and sensitive. Both planners agreed that the OP assumes the '*Neighbourhoods*' designation is not to be 'frozen in time' or held 'static'.

The subject property is designated '*Neighbourhoods*' and it is not located in areas such as an Avenue, Centre or Downtown where the OP typically directs intensification. I agree with Mr. Romero that growth is to be directed to those areas to protect '*Neighbourhoods*' and not as a reason to justify growth and intensification. In his testimony and evidence, he asserted that City Council already directed its mind to the

appropriate type of intensification in *Neighbourhoods* as set out in detail in the 'Expanding Housing Options in Neighbourhoods' reports (Exhibits 9 and 10), and I agree that both expert planners concurred that this direction did not include a "kick start" (Summary of City's Oral Submissions, para. 3) approach through consents.

Both planners also identified a Neighbourhood Study (NSA) area by which they sought to assess a norm or descriptor of character. Not only does the OP encourage this effort, but also refines it through the Healthy Neighbourhoods policies in s. 2.3.1.1 which emphasis that the policy obligation of planning decisions is to 'respect and reinforce the existing, physical character of building, streetscapes and open space patterns.' That definition is further honed by intended reference to attributes, measures and features that can be described and replicated.

Therefore, I find that the delineation of a Study Area is a necessary first step by planning practitioners to attempt encapsulation of measures that replicate the existing physical character of a neighbourhood and for ascertaining Official Plan conformity.

The OP also directs that the severances and variances be compared to an 'immediate' and broader neighbourhood. Clearly in this matter, the definition of a study area to help define essential physical attributes caused some ambivalence. The Appellant's solicitor, Ms. Keating, asks the Tribunal to prefer the NSA delineated by Mr. Theodore as the area he identified as the broader and immediate contexts follow the clear direction provided by the OP.

Additionally, she asserted that Mr. Romero's Study Area "artificially" excludes the southern portion of Mr. Theodore's neighbourhood based on the caveat of a curvilinear street network but notes but, conversely, included the court along Gwendolyn Crescent with 15 m lot frontages.

Furthermore, she submitted that Mr. Romero excluded the block fronting onto Franklin Avenue even though the street pattern and lotting pattern remained the same and the street is located less than 300 m away from the subject property. She argues that this can be seen as an attempt by the City to exclude several relevant examples of reduced lot frontages within the neighbourhood.

While that may be accurate, I nevertheless find that the geographic neighbourhood defined by both planning experts does not differ markedly and generally describe a similar general physical character. I agree with the City that the difference between the two planners is not so much a matter of numbers or the study area that they chose to focus on, but rather is primarily a matter of approach and perspective.

The central issue is whether the proposed development is materially consistent with the prevailing physical character of properties in both the broader and immediate contexts. The prevailing physical character is to be determined by the *most frequently occurring form* (my emphasis) of development in the neighbourhood. OP Policy 4.1.5 provides that development whose physical characteristics are not the most frequently occurring but do exist in substantial numbers within the geographic neighbourhood not



be precluded, provided that the physical characteristics of the proposed development are materially consistent with that character and ***“already have a significant presence on properties located in the immediate context or abutting the same street in the immediately adjacent block(s) within the geographic neighborhood.”*** (my emphasis)

Policy 4.1.5 also states that in instances of significant difference between these two contexts (broader and immediate), the immediate context will be of greater relevance.

Mr. Theodore's asserted that the prevailing pattern of lot frontage is that of an evolving pattern which is observed by eight (8) lots with comparable frontages of 7.62 m in the Immediate Context and a diversity of frontages in the Broader Context. Therefore, his assessment of the character of the neighbourhood can be summarized in the following short passage found at paragraph 3.5 of his Responding Witness Statement (Exhibit 4):

*“In my opinion, this variety of lot frontages reflects a diversity of which increases steadily as you move from west to east, and particularly east of Pewter Road.”*

His analysis of neighbourhood character was reflected in the depicted existence of scattered narrower frontage lots in his NSA, as demonstrated by colouration on the Lot Frontage Map. I find, however, that he was unsuccessful in justifying that the subject proposal is either prevailing or existing in substantial numbers in either the Broader or Immediate Context. I prefer Mr. Romero's evidence that a small percentage of lots relative to the total have comparable frontages to those proposed, and that many of those fall within the WLZSA.

I find that the assessment of the physical character of a neighbourhood does not begin or end with 'examples' or 'ranges' of statistics within which similarities to be proposed can be drawn. While I agree that the presence of a scattered pattern of narrower lot frontages is relevant, the policy goal to respect and reinforce the neighbourhood is ultimately the protection of the general physical character of these neighbourhoods, the encouragement of stability, and the direction of planning permissions that development be sensitive, gradual, and 'fit'.

I find that the creation of two lots with a frontage of 7.62 m from one with a frontage of 12.0 m in an area defined mostly by 12 m frontage requirements or greater will not respect and reinforce the existing physical character of the neighbourhood. I also find that the Immediate Context is characterized by dwellings of a modest built form relationship to their respective lot size and frontage than what is being proposed by the Applicant.

Mr. Theodore submitted that there was no policy specific to Florence Avenue that would prevent severance applications that reflect the 'pattern' of severance applications and activity in the neighbourhood. The 'pattern' he refers to and that he suggested is

reflected in the neighbourhood may more properly be characterized as what I would term 'concentrated' activity.

Respectfully, I disagree. The designation is present: it is *Neighbourhoods* and, as I interpret it, the thrust of the City OP is to respect and reinforce the existing physical character of the neighbourhood. The policy leaning of the OP is not to preclude change, but to test it on defined criteria to be considered 'holistically', without favour or apparent emphasis.

I agree with the City solicitor and Mr. Romero that it is instructive to consider the West Lansing Zoning Study Area and the background information and reports prepared by the City's Planning staff in this regard. City Council enacted zoning by-law amendments (By-laws 644-2018 and 645-2018) for the WLZSA which are now in full force and effect. What was Council's intent in undertaking this planning exercise? That question could perhaps be answered through the background Reports prepared by Planning Staff. In their Final Report dated April 13, 2018, at page 3 (Exhibit 8, Tab 21, staff wrote the following:

*"The intent of the proposed zoning by-law amendments is to direct intensification to the Focused Study Area, where it is most appropriate, preserve the shape and feel of the broader West Lansing Neighbourhood, and ensure that new development respect the existing physical character of the area."*

In totality, considering the OP in place, the approved modifications to OPA 320, and the enactment of the WLZSA by-laws, I find that the policy decisions of the approval authorities do not support a proactive basis to advance change, by way of severance and variances, to reinforce a pattern of narrower lot frontages, to advance a definition of conformity. Furthermore, I was not directed to any policy support in the OP, or OPA 320 for that matter, which articulates the encouragement of intensification through lot severances.

On the contrary, I find that the proper perspective within which to consider the Applications is to assess whether the relief sought by the Applicant meets the policy directions of respecting and reinforcing the obvious and compelling physical character of the neighbourhood. In this regard, I prefer the City's evidence that the proposed change anticipated if the Applications were approved would be neither sensitive, gradual nor constitute a fit, contrary to elements of the OP assessment criteria. Conformity has not been demonstrated in the principal opinions or evidence that moves me from this determination.

Furthermore, I find that the Applications, if approved, will result in a built form and lot pattern change that is inconsistent with the general pattern of development in the neighbourhood, however it is defined in scale. I find that the proposal would result in lot sizes, frontages, height manifestations, and building separation distances that are inconsistent with the physical character of the properties in the area.

Counsel for the Applicant/ Appellant raised the issue of ‘precedents’ in its closing statement highlighting recent TLAB approvals at No’s 84, 88, and 123 Florence Avenue representing narrower lot frontages similar to what is proposed, in the Immediate Context. The City also raised the matter of ‘precedent’ in its closing statement noting that there are a number of other lots on Florence Avenue, including lots on both sides of the subject property and on the block opposite to it and elsewhere in the neighbourhood that could be impacted by this decision. Mr. Davidson asserted that if the subject Applications were to be approved, *“the applications would result in a new lot precedent for the block, the immediate vicinity of the site, and the neighbourhood at large.”*

I remind the Parties that the TLAB is an administrative tribunal charged with the responsibility, on appeal, to dispose of the matter before it. Apart from statutory and judicial direction, it is not obliged to follow the principal of precedent, *stare decisis*, as in support of supreme court law. It can consider, distinguish, follow or reject decisions of equal stature tribunals to which it is referred. Any proposal, if seeking Planning approval, will be subject to rigorous public process to assess its merits and whether it should be allowed or not. This process ensures that any development that occurs in a neighbourhood will be achieved in a balanced manner considering all relevant issues.

I see the ‘precedent’ potential to be but one factor in the overall consideration of whether applications warrant approval. I am reminded of the observation made by TLAB Member Yao in the *103 Westbourne Avenue* decision on the topic of ‘precedent’ where he stated, on page 6:

*“...previous severances are invariably used to justify each successive severance. There is an element of truth to this. However, it is also the case that any individual case will differ from another both in time and geographic location, even if it in a similar study area. So, while ‘precedents,’ may be relevant, they are not determinant.”*

In addition, I also reference what the former TLAB Chair, Ian Lord, wrote on page 24 of his 2019 decision for *37 Stafford Road* on this issue:

*“Precedent that threatens the essential objectives of respecting and reinforcing the existing physical character of City Neighbourhoods is a relevant land use planning consideration given the expressed policies of the Official Plan.”*

Given that I am refusing the Applications, I find no further discussion on the matter of precedential value of approvals is warranted other than to summarize the sentiment of the above passages; that is, that every application is to be considered on its own merits and this Panel is not bound by other decisions of the TLAB or the Ontario Land Tribunal (formerly the LPAT).

At the end of this consideration, I remain in doubt, despite the professional opinion evidence, that the essential policy considerations are met. Consequently, and considering the foregoing, having considered the decision of the COA, the applicable statutory tests and evidence, I find the Applicant/Appellant has not met the onus of

demonstrating satisfactorily that Official Plan conformity is present, applicable to both the consent and associated variances, and that the variances in **Attachment A**, collectively, are warranted.

Therefore, having disposed of the severance request, an equally detailed consideration of the variances sought is unnecessary as they relate to the lot configuration as proposed by the Applications.

## **DECISION AND ORDER**

The appeals are dismissed; the Applications for consent and variances are refused. The decisions of the Committee of Adjustment dated February 11, 2021, are confirmed.

2021-10-20

X 

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Chair, Dino Lombardi  
Toronto Local Appeal Body  
Signed by: dlombar

## ATTACHMENT A

### 83 Florence Avenue List of Variances

#### PART 1

##### Consent

Conveyed - PART 1 - Address to be assigned  
The Lot Frontage is 7.62 m and has a Lot area of 299.4 sq. m.

##### Variances

##### Chapter 10.20.30.10 (1)(A), By-law No. 569-2013 – Lot Area

The required minimum lot area is 370 sq. m.  
The proposed lot area is 299.4 sq. m.

##### Chapter 10.20.30.20(1)(A), By-law No. 569-2013 – Lot Frontage

The required minimum lot frontage is 12.0 m.  
The proposed lot frontage is 7.62m.

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

The maximum permitted wall height is 7.5 m.  
The proposed wall height is 8.56 m.

##### Chapter 10.20.40.10(3)(A), By-law No. 569-2013 – Storeys

The permitted maximum number of storeys is two.  
The proposed building has three storeys.

##### Chapter 10.20.40.70(3)(C), By-law No. 569-2013 – Setback

The required minimum side yard setback in the RD zone is 1.2 m if the required minimum lot frontage is 12.0 m to less than 15.0 m.  
The proposed east side yard setback is 0.65 m.

##### Chapter 10.20.30.40(1)(A), By-law No. 569-2013 – Lot Coverage

The permitted maximum lot coverage is 30%.  
The proposed lot coverage is 32%.

##### Section 14-A(8), By-law No. 7625 – Height

The maximum permitted building height is 8.8 m.  
The proposed height is 9.28 m.

## **ATTACHMENT A Cont'd...**

### **PART 2**

#### Consent

Retained - PART 2 Address to be assigned

The Lot Frontage is 7.62 m and has a Lot area of 299.8 sq. m.

#### VariANCES

##### Chapter 10.20.30.10 (1)(A), By-law No. 569-2013 – Lot Area

The required minimum lot area is 370 sq. m.

The proposed lot area is 299.8 sq. m.

##### Chapter 10.20.30.20(1)(A), By-law No. 569-2013 – Lot Frontage

The required minimum lot frontage is 12.0 m.

The proposed lot frontage is 7.62 m.

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

The maximum permitted wall height is 7.5 m.

The proposed wall height is 8.56 m.

##### Chapter 10.20.40.10(3)(A), By-law No. 569-2013 – Storeys

The permitted maximum number of storeys is two.

The proposed building has three storeys.

##### Chapter 10.20.40.70(3)(C), By-law No. 569-2013 – Setback

The required minimum side yard setback in the RD zone is 1.2 m if the required minimum lot frontage is 12.0 m to less than 15.0 m.

The proposed west side yard setback is 0.65 m.

##### Chapter 10.20.30.40(1)(A), By-law No. 569-2013 – Lot Coverage

The permitted maximum lot coverage is 30%.

The proposed lot coverage is 32%.

##### Section 14-A(8), By-law No. 7625 – Height

The maximum permitted building height is 8.8 m.

The proposed building height is 9.21 m.