

DECISION AND ORDER

Decision Issue Date Wednesday, September 01, 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): EBRAHIM MOUSAVI

Applicant(s): RUBINOFF DESIGN GROUP

Property Address/Description: 217 CHURCHILL AVE

Committee of Adjustment File

Number(s): 20 162402 NNY 18 CO (B0021/20NY), 20 162407 NNY 18 MV (A0336/20NY), 20 162408 NNY 18 MV (A0335/20NY)

TLAB Case File Number(s): 20 224063 S53 18 TLAB, 20 224064 S45 18 TLAB, 20 224066 S45 18 TLAB

Hearing date: May 28, 2021 & June 10, 2021

Deadline Date for Closing Submissions/Undertakings: Romero Witness
Statement filed Aug 6, 2021

DECISION DELIVERED BY T. YAO

REGISTERED PARTIES AND PARTICIPANTS

Applicant	Rubinoff Design Group
Appellant	Ebrahim Mousavi
Appellant's Legal Rep.	Amber Stewart
Expert Witness	Franco Romano
Party	City of Toronto
Party's Legal Rep.	Marc Hardiejowski

Decision of Toronto Local Appeal Body Panel Member: T. Yao
TLAB Case File Number: 20 224063 S53 18 TLAB, 20 224064 S45 18 TLAB,
20 224066 S45 18 TLAB

Expert Witness

Michael Romero

INTRODUCTION

Ebrahim Mousavi wishes to sever his lot and build two new houses. In order to do so, he requires permission for a severance and variances as shown in Table 1. On November 10, 2020, the Committee of Adjustment refused his application; Mr. Mousavi appealed and so this application comes before the TLAB.

Table 1. Variances sought for 217 Churchill				
		Required/Permitted	Proposed Part A ¹ (east)	Proposed Part B (west)
Variances from Zoning By-law 569-2013				
1	Side Yard Setback (for building)	1.8 m	External 1.21 m; internal 0.9 m	
2	Side Yard Setback (for rear deck)	1.8 m	External 1.22 m	
3	Lot Area	550 m ²	461.7 m ²	461.6 m ²
4	Frontage	15 m (49.3 ft)	10.67 m (35 ft)	
5	Coverage	30%	31.6 %	
6	Main wall height	7.5 m	8.83 m,	8.84 m
7	Max. chimney encroachment	0.6 m	0.88 m	0.90 m
Variances from North York Zoning By-law²				
	Building Height	8.80 m	9.50 m	9.42 m
	First Floor Height	1.50 m	1.56 m	complies

¹ The Committee of Adjustment Decision does not specify which lot is A and B. I have inferred A is A0335/20NY and B is A0336/20NY.

² Despite the fact that by-law 569-2013 was adopted in 2013, appeals against it are still outstanding so the Buildings Department reviews plans under both by-laws.

MATTERS IN ISSUE

This case involves a request for a severance and variances and the *Planning Act* has separate tests for each.

Higher level documents must be considered (the Provincial Policy Statement and the Greater Golden Horseshoe Growth Plan) but contain a high level of generality. For example, the Provincial Policy Statement discourages lot creation on prime agricultural land and prefers municipal water and sewage over private systems; I find these policies offer little guidance for a single lot in a settlement area for which those most policies too general or high level.

Severance criteria - s 51(24) of the *Planning Act*

The test for a severance is found in a combination of 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 in the particular circumstances of each severance. Some of the other factors to be considered are also stated in a very general way, such as “the welfare of the present and future inhabitants”. *I find* others are inapplicable in a small scale redevelopment, such as the adequacy of municipal services. Still others are rarely a deciding factor for a single lot severance, such as the adequacy of school sites. The factors that are typically most relevant in a built up area such as Toronto are 51(24)(c) and (f):

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

Variance tests - s 45(1) of the *Planning Act*

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 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*; whereas for the variances, I am to consider the

“prevailing size and configuration of lots” with respect to the test in 4.1.5 of the Official Plan of the City of Toronto. The tests are similar but not identical.

Right to develop in accordance with owner’s wishes

The obligation is on the proponent (Mr. Mousavi) to demonstrate to the decision-maker that the tests are met on the balance of probabilities; there is no right to a variance or a severance.

EVIDENCE

I heard from Franco Romano, planner for Mr. Mousavi, and Michael Romero, planner for the City of Toronto, both of whom I qualified as expert witnesses. There were no other witnesses.

ANALYSIS, FINDINGS, REASONS

I start with the “cornerstone” test: s. 4.1.5 of the Official Plan:

4.1.5 Development in established Neighbourhoods will respect and reinforce the existing physical character of each geographic neighbourhood, including in particular: . . .

b) prevailing size and configuration of lots;

Prevailing lot size requires that as an initial step each planner count the number of lots with certain measurements in a delineated geographic neighbourhood.

Geographic neighbourhood

The two planners’ geographic neighbourhoods are shown in Figure 2 (next page). Mr. Romero’s neighbourhood is about three times as large as Mr. Romano’s and ordinarily would require discussion as to which is to be preferred. However, since each planner also provided the raw data, enabling me to make head-to-head comparisons. The conclusions were similar; thus, I find that the choice was not pivotal. For example, Mr. Romero found that the proposed lot frontages of 10.67 m would be less than 11% of the total lots³ and Mr. Romero’s equivalent number was 6%.

³ Less than 10 m frontage = 2.2%; 10 to 11.5 m = 8%; Sum is 10.2% (Source Romano legend, p 128, Romano Witness Statement; pages are unnumbered)

Figure 2. Geographic neighbourhoods; Romano (left); Romero (right)



I have marked 217 Churchill with an arrow and outlined Mr. Romano's area on Mr. Romero's (the City's) with a dashed line.

Immediate context

The Official Plan says:

Proposed development will be materially consistent with the prevailing physical character of properties in both the broader and immediate contexts...

The immediate context is the block on which the subject property is located. In certain cases, the immediate context may be augmented by the next block.⁴

Figure 3. Immediate contexts; Romano (top); Romero (below)

⁴ In such cases, the direction to respect and reinforce the prevailing physical character will not preclude development whose physical characteristics are not the most frequently occurring but do exist in substantial numbers within the geographic neighbourhood, provided that the physical characteristics of the proposed development are materially consistent with the physical character of the geographic neighbourhood 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 neighbourhood.



In Figure 3, I have simply excerpted each planner's larger area to show the immediate context. Both neighbourhoods terminate on the right at Senlac. Mr. Romero's extends westward beyond Wynn to Stafford Rd. For both the larger and smaller contexts, one colour predominates: magenta for Mr. Romano and blue-green for Mr. Romero. This colour indicates lots with lot frontages from 14.8 to 15.3 m.

Numerical conclusions – Mr. Romano

The colours indicate frontages. Mr. Romano used eleven "brackets" or ranges:

Less than or equal to 10 m, followed by nine equally spaced brackets of 1.5 m, then greater than or equal to 24.3 m.

Of these, the f15 zoning standard (i.e., minimum frontage = 15 m) is coloured magenta (14.8 to 16.3 m, or 48.6 to 53.5 ft) and is 45.1% of total lots. The proposed lots would be dark blue, or 8%.

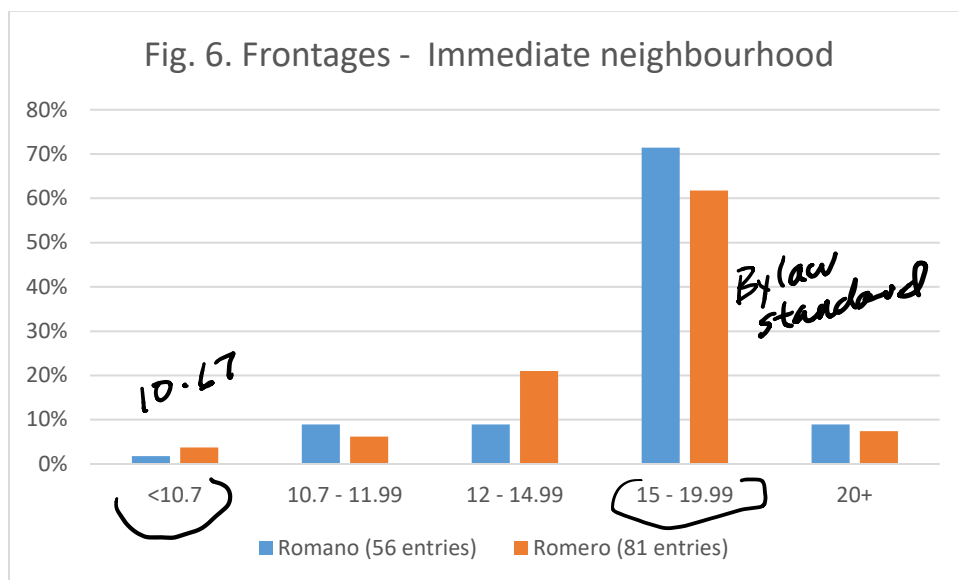
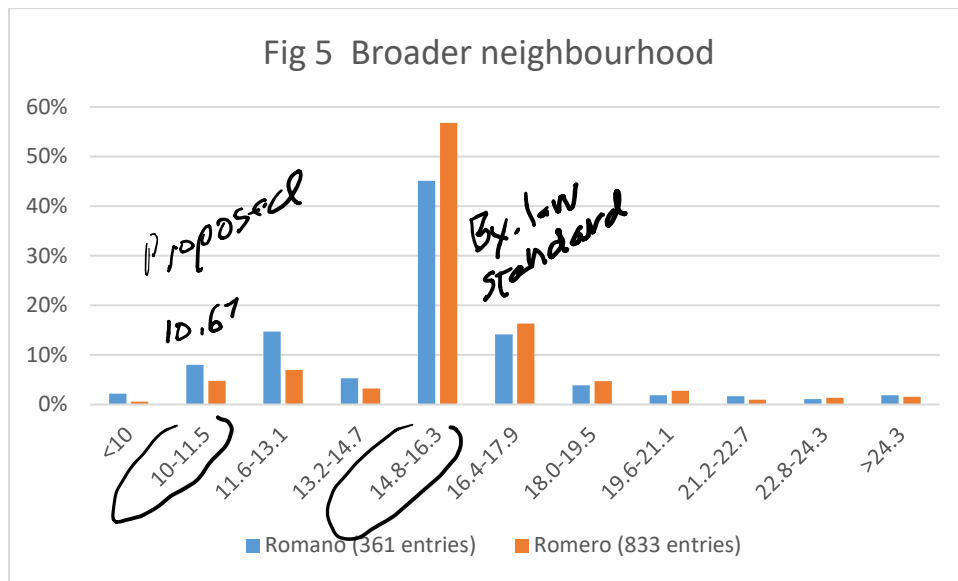
For the immediate context, I find magenta is prevailing, whether Churchill is considered to extend to Cobden or Wynn. Both the subject and proposed lots are in the minority; the subject lot's frontage of 21.34 m (70 ft) is ranked 344 out of 361 (where 1 is the smallest and 361 is largest), or in the 5% of largest lots. The adjacent lot 219 Churchill is the smallest; this is not the result of a severance but appears to be a single-lot anomaly.

Numerical conclusions – Mr. Romero

To bring everything to a common basis, I created my own data base. I dropped out lots in the f12 and f9 zones numerically where needed. This reduced Mr. Romero's 1006 properties to 833⁷.

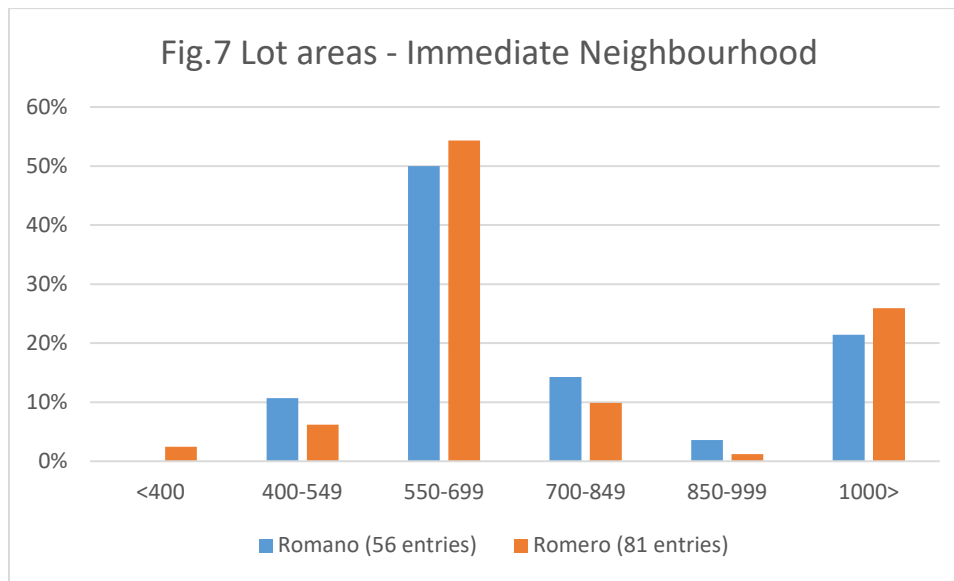
I then applied Mr. Romano's eleven brackets for the larger areas and Mr. Romero's five brackets for immediate contexts. The results are shown in the two bar charts on the next page. In each pair of bars, Mr. Romano's is on the left and Mr. Romero's on the right. I used percentages because each planner had a different starting universe of properties. **The result is similar for whatever neighbourhood is chosen**, a sharp peak for 14.8 to 16.3 m, the bracket containing the zoning standard of 15 m. I find most frontages are 15 m and over and comply with the by-law.

⁷ Mr. Romero and I both find 1006 properties in his zone but when we perform the dropping out exercise, he comes to 852 and I get 833. I don't think there is much significance in this difference.



Lot areas

Since “lot size” also includes lot areas, I also made a separate count (Figure 7). I devised my own brackets, starting with 550 m², since this is the by-law standard, and worked upwards and downwards in 150 m² increments. I did this for the immediate neighbourhood only, as neither planner offered a visual analysis of lot areas but did offer their raw data.



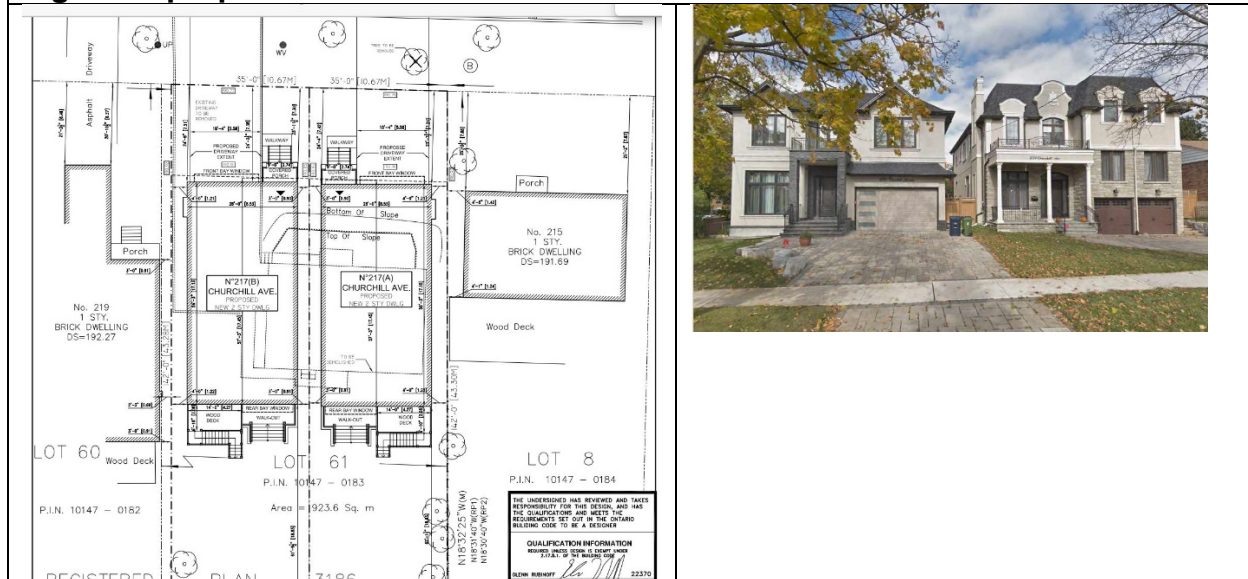
The highest bar uses 550 m² as the lower limit; implying everything in the bar and to the right is compliant, and clearly prevailing. Lots in the range proposed (462 m²) are less than 10% for either planner. Figure 7 also contains a secondary peak of over 1000 m², reflecting ultra-deep lots on the north side of Churchill between Senlac and Hazelglen. These depths account for the April 2021 decision for 210 Churchill, where the TLAB granted a severance. The two newly created lots were 816 and 1009 m². (Note they would still fall into the secondary peak.) The new frontages were 12.13 m, but because the lot lines were angled 45° to the centerline, about 15 m of street frontage was available along Hazelglen. The smallest lot depth dimension was 69 m, versus about 40 to 43 m on the south side of Churchill. These deep lots are unlike the subject property.

I find not only that there are too few lots in the 400-549 m² lot area range (11% for Mr. Romano and 6% for Mr. Romero) to form a physical character of the neighbourhood and lots in that range do not respect and reinforce the immediate context's physical characteristics.

Accordingly, the physical pattern does not favour the proponent's application. Mr. Romano counters these facts with the argument that there is no one uniform size and the entire neighbourhood is one of modest sizes from 9 to 18 m frontages and "varied"⁸. Ms. Stewart recognized this in her submissions:

⁸ 2.49 The proposal contains site design and built form features which implement the zoning by-law in a manner that is similar and compatible to other properties within the geographic and immediate areas. It is a frequently occurring physical character for properties to not fully comply with the applicable zoning by-law(s). The proposal contains numerical and other performance standards which are well represented within the Subject Lands physical contexts, qualitatively or

Figure 8: proposed vs 234 and 236 Churchill



Any adjudicator would struggle with saying “yes” to that question – that there would never ever be another severance again. Because the policies allow it and the policies encourage it, where it can be demonstrated to be appropriate.

This lot in this location is the best lot, the only lot capable of accommodated a severance in the immediate context or anywhere nearby. So, if this lot is not appropriate for a severance, I don’t know what lot could be.

I agree with Ms. Stewart that the subject is one of the biggest lots and abuts the smallest lot (219 Churchill). The appropriateness has to be demonstrated. I find that Mr. Romano’s “varied” adjective to be too general; the more recent Committee approvals create developments with specific lot areas or frontages that it found respect and reinforce the physical characteristics of the neighbourhood.

In Figure 8, I contrast the proposed site plan with 234 and 236 Churchill, both relatively recent tear downs. I infer from the closeness of the Committee of Adjustment file numbers that the there was some coordination involved (A779 and A818, both 2014). The applications both required frontage variances (14.7 m) as well as height, length and side yard variances, but not for lot area. These were not a severance. However, I find that the resulting physical characteristics are different from the proposed; for example, there is room for a window opposite the garage.

quantitatively, and contribute appropriately to the non-homogeneous, varied nature of development that exists, as expressed by the Official Plan.

Decision of Toronto Local Appeal Body Panel Member: T. Yao
TLAB Case File Number: 20 224063 S53 18 TLAB, 20 224064 S45 18 TLAB,
20 224066 S45 18 TLAB

The Official Plan requires that the lot sizes respect and reinforce the physical characteristics of the neighbourhood⁹, which are mostly in the 15 m or plus range. I find the development does not respect and reinforce this physical character and thus the severance cannot be granted. I find on the same evidence that the frontage reduction to 10.67 m (15 m required) does not maintain this intent as required under s. 45(1) of the *Planning Act*. Since all variances must individually and cumulatively meet the tests, the failure of one means the whole application fails.

DECISION AND ORDER

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



X

Ted Yao
Panel Chair, Toronto Local Appeal Body

⁹ Development in established *Neighbourhoods* will respect and reinforce the existing physical character of each geographic neighbourhood, including in particular: . . .b) prevailing size and configuration of lots;