

DECISION AND ORDER

Decision Issue Date Tuesday, November 23, 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): HUGH THADDEUS RANALLI

Applicant(s): IDA EVANGELISTA

Property Address/Description: 182 QUEENS AVE

Committee of Adjustment File

Number(s): 20 137252 WET 03 CO, 20 137257 WET 03 MV, 20 137259 WET 03 MV

TLAB Case File Number(s): 21 142990 S53 03 TLAB, 21 138301 S45 03 TLAB - 21 138305 S45 03 TLAB

Hearing date: September 21, 2021

Deadline Date for Closing Submissions/Undertakings: N/A

DECISION DELIVERED BY A. BASSIOS

REGISTERED PARTIES AND PARTICIPANTS

Applicant	IDA EVANGELISTA
Appellant	HUGH THADDEUS RANALLI
Party	ANTHONY CONTI
Party's Legal Rep.	SAMANTHA LAMPERT
Expert Witness	FRANCO ROMANO

INTRODUCTION

This is an Appeal of the Etobicoke York panel of the City of Toronto (City) Committee of Adjustment's (COA) approval, with conditions, of an application for consent to sever the subject property and associated variances to construct two new dwellings on the proposed resultant lots.

The purpose of the application is to obtain consent to sever the subject property into two undersized lots and to construct two new detached dwellings with integrated garages.

The subject property is located in the Mimico neighbourhood of the former City of Etobicoke. It is designated *Neighbourhoods* in the City Official Plan (OP) and zoned RM (u3;d06)(x22). Exception 22 in the Zoning By-law imposes a maximum lot area of 325m² and a shorter minimum lot frontage (10.5m) than would otherwise be the case.

In attendance at the Hearing were:

- Samantha Lampert, legal counsel for the Applicant, and Expert Witness Franco Romano (Land Use Planning);
- Hugh Ranalli, the Appellant;

I advised those present at the Hearing that, as per Council direction, I had attended at the site and the surrounding area and reviewed the pre-filed materials in preparation for the hearing of their evidence.

BACKGROUND

The application seeks to demolish an existing two-storey house which had been identified as one of the oldest in the neighbourhood.

THE CONSENT REQUESTED

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

CONVEYED – PART 1

The proposed lot frontage is 7.48m, and the proposed lot area is 303m².

The property is proposed to be redeveloped as the site of a new detached dwelling with an attached garage, requiring variances to the Zoning By-law(s), as outlined below.

RETAINED – PART 2

The proposed lot frontage is 7.48m, and the proposed lot area is 303m².

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

PART 1

To construct a new dwelling with an attached garage.

1. Section 900.6.10.(22)(B)(i), By-law 569-2013

The minimum required lot frontage is 10.5 m.
The lot frontage will be 7.48 m.

2. Section 900.6.10.(22)(A)(i), By-law 569-2013

The minimum required lot area is 325 m².
The lot area will be 303 m².

3. Section 10.80.40.40.(1)(A), By-law 569-2013

The maximum permitted floor space index is 0.6 times the lot area (181.8 m²).
The proposed dwelling will have a floor space index of 0.68 times the lot area (207.2 m²).

4. Section 900.6.10.(22)(D), By-law 569-2013

The minimum required side yard setback is 0.9 m.
The proposed dwelling will be located 0.61 m from the north and south side lot lines.

5. Section 10.80.40.10.(2)(B)(ii), By-law 569-2013

The maximum permitted height of all side exterior main walls facing a side lot line is 7 m.
The proposed dwelling will have north and south side exterior main wall heights of 8 m, facing a side lot line.

6. Section 10.5.40.50.(2), By-law 569-2013

A platform without main walls, such as a deck, porch, balcony or similar structure, attached to or within 0.3 m of a building, must comply with the required minimum building setbacks for the zone, 0.9 m.
The proposed rear platform will be located 0.78 m from the south side lot line and 0.73 m from the north side lot line.

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The lot frontage will be 7.48 m.

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The minimum required lot area is 325 m².
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MATTERS IN ISSUE

The Appellant cites two main grounds for the Appeal. The consent to sever the property is opposed by the Appellant on the grounds that the severance would create two undersized lots with tall narrow structures which do not integrate into the existing neighbourhood. In addition, the variances are opposed on the basis that they significantly affect the adjacent property, where the Appellant resides, by blocking the majority of the light on the south side of the neighbouring house.

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

ROMANO

Mr. Romano was qualified as an expert in land use planning. He identified a Neighbourhood Study Area as prescribed in Policy 4.1.5 of the OP.

He described the characteristics of the neighbourhood, summarized as follows:

- There are a wide variety of lot sizes in the neighbourhood, which he illustrated on a map reproduced as Figure 1 in the pages below.
- The street layout is not a regular grid, which results in a differentiation in streetscapes, lots, site designs and house layouts.
- The area is experiencing a considerable amount of redevelopment. This includes new residential buildings upon existing and new lots
- There are varying building heights in the neighbourhood, even with first generation homes.
- There are “tight” side yards between some of the properties in the neighbourhood. (He showed photographs of 176 Queens Ave where there is a narrow side yard and the wall of the house is close to the side wall of the apartment-type building which has multiple windows).
- The height of the first floor of the houses varies.
- More recent construction tends to have a garage integrated into the structure.
- New construction tends to have larger buildings occupying more property than earlier, or first generation, buildings.

Mr. Romano referred to photographs of individual properties in the neighbourhood to show the following:

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- A property on the same block as the subject property, at 212 Queens Ave, has been severed. The resulting frontages on that example are wider than the proposal although the lot areas are smaller than the proposal.
- The house at 103 Superior Ave has a taller wall height than that proposed by the Applicant.
- There is a three storey triplex with a mansard roof located at 89 Cavell Ave which has a smaller lot frontage than the undivided subject property. Mr. Romano noted that a duplex or a triplex would not be subject to a wall height regulation under the By-law.
- A mansard roof like the one at 89 Cavell Ave would meet the sloped roof requirements of the By-law, and could be built as-of-right on the subject property.

Some of Mr. Romano's statements in support of the proposal are summarized below:

- Differences in height are part of the prevailing character of the neighbourhood. The previous architectural style is "being replaced in a market driven manner". In his opinion, the market creates a different built form condition that continues the variety.. but still in a "consistent manner" with "tight side yards and a low rise scale...".
- Only detached houses and semi-detached houses are subject to the wall height limitation under this By-law. Height limitations under the By-law are also different for detached and semi-detached homes compared to other buildings, such as duplexes and triplexes (12m). In his opinion, these alternative forms would have more impact on adjacent neighbours, as they create more mass at the upper level, especially if a mansard roof is used as in the triplex at 89 Cavell.

RANALLI

Mr. Ranalli's objections to the proposal are summarized below:

- The application would result in two tall, narrow structures, on undersized lots, which do not integrate into the existing neighbourhood, i.e., they do not reflect the prevailing character of the neighbourhood.
- The design does not take into account the impact on adjacent homes nor on the community.
- The proposal would significantly and negatively affect his property, as the requested variances for increased wall height and reduced side yard setback would block more of the predominant source of natural light into his home.
- Newer development in the neighbourhood is introducing an unpleasant format with raised ground floor and front access garage.

ANALYSIS, FINDINGS, REASONS

Consent to sever

The standard for approving a consent to sever is that the 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 *Planning Act*.

I am satisfied that a plan of subdivision is not necessary as the proposal is a simple division of an existing legal lot in a long-established area. No adaptation or construction of public infrastructure is required.

Of the criteria set out in s. 51(24) of the *Act*, I consider compliance with only two of the criteria to warrant further discussion in this Decision:

- (c) whether the plan conforms to the official plan and adjacent plans of subdivision, if any;
- (f) the dimensions and shapes of the proposed lots.

As the OP contains policy about dimensions of lots, I have folded consideration of criterion f) above into discussion of the OP.

OP Policy 4.1.5 – Criteria for Development

OP Policy 4.1.5 requires that development in neighbourhoods respects and reinforces the existing physical character of each geographic neighbourhood and lists the particular aspects of physical character to be evaluated.

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

- a) patterns of streets, blocks and lanes, parks and public building sites;*
- b) prevailing size and configuration of lots;*
- c) prevailing heights, massing, scale, density and dwelling type of nearby residential properties;*
- d) prevailing building type(s);*
- e) prevailing location, design and elevations relative to the grade of driveways and garages;*
- f) prevailing setbacks of buildings from the street or streets;*
- g) prevailing patterns of rear and side yard setbacks and landscaped open space;*
- h) continuation of special landscape or built-form features that contribute to the unique physical character of the geographic neighbourhood; and*
- i) conservation of heritage buildings, structures and landscapes.*

Text in Policy 4.1.5 directs how a geographic neighbourhood should be delimited and says that the physical character of the geographic neighbourhood includes the physical

characteristics of the entire geographic area in proximity to the proposed development (*the broader context*) and the physical characteristics of the properties that face the same street as the proposed development in the same block and the block opposite the proposed development (*the immediate context*).

The text goes on to require that proposed development within a Neighbourhood will be materially consistent with the prevailing physical character of properties in both the broader and immediate contexts. In instances of significant difference between these two contexts, the immediate context will be considered to be of greater relevance.

OP Policy 4.1.5 says that the prevailing type and physical character of a geographic neighbourhood will be determined by the most frequently occurring form of development in that neighbourhood.

The Policy recognizes that some geographic neighbourhoods contain a mix of physical characters. In such conditions, the direction to respect and reinforce the prevailing character will not preclude the development whose physical characteristics are not the most frequently occurring, but do exist in substantial numbers within the geographic neighbourhood. This flexibility is provided only where 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 blocks within the geographic neighbourhood.

In simpler terms, the Policy requires that a proposed development must respect and reinforce specific aspects of what already exists (“prevailing”) in the neighbourhood, such as the prevailing size and configuration of lots. The proposal must fit the neighbourhood overall, but it must also fit the characteristics of the street where it is proposed be located. The Policy also says that development that has characteristics similar to those which already exist in substantial numbers in the blocks immediately adjacent to the proposal should not be precluded even if they are not the most frequently occurring form of development.

Prevailing size and configuration of lots.

- Frequency map

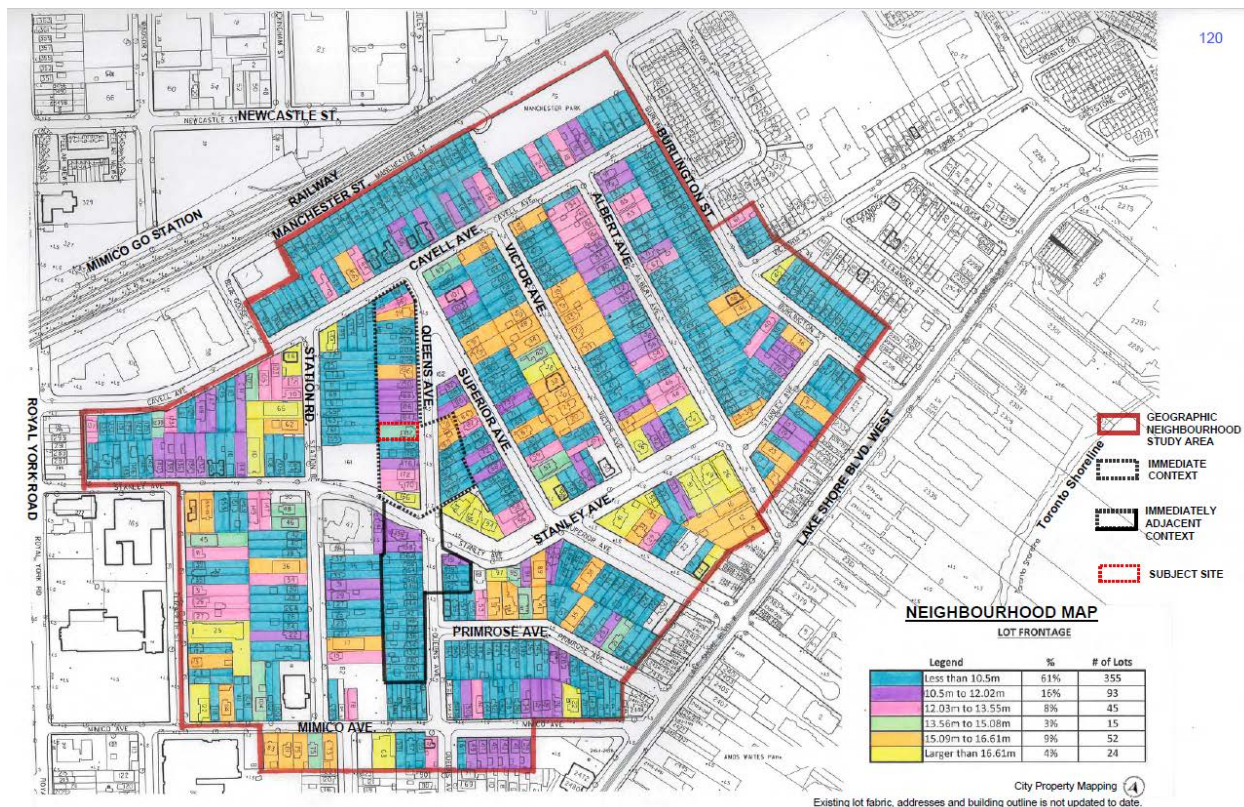


Figure 1: Neighbourhood Map Lot Frontage, EX 1, Romano

Figure 1 is Mr. Romano's illustration of where certain categories of lot frontage are located. The blue colour shows all lots which have a lot frontage smaller than the By-law minimum for detached houses, which is 10.5m. The proposed frontages of the severed lots are 7.48 m.

Lots with frontages greater than 10.5 have been categorized and coloured on the map in intervals of 1.52m, (for example 10.5 to 12.02m, and 12.03m to 13.55m). A similar categorization of the lots with frontages less than 10.5m would have been useful to understand how many lots have similar frontages to those that are being proposed. A lot coloured blue on the map could have a frontage anywhere between 4.57m and 10.5m.

I conclude from the map that a significant number of the lots in the neighbourhood have frontages that are smaller than the required minimum frontage for detached houses, which has relevance, but does not sufficiently come to terms with the OP standard of "prevailing" and "most frequently occurring", as discussed previously.

- o Statistical Analysis

Mr. Romano provided an analysis of the frontages and lot areas at three different scales; the broader context, the immediate context, and the immediately adjacent block context.

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Mr. Romano's statistical analysis:

	BROADER CONTEXT	IMMEDIATE CONTEXT	IMMEDIATE ADJACENT
Frontage Range	4.57m to 48m	7.7 to 17.07m	7.62m to 23.47m
Area range	157.9m ² and 1610 m ²	239.7 to 676.3 m ²	239.7m ² to 715.37m ²
Most frequent frontage	7.62m (93 times), 9.14m (59 X), 10.67m (32 X)	15.24 (3 x) Each different – no one "most frequent"	7.62m (6 x) Each different – no one "most frequent"
Most frequent area	306.58 m ² (32 times), 290.32 m ² (29 x)	none	306.5 m ² (6 x)
Proposed lot frontage 7.48		Proposed lot area 303 m ² .	

Mr. Romano's witness statement says that there is no single prevailing lot size number and goes on to "qualitatively" describe the lot size physical character as "compact to modest sized, being smaller than 10.5m (61%) or 12m (77%) for lot frontage and 400m² (58.4%) or 500m² (78%) for lot area".

He acknowledged that the proposed lot frontage and lot area may not be the most frequently occurring lot size numerically, but concluded that the proposed lot sizes' physical character will create "modest sized lots which will respect and reinforce the prevailing lot size within the immediate context".

By Mr. Romano's approach, most of the lots in the neighbourhood have lot frontages smaller than 10.5m and areas less than 400m² and he therefore applied a general label of "compact to modest sized" to the character of lots in the neighbourhood. He concluded that the proposed lots, being "modest sized lots" respect the prevailing lot size. By this logic, any undersized¹ lot, no matter how small, could fit his description of the character of the neighbourhood.

I do not find that Mr. Romano has adequately addressed the policy that the proposal must respect and reinforce the *prevailing* size and configuration of lots.

In this context, the most frequently occurring lot frontage in the broader context, that which is "prevailing" as per the OP direction, would be 7.62m. The prevailing (most frequently occurring) lot area would be 306.58m². The dimensions of the proposed lots are smaller than these benchmarks.

¹ Exception 22 of the By-law requires a minimum lot frontage for a detached house of 10.5m and a minimum lot area of 325m².

Even if the notion of “prevailing” can accommodate ranges/ categories rather than only lots with the exact same dimensions, those categories must have relevance. In a statistical analysis, to understand what is “prevailing”, it is important to understand, in a general way, what the frequency of lot sizes (frontages and areas) are in meaningful categories. Further, it is important to understand where the proposed lot frontages actually fall within that distribution. In other words, are the greatest number of lots (most frequently occurring/ prevailing) within a range of 9 to 10.5m frontage, for example, or are there substantial numbers within a range of 6-7.5m that would reflect the frontages of the proposed lots? How many lots are smaller than the proposed lot sizes?

I note from Mr. Romano’s evidence that there are no lots in the immediate context (both sides of Queens Ave from Cavell Ave to before Mimico Ave) that have a lot frontage as small as that which is being proposed. The same is true of the immediately adjacent context area. OP Policy 4.1.5 requires that development within a neighbourhood be materially consistent with the prevailing physical character of properties in *both* the broader *and* immediate contexts.

I find that the statistical analysis provided by Mr. Romano does not support a conclusion that the proposed lot sizes respect and reinforce the prevailing size of lots in the neighbourhood and immediate context.

Variances

Not “prevailing” lot sizes but still “fit”?

The general expectation of the OP, as seen in the preamble to Policy 4.1.5, is that physical changes to established neighbourhoods must be sensitive, gradual, and “fit” the existing character.

Mr. Romano asserted that development can have different physical characteristics and still be found to respect and reinforce the overall character of the physical contexts. In other words, I am asked to find that the combined features of the proposal still fit the neighbourhood even though the requested lot frontage has not been shown to meet the OP standard for prevailing lot sizes. This argument relies on the proposition that the proposed buildings fit the context of the neighbourhood well enough that the undersized lots are supportable. i.e., that the consent to sever is justified on the basis of the proposed built form.

In addition to the criterion regarding prevailing size and configuration of lots, there are two additional criteria in OP Policy 4.1.5 that warrant further discussion in relation to the proposed buildings:

OP Policy 4.1.5

- c) prevailing heights, massing, scale, density and dwelling type of nearby residential properties;

- f) prevailing patterns of rear and side yard setbacks and landscaped open space;
 - o prevailing patterns of rear and side yard setbacks and landscaped open space

Mr. Romano's evidence was that side yard setbacks are "tight to modest" with "larger side yards typically accommodating driveways". In response to this description, Mr. Ranalli asked Mr. Romano if the pattern of side yard setbacks was that of a tight side yard on one side and a driveway on the other side... so that the abutting house has more space on the other side.

Mr. Romano agreed that there were pockets in the neighbourhood where this was the case, but explained that a planning assessment is not based on one or two or three properties, but the neighbourhood as a whole. He explained that the pattern in the neighbourhood is not a tight side yard on one side only and said that it is definitely not the case for newer construction.

I agree with Mr. Romano that the prevailing pattern of side yard setbacks in the neighbourhood is not one where there is a tight side yard on one side, with a driveway, or wider setback on the other. I agree with Mr. Romano that a planning assessment in the context of OP Policy 4.1.5 is not based on one or two examples, but on the prevalence of the characteristic in the neighbourhood, or immediate context.

- o Prevailing heights, massing, scale and density

Variances have been requested for the height of the exterior main walls, for density and for side yard setbacks.

Mr. Ranalli contended that the two tall, narrow structures, on undersized lots, do not reflect the character of the neighbourhood, i.e., that they do not reflect the prevailing built form.

Mr. Romano argued that the proposed wall height produces less mass overall than what could be constructed as of right for detached dwellings and other building types and that a mansard roof style would create more massing at the upper level. A diagram depicting a design with By-law compliant height and wall height was included in EX 1, page 70.

I give little weight to an opinion that other different designs could potentially have more impactful massing than what has been proposed. The burden remains with the applicant to demonstrate that *their* design, as proposed, fits the character of the neighbourhood and respects and reinforces the existing physical character at both the broader neighbourhood context and the immediate context.

Mr. Romano emphasized that the proposal does not require a variance for overall height, only for the north and south side exterior main wall heights. His opinion was that the building overall is lower and so there is some benefit to allowing the wall height. In his testimony, he characterized this as the owner “leaving money on the table” (referring to a quote from a decision of the TLAB on another application). I do not agree. It is somewhat disingenuous to suggest that a roof peak which is 14cm shorter than the maximum is a concession that balances the proposed increased floor space and ceiling heights in the living area of the house, or that any “money” has been left on the table.

I accept and agree with Mr. Romano’s evidence that there are a variety of building heights in the broader neighbourhood and that wall heights vary. Similarly, I accept that there are a range of densities (described as a floor space index) in the broader neighborhood. In most cases, however, the taller or larger examples that Mr. Romano referred to are located on wider lots, resulting in a better balance of architectural scale and massing.

The correlation between the compact to modest sized lots Mr. Romano described and dwelling type has not been analyzed, but in context of Mr. Romano’s reference to potential heights of other building types I note, for example, that the scale and massing of a semi-detached structure on two “modest” lots would present quite differently than two detached houses on the same sized lots.

To uphold the premise that the proposed buildings “fit” the existing character, it is not enough to find some examples of similar or greater wall heights, and similar or greater densities, in the broader neighbourhood; the heights, massing, scale and density, in combination, must respect and reinforce the prevailing character at both the broader neighbourhood and immediate context.

There is only one example cited by Mr. Romano of a similar pair of narrow detached houses with tall exterior walls in the immediate context, at 212 Queens Ave. In that example, both lots are wider and only one of the pair has a density as high as the proposal. One, or even two, instances would not be sufficient to fulfil the OP standard that the proposal respect and reinforce the *prevailing* heights, massing, scale and density.

I find that the proposal has not met the criterion set by OP Policy 4.1.5 c) that the proposal respect and reinforce the prevailing heights, massing, scale and density of nearby residential properties.

General Intent and Purpose of the Official Plan

I have found that the statistical analysis provided by Mr. Romano does not support a conclusion that the proposed lot sizes respect and reinforce the prevailing size of lots in the neighbourhood and immediate context (OP Policy 4.1.5 b)). I have found that the proposal does not respect and reinforce the prevailing heights, massing, scale and density of nearby residential properties (OP Policy 4.1.5 c)).

I find that Mr. Romano's contention that development can have different physical characteristics and still be found to respect and reinforce the overall character of the physical contexts is not sustainable in this matter. I find that the proposal does not maintain the general intent and purpose of the Official Plan for the reasons set out above.

In concert with my finding that the proposal does not maintain the general intent and purpose of the OP, I am not satisfied that the proposal conforms to the OP as required by s. 51(24)(c) of the *Act*, which is a requirement for approval of the application for consent to sever.

General Intent and Purpose of the Zoning By-law

The overall purpose of the Zoning By-law is to implement the policies of the OP. Having found that the proposal does not meet the general intent and purpose of the OP, I find that for the same reasons, the proposal does not therefore meet the general intent and purpose of the Zoning By-law.

My finding that the proposal does not meet the first test for approval of a variance, the one regarding the intent and purpose of the OP, is sufficient for the both the application for variances and the application for consent to sever to be denied.

Allied with my finding on the first test, is my finding that the proposal fails the second test regarding the intent and purpose of the Zoning By-law. Nonetheless, for the sake of completeness, I shall briefly summarize further comments regarding the intent of the Zoning By-law and the third and fourth tests mandated under s. 45(1) of the *Act*.

Six variances have been requested, duplicated for both parts of the proposed subdivided lots.

- Lot Area and Lot Frontage

In this zone, the By-law permits detached houses, semi-detached houses, triplexes, fourplexes, and low-rise apartment buildings. The By-law sets different limits for dwelling types with respect to minimum frontage, maximum height, side yard setbacks, and minimum lot area. There are an additional provisions which apply to detached and semi-detached houses that do not apply to other dwelling types.

Under the zoning exception which applies to this property, minimum lot frontage for a detached house is 10.5m. For a semi-detached house, the minimum lot frontage is 18.0m. The underlying provision in the RM zone states that if a semi-detached house, a fourplex or an apartment building is on two lots in the RM zone, the required minimum frontage for each lot is 50% of the requirements cited in A and B (for lot area and lot frontage). The minimum frontage for a semi-detached structure which is located on two separate lots, is, in this case, 9m. The proposed lot frontage for each of the two lots, at 7.48m, is therefore noticeably smaller than the minimums the By-law establishes for detached houses and closer, but still shorter, than the minimums set for semi-detached

houses which are generally expected to be a narrower form of dwelling. The By-law, in other words, provides for different forms of housing to be located on narrow lots.

In context of the above, and on the basis of the reasons supporting my finding that the proposed lot sizes do not fit the fit the neighbourhood, I find that the proposed lot frontage and lot area would not maintain the intent and purpose of the Zoning By-law.

- Main Wall Height

Mr. Romano's evidence was that only detached dwellings and semi-detached dwellings are subject to the wall height limitation in the By-law and are subject to a lesser overall height limit than duplexes, triplexes, apartments etc. He did not elaborate on the intent of this differentiation in the By-law.

Mr. Romano said that the intent of the main wall height provision in the By-law is to minimize the extent to which walls may rise to create inappropriate upper levels, "such as third storeys where two storeys are regulated". Mr. Ranalli questioned whether this was the only intent of the provision and thought that higher walls were problematic in that they block more light from reaching adjacent buildings. Mr. Romano's Witness Statement mentioned an intent for the By-law to prevent disproportionate flat roofs where pitched roofs are encouraged.

I find that the design of the proposal, which has two levels of habitable space above a garage, does not maintain the intent and purpose of the By-law. The additional wall height variance does in my opinion facilitate the completion of three levels, in an area Mr. Romano characterizes as having a "two storey height level". (The main floor of the proposed houses above the garage is located 2.52m (+8 ft) above the established grade). In my opinion, the application of the intent and purpose of the By-law provision is not constrained by the absence of a regulation on the number of storeys, as might have been suggested by Mr. Romano's example.

- Side Yard Setback

Mr. Ranalli's primary objections to the variances requested for main wall height and side yard setback are with regards to the impact these variances would have on the amount of natural light that would still be available through the eight windows located on the side wall of his house adjacent to the subject property.

Instead of the current conditions of a driveway between the Appellant and Applicant, the new house is proposed to be built within 0.6m of the lot line, with the driveway for the proposed house on the severed lot coming in at the front wall and entering the integrated garage on the façade. Mr. Ranalli acknowledged under cross examination that the existing generous side yard setback on the Applicant's property is not protected, and that zoning compliance for the side yard setback would result in a 1.5m separation between his wall and the proposed new house. In Mr. Ranalli's opinion, the impact of the change from the existing condition was already severe, since he

characterized the two existing dwellings as each having been built in recognition of the location of the other, accommodating each other in terms of light and privacy. He said he had to accept what the By-law allows, but that he did not accept that the situation should be made worse by the variance.

The variances sought for the raised decks are caused by the location of the deck within the required side yard setbacks.

I accept Mr. Romano's evidence that the side yard setbacks which are proposed are similar to what is found next door, as well as in the immediate and broader contexts. I find that the side yard setbacks and the setback of the proposed deck allows for sufficient space to provide access and maintenance and that the general intent and purpose of the Zoning By-law is maintained.

- Floor Space Index

I accept Mr. Romano's evidence with respect to FSI.

Desirable for the Appropriate Development or use of the land

I find that the proposal is not desirable for the appropriate development of the land for the same reasons that support my finding that the proposal does not maintain the general intent and purpose of the OP and my finding that the requested variances do not cumulatively maintain the general intent and purpose of the Zoning By-law.

Minor

One of Mr. Ranalli's primary concerns was the impact the proposed dwelling would have on the amount of light that would still enter his house on the north side. His objection to the proposal was that the existing eight windows on the north side of his house would have a blank wall 1.22m from them, blocking light and view.

The test for "minor" is not that there be no impact, and it is not only evaluated on the basis of size or degree, but rather whether the imputed impact rises to the level of being an unacceptable adverse impact of a planning nature.

In Mr. Romano's Witness Statement, he provided his opinion with respect to light and privacy as follows: "the land use planning framework test to provide adequate light and privacy is being maintained. There is more than adequate light and privacy being provided. The overall building height is less than permitted and the eaves setback is fully zoning by-law compliant. These are features which influence height (sic) to a greater degree than any of the requested variances". His opinion was that there is no impact on direct sunlight and that any loss of ambient light is negligible.

I was advised by counsel for the Applicant that an as-of-right design could have a greater impact than what is being proposed. She asserted that the impact to Mr. Ranalli does not amount to an undue level that provides grounds to refuse the application.

On the argument that overall height and eaves are more impactful to the light which would penetrate to Mr. Ranalli's property, this proposition does not invalidate Mr. Ranalli's concern about the incremental effects of those components of the proposal which are not as-of-right. Mr. Ranalli would assert that the incremental impact of the proposed variances for side yard setback and wall height are aggravating to an already impactful change.

Mr. Romano's testimony at the Hearing was that other elements such as canopies are permitted as-of-right, which could block light. The implication that I understand from this testimony is that there are as-of-right entitlements to put up features that could block light and therefore, perhaps, that the permission to erect canopies translates into permission to obstruct light. I am reluctant to embrace this point of view as I am of the opinion that the permission to erect a canopy, if desired, is confined to the permission to do only that, and no further implications should be ascribed, especially as the prospect of a canopy is only a theoretical example in this case.

Mr. Renalli's assertion is that the context matters. He described the relationship between the two existing buildings that were built over 100 years ago, noting that they were built in such a way that the relationship between them was kept in mind, accommodating a predominant source of natural light on the north wall of Mr. Ranalli's home and aided by the driveway location/setback on the Applicant's property. The change in relationship between the two properties by way of the proposed Applications is impactful in Mr. Ranalli's view and there is little flexibility available for him to adapt his house to the changed condition that would result from the proposal.

Mr. Romano emphasized that the proposal does not block any direct sunlight from Mr. Ranalli's property, that the only potential decrease is of ambient light. Mr. Ranalli rejected the implication that ambient light was not important, or as important, as direct sunlight. Mr. Ranalli's concern was not direct sunlight, but the amount of natural (ambient) light that would no longer enter the windows on the north wall of his home, similar to the light that any home in Toronto experiences on the north side of a house.

I understand Mr. Ranalli's concerns and I recognize that change to this particular long-standing context between the two existing houses may obstruct the views from the windows on the north wall of his house and may reduce the light which enters those windows. The accepted benchmark for finding that the proposal does not meet the test of minor is a finding that there is undue adverse impact from the variances requested. In the circumstances of this request, while the change to the existing condition is greater, the variance requested for the side yard setback amounts to 30cm and it is difficult to substantiate that this particular variance causes undue adverse impact.

From the evidence of the Parties, I am not able to substantively assess the impact of requested variances on the amount of natural light available to the north side of the

Appellant's home, although I have heard opinions from both Parties. I shall not make a finding on this fourth and final test and my Decision shall stand on the findings regarding the first three tests mandated under s. 45(1) of the *Act*.

Conclusion

I have found that the proposal does not maintain the intent and purpose of the Official Plan. In concert with my finding that the proposal does not maintain the general intent and purpose of the OP, I am not satisfied that the proposal conforms to the OP as required by s. 51(24)(c) of the *Act*, which is a requirement for approval of the application for consent to sever.

I have found that the proposal does not maintain the general intent and purpose of the Official Plan and the general intent and purpose of the Zoning By-law. I have also found that the proposal is not desirable for the development of the land.

DECISION AND ORDER

The Appeal is allowed. The decisions of the COA regarding the application for consent to sever and regarding the applications for variances, dated March 23, 2021, are set aside.

X



Ana Bassios
Panel Chair, Toronto Local Appeal Body