

DECISION AND ORDER

Decision Issue Date Monday, June 27, 2022

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): HAMED AFSHAR

Applicant(s): ARKLAB INC

Property Address/Description: 79 FLORENCE AVE

Committee of Adjustment File

Number(s): 20 222164 NNY 18 CO, 20 222167 NNY 18 MV, 20 222168 NNY 18 MV

TLAB Case File Number(s): 21 128484 S53 18 TLAB, 21 128485 S45 18 TLAB, 21 128486 S45 18 TLAB

Hearing dates: August 12, 2021 and September 16, 2021

DECISION DELIVERED BY C. KILBY

REGISTERED PARTIES AND PARTICIPANTS

Name	Role	Representative
Arklab Inc.	Applicant	
Shokoufeh Farina	Primary Owner	
Hamed Afshar	Appellant	Amber Stewart
City of Toronto	Party	Michael Mahoney
Marshall Mednick	Participant	

INTRODUCTION

The Appellant Hamed Afshar appeals from three decisions of the Committee of Adjustment dated February 25, 2021 (**Appeal**). The Committee of Adjustment denied consent to sever the property at 79 Florence Avenue (**Property**) and refused to grant permission for 18 variances associated with the construction of two new houses on the subdivided land.

On August 12 and September 16, 2021, the Toronto Local Appeal Body (**TLAB**) held a virtual hearing of this Appeal (**Hearing**). Amber Stewart represented the Appellant with Franco Romano appearing as the Appellant's land use planning expert. The City of Toronto (**City**) opposed the Appellant's proposal as a Party to the Appeal. Michael Mahoney represented the City and Michael Romero appeared as the City's land use planning expert. I qualified Mr. Romano and Mr. Romero as Expert Witnesses in land use planning. There were no other Parties or Participants at the Hearing.

I advised that I had attended the site, walked the neighbourhood and had familiarized myself with the pre-filed evidence but it was the evidence to be presented at the Hearing that would be of importance.

JURISDICTION

The TLAB exercises its authority within a statutory framework. The criteria for my decision are set out in the following provisions of the Planning Act (**Act**).

Provincial Policy – S. 3

A decision of the TLAB must be consistent with the 2020 Provincial Policy Statement (**PPS**) and conform to the Growth Plan for the Greater Golden Horseshoe for the subject area (**Growth Plan**).

Variance – S. 45(1)

In considering the applications for variances from the zoning by-laws, the TLAB 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.

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 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*.

ISSUES

The issues to be determined in this Appeal are:

TLAB Case File Number: 21 128484 S53 18 TLAB, 21 128485 S45 18 TLAB, 21 128486 S45 18 TLAB

1. Do the proposed variances satisfy the four tests under subsection 45(1) of the Act?
2. If the variances satisfy the four tests, does the proposed severance meet the criteria for granting consent to sever under section 53 of the Act?

After carefully considering all of the evidence presented during the Hearing, I have determined that this Appeal should be dismissed for the reasons set out below.

BACKGROUND

The Applications

The Property is located south of Sheppard Avenue West and east of Yonge Street, in the former municipality of North York. The area is designated as “Neighbourhoods” in the City’s Official Plan (**OP**). The Property presently hosts a detached dwelling and a garage.

The applicable zoning standards require a minimum lot frontage of 12m and a minimum lot area of 370m². If the Applications are granted, the Appellant proposes to subdivide the property into two lots, each with a lot frontage of 7.62m. Part 1 (or A), the eastern retained lot, would have a lot area of 300.58m² and Part 2 (or B), the western conveyed lot, would have a lot area of 300.19m². The Appellant proposes to build a single detached house on each lot, each of which requires nine variances, for a total of 18 variances.

The Appellant directed my attention to other severance approvals in the neighbourhood, on this street, and on the same block as the Property. While the presence of different types of lots in proximity to the Property is relevant to my analysis, TLAB Panels are not bound by precedent and each case is decided on its own merits.

The Appellant’s plans have been revised to include comments from the City’s Engineering staff and to show the current tree inventory on the Property, as a birch tree has been removed since the initial Applications were made. There has also been an adjustment of the driveway for the east lot to minimize overlap with the tree protection zone for a City tree. I find that the Appellant’s changes constitute minor amendments consistent with section 45(18.1.1) of the Act, and no additional notice is required.

Zoning

The Property is subject to two zoning standards. It is zoned RD(f12.0; a370) [ZZC] under the City’s harmonized zoning by-law 569-2013 (**Zoning Bylaw**) and R6 under the former North York Zoning Bylaw 7625 (**North York Bylaw**). The North York Bylaw applies only in respect of building height in this case.

The block in which the Property is located is subject to more than one zoning standard. The north side of Florence Avenue between Botham Road and Pewter Road

TLAB Case File Number: 21 128484 S53 18 TLAB, 21 128485 S45 18 TLAB, 21 128486 S45 18 TLAB

is zoned RD(f15.0; a550)(x5), while the south side, where the Property is located, is zoned RD(f12.0; a370).

The West Lansing Zoning Study

In 2017, the North York Community Council adopted a recommendation to conduct a zoning study called the West Lansing Zoning Study (**Study**). The report filed in Exhibit 1b describes the intent of the study as being “to address the evolving lot pattern of the neighbourhood and to determine if a portion of West Lansing should be re-zoned to more accurately reflect the frontage and area of lots that currently exist.” The Study’s aim was to align the zoning standard with the physical reality on the ground in the Study Area, citing Policy 4.1.8 of the OP in this regard.

As a result of the Study, the zoning standards for lot frontage and lot area were modified to 7.5m and 300m², respectively, for the area bounded by Johnston Avenue to the north, Franklin Avenue to the south, Yonge Street to the east, and Botham Road to the west (the **Rezoned Area**). Side yard setback standards were also adjusted.

The Property does not fall within the Rezoned Area. Mr. Romano said that I should not read the Study as proscribing similar development styles elsewhere in the neighbourhood because the entire neighbourhood was not reviewed. In considering this point, I note these comments from the Study report:

Despite interest from the development community to expand the study boundaries further west to Pewter Road, Planning staff have maintained their opinion that lots west of Botham Road have not evolved in the same way as the Focused Study Area. Small lots west of Botham Road to Pewter Road would not respect and reinforce the character of the lots that currently exist.

It appears from this remark that the choice not to include the area where the Property is located in the Study was deliberately made on the basis of the then-existing physical character of that area. The question is whether such a statement remains true today. In this Appeal, I must determine whether the current physical character of the Property’s context supports the type of development proposed by the Applications. The evidence presented at the Hearing is more informative as to the existing physical character of the neighbourhood than the Study.

The Appellant relies on the similarity of the overall physical form of the proposed development for the Property to what exists in the Study Area, and the proximity of the Property to the Rezoned Area, as support for approval of the Applications. Mr. Romano also suggested that because the rezoning took place without the need for an OP Amendment, 7.5m lot frontages and 300m² lot areas conform to the OP. I interpret the absence of an OP Amendment associated with the rezoning as support for the Study’s findings that the physical character of the Rezoned Area reflected the proposed new zoning standards, and not as a blanket acceptance of these dimensions as conforming to the OP across the broader geographic neighbourhood.

The physical form of development as well as lot size data in the Rezoned Area is relevant to an analysis of the overall neighbourhood, but it does not replace an

assessment of the character of the wider neighbourhood (the broader context under the OP) or the Property's immediate context. Moreover, in considering evidence about the physical character of the Rezoned Area, I am mindful that it is subject to a different zoning standard than what applies to the Property. This is relevant to the weight I will afford to evidence about its physical character, since comparable physical characteristics are permitted as of right in that location.

Ultimately, I find the Study to have limited weight or relevance to the questions before me in this Appeal.

Variances Sought

The variances sought are as follows:

Part 1 (Lot A – East Lot)

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

The required minimum lot frontage is 12.0m.

The proposed lot frontage is 7.62m.

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

The required minimum lot area is 370m².

The proposed lot area is 300.58m².

3. Chapter 10.20.40.10.(6), By-law 569-2013

The elevation of the lowest point of a main pedestrian entrance through the front wall or a side main wall may be no higher than 1.2m above established grade.

The proposed height of the main pedestrian entrance above established grade is 1.5m.

4. Chapter 10.5.40.50.(4), By-law 569-2013

The level of the floor of a platform, such as a deck or balcony located at or below the first storey of a residential building other than an apartment building, may be no higher than 1.2m above the ground at any point below the platform, except where the platform is attached to or within 0.3m of a front wall, the floor of the platform may be no higher than 1.2m above established grade.

The floor of the proposed front porch is 1.38m above established grade.

5. Chapter 10.20.40.10.(2)(A), By-law 569-2013

The permitted maximum height of all exterior main walls is 7.5m.

The proposed height of the exterior main walls 9.11m.

6. Chapter 10.20.40.20.(1), By-law 569-2013

The permitted maximum building length is 17.0m.

The proposed building length is 17.73m.

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

The required minimum side yard setback is 1.2m.

The proposed east side yard setback is 0.91m.

8. Chapter 10.20.30.40.(1)(A), By-law 569-2013

The permitted maximum lot coverage is 30% of the lot area.

The proposed lot coverage is 31.97% of the lot area.

9. Section 14-A(8), By-law 7625

The maximum permitted building height is 8.8m.

The proposed building height is 9.1m.

Part 2 (Lot B – West Lot)

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

The required minimum lot frontage is 12.0m.

The proposed lot frontage is 7.62m.

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

The required minimum lot area is 370m².

The proposed lot area is 300.19m².

3. Chapter 10.20.40.10.(6), By-law 569-2013

The elevation of the lowest point of a main pedestrian entrance through the front wall or a side main wall may be no higher than 1.2m above established grade.

The proposed height of the main pedestrian entrance above established grade is 1.5m.

4. Chapter 10.5.40.50.(4), By-law 569-2013

The level of the floor of a platform, such as a deck or balcony located at or below the first storey of a residential building other than an apartment building, may be no higher than 1.2m above the ground at any point below the platform, except where the platform

TLAB Case File Number: 21 128484 S53 18 TLAB, 21 128485 S45 18 TLAB, 21 128486 S45 18 TLAB

is attached to or within 0.3m of a front wall, the floor of the platform may be no higher than 1.2m above established grade.

The floor of the proposed front porch is 1.38m above established grade.

5. Chapter 10.20.40.10.(2)(A), By-law 569-2013

The permitted maximum height of all exterior main walls is 7.5m.

The proposed height of the exterior main walls 8.95m.

6. Chapter 10.20.40.20.(1), By-law 569-2013

The permitted maximum building length is 17.0m.

The proposed building length is 17.73m.

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

The required minimum side yard setback is 1.2m.

The proposed east side yard setback is 0.91m.

8. Chapter 10.20.30.40.(1)(A), By-law 569-2013

The permitted maximum lot coverage is 30% of the lot area.

The proposed lot coverage is 32% of the lot area.

9. Section 14-A(8), By-law 7625

The maximum permitted building height is 8.8m.

The proposed building height is 9.04m.

EVIDENCE AND ANALYSIS

The following evidence was marked as exhibits in this Appeal:

- | | |
|------------|--|
| Exhibit 1a | Franco Romano Expert Report, Part 1 |
| Exhibit 1b | Franco Romano Expert Report, Part 2 - Compendium |
| Exhibit 2 | Michael Romero Expert Report |
| Exhibit 3 | City of Toronto Document Disclosure |

POLICY

TLAB decisions must be consistent with the PPS and conform to, or not conflict with, the Growth Plan for the area. Both the PPS and the Growth Plan discuss issues such as land use coordination, employment, housing infrastructure, climate change and resource management. The PPS and Growth Plan are high level provincial policy documents that are not typically engaged by a local variance and severance application. Nevertheless, these documents discuss intensification in existing built-up areas such as the neighbourhood in this case, and favour development in transit-served areas. As the Applications propose to construct residential dwellings in a built-up area, close to transit, I agree with both Mr. Romano and Mr. Romero that the Applications are consistent with the PPS and conform to the Growth Plan.

Mr. Romero highlighted Policy 4.6 of the PPS which characterizes the municipal official plan as the most important vehicle for the comprehensive and integrated implementation of provincial planning policy. Similarly, he pointed out Policy 5.2.5.8 of the Growth Plan which clarifies that existing land use designations are not altered by the Growth Plan's identification of areas such as strategic growth areas. I agree with Mr. Romero that the OP is a critical policy document for the purposes of deciding this Appeal. Given the policies outlined by Mr. Romero about the importance of the OP, I am not convinced that "market demand", a consideration raised by the Appellant, can be enshrined above local planning policy.

VARIANCES

In order to be approved, all of the variances must individually and cumulatively satisfy the four tests set out under subsection 45(1) of the Act. Other than lot frontage and lot area, the majority of the proposed variances relate to the size and massing of the proposed new dwellings. Side yard setback reductions, building height, depth and length variances, as well as a variance for lot coverage, all relate to the scale of the dwellings proposed to be built relative to their lots.

1. Do the variances maintain the general intent and purpose of the OP?

The OP strategy for managing change is implemented through land use designations such as the "Neighbourhoods" designation applicable to this area. Read as a whole, the OP has a theme of gradual and sensitive change that respects the existing character of designated areas. Throughout the OP there is language about steering development towards certain areas of the City while "protecting our neighbourhoods...from development pressures."¹

Nevertheless, "Neighbourhoods" are not expected to stay frozen in time. The OP describes as a "cornerstone policy" the goal of ensuring that new development in

¹ OP, Chapter 2, page 2-1, Policy 2.2.2.

“Neighbourhoods” respects the existing physical character of the area, which will reinforce a neighbourhood’s stability.² The preamble to and text of Policy 3.1.2.1 also discusses the importance of future development fitting into its context, respecting and improving the character of the surrounding area.

Overall, the OP emphasizes the preservation of the existing physical character of designated areas such as “Neighbourhoods,” but does not demand duplication of existing physical characteristics. Proposed development that represents change should fit into, or respect and reinforce, what exists in a particular context. Mr. Romano opined that if what is being proposed respects and reinforces the existing physical character of the neighbourhood, then that reflects stability. He directed my attention to policies in the OP that he deemed to be most relevant to this Appeal, including 2.3.1, 3.1.2, 3.2.1, 3.4, 4.1.1, 4.1.5 (including explanatory text), and 4.1.8. I have considered all of these policies.

Neighbourhood Study Area

Policy 4.1.5 requires development in established “Neighbourhoods” to respect and reinforce the existing physical character of each “geographic neighbourhood.” The setting of boundaries for the relevant neighbourhood is a necessary first step by planning practitioners to attempt encapsulation of its existing physical character. The OP also directs that the severance and variances be compared to an “immediate” and “broader” neighbourhood context, and the proposed lot frontages and lot areas should respect and reinforce the characteristics in both.

As required by the OP, each expert prepared a neighbourhood study area (**NSA**) for the purposes of analyzing the Applications against the characteristics of the geographic neighbourhood. Both NSAs were reasonably similar. Mr. Romano’s 884-property NSA had these boundaries: Easton Road and Gwendolen Crescent to the west, Sheppard Avenue to the north (excluding lots fronting onto Sheppard), Yonge Street to the east (excluding lots fronting onto Yonge Street), and a southern boundary of Franklin Avenue (including lots on the south side of Franklin). Mr. Romero delineated his 847-property NSA with reference to Gwendolen Crescent to the west, Bogert Avenue to the north, Yonge Street to the east (excluding lots fronting onto Yonge Street), and Cameron Avenue to the south.

What is the Existing Physical Character of the Neighbourhood?

To determine whether the Applications will respect and reinforce the existing physical character of the neighbourhood, I must first discern that character from the evidence. My focus is on Policy 4.1.5(b), (c), and (g) as the proposed variances relate to these criteria. I accept Mr. Romano’s evidence that the Applications will not result in a significant change from what exists in terms of the other applicable development criteria listed under Policy 4.1.5 (d, e, f).

A recurring theme in the Appellant’s evidence was that the neighbourhood’s physical character is that of an inconsistent building and lot form. Mr. Romano’s

² OP, Chapter 2, Policy 2.3.1.1, page 2-27.

TLAB Case File Number: 21 128484 S53 18 TLAB, 21 128485 S45 18 TLAB, 21 128486 S45 18 TLAB

evidence was that the Applications should be deemed to uphold the general intent and purpose of the OP because to find otherwise would be to constrain growth and development and essentially enforce a static standard. Mr. Romano was very clear that “fit” does not mean “the same as.”

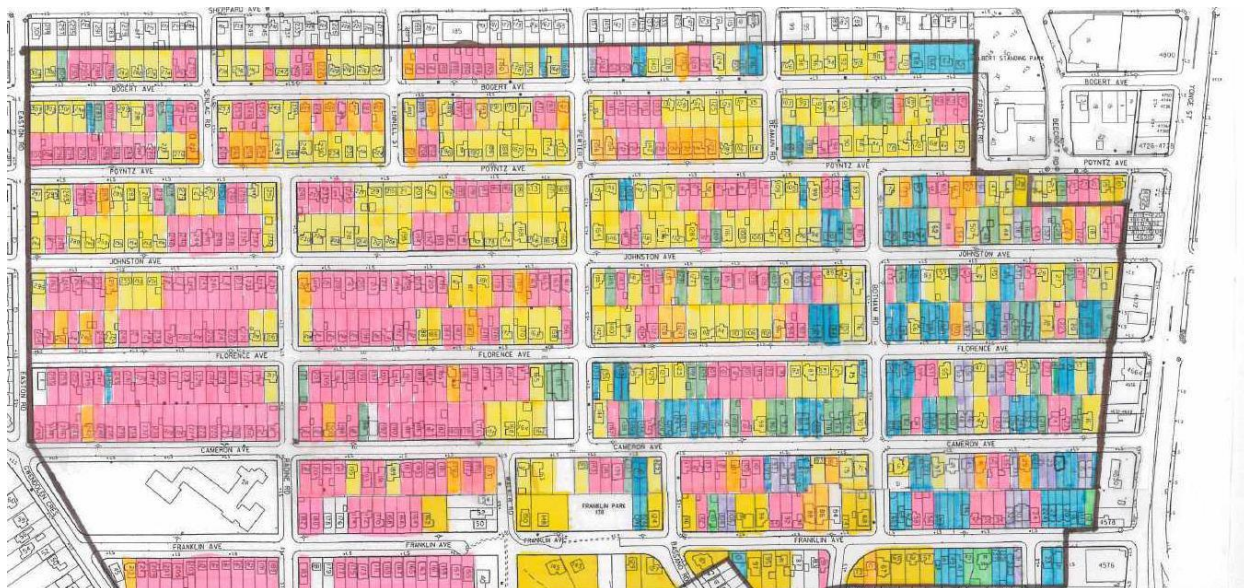
Prevailing Size and Configuration of Lots

I will begin my analysis with Policy 4.1.5(b), the prevailing size and configuration of lots. If consent to sever is granted, each severed lot will have a frontage of 7.62m and a lot area of approximately 300m².

Prevailing means “most frequently occurring” under the OP. Rectangular lots are the most frequently occurring lot configuration in the neighbourhood, and the Applications do not propose to change this shape.

Mr. Romano explained that “prevailing” is difficult to measure, as physical character is more a matter of qualitative substance as opposed to quantity. Nevertheless, his evidence was that there is more than one prevailing physical character in this neighbourhood as it relates to lot frontage and area, which together comprise lot size.

To ascertain what the most frequently occurring lot size is in the neighbourhood, Mr. Romano presented a Neighbourhood Context Map³ in which he colour-coded six categories of lot frontage within the NSA. I have reproduced the map and colour key below, but a more detailed version is included in Exhibit 1a at page 109.



³ Exhibit 1a, Tab G1, page 109.

7.62m and smaller
7.63m to 9.45m
9.46m to 11.29m
11.3m to 13.13m
13.14m to 14.98m
14.99m and larger

The Property's current lot frontage of 15.24m is represented by the yellow shading. Mr. Romano's evidence was that 15.24m is the most frequently occurring lot frontage in the NSA (238 properties). Another common lot frontage category, 11.3m to 13.13m, is indicated in pink shading. Mr. Romano's evidence was that lot frontages of 12.19m are the second-most frequently occurring in the NSA (231 properties).

In terms of lot area, Mr. Romano's evidence was that the most frequently occurring lot area in his NSA is 510.97m² (101 properties) followed by 483.1m² (83).⁴ The neighbourhood includes 248 different lot area values.

The map indicates a concentration of lots with a similar frontage to those being proposed on the southeastern part of the neighbourhood, including in the Rezoned Area. Lots having a frontage of 7.62m or smaller account for 13.7% of the NSA according to Mr. Romano's calculations, and he characterized lot frontages of 7.62m as the third most frequently occurring in the NSA (114 properties, or 12.9% of the NSA).

On Florence Avenue in particular, the lot data reveal a total of 32 lots⁵ on Florence Avenue having frontages of 7.62m or less. Of these, eight are in the Property's "immediate context", facing Florence Avenue on the north and south sides of the street, between Botham Road and Pewter Road.⁶ Mr. Romano's evidence was that 15.24m is the most frequently occurring lot frontage in the immediate context. The available data demonstrate the most frequently occurring lot area in the immediate context to be 603.87m² (9 properties), with lot areas comparable to those proposed by the Applications occurring 6 times.⁷

Mr. Romano acknowledged that the proposed dimensions of the severed lots do not reflect the most frequently occurring lot size in the NSA, but said that they do respect and reinforce the lot size pattern and physical character of properties "proximate to the Subject Site."⁸ I interpret this to refer to those lots having similar characteristics in the southeastern part of the neighbourhood.

I agree that there is more than one prevailing lot frontage in this neighbourhood, based on the figures discussed above. However, I do not agree that lot frontages of 7.62m constitute a prevailing, or a category of the most frequently occurring, physical characteristic for the neighbourhood. The evidence shows that there are half as many 7.62m lots as 12.19m lots in the NSA. Lot areas are more diverse; however, I did not

⁴ Exhibit 1a, p. 8.

⁵ 33 per the lot study in Mr. Romero's evidence, Exhibit 2, page 60.

⁶ Exhibit 1a, pp. 111-127.

⁷ Exhibit 1a, para. 3.17, p. 9.

⁸ Exhibit 1a, para. 3.14, p. 9.

see evidence that lot areas of approximately 300m² are the most frequently occurring in the neighbourhood, or that they would fit qualitatively into the existing physical character of the neighbourhood.

Therefore, I find that the lot sizes of the severed Property as proposed would not respect and reinforce the prevailing physical character of this neighbourhood.

Mix of Physical Characters

I accept Mr. Romano's description of the geographic neighbourhood as containing a mix of physical characters, which means that it is possible for the Applications to succeed if the Appellant can establish the Applications' satisfaction of certain other criteria set out in Policy 4.1.5. The test is set out below:

...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.

The Appellant submits that the Applications meet these criteria. The physical characteristic under consideration is the small lot size proposed for the severed parcels of the Property. In light of the diversity of lot areas in the neighbourhood, the predominant focus of this analysis is lot frontage, consistent with the evidence presented at the Hearing.

Exist in Substantial Numbers in the Geographic Neighbourhood

While properties with similar lot frontages to what is proposed do exist in the neighbourhood, they account for at most 14% of Mr. Romano's NSA, which I find is not a substantial number. On a more qualitative level, the map reproduced above reveals that most of the properties having a similar lot frontage are concentrated in areas with different zoning standards from the Property, largely isolated from the broader geographic neighbourhood. Mr. Romano confirmed during his cross-examination that the greatest variety of diverse lot frontages in the neighbourhood are found within the vicinity of the Property. There are other examples of similarly-sized lots in the geographic neighbourhood, but not in substantial numbers.

Therefore, I find this element is not met.

Physical Characteristics Materially Consistent

The Policy requires that the physical characteristics of the proposed development be materially consistent with the physical character of the geographic neighbourhood. Materially consistent is not defined, but suggests something not exactly the same as,

but compatible with, a physical character. This invites a less rigid analysis. Based on Mr. Romano's lot frontage categories, and the distribution of different lot sizes throughout the neighbourhood, I find that the lot frontage proposed would not be materially consistent with the physical character of the geographic neighbourhood.

Significant Presence

The final consideration under this part of the Policy is that the proposed physical characteristics "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" (my emphasis). On cross-examination, Mr. Romano agreed that modest-sized lots with detached houses are a prevailing physical character of this neighbourhood, and of the Property's immediate context.

From the analysis outlined above, I conclude that there is not a significant presence of 7.62m lots in the immediate context. On this block of Florence Avenue, the Property's immediate context, 34 out of 45 lots⁹ have lot frontages of 11.3m or greater. Quantitatively and qualitatively, smaller lots do not represent a significant presence in the immediate context, although they do exist.

The Appellant's evidence focused on the immediately adjacent block of Florence Avenue east of the Property and the properties on Cameron Avenue behind the Property. The Cameron Avenue properties canvassed during the Hearing are proximate to the Property, but do not fall within the immediate context or the immediately adjacent blocks abutting the same street as contemplated by the OP. They are also subject to a different zoning standard than the Property, with a minimum lot frontage of 9m. They are part of the broader context but are not relevant to this step of the analysis under Policy 4.1.5.

The eastern adjacent block of Florence Avenue contains a significant presence of smaller lots and similar built forms to what is proposed in the Applications. It also happens to be in the Rezoned Area where such lot dimensions can be created as of right. This zoning distinction makes it difficult to use this block as the sole reference point for this element of the Policy.

Less time was spent during the Hearing comparing the Property to the western adjacent block on Florence Avenue. On cross-examination, Mr. Romano stated that it made more sense to look at the block to the east of the Property than the block to the west because of the Property's location on the eastern end of its own block. The adjacent block to the west is further from the Property; "more lots away", in Mr. Romano's words, and therefore the eastern block is more relevant in terms of physical characteristics. The OP does not prefer one adjacent block over another. I must also consider the western adjacent block as part of a comprehensive assessment of the Applications.

⁹ Mr. Romano's Expert Witness Statement identifies 44 properties in the immediate context, but a count of the lots pictured in a 2020 aerial photograph at page 110 of Exhibit 1a reveals 45 (taking into account approved severances which have not yet been completed.)

Decision of Toronto Local Appeal Body Panel Member: C. KILBY
TLAB Case File Number: 21 128484 S53 18 TLAB, 21 128485 S45 18 TLAB, 21 128486 S45 18 TLAB

The western adjacent block has more lots with frontage dimensions of 11.3 to 13.13m, based on the colour-coding above. In Mr. Romano's opinion, the block to the west of the Property would not be a suitable candidate for severance of the type proposed for the Property. His map reveals no lots having a frontage of 7.62m on that block of Florence Avenue.

Taken together, the eastern block has a significant presence of lots with the same physical characteristics as the proposed severed lots, and the western block does not. The Policy contemplates taking all adjacent blocks abutting the same street into consideration, and the imbalance between these two blocks suggests that this criterion is not met. Even if I am incorrect in that analysis, the other conditions of this part of the Policy are not made out and so the Applications cannot succeed on this basis in any event.

Finally, the OP says that changes that are out of keeping with the overall physical character of the entire Neighbourhood should not be made through minor variance or consent. Focusing on isolated pockets of the geographic neighbourhood where this physical characteristic exists, without considering the broader context as directed by the OP, is an unduly narrow analysis which fails to uphold the larger goals of the OP as discussed at the outset of this section.

I find that the proposed lot frontages and areas would not respect and reinforce the existing physical character of the neighbourhood and would not maintain the general intent and purpose of the OP.

Policy 4.1.5(c)

Will the prevailing heights, massing, scale, density and dwelling type of nearby residential properties be respected and reinforced by the Applications? Mr. Romano described the existing physical character of the neighbourhood with respect to the location and organization of development as follows:

- Dwellings located towards front central portion of lots
- Buildings align along the street fairly consistently
- Side yard setbacks are tight to modest with larger side yards hosting driveways
- Building heights and scale are low rise, between one and three storeys, with many two-storey dwellings in the immediate context
- Integral garages are well represented in the area

He asserted that new dwellings with integral garages that take up more space than their predecessors on existing lots are common. With reference to nearby residential properties, I accept this description of the existing physical character of the neighbourhood.

At Tab I of Exhibit 1a, Mr. Romano compiled a chart summarizing Committee of Adjustment and TLAB decisions in the neighbourhood. This Decision Summary Table represents a "snapshot" of developments approved in the prior 10 years, but is not a

comprehensive picture of the neighbourhood. The following can be surmised from that Table:

- The proposed lot coverage variance has precedent in the neighbourhood, with similar variances of 31%-32% being frequently approved
- The main wall height variance of 9.11m is not the most common among what has been approved in the neighbourhood. The chart reveals that the majority of approved main wall height variances are less than this figure, although some equal or greater variances have been approved
- The chart reveals that the requested building height variances fall within the range of those previously granted in the neighbourhood
- A small number of the building length variances granted are greater than what is requested in this case; the majority in the chart are smaller than 17.73m
- There is a wide range of first floor height variances in the chart, with some equal to 1.5m as sought here.

Tab G2 of Exhibit 1a includes Committee of Adjustment decisions and the associated building plans which Mr. Romano asserted demonstrate that development for the subject site is materially consistent with the way development is evolving in the neighbourhood.

The photographic evidence suggests that the proposed physical characteristics of the dwellings to be constructed are materially consistent with the built form of other redeveloped properties close by to the Property in the geographic neighbourhood (taller homes, walls, and elevated entrances).

With reference to the Committee of Adjustment and photographic evidence, I find that the Applications propose development that will, on the whole, respect and reinforce the existing prevailing heights, massing, scale, density and dwelling type of nearby residential properties.

4.1.5(g)

Policy 4.1.5(g) addresses the prevailing pattern of rear and side yard setbacks and landscaped open space. In this case, a variance is sought for a side yard setback of 0.91m on each lot where the zoning standard requires 1.2m.

There was limited evidence of what is prevailing in terms of side yard setbacks in the broader context. The Decision Summary Table demonstrates that there are smaller side yard setbacks than what the zoning standard requires in the neighbourhood, but not in such large numbers as to represent a substantial number as directed by the OP. The photographic evidence suggests that outside the Rezoned Area, there is an overall character of modest side yard setbacks.

Mr. Romano's evidence was that the prevailing pattern of side yard setbacks can be ascertained from the immediate context, in which they are "tight to modest." The photographic evidence suggests that modest side yard setbacks do exist in the immediate context, but precise measurements are difficult to ascertain visually and were not otherwise available.

The Decision Summary Table indicates that in the Property's immediate context, comparable side yard setbacks (around 0.9m) have been approved for three or four properties on Florence Avenue: 119, 133 (listed twice), and 137 (west side yard setback of 0.86m). Other, smaller, side yard setbacks have been approved for 84, 88, and 123 Florence Avenue. Taken all together, giving credit for both listings of 133 Florence Avenue, these approvals represent 15-17% of the properties in the immediate context. The total number of approvals listed in the table on Florence Avenue is 17.

Even taking into account the possibility that there are similar side yard setbacks to what is proposed by the Applications that do not appear on the Decision Summary Table, I find on the evidence before me that 0.91m does not represent the most frequently occurring side yard setback in the geographic neighbourhood, nor does it have a significant presence in the immediate context. This variance cannot be said to maintain the general intent and purpose of the OP.

Conclusion - OP

I find that two lots with a frontage of 7.62m each in this neighbourhood will not respect and reinforce its existing physical character or be compatible, or capable of existing in harmony, with their surroundings. Similarly, I find that the proposed side yard setback of 0.91m does not respect and reinforce the existing physical character of the neighbourhood. These variances are central to the overall Applications. Therefore, the Applications fail to maintain the general intent and purpose of the OP, and also fail to conform to the OP.

Subsection 45(1) of the Act is clear that an Applicant must show how all the variances requested meet all four tests. Having found that the lot frontage and side yard setback variances fail to meet the test of maintaining the general intent and purpose of the OP, the Applications fail, and it is unnecessary for me to consider the remaining tests under the Act. Nonetheless, for the sake of completeness, I shall briefly summarize further comments regarding the remaining tests mandated under s. 45(1) and s. 53 of the Act.

2. General Intent and Purpose of the Zoning Bylaw

The general intent and purpose of the Zoning Bylaw, as a whole, is to set building performance standards that execute the goals of the OP. I accept Mr. Romano's evidence that preserving a low-rise built form with a close relationship to grade is the intent of many of the zoning standards applicable to this Appeal. I am satisfied that the building height, wall height, building length, pedestrian entrance height, front porch floor height, side yard setback and lot coverage variances achieve this goal based on the evidence provided.

The lot frontage and lot area variances will result in inadequate space for the proposed dwellings and undersized lots for their immediate context. As discussed above, the proposed lot size is not well-represented in geographic neighbourhood. These variances, individually and cumulatively, do not maintain the general intent and purpose of the Zoning Bylaw. Therefore, the Applications do not satisfy this test.

3. Desirable for the Appropriate Development or Use of the Land

The third test in section 45(1) is whether the variances, individually and cumulatively, are desirable for the appropriate development or use of the land. Mr. Romano's evidence was that the Applications satisfy this test because they will contribute to the range of housing options in, and strengthen the character of, the neighbourhood. I do not agree that the character of the neighbourhood will be strengthened by the approval of the Applications. While adding housing is a desirable goal, I do not agree that the method proposed by the Applications for creating additional housing is appropriate for the Property.

4. Minor

The fourth test in section 45(1) is whether the variances, individually and cumulatively, are minor. Assessing whether a variance is minor involves assessing its numeric and practical implications. I must also consider whether the variances will result in undue adverse impacts of a planning nature.

Mr. Romano said that the variances and the severance will not result in significant adverse impacts of a planning nature. He directed my attention to the Decision Summary Table discussed above as a means to understanding not only the order of magnitude of the variances granted in this area, but also as a description of the character of the neighbourhood.

As discussed above, many of the variances requested for the proposed built forms have precedents of similar size in the neighbourhood. Some of the requested variances, such as lot coverage or front porch height, or building height, are numerically minor. Others such as lot frontage and area, or building length, are larger in magnitude. I find that there will be undue adverse impacts of a planning nature if the requested lot frontage variances are granted in this particular immediate context, as they will represent a potentially destabilizing departure from the prevailing physical character not only of that context but also of the overall physical character of the entire geographic neighbourhood.

Therefore, I find that the Applications fail to satisfy the test of minor.

CONCLUSION ON VARIANCES

The variances, individually and cumulatively, do not satisfy the four tests set out under subsection 45(1) of the Act.

CONSENT TO SEVER

The Applications' failure to meet the four tests in section 45(1) of the Act means that the request for consent to sever must also fail, as it is premised on the lot frontage and area variances.

Decision of Toronto Local Appeal Body Panel Member: C. KILBY

TLAB Case File Number: 21 128484 S53 18 TLAB, 21 128485 S45 18 TLAB, 21 128486 S45 18 TLAB

In any event, of the criteria listed under section 51(24) for approving a severance, items (c) and (f) are the most critical to the success of these Applications. Given my conclusion that the proposed lot sizes do not maintain the general intent and purpose of the OP, and based on my lot size analysis, I find that the Applications fail to satisfy these criteria. Accordingly, the Applications cannot be said to conform to the OP or to meet all of the criteria for granting consent to sever.

DECISION AND ORDER

The Appeal is dismissed and the Decisions of the Committee of Adjustment dated February 25, 2021 in file numbers B0046/20NY, A0622/20NY, and A0623/20NY are confirmed and stand.

X 
Enter Panel Member Name C. Kilby
Panel Chair, Toronto Local Appeal Body