

# DECISION AND ORDER

**Decision Issue Date**      Tuesday, August 23, 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): CLAUDIO D'AMARIO

Applicant(s): CLAUDIO D'AMARIO

Property Address/Description: 14 FAITH AVE

Committee of Adjustment File Numbers

20 216429 NNY 06 CO (B0044/20NY); 20 216433 NNY 06 MV (A0604/20NY); 20 216445 NNY 06 MV (A0605/20NY) 22 118722 S53 06 TLAB; 22 118723 S45 06 TLAB; 22 118725 S45 06

**TLAB Case File Number(s): 21 190170 S53 02 TLAB, 21 190171 S45 02 TLAB, 21 190172 S45 02 TLAB**

**Hearing date:** August 8, 2022

**DECISION DELIVERED BY TLAB Panel Member T. Yao**

## REGISTERED PARTIES AND PARTICIPANTS

Appellant	Claudio D'Amario
Mr. D'Amario's Legal Rep.	Kristie Stitt
Mr. D'Amario's Expert Witness	Chris Pereira
Rose Spensieri	Participant

## INTRODUCTION

Mr. D'Amario wishes to sever his lot at 14 Faith Ave and build two new houses. In order to do so, he requires permission for a severance and additionally, the variances shown in Table 1.

<b>Table 1. Variances Sought For 14 Faith Ave</b>			
	Required	14A Faith (southern or left half)	14B Faith (northern or right)
<b>VARIANCES FROM ZONING BY-LAW 569-2013</b>			
1	Minimum lot area of 550 m <sup>2</sup>	509 m <sup>2</sup>	509 m <sup>2</sup>
2	Minimum frontage of 15 m	9.9 m	9.9 m
3	Building length of 17 m	17.98 m	17.98 m
4	External side yard setback of 1.8 m	1.5 m	1.5 m
5	Internal side yard setback of 1.8 m	0.76 m (building and porch)	0.76 m (building and porch)

The Committee of Adjustment refused this application on Feb 16, 2022; Mr. D’Amario appealed and so this application comes before the TLAB.

**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 (the Provincial Policy Statement and the Greater Golden Horseshoe Growth Plan) must be considered for both the severance and variances. However, these contain a high level of generality.; I find these policies offer little guidance or are not applicable for a severance of one lot in a settlement area nor for the variances that are closely associated with the severance.

**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 other factors are inapplicable, such as the adequacy of municipal services. Still others are rarely a deciding factor, such as the adequacy of school sites.

The most relevant factors are s. 51(24)(c), (f) and (g) of the *Planning Act*:

- (c) Official Plan conformity; and
- (f) the “dimensions and shapes” of the proposed lots.
- (g) the restrictions or proposed restrictions (which I interpret as largely zoning 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.

### **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.

### **No right to a severance or a variance**

The obligation is on Mr. D’Amario to demonstrate to the decision-maker that the tests are met on the balance of probabilities; there is no right to a severance or a variance.

### **Evidence**

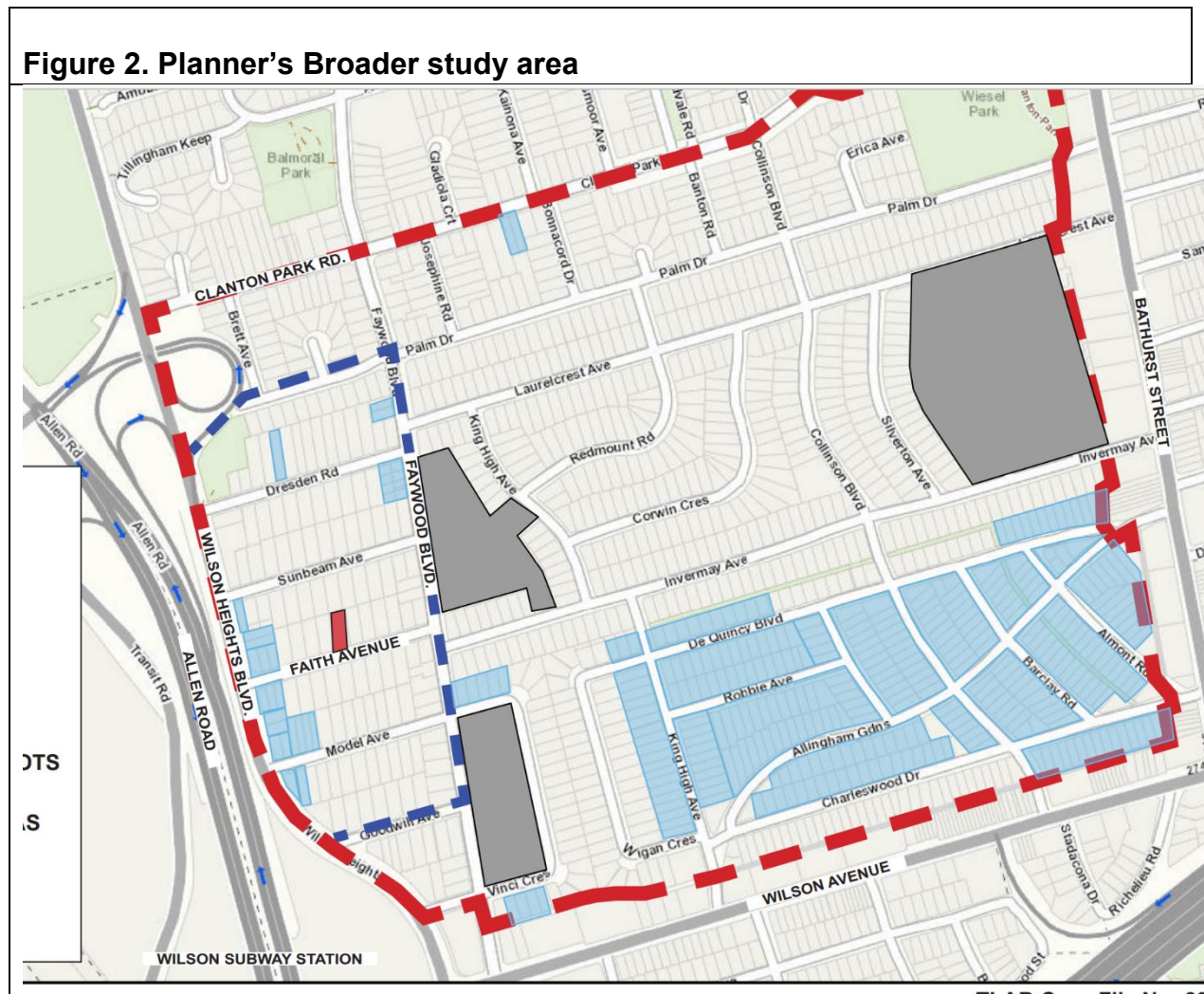
I heard from Mr. Pereira, Mr. D’Amario’s planner, whom I qualified as an expert witness. Ms. Spensieri, the next-door neighbour, spoke on her own behalf. I visited the site prior to the hearing. What I saw on the site visit is not evidence but enabled me to better understand the evidence given at the hearing.

### **ANALYSIS, FINDINGS, REASONS**

The standard approach for a proponent is to lay out for the decision maker a neighbourhood context in which the proposed severance and variances are proposed.

The evidence in this case is insufficient for Mr. D’Amario to overcome, on a balance of probabilities, the obligation in the previous section headed “No right to a severance or a variance.”

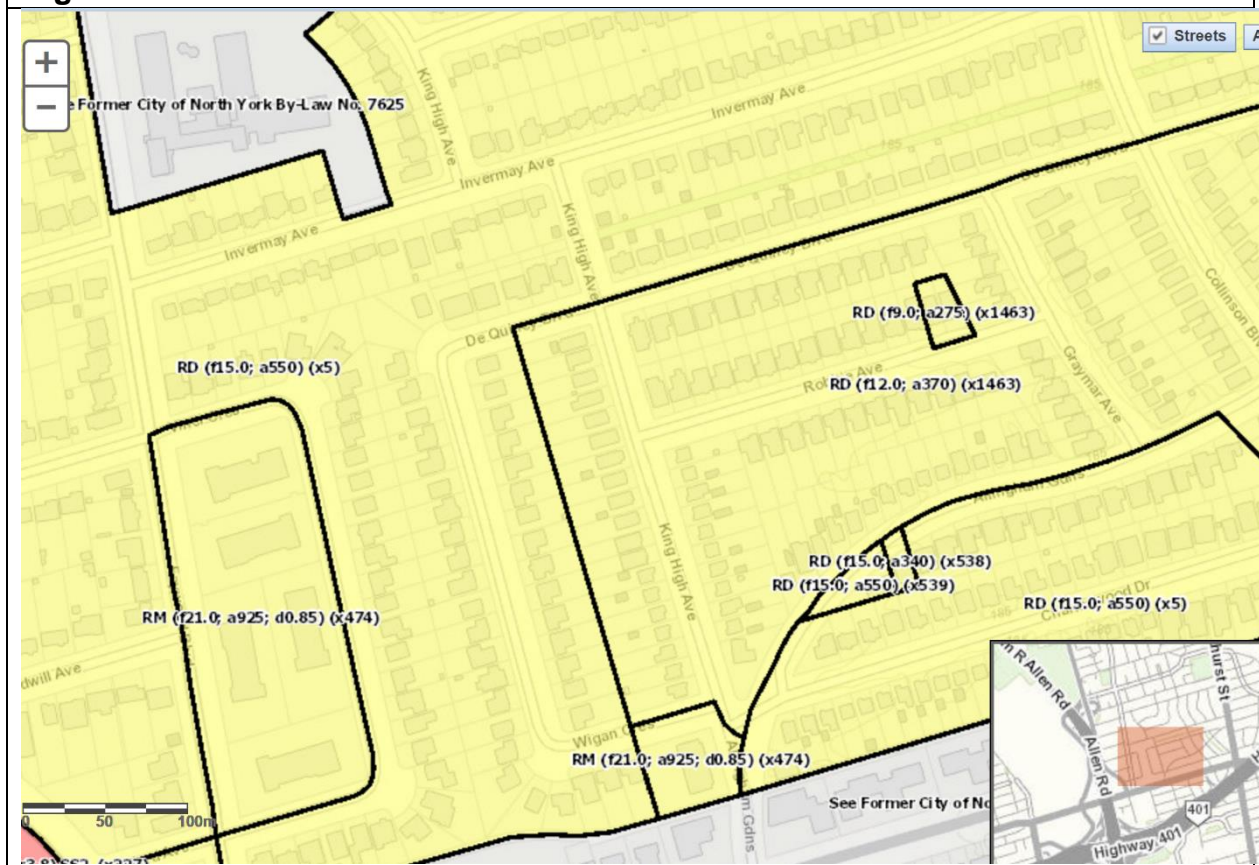
The chief piece of evidence is the map shown in Figure 2 below. The blue areas are what Mr. D’Amario’s planner called “comparable lots”. By “comparable”, I understand they are smaller than the 15 m frontage and 550 m<sup>2</sup> lot area, but I was not given specific measurements for any single blue lot nor tables or charts. The area of solid blue, south of De Quincy Blvd and east of King High, is in a different zoning category, with a minimum of 12 m frontage instead of 15 m. I find it should not be considered as part of the study area in terms of assessing the suitability of the frontage variance.



There are some smaller lots on the east side of Wilson Heights and also the western ends of Faith and Model Ave. Ms. Spensieri said they consisted of “government” lots sold some time ago and do not represent recent severance

applications. At any rate, as I have already stated, detailed lot frontage and lot area information was not supplied, nor a history of recent Committee of Adjustment or TLAB approvals. I have insufficient information to come to any conclusion about the character of the neighbourhood with respect to dimensions of lots or prevailing size and configuration of lots and thus cannot properly apply the “fit in” test mandated by s. 4.1.5 of the Official Plan.

**Figure 3. Zoning Map, RD f12, a370 zone south of De Quincy and East of King High**



This appears to be the first severance application in the interior of east west streets such as Dresden, Sunbeam, Faith, Model and Goodwill and on the basis of the evidence supplied, I find it does not respect and reinforce the neighbourhood character.

The variances and severance seek to create two 9.9 m lots where the required frontage is 15 m. I find that this is not numerically minor and the variances, considered alone, fail the four tests.

Ms. Stitt, Mr. D'Amario's lawyer, suggested that I should have regard to matters of Provincial interest as exemplified by Bill 108, More Homes, More Choice: Ontario's

Housing Supply Action Plan, June 6, 2019. I have footnoted the “Backgrounder” to this Act on the Government website in Footnote<sup>1</sup>, dealing with changes to the *Planning Act*. It states there will be inclusionary zoning around major transit station areas.

The Growth Plan defines these as within a ten-minute walk of a subway station<sup>2</sup> and the planner’s witness statement states that 14 Faith is within 150 m of the Wilson Subway<sup>3</sup>, which might be a typo because he said “500 m” in oral evidence. I accept this is within a major transit station catchment area, even though the planner may have said something different in oral testimony.

At the end of the day, I do not accept that the More Homes More Choices legislation is determinative, even assuming that 14 Faith is within a ten-minute walk. The legislation is addressed to municipalities, which may “allow inclusionary zoning”. I was not directed to such by-law amendments for this area. Accordingly, I cannot grant a severance on the basis of the evidence in this hearing, including Bill 108. Variances are dependent on the severance being granted.

---

<sup>1</sup> We are making it easier to bring housing to market with changes that accelerate local planning decisions and put in place a more efficient appeals process. Changes to the Act allow homeowners to create an additional residential unit in their main residence and another unit in another building on the same property, such as above garages or in laneways. They also let municipalities collect funds from developers to cover the capital costs of community benefits, like libraries and daycare facilities. **Changes to the *Planning Act* help municipalities address local housing needs by allowing the use of inclusionary zoning around major transit station areas.** The changes reflect feedback from broad online public consultation in late 2018 and early 2019, as well as through sector-specific discussions with municipalities, developers, ratepayer groups and others. The government also intends to consult on regulatory approaches to implementing the legislation. (Backgrounder)

<sup>2</sup> Major Transit Station Area

The area including and around any existing or planned *higher order transit station* or stop within a *settlement area*; or the area including and around a major bus depot in an urban core. *Major transit station areas* generally are defined as the area within an approximate 500 to 800 metre radius of a transit station, representing about a 10-minute walk.

<sup>3</sup> Par. 3.2.4

**Decision and Order**

The consent is not granted, and the variances are not authorized.



**X**

---

T. Yao  
Panel Chair, Toronto Local Appeal Body