

DECISION AND ORDER

Decision Issue Date Monday, October 24, 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): Rizwan Yousaf (AK Investments Holding Inc.)

Applicant(s): MB1 Development Consulting Inc.

Property Address/Description: 48 Mattice Avenue

Committee of Adjustment File

Number(s): 20 183252 WET 02 CO (B0023/21EYK), 20 183254 WET 02 MV (A0460/20EYK), 20 183255 WET 02 MV (A0461/20EYK)

TLAB Case File Number(s): 22 109856 S53 02 TLAB, 22 109857 S45 02 TLAB, 22 109858 S45 02 TLAB

Hearing date: Friday, July 22, 2022

DECISION DELIVERED BY TLAB Panel Member G. Swinkin

REGISTERED PARTIES AND PARTICIPANTS

Appellant	Rizwan Yousaf (AK Investments Holding Inc.)
Appellant's Legal Rep.	Marc Kemerer
Applicant	MB1 Development Consulting Inc.
Party	City of Toronto

Party's Legal Rep.	Derin Abimbola
Party's Legal Rep.	Jessica Jakubowski
Expert Witness	Michael Barton
Expert Witness	Claudio Pagliaroli
Expert Witness	Nicholas Deibler

INTRODUCTION

The appeals before the Toronto Local Appeal Body (the “Tribunal”) are brought by the owner (the “Owner”) of the property municipally known as 48 Mattice Avenue (the “Property”). The Owner is seeking to sever the property in two to create two new lots. The building proposal on those proposed lots would require a variety of variances from the applicable Zoning By-law 569-2013 (the “Zoning By-law”).

For the purpose of this redevelopment proposal, the Owner brought a consent application and two variance applications before the City of Toronto Committee of Adjustment (the “Committee”). The Committee refused each of these applications, which decisions have been appealed by the Owner to the Tribunal.

In this hearing, the Owner called a land use planning consultant as its sole witness. The City of Toronto (the “City”) elected to take Party status in the proceeding in opposition to the Owner’s appeals. The City called a land use planner and an urban forestry expert as its witnesses.

For the reasons set forth below, the Tribunal does not find that the requested approvals conform with the City’s official plan policies and as a result fail to meet the statutorily mandated tests for approval. The Tribunal will dismiss the appeals.

BACKGROUND

The Property is located on the north side of Mattice Avenue, between Kipling Avenue and Prennan Avenue, which is in the area of the former City of Etobicoke. Kipling Avenue is a major north/south arterial road. Mattice Avenue and Prennan Avenue are local residential streets, Mattice Avenue running in an east/west direction from Kipling Avenue.

The area is designated as Neighbourhoods in the City Official Plan (“OP”). It is an area dominated by single detached dwellings and would be characterized as stable.

**Decision of Toronto Local Appeal Body Panel Member: G. Swinkin
TLAB Case File Number: 22 109856 S53 02 TLAB, 22 109857 S45 02 TLAB,
22 109858 S45 02 TLAB**

The zoning on the Property and throughout the contiguous neighbourhood is RD (f13.5; a510; d0.45) (x21). This zoning permits the use and development of lands for residential detached dwellings on lots with a minimum frontage of 13.5 metres (“m”), a minimum area of 510 square metres (“sq.m.”) and a density, or Floor Space Index (“FSI”) of 0.45. The lands are subject to Exception 21, which authorizes an increase in density up to 0.5.

The Property is located one parcel west of a corner lot which fronts on Kipling Avenue, which however is municipally known as 46 Mattice Avenue. The Property is generally rectangular shaped. The Property has a frontage of 21.35m and a lot area of 690.13 sq.m. It is currently occupied by a single-detached one-storey building with vehicle access from Mattice Avenue. The site is presently surrounded by construction hoarding.

The redevelopment proposal seeks to sever the Property into two parcels, the westerly one being the intended conveyed parcel, which has been identified for application purposes as Part 1, and the easterly one being the intended retained parcel, which has been identified for application purposes as Part 2. Part 1 (the western parcel) proposes a frontage of 10.67m and a lot area of 346.32 sq.m. Part 2 (the eastern parcel) proposes a frontage of 10.67m and a lot area of 343.81 sq.m.

Based upon the intended design of the dwellings, in addition to the variances required for lot frontage and lot area, the proposal will require building related variances. The following sets out the Zoning By-law standards and the relief sought by the Owner as set forth on the Committee applications:

REQUESTED VARIANCE(S) TO THE ZONING BY-LAW RE PART 1:

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

The minimum required lot frontage is 13.5 m. The proposed lot will have a frontage of 10.67 m.

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

The minimum required lot area is 510 m².
The proposed lot will have a lot area of 346.32 m².

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

The maximum permitted lot coverage is 33% of the lot area (114.25 m²). The proposed dwelling will cover 39.1% of the lot area (134.34 m²).

Section 900.3.10.(21)(C), By-law 569-2013

The maximum permitted floor space index is 0.5 times the area of the lot (171.85 m²).
The proposed dwelling will have a floor space index of 0.76 times the area of the lot

(263.75 m²).

Section 10.20.40.70.(2)(B), By-law 569-2013
The minimum required rear yard setback is 8.14 m.
The proposed dwelling will be located 7.23 m from the rear lot line.

Section 10.20.40.20.(1), By-law 569-2013
The maximum permitted building length is 17 m.
The proposed dwelling will have a length of 17.61 m.

Section 10.20.40.30.(1), By-law 569-2013
The maximum permitted building depth is 19 m. The proposed dwelling will have a depth of 19.09 m.

REQUESTED VARIANCE(S) TO THE ZONING BY-LAW RE PART 2:

Section 10.20.30.20.(1)(A), By-law 569-2013
The minimum required lot frontage is 13.5 m. The proposed lot will have a frontage of 10.67 m.

Section 10.20.30.10.(1)(A), By-law 569-2013
The minimum required lot area is 510 m².
The proposed lot will have a lot area of 343.81 m².

Section 10.20.30.40.(1)(A), By-law 569-2013
The maximum permitted lot coverage is 33% of the lot area (114.25 m²). The proposed dwelling will cover 39.1% of the lot area (134.34 m²).

Section 900.3.10.(21)(C), By-law 569-2013
The maximum permitted floor space index is 0.5 times the area of the lot (171.85 m²).
The proposed dwelling will have a floor space index of 0.77 times the area of the lot (263.75 m²).

Section 10.20.40.70.(2)(B), By-law 569-2013
The minimum required rear yard setback is 8.14 m.
The proposed dwelling will be located 7.31 m from the rear lot line.

Section 10.20.40.10.(1)(A), By-law 569-2013
The maximum permitted building height is 9.5 m. The proposed dwelling will have a

height of 9.81 m.

Section 10.20.40.20.(1), By-law 569-2013
The maximum permitted building length is 17 m.
The proposed dwelling will have a length of 17.61 m.

Section 10.20.40.30.(1), By-law 569-2013
The maximum permitted building depth is 19 m. The proposed dwelling will have a depth of 19.09 m.

MATTERS IN ISSUE

At the time when the applications were before the Committee, City Planning Department staff communicated comments to the Committee in which they said, “in review of the applications, previous decisions and the lot pattern of Mattice Avenue and the surrounding area, and based on staff assessment of an area lot study, Planning staff determined concerns with the proposal. Within the immediate block on Mattice Avenue and Prennan Avenue, all of the lots have frontages larger than 15 metres. Should the application be approved as proposed, it would result in creation of lots which would be amongst the smallest in the immediate context. As such, staff are of the opinion the creation of lots with frontages of 10.67 metres and lot areas of approximately 345 square metres would not be in keeping with the size and configuration of existing lots within the surrounding area or the immediate block. Furthermore, the applications, if approved, would create increased pressure for future severances on similar sized lots in the area.

Planning Staff are of the opinion that approval of the above-noted consent and minor variance applications would weaken the established character of the neighbourhood and result in other applications of a similar nature. The proposed severance and resulting minor variances would allow for the creation of two undersized lots that do not respect nor reinforce the physical character of the neighbourhood, and thus, are not in keeping with the intent of the Official Plan and Zoning By-law. Therefore, Planning staff recommend the Consent and related Minor Variance Applications be refused.”

In addition, the Urban Forestry Division also sent a communication to the Committee which recommended denial of the applications on the basis that their approval would require the removal of three healthy bylaw protected trees and the permanent loss of viable planting space. Two of the impacted trees are City-owned street trees, a Norway Maple with a 35cm diameter and a Siberian elm with a 170cm diameter. The third tree is on the west side of the Property, being a Norway Spruce with a 50cm diameter.

These very same issues were the issues advanced by the City at the Tribunal hearing.

JURISDICTION

Provincial Policy – S. 3

A decision of the Toronto Local Appeal Body ('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').

Consent – S. 53

TLAB must be satisfied that a plan of subdivision is not necessary for the orderly development of the municipality pursuant to s. 53(1) of the Act and that the application for consent to sever meets the criteria set out in s. 51(24) of the Act. These criteria require that " regard shall be had, among other matters, to the health, safety, convenience, accessibility for persons with disabilities and welfare of the present and future inhabitants of the municipality and to,

- (a) the effect of development of the proposed subdivision on matters of provincial interest as referred to in section 2 of the Planning Act;
- (b) whether the proposed subdivision is premature or in the public interest;
- (c) whether the plan conforms to the official plan and adjacent plans of subdivision, if any;
- (d) the suitability of the land for the purposes for which it is to be subdivided;
 - (d.1) if any affordable housing units are being proposed, the suitability of the proposed units for affordable housing;
- (e) the number, width, location and proposed grades and elevations of highways, and the adequacy of them, and the highways linking the highways in the proposed subdivision with the established highway system in the vicinity and the adequacy of them;
- (f) the dimensions and shapes of the proposed lots;
- (g) the restrictions or proposed restrictions, if any, on the land proposed to be subdivided or the buildings and structures proposed to be erected on it and the restrictions, if any, on adjoining land;
- (h) conservation of natural resources and flood control;

- (i) the adequacy of utilities and municipal services;
- (j) the adequacy of school sites;
- (k) the area of land, if any, within the proposed subdivision that, exclusive of highways, is to be conveyed or dedicated for public purposes;
- (l) the extent to which the plan's design optimizes the available supply, means of supplying, efficient use and conservation of energy; and
- (m) the interrelationship between the design of the proposed plan of subdivision and site plan control matters relating to any development on the land, if the land is also located within a site plan control area designated under subsection 41 (2) of this Act or subsection 114 (2) of the City of Toronto Act, 2006. 1994, c. 23, s. 30; 2001, c. 32, s. 31 (2); 2006, c. 23, s. 22 (3, 4); 2016, c. 25, Sched. 4, s. 8 (2).

Variance – S. 45(1)

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

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

EVIDENCE

The Owner called one witness, Michael Barton, who was qualified by the Tribunal to offer opinion evidence on land use planning matters. The City also called a land use planner, Nicholas Deibler, a staff planner in the City Planning Division, who was also qualified by the Tribunal to offer opinion evidence on land use planning matters. In addition, the City called a staff person from the Urban Forestry Division, Claudio Pagliaroli, a certified arborist, who was qualified to offer opinion evidence on arboricultural matters.

As noted above in the delineation of the issues, the critical evidence centred on the matter of compliance with the OP, most particularly the policy found in Policy 4.1.5 relating to the development criteria in the Neighbourhoods designation, and to the OP policy relating to the preservation of the urban forest.

Policy 4.1.5 and the Respective Study Areas

In accordance with Policy 4.1.5, each planner delineated a study area consisting of a broader neighbourhood and an immediate context. There was unanimity on the immediate context, which is to embrace the properties on both sides of the block within which the Property is located. This encompassed nine properties on Mattice Avenue lying between Kipling Avenue and Prennan Avenue.

Mr. Barton defined a study area which essentially incorporated properties with like zoning to the Property. He defined the broader context to include the properties generally bound by the rail corridor to the west, Burnhamthorpe Road to the north and to the east, the limits of the same RD zone in which the Subject Property is located to the northeast, and the properties abutting but not fronting onto Bloor Street to the south. As such, his broader area took in properties on both sides of Kipling Avenue, those east of Kipling Avenue appearing approximately equal in number to those lying west of Kipling Avenue. This struck the Tribunal as somewhat anomalous as Kipling Avenue is such a broad avenue and quite significantly separates the lands on either side of it.

Mr. Barton relied heavily on relatively recent severance activity on Kipling Avenue itself as a justification for the redevelopment proposal for the Property. In this regard, he took the Tribunal to three situations in the vicinity, south of Mattice Avenue, where parcels were created with 7.6m frontages.

The consent applications that resulted in the creation of 978 and 978A Kipling Avenue, and 982A and 982B Kipling Avenue were approved by the Committee of Adjustment in 2017 and 2014 respectively. The consent application associated with 1030A and 1030B Kipling was refused by Committee of Adjustment in 2017 with the consent and variances appealed and approved by the Tribunal in 2018.

Mr. Deibler advised the Tribunal that his defined lot study area is the neighbourhood generally bounded by Kipling Avenue to the east, Burnhamthorpe Road to the north, the power transmission corridor to the west, and the commercial corridor along the north side of Bloor Street West to the south. He treated Kipling Avenue as a separator between neighbourhoods. In his view, this is supported by the fact that Kipling Avenue forms the border between Etobicoke-Centre (Ward 2), where the Property is located, and Etobicoke Lakeshore (Ward 3), further re-enforcing this major road as being a neighbourhood boundary.

Mr. Deibler advised that review of the data within his broader study area reveals that the overwhelming majority of lots in the neighbourhood study area have frontages that meet or exceed 13.5 metres (the Zoning By-law minimum standard). There are 424 total lots within his neighbourhood study area, including 367 that are 13.5 metres, or greater. This accounts for approximately 87% of the total number of lots. This percentage accounts for lots found in the RD (f13.5; a510; d0.45) (x21) and RD (f15.0; a555; d.0.45) (x21) zones.

In addition, he advises that the total number of lots that are 10.67 metres or less in the neighbourhood study area is approximately 3% of the total number of lots, which

comprises 13 out of the 424 total lots. The majority of these comparable sized lots are within the part of the neighbourhood fronting Kipling Avenue, a major street.

Mr. Deibler rightly points out that Policy 4.1.5 explicitly recognizes that lots which front a major street are accorded a different treatment. The text which expresses this is as follows: "Lots fronting onto a major street shown on Map 3 and designated Neighbourhoods are to be distinguished from lots in the interior of the block adjacent to that street in accordance with Policy 6 in order to recognize the potential for a more intense form of development along major streets to the extent permitted by this Plan."

With respect to the three contiguous lots at 9, 10 and 11 Prennan Avenue, south of Mervyn Avenue, with frontages of 10.2m, Mr. Deibler advises that these lots have not been subject to consent applications and were created prior to the adoption of City-wide By-law 569-2013 and the current Official Plan and other provincial planning policies.

Finally, within the immediate context, directly across from the Property on the south side of Mattice Avenue, are three lots that were created through two consent applications (51, 49a, and 49 Mattice Avenue). An application at 49 Mattice Avenue (B17/05EYK) was approved by the Committee at the February 3, 2005 meeting to sever the westerly 7.11m of the site for the purpose of creating a new lot with the adjacent property (51 Mattice Avenue). An application at 51 Mattice Avenue (B16/05EYK) was also approved by the Committee at the February 3, 2005 meeting to sever the easterly 7.11m of the site for the purpose of creating a new lot with the adjacent property (49 Mattice Avenue). The approval of these severances resulted in the creation of a new lot (49a Mattice Avenue), and a frontage of 14.2m for each of the lots, exceeding the minimum lot frontage of 13.5m in the Zoning By-law. Each lot also has a lot area of 520 sq.m.. Following the approvals, the two dwellings on 51 and 49 Mattice were demolished and replaced with new single-family dwellings with attached garages. A single family home with an attached garage was also constructed on 49a Mattice Avenue.

After review of the particulars of the lot study and the severance activity which has occurred, Mr. Deibler concludes that the findings of the lot study reinforce his position that the overwhelming majority of the lot frontages meet the minimum frontage requirement of the Zoning By-law and that the overwhelming majority of the lots in the neighbourhood study area exceed 13.5m. More pointedly, he concludes that the proposed frontages of 10.67m for the Property do not represent and reinforce the existing physical character of lots in the immediate context.

The Trees

Mr. Pagliaroli addressed the trees on and adjacent to the Property. His duties in the Urban Forestry Division involve review of development applications and the provision of comments to the approval authority, bearing in mind the relevant policies of the OP and more particularly the provisions of Chapter 813 of the Municipal Code,

which deals with the injury or destruction of City trees and private trees. In discharging his duties, he visits the site and takes photos, as he did here.

In his witness statement and his testimony, he echoed the comments which he communicated to the Committee. That is, the requested applications will result in construction that will require the removal or injury of:

A healthy City-owned Norway maple tree measuring 35 cm in diameter;

A healthy City-owned Siberian elm tree measuring 170 cm in diameter;

A healthy privately-owned boundary Norway spruce tree measuring 35 cm in diameter; and

An unknown number of privately owned trees which he was unable to properly assess and evaluate due to not being able to access the property, as well as a lack of information from the applicant by way of support for the applications.

Mr. Pagliaroli asserts that, in his opinion, the three specifically noted large trees are both botanically and structurally healthy. They have capacity for continued growth well into the future. They are worthy of retention to provide benefits for the community for many years to come.

As the redevelopment proposal would involve the introduction of two new driveways that would impact the root growing zones of the street trees with consequential impact on the health of those trees, Mr. Pagliaroli says that at this stage, he does not have enough information to assess whether these trees could be injured in an acceptable manner. He also says that he opposes the removal of any additional healthy by-law protected tree that he was unable to identify due to the hoarding of the property. Accordingly, he concludes that the requested consent to sever and minor variances will require injuring and removing healthy trees, which is inconsistent with the City's Official Plan: Section 3.1.2(d): Built Form and Section 3.4: The Natural Environment - Policies. On this basis, as he communicated initially to the Committee, he recommends refusal of the requested approvals at this stage as well.

ANALYSIS, FINDINGS, REASONS

The Tribunal prefers the planning evidence of Mr. Deibler and concludes that the lot frontages and lot areas proposed by these applications would not reflect the prevailing character of the neighbourhood, and therefore would not conform with the OP. In support of this conclusion, the Tribunal accepts that lots fronting on a major

street are peripheral to the interior neighbourhood and should not be treated in the same fashion as interior lots for the purpose of identifying character.

Consequently, the Tribunal finds that the severance here will not conform with the OP as referenced in clause (c) of Section 51(24) of the *Planning Act*, and would not be in keeping with the general intent and purpose of the OP as referenced in Section 45(1) of the *Planning Act*. With the failure to meet these tests, the severance and the associated variances must fail.

Additionally, the Tribunal is sensitive to the likely impact of the redevelopment proposal on both the City and private trees. The policy mandate is set out in clause (d) of Policy 3.4.1 of the OP, which sets forth as its objective: d) preserving and enhancing the urban forest by:

- i. providing suitable growing environments for trees;
- ii. increasing tree canopy coverage and diversity, especially of long-lived native and large shade trees; and
- iii. regulating the injury and destruction of trees;

The introduction of two dwellings on this parcel necessitates the creation of two driveways and from all appearances, and based upon the evidence of Mr. Pagliaroli, that will have a dramatic negative impact on the two very substantial City street trees. These trees contribute to the character and amenity of the area such that their loss would result in a diminution of the character of the area and run counter to the aforesaid OP policy.

With denial of the proposed severance, the matter of the variances becomes academic and those appeals will necessarily be dismissed.

DECISION AND ORDER

The Tribunal ORDERS THAT:

1. The Owner's consent appeal is dismissed; and
2. The Owner's two variance application appeals are dismissed.

X

A handwritten signature in black ink, appearing to read 'G. Swinkin', written over a horizontal line.

G. Swinkin
Panel Chair, Toronto Local Appeal Body