

Ontario Municipal Board
Commission des affaires municipales
de l'Ontario



ISSUE DATE: March 4, 2015

CASE NO.: PL140948

PROCEEDING COMMENCED UNDER subsection 53(19) of the *Planning Act*, R.S.O. 1990, c. P.13, as amended

Applicant and Appellant: Giuseppe Sacco
Subject: Consent
Property Address/Description: 252 Haddington Avenue
Municipality: City of Toronto
Municipal File No.: B029/14NY
OMB Case No.: PL140948
OMB File No.: PL140948

PROCEEDING COMMENCED UNDER subsection 45(12) of the *Planning Act*, R.S.O. 1990, c. P.13, as amended

Applicant and Appellant: Giuseppe Sacco
Subject: Minor Variance
Variance from By-law No.: 7625
Property Address/Description: 252 Haddington Avenue
Municipality: City of Toronto
Municipal File No.: A298/14NY, A299/14NY
OMB Case Nos.: PL140948
OMB File Nos.: PL140949, PL140950

Heard: January 28, 2015 in Toronto, Ontario

APPEARANCES:

Parties

Giuseppe Sacco

City of Toronto

Counsel

A. Stewart

G. A. Whicher
J. Wehrle, student-at-law

DECISION DELIVERED BY SUSAN de AVELLAR SCHILLER AND ORDER OF THE BOARD

INTRODUCTION

[1] Guiseppe Sacco (“Proponent”) owns a relatively large residential lot with an existing bungalow at 252 Haddington Avenue (“subject site”) in the City of Toronto (“City”). The Proponent wishes to divide this lot into two lots and build two new single family homes, one on each new lot.

[2] In support of this intention, the Proponent made applications for consent to convey and for associated variances. The in-force zoning by-law is By-law No. 7625 of the former City of North York. The City has now adopted a new zoning by-law, By-law No. 569-2013. This latter by-law is under appeal to this Board. For certainty, the Proponent seeks variances to By-law No. 7625 and, contingent upon it coming into force, variances to By-law No. 569-2013.

[3] The City of Toronto Committee of Adjustment (“COA”) refused both the application for consent and the applications for variances. The Proponent has appealed to this Board against that decision.

[4] The Board heard from two expert witnesses the Board qualified to give the Board independent expert opinion evidence in land use planning matters: Lawrence Jewell and Michael Manett. Mr. Jewell was retained and called by the Proponent. Mr. Manett was retained and called by the City to provide land use planning evidence in these proceedings. The Board did not hear from any planner currently on staff with the City.

[5] The Board also heard from four interested neighbours who appeared as participants in these proceedings: Lloyd Davidson, Michael Greene, Rubin Cohen and Richard Seary.

ANALYSIS AND FINDINGS

Amended Application

[6] The Board was advised that the Proponent wished to amend the application for variance. The Board reviewed the changes to the application and noted that, where amended, the variance sought was less than the variance applied for at the COA.

[7] Having regard to s. 45(18.1.1) of the *Planning Act*, R.S.O. 1990 c. P.13 (“Act”), the Board is of the opinion that the changes are minor and no further notice is necessary.

[8] In its report to the COA, City planning staff had recommended several conditions for provisional consent and had recommended several conditions for the authorization of the variances.

[9] In addition to reducing some of the variances being sought, the Proponent has indicated its acceptance of the conditions proposed by City planning staff for provisional consent and for the authorization of the variances.

[10] The two zoning by-laws have a minimum lot frontage requirement of 12 metres (“m”) for the subject site. The site itself has a lot frontage of 17.02 m, slightly more than 42% larger than the minimum set by the by-laws. In the application for consent, the Proponent wishes to divide the existing lot to create two new lots with frontages of 8.51 m each.

[11] Since the proposed two new lots require variances in order to comply with the by-laws, the Board’s analysis begins with the variances.

Variances

[12] When considering an application for variance, the Board must find that the variance meets all of the four tests set out in s. 45(1) of the Act. The tests are:

1. maintain the general intent and purpose of the official plan
2. maintain the general intent and purpose of the zoning by-law
3. be desirable for the appropriate development or use of the land
4. be minor

City of Toronto Official Plan

[13] The City of Toronto Official Plan (“OP”) designation for the site is Neighbourhoods. The OP describes neighbourhoods as stable but not static, thereby contemplating change.

[14] In policy 4.1.5, the OP sets out the development criteria for new development in neighbourhoods and emphasizes the importance of new development respecting and reinforcing the existing physical character of the neighbourhood. The first question then is: what are the boundaries of the neighbourhood? The second question is: what is the existing physical character of the neighbourhood?

[15] A neighbourhood might be of one size when judged by the area that a pedestrian might stroll to get to shops, schools, or parks or simply to perambulate through local streets. The Board is persuaded that the neighbourhood, when considered on this basis, reasonably stretches from Bathurst Street on the west to Avenue Road on the east and south to Brooke Avenue.

[16] The neighbourhood identified for a lot study by the City planning staff went north to Joicey Boulevard, as did the area studied by the planner for the Proponent. The planner retained by the City for this hearing took the neighbourhood one further block north to include lots on the south side of Carmichael Avenue.

[17] For the issues in this hearing, the Board finds no significant difference between a neighbourhood lot study that includes the south side of Carmichael Avenue and one that

stops with the north side of Joicey Boulevard.

[18] Although a neighbourhood may be identified as encompassing a larger area when based on walkability and casual use, it might also be as small as a street or two if there are identifiably different existing physical characteristics of a smaller area within a larger, walking distance neighbourhood.

[19] The parties agree that this neighbourhood is in transition. Lots vary considerably in size and development of new houses is reasonably common. Where the older, existing houses tend to be one-storey bungalows, the new houses tend to be two storeys or a bit more and built to a higher lot coverage in a style that includes integral front-facing garages and stone cladding.

[20] There are four streets that run north-south within the walking neighbourhood between Bathurst Street and Avenue Road. Three of these streets go fully through the neighbourhood: Kelso Avenue, Clyde Avenue and Falkirk Street. The fourth, Sunshine Street, only goes from Brooke Avenue on the south to Haddington Avenue.

[21] Sunshine Street is the first street east of Bathurst Street. 252 Haddington Avenue is on the north side of Haddington Avenue where Sunshine Street stops at Haddington Avenue. Falkirk Street is the second street east of Bathurst Street. Sunshine Street is about half way between Bathurst Street and Falkirk Street.

[22] Regardless of the boundaries of the walking neighbourhood, the evidence before the Board from both Mr. Jewell and Mr. Manett is that lots of 8.6 m frontage, or less, are concentrated west of Falkirk Street. The proposed new lots are squarely within this area.

[23] Lots east of Falkirk Street are generally larger, including several that are larger than the minimum zoning by-law requirement.

[24] This considerable difference in concentration of lot sizes east of Falkirk Street and

west of Falkirk Street indicate that the appropriate neighbourhood to assess neighbourhood character is west of Falkirk Street and does not include the entire area east to Avenue Road.

[25] The other elements of neighbourhood character, as set out in the OP, are met. There is no change to the pattern of streets and blocks. The proposed lots are rectangular and the proposed size of the lots fits the neighbourhood concentration of smaller lots.

[26] The prevailing dwelling type continues to be single family detached and the proposed buildings reflect the prevailing building type and style of newer construction.

[27] The height has been reduced. The proposed scale and massing is in keeping with the scale and massing of new development on smaller lots in the neighbourhood. No variance is being sought for the setback from the street or from the rear lot line. No variance is being sought for landscaped open space. No heritage issues have been raised or engaged.

By-law No. 7625 and By-law No. 569-2013

[28] Variances under By-law No. 7625 for the proposed east lot:

1. The proposed lot area is 337.07 m², WHEREAS 371 m² is required. (s. 14-A(3))
2. The proposed lot frontage and width is 8.51 m, WHEREAS 12 m is required . (ss. 14-A(4) and s. 6(8))
3. The proposed west side yard setback is 0.61 m, WHEREAS 1.2 m is required. (s. 14-A(5)(c))
4. The proposed building height is 9.73m, WHEREAS 8.8 m is permitted. (5. 14-A(8))
5. The proposed building length is 16.76 m, WHEREAS 15.3 m is permitted. (s. 14-A(9))
6. The proposed lot coverage is 33% of the lot area, WHEREAS 30% is permitted. (5. 14(A)(6))

[29] Variances under By-law No. 7625 for the proposed west lot:

1. The proposed lot area is 337.07 m², WHEREAS 371 m² is required. (s. 14-A(3))

2. The proposed lot frontage and width is 8.51 m, WHEREAS 12 m is required. (55. 14-A(4) and s. 6(8))
3. The proposed east side yard setback is 0.61 m, WHEREAS 1.2 m is required. (s. 14-A(5)(c))
4. The proposed lot coverage is 33% of the lot area, WHEREAS 30% is permitted. (5. 14(A)(6))
5. The proposed building height is 9.45 m, WHEREAS 8.8 m is permitted. (5. 14-A(8))
6. The proposed building length is 16.76 m, WHEREAS 15.3 m is permitted. (5. 14-A(9))
7. The proposed finished first floor height is 1.74 m, WHEREAS 1.5 m is permitted. (s. 6(30)(A))

[30] Variances under No. By-law 569-2013 for the proposed east lot:

1. The proposed area of the first floor within 4.0 m² of the front main wall is 5.57 m², WHEREAS 10 m² is required. (s. 10.5.40.10(5))
2. The proposed lot area is 337.07 m², WHEREAS 370 m² is required. (s.10.20.30.10.(1))
3. The proposed lot frontage is 8.51 m, WHEREAS 12 m is required. (s. 10.20.30.20.(1))
4. The proposed lot coverage is 33% of the lot area, WHEREAS 30% is permitted. (5. 10.20.30.40.(1))
5. The proposed height of the side exterior main walls is 7.98 m, WHEREAS 7.5 m is permitted. (s.10.20.40.10.(2))
6. The proposed west side yard setback is 0.61 m, WHEREAS 1.2 m is required. (s. 10.20.40.70.(3))

[31] Variances under No. By-law 569-2013 for the proposed west lot:

1. The proposed area of the first floor within 4.0 m² of the front main wall is 5.57 m², WHEREAS 10 m² is required. (s. 10.5.40.10(5))
2. The proposed lot area is 337.07 m², WHEREAS 370 m² is required. (s.10.20.30.10.(1))
3. The proposed lot frontage is 8.51 m, WHEREAS 12 m is required. (s. 10.20.30.20.(1))
4. The proposed lot coverage is 33% of the lot area, WHEREAS 30% is permitted. (5. 10.20.30.40.(1))
5. The proposed height of the side exterior main walls is 7.78 m, WHEREAS 7.5 m is permitted. (s.10.20.40.10.(2))
6. The proposed west side yard setback is 0.61 m, WHEREAS 1.2 m is required. (s. 10.20.40.70.(3))

[32] Variances for lot area and lot frontage deal with the size of lots to be created. The intent and purpose is to ensure a lot size sufficient to develop for a single family residential dwelling and the Board finds that the size is sufficient to do so.

[33] Variances for lot coverage deal with massing. The intent and purpose is to avoid overbuilding on a site. The Board finds that at 33% coverage there is no overbuilding on the site.

[34] Variances for building height have been reduced. As shown below, the variances for height from By-law No. 7625 are not required for By-law No. 569-2013 since the proposed heights are below the permitted height in the latter by-law. The intent and purpose of building height maximum is to assist in compatibility with and transition to, where appropriate, neighbouring properties.

[35] Variances for the side exterior main wall from By-law No. 569-2013 are a function of a change in the manner of measuring. This variance for the west lot has been reduced. No variance is required from By-law No. 7625.

[36] Variances for the proposed building length have been reduced. The intent and purpose of a limit on building length is to ensure sufficient privacy and area in the rear yard of the subject site and that of its neighbours. The reduction in building length brings the proposed new houses into compliance with the building length maximum permitted under By-law No. 569-2013.

[37] Variances for the proposed area of the first floor foyer relate to a new provision found in By-law No. 569-2013. The intent and purpose of this requirement appears to relate to a preference for a particular interior design and not to any question of external compatibility or impact on the street or neighbouring properties. The area of the foyer cannot be discerned from the street.

[38] The last variances to be dealt with are those that reduce the interior side yard

setback for each house from the side yard lot line that separates the two proposed new lots. The variances sought are to reduce the setback nearly in half, from the required 1.2 m to 0.61 m. The intent and purpose of the side yard setback is to ensure sufficient space for maintenance and for appropriate access by emergency services, in the event this latter become necessary, and to provide visual spacing for streetscape purposes.

[39] The Board is not persuaded that such a reduction provides sufficient room for maintenance or appropriate access by emergency services.

[40] The conditions proposed by the City planning staff for the authorization of the variances are:

Condition Applicable to Lot 252A (East Lot)

1. The Owner shall construct the dwellings substantially in accordance with the Site Plan, Front Elevation, Left Elevation, Right Elevation, and Rear Elevation, prepared by Rubinoff Design Group and dated January 20, 2015, filed as Tab 13 of Exhibit &.. at the hearing.

Condition Applicable to Lot 2528 (West Lot)

2. The Owner shall construct the dwellings substantially in accordance with the Site Plan, Front Elevation, Left Elevation, Right Elevation, and Rear Elevation, prepared by Rubinoff Design Group and dated January 20, 2015, filed as Tab 14 of Exhibit j." at the hearing.

Conditions Applicable to Both Lots

3. The Owner shall comply with City of Toronto Municipal Code Chapter 813, Article III, Privately-owned trees (www.toronto.ca/trees/private_trees.htm).
4. Where no street tree exists, the Owner shall provide payment in an amount to cover the cost of planting a street tree abutting the site to the satisfaction of the General Manager of Parks, Forestry and Recreation.
5. Despite any other general or specific provision in Zoning By-law No. 7625 of the former City of North York, the lowest point of an opening to an area that may be used for parking or storage of a vehicle located inside or abutting the dwelling shall be higher than the elevation of the street the lot abuts measured at its centerline directly across from the driveway leading to the parking space.

[41] Having regard to s. 45(9) of the Act, the Board finds that these conditions are appropriate.

[42] The Board finds that the requested variances to By-law No. 7625, subject to conditions and with the exception of the variance for the interior side yard setback, maintain the general intent and purpose of the OP, maintain the general intent and purpose of the by-law, are desirable for the appropriate development of the land and are minor.

Consent

[43] When considering an application for consent, the Board must have regard to the criteria set out in s. 51(24) of the Act. In reviewing these criteria, the Board finds that there are six sections engaged by the issues in these proceedings. Those sections are: 51(24)(a), (b), (c), (d), (f) and (g).

Criteria

(24) In considering a draft plan of subdivision, 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;
- (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;
- (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;

[44] The City and the participants have together suggested that the creation of these two new proposed lots, and the development of the two proposed houses, is premature and not in the public interest. In support of this position, they cited the existence of some lots

with the same large frontage as the subject site and expressed the concern that these lots might also become candidates for division. In this context, Mr. Manett and the participants expressed concern about what they termed the precedent of a large lot being divided into two smaller ones.

[45] Every change to a neighbourhood changes the existing physical characteristics from that point forward. The division of the subject site into two lots would not represent the first instance of smaller lot frontages west of Falkirk Street. With the significant number of smaller lot frontages already in existence west of Falkirk Street, the Board finds that the addition of two more lots with smaller lot frontages west of Falkirk Street is simply respecting and reinforcing the existing physical character of this area neighbourhood.

[46] The concerns that two lots being created, and the resulting development of two houses if the variances are authorized, are not in the public interest also focussed on noise, crowding and a lack of privacy. All three came together as a concern that building a single new house on the existing lot would result in fewer people with less likelihood of younger families with children buying a single large house rather than investing in one of the two proposed smaller houses.

[47] Dunblaine Avenue is immediately north of Haddington Avenue. Mr. Cohen is on Haddington Avenue, three lots east of the subject site. He backs onto two of three smaller lots created by consent and developed with new houses on Dunblaine Avenue. He did not object to the creation of these lots but his experience has been that the houses were occupied by younger families with children and he feels he has experienced noise and a lack of privacy as a result.

[48] Mr. Greene is on Dunblaine Avenue. He backs onto the lot adjacent to the west of the subject site on Haddington Avenue. That lot demolished the existing bungalow and built a new, larger and taller home on the lot. Mr. Greene has no objection to this house or its deck and would support a new large house on the subject site. Mr. Greene's rear lot line has a small portion that is adjacent to the subject site. It is his contention that two smaller

houses instead of one larger house would result in noise, crowding and a loss of privacy for his enjoyment of his raised rear deck, which overlooks his rear yard.

[49] Mr. Davidson is adjacent to the east of Mr. Cohen and, therefore, further from the subject site. Mr. Davidson expressed concerns primarily about precedent and overbuilding on the site if two new houses are built on two new, smaller lots.

[50] Mr. Seary is on the south side of Haddington, east of the subject site. Mr. Seary shares the concerns expressed by the other participants. Mr. Seary adds the concern that the existing lot has generous landscaping that he feels would be lost with the proposed two new houses.

[51] All four participants were clear that they supported reinvestment on, and redevelopment of, the site that takes the form of a single, larger house rather than two smaller ones.

[52] The Board is not persuaded by the evidence of the City or the participants.

[53] The Board finds that the proposed consent has regard to s. 2 of the Act, in particular the following:

- (h) the orderly development of safe and healthy communities
- (j) the adequate provision of a full range of housing ...
- (p) the appropriate location of growth and development

[54] The Board finds that the application for consent is not premature. Further, the Board finds that the application for consent, resulting in modest intensification and the opportunity to provide a broader range of housing, is in the public interest.

[55] The Board finds that the proposed consent conforms to the OP and the resulting lots are suitable for purposes of residential development with appropriate and reasonable

dimensions and shapes.

[56] The Board finds that the restrictions on the land, subject to the variances and conditions of the variances, are appropriate.

[57] The proposed conditions of provisional consent are:

1. The Owner shall provide confirmation of payment of outstanding taxes to the satisfaction of Revenue Services Division, Finance Department.
2. The Owner shall submit to the Deputy Secretary-Treasurer a draft Certificate of Official, as prescribed in O.Reg. 197/96 as Form 2 or 4 and in a form satisfactory to the Deputy Secretary Treasurer, that includes a completed and registerable description of the land that is the subject of the consent, within one year of the date of issuance of the Decision.
3. The Owner shall file copies of the registered Reference Plan of Survey integrated to NAD 83 CSRS (3 degree Modified Transverse Mercator projection), delineating by separate Parts the lands and their respective areas, with the Manager of Land and Property Surveys, Engineering Services, Engineering and Construction Services. The Owner shall also file copies of the registered Reference Plan of Survey with the Committee of Adjustment, satisfying the requirements of the Manager of Land and Property Surveys, Engineering Services, Engineering and Construction Services.
4. The Owner shall submit a copy of a letter from the Executive Director of Technical Services advising that the applicant has obtained the necessary adjustment to the municipal addressing of the land. Contact Survey and Mapping Services, Technical Services at (416) 392-7755. The application for municipal addressing must be accompanied by a copy of the registered Reference Plan of Survey, integrated with the Ontario Co-ordinate System, and specify the PART numbers that will comprise each of the new parcels.
5. This Decision shall become null and void within 12 months unless the Certificate of the Committee of Adjustment is affixed to the relevant documents.

[58] Having regard to s. 51(25) of the Act, the Board finds that the proposed conditions of provisional consent are reasonable, having regard to the nature of the proposed residential development. The Board further finds that provisional consent, subject to these conditions, is appropriate.

Provincial Policy Statement and Growth Plan for the Greater Golden Horseshoe

[59] Both the Provincial Policy Statement (“PPS”) and the Growth Plan for the Greater

Golden Horseshoe (“GGH”) emphasize intensification within settlement areas with the efficient use of land, infrastructure and resources and the importance of providing a range of housing. The Board finds that the application for consent, with conditions, and the applications for variances, with conditions, are consistent with the PPS and conform to the GGH.

ORDER

[60] The Board orders that the appeal is allowed and

1. The variances to By-law No. 7625 are authorized, subject to the conditions above set forth, with the exception of the variance for the interior side yard setback which is refused.
2. The variances to By-law No. 569-2013 are authorized, subject to the conditions above set forth, with the exception of the variance for the interior side yard setback which is refused, contingent on By-law No. 569-2013 coming into force as it may apply to the subject lands in terms of the variances identified.
3. Provisional consent is granted, subject to the conditions above set forth.

“Susan de Avellar Schiller”

SUSAN de AVELLAR SCHILLER
VICE-CHAIR

Ontario Municipal Board

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