

Ontario Municipal Board
Commission des affaires municipales
de l'Ontario



ISSUE DATE: May 25, 2015

CASE NO(S): PL141102

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

Applicant and Appellant: Edmond Visan
Subject: Consent
Property Address/Description: 86 Twenty Third Street
Municipality: City of Toronto
Municipal File No.: B47/13EYK
OMB Case No.: PL141102
OMB File No.: PL141102

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

Applicant and Appellant: Edmond Visan
Subject: Minor Variance
Variance from By-law No.: Etobicoke Zoning Code
Property Address/Description: 86 Twenty Third Street
Municipality: City of Toronto
Municipal File No.: A314/13EYK
OMB Case No.: PL141102
OMB File No.: PL141103

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

Applicant and Appellant: Edmond Visan
Subject: Minor Variance
Variance from By-law No.: Etobicoke Zoning Code
Property Address/Description: 86 Twenty Third Street
Municipality: City of Toronto
Municipal File No.: A315/13EYK
OMB Case No.: PL141102
OMB File No.: PL141104

Heard: March 19, 2015 in Toronto, Ontario

APPEARANCES:

Parties

Counsel

Edmond Visan

R. D. Cheeseman

City of Toronto

A. Suriano
A. Jones, student-at-law

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

INTRODUCTION

[1] Edmond Visan (“Proponent”) wishes to divide his property at 86 Twenty Third Street (“subject site”) in the City of Toronto (“City”). He intends to keep the newly built existing dwelling on Part 1, which is the proposed new southerly lot, and build a new dwelling on Part 2, which is the proposed new northerly lot. The two proposed lots require variances as do both the newly built existing dwelling on Part 1 and the proposed new dwelling on Part 2.

[2] The subject site is in the Long Branch community in the former Borough of Etobicoke. The Etobicoke Zoning Code (“EZC”) governs the site.

[3] The Proponent applied to the City Committee of Adjustment (“COA”) for consent to divide his property and for the associated variances.

[4] The COA refused consent to divide the subject site and refused to authorise the requested variances. Mr. Visan has appealed the COA decisions to this Board.

[5] The variances being sought to the EZC for Part 1, which has the newly built existing dwelling, are:

1. Section 330-23A(2): The minimum required lot frontage is 12 metres (“m”).
The lot frontage is 7.62 m.
2. Section 330-23A(1): The minimum required lot area is 371 sq. m. The lot area is 290.3 sq. m.
3. Section 330-23A(9): The maximum permitted floor space index is 0.35 times the lot area. The dwelling has a floor space index of 0.72 times the lot area.
4. Section 330-23A(7): The minimum required side yard setback is 0.9 m. The dwelling will be located 0.6 m from the north side lot line.
5. Section 330-13A(2): The minimum required eaves setback from the side lot line is 0.5 m. The dwelling eaves will be located 0.2 m from the north side lot line.

[6] The variances to the EZC being sought for Part 2, on which a new dwelling is to be built, are:

1. Section 330-23A(2): The minimum required lot frontage is 12 m. The lot frontage is 7.62 m.
2. Section 330-23A(1): The minimum required lot area is 371 sq. m. The lot area is 290.3 sq. m.
3. Section 330-23A(9): The maximum permitted floor space index is 0.35 times the lot area. The new dwelling will have a floor space index of 0.69 times the lot area.
4. Section 330-23A(7): The minimum required side yard setback is 0.9 m. The new dwelling will be located 0.6 m from the south side lot line.
5. Section 330-13A(2): The minimum required eaves setback from the side lot

line is 0.5 m. The dwelling eaves will be located 0.2 m from the south side lot line.

[7] At the outset of the hearing, the Proponent confirmed that no amendments to the applications for variances were being sought.

[8] The Board heard from six witnesses.

[9] Theodore Cieciora is a full Member of the Canadian Institute of Planners and a Registered Professional Planner in Ontario. Mr. Cieciora acknowledged his duty to the Board as an expert witness, in accordance with Rule 21.01 of the Board's *Rules of Practice and Procedure*. The Board qualified Mr. Cieciora to provide the Board with independent expert opinion evidence in land use planning matters. Mr. Cieciora was called by the Proponent in these proceedings.

[10] Victor Hipolito is an architectural technologist, licensed to design small buildings. Mr. Hipolito acknowledged his duty to the Board as an expert witness, in accordance with Board Rule 21.01. The Board qualified Mr. Hipolito to provide the Board with independent expert opinion evidence in architectural technology. Mr. Hipolito was called by the Proponent in these proceedings.

[11] Nicole Ivanov is neither a full nor a provisional Member of the Canadian Institute of Planners and is not a Registered Professional Planner in Ontario. Ms. Ivanov holds the position of assistant planner in the City and specializes in reviewing and commenting on applications for variance and applications for consent. Ms. Ivanov acknowledged her duty to the Board as an expert witness, in accordance with Board Rule 21.01. The Board qualified Ms. Ivanov to provide the Board with independent expert opinion evidence in land use planning matters limited to variances and consents only. Ms. Ivanov was called by the City in these proceedings.

[12] The Board also heard from three Participants who live in the community, including the immediate neighbour to the south of the newly built existing dwelling.

These Participants are Diane Cusimano, Brian Liberty and Sonya Koops. All three Participants appeared in opposition to the applications for consent and variances.

ISSUES, ANALYSIS AND FINDINGS

[13] In March 2012, the COA considered applications from the Proponent for consent to divide the subject site into two lots and for associated variances to build two new dwellings, one on each proposed new lot. The variances to the EZC standards now before the Board are virtually identical to the previous variances sought.

[14] The COA refused these applications. The Proponent did not appeal the COA decisions to this Board.

[15] The Proponent demolished the dwelling that was on the site at the time. He then built a new dwelling, which is now the existing dwelling on Part 1.

[16] The Board was advised that this new dwelling required no variances to the EZC since it was being built on the large existing lot and not on one of the much smaller lots proposed in both the earlier applications and in the current applications.

[17] The style of this new dwelling is narrow and tall with an integral, front-facing garage. The demolished dwelling was a one-storey bungalow without an integral garage.

[18] The new dwelling was built at the southernmost part of the subject site, where it would have been located if the COA had given consent and authorized the variances in the earlier applications.

[19] No substantive physical change is being proposed to this newly built existing dwelling.

The Variances

[20] Since the proposed new lots require variances to comply with the EZC, and since both the newly built existing dwelling and the proposed new dwelling require variances to comply with the EZC if the existing lot is divided, the Board begins its analysis with the requested variances.

[21] The variances sought in these proceedings are to be decided under s. 45(1) of the *Planning Act*, R.S.O. 1990, c. P. 13 ("Act"). That section of the Act sets out four tests, each of which must be met by each variance that is sought before that variance may be authorized. On the evidence presented at the hearing of the merits, the Board must be satisfied that, in its opinion, the variances:

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

Official Plan

[22] Both planners agree that the site is within the *Neighbourhoods* designation in the City's Official Plan ("OP"). They also agree that the OP describes *Neighbourhoods* as "stable but not static".

[23] This neighbourhood in Long Branch is mature and well-established. Approximately 76% of the dwellings in the neighbourhood were built before 1950.

[24] OP policy 4.1.1 describes *Neighbourhoods* broadly across the City:

Neighbourhoods are considered physically stable areas made up of residential uses in lower scale buildings such as detached houses, semi-detached houses, duplexes, triplexes and townhouses, as well as interspersed walk-up apartments that are no higher than four storeys. Parks, low scale local institutions, home occupations, cultural and recreational facilities and small-scale retail, service and office uses are also provided for in *Neighbourhoods*....

[25] With a municipality as large and diverse as the City, this description of what one might find in areas designated *Neighbourhoods* does not mean that every neighbourhood carrying the designation *Neighbourhoods* either will have or should have all of these elements. OP policy 4.1.5 signals that there are differences between neighbourhoods that need to be considered when development is being proposed.

[26] OP policy 4.1.5 states:

Development in established *Neighbourhoods* will respect and reinforce the existing physical character of the neighbourhood, including in particular...

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

[27] The first thing to be determined is the appropriate boundary of the

neighbourhood that defines the existing character to be respected and reinforced.

The Broader Neighbourhood

[28] Both planners identified very similar areas for analysis.

[29] They focused their analyses on the Residential Single (“RS”) zoning within the quadrant that is south of Lake Shore Boulevard West to Lake Ontario, Twenty Third Street on the east and Thirty First Street on the west.

[30] The subject site is at the eastern end of this neighbourhood on Twenty Third Street.

[31] This neighbourhood is a good example of one that is stable but not static. The neighbourhood has experienced some older houses being demolished and new houses being built. Variances have been sought to accommodate some new houses as well as to accommodate some renovations or expansions to existing houses.

[32] The new dwellings come in a variety of architectural styles and types. While the neighbourhood may have been more homogenous when developed initially, redevelopment and renovations with additions has resulted in a neighbourhood that has some variety in style.

[33] The neighbourhood has lots with large lot frontages and lots with small lot frontages. According to the Ms. Ivanov, there have only been nine consent applications in this neighbourhood between 2002 and 2015. Of these, seven were given consent and two applications were refused. The two applications that were refused include the earlier application to divide the subject site.

[34] The size of a lot is a function of the frontage times the depth. The depth of a lot is not seen readily from the street but the frontage is. The configuration may refer to the shape of the lot, for example rectangular or pie-shaped.

[35] This neighbourhood has a few irregularly shaped lots but the overwhelming majority of the lots are simply rectangular.

[36] Within the configuration that may be described as rectangular, differences arise in the actual dimensions of the rectangle and the deployment of various dimensions. A lot may have a broad frontage but be very shallow or it may have a very narrow frontage and otherwise be deep.

[37] The depth of lots in the broader neighbourhood varies but tends to do so by blocks. A single block of lots on a street tends to have similar depths for each lot. With a common dimension on depth, the smaller the lot frontage then the smaller the lot size. While the configuration may still be rectangular, the lot now becomes much thinner as well as smaller in area.

[38] The minimum lot frontage for the RS zone is 12 m. While a pedestrian may be unable generally to distinguish between two lot frontages that differ in size by a millimetre or two, that same pedestrian would likely find it quite easy to distinguish between two lots whose lot frontages differ by several metres.

[39] Based on the analysis of the properties zoned RS in this broader neighbourhood that was presented by Ms. Ivanov in Exhibit 5, as filed in these proceedings, this neighbourhood has approximately 11% of its lots with frontages of 7.62 m or less. The variance being sought is for lot frontages of 7.62 m.

[40] Approximately 25% of the lots have frontages between 7.63 m and 11.99 m. All told, there are approximately 36% of the lots that are below the minimum lot frontage. Some, like the proposed lots, are considerably below the required minimum lot frontage. Others are barely below the required minimum lot frontage.

[41] That same analysis identified approximately 48% of the lots as being between 12 m and 15.24 m, this latter being the size of the subject site.

[42] Approximately 9% of the lots have frontages of 15.25 m to 18.29 m and approximately 7% of the lots have frontages of 18.3 m or greater.

[43] Together, the lots that meet or exceed the minimum lot frontage account for approximately 62% of the lots.

[44] The existing character of this broader neighbourhood is firmly one of larger lot frontages of 12 m or more.

The Smaller Neighbourhood

[45] Since the subject site is located at the eastern end of this neighbourhood, it is appropriate to consider the more immediate neighbourhood to see if the more immediate neighbourhood has a neighbourhood character that is distinct from the larger neighbourhood.

[46] The subject site is on the west side of Twenty Third Street, about mid-way between Alder Crescent on the north and Meaford Avenue on the south.

[47] Alder Crescent curves around to meet Twenty Fifth Street on the west.

[48] Within this more immediate neighbourhood of the west side of Twenty Third Street, the south and east sides of Alder Crescent, the east side of Twenty Fifth Street and the north side of Meaford Avenue, there are 35 lots.

[49] Using the same categories and City exhibit as used for the larger neighbourhood, the lot frontages of these lots vary with eight at 7.62 m or less, eight at 7.63 m to 11.99 m, 17 at 12 m to 15.24 m, one at 15.15 m to 18.29 m and one at 18.3 m or greater.

[50] Lots with frontages of 7.62 m or less represent about 22% of the lots in this more immediate neighbourhood. While that is a larger percentage than that in the broader neighbourhood, it remains a minority. The lots with lot frontages of 12 m or more, meaning those that meet or exceed the EZC lot frontage requirements, represent

approximately 55% of lot frontages in this more immediate neighbourhood.

[51] All of the houses on the west side of Twenty Third Street between Alder Crescent and Meaford Avenue have the same lot depth. The subject site is about at the middle of the block.

[52] Within this block is a row of nine lots with the same generous frontage. The subject site is fourth from the north of this row of lots. The lots in this row have the same lot area or size of lot. The variances seek a reduction of about 26% of the lot area.

[53] Immediately to the south of the subject site is a one-storey bungalow. Immediately north of the subject site is a one and a half storey cape cod. Although no variance is being sought for height, the height of the newly built existing dwelling, and that of the proposed new dwelling, results in dwellings that are considerably taller than the adjacent properties.

[54] The taller building type arises from the desire to build a house of a particular size that is fully compliant with the EZC on a larger lot but is not compliant on the smaller lots being sought. Building this type of house on the smaller lot requires the variance to increase the floor space index approximately 100% beyond what is permitted in the EZC.

[55] In addition, this produces a dwelling type that can be found in the neighbourhood but does not reflect the dwelling type of nearby residential properties.

[56] The Board finds that the variances to reduce the lot frontage, the variances to reduce the lot area and the variances to increase the floor space index do not respect and reinforce the existing physical character of the neighbourhood as required by policy 4.1.5 of the OP. As such, the Board finds that these variances do not maintain the general intent and purpose of the OP.

[57] Mr. Cieciora asked the Board to consider OP policy 4.1.9.

[58] OP policy 4.1.9 states:

Infill development on properties that vary from the local pattern in terms of lot size, configuration and/or orientation in established *Neighbourhoods* will ...

[59] The Board finds that this policy does not apply in this case. This policy sets a key pre-requisite that the property vary from the local pattern in an established neighbourhood in certain specific respects. The subject site does not vary from the local pattern in terms of lot size, configuration or orientation. It is of a size, configuration and orientation that represent the majority of lots in both the broader neighbourhood and the smaller neighbourhood.

The Etobicoke Zoning Code

[60] Variances are being sought for a side yard setback. The reduction being sought is a mirror between the two proposed lots and reduces the side yard setback between the newly built existing dwelling and the proposed new dwelling. The variances reduce the side yard setback from 0.9 m to 0.6 m.

[61] The Board did not have evidence on the general intent and purpose of the EZC with regard to the side yard setback requirement. The fact that the Proponent lives in the newly built existing dwelling and the new residents of the proposed new dwelling would be aware of the reduced side yard setback does not speak to the general intent and purpose of the requirement.

[62] There is a similar pair of variances being sought for the setback for eaves. These, again, mirror each other where the proposed two lots are adjacent.

[63] The Board did not have evidence on the general intent and purpose of the EZC with regard to the eaves setback requirement.

[64] With no evidence on the general intent and purpose of the EZC with regard to the variances being sought to the side yard setback and the eaves setback, the Board

cannot make the requisite finding that these variances would maintain the general intent and purpose of the EZC.

Desirable for the Appropriate Development of the Land

[65] The Provincial Policy Statement (“PPS”) encourages intensification and the efficient use of land and infrastructure, as does the Growth Plan for the Greater Golden Horseshoe (“GGH”).

[66] The variances to support two dwellings where there is now one dwelling are consistent with the PPS and conform to the GGH. In this regard, the proposal does not engage any issue with the PPS or the GGH.

[67] The subject site and its newly built existing dwelling are also consistent with the PPS and conform to the GGH.

[68] The requirement to make a finding of desirability means the Board must look at a finer grain of analysis than is provided by reference to the PPS or the GGH.

[69] In doing so, Mr. Cieciora cited the large side yard on the north side of the newly built existing dwelling. He testified that this large side yard is an anomalous gap in the pattern on the street.

[70] Side yards on adjacent properties do not suggest the same side yard pattern since the dwellings on these lots tend to be sited more to the centre of the lot than loaded off to one side.

[71] Mr. Cieciora acknowledged under cross-examination that the generous side yard on the subject site is the result of a deliberate decision by the Proponent to site his newly built existing dwelling hard to the southern end of the subject site to create a generous side yard to the north.

[72] Rather than characterizing this generous side yard as an unwanted gap, the

Board finds that it is the result of a demonstrated and acted upon preference for a generous side yard that was created with the siting of the newly built existing dwelling that is fully compliant with the EZC.

[73] Mr. Cieciora acknowledged under cross-examination that the proposed new dwelling will be essentially the same as the newly built existing dwelling.

[74] Ms. Koops, the neighbour to the south adjacent to the newly built existing dwelling, testified to the lack of privacy and overlook on to her property that resulted from the design of the dwelling now on the subject site.

[75] The Board agrees with the Proponent that a decision on the requested variances that resulted in the construction of a new dwelling on the north side would not change the impact of the existing dwelling.

[76] The benefit of the newly built existing dwelling being fully in place is that the Board is able to appreciate the impact another similar dwelling would have on a neighbour.

[77] Under cross-examination, Mr. Cieciora also acknowledged that the proposed new dwelling would exhibit similar characteristics of overlook to those identified by Ms. Koops from the newly built existing dwelling.

[78] The Board finds that the proposed variances are not desirable for the appropriate development of the land.

Minor

[79] Considering all of the foregoing analysis, the Board finds that the requested variances are not minor.

The Application for Consent

[80] When considering an application for consent, the Board is required to have regard to the matters set out in s. 51(24) of the Act. The Board finds that s. 51(24)(c) and s. 51(24)(f) are relevant here:

(c) whether the plan conforms to the official plan...

(f) the dimensions and shapes of the proposed lots...

[81] On the evidence and analysis the Board set out above in the review of the variances in terms of the OP, in the circumstances of this case, the Board finds that the dimensions and shapes of the proposed lots are inappropriate and further finds that the proposed lots do not conform to the requirements of the OP.

ORDER

[82] The Board orders that the appeals by Edmond Visan are dismissed, consent is not granted and the variances are not authorized.

"Susan de Avellar Schiller"

SUSAN de AVELLAR SCHILLER
VICE-CHAIR

If there is an attachment referred to in this document,
please visit www.elfo.gov.on.ca to view the attachment in PDF format.

Ontario Municipal Board

A constituent tribunal of Environment and Land Tribunals Ontario
Website: www.elfo.gov.on.ca Telephone: 416-212-6349 Toll Free: 1-866-448-2248