

ISSUE DATE:

January 07, 2013



PL120777

Ontario
Ontario Municipal Board
Commission des affaires municipales de l'Ontario

IN THE MATTER OF subsection 53(19) of the *Planning Act*, R.S.O. 1990, c. P.13, as amended

Applicant and Appellant: Antonio Carreiro, Regiane Volpati
Subject: Consent
Property Address/Description: 168 Lake Promenade
Municipality: City of Toronto
Municipal File No: B52/10/EYK
OMB Case No: PL120777
OMB File No: PL120777

IN THE MATTER OF subsection 45(12) of the *Planning Act*, R.S.O. 1990, c. P.13, as amended

Applicant and Appellant: Antonio Carreiro, Regiane Volpati
Subject: Minor Variance
Variance from By-law No: Section 330-23
Property Address/Description: 168 Lake Promenade
Municipality: City of Toronto
Municipal File No: A346/10EYK
OMB Case No: PL120777
OMB File No: PL120779

IN THE MATTER OF subsection 45(12) of the *Planning Act*, R.S.O. 1990, c. P.13, as amended

Applicant and Appellant: Antonio Carreiro, Regiane Volpati
Subject: Minor Variance
Variance from By-law No: Section 330-23
Property Address/Description: 168 Lake Promenade
Municipality: City of Toronto
Municipal File No: A345/10EYK
OMB Case No: PL120777
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APPEARANCES:

Parties

Antonio Carreiro
Regiane Volpati

City of Toronto

Counsel

R. D. Cheeseman

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DECISION DELIVERED BY J. P. ATCHESON AND ORDER OF THE BOARD

[1] This was a hearing in the matter of an appeal by Antonio Carreiro and Regiane Volpati (“Appellant”) from a decision of the City of Toronto (“City”) Committee of Adjustment (“COA”) (File B52/10 EYK), that refused to grant a consent for a property known municipally as 168 Lake Promenade in the former City of Etobicoke, now in the City of Toronto. The purpose of the consent application is to create two lots where one currently exists. The Appellant intends to remove the existing dwelling on the property and create two new two-storey, detached dwellings with an integral at grade garage on each of the lots. The severed lot would have a frontage of some 7.68 m and a lot area of some 344.20 sq. m while the retained parcel would have a frontage of some 7.68 m and a lot area of some 351.50 sq.m as shown on a site plan and building elevation plans Exhibit 7A and 7B.

[2] Associated with the consent application were applications for minor variances (Committee files A345/10EY and A346/10EYK).

[3] The variances sought are from Zoning By-law No. 330 of the former City of Etobicoke, now in the City of Toronto and are required to demolish the existing dwelling on the property and to construct the proposed two new two-storey, detached dwellings on the subject lands. The variances applied for are as follows:

Part 1 Severed Parcel

1. Section 330-23.A(2)

The minimum required lot frontage is 12 m. The lot frontage is 7.68 m.

2. Section 330-23.A.(1)

The minimum required lot area is 371 m². The lot area is 344.2 m².

3. Section 330-23.A.(9)

The maximum permitted floor space index is equal to 0.35 times the lot area (120.5 m²). The new dwelling will have a floor space index equal to 0.58 times the lot area (199.1m²).

4. Section 330-23.A.(7)

The minimum required side yard setback is 0.9 m.
The new dwelling will be located 0.6 m from the east side lot line.

5. Section 330-13.A.(2)

The minimum required side yard setback for an eaves overhang, including the eavestrough, is 0.5 m. The eaves overhang, including the eavestrough, will be located 0.3 m from the east side lot line.

Part 2 Retained parcel

1. Section 330-23.A.(2)

The minimum required lot frontage is 12 m. The lot frontage is 7.68 m.

2. Section 330-23.A.(1)

The minimum required lot area is 371 m². The lot area is 351.5 m².

3. Section 330-23.A.(9)

The maximum permitted floor space index is equal to 0.35 times the lot area (123 m²). The new dwelling will have a floor space index equal to 0.57 times the lot area (199.1 m²).

4. Section 330-23.A.(7)

The minimum required side yard setback is 0.9 m.
The new dwelling will be located 0.6 m from the west side lot line.

5. Section 330-13.A.(2)

The minimum required side yard setback for an eaves overhang, including the eavestrough, is 0.5m. The eaves overhang, including the eavestrough, will be located 0.3 m from the west side lot line.

BACKGROUND AND EVIDENCE

[4] The Board during the course of the hearing, heard from two qualified Land Use Planners. Mr. Michael Goldberg was retained by the Appellant to assist in making their applications to this Board. Mr. Martin Rendl was retained by the City and supports the

decision of the Committee of Adjustment to refuse the application. The city planning staff's report to the Committee of Adjustment proffered no opinion on the applications now before the Board.

[5] The Board granted on consent participant status and heard submissions from four residents who live in the immediate area. Mr. Archer lives to the immediate west of the subject property at 170 Lake Promenade. Mr. Philip Trunk, lives at 1, 31st Street his property is a small lot immediate north of Mr. Archer's and backs on to a portion of the rear yard of the subject property. Mr. Quackenbush who lives at 82 Ash Crescent, a location beyond the immediate subject area, was given participant status but during the course of the hearing elected not to give evidence. He relies on the evidence of other who oppose the application at the hearing. The Board also heard from a Mr. David Godley who lives some distance to the west at 401 Lake Promenade. Mr. Godley is a retired professional planner who opposed the development and is critical of the Board and its determinative processes regarding this and other appeals in the general area. He attempted to introduce s. 43 appeal materials filed with respect to another case which is currently before the Executive Chair of the Board. This panel advised Mr. Godley that it did not have jurisdiction in the s. 43 matters and would not receive submissions, or hear evidence on the matter under a s. 43 review. He was directed to proffer his opinions and submissions directly to the matters of these applications before this panel of the Board.

[6] The salient concerns raised by these residents may be summarized as follows:

- The built form is not in keeping with the character of homes found in the area.
- The additional driveway access has the potential to create traffic problems on Lake Promenade.
- The additional home may create parking problems in the area.

- The proposed development might present a risk for an existing silver maple tree on Mr. Archer's property.
- The proposed new home will create oversight issue for the deck and increase sun shadow effects on the Archer property.
- The proposed lots are too small and do not respect and reinforces the character of this area.
- The proposed development may not meet building and fire codes.
- These smaller lots may affect property values in the area.

[7] Counsel for the City in her opening submissions indicated that the City's sole concerns were with the size of the lots that would be created if the consents were given and lot area and lot frontage variances were authorized. The City takes no position with respect to the other variances.

[8] The Board then heard from Mr. Goldberg who provided the Board with an overview of the larger area and more particularly, his study area as set out in Exhibit 4. He also provided a photo study of the immediate area found at Exhibit 3. It is clear from his evidence that this is a stable, single-family neighbourhood consisting of predominately single-family homes that vary in size, design and character. He pointed out in his evidence that significant reinvestment is occurring to properties in the area through renovations, additions, or the complete demolition and reconstruction of new, larger, single-family homes. He noted that his study area coincides with the RS zone. This zone is the exclusive single family zone found in Zoning By-law 330. This by-law is a cumulative type of Zoning By-law that dates back to the late 1950's and covers the Long Branch area. He testified that within his study area and the area covered by the RS Zone a wide variety of lot sizes exist as set out at Exhibit 14A and his lot frontage analysis Exhibit 5 noting that 33.8% of the lots within his study area were equal to or less than the minimum lot frontage established in the Zoning By-law.

[9] Mr. Goldberg testified that the subject property is currently occupied by a one and a half-storey, detached dwelling, which is to be demolished and replaced with two larger two-storey, detached single-family homes of a design and size consistent with many new homes designed for lots of this size found in the neighbourhood. The site plans, elevations and building plans of the proposed homes that the Appellant intends to build on the two lots are set out at Exhibits 7A and 7B, being plans prepared by Ambient Designs Ltd, dated May 09, 2011. The elevations of the proposed structures are consistent with other, newer homes found within his study area. He noted that the homes are two storeys in height and have been designed to include an integral single car garage at grade. The main floor of the proposed homes is situated on the second level in part, with the third floor level containing the bedroom areas. The subject lots are rectangular in shape having a frontage of 7.68 m on Lake Promenade and an average depth ranging from 44.69 m on the western side to 46.62 m along the eastern lot line. The proposed lots have a similar configuration with respect to their orientation and lot depth with other lots along the north side of the street to the east. The two lots to the immediate east on the north side of Lake Promenade have similar lot frontages to those being proposed by the Appellant. Similar directly across the street are two similar sized lots to those being proposed upon which small cottage type structures currently exist. Mr. Goldberg also testified that in the past Mr. Archer lot was divided to provide for the lot and home occupied by Mr. Trunk as shown on Exhibit 14 A.

[10] Both retained planners agree that these applications are governed by the City's OP and that the Official Plan must be considered in its entirety. They all noted that the Official Plan in Chapter Two recognized that:

some physical change will occur overtime as enhancements, additions and in fill housing occurs on individual sites. A cornerstone policy is to ensure that new development in our neighbourhoods respects the existing physical character of the area, reinforcing the stability of the neighbourhood.

[11] The planners also agree that in this case, the Official Plan designates the site and immediate area as "Neighbourhoods" on Map 15 Land Use Plan to the City' Official Plans which states that "Neighbourhoods" are considered physically stable areas made

up of residential uses in lower scale buildings such as detached houses,” and that s.

4.1.5 of the Official Plan would apply which states that:

4.1.5 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 landscape 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.

[12] They further agree that subsections 4.1.5 a), b), c), d) and f) together with section s. 4.1.8 are of particular importance in providing guidance as to how this matter should be considered.

[13] Section 4.1.8. states:

Zoning by-laws will contain numerical site standards for matters such as building type, and height, density, lot size, lot depths, lot frontages, parking, building setbacks from lot lines, landscaped open space, and any other performances standards to ensure new development will be compatible with the physical character of established residential neighbourhoods.

[14] There is also general agreement that the consents in the first instance must meet the test of the City's Official Plan and the criteria set out in s. 51(24) of the *Planning Act* (Act) which states:

51(24) Criteria

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;
- (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).

[15] There was also general agreement among the planners that the applicable criteria as set out in the Act would be s. (a), (b), (c), (d), (f) and (g) and that in this case, the first test is whether the consent should be given. If the application fails at this level, then the tests associated with the minor variances become moot.

[16] The planners, in conducting their analysis of conformity with the Official Plan and the criteria established by the Act, used different study areas. Mr. Goldberg's study area is found at Exhibit 4 and generally follows the RS Zone from Lake Ontario northward to the rear lot line of the lots on the north side of Ash Crescent. Mr. Rendl's study area is somewhat smaller and consists of the lots on either side of Lake Promenade from Twenty Third Street on the east to the limit of the RS zone to the west as set out at Exhibit 13 and summarizes at Exhibit 16. The substantive difference in their respective study area is that Mr. Goldberg extends his area northward to cover a larger area, which also includes some different zoning categories and land uses that form part of what he considered the larger neighbourhood. Mr. Rendl opines that it is only the lots along Lake

Promenade that define the character of this area of Long Branch. Mr. Rendl as part of his evidence traced the historical development of the Long Branch area from a tourist area to the residential community that exists today. It is clear from his evidence that the majority of the current lot pattern that exists in this area today predated any planning controls and has contributed to the eclectic character of the area that exists today.

[17] The descriptions of the character of the area as reflected in the photographic displays presented by Mr. Goldberg and Mr. Rendl are remarkably similar except for geographic area they decided to study. They both agree that this is a stable, single-family residential area that has been and is still undergoing extensive upgrading to larger homes. Where they differ is that in Mr. Rendl's opinion, this is being achieved largely by a reutilization of the existing lot fabric on the predominately 12 m frontage lots found along Lake Promenade. He freely admitted both in direct and under cross examination, that single-family redevelopment has occurred within the larger neighbour area on smaller lots, but that this has generally occurred to the north, and that the lot fabric along Lake Promenade has remained largely unchanged. Mr. Rendl conceded under cross examination that the lots sizes along the south side of Lake Promenade as show on the original survey Exhibit 17 had all been reduced over time from 100 ft. frontages to an average 50 ft. frontage lots. However, he maintained that in his opinion more than 71% of the existing lots along Lake Promenade were 12 m or larger and that this lot size established the character of the area and that the smaller lots found in this area were the result of lots of record which were recognized and permitted by s. 330-20 of the Zoning By-law. It is instructive to note that this section of the By-law establishes a minimum lot frontage of 7.5 m Exhibit 2, Tab 3, p 50 for existing lots of record existing on or before September 9, 1959.

[18] Mr. Goldberg opined that one needs to look at the total development scheme being proposed in this case. He opined on this basis that the homes being proposed are compatible in both design and in size with other homes in the area. He noted several examples where existing homes in the immediate area exist on lots of similar size, side-by-side, in harmony with one another and without any adverse impacts being observed

or noted. He opined that the development being proposed would be consistent with other lots and existing developments found adjacent to the east and right across the street from the subject property, would not be precedent setting, and would in his opinion, fit harmoniously into the neighbourhood. He noted that side yard variances were for the yards between the proposed two new homes and that the proposed homes where they abut existing development would fully comply with the side yard requirements of the Zoning By-law.

[19] Mr. Goldberg proffered that the floor space index of 0.35 times the lot area was a development control tool that required a public process when it was to be exceeded. He noted many examples Exhibit 6 along Lake Promenade where variance to exceed the floor space index had been approved. He sees nothing out of the ordinary in the relief being sought by his client for the two new homes and suggests that the homes that would result would be in keeping with the size of homes found in the area. He noted that the building envelopes for the proposed homes as shown at Exhibit 7A and 7B were consistent in size to other homes found in the area. He noted that except for the side yard between the proposed new homes the buildings would fit within the building envelope prescribed by the Zoning By-law. In his opinion; no adverse impact would result from the development being proposed beyond what might occur as of right under the current provisions of the Zoning By-law and as such he concludes that the variances both individually and collectively would meet the intent and purpose of the Official Plan and Zoning By-law, would be minor in nature resulting in appropriate development for this part of the municipality.

[20] He testified if the Board was to find in favour of his client that his that client was in agreement with the conditions recommended by the City (Exhibit 9), and that his client was in agreement to build the homes substantially in the form set out at Exhibit 7A and 7B. He noted that these plans formed the basis of the variances applied for by his client and, in his opinion, these plans represent a compatible form of development consistent with the redevelopment presently occurring along this street and in the general area.

[21] Mr. Goldberg contends that the applications should be viewed as a package and that on this basis, the development resulting would be consistent with existing development in the area, would meet the objectives of the Official Plan to promote stable residential neighbourhoods and would not result in any adverse impacts to abutting properties. He testified that the applicable criteria of s. 51(24) of the Act would be met in that the lots maintain the same general shape of the current subdivision, that the form of development is the same as currently exists (single-family homes), that municipal services are in place, and on that basis the development is not premature. He opined further that the proposed development would fit harmoniously with the development currently found and occurring in immediate neighbourhood and would reinforce the stable, single-family residential character of the neighbourhood, as required by the City's Official Plan. He opined on this basis that the development scheme, when viewed in its entirety, was in conformity with the planning objective of the municipality and that on this basis, the consent, subject to the City's conditions, should be given. He sees no Provincial interest being adversely affected by these applications noting that intensification is encouraged in urban municipalities by provincial policy and that this modest form of intensification is recognized by the City's Official Plan as noted above.

[22] It is Mr. Goldberg's opinion that the proposed buildings are similar to other new, single-family dwellings being developed in the area, albeit on slightly smaller lots and that with respect to the Official Plan policies found at s. 4.1.5, the proposed development would respect and reinforce the single-family physical character of the neighbourhood and would meet the policy objectives set out in s. 4.1.5 a), b), c), d) and f). It was his opinion that the applications meet the intent and purpose of the Official Plan for the "*Neighbourhoods Designation*," by reinforcing the stable character of this single-family, detached neighbourhood and would be compatible with the redevelopment presently occurring in the area.

[23] It was also his contention that the development scheme, when viewed as a package, meets the intent and purpose of the Zoning By-law in that the proposed

structures would fit within the building envelope prescribed by the Zoning By-law with the exception to the side yard between the two new buildings.

[24] It was Mr. Goldberg's opinion that the proposed applications, when viewed as a complete package, would result in a development that was appropriate and compatible with the existing character and built form found in within his study area and the immediate area of this site where smaller lots of the size being proposed currently exist, that no negative adverse impacts would result from the proposed development and that the variances being sought, both individually and collectively, should be viewed as minor, meeting the four tests set out in s. 45(1) of the Act.

[25] It was Mr. Rendl's position that the proposed development did not respect the historic relationship of lot sizes found in his study area where over 71 per cent of the lots have frontages of 12 m or larger. He contends that the character of the area is found along the Lake Promenade which consists largely of lots sizes in conformity with the minimum lot frontages prescribed by the Zoning By-law he sees the lot sizes being requested as a significant departure from the provision of the Zoning By-law and that the change in lot frontage and lot area being proposed by these applications is not consistent with the character of the neighbourhood and as such, the consents would not conform with the intent of the City's Official Plan, The proposed consents in his opinion would not be in the public interest would be bad planning that could set a precedent that would destabilizes this stable residential area and as such would not meet the intent of the City's Official Plan. The reduction in lot frontage and lot area being proposed, in his opinion, constitutes a negative impact. He sees the quest for density in this case resulting in a built form not in keeping with the established character of the neighbourhood (lot size). He opined that the proposed lots were not in keeping with predominate lots sizes in the area and sanctioned by the Zoning By-law and as a result, the number of variances being requested reflected how out of keeping this proposal is with the rest of the homes in the area. It was his opinion that the variances result in a built form that is not appropriate or desirable for this part of Lake Promenade and its streetscape. The homes being proposed, in his opinion, do not reinforce the physical

character of the neighbourhood as prescribed by the City of Toronto Official Plan and the policy directions set out in s. 4.1.5.c) and d) of that document. He also relies on s. 4.1.8. of the City's Official Plan that the existing provisions of Zoning By-law No. 330 for the RS Zone should be maintained, and form the benchmark for evaluating the applications for consent.

[26] He concluded his remarks by indicating that, in his opinion, the consents did not meet the intent and purpose of the Official Plan, were not in the public interest and were not consistent with the predominate lot sizes found in his study area. He sees the creation of these two smaller lots in this location as poor planning that is not consistent with the applicable criteria s. (a),(b),(c),(d) (f) and (g)) of s. 51(24) of the Act and on this basis alone he opined that the consent application should be refused. He sees the list of variances as demonstrative that the applications do not meet the intent and purpose of the both the Official Plan and Zoning By-law and would result in inappropriate development for this part of Lake Promenade that is not minor, and therefore the variances should not be approved.

FINDINGS AND CONCLUSIONS

[27] The Board, after carefully reviewing the evidence and the submissions made by the parties and the participants, finds that in assessing this case one must view the entire development proposal as a package or complete development scheme. Clearly, if one cannot meet the Official Plan tests and the s. 51(24) criteria of the Act, then the consents fail and the questions of the variances become moot.

[28] However, in determining the appropriateness of the consents, it is the Board's finding that this must be based on an understanding of the end result, which in this case is two homes that would result if the consents were granted and the variances authorized as shown on the plans filed with the applications Exhibits 7A and 7B.

[29] It is clear from the evidence that this is a stable residential neighbourhood as contemplated by the Official Plan. It is a stable neighbourhood, only in that the

predominate form of housing (being single-family homes), has not changed. The uncontradicted evidence is that for many years, the area has been undergoing substantial reinvestment in new and larger homes such that the small homes that originally made up the neighbourhood are vanishing. This has been undertaken using existing lots of records which vary in size and in some cases, through the division of existing lots into smaller parcels, as is being proposed in this case. The result is a patch work of lots sizes existing through the larger study area Exhibit 14A and to a lesser degree even along Lake Promenade. The immediate area of the subject application is a compelling example of smaller lots existing in harmony with larger lots and homes in the immediate area.

[30] This redevelopment activity has been taking place over many years and has worked rather effectively in ensuring high-quality development and redevelopment within the area which is clearly reflected in the photo studies filed by both planners.

[31] The Board ascribes to the proposition that once one enters in to a development scheme for consents and minor variances to increase density, all of the regulations of the Zoning By-law, the Act, together with the imposition of site-specific conditions, may come to bear. In this case, the Board finds that the four tests for minor variances set out in the Act are the more rigorous benchmarks or tests against which a project must be judged and that meeting those tests, in this case, will result in meeting the applicable criteria of s. 51(24) of the Act and the City's Official Plan policies.

[32] The Board, in this case, must view the request for an increase in density and the other variances being sought within the context of the built form being proposed and found at Exhibits 7A and 7B against what currently exists in the area. Clearly, there can be different variations in the built form that could achieve the same density result, however no such other options were presented to the Board. Similarly, the Board finds no requirement in either the City's Official Plan or Zoning By-law that requires uniformity of building design. Instead, the Official Plan test is to "reinforce the existing physical character of the neighbourhood." This area, by all accounts, is a stable, detached,

single-family neighbourhood undergoing extensive reinvestment in larger, single-family homes presenting a variety of built single-family housing forms. Uniformity or sameness is not a characteristic of the housing forms found in the study areas presented to the Board by the Planners. The homes in the area vary in size, height, style and form. It is this precise variety of housing styles on varying lot sizes that gives this part of the neighbourhood its character. In making this determination the Board finds that whether one uses Mr. Goldberg's study area or the study area suggested by Mr. Rendl the conclusions would be the same.

[33] The Board, in considering the relief sought for the lot frontage and lot area, does not find the proposition put forward by the neighbours and the City that this will result in a built form not in keeping with the immediate neighbourhood. Similar designs currently exist on lots of similar size in the general area. Lots of the sizes being proposed have existed in this part of the neighbourhood for many years Exhibit 14A with no demonstrated negative impacts.

[34] The request for relief from any provision of the Zoning By-law triggers the requirement for a comprehensive review to determine whether the relief should be sanctioned, as has occurred in the past for other properties in this same area. The measure of the appropriateness of the relief sought is the four tests under the Act and the guidance found in the City's planning documents.

[35] The Board, in considering the relief sought, prefers the evidence of Mr. Goldberg that the proposed development scheme for the two new homes will be compatible with and will fit harmoniously into the streetscape of the existing neighbourhood.

[36] The Board would note that the City's own Official Plan, in Chapter Three, provides assistance and context with respect to matters of height and density when it states:

Where there are no height or density limits in the Plan, height and density limits of area zoning that implements the Plan will be benchmarks for assessment of those aspects of the planned context...

and further s. 3.1.2.3 states:

3. New development will be massed and its exterior façade will be designed to fit harmoniously into its existing and/or planned context...

[37] The Board would note that the City's Official Plan provides no definition of the term "fit harmoniously into the existing or/or planned context".

[38] In the Board's finding the test to "fit harmoniously," or to be compatible, was best articulated by Board member A.J.L. Chapman in *Motisi v. Bernardi* (1987), 20 O.M.B.R. 129 at page 136: when he said:

In other words, the new development must be compatible with the existing development.

...Being compatible with is not the same thing as being the same as. Being compatible with is not even the same thing as being similar to. Being similar to implies having a resemblance to another thing; they are like one another, but not completely identical. Being compatible with implies nothing more than being capable of existing together in harmony.

[39] The Board finds that the house designs being proposed are not markedly different from what exists today in the area and that the new homes being proposed are not a factor that would destabilize this residential neighbourhood. Similar designs exist and are being constructed in the same general neighbourhood. There is no evidence before the Board that the design of the homes being proposed will have any adverse impacts on the adjoining properties beyond what might occur as a matter of right under current zoning regulations, or that the design would have any adverse impact on the larger neighbourhood studied by the planners. Whether one likes the design is a matter of individual choice. Architectural choice of a single-family home is not a test under the Act. Instead, one must consider whether the design to be authorized by the variances would have any adverse impacts on the surrounding properties and neighbourhood and

whether the proposed development is appropriate for the area within the directions found in the Official Plan and its implementing Zoning By-law.

[40] The Board heard conflicting opinions from the professional planning witnesses with respect to what weight the Board should give, if any, to the as of right provisions of the Zoning By-law (existing lot size and lot area). Mr. Rendl opined that these factors are fundamental to the character of the area. The evidence of the Mr. Goldberg was that the existing context, being that which is found in the area today, is the most important test and that the Official Plan test set out in s. 4.1.5 is to “reinforce the existing physical character of the neighbourhood.”

[41] The Board has carefully reviewed the photographic evidence presented by the parties and concludes the integral at-grade garages are a common characteristic found in new homes on lots of this size found in the study area proffered by Mr. Goldberg, and are sanctioned by the City’s Zoning By-law. This type of built form results in the need for the height of the homes being proposed which fall within the height limits permitted by the Zoning By-law. It is also clear from the photographic evidence that the architectural form of the homes in the area varies, that no one style or design is dominant, but rather, the house designs vary to meet the circumstance of the site and the owners’ preferences and that these design characteristics form the character of the neighbourhood and are not a direct function of lot frontage or lot area.

[42] Mr. Archer in his evidence suggested that a side window proposed for the home next to him would not meet building code requirements and would result in oversight of his rear yard deck. He also expressed concerns that the sidewall he would see if proposed home were built would obstruct his views from his deck. He freely admitted under questioning that the as of right provisions of the Zoning By-law would permit a home in the same location to that being proposed even if the severances were not granted.

[43] This issue of whether a window meets the requirements of the *Ontario Building Code* is a matter for the Chief Building Official of the Municipality and is not a matter to be determined by this Board.

[44] The Board heard no compelling evidence that the adverse impacts of oversight or shadowing on abutting properties would be any different to what one might expect if a home was built on the existing lot in full compliance with the requirements of the Zoning By-law.

[45] The Board heard no compelling testimony that the location of the proposed new buildings, within the building envelope provided by the variances and shown at Exhibit 7A and 7B would create any adverse impacts on any abutting property beyond what might occur today under the provisions of the Zoning By-law.

[46] Concern was raised by Mr. Archer about the impact on a silver maple tree in his back yard. The Board is satisfied that condition Five found at Exhibit 9 of the City's proposed conditions will appropriately address these concerns and will provide protection to the tree in question.

[47] The Board heard no credible evidence that the proposed lots or house designs will result in any traffic or public safety issues or that the proposed lots are irregular in shape and as such do not fit into the current road or development pattern found in the area. Nor does the Board find that the addition of one driveway entrance on to Lake Promenade as proposed will constitute any traffic hazard or effect the capacity of on street parking in the area.

[48] There is also no compelling evidence before the Board that the proposal will have any negative effect on property values in the immediate area.

[49] The Board finds that the applicable criteria of s. 51(24) of the Act are met in this case.

[50] The Board does not accept the proposition put forward by Mr. Rendl that the RS Zoning provisions should be applied without exception and that on this basis the proposed lots are substandard to those existing in the area and as such these smaller lots therefore are not compatible with the character of the area. Clearly, the Zoning By-law establishes the development standards for the area and is deemed to implement the policy directions of the Official Plan.

[51] It is also clear from the evidence that Zoning By-law No. 330 sanctions development on existing lots of record provided they have a minimum lot frontage of 7.5 m and that this regulation has been applied to the existing lots to the immediate east and across the street from the subject property and that this permission, and these existing smaller lots go to establishing the existing character of this part of lake Promenade.

[52] Mr. Goldberg characterized Zoning By-law No. 330 as a blunt instrument. It is clear to the Board that Zoning By-laws cannot predict all circumstances and that this is one of the reasons the Act permits the variance process, subject to the prescribed four tests. As indicated earlier in this decision, it is the determination of the Board that in determining whether the proposal should be approved or rejected, one must judge these matters based not on part of the application but instead, on the resulting development scheme in its totality.

[53] The Board, in considering the variances from the lot frontage and lot area provisions of the Zoning By-law, finds that these two criteria in and of themselves are not the sole determinants of the question. There are examples of similar sized lots in the immediate area that fit and form part of the character of this neighbourhood that have existed for many years. The important issue is how the proposed development on the proposed lots translates into the built form on the property and how it fits into the existing character of the neighbourhood.

[54] The Board has carefully reviewed the plans found at Exhibit 7A and 7B, and all of the photo studies provided by the parties and the testimony of all the Planners. The

Board concludes from the evidence that there exists a variety and mixture of single-family housing types, both in size and built form, in the immediate area and that this eclectic composition of very different homes on a variety of lot sizes characterizes this very unique neighbourhood. Furthermore the immediate area surrounding the subject property is an area where historically smaller sized lots have existed in harmony for many years. It is the Board's finding that what is being proposed by the Appellant is not a departure from a lot form that has existed in this immediate area for many years.

[55] The Board understands the concerns raised by the residents that the proposal is a change from the current lot size that has existed on the subject property for many years and that change of this nature can be disconcerting. However, that being said, the Board must consider the impacts that could result from the variances requested in relation to the built form being proposed with what currently exists in the area.

[56] The Board finds, after a careful review of all of the evidence presented by the parties, that there would be no negative impacts resulting from the relief being requested beyond what one would anticipate from a structure built in full compliance with the Zoning By-law's regulations. In this case, the Board does not find that the massing resulting from the proposed smaller building lots will result in a development that is not in keeping with the general character of this area.

[57] The Board has reviewed the eight decisions of the Board dealing with appeals in the Long Branch area submitted by Counsel for the parties in support of their respective positions. The Board concludes after this review that none of the decision submitted reflect the circumstances found on the ground in these applications and further reinforces the proposition that each application is unique and must be view on its own specific merits. It is the Board's finding that the decisions submitted establish no precedent that this panel of the Board should rely upon, and further the determination of the Board in this case should not be viewed as establishing any precedent for any future application.

[58] In this case the existing lots to the immediate east and Mr. Trunk's lot that abuts the subject property to the north west are below the minimum lot frontage and lot area requirements by the By-law and appear to have existed with no adverse impact on the this part of the neighbourhood and in the Boards determination are fundamental in defining the character of the area as required by the City's Official Plan.

[59] It is the finding of the Board, for the reasons contained in this decision, that in this case, the resulting built form as depicted in Exhibits 7A and 7B will respect and reinforce the existing character of the neighbourhood as required by the City's Official Plan. The Board finds that the intent and purpose of the Zoning By-law is maintained by the development scheme being proposed and that variances, both individually and collectively, are minor, resulting in a development that is appropriate and desirable for this part of Lake Promenade.

[60] Further, the Board concludes that the consents as proposed represent good planning consistent with the applicable criteria to be considered under s. 51(24) of the Act and the City's Official Plan and should be granted on a provisional basis, subject to the conditions proposed by City at Exhibit 9.

ORDER

[61] THE BOARD ORDERS that the appeal is allowed and the provisional consents are to be given subject to the following conditions:

1. Confirmation of payment of outstanding taxes to the satisfaction of Revenue Services Division, Finance Department;
2. Municipal numbers for the subject lots indicated on the applicable Registered Plan of Survey shall be assigned to the satisfaction of the Survey and Mapping Services, Technical Services.

3. Two copies of the registered reference plan of survey integrated to NAD 83 CSRS, delineating by separate parts the lands and their respective areas, shall be filed with City Surveyor, Survey & Mapping, Technical Services;
4. Three copies of the registered reference plan of survey satisfying the requirements of the City Surveyor shall be filed with the Committee of Adjustment;
5. Prior to the issuance of a demolition and /or building permit, the owner shall satisfy all matters relating to City and Privately owned trees, to the satisfaction of the Supervisor, Urban Forestry-Tree Protection & Plan Review. Urban Forestry will issue a clearance letter to the owner once the above noted condition has been fulfilled;
6. The property be developed substantially in accordance with the plans submitted to the Board and documented as Exhibits 7A and 7B;
7. The Owner shall submit a revised site plan illustrating the requirements specified in the Technical Services memo dated August 19 2011 to the satisfaction of the Manager of Development Engineering;
8. Within one year of the Board's decision and order, the owner shall comply with the above-noted conditions.

[62] THE BOARD ORDERS that the appeals are allowed and the variances to Zoning By-law No. 330 of the former City of Etobicoke, now in the City of Toronto as set out in the City of Toronto Committee of Adjustment Files (Committee files A345/10EY and A346/10EYK), are authorized subject to the following condition:

1. That the homes to be built are substantially in the form found on the Plans prepared by Ambient Design Ltd. dated May 09, 2011 and found in the Board file at Exhibits 7A and 7B.

“J. P. ATCHESON”

J. P. Atcheson
MEMBER