

38 36th Street, a proposal for (2) soldier houses on a 50 feet wide lot

Files B18/17, A233-4, EYK

Committee of Adjustment meeting June 29 2017 at 3pm

Recommendation: Refusal

Principles for decisions within the current planning and legal framework with appeal to Toronto Local Appeal Board:

- 1) **Provincial Policies are irrelevant.** The OMB hearing officer cut off any evidence on Provincial policy at the 168 Lake Promenade hearing. Provincial policies are implemented through Official Plans.
- 2) **Neighbourhoods are not for intensification.** Toronto Local Appeal Board (TLAB) has been told this clearly by Jeffrey Cantos of Planning's Strategic Division at a business presentation in February. Intensification is to take place in other areas of the City according to the Official Plan.
- 3) **Evaluations for reinforcing and respecting character follow established practice** - abutting street properties are key, as mentioned in Long Branch Urban Design Guidelines draft, followed in importance by the row in which the proposal sits, followed by the micro-neighbourhood (in this case the block as described in OPA 320) and then the overall neighbourhood in this case South Long Branch (not the 200 or 300 properties surrounding). The clarification and reinforcement policies included in OPA 320 be used as a base for evaluations. In a break from OMB culture, a decision on 9 Meaford condemns Development Planner's rationale that every 50 feet lot in Long Branch is suitable for splitting. It takes the community's point of view over two qualified planners. (PL 162048.) This hearing officer is the first to grasp the real issues rather than following along a well defined path of agreeing with qualified planners especially if they are well established.
- 4) **Minor is the dictionary definition or the ones already used by the City** (on the website and in the new blue Planning Department brochure) in other words small changes that do not quite fit the zoning bylaw.
- 5) The low density of Long Branch **zoning overrides market forces.** The intent of the zoning reflects the intent of the Official Plan. The OMB decision on 30 36th clearly states market forces are not part of the equation as has previously been expressed by Divisional Court. PL160520.

Summary Findings: Consent and variance applications for 38 36th Street

- 1) Provincial Policies are not relevant.
- 2) What TLAB might do is not a consideration.
- 3) “Neighbourhoods” (the OP designation) are not areas for intensification.
- 4) The issues are exclusively urban design and economics, not land use.
- 5) The proposal detracts from many urban design objectives, particularly on the rhythm of the street and severe impacts on adjacent properties.
- 6) The proposal shows no attempt to fit harmoniously into the neighbourhood and appears to be a way of maximising profit. Long blank overwhelming sidewalls, non-prevailing reduced side yards and rear yards, raised first floor and 3 storeys are a sure sign of overdevelopment.
- 7) The proposal is a precedent for more soldier houses (3 storeys on narrow usually 25 feet wide lots) not only in this locality but throughout the neighbourhood. Nearly all OMB approvals for consents have been made (mistakenly) on precedent. The cumulative impact is major. Lot splitting should be stopped unless complying with the zoning bylaws in order to resolve an issue tearing at the heart of city policy and sound planning.
- 8) The general intent of the Official Plan is ignored including Section 2 on shaping the neighbourhood, 3.1.2.3 on urban design, and 4.1.5 on respecting and reinforcing the character of the neighbourhood. (Appendix 2)
- 9) The general intent of the zoning being low density, low profile housing in wider lots is not observed.
- 10) Minor means minor both in size and impact and not an “Alice in wonderland” interpretation adopted egregiously by the OMB.
- 11) No information has been provided for character evaluation nor has any analysis been done. The application is premature without these evaluations.
- 12) The public interest for appropriate and desirable does not include the applicant’s wishes especially those for expanded profit or market forces.
- 13) The Planning Department recommend deferral or alternatively refusal.
- 14) There are major impacts on trees to be defined by Urban Forestry. The tree canopy is being destroyed needlessly by inappropriate development.
- 15) A key criterion is how the neighbourhood and particularly people most affected wish to shape their neighbourhood. This is the so called “fifth test” of a minor variance. Resident’s property rights would be defiled.

Recommendation:

It is recommended that the applications be refused.

Proposal

It is proposed to divide a 50 by 132 feet frontage lot into two 25 feet lots and build (2) three storey detached houses on both lots with a density of 0.69 and 0.70. The severance and variances need to be considered together because it is an accident of history there are 2 types of applications

Impacted owners

The Long Branch neighbourhood is up in arms with the lack of planning and instability caused. There are over 200 lawn signs protesting the destruction of the neighbourhood character. A number of nearby residents has been conversing with me on this file.

Long Branch

Long Branch is the epicentre for severances so its character is being desecrated faster than anywhere else in Toronto and probably Canada. This not only means that the appearance is deteriorating but that the economy is suffering. This is well outlined in the Official Plan. Distinctive neighbourhoods are an attraction to those investing in the Region. Long Branch South is the most well defined neighbourhood in Toronto with strong physical boundaries, Lake Shore Blvd West, the Waterworks, Lake Ontario and Etobicoke Creek. It is an island of housing with a strong heritage which needs to be conserved.

No Intensification in Neighbourhoods

That is why the Official Plan directs intensification (other than infilling on large blocks, to other areas of the City which has an abundance of development land. As the Chief Planner says, all planned population can be accommodated within the Avenues designation with plenty to spare. Jeffrey Cantos, (of The Strategic Division of the Planning Department) in his presentation to the Toronto Local Appeal Board stated on February 23 2017 “Neighbourhoods are not for intensification.” Any alternative interpretation will be confusing for TLAB.

Minor is not Major or even something in between.

Minor a decade ago was a maximum of 10 to 20%, 5 years ago it was 50%, recently it was 100% even in some Planning Department recommendations. Applications have been submitted for three times density. The Department has been pushed to support higher densities because otherwise processing would grind to a halt. Planners would be forever at the OMB.

Small size of variance, as well as impact, is a legal requirement to be judged as to what is eligible for being considered by the Committee of Adjustment. The Toronto definition of minor is “Small changes or exceptions to existing land use or development restrictions contained in the zoning bylaw are called minor variances.” The word “Adjustment” defines the Committee’s role. A further recent clarification is included in the Blue Brochure produced by the Planning Department which says that variances are for those proposals that do not quite fit the zoning bylaw. The Committee of Adjustment is appointed to ensure the City’s interest by representing the citizens of Toronto rather than imposing their own views of planning. Decisions need to support City policies.

Urban Design and Aesthetics

About two thirds of the Official Plan is devoted to the third dimension of development. Unfortunately all approvals for severances for soldier houses in Long Branch have ignored or misunderstood the Official Plan this issue until 9 Meaford. Not considering this pivotal aspect of applications is seen as negligence. This is why the community is so angry and frustrated. An analysis of urban design is included, Appendix 1, a checklist for considering severance/variance applications. Development planners have insisted soldier houses are in character because they exist in the neighbourhood. They maintain every 50 wide feet lot is therefore eligible for division in conformity with the OP. This is seen as irrational financially based fraud.

Side and Rear Yards

As the decision on 30 36th street clearly points out side yards need to be functional. Official Plan policy also requires them to follow prevailing

patterns. It is the same for rear yards. The proposal does not conform to policy 4.1.5f and should fail on this count alone.

Department Comments

In this case the Planning recommend deferral or alternatively refusal. Urban Forestry has major concerns yet to be submitted.

Provincial Policy

The Provincial Policy Statements are implemented through the Official Plan and are considered by everyone except certain development planners as irrelevant. So they are not part of the planning and legal framework in this instance.

Planning and Legal Framework

If the Planning and Legal Framework is not followed and the decision is appealed from TLAB, the Divisional Court will strike the proposal down. Unfortunately no one in Long Branch can afford to appeal (so far). For the Committee of Adjustment, the Integrity Commissioner is the route for those not following City policy or the public interest.

Context

Context is critical not only in administrative terms such as the various relevant policies but also in terms of urban design and the surrounding properties. The OP clarified by the OPA 320 identifies a micro-neighbourhood as well as a broader area for analysis. The draft Urban Design Guidelines for Long Branch clarify further by putting emphasis on the two abutting street houses to ensure street rhythm. This is classic urban design practice as well as common sense. The issues on this application are urban design oriented and not land use. No information has been provided on context but the prevailing, predominant, most frequently occurring lot frontages are around 50 feet wide. No context is provided for density, massing or number of storeys. The two storey houses either side would suffer increased overshadowing and an overwhelming appearance because of over development. (See map below)

Conclusion

The COA has in the past been good at listening to the concerns of people affected. The Committee of Adjustment may not always agree with the residents but up to recently have had a fairly good record of incorporating citizen concern. When the COA has deferred matters to a community meeting this allows everyone to have their say in a non threatening environment. Usually some improvements are made to a proposal. How citizens want to see their neighbourhood develop is a key consideration. The OP is set up so citizens should shape their neighbourhood without yielding to the pressures of development (explicitly stated). The zoning has recently been updated and reflects the current OP vision. Minor variances have four tests but with flexibility to allow other considerations. Public input is part of the fifth test. (Need and hardship can be included as well.)

It is incumbent on the applicant to prove conformity with the Planning and Legal framework. This has not been done. There are no reasons to approve the proposal.

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Appendix 1

A check list of matters to consider for these applications are:

1) Can development be built under current zoning. (Application Form)

Yes

2) Does the proposal conform to the general intent of the Official Plan. No

a) Does the proposal reflect "respect and reinforcement of character" as repeated in the OP a dozen times. No

b) Is change in the neighbourhood gradual, harmonious and sensitive and does it fit the existing physical character. No

c) Does the proposal reflect Policy 2 of the OP that conservation of character trumps density and demand.

No

d) Does the proposal reflect policy 3 of the OP reflecting and reinforcing the predominant features

Width of lot. No

Other features of configuration of lots No

Width of house. No

Number of storeys No

Density No

Massing/scale 1 to 2 storeys and not tall, long and narrow

No

Floor datums (floor closest to the ground) No

Roof Lines	No		
Building face	No		
Stair approaches	No		
Pitches of roofs	Yes, but not the pitched roof form		
Garages and Driveways	No		
Front entrance design	No		
Lining up of front and rear setbacks	No		
Other Architectural Features	No		
Landscaping	No		
Preservation of trees and greenery	No		
Is the overshadowing more than minor	Yes		
Is access to light reduction more than minor	Yes		
Is privacy invaded	Yes from the rear raised deck		
Is the proposal overbearing on adjacent properties more than minor	Yes		
Are the view impacts more than minor	Yes	No	
Are the cumulative impacts more than minor.	Yes	No	
Have any these items been addressed	No		

f) Does the proposal reflect policy 4 specifically 4.1.5c -1) to respect and reinforce existing physical character "heights, massing, scale....of nearby residential properties" and are the densities, storeys, and frontages of the nearby properties reflected in the proposal. 2) Is the

property right protection of neighbourhood character built into the Official Plan and zoning bylaw still intact. OPA policy 320 clarifies that all criteria will be based on prevailing which is defined as most frequently occurring.

No to both

g) Is the Official Plans clarification in OPA 320 (Provincial and City Policy) considered - that conservation features are prevailing, predominant and most frequently occurring particularly 4.1.5c "prevailing heights, massing,, scale, density... of nearby dwelling residential properties.". As Urban Design experts know the there is a hierarchy of areas which need addressing for urban fit. In order of importance they are 1) the abutting houses, 2) the row of housing 3) houses close by on both sides of the road and 4) the area of neighbourhood beyond. This may be included in the Urban Design Guidelines. A more general policy is contained in OPA 320 adopted by the City and approved by the Province but appealed to the OMB.

No

3) Will the proposal set a precedent which could lead to a change of street or neighbourhood character, considering the OMB always use precedent to support soldier house applications.

Yes

4) Does the proposal comply with the definition of minor.

"Small changes or exceptions to existing land use or development restrictions contained in the zoning bylaw are called minor variances."

No

5) Are the variances small in size (De Gasperis) as well as impact.

No

6) Is the development desirable for the appropriate use from the public interest point of view, balancing wider city interests (of which there appear to be none) to local interests.

No

7) Is the general intent of the zoning (one of the lowest densities in the City) achieved particularly the ordinance to limit first floor height to achieve 2 storeys and a sense of scale and massing similar to both existing and that permitted in the zoning.

No

8) What is the opinion of the most severely impacted residents, the nearby residents and the neighbourhood as a whole. Section 5 of the Official Plan includes "A fair and accessible public process by encouraging participation by all segments of the population and promoting community awareness of planning issues and decisions through use of clear, understandable language." Without this consultation a planning position is premature. Without those affected being part of any negotiation a planning decision is premature. Does the general neighbourhood and those in the locality support refusal.

Yes

9) Do the Planning Department support the proposal. The Planning Department does not support the current proposal. They freely admit to not commenting on proposals that they oppose because of expediency. If they did the whole system would grind to a halt with planners tied up at the OMB. No

10) The Planning Act includes a provision that a sense of place is required to be considered. Does the proposal reflect the existing facets which make up character.

No

11) Is the proposal premature either in planning terms or lack of information and analysis. Without this analysis and further information such as a scale drawing of the facades of the proposal

and houses either side and birds eye view. We are unsatisfactorily dealing with a 3 dimensional issue with 2 dimensional drawings.

12). Are there better alternatives to the proposal which fit the legal and planning framework.

Yes

The neighbourhood is having its character destroyed by soldier houses such as the proposal in complete contrast to the general intent of the legal and planning framework. Soldier houses and the proposal in particular are strongly objected to by the community.

A single family house similar to the designs already established by older properties on the street is appropriate. Keeping the current property façade and adding is the best planning solution. Other good examples of blending in are attached.

Appendix 2

The most important OP sections which need to be referenced are:

Section 1.1, 2. Making Choices

A vibrant and modern city with “beauty” is one of four basic visions. A principle is “beautiful architecture and excellent urban design that astonish and inspire.” A statement on beauty is that “all successful cities astonish with their human made and natural beauty. People choose to live and businesses choose to invest in beautiful cities.”

2 Shaping the City

“The principles that follow are for steering of growth and change to some parts of the City, while protecting our neighbourhoods and green spaces from development pressures, are the first layer of a sound planning process for shaping the city’s future”. As Jeffrey Cantos (who works for the City on Official Plan matters) stated to the TLAB briefing session recently, “**neighbourhoods are not intended for intensification**”. The Chief Planner Jennifer Keesmaat is on record as saying all expected development can be accommodated in “The Avenues” with plenty of land left over in the

Downtown, Waterfront, Mixed Use Areas and various Centres. This vision not only supports an excellent quality of life in neighbourhoods but is an economic strategy as well. I have highlighted the myth about density being a reason to approve severances cum variances.

3 Building a Successful City

3.1.2.3 Policy “New development will be massed and its exterior façade will be designed to fit harmoniously into its existing and planned context, and will limit impacts on neighbouring uses, streets,, parks, open spaces and properties by: a) massing new buildings to frame adjacent streets and open spaces in a way that respects the existing.” Further policies mention privacy, views, light, shadowing, wind protection and trees.

3.4.1 d preserving and enhancing the urban forest by

- i) providing suitable growing environment for trees;
- ii) increased tree canopy coverage and diversity, especially pf long-lived native and large shade trees.

NB Mr. Beauregard , Manager of Urban Forestry regards intensification to be a major threat to the tree canopy. Long Branch has already lost over 30 beautiful trees to development both legally and illegally.

4. Land Use Designations

The distinctive character and contextural stability of neighbourhoods are to be preserved.

Development criteria in Neighbourhoods

“while communities experience constant social and demographic change, the general physical character of Toronto’s residential neighbourhood endures. Physical changes to our established neighbourhoods must be sensitive, gradual and generally “fit” the existing physical character. A key objective of this Plan is that new development respect and reinforce the general physical patterns in a Neighbourhood.

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 of nearby residential properties**
- d) prevailing building type(s)
- e) setbacks of the buildings from the 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 the neighbourhood and
- h) conservation of heritage buildings, structures and landscapes

No change will be made through rezoning, minor variance, consent or other public action that are out of keeping with the physical character of the neighbourhood.”

I have highlighted the key 4.1.5c which should cover both buildings along the street and well as buildings to the rear which may be affected by light views privacy etc. OP Amendment 320 is adopted by City council and approved by the Province but appealed to the Municipal Board. Words in bold have been added. The OPA clarified and reinforced the policies in the original OP of 2006. Also highlighted is the side and rear yard policy.

Appendix 3

OPA 320 City policy, approved by Province but appealed to the OMB
 4.1. 5. “Development in established Neighbourhoods will respect and reinforce the existing physical character of the geographic neighbourhood, including in particular:

- a) patterns of streets, blocks and lanes, parks and public building sites;
- b) **prevailing** size and configuration of lots;
- c) **prevailing** heights, massing, scale, **density** and dwelling type of nearby residential properties;
- d) prevailing building type(s);
- e) **prevailing location, design and elevations relative to the grade of driveways and garages;**
- f) **prevailing** setbacks of buildings from the street or streets;

- g) **prevailing** patterns of rear and side yard setbacks and landscaped open space;
- h) continuation of special landscape or built form features that contribute to the unique physical character of a **geographic** neighbourhood; and
- i) conservation of heritage buildings, structures and landscapes.

A geographic neighbourhood for the purposes of this policy will be delineated by considering the context within the Neighbourhood in proximity to the development site, including: zoning; prevailing dwelling type and scale; lot size and configuration; street pattern; pedestrian connectivity; and natural and human made dividing features

The physical character of the geographic neighbourhood includes both the physical characteristics of the entire geographic area and the physical characteristics of the properties which face the same street as the development site in the same block and the block opposite the development site. A proposed development within a Neighbourhood will be materially consistent with the prevailing physical character of both properties which face the same street as the development site in the same block and the block opposite the development site and the entire geographic neighbourhood within which it is to be located.”

Appendix 4 Extracts from Planning Act

Powers of committee

45. (1) The committee of adjustment, upon the application of the owner of any land, building or structure affected by any by-law that is passed under section 34 or 38, or a predecessor of such sections, or any person authorized in writing by the owner, may, despite any other Act, authorize such minor variance from the provisions of the by-law, in respect of the land, building or structure or the use thereof, as in its opinion is desirable for the appropriate development or use of the land, building or structure, if in the opinion of the committee the general intent and purpose of the by-law and of the official plan, if any, are maintained.

Criteria for subdivisions and severances

51(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;

(d.1) if any affordable housing units are being proposed, the suitability of the proposed units for affordable housing;

(e) the number, width, location and proposed grades and elevations of highways, and the adequacy of them, and the highways linking the highways in the proposed subdivision with the established highway system in the vicinity and the adequacy of them;

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

(g) the restrictions or proposed restrictions, if any, on the land proposed to be subdivided or the buildings and structures proposed to be erected on it and the restrictions, if any, on adjoining land;

(h) conservation of natural resources and flood control;

(i) the adequacy of utilities and municipal services;

(j) the adequacy of school sites;

(k) the area of land, if any, within the proposed subdivision that, exclusive of highways, is to be conveyed or dedicated for public purposes;

(l) the extent to which the plan's design optimizes the available supply, means of supplying, efficient use and conservation of energy