



Toronto Local Appeal Body

40 Orchard View Blvd, Suite 211
Toronto, Ontario M4R 1B9

Telephone: 416-392-4697
Fax: 416-696-4307
Email: tlab@toronto.ca
Website: www.toronto.ca/tlab

DECISION AND ORDER

Decision Issue Date Monday, January 21, 2019

PROCEEDING COMMENCED UNDER section 53, subsection 53(19), section 45(12), subsection 45(1) of the Planning Act, R.S.O. 1990, c. P.13, as amended (the "Act")

Appellant(s): CHARLOTTE SHEASBY-COLEMAN

Applicant: VICTOR HIPOLITO

Property Address/Description: 11 STANLEY AVE

Committee of Adjustment Case File Number: 17 267606 WET 06 CO, 17 267617 WET 06 MV, 17 267618 WET 06 MV

TLAB Case File Number: **18 135459 S53 06 TLAB, 18 135460 S45 06 TLAB, 18 135463 S45 06 TLAB**

Hearing dates: Friday, September 14, 2018, December 19 and 20, 2018, and January 4, 2019

DECISION DELIVERED BY T. YAO

APPEARANCES

| Name | Role | Representative |
|---------------------------|----------------|-------------------|
| Giuseppina Deo | Party/Owner | Russell Cheeseman |
| Theodore Cieciura | Expert Witness | |
| Victor Hipolito | Expert Witness | |
| Charlotte Sheasby-Coleman | Appellant | |
| Max Dida | Expert Witness | |
| David Godley | Expert Witness | |
| Craig Goodman | Expert Witness | |
| Michael Smith | Witness | |
| Nancy Ditchfield | Participant | |

Decision of Toronto Local Appeal Body Panel Member: T. YAO
TLAB Case File Number: 18 135459 S53 06 TLAB, 18 135460 S45 06 TLAB,
18 135463 S45 06 TLAB

| | |
|-----------------|-------------|
| Ulrich Fekl | Participant |
| Rosalie Wang | Participant |
| Aiden Coleman | Participant |
| Raoul Coleman | Participant |
| Barbara Radecki | Participant |
| Marion Jenson | Participant |

INTRODUCTION

Giuseppina Deo, the owner of 11 Stanley Avenue in the Mimico area, wishes to sever her 50-foot property into two 25-foot lots. She will thereafter tear down the existing bungalow and build two homes, each with 317.8 m² interior space (3178 sq. ft.).

BACKGROUND

Ms. Deo acquired the property in August 2017. On March 8, 2018, the Committee of Adjustment granted her a severance plus a number of variances to facilitate the building of the proposed buildings¹ (Table 1). The most important variances are the lot frontage, floor space index and main wall height, which together with the severance will permit two houses with integral garages, with four feet between the new houses. There is no building height variance being sought. The two houses will respect the side yard setbacks of .9 m to 9 Stanley (neighbour to the north, Ms. Sheasby-Coleman) and 15 Stanley (neighbour to the south).

Table 1. Variances sought for one half of 11 Stanley Ave. Bracketed numbers indicate variances for the other proposed lot

| | | Required | Proposed Part 1 (Part 2) |
|----------------------------------------------|--|----------|--------------------------|
| Variances from Zoning By-law 569-2013 | | | |

¹ The variance relating to a minimum amount of first floor to be within 4 m of the main front wall has been eliminated owing to the resolution of outstanding appeals against the City-wide zoning bylaw 569-2013.

Decision of Toronto Local Appeal Body Panel Member: T. YAO
TLAB Case File Number: 18 135459 S53 06 TLAB, 18 135460 S45 06 TLAB,
18 135463 S45 06 TLAB

| | | | |
|---|----------------------------------------------|-------------------------------------------------------|--------------------------------------------------------|
| 1 | Minimum lot area | 325 m ² | 305.90 m ² (306.2 m ²) |
| 2 | Minimum lot frontage | 10.5 m or 34.44 feet | 7.64 m or 25 feet (7.64 m) |
| 3 | Max. Floor space index, in terms of lot area | : 0.6 times area of lot required by s. 10.80.40.40 1A | 0.97 (0.97) times area of lot |
| | | 0.6 required by s 340.30 L: | 0.7 (0.7) |
| 4 | Min. side yard setback | .9 m | South side, .6 m; (North side, .6 m) |
| 5 | Height of exterior main walls | 7.0 m | 7.83 m (7.83 m) |
| 6 | Eave encroachment | Must be no closer than .3 m to a lot line | 0.2 m to south lot line; (0.2 m to north lot line) |
| 7 | Max.size second floor platform | 4.0 m ² | Front porch 4.3 m ² (4.3 m ²) |
| | | | Rear deck 14.34 m ² (14.34 m ²) |

MATTERS IN ISSUE

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

- (a) the effect of development of the proposed subdivision on matters of provincial interest as referred to in section 2 of the Planning Act;
- (b) whether the proposed subdivision is premature or in the public interest;
- (c) whether the plan conforms to the official plan and adjacent plans of subdivision, if any;
- (d) the suitability of the land for the purposes for which it is to be subdivided;

Decision of Toronto Local Appeal Body Panel Member: T. YAO
TLAB Case File Number: 18 135459 S53 06 TLAB, 18 135460 S45 06 TLAB,
18 135463 S45 06 TLAB

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

Many of these are clearly not relevant, such as affordability. Nonetheless I consider them as a contextual aid to the main tests, Official Plan and size of lots.

Section 53(24) b speaks to “prematurity”, and I considered whether it would be useful to await the outcome of a parallel decision on 15 Stanley, the lot immediately south of 11 Stanley. Number 15 Stanley obtained similar planning approvals (consent to sever and minor variances) at the Committee of Adjustment, both on February 8, 2018. Ms. Sheasby-Coleman appealed both decisions, although for 15 Stanley, she did not appeal the variances through misunderstanding the process. On June 29, 2019, Ms. Ms. Sheasby-Coleman brought a motion to consolidate both appeals on the grounds both owners had retained the same lawyer (Mr. Cheeseman) and planner (Mr. Cieciura). On July 12, 2018, TLAB Member Mr. Gopikrishna denied the motion.

On September 14, 2018, the first day of this hearing, the TLAB Chair Mr. Lord denied the severance of 15 Stanley. Mr. Cheeseman requested an adjournment in the case before me to call his expert arboriculture witness. I denied that motion. At the resumption of this hearing on December 19, 2018, he repeated his request to be able to tender his arboriculture evidence. I denied that request and separate reasons have been given.

One of the matters to consider is 51(24)(c), above, which states:

- (c) whether the plan conforms to the official plan and **adjacent plans of subdivision**, if any; (my bold)

Decision of Toronto Local Appeal Body Panel Member: T. YAO
TLAB Case File Number: 18 135459 S53 06 TLAB, 18 135460 S45 06 TLAB,
18 135463 S45 06 TLAB

It is a reasonable interpretation that “adjacent plans of subdivision” refers to adjacent provisional consents when deciding whether a consent is to be given. In any event, it would seem to me to be common sense and the usual practice to consider what is happening right next door. There was only an indication that neither owner objected to the other. Mr. Cheeseman advised me that leave to appeal the decision of Chair Lord in 15 Stanley was being sought in February 2019. The Divisional Court may or may not return the matter to TLAB and I would assume the owners of 15 Stanley are waiting until that litigation is finalized.

I have decided there is too much uncertainty to delay my decision when no party has asked me to temporize. The two owners have clearly indicated before Mr. Gopikrishna an intent to develop separately, which appears to be contrary to the principle of comprehensive planning.

For the variances, I must be satisfied that the applications meet all the four tests under s. 45(1) of the *Planning Act*, whether they:

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

EVIDENCE

I heard from T.J. Cieciura planner for Ms. Deo, whom I qualified as able to give opinion evidence in the area of land use planning and Victor Hipolito, Ms. Deo's urban designer, whom I qualified as able to give opinion evidence in the area of architectural technology and the Ontario Building Code.

Ms. Sheasby-Coleman called Dr. Dida, the City's Supervisor, Tree Protection and Plan Review - West District, under summons. Other persons, listed above, testified as affected neighbours. I qualified Mr. Goodman, an architect and a neighbour, as able to give opinion evidence in the area of architecture, over the objection of Mr. Cheeseman, and I provided a separate decision on his qualifications at Mr. Cheeseman's request.

I also allowed Mr. Godley to give opinion evidence as a “local expert”, that is, he could give limited opinion evidence, subject to weight. Mr. Godley has a degree in Town Planning from the UK. He has worked as a planner for the City of Hamilton and been a member of the Toronto Committee of Adjustment. He has attended and testified in 20-30 OMB hearings. In my ruling on the admissibility of Mr. Goodman's evidence, I noted that TLAB rules, which are modelled after the Court's Rules of Practice, do not

Decision of Toronto Local Appeal Body Panel Member: T. YAO
TLAB Case File Number: 18 135459 S53 06 TLAB, 18 135460 S45 06 TLAB,
18 135463 S45 06 TLAB

contemplate an expert who is a volunteer and not retained by any party. Mr. Godley is such a person.

I am appointed by Toronto Council which expects me to administer a process which is accessible to ordinary residents. A person like Mr. Godley, who has studied and thought about urban design, surely has information to assist me; indeed, in my experience, urban design is under-represented in the various viewpoints brought to the table. But neither a qualified expert or non-expert witness can usurp the ultimate question that Council asks the TLAB to answer and it is through this lens that I received the evidence of Mr. Godley.

ANALYSIS, FINDINGS, REASONS

Summary

Both the severance and minor variances require conformity to the Official Plan, which says that for land designated Neighbourhoods, the development must respect and reinforce the existing physical pattern. The existing physical pattern, which I ascertained from many witnesses, is composed of a diverse mixture of built forms, tenure and lotting. It is composed of a larger neighbourhood and many sub neighbourhoods. The distinctive massing of two stories above an integral garage is not widespread in either. The owner relies on intensification policies in higher level plans and when I balance these with other policies in the Official Plan, I find that the proposal does not meet the respect and reinforce test.

Intensification

Intensification is an important goal of the Official Plan. Even Mr. Goodman acknowledged this:

As I said earlier, about the planning report that submitted by the owner's team, it cites many of the good planning practices the City is promoting for **intensification** and I agree with many of them as far as an approach to intent. I believe the City does need to be intensified. The question is how?

The application of planning principles requires expertise in terms of design and the social acknowledgement that reviews all of the considerations that are within the planning principles. **It requires a lot of judgement, to know-how to weigh those factors.** And there are many factors in planning.

Decision of Toronto Local Appeal Body Panel Member: T. YAO
TLAB Case File Number: 18 135459 S53 06 TLAB, 18 135460 S45 06 TLAB,
18 135463 S45 06 TLAB

Although I acknowledge that this decision must be consistent with the 2014 Provincial Policy Statement, it is difficult to see how a Statement that covers all of Ontario can meaningfully discriminate between one 50-foot severance from another. Since the Growth Plan covers a somewhat smaller area than Ontario (Peterborough to Niagara Falls), it is reasonable to start with this document. The summary on the Ministry of Municipal Affairs and Housing website says: a key goal is:

managing growth by encouraging the development of communities in cities and towns that provide affordable housing options and easy access to business and public services [that] residents of all ages use every day

This is the “complete communities” theme, which is also in the Official Plan. Certainly, Ms. Deo’s proposal is part of a **development** of a **community** in a **city** in a location that provides **easy access** to **businesses** and **public services**. It is just a block from Lakeshore, with street car service to downtown. But unless every application near public transit (which is every location in Toronto) is worthy of approval, the words “affordable housing” and “residents of all ages” must also be given weight. If every development in the City tautologically meets the above bolded words, then the policy is not needed at all.

Part of the intensification debate is the encouragement of rental or affordable, which this is not. Another part is accessibility, which is so important that it is in the preamble in 51(24): “the health, safety, convenience, accessibility for persons with disabilities. . .²” Mr. Cieciura said that a handicapped person could always buy one of the proposed houses and retrofit it, which is an unhelpful comment. Mr. Hipolito’s comment was somewhat more sympathetic; disabled persons had purchased Hipolito and were “very pleased”. Ms. Sheasby-Coleman pointed out that this freehold home was market driven and contained many interior steps and in no way was geared to an aging society either in affordability or physical design. In counter distinction, Mr. Cieciura said that the *Accessibility for Ontarians with Disabilities Act* did not apply to private housing.

Housing in Ontario is produced by the private sector for the general public. Mr. Godley stated that the Provincial interest in intensification, is answered by the structure of planning approvals. While increased density is a top-down initiative, it is implemented at the bottom end by the municipal Official Plan that requires that even intensified properties must respect and reinforce the existing physical character of the neighbourhood. I agree with this view and find that the “gentle intensification” proposed by Ms. Deo is but one factor in the Official Plan. It can be neutralized by the finding that the physical form fails to respect and reinforce the existing physical character of the

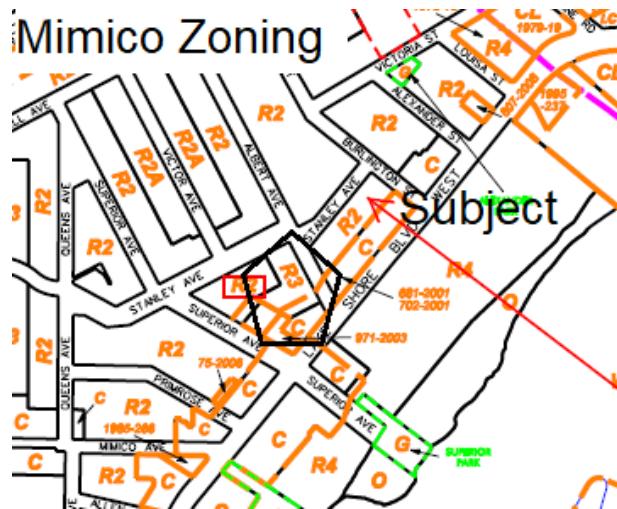
² This section is designed for all of Ontario, which would include rural areas and is in my view is designed to discourage subdivisions on septic tanks, with poor access to the road system and generally representative of scattered development.

neighbourhood. An extensive discussion of that is at the heart of this decision.

The Zoning

The lands are zoned Residential Exception 22 under the most recent zoning by-law. Mr. Cieciura summed it up as follows

- 8.1 The subject property is currently zoned "R2" under former municipality of Etobicoke, Mimico Zoning Code
- 8.2 It is also zoned as "RM(u3; d0.6)(x22)," Residential Detached under Citywide Zoning By-law 569-2013. Under this by-law the site is subject to a site-specific by-law "Exception RM 22" which permits detached dwellings at a minimum lot frontage of 10.5m and minimum lot area of 325 square metres.



"U3" denotes up to three dwelling units, formerly called a "triplex". The pentagon in the Mimico Zoning map above right shows an R3 zone (permitting apartments) which contains 26 Albert, to be mentioned later in terms of the view westward. The multi-unit permission (i.e.,U3) acknowledges the wide diversity of ground-related residential built forms in this neighbourhood.

The physical character of the area includes many multi-unit buildings, including apartment buildings.

The Official Plan “Respect” test

The lands are designated “Neighbourhoods” and are to be a “stable but not static” residential area. The “cornerstone” test for development in Neighbourhoods is:

- 4.1.5 Development in established Neighbourhoods will respect and reinforce the existing physical character of the neighbourhood, including in particular:
- ...
 - b) **size** and configuration of lots;
 - c) heights, **massing, scale** and dwelling type of nearby residential properties;
 - f) prevailing patterns of . . . **rear and side yard setbacks** and landscaped open space (my bold)

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

Decision of Toronto Local Appeal Body Panel Member: T. YAO
TLAB Case File Number: 18 135459 S53 06 TLAB, 18 135460 S45 06 TLAB,
18 135463 S45 06 TLAB

The test of respecting and reinforcing the existing physical character of the streetscape and open space pattern is repeated in policies 2.3.1.1 and 3.1.2.3 of the Official Plan³. Thus, for the consent, Ms. Deo must satisfy me that the dimensions and shapes of the lots are suitable. The variance tests require that a deviation from the 35-foot minimum lot frontage and 325 m² minimum lot area must meet the general intent and purpose of the Official Plan, including the “respect and reinforce” test.



Mr. Goodman's characterization of the neighbourhood

The neighbourhood is a mix of dwellings, single family and small multi-unit residential, single scale, I don't think any of them are more than three stories in height. Also, most of

³Official Plan Section 2.3.1:

By focusing most new residential development in the Centres, along the Avenues and in other strategic locations we can preserve the shape and feel of our neighbourhoods. However, these neighbourhoods will not stay frozen in time. Some physical change will occur over time as enhancements, additions and infill 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.

•Official Plan Policy 2.3.1.1

"Neighbourhoods and Apartment Neighbourhoods are considered to be physically stable areas. Development within Neighbourhoods and Apartment Neighbourhoods will be consistent with this objective and will respect and reinforce the existing physical character of buildings, streetscapes and open space patterns in these areas."

•Official Plan Policy 3.1.2.3:

"New development will be massed and its exterior façade will be designed to fit harmoniously into its existing and/or planned context, and will limit its impact on neighbouring 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 and/or planned street proportion; b) incorporating exterior design elements, their form, scale, proportion, pattern and materials, and their sustainable design, to influence the character, scale and appearance of the development;

Decision of Toronto Local Appeal Body Panel Member: T. YAO
TLAB Case File Number: 18 135459 S53 06 TLAB, 18 135460 S45 06 TLAB,
18 135463 S45 06 TLAB

the buildings have been built, I would guess between 1900 and the mid twentieth century. The house I live in is 1916, some of the houses are up to 1970, but most of them are pre1950. There's a balance of landscape with density of the houses; it's a very pedestrian oriented neighbourhood. It's a well-balanced Toronto neighbourhood, that happens to have proximity to the Lake, which is a nice feature, as well as a business corridor along Lakeshore. It has many features that a city should have, as a neighbourhood.

Mr. Cieciura's depiction of neighbourhood physical character

Mr. Cieciura submitted four pieces of evidence:

- 86 photos
- a spreadsheet of 324 properties, with pieces of information, such as each address's lot frontage, area and year of construction;
- Committee of Adjustment decisions from 2008 to 2018; and
 - colour coded maps of lot frontages and areas.



Picture 2. #23, and #21
Burlington (Cieciura)

Mr. Cieciura's photo analysis highlighted **atypical** built forms; that is, properties with front yard parking, multi-unit properties, recent construction and so on. After the photo analysis he concluded:

There are older original dwellings, in this neighbourhood, there are a variety of dwelling sizes, there are new constructed dwellings, with benefit of variances, there are older original dwellings, that fit, they're approved they're there, and they form the character of the neighbourhood.

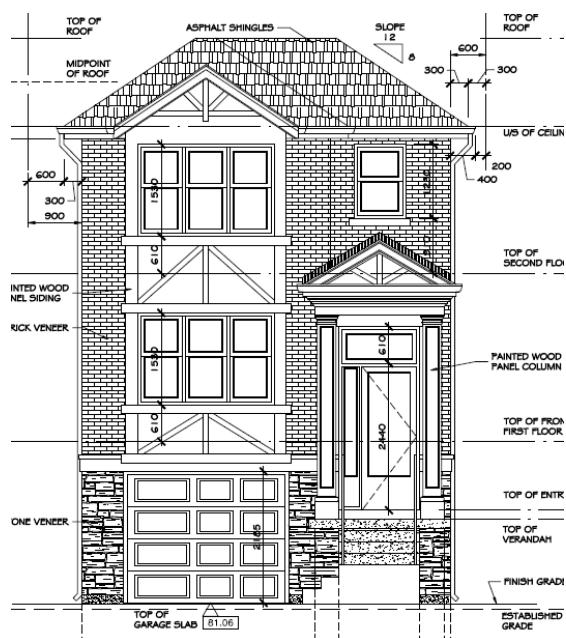
I found Mr. Cieciura's verbal description concentrated too much on how approvals could be justified and less on what is the character. The existence of atypical properties does not mean that anything that is atypical is permitted. In fact, many of his photographs show the opposite —that an atypical situation may respect and reinforce the existing physical character of the neighbourhood. This may be seen in this composite of 19, 21, and 23 Stanley on the previous page. While number 23 Stanley appears to be at least a four plex, there is a transition from the lower density forms at 11, 15, 17 (formerly a mix of bungalows and 1.5 stories) to the two storey at 21 transitioning to the multiunit building at 23 Stanley. This transition is demarcated by wide side yards with extensive landscaping. Wider sideneys may even be seen in the swath of exclusively 25-foot properties from #23 and 21 Burlington see driveway between the buildings, (Picture 2, upper left) and indeed in the present sideway arrangement between 9, 11 and 15.

**Decision of Toronto Local Appeal Body Panel Member: T. YAO
TLAB Case File Number: 18 135459 S53 06 TLAB, 18 135460 S45 06 TLAB,
18 135463 S45 06 TLAB**

Another example of a wide side yard is seen in number 82, a recently constructed home on a 25-foot lot. This house received 4 variances in 2016 — floor space index of .9, a building height of 9.7m (9.5 permitted), exterior main wall height of 7.1 (7 m permitted) and third floor platform of 33 m² (4 m² permitted). The height variances appear to me to be truly minor; Ms. Deo seeks a main wall height variance of 7.83 m, or .83 m (2.7 feet) over what is permitted.

Picture 3 shows #82's owner, Hamia Aghaiemeybodi, has hidden much of the extra third floor from the street, has used a parking pad instead of integral garage, left a generous side yard setback to her neighbour at 84A and placed the massing of her house next to the two storey dwelling at 80 Burlington instead of against the bungalow at 84A. Mr. Cieciura's spreadsheet data shows (from left to right) 84A, 82 and 80 are all 25-foot lots, just like Ms. Deo's proposed lots. Incidentally, Mr. Cieciura's spreadsheet shows that the bungalow at 84A was itself a result of a severance in 1962.

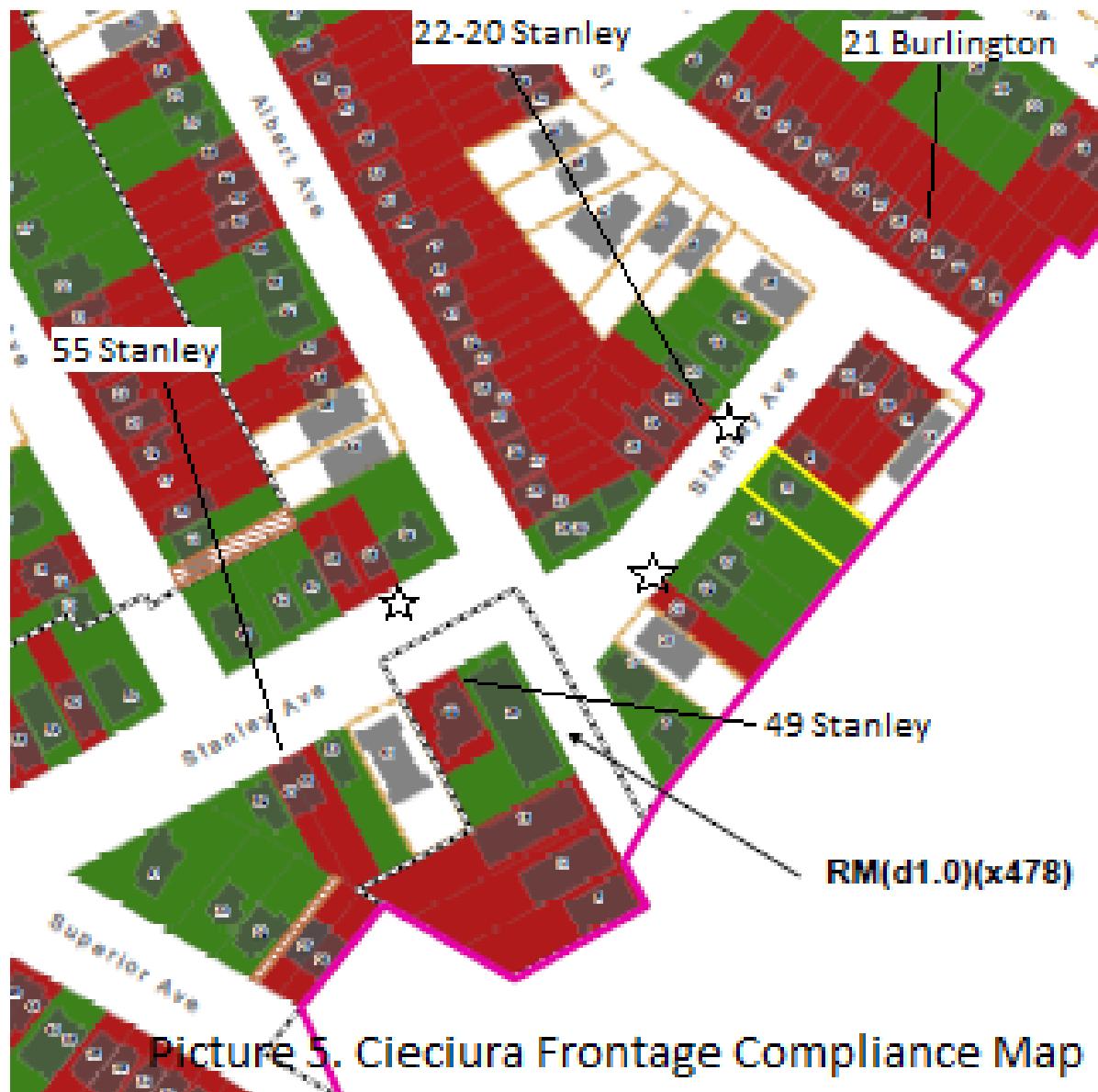
The physical character of the area is diverse. It contains many wide side yards,



For comparison, I have reproduced the front elevation for one of the proposed Deo houses (left). The fanlight above the transom of the front door is about .6 m high so this vertical distance will illustrate one half the distance between the two proposed houses. Mr. Cieciura stated that the proposal will appear lower because of the stone facing on the lower portion versus brick upper portion, and the use of strong horizontal elements beneath the windows. While handsome in themselves, I do not think they are as respectful as the more attractive spacing and massing of Ms. Aghaiemeybodi's home.

I now turn to Mr. Cieciura's colour coded maps.

The lot frontage and lot area compliance maps



Mr. Cieciura provided maps to attempt to justify how the lot frontage and area reductions nonetheless meet the general intent of the Official Plan and zoning by-law. Two sets of maps of maps were presented (four in all), two with frontages and two with areas.

I consider lot area a less important metric; the requested variance for lot area sought by Ms. Deo **in isolation** seems minor and lot areas are dependent on both frontage and depth. So, for frontage we have two maps: one showing “compliance”, that is simple over-and-under frontages (Picture 5 shown above) and the other colour coded as to various tranches of frontages. The smallest category (zero to 25 feet)

Decision of Toronto Local Appeal Body Panel Member: T. YAO
TLAB Case File Number: 18 135459 S53 06 TLAB, 18 135460 S45 06 TLAB,
18 135463 S45 06 TLAB

comprises 26% (of 460 lots), and Mr. Cieciura suggests that two more will not make any difference.

These maps are only a starting point. If the reader views Picture 5 in black and white, the darker shade indicates non-compliant frontages (≤ 25 feet). None of the properties in the Map has an integral garage. I have already shown a photo of 23-21 Burlington, (page 10) with its driveway that still functions as side yard, adding some spaciousness to the row of consecutive 25-foot lots. The stars indicate transitions where you would expect to see a difference between compliant and non-compliant frontages, but the streetscape is such that they are imperceptible.

For example, the strip of six houses on the west side of Stanley (22-20 Stanley) have frontages of 31, 31, 31, 36, 36, 36 feet, with wide setbacks and architecturally similar bungalows with bay windows and leaded glass. These form part of the potential heritage district to be discussed on page 17. Number 49 Stanley is marked darker (noncompliant) but it needs more explanation. It is Residential Multiple Exception 848, in which the minimum lot frontage is 15 m for a triplex and 22.5 m for a fourplex or greater. The actual building (photo 29, not included in this decision) looks a little like an Annex (Toronto) building surrounded by a parking lot. Whether the frontage is undersized or not depends on the number of units, so it might have been better to have left it blank rather than guess at the unit count. The final comment concerns 55 Stanley, which at one time consisted of two undersized lots, each with one half of a semi. The owner acquired both halves and hired Jim Farrell, a building contractor, who lives at 46 Stanley, to make them into a single house, all without making exterior modifications. Not only does this remove a “non-compliant” frontage, but it shows that the rhythm of the street is a valuable asset that can spur private investment to maintain.

So, in my view 26% 25-foot lots does not indicate a hypothetical existing character of narrow lots that the proposed severance will respect. This is due to insistence on an integral garage, legal but very narrow side yards and a lack of sensitivity to the built form patterns of the streetscape. I now turn to the 56% of “non-compliant” lots in the neighbourhood, that is, below 35 feet frontage.

The importance of 50 foot and 25-foot lots

Table 2 below is my distillation of frontages taken from Mr. Cieciura’s spreadsheet, not his maps. There is a slight difference in total lots⁴, which I do not think is important.

⁴ The Excel spreadsheet filed by Mr. Cheeseman contains 324 properties. Mr. Cieciura’s maps show 431 properties. For example, Alexander and Victoria Streets are in the map but not on the spreadsheet.

Decision of Toronto Local Appeal Body Panel Member: T. YAO
TLAB Case File Number: 18 135459 S53 06 TLAB, 18 135460 S45 06 TLAB,
18 135463 S45 06 TLAB

| Table 2. Frontage Distribution for lots in Mr. Cieciura's study area | |
|-----------------------------------------------------------------------------|------------|
| < 25 feet | 30 |
| Exactly 25 feet | 57 |
| Between 25 and 50 feet | 180 |
| Exactly 50 feet | 26 |
| >50 feet | 31 |
| TOTAL | 324 |

When I calculate ‘non-compliant’ lots, I get 211 out of 324, which is even more than Mr. Cieciura (65% vs 56%) and the majority are over 25 feet. I consider properties between 25 feet and 50 feet largely irrelevant because anything less than 50 feet will have difficulty creating two houses meeting modern needs. Properties that are exactly 25 and 50 feet are relevant to the Official Plan criteria because in the City of Toronto, it is typically a 50-foot lot which is being severed. This is despite a by-law specification of minimum frontage of 35 feet (the subject application), 40 feet or even 50 feet⁵. It would seem that without further explanation, two 25-foot lots right beside each other, without the occasional wide aisle like 82 Burlington, would not respect the existing physical character, let alone reinforce it. This lotting must be considered in conjunction with the proposed built form, which I will now discuss.

The Committee of Adjustment decisions (bullet three of Mr. Cieciura’s evidence) show the following:

| Table 3 Severances in the study area within the last 10 years. | | |
|-----------------------------------------------------------------------|--------------|--------------------------------------------------------------------|
| June 20, 2013 | Edy Azzoli | 212 Queens Ave |
| May 22, 2014 | Scott Rogers | 61 Victor Ave |
| Aug 6, 2015 | Peter Browne | 148 & 150 Queens (this was a technical severance to undo a merger) |

⁵ For a 12 m minimum frontage, see Long Branch cases such as 38 *Thirty Sixth*, and for 15 m frontages, see 64 *Lockerbie*, in the Jane-401 area.

Decision of Toronto Local Appeal Body Panel Member: T. YAO
TLAB Case File Number: 18 135459 S53 06 TLAB, 18 135460 S45 06 TLAB,
18 135463 S45 06 TLAB

| | | |
|-------------------|-------------------|---------------------------|
| February 11, 2016 | Mario Deo | 109 Superior Ave |
| April 6, 2017 | BDF Holdings Corp | 66 Victor (not built yet) |
| July 27, 2017 | Alexander Kolos | 56 Victor Ave |

Two pairs of 2017 severances, 152 and 153 Stanley, are outside the study area, so I don't count them. Six severances out of 57 lots (50-feet or greater) does not change the character of an area of 324 lots. Table 4, below, sets out the exact variances granted to the above properties.

| Table 4. Comparison of Variances obtained for two and one storey above garage | | | |
|--------------------------------------------------------------------------------------|-----------------------------------|----------------------------------------------|-----------------|
| | Frontages (10.5 m required) | Main wall height variance (7 m permitted) | FSI (.6 max) |
| Two Storey above garage | | | |
| 212 Queens | 7.7 and 8.48 | None | .68 |
| 109 Superior | 7.7 and 7.7 | 7.94 | .94 |
| 11 Stanley (Subject) | 7.64 and 7.64 | 7.83 | .97 |
| One storey above garage | | | |
| 61 Victor | 7.47 and 7.47 | None but length variance of 18.24 m | .63 |
| 66 Victor | 7.62 and 7.62 | None | .78 |
| 56 Victor | 7.6 and 7.6 | None but length variance of 18.22 m | None |

I conclude from Tables 3 and 4 that the integral garage, combined with a severance, needs significant variances, which together produce an out-of-character built form.⁶ I

⁶ Mr. Hipolito gave evidence that the basement slab was closest to established grade, which meant that the FSI was in the .9 range instead of .6. However, he did admit that the basement could be lowered in the rear by at least a foot and the whole building could be lowered using

Decision of Toronto Local Appeal Body Panel Member: T. YAO
TLAB Case File Number: 18 135459 S53 06 TLAB, 18 135460 S45 06 TLAB,
18 135463 S45 06 TLAB

find as well that the prominence Mr. Cieciura gave to this small number of severances in his planning justification, including the urging upon me of an unbuilt property for which the severance is undetectable as yet to the ordinary person, suggests that any severance I might grant would inevitably be cited in future applications and thus be destabilizing. I concur with Mr. Lord's invocation of the precautionary principle.

Thus, I find that the existing physical character includes many 25-foot lots, but these overwhelmingly predate the zoning, and appear in cohesive blocks that are well integrated into the lotting pattern and streetscape.

“Pockets” and heritage landscape considerations

Ms. Sheasby-Coleman and her son gave evidence that Stanley is an important street, functioning almost as a minor collector, with no parking on the block where 9 and 11 Stanley are located. Part of it is one way eastbound; people use it as a shortcut from Royal York to Lakeshore. It has two jogs as it travels east to Albert, where, according to Ms. Sheasby-Coleman, cabbies are perplexed because Stanley appears to come to a dead end. Once past this intersection, if you look backwards (southwest), the vista is blocked by the wall 26 Albert, the R3/RM use that I mentioned previously, creating a “pocket”. I find this non-quadrilinear street pattern cuts up neighbourhoods and creates intersections like Albert and Stanley. The person who turns a corner may see a slightly different physical character than from the previous block.

Ms. Sheasby-Coleman tendered the heritage inventory *Mimico 20/20*⁷, which states that this area was built in the “booming period” flowing the crash of 1929 and “Whole neighbourhoods were developed that stand largely intact with individual characteristics that clearly distinguish one from another.” (page 8). The inventory includes:

- 13 properties on Toronto’s Inventory of Heritage Properties (2 of which they suggest should be delisted);
- 9 properties that should be evaluated further (none are in the block, the nine include but 46 Stanley in the next block (Mr. Farrell’s house, the building contractor previously mentioned);
- Five streetscapes worth of consideration as Cultural Heritage⁸

more expensive shoring techniques. I find it is the integral garage that causes this issue and that in any case FSI is only one among many factors.

⁷ An inventory and evaluation of the Built Heritage Resources within the one block section abutting Lakeshore from Park Lawn to roughly Royal York. The author is URS Canada, and the inventory prepared for the Heritage Preservation Services, Department of Planning, City of Toronto, May 25, 2012

⁸ “Cultural heritage value or interest” is a term of art. The *Ontario Heritage Act* states “heritage attributes” means, in relation to real property, and to the buildings and structures on the real

Decision of Toronto Local Appeal Body Panel Member: T. YAO
TLAB Case File Number: 18 135459 S53 06 TLAB, 18 135460 S45 06 TLAB,
18 135463 S45 06 TLAB

Landscapes or Potential Cultural Heritage Districts (PCHDs), “due to their cohesive character and level of integrity”. One of these is the streetscape from 20 Stanley Avenue to 39 Albert Street, which includes this pocket of Stanley.

This streetscape is further identified as ticking the three criteria used to indicate significant PCHDs, that is,

design,
historical theme and
environmental/context attributes.

The authors narrate additional information: development of this land was by Harry McGee, vice president of Eaton's, who privately developed this land (I gather) both as an investment and a make-work project to stimulate the local economy in the early 30's. The character of the group of 11 buildings “clearly expresses the era early in the Depression in the consistent design and details, due to the high degree of integrity” (p 74).

Thus, I find that the neighbourhood includes sub neighbourhoods, such as this section of Stanley and Albert, suggested by Mimico 20/20 as a potential Cultural Heritage District.

Urban design considerations

Mr. Godley set out eight sections of the present Official Plan that relate to urban design. Chief amongst these were the sentences: "Good urban design is not just an aesthetic overlay, but an essential ingredient of city building. Good urban design is good business and good social policy." Mr. Godley mapped the Stanley portion of the sub neighbourhood just mentioned in the bolded paragraph above. It shows:

- The entire subarea is low density, from .23 to .33 floor space index, except for 17 Stanley, which obtained a recent variance of .84;
- A straight line can be drawn through the rear walls, indicating uniform building depth;
- All frontages are between 30 feet and 36 feet except for 11 and 15 Stanley, which are 50 feet.
- If Ms. Deo is allowed to go forward, her new north wall will increase the overhang for Ms. Sheasby-Coleman's home by about 15 feet.

Thus, I find that for this sub neighbourhood, the prevailing pattern of rear

property, the attributes of the property, buildings and structures that contribute to their cultural heritage value or interest;

and side yards are as Mr. Godley observed, and that the rear yard pattern is not respected by a building that increases overhang by a considerable amount, nor is a building-to-building distance of 1.2 m respectful of the prevailing pattern of side yards.

This may seem harsh to Ms. Deo, who may protest that the Official Plan would stifle all change. However, the alternative is to build within the by-law and forgo a severance.

Mr. Godley's final criticism was that urban design should have been considered at the very outset, which is what the Official Plan tells us to do. Having heard Mr. Hipolito describe some of the compromises he made in the design and Mr. Cieciura's defense of the proposal, I am of the view that the latter two professionals had no input into the client's decision to build approximately 100 m² on two levels above grade with integral garage on two 25-foot lots. Mr. Goodman (the architect neighbour) stated that this fundamental decision is at root of the resulting negative design solution:

The desire to squeeze two properties [out of] a current single dwelling has exaggerated many complex and competing design treatments. The constraints of the building footprint has the need for including a vehicle garage and therefore has driven the spatial solutions through added height. The combination of the added height and the need to place a vehicle garage at grade level has necessitated a solution that puts the entry level of the house at approximately 9 feet above the Average Grade. (close to where the 2nd floor would be in most local existing homes and pushes the 2nd floor up to what would normally be a 3rd floor level).

Trees and the integration of OP 3.4 with OP 4.1.5

On February 28, 2018, Dr. Dida (Urban Forestry) wrote to the Committee of Adjustment to advise that his department objected to the 11 Stanley proposal on the basis that the development "may require the injury or removal" of a healthy **City-owned** crab apple tree. He also quoted the Official Plan, which states that development will be "environmentally friendly" and based on three specific policies including the regulatory framework of the tree by-law.⁹ A separate letter stated that Urban Forestry also

⁹ The Preamble to Section 3.4: The Natural Environment states:

City-building and development pressures, however, can create a difficult environment in which to sustain the urban forest canopy. We must not only protect the existing urban forest, but also enhance it, especially by planting native trees and trees that increase canopy coverage and diversity. (3-33). Policy 1 states:

Decision of Toronto Local Appeal Body Panel Member: T. YAO
TLAB Case File Number: 18 135459 S53 06 TLAB, 18 135460 S45 06 TLAB,
18 135463 S45 06 TLAB

objected to the development because of possible injury or destruction of **privately-owned** trees. In both cases Dr. Dida stipulated that if the Committee of Adjustment did not agree with Urban Forestry, then the regulatory process should be followed. Ms. Deo was willing to do this, and her decision is used by Mr. Cieciura as a complete answer to any Official Plan concerns; in effect she states that the Official Plan explicitly allows her to substitute cash in lieu for any tree obligations, which she accepts.

The City of Toronto has implemented quite a rigorous system for tree protection and if the proposed development is going to have an effect on the trees on the subject property, there is a separate process through the City of Toronto Municipal Code that conforms to the by-law, to make sure that any natural resources that may be affected by this are adequately mitigated, or replaced in some other location, either by the applicant or by the City through a cash payment.

Separating the two processes compartmentalizes the decision making; for example, in this case, were the severance to be given, Ms. Deo will have the right to erect a home when the tree constraints are not known. In other cases, within my experience, owners decide to retain arborists prior to the Committee of Adjustment hearing, in the spirit of “everyone takes responsibility for the natural environment”.¹⁰

Dr. Dida's evidence conflicted with Mr. Cieciura's, in that Dr. Dida did not consider in-lieu planting of replacement trees was always “adequate mitigation”. Dr. Dida said that a mature tree had forty times the carbon transforming effect of a young tree and that even three replacement trees would not be an equivalent substitute for a mature tree. In addition, the replacement trees were likely to be in parks or ravines where their beneficial effects would be lost to this neighbourhood, of which part of the appeal is its well treed nature.

Ms. Sheasby-Coleman took the position that even if one tree is injured, development should not take place. But section 3.1.2 Built Form says that new development will preserve mature trees “wherever possible” and incorporate them into landscaping designs. Developers interpret “wherever possible” as “wherever it does not impede the owner's intentions”. Neither position is correct.

-
1. To support strong communities, a competitive economy and a high quality of life, public and private city-building activities and changes to the built environment, including public works, will be environmentally friendly, based on: . . d) preserving and enhancing the urban forest by:
 - i) providing suitable growing environments for trees;
 - ii) increasing tree canopy coverage and diversity, especially of long-lived native and large shade trees; and
 - iii) regulating the injury and destruction of trees.

¹⁰ Official Plan Section 1 “A City of Leaders and Stewards”:

Decision of Toronto Local Appeal Body Panel Member: T. YAO
TLAB Case File Number: 18 135459 S53 06 TLAB, 18 135460 S45 06 TLAB,
18 135463 S45 06 TLAB

This is a complex issue with no easy one-size-fits-all answer. There is a strand of “design with nature” philosophy in the Official Plan that is difficult to implement in a mature urban context. The natural environment policies referred to by Dr Dida occur in Section 3 “Building a Successful City”. The preamble states:

The policies in this Chapter will guide our growth by integrating social, economic and environmental perspectives in our decision making to create an attractive Toronto with a strong economy and complete communities. The policies will help bring to life our vision of a successful city by focusing on the built environment, the human environment, the natural environment, economic health and new neighbourhoods. **All applications for development will be evaluated against the policies and criteria in this Chapter to ensure that we make the best possible development choices.** City-building involves balancing social, economic and environmental needs and priorities. As a result, change may sometimes emphasize or recognize one of these elements rather than the others. Such changes should be considered only after the trade-offs between clear social, economic and environmental impacts and benefits have been identified, acknowledged, analyzed and publicly debated.

This section requires integration of environmental and other policies, including those of complete communities to achieve “the best possible development choices”. Policy 3.4 states that the development will be environmentally friendly, based on three policies:

- i) providing suitable growing environments for trees;
- ii) increasing tree canopy coverage and diversity, especially of long-lived native and large shade trees;

and the third being the regulatory framework just discussed. Mr. Cheeseman called policies i) and ii) “motherhood”. I do not believe they are merely aspirational or meaningless but present another factor to be integrated with the other criteria of the Official Plan. Ms. Deo’s proposal does not provide a suitable growing environment for trees or increase the tree canopy. It does not meet the affordable or accessibility goals of the Growth Plan in a meaningful way, which might offset this lack of “environmental friendliness”.

Conclusion

I find that the proposal fails the “respect and reinforce the existing physical character of the neighbourhood” test, in the light of a detailed built form analysis. This finding is supported by a comprehensive analysis of social, economic, urban design, natural environment and heritage conservation factors. Intensification has at its heart an environmental impetus. Mr. Cieciura is correct to remind us that otherwise pressure will develop to build outside of urban boundaries. Intensification may come, but not in

**Decision of Toronto Local Appeal Body Panel Member: T. YAO
TLAB Case File Number: 18 135459 S53 06 TLAB, 18 135460 S45 06 TLAB,
18 135463 S45 06 TLAB**

every location, and only through a sensitive proposal that fits in with, and honours and reinforces the existing physical character of neighbourhoods.

DECISION AND ORDER

The appeal is allowed, and the severance and variances are refused. The decision of the Committee of Adjustment is set aside.

X

Ted Yao

Ted Yao

Panel Chair, Toronto Local Appeal Body

Signed by: Ted Yao