

Ontario Municipal Board
Commission des affaires municipales
de l'Ontario



ISSUE DATE: December 20, 2017

CASE NO.(S): PL160973

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

Applicant and Appellant: Seyed Valeh
Subject: Consent
Property Address/Description: 511 Woburn Avenue
Municipality: City of Toronto
Municipal File No.: B025/16NY
OMB Case No.: PL160973
OMB File No.: PL160973
OMB Case Name: Valeh v. Toronto (City)

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

Applicant and Appellant: Seyed Valeh
Subject: Minor Variance
Variance from By-law No.: 7625
Property Address/Description: 511 Woburn Avenue
Municipality: City of Toronto
Municipal File No.: A-0365/16NY
OMB Case No.: PL160973
OMB File No.: PL160975

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

Applicant and Appellant: Seyed Valeh
Subject: Minor Variance
Variance from By-law No.: 7625
Property Address/Description: 511 Woburn Avenue
Municipality: City of Toronto
Municipal File No.: A0364/16NY
OMB Case No.: PL160973
OMB File No.: PL160974

Heard: February 22, 2017 in Toronto, Ontario

APPEARANCES:

Parties

Counsel

Seyed Valeh (Applicant)

Peter Gross

DECISION DELIVERED BY DAVID L. LANTHIER AND ORDER OF THE BOARD

INTRODUCTION AND BACKGROUND

[1] This Appeal is brought by Seyed Valeh (the “Applicant”), the owner of the property municipally known as 511 Woburn Avenue in the City of Toronto (the “Subject Property”). The Applicant brought an application for consent to sever the Subject Property (the “Consent Application”) into two smaller lots under s. 53(1) of the *Planning Act*, (the “Act”). Part 1, (identified as 511-B, with Building ‘B’ on the Applicant’s drawings) is intended to be conveyed and Part 2 (identified as 511-A, with Building ‘A’ on the drawings) is intended to be retained. Concurrent applications for a series of minor variances under s. 45(1) of the Act (the “MV Applications”) were also brought to permit the construction of a two-storey dwelling on each of the two subdivided lots (the “Development”).

[2] Planning Staff for the City of Toronto (“City”) did not oppose the Consent Application or the MV Applications and advised that the proposed lot sizes with the Consent were similar to existing lot sizes in the surrounding neighbourhood. The Report to the Committee of Adjustment (“Committee”) recommended that if approved, there should be conditions including one as to the allocation of lot coverage. In the three Decisions dated July 7, 2016 (the “Decisions”) the Committee for the City refused the three Applications and the Applicant appealed.

[3] The central issue for determination by the Board is whether the creation of two undersized lots from the larger municipal lot and the consequential development of two detached family dwellings on two smaller lots will be consistent with the established character and lot pattern of the neighbourhood and the other applicable criteria and

policies set out in the Act and the Official Plan (“OP and meets the tests and criteria set out in the applicable framework of provincial and municipal planning legislation.

THE HEARING

[4] The Applicant appears with counsel. No one has appeared on behalf of the City. Three neighbours requested, and were granted, Participant status: Mr. Elliott Vardin and Ms. Kim Meyers (519 Woburn) and Mr. Shane Katz (509 Woburn). No other party or person appeared opposed to, or supporting, the Appeal. The Board notes the letters of support for the Applications as set out Tab 12, Exhibit 1.

[5] The Board has received uncontradicted expert planning from Ms. Lorelie Spencer who was qualified by the Board, as well as supporting documentation filed as exhibits through Ms. Spencer. In addition to the Book of Documents (Exhibit 1), Ms. Spencer also provides a Visual Evidence book (Exhibit 2).

ISSUES

[6] With respect to the consent application, the issue before the Board is whether the creation of two undersized lots from the larger municipal lot, and the consequential development of two detached family dwellings on two smaller lots, will respect and reinforce the established character and lot pattern of the neighbourhood, conform to the other applicable policies set out in the Official Plan and generally meet the tests and criteria set out in the applicable framework of Provincial and Municipal planning legislation, and specifically s. 51(24) of the Act.

[7] Among the list of enumerated criteria to be considered in this case are: whether the severance of the Subject Property conforms with the OP; whether the division of the Subject Property is premature or in the public interest; whether the land is suitable for the purposes for which it is to be subdivided; the dimensions and shapes of the proposed lots; and the buildings and structures proposed to be erected on the subdivided lots.

[8] With respect to the variances, the issue is whether the requested variances meet the four tests set out in s. 45(1) of the Act and should be authorized by the Board. The Board must accordingly be satisfied that the variances that would permit the proposed development of the two smaller lots:

- (a) maintain the general intent and purpose of the OP;
- (b) maintain the general intent and purpose of the applicable Zoning By-laws, (which in this case, are both the currently in-force Zoning By-law No. 7625 (the “ZBL 7625”) and the new harmonized Zoning By-law No. 569-2013 (“ZBL 569-2013”) currently under appeal before the Board, (collectively the “ZBLs”);
- (c) are minor; and
- (d) are desirable for the appropriate use and development of the Subject Property.

[9] Additionally, the variances must be consistent with the 2014 Provincial Policy Statement (“PPS”) and conform to the Growth Plan for the Greater Golden Horseshoe.

[10] Those are the formal legal issues and tests that must be applied. Practically speaking, based on the evidence presented, the specific disputed matters are:

- (a) What exactly is the defined “neighbourhood” that should be considered in deciding whether the severance and variances are appropriate?
- (b) Once the neighbourhood is defined, will the smaller lots created by the severance respect and reinforce the physical character of that neighbourhood as it now exists or as it is being altered through other lot divisions, regeneration and development, if that is now occurring?

- (c) Will the size, mass, scaling and design of the two dwellings, as they will be built on these two smaller lots, respect and reinforce the character of the identified neighbourhood and surrounding dwellings, adversely affect any neighbours, and adhere to the City's policies as to how neighbourhoods undergo change? Essentially, will the development represent a good "fit", in harmony with the defined neighbourhood?

REVIEW AND ANALYSIS OF NEIGHBOURHOOD CONTEXT AND PLANNING CONTEXT

[11] The Subject Property is in the Neighbourhoods Land Use designation under the OP and zoned as residential RD and R6(20) under the two ZBLs.

[12] The Subject Property is situated on the south side of Woburn Avenue, which is located in the Ledbury Park neighbourhood, in an area east of Bathurst, west of Avenue Road and north of Lawrence Avenue West. For the purposes of the hearing, and this Decision, the Board was directed by Ms. Spencer to a defined neighbourhood Study Area bounded by Cranbrooke Avenue to the north and Bedford Park Avenue to the south (examining residential lots and homes on both the north and south sides of those streets), and by Ledbury Street to the west and Avenue Road to the east ("Study Area").

[13] Based upon the testimony of Ms. Spencer, the Board finds that the Study Area represents an appropriate description of the neighbourhood in which the Subject Property is located. The lot fabric and housing stock indicated in the Study Area maps and photographs is one of an established area with a rather tight lot fabric with some rear lanes, limited sideyard separations between homes, moderate to larger sized homes with more or less consistent front yard alignment.

[14] Ms. Spencer states that as with many aging areas in the City, this neighbourhood is an area in transition and is undergoing significant redevelopment and change as housing stock is replaced with newer, larger contemporary residences. There have been a number of applications to the Committee that have been granted within the

Study Area, permitting greater lot coverage on smaller sized lots than the ZBL standards. Front-yard driveways and parking pads are common in the area.

[15] Also provided to the Board, in the visual evidence, is further confirmation of a high incidence of narrow lot configuration. Ms. Spencer introduced as an Exhibit to the proceeding, a pinned aerial photograph and other photos, identifying 45 properties, most of them on Woburn Avenue, and eight of them immediately to the southwest of the Subject Property, all of which have frontages of only 20 feet, or 6.1 metres ("m").

[16] This is corroborated by the City's planning department which confirmed that in their review of lotting patterns on Woburn Avenue, and in the surrounding neighbourhood, the proposed lot sizes, with lot frontages of 6.1 m, created by the proposed Consent Application are consistent with the existing pattern of lots in the surrounding neighbourhood. The City's lot study indicates that the majority of lots have a frontage of less than 12.2 m, with 38% of the lots having a frontage between 6.1 metres to 9.1 m, similar to the lots proposed in the Applicant's Consent Application. The evidence before the Board accordingly confirms that there are numerous lots in the neighbourhood that have less than the minimum lot frontage of 12 m and less than the minimum lot area of 370/371 square metres ("m²"), with resultant greater lot coverage than is required under both ZBLs.

[17] The Applicant has also directed the Board to nine of the 27 selected decisions of the Committee which confirm that the Committee has approved minor variances on lots in the Study Area which involved lots with frontages below 12 m, and of those, four had frontages equal to those that would be created by the Consent Application, if approved (Tabs 20, 21, 27 and 28, Exhibit 1). The Board was not advised if they are inclusive, or exclusive of the 45 identified on page five of Exhibit 2. The Board does not have evidence before it indicating which, if any, of the numerous lots with 6.1 m frontages arise as a result of approved severances.

[18] The Board has also considered the other overview maps in Exhibit 2 which demonstrate that the Study Area has a noticeably denser lot pattern than the

neighbourhoods between Ledbury Street and Avenue north of Cranbrooke Avenue and south of Douglas Avenue where the lots have greater frontages.

[19] It was the planning opinion of Ms. Spencer that the lot fabric and physical character of the neighbourhood is one reflected in the numerical and visual evidence and that the character included a high percentage of lots with reduced lot frontage, with many sharing the lot frontages proposed in the Consent Application.

[20] Finally, on the matter of lot frontage, the Board has considered the testimony of the Participants who have expressed the opinion that the reduced lot frontage, as with the other variances, are below that of the ZBL performance standards. While Mr. Vardin, for example, has described the reduced lot frontage as “incredible”, the Board is nevertheless required to consider the physical character of the neighbourhood, as it is, and as it may be changing historically through the process of severances and variances as the City’s aging housing stock is rebuilt and the provinces intensification policies are implemented to the extent permitted by the OP.

[21] Upon the totality of the unchallenged evidence before the Board, and having regard for the corroborating comments from the City’s Planning Staff, the Board finds that the neighbourhood in which the Subject Property is located, is physically characterized by a notably narrow lot fabric where, unlike other neighbourhoods in the City, 6.1 m wide lots are reflective of the physical character of this neighbourhood. Even if the high percentage of narrow-width lots were not attributable to approved severances, the prevalence of this lot size in the neighbourhood, and in particular Woburn Avenue itself, is sufficient to demonstrate the narrow lot fabric that exists in fairly significant portions of this neighbourhood.

[22] With respect to lot coverage, Ms. Spencer has also directed the Board to those Committee Minutes submitted into evidence by the Applicant (Exhibit 1, Tabs 17 to 43) in support of her opinion that the character of the neighbourhood, and the streetscape that exists, reflects patterns of development with generous and greater lot coverage than that provided for in the ZBLs, in many cases, approved by the Committee through minor variance applications. Of the 27 decisions of the Committee, all of the approved

variances exceeded the 30% minimum provided for in the ZBLs, and they range from a minimum of 33% to a high of 54%, with 15 variances approved higher than 35% and six higher than 39%. Ms. Spencer is of the opinion that the physical character of this neighbourhood reflects a denser build area, in part due to the lot fabric and patterns.

[23] Upon the evidence, the Board also finds that the narrowed lot fabric and lot pattern of the neighbourhood, has an overlay of lot coverage percentages exceeding that of the ZBLs, many of which have been historically approved through the minor variance process and approved by the Committee. This is also borne out by the visual evidence presented to the Board, the consistently narrow side yard setbacks visible in the streetscapes and the size of dwellings, in some lots, placed within lots that are shallower than others due to the presence of some of the accessible rear laneways.

[24] The Board accepts the uncontradicted planning evidence and finds that qualitatively and quantitatively, the immediate streetscapes and lot patterns in this neighbourhood reflect an area of smaller, intensively developed residential lots with narrower frontages, limited open space between and in some cases surrounding residences, and a character that has been changing to a relatively frequent degree through larger builds and approved minor variance applications.

SUBJECT PROPERTY, PROPOSED DEVELOPMENT AND VARIANCES

[25] The photos and plans of the Subject Property corroborate Ms. Spencer's testimony that the smaller, one-storey bungalow that is currently on the Subject Property is an anomaly in a neighbourhood filled with larger two-storey dwellings. The current home is slightly out of alignment with the front facing of buildings on the south side of Woburn Avenue and the rear set-back is currently much larger given the relatively shallow depth of the square sized dwelling as compared with the noticeably greater depth/length of most dwellings in the Study Area. The new proposed buildings will have a consistent front yard and rear yard setback consistent with the adjacent and nearby buildings. The rear yard currently contains a somewhat expansive accessory building which, along with the currently dwelling, be demolished.

[26] The particulars of the design and built-form of the two dwellings proposed for each of the subdivided lots were reviewed by Ms. Spencer and is well articulated and described in Exhibit 2. Two, almost identical, modest-sized contemporary designed dwellings are to be constructed, with minimally raised entries located beside each other on the interior boundary lines of each of the homes. The Plans show a modern straight-lined geometric styling with a mix of siding and brick veneer, and a flat-top roof design at the front. Each of the two dwellings in the Development will be very similar in design and appearance to a nearby dwelling at 460 Woburn Avenue (but only two-storeys in height). As to the narrower built-form massing and scaling, Ms. Spencer identified a number of other dwellings in the nearby area with similarly narrowed building design.

[27] Ms. Spencer identified the two “bay windows” integrated into the design of the upper floor of each home, one at the front, above the porch entrance, and one on the outer wall of each dwelling to accommodate a “bump out” for “Bedroom 3” in each home. A small canopy is located above the main floor rear deck, as well as at the front extending to the side of the bay window as an architectural element.

[28] The comparison of the as-of-right zoning area and dimensions of one dwelling on the Subject Property, relative to the adjacent dwellings and the proposed construction (pg. 7 of Exhibit 2) assists in conveying the extent to which the massing and scale of the two built-forms combined is not significantly greater than what could be built as of right under the ZBLs. As Ms. Spencer testified, a number of the variances for setback are required for the two bay windows which allow for the third bedroom without the necessity of enlarging the structure thus maintaining the intent of the ZBLs. Ms. Spencer testified that the manner in which the eaves and projections for the bay windows is included as part of the lot coverage differs slightly under the two ZBLs.

[29] The design of the Development includes a parking pad at the front. As noted by Ms. Spencer, this variance is not required for the in-force ZBL. Parking pads and garages are, in fact, commonly seen in the neighbourhood streetscape, and the variance is required only under the harmonized ZBL. The Applicant is also proposing the use of a permeable surface for the parking pad.

[30] Mr. Vardin's comments included reference to the existence of the rear laneway access for the Subject Property, and the fact that other properties do not have the advantage of rear yard access to garages as the Applicant's property does. While this may be correct, the visual evidence before the Board also demonstrates that many residences in the neighbourhood have both parking pads and rear laneway access, which appears, again, to be a pervasive characteristic of the neighbourhood.

[31] The dimensions and context of the Subject Property are relevant for the purposes of assessing the issues, particularly that of the severance and required minimum lot frontage. The frontage of the Subject Property, which currently contains the older one-story dwelling, and the rear accessory structure, is 12.19 m, and has a depth of 38.513 m with a total area of 464.8 m². The proposed severance and building placement is laid out on pages 8 and 20 of Exhibit 2 which indicate that the Subject Property will be divided into two equal lots each having a frontage of 6.1 m. The two equal sized single-detached dwellings are then to be constructed on the two subdivided lots each with identical front and rear setbacks. Each of the smaller lots would then have a total area of 232.48 m².

[32] The proposed lot coverage for each of the two properties under the proposed variances varies slightly. The difference is, as indicated, due to the manner in which the canopies and bay window extensions are taken into account in the calculation. For example of the 43.5% lot coverage variance required for Part 2, 34.2% would be attributable to the dwelling and 9.3% would be attributable to the proposed accessory building under ZBL No. 569-2013, the harmonized ZBL.

[33] The interior side lots (between the two new dwellings) would be identical at 0.45 m for each lot and variances are required for these side yard setbacks. Both the west and east side yard setbacks are required to accommodate the width of the dwellings but as noted, the side bay view windows extending only on the second floor, account for the numerical extent of the requested variance to accommodate this design aspect of the plans, and the balance of the side yard set-back will actually be an improvement over the existing side yard setback which is currently less than what is proposed. The depth and length of each of the buildings as well as the building height to roof peak, and the

requested variances are almost identical for each of the two buildings and are less than the dwellings existing to the west and east of the Subject Properties. The streetscape view would essentially show two identical sized buildings with identical exterior designs.

[34] Insofar, as building design and character are concerned, the Board finds that this proposed construction on the two proposed lots of the Development will fit quite harmoniously with the streetscape and predominant built-form character of the neighbourhood.

[35] The variances required for each of the two proposed lots are as set out in Attachment 1 to this decision. For clarity, as the evidence was presented, and following the form and order of the variances as identified in the original MV Applications, the two lots that would be created by the Consent Application, if approved, are as follows:

- the westerly lot is identified in the Applicant's plans as "511-B Woburn Avenue", and "Bldg. 'B'"; and
- the easterly lot is identified in the Applicant's plans as "511-A Woburn Avenue", and "Bldg. 'A'".

ADDITIONAL EVIDENCE AND ANALYSIS

Planning Policies and legislation

[36] The applicable provisions of the Act, in relation to the Consent Application and the MV Applications, have been referred to above.

[37] The determination of whether the proposed severance should be granted requires an analysis as to whether or not the creation of the two smaller lots, and the development of the two smaller homes, with the noted variances, results in a lot pattern and design that, in applying the content of the OP in its simplest application, "fits" within the neighborhood. In this case, an admittedly overly-simplified description of the approach to be used would be to determine whether or not, in assessing the proposed built-forms of the Development within the two reduced-sized lots, as it is situated within

the immediate, and broader, context within the Study Area, one would consider the Development to fit within, and respect and reinforce, the prevailing character, building type, existing streetscape, and lot and building spatial patterns in the immediate and larger neighborhood. That may involve both qualitative analysis and numerical quantitative analysis.

[38] Determination of these issues, of course, requires the consideration of the policies, criteria, and narrative text as contained in the familiar sections of the Neighborhoods section of the OP which were thoroughly reviewed and applied in Ms. Spencer's analysis to consider that branch of the four tests. Ms. Spencer considered the essential portions of the OP which acknowledge that the principle of "stable not static" underlies the Neighborhoods designation such that development will "respect and reinforce the existing physical character of buildings, streetscapes and open space patterns" (Policy 2.3.1.1). The OP requires that new development "be located and organized to fit with its existing and/or planned context" (Policy 3.1.2.1) and provides development criteria to preserve the stability of the Neighborhoods and which support the requirement that: "Physical changes to established Neighbourhoods must be sensitive, gradual and generally "fit" the existing physical character." (p. 4-3).

[39] Policy 4.1.5, which is often seen as the core of the City's OP directs that "Development in established Neighbourhoods will respect and reinforce the existing physical character of the neighborhood." Policy 4.1.5. then provides the inclusive list of criteria to be considered which includes: patterns of streets, blocks and lanes, parks and public building sites; the size and configuration of lots; the heights, massing, scale and dwelling type of nearby residential properties; prevailing building type(s); setbacks of buildings from the street or streets; prevailing patterns of rear and side yard setbacks and landscaped open space.

[40] To reinforce these policy criteria there is further emphasis that: "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" (4.1.5).

Consent Application

[41] Ms. Spencer's planning opinions involved an analysis of all of the policies outlined above in support of her recommendation that the Consent Application should be approved. These policies and her analysis were, of course, also applied in regards to the MV Applications in consideration of the four tests under s. 45(1).

[42] Ms. Spencer's opinion is that the severance, when considered in the context of the PPS, Growth Plan and OP, conforms with those policies primarily because the lot sizes resulting from the severance would be consistent with the already existing, and substantial, number of lots having frontages of less than 9 m and more importantly equal to the proposed frontage of 6.1 m. This, in her view, indicated that the proposed lot size resulting from the severance was compatible with, respected, and reinforced the existing physical lot pattern and was organized to fit within the existing and planned context of the area. This is, as well, supported by the comments of the City' Planning Staff which confirmed the number of smaller-sized lots (Tab 11, Exhibit 1).

[43] The criteria in Policy 4.1.5 of the OP were, in Ms. Spencer's opinion, adhered to, since the severed lots would respect and reinforce the lot pattern, lot size and configuration, and patterns of open space. In regards to the criteria in s. 51(24) and other sections of the Act, Ms. Spencer opined that: a plan of subdivision was definitely not required under the circumstances; due to its size the Subject Property was suitable for the intended purpose of a severance and the creation of two smaller residential lots; the two lots would fit within the streetscape of Woburn Avenue; the property had access to adequate municipal utilities and services; and there were no broader public concerns noted by Ms. Spencer.

[44] The Board has reviewed the evidence relating to the lot fabric and patterns as reviewed above, and accepts the uncontroverted planning evidence of Ms. Spencer as it applies to the Consent Application. The Board has also considered the testimony of the Participants, the Municipal Record that was before the Committee, including the Planning Report, and has had regard to the decision made by the Committee.

[45] The Board accepts the recommendations of Ms. Spencer and finds that the provisional consent to the severance is appropriate, particularly given the physical character of the neighbourhood and the rather plentiful number of smaller sized lots, with 6.1 m frontages that have obviously often accommodated development similar to that proposed by the Applicant.

[46] Although there were some generalized comments from the Participants about negative effects from the severance, they were not significant and were primarily in relation to concerns of view, which is not, a guaranteed right, nor in this case, significant. The Board has no evidence before it, and is not of the view, that the approval of the severance or the variances will adversely affect any property or the broader neighbourhood and will not destabilize the neighbourhood. The proposed severance represents similar, sensitive, proper and orderly development of the Subject Property in keeping with the surrounding neighbourhood, conforms to the OP, is consistent with the PPS and conforms to the Growth Plan. The Board also finds that the severance as presented to the Board will allow for good quality improvements to the Subject Property and, with the conditions indicated, will meet all the requirements and criteria of the Act, including those set out in s. 51(24) and will represent good planning.

Minor Variance Applications

[47] The Board has also carefully considered the uncontradicted planning evidence from Ms. Spencer on the matter of the requested variances for the proposed Development and generally the extent to which the design and scale of the proposed two dwelling meet the tests set out in s. 45(1) of the Act.

[48] Ms. Spencer has reviewed the individual variances and concluded that individually and cumulatively, the variances maintain the general intent and purpose of each of the performance standards set out in the ZBLs. Generally, Ms. Spencer is of the opinion that the variances that were requested, especially within the context of the analysis of other variances granted by the Committee, are not significant and in some instances are more of a technical nature. This includes her evidence in relation to the

setback variances as they relate to the canopies and the bay windows integrated into the contemporary design.

[49] Of importance to Ms. Spencer was the comparative analysis of the mass and scale of the dwellings as they would now be situated on two narrower lots in relation to the mass and scale of the dwelling that would be situated on just one lot as a matter of right under the ZBLs. In Ms. Spencer's opinion, in the context of the streetscape on Woburn Avenue, the Development would not result in an excessive height or mass. The variances relating to building length, under the circumstances meet the general intent and purpose of the ZBL standards, to prevent excessive mass and length relative to nearby dwellings, since they will be fully consistent, if not slightly shorter than the length of the adjacent dwellings as built.

[50] Ms. Spencer was of the opinion that the general intent and purpose of the Zoning By-laws was also maintained, through the variances, since visually the built-form, massing and scale of the Development would be very compatible with the immediate and broader neighbourhood context, particularly in the context of the deviations demonstrated to have been permitted elsewhere in the neighbourhood by the Committee, in the governance of the performance standards of the ZBLs.

[51] On the matter of lot coverage, the Board's attention was drawn to the comments of the City's Planning staff (Tab 7, Exhibit 1) which confirmed that, in the City's view, the 45% lot coverage, inclusive of the garage "should be okay" as long as the length did not extend beyond the rear of the neighbouring dwellings. These comments were reflected in the final Planning Report to the Committee which was clarified to recommend that the lot coverage allocation be limited as indicated. Ultimately, the coverage requested for each is less than 45% under both the harmonized ZBLs. Ms. Spencer was of the opinion that specifically, given the evidence as a whole, the requested variances for lot coverage meet the general intent and purpose of the ZBLs relative to the prevailing character of this neighbourhood as they were applied to maintain consistency of lot density and open space.

[52] Specifically addressing the side yard setbacks, Ms. Spencer, as indicated, testified that because the two dwellings were being constructed to be compatible in their form (with entrances adjacent to each other, and windows located to the front, rear and outside walls) the side yard setbacks, with the design, allowed for adequate rear-yard access, maintained privacy and addressed the intent of the side yard performance standards. She noted further, that the setbacks to the west and east were actually an improvement to the existing setback as it related to the majority of the west and east walls, with the exception being the second level bay-window required to accommodate the third bedrooms and to keep the rear wall alignment in keeping with the adjacent homes. In Ms. Spencer's view the variances for the eaves was indeed numerically minor and would have no visible impact of any kind. Overall, when considering the side yard setbacks and lot coverage, the separation distances and open space pattern was very much in keeping with the character of the neighbourhood and the streetscape.

[53] As for the variances relating to the parking spaces, and the soft landscaping, as indicated above, notwithstanding the ZBL restriction in the older ZBL, the parking pad, particularly if it were permeable, was very consistent with the neighbourhood and surrounding area and met the general intent and purpose of the ZBL. So too the deviation in soft landscaping.

[54] Qualitatively, Ms. Spencer's opinion was that the Development, with the severances, represented a very minimal form of intensification of a type that was in the public interest and met the objective of the PPS. As indicated, Ms. Spencer's review of the applicable sections of the OP applicable to the Neighbourhoods designation led her to conclude that the size and nature of each of the two smaller lots most certainly: respected the existing character of the neighbourhood; had comparable massing and scale to many neighbouring properties such that the dwellings would not look out of place; had setbacks, front yard design, and rear yard amenity characteristics common to the neighbourhood; and reinforced the established character of this neighbourhood. Individually and cumulatively it was Ms. Spencer's opinion that the variances maintained the general intent and purpose of the OP.

[55] Given the current limited and aging condition of the property, the design for the two dwellings, in Ms. Spencer's opinion, represented good and appropriate use and development of this residential property and served to provide a suitable and valuable replenishing of housing stock and appropriate infill without any destabilization of the surrounding area. There were virtually no adverse impacts of any kind that were, in Ms. Spencer's view, attributable to the severance or the variances and given the compatible nature of the design. Ms. Spencer was of the opinion that, not only were the variances numerically minor, but overall, there were no issues of unacceptable or adverse impact.

[56] The Board has considered the testimony of the Participants in considering the expert planning evidence provided by Ms. Spencer. An aspect of the approach of the Participants that there was no "need" for a severance or the variances to replace one lot and one house with two lots and two dwellings and that the ZBLs contain standards that should be followed. The issue of need has been raised before by neighbours opposed to applications such as this. The tests under the legislation do not impose any test of need and none is required. As has been considered time and again by the Board, the zoning by-law standards, while representing standards for residential development, do not always reflect the special character of some neighbourhoods, and to apply too rigid an approach to zoning by-law standards as absolute maximums and absolute minimums, that should not be exceeded, is a narrowed approach that fails to recognize the right to variances as set out in the Act.

[57] As well, the Board cannot accept, as suggested in the Participants' evidence, that this kind of very minimal intensification, in a neighbourhood with such demonstrated characteristics, will somehow adversely change a "family friendly neighbourhood". Neither is there any evidence that the two residences will stress available municipal resources, and, to the point of the provincial policies, allowing for any minimal intensification while accessing existing municipal infrastructure, is in keeping with the broader goals in municipal planning.

[58] Upon all the evidence provided, and in the absence of any planning evidence that would contradict the expert planning evidence provided by Ms. Spencer, the Board finds

that the variances and the proposed Development, as a whole, meets the four tests set out in s. 45(1) of the Act and satisfies the provisions of the Growth Plan and the PPS.

[59] The Board finds that the proposed variances are minor and are desirable for the appropriate development or use of the lands.

[60] The Board also finds that the resultant dwellings will fit within, and respect and reinforce, the prevailing character, building type, existing streetscape, and lot and building spatial patterns in the immediate and larger neighborhood. The Board further finds that upon the uncontradicted planning evidence provided, that the variances also are consistent with performance standards set out in the ZBLs and the policies of the OP, and therefore maintain the general intent and purpose of the ZBLs and the OP.

[61] Given the evidence before it, the Board finds that there is nothing of exceptional note to indicate that the proposed variances are not in conformity with the Growth Plan and consistent with the PPS, 2014, and as indicated by Ms. Spencer, are consistent with the PPS in promoting appropriate and minimal compact intensification, as can be accommodated and as determined by the City's OP.

[62] Accordingly, the Board will approve the minor variances as were contained in the MV Applications and as presented to the Committee. They are as set out in Attachment 1 to this decision.

Conditions

[63] With respect to conditions, Ms. Spencer's testimony supports the inclusion of the conditions requested in the recommendations of the City Planning Staff. There are no circumstances to suggest that the standard conditions relating to the Consent Application should also not be included, though some minor corrections were deemed necessary.

[64] For the purposes of implementing the provisional consent and the variances, the Board finds that the Conditions as recommended by the City's Planning Staff, and to the

extent confirmed by Ms. Spencer, represent good planning, are reasonable, should be implemented. The Board accordingly will ensure that the related conditions to both the Consent Application and the MV Applications are imposed with the Consent and the Minor Variances as granted. They are set out in Attachment 2 to this Decision.

ORDERS

[65] The Board orders that the appeal, with respect to the Application for the proposed severance, is allowed and the provisional consent is to be given subject to the “Consent Conditions” set out in Attachment 2 of this Decision.

[66] The Board orders that the appeals, with respect to the Applications for the minor variances in relation to both the proposed Part 1 and Part 2 subdivided lots, are allowed and:

- (a) The variances as set out in Attachment 1 to this Decision relating to Part 1, 511-B Woburn as set out in the Plans and Drawings relating to the construction on that Part (identified on Drawing A1, Bldg. B - Site Plan) are authorized subject to the “Minor Variance Conditions” set out in Attachment 2 of this Decision; and
- (b) The variances as set out in Attachment 1 to this Decision relating to Part 2 511-A Woburn as set out in the Plans and Drawings relating to the construction on that Part (identified on Drawing A1, Bldg. A - Site Plan) are authorized subject to the “Minor Variance Conditions” set out in Attachment 2 of this Decision.

[67] The Board orders that the variances, with respect to Zoning By-law No. 569-2013, are contingent upon that By-law coming into force and effect.

“David L. Lanthier”

DAVID L. LANTHIER
MEMBER

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

Ontario Municipal Board

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

ATTACHMENT 1

LIST OF VARIANCES:

Property Address: 511 WOBURN AVE, TORONTO (North York)
(PART 1)
(511-B Woburn; Drawing A1, Bldg. B - Site Plan)

Legal Description: PLAN M108 LOTS 453, 454

1. Chapter 10.5.40.60.(6), By-law No. 569-2013

A bay window, or other window projection from a main wall of a building, which increases floor area or enclosed space and does not touch the ground, may encroach 0.60 m into a side yard provided that they are no closer to the side lot line than 0.6 m. The proposed window projection encroaches 0.61 m into the side yard and is 0.29 m from the west side lot line.

2. Chapter 10.5.40.60.(7), By-law No. 569-2013

Roof eaves may project a maximum of 0.9 m provided that they are no closer than 0.30 m to a lot line.
The proposed eaves project 0.20 m and are 0.25 m from the east side lot line.

3. Chapter 10.5.80.1043), By-law No. 569-2013

A parking space may not be located in a front yard or a side yard abutting a street.
The proposed parking spot is located in a front yard.

4. Chapter 10.20.30.10.(1), By-law No. 569-2013

The required minimum lot area is 370 m².
The proposed lot area is 232.4 m².

5. Chapter 10.20.30.2041), By-law No. 569-2013

The required minimum lot frontage is 12.0 m.
The proposed lot frontage is 6.10 m.

6. Chapter 10.20.30.4041), By-law No. 569-2013

The permitted maximum lot coverage is 30.0% of the lot area: 69.74 m².
The proposed lot coverage is 43.2% of the lot area: 100.48 m².

7. Chapter 10.20.40.70.(3), By-law No. 569-2013

The required minimum side yard setback is 1.2 m where the required minimum lot frontage is 12.0 m to less than 15.0 m.
The proposed east side yard setback is 0.45 m.

8. Chapter 10.20.40.70.(3), By-law No. 569-2013

The required minimum side yard setback is 1.2 m where the required minimum lot frontage is 12.0 m to less than 15.0 m.
The proposed west side yard setback is 0.90 m.

9. Section 14-A(3), Zoning By-law No. 7625

The minimum required, lot area is 371 m².
The proposed lot area is 232.4 m².

10. Section 14-A(4), Zoning By-law No. 7625

The minimum required lot frontage is 12.0 m.
The proposed lot frontage is 6.10 m.

11. Section 14-A(5)c, Zoning By-law No. 7625

The minimum required side yard setback is 1.20 m.
The proposed east side yard setback is 0.45 m.

12. Section 14-A(5)c, Zoning By-law No. 7625

The minimum required side yard setback is 1.20 m.
The proposed west side yard setback is 0.90 m,

13. Section 14-A(6), Zoning By-law No. 7625

The maximum permitted lot coverage is 30% of the lot area.
The proposed lot coverage is 44.4% of the lot area.

14. Section 14-A(9), Zoning By-law No. 7625

The maximum permitted building length is 15.30 m.
The proposed building length is 17.05 m.

15. Section 6(8), Zoning By-law No. 7625

The minimum lot width is not to be less than the lot frontage for the zone in which the building is to be constructed: 12.0 m.
The proposed lot width is 6.10 m.

16. Section 7.4B, Zoning By-law No. 7625

A minimum of 75% of the front yard not covered by a permitted driveway shall be maintained as soft landscaping.
The proposed soft landscaping is 73.1% of the front yard not covered by a permitted driveway.

LIST OF VARIANCES:

Property Address: 511 WOBURN AVE, TORONTO (North York)
(PART 2)
(511-A Woburn; Drawing A1, Bldg. A - Site Plan)

Legal Description: PLAN M108 LOTS 453, 454

1. Chapter 10.5.40.60.(2), By-law No. 569-2013

A canopy, awning or similar structure may encroach in a rear yard 2.50 m, if it is no closer to a side lot line than the minimum required side yard setback: 1.20 m.
The proposed canopy is 0.62 m from the east side lot line.

2. Chapter 10.5A0.60.(6), By-law No. 569-2013

A bay window, or other window projection from a main wall of a building, which increases floor area or enclosed space and does not touch the ground, may encroach 0.60 m into a side yard provided that they are no closer to the side lot line than 0.6 m. The proposed window projection encroaches 0.61 m into the side yard and is 0.29 m from the east side lot line.

3. Chapter 10.5.80.1043), By-law No. 569-2013

A parking space may not be located in a front yard or a side yard abutting a street.
The proposed parking spot is located in a front yard.

4. Chapter 10.20.30.1041), By-law No. 569-2013

The required minimum lot area is 370 m².
The proposed lot area is 232.48 m².

5. Chapter 10.2030.2041), By-law No. 569-2013

The required minimum lot frontage is 12.0 m.
The proposed lot frontage is 6.10 m.

6. Chapter 10.20.30.40.(1), By-law No. 569-2013

The permitted maximum lot coverage is 30.0% of the lot area: 69.74 m².
The proposed lot coverage is 42.4% of the lot area: 98.48 m².

7. Chapter 10.20.40.70.(3), By-law No. 569-2013

The required minimum side yard setback is 1.2 m where the required minimum lot frontage is 12.0 m to less than 15.0 m.
The proposed east side yard setback is 0.90 m.

8. Chapter 10.20.40.70.(3), By-law No. 569-2013

The required minimum side yard setback is 1.2 m where the required minimum lot frontage is 12.0 m to less than 15.0 m.
The proposed west side yard setback is 0.45 m.

9. Chapter 10.5.40.6047), By-law No. 569-2013

Roof eaves may project a maximum of 0.9 m provided that they are no closer than 0.30 m to a lot line.

The proposed eaves project 0.20 m and are 0.25 m from the west side lot line.

10. Section 14-A(3), Zoning By-law No. 7625

The minimum required lot area is 371 m².

The proposed lot area is 232.48 m².

11. Section 14-A(4), Zoning By-law No. 7625

The minimum required lot frontage is 12.0 m.

The proposed lot frontage is 6.10 m.

12. Section 14-A(5)c, Zoning By-law No. 7625

The minimum required side yard setback is 1.20 m.

The proposed east side yard setback is 0.29 m.

13. Section, Zoning By-law No. 7625

The minimum required side yard setback is 1.20 m.

The proposed west side yard setback is 0.45 m.

14. Section 14-A(6), Zoning By-law No. 7625

The maximum permitted lot coverage is 30% of the lot area.

The proposed lot coverage is 43.5% of the lot area.

15. Section 14-A(9), Zoning By-law No. 7625

The maximum permitted building length is 15.30 m.

The proposed building length is 17.05 m.

16. Section 6(8), Zoning By-law No. 7625

The minimum lot width is not to be less than the lot frontage for the zone in which the building is to be constructed: 12.0 m.

The proposed lot width is 6.10 m.

ATTACHMENT 2

CONSENT CONDITIONS

The Provisional Consent is subject to the following Conditions:

1. Confirmation of payment of outstanding taxes to the satisfaction of Revenue Services Division
2. A draft Certificate of Official, as prescribed in O.Reg. 197/96 as Form 2 or 4, and in a form satisfactory to the Deputy Secretary-Treasurer, that includes a completed and registerable description of the land that is the subject of the consent, shall be submitted to the Deputy Secretary-Treasurer within one year of the date of the giving of notice of this decision.
3. Copies of a deposited Reference Plan of Survey, integrated with the Ontario Co-ordinate System, and clearly delineating the parcels of land approved by the Committee of Adjustment. A list of the parts and their respective areas is required.
4. A copy of a letter from the Executive Director of Engineering and construction Services advising that the applicant has obtained the necessary adjustment to the municipal addressing of the land. Contact Survey and Mapping Services, Engineering and Construction Services at (416) 392-7755. The application for municipal addressing must be accompanied by a copy of the deposited Reference Plan of Survey, integrated with the Ontario Co-ordinate System, and specify the part numbers that will comprise each of the new parcels.
5. The Decision of the Board shall become null and void within 12 months unless the required Certificate is affixed to the relevant documents.

MINOR VARIANCE CONDITIONS APPLICABLE TO BOTH APPLICATIONS

The approval of the Minor Variances for each of the two lots currently forming the lot municipally described as 511 Woburn Avenue are subject to the following conditions and all conditions apply in the same respect to each Application:

1. Each of the proposed dwellings shall be built substantially in accordance with the plans drawings and elevations prepared by Anjani Architect Inc. as they were submitted and formed part of Exhibit 2 to this hearing, pages 8 to 31.
2. For the approved lot coverage for each lot, not less than 9.3% of the lot coverage for each lot shall be allocated towards the detached garage accessory structure located at the rear of the lot; and
3. Permeable materials are to be used for the proposed front driveway/parking pad.