

Ontario Municipal Board
Commission des affaires municipales
de l'Ontario



ISSUE DATE: March 17, 2016

CASE NO(S): PL150999

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

Appellant:	City of Toronto
Applicant:	Talat Muinuddin, Tariq Mustafa Muinuddin
Subject:	Minor Variance
Variance from By-law No.:	7625
Property Address/Description:	807 Willowdale Avenue
Municipality:	City of Toronto
Municipal File No.:	A0625/15NY
OMB Case No.:	PL150999
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Case Name:	City of Toronto v. Toronto (City)

Heard: March 1, 2016 in Toronto, Ontario

APPEARANCES:

Parties

Counsel

Talat Muinuddin

M. Kemerer

City of Toronto

A. Suriano, C. litan

DECISION DELIVERED BY RICHARD JONES AND ORDER OF THE BOARD

BACKGROUND

[1] This hearing concerned the reconstruction of an existing single detached dwelling known municipally as 807 Willowdale Avenue in the City of Toronto. The nature

of the reconstruction involved the addition of a second-storey and a partial third-storey above the first-storey of the existing home along with a new front porch, rear deck and a third-storey terrace.

[2] This project involved variances to Zoning By-law No 569-2013, which is under appeal and not fully in effect, and Zoning By-law No.7625, the old zoning by-law for North York.

[3] The Committee of Adjustment (“COA”) approved the application, an action that was subsequently appealed by the City of Toronto. The surrounding neighbourhood residents who are so often active in these matters did not oppose the application during the hearing, nor the prior COA session according to evidence although the Applicant and COA agreed to modify the size of the third storey platform/deck from 57.7 square metres (“sq m”) to 10 sq m as a consequence of input from a next door neighbour who was concerned with its size and occupancy potential. That same neighbour was agreeable to the remaining variances.

[4] During the course of the COA review and approval, the Planning Department had recommended against the application and did so again before the Board.

The variances are as follows to:

By-law No. 569-2013

1. A minimum of 10.0m² of the first floor area must be within 4m of the front wall. There is 5.62m² proposed within 4m of the front wall.
2. The maximum permitted number of storeys is 2, whereas, 3 storeys are proposed.
3. The maximum permitted area of each platform at or above the second storey of a detached house is 4.0 m² whereas the proposed area is 10.0m².

4. The maximum permitted height of the first floor above established grade is 1.2m whereas, the proposed height of the first floor above established grade is 1.24m
5. The maximum permitted height of the first floor established grade is 1.2m whereas, the existing and proposed south side yard is 1.16m
6. The maximum permitted building height is 7.2m whereas, the proposed building height is 10.53m

And By-law No. 7625

7. The maximum permitted balcony area is 3.8m², whereas, the proposed balcony area is 10.0m².
8. The minimum required south side yard setback is 1.8m and the proposed existing and proposed south side yard setback is 1.16m.
9. Three storeys are proposed, whereas, the maximum number of storeys is 2.
10. The maximum permitted height of an unexcavated deck in the rear that projects more than 2.1m from the wall and/or is greater than 50% of the house is 1.0m above all points of the adjacent ground. The proposed deck height is 1.34m.

[5] The maximum permitted building height is 8 metres ("m") whereas the proposed building height is 10.64 m.

[6] The subject lands are located at the southeast corner of Olive Avenue and Willowdale Avenue, a long established neighbourhood in the North York community. The adjoining homes are single-family detached units although multi-unit buildings exist in select areas close by the subject property. The single-family housing stock is changing and experiencing renovations and demolitions/rebuilds activity throughout much of the neighbourhood according to testimony.

[7] The Board heard that the demolition of the existing, side split-residence was desired by the owner in order to accommodate his large intergenerational family which a

three-storey building utilizing the same footprint as the side-split, would accomplish efficiently.

PLANNING EVIDENCE

[8] Franco Romano, a land use planning consultant, with prior municipal planning experience in North York, provided evidence on behalf of the Applicant. Carla Tsang, Assistant Planner with the City of Toronto, testified on behalf of the City of Toronto. There was no participation from the neighbourhood, either for or against the application before the Board.

[9] Testimony centered upon s. 45(1) of the *Planning Act*, (“Act”) the four tests:

- Is the general intent and purpose of the Official Plan (“OP”) maintained?
- Is the general intent and purpose of the Zoning By-law maintained?
- Are variances considered desirable for the development and use of the land?
- Are the variances minor?

[10] With regard to the OP, both planners reviewed similar policies but interpreted the policy impact quite differently. Moreover, their respective testimonies principally concentrated on the issue of building height rather than the other variances. But the Board agrees with that focus: building height was the defining issue of this hearing.

[11] Mr. Romano opined that the application matched the OP’s recognition that neighbourhoods are not frozen in time, but changing as long as an application can establish fit and compatibility. Towards those objectives of fit and compatibility, he testified that the neighbourhood was eclectic from the perspective of architecture and massing. High buildings in the vicinity of the subject property were described in photo exhibits, most notably, 131 Olive Street that is located adjacent to the application, to the east. That pitched roof structure appeared to have habitable space above the eaves, within the highly pitched roof of the home. Mr. Romano described this building as three-

storeys although Ms. Tsang alternately considered it a two-storey building.

[12] Mr. Romano was of the opinion that the impact of height was alleviated by the fact that only part of the structure has been designed for three storeys, and further that this higher building component faces the intersection of the two adjoining roadways rather than conveying impact onto the two adjacent residences. Ms. Tsang opined that the corner lot situation actually magnifies the prominence of the higher building section, a situation made worse by the austere character of the exterior sidewall designed to face Olive Street. Ms. Tsang testified that the flat roof nature of the residence conveyed an unfortunate sense of mass and bulk (her term was: “little architectural animation”) which rendered the application unsuited to the existing neighbourhood.

[13] Ms. Tsang opined that no other home within her study area, which she described as Dunforest, (consisting of 342 properties) had been approved for building heights in excess of 10 m.

[14] Despite the reduction in the size of the deck/balcony and the provision of a privacy screen, Ms. Tsang considered that unnecessary overlook would still occur by too many people occupying the 10 sq m deck. Mr. Romano opined that the reduction in deck size had met the approval of the resident most affected by the potential for overlook and in his opinion, that problem was no longer a concern.

[15] Because the new building is proposing to reuse the existing first floor of the residence, the City’s planning witness in her testimony did not actively contest these variances because the elevation of the ground floor is fixed.

FINDINGS

[16] The Board is of the view that with the exception of the height variations, the remaining variances are found to be minor, being either linked by necessity to the elevation of the first floor of the existing home, or associated with the innovative

character of the architecture which allows for a deck /platform as an appropriate element of the modernistic design.

[17] Furthermore, the application does not possess variations relating to gross floor area, coverage, or inadequate green space, which would suggest excessive building mass and volume.

[18] However, the variances relating to building height are not minor in the Board's opinion: in fact, the zoning by-laws are explicit in stating: "a maximum of two storeys" and the building is designed for three storeys if only involving part of the structure.

[19] The Board agrees with Mr. Romano that the adverse impact is to some degree obviated by the fact that the three storey section faces the intersection of the street and away from adjoining residential uses, but concurrently, the Board also concurs with Ms. Tsang's testimony that this very location accords prominence to what would be the highest single-family use in the neighbourhood.

[20] Most significantly, the written narratives in the zoning by-laws which state: "a maximum of two storeys" is viewed as a clear and unmistakable statement of intent which cannot be varied.

[21] Planning consideration of a variance does not solely arise from an assessment of impact, adverse or otherwise, or presumed conditions regarding fit and compatibility. Determination of suitability also flows from the narrative, numeric and descriptive, of the planning instruments, principally the OP and Zoning By-laws. In this regard, the Board finds that permission for three storeys would breach the City's planning policy regarding building height in a definitive and measurable fashion.

[22] Finally, the Board is not unsympathetic to the spatial needs of a large multi-generational family, nor the architect's success to efficiently realize a larger home on a tight, existing footprint. But these considerations are secondary to the Board's finding

that the height variance is major as measured against the intent of the Zoning By-laws.

[23] In this regard, the Board finds that the test assessing compliance with “the general intent and purpose of the Zoning By-law” is not met by the application.

ORDER

[24] The Board orders that the appeal is allowed and the variances are not authorized.

“Richard Jones”

RICHARD JONES
MEMBER

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Ontario Municipal Board

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