

DECISION AND ORDER

Decision Issue Date Friday, October 13, 2017

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

Appellant(s): 2542751 Ontario Limited, Mohsen Movaseghi

Applicant: F&A Associates

Counsel or Agent: Amber Stewart

Property Address/Description: 175-177 Ranleigh Ave

Committee of Adjustment Case File Number: 17 126734 NNY 25 MV (A0238/17NY),
17 126719 NNY 25 MV (A0237/17NY)

TLAB Case File Number: 17 174720 S45 25, 17 174724 S45 25

Hearing date: Friday, September 08, 2017

DECISION DELIVERED BY S. Gopikrishna

Appearances: Ms. Amber Stewart, Counsel and Mr. Alan Young, Planner for the Appellant

INTRODUCTION

1. The applicant Mohsen Movaseghi had applied to the Committee of Adjustment to have variances approved variances for developing two semi-detached homes on adjacent properties – 175 and 177 Ranleigh Avenue. The purpose of the variances for both properties is facilitate the construction of the two new semi-detached dwellings with attached garages after demolishing the existing semi-detached dwellings.

2. The nature of the variances requested to the two properties include height variances for side exterior walls, increases to the maximum permitted floor space index, requests for vehicle entrances on properties with frontages smaller than the permitted frontage and variances related to integral garages and rear decks..

3. The Committee of Adjustment henceforth "COA") considered the applications for variances for 175 and 177 Ranleigh together on 18 May 2017. In its decisions, the COA refused all variances at 177 Ranleigh while the variances at 175 Ranleigh were

approved with conditions. The appeal to the Toronto Local Appeal Body (TLAB) concerning the variances at 177 Ranleigh triggered a re-examination of all variances, including 175 Ranleigh because the applications were heard together by the COA and are part of the same appeal before TLAB. Similarly, this panel heard the evidence and considered all matters individually and together.

MATTERS IN ISSUE

4. The issue before the TLAB is whether the requested variances for the two properties, as listed below under the two applicable by-laws, satisfy the four tests under Section 45(1) of the Planning Act.

The variances requested for at 175 Ranleigh are:

VARIANCES TO BY LAW 569-2013 (the “City Wide Zoning Bylaw”)

1) A minimum of 10.0 m² of first floor must be within 4.0 m of the front main wall. The proposed first floor area within 4 metres of the front main wall is 1.2 m².

2) The permitted maximum height of all side exterior main walls facing a side lot line is 7.5 m. The proposed height of the side exterior main wall facing a side lot line is 7.7 m.

3) The permitted maximum floor space index is 0.6 times the area of the lot. The proposed floor space index is 0.82 times the area of the lot.

4) Vehicle entrances through the first main wall of the building are permitted provided the lot has a minimum frontage of 7.6 m whereas The existing lot frontage is 5.49 m.

VARIANCES TO BY LAW 438-86 (the “Toronto Zoning Bylaw”)

5. The permitted maximum floor space index is 0.6 times the area of the lot. The proposed floor space index is 0.82 times the area of the lot.

6. The proposed building must not be located any closer than 1.2 m to the portion of the side wall of an adjacent building that contains openings or 0.9 m to the portion of the side wall of an adjacent building that doesn't contain opening. The proposed building is located 0.72 m from the adjacent west building.

7. The maximum permitted height of an uncovered platform which projects into the required setbacks to a maximum of 1.2 m above grade. The proposed rear deck is 2.32 m above the grade.

8. An integral garage in a building on a lot having a frontage of less than 7.62, where access to the garage is located in a wall facing the front lot line is not permitted. The proposed integral garage is in a wall that faces the front lot line.

9. An integral garage in a building where the floor level of the garage is located below grade and the vehicle access to the garage is located in a wall facing the front lot line is not permitted. The proposed integral garage is below grade.

The variances requested at 177 Ranleigh are:

VARIANCES TO BY LAW 569-2013 (the “City Wide Zoning Bylaw”)

1. A minimum of 10.0 m² of the first floor must be within 4.0 m of the front main wall. The proposed first floor area within 4 m of the front main wall is 1.2 m².
2. There permitted maximum height of all side exterior walls facing a side lot line is 7.50 m. The proposed height of the side exterior main walls facing a side lot line is 7.70 m.
3. The permitted maximum floor space index is 0.6 times area of the lot. The proposed floor space index is 0.81 times the area of the lot.
4. Vehicle entrances though the front main wall of the building are permitted provided the lot has a minimum frontage of 7.6 m The existing lot frontage is 5.31 m.

VARIANCES TO BY LAW 438-86 (the “Toronto Zoning Bylaw”)

5. The permitted maximum floor space index is 0.6 times area of the lot. The proposed floor space index is 0.81 times the area of the lot.
6. A proposed building may not be closer than 1.2 m to the portion of the side wall of an adjacent building that contains opening or 0.9 m to the portion of the side wall of an adjacent building that doesn't contain openings. The proposed building is located 0.72 m from the adjacent west building.
7. An integral garage is not permitted on a lot having a frontage of less than 7.62 m where access to the garage is located in a wall facing the front lot line. The proposed integral garage is in a wall that faces the front lot line.
8. An integral garage is not permitted in a building where the floor level of the garage is located below grade and the vehicle access to the garage is located in a wall facing the front lot line. The proposed integral garage is below grade.
9. An uncovered platform which projects into the required setbacks may not exceed a maximum of 1.2 m above grade. The proposed rear deck height is 2.32 m above grade

EVIDENCE

5. At the onset of the hearing, it was pointed out by Ms. Stewart, Counsel for the Applicant that neither the neighbours nor the City were in opposition to the proposals at 175 and 177 Ranleigh Avenue. The COA's reason for approving one proposal and refusing the other were the result of their reliance on a staff report whose reliance on FSI did not address the important fact that the subject properties were substantially smaller than the neighbouring lots.

6. Ms. Stewart then introduced the Expert Witness, Mr. Alan Young who had many years of experience as a Planner both in the governmental and private sectors. Mr. Young began his presentation by discussing the surrounding community and his choice of a study area consisting of the 2 blocks of Ranleigh Avenue between Yonge Street and Ronan Avenue. The study area has a mix of houses, some detached and others semi-detached. Based on information from the City of Toronto's Land Planning Database, the Gross Floor Areas of the houses range from 75 square metres to 297 square metres while the Floor Space Index(henceforth “FSI”) ranged from 0.22 to 0.81. The wide variance in densities were described by the differences in lot depths and the variability in the ages of houses, with newer houses typically being larger than the

houses they replaced. Thus, despite similarities in the scale and massing of the houses, there is a wide variation in the measure of densities of the houses. Therefore, it was the planner's opinion that density can't be relied upon to determine if the proposed builds reinforce community character.

7. The recommendation from the City's Planning Department dated 9 May 2017 suggesting reduction of the FSI to 0.63- 0.75 because they were typical of what had been approved in the "neighbourhood" was then considered. However, the City Planning Report did not discuss what the neighbourhood was. Further, an analysis of COA decisions from the study area, as specified in the previous paragraph, included 5 properties where FSI's in excess of 0.8 had been approved.

8. According to the Official Plan and Zoning, the subject lands were designated as "Neighbourhoods"- there are no Secondary Plans, area-specific or site-specific policies. The Provincial Policy Statement (2014) and Growth Plan (2017) were acknowledged as providing encouragement of intensification within established built-up areas was acknowledged. However these policies don't apply to the subject properties since the proposal aims to replace two existing semi-detached units with two new semi-detached units, albeit larger.

9. Clause (c) of Section 4.1.5 of the Official Plan was then discussed because of its relevance to the subject properties through focusing on "***the heights, massing, scale and dwelling type of nearby residential properties***". In the case of the subject properties, there is no variance required for overall building height because it conforms with both zoning-by laws ; however there is a variance request for height of the main side walls. The main side walls are required to be 2.5 m below the main roof height resulting in a request for a 0.2 metre variance between the requirement and proposed heights. It was pointed out that the 0.2 m difference is not discernible to a viewer standing on the road. In the planner's opinion, the construction of a pitched roof design with two front gables provides visual harmony with the sloped roofs in the neighbourhood,

10. The planner described that the proposed building mass and scale meets the setback, dwelling length and overall height requirements of the by-laws. The rear walls project 2.6 metres beyond the rear wall of No 173 Ranleigh but are 0.5 m behind the rear wall of No 179 Ranleigh. The proposed massing is consistent with the neighbouring buildings and with the neighbourhood itself which demonstrates a pattern of staggered front and rear building walls.

11. Mr. Young then discussed the issue of density of the proposed dwellings which constituted the focus of the City's Planning Report dated 9 May 2017. While admitting that the proposed density was on the higher side of what existed in the study area, he attributed this to the building type and the relatively shallow lot sizes at 175 and 177 Ranleigh. Given the mixed nature of buildings, the density was described strictly as a numerical designation with no practical interpretation nor significance.

12. The next topic to be discussed was the placement of the front integral garage and the consequent variances. Given the prominence of garages on narrow lots and its impact on soft landscaping, internal garages and below grade garages were prohibited

on lots with widths of less than 7.62 m. Since the lots in question were less than 7.62 m each, the proposal was to construct front pedestrian entrances with covered porches and limestone columns . These, coupled with a satisfactory relationship of porch and grade, he felt would offset the prominent looking garage on the subject properties. This arrangement is consistent with the prevalence of front yard garages and parking in the neighbourhood.

13. Based on the above, Mr. Young opined that the allowing an at-grade garage integral in each unit was consistent with intent of the zoning by-law. Also, the design would be consistent with the parking space required by zoning and the provision of on-site parking behind the front wall of the dwelling, in this case, in an adequate integral garage. However, under By-Law 438-86, a ‘technical’ variance is triggered because the finished grade is a little above the grade of the garage. This variance was described to be minor because of its technical nature and definition of grade under the Toronto by-law. It was stated clearly that there are no below-grade garages planned in the projects under consideration.

14. On the matter of variances related to separation distances, the planned distance of 0.72 m between the west wall of 175 Ranleigh and the east wall of 173 Ranleigh triggers a variance requested under By-law 438-86, which as described above, requires a separation of 1.2 m between buildings with an opening in the wall. However, the separation between the ground floor window at 173 Ranleigh and the wall at 175 Ranleigh, he felt, has no practical impact and may be considered minor.

15. Lastly, Mr. Young discussed the placement of the decks and the consequent variances. Under By-law 438-86, ground floor rear decks are considered an encroachment into a required setback triggering a variance request. In the project under consideration, the allowed height provision was 1.2 m while the actual planned height of the rear decks was 2.32 metres above ground. It was also pointed out that the plans had to be amended to note the 2.32 metre height difference since the Zoning Examiner had noted the height difference to be 1.3 m instead of 2.32m.

16. Ms. Stewart submitted that no notice was required if the amendment was accepted because the separation was consistent with what had been originally submitted to the City. The request for the amendment constituted a correction to an error and not a revision of the plans.

17. In her closing statements, Ms. Stewart requested that all variances be approved. She also recommended for the inclusion of two conditions should the proposal be approved. The conditions are:

- a) . The proposed dwellings shall be built substantially in accordance with the Site Plan and Elevations prepared by Arcica Inc. and dated November 17, 2016. Floor plans are not included in order to provide some flexibility with respect to the interior of the dwelling while preserving the external features since this is what will be visible from the street.

b) . The owner shall comply with the City of Toronto Municipal Code Chapter 813, Article II (City-owned trees) and Article III (Privately-owned trees). This is a standard forestry condition.

In addition, Ms. Stewart also alluded to the City of Toronto's Planning Department's request for a condition relating to driveway slope and stated that she didn't object to its inclusion in the decision if the project were approved. The condition is:

c) The driveway maintain a positive slope from the street to the entry of the integral garage.

ANALYSIS, FINDINGS, REASONS

18. I accept the amendment about changing the heights of rear decks being 2.32 metres above grade and not 1.3 metres as erroneously noted in the Zoning Examiner's review. Because the plans were unchanged, this member agrees that no further Notice will be required as provided pursuant to s.45(18.1.1) of the Planning Act.

19. In considering the applications for variances from the Zoning By-laws, the TLAB Panel must be satisfied that the applications are consistent with the Provincial Policy Statements (2014) and confirm to Growth Plan. Further, that they meet all of the four tests under s. 45(1) of the Act. The tests are whether the variances:

- 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

Applying these considerations and tests to the proposed variances, I come to the conclusions listed from paragraphs 20-23 below, applicable to both Bylaws.

20. The variances relating to density are consistent with the intent of the Official Plan because the resulting massing and scale respects and reinforces the character of the nearby residential properties. Notwithstanding the resulting significant density of the properties, the actual massing and scale are modest because of the lot depth. The increase in FSI is supported by the analysis of COA decisions which demonstrates that FSIs comparable with that of the proposed projects have been granted previously, including one at 113 Ranleigh Avenue. The impact of the proposed variances is minor and contributes no undue adverse impact.

21. The proposed increase in FSI is within the intent of the zoning by-Laws because the scale and massing of the proposed building fit within the set-back, overall height and dwelling parameters of the zoning by-laws and the resulting built form is compatible with neighbouring properties. . The impact of building massing on neighbours is minor as above described.

22. Variances to permit an integral front garage in each unit respect the character of the neighbourhood because front yard/garage parking arrangements are common here.

The proposed garages respect the intent of the Zoning By-law because of the relationships between main pedestrian entrance to grade, the placement of a columned porch and fulfillment of front landscaping requirements. The impacts of such variances are minor.

23. The requested variances are desirable because in conjunction with each other, they will help replace two small existing semi detached homes. Given the above conclusions, the requested variances are therefore supportable since they meet all the tests individually and collectively. In all material respects not mentioned but reference above, I agree with the opinion advice of the planner, Mr. Young. That evidence was uncontested.

24. The three requested conditions, above, are also acceptable since they will preserve the external features while allowing flexibility to the developer for small internal changes. The condition discussing trees is a standard Urban Forestry condition. The City of Toronto's concern about preventing reverse slope garages is noted, appreciated and advanced in the form of the condition maintaining a positive slope from the street to the entry of the internal garage.

DECISION AND ORDER

25. The appeals to set aside and replace the decisions of the Committee of Adjustment at 175 and 177 Ranleigh Avenue are allowed.

26. All requested variances identified in paragraph 4 hereof for 175 and 177 Ranleigh Avenue are approved subject to the following conditions:

a). The proposed dwellings shall be built substantially in accordance with the Site Plan and Elevations prepared by Arcica Inc. and dated November 17, 2016.

b). The owner shall comply with the City of Toronto Municipal Code Chapter 813, Article II (City-owned trees) and Article III (Privately-owned trees).

c). The driveways maintain a positive slope from the street to the entry of the integral garage.

X 

S. Gopikrishna
Chair, Toronto Local Appeal Body