

DECISION AND ORDER

Decision Issue Date Tuesday, September 12, 2017

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

Appellant(s): CALOGERO BANCHERI

Applicant: NETTHAUS DESIGN-BUILD

Counsel or Agent: MICHAEL MANETT

Property Address/Description: 49 CARMICHAEL AVE

Committee of Adjustment Case File Number: 17 125243 NNY 16 MV

TLAB Case File Number: 17 166521 S45 16 TLAB

Hearing date: Tuesday, September 05, 2017

DECISION DELIVERED BY T. YAO

INTRODUCTION

Calogero Bancheri and Nadia Constantino, the owners of 49 Carmichael Ave, appeal the single variance the Committee of Adjustment did not grant. Because they were the only ones to appear at the appeal and because their planner put forward a full and complete planning justification for all the variances, I am allowing the appeal.

BACKGROUND

Carmichael Avenue is undergoing transition with 40s-50s-style one and a half stories ("older homes") giving way to large three-storey houses. Mr. Bancheri and Ms. Constantino purchased 49 Carmichael three years ago with the intention of tearing it down and starting a family in the new home. Neighbours at 47 Carmichael and across

the street at 48 Carmichael live in new homes. Another neighbor to the west lives in an older home but she supports the variances. The two newer houses have height and lot coverage variances slightly more than what Mr. Bancheri and Ms Constantino seek. They retained the same architect who designed 47 Carmichael, instructing him to design a house that would “fit into” the established neighbourhood, as required by the Official Plan, chapter 4. They say the process has been “one hurdle after another.”

They sought three variances: lot coverage, height of side wall, and first floor height above grade, a total of six under the former City of North York By-law and the adopted but not in force City-wide By-law.

About a week before the hearing, city staff wrote a report, proposing that the geometry of one of the side walls be reduced¹ to be “more in keeping with the neighbourhood”, to which they have agreed. They asked the architect to revise the drawings, which cost them “thousands”. At the Committee, everything was approved except the lot coverage of 34.75%, for which the Committee gave only 32%. They considered this “arbitrary”; their planner Mr. Manett says it was made “without any evidence”. After the decision, Mr. Bancheri and Ms Constantino went back to their architect to see if they could fit within the reduced variance. Mr. Bancheri said, “It shrinks the house quite substantially, it actually takes a few feet from our kitchen, and in an Italian family, that’s a big deal.”

MATTERS IN ISSUE

An appeal triggers a completely fresh hearing, Mr. Bancheri and Ms Constantino have to justify the height variances as well as lot coverage.

¹ Building Height provisions are devised, in part to ensure a consistent pattern of development. As proposed, the east main wall has the requested 9.1 m for 20% of the side main wall width and west main wall has the requested 9.1 m for 15% of the side main wall width. Staff are of the opinion that the proposed east side main wall at 9.1 meters for 20% of the side main wall width is not in keeping with the intent of the Zoning By-law. Staff recommend that the applicant reduce the requested 9.1 meter side exterior main wall height to no more that 15% of the side exterior main wall width to be more in keeping with the general physical character of the immediate vicinity.

ANALYSIS

Mr. Manett, a qualified land use planner, began: “This is a modest dwelling compared with some of the ones you see going into the neighbourhood.” In his opinion, the relevant Official Plan policies are:

- Whether physical changes were sensitive, gradual and generally “fit” the existing character (Development Criteria p 4-3)
- Whether development reinforced the existing character, particularly the massing of nearby residential properties (4.1.5.c, p 4-4)
- Whether new development was compatible with the physical character of established residential Neighbourhoods (4.1.8, p 4-5)

It was his opinion that the Bancheri/Constantino proposed dwelling “fits”, “is compatible with”, “respects and reinforces the neighbourhood with regard to height, massing, and dwelling type”. In other words, it meets all the relevant Official Plan tests, and I accept his evidence.

FINDINGS

His evidence shows in the roughly 50 buildings between 22 Carmichael and No. 82 (a consent), there were 9 applications for minor variances, and the Committee has typically granted permission for increased lot coverage at about 35%.

	Lot coverage	
22 Carmichael Ave.	35%	
40 Carmichael Ave.	35%	
42 Carmichael Ave.	35%	
45 Carmichael Ave.	36.5%	
47 Carmichael Ave.	35%	
48 Carmichael Ave.	35%	
49 Carmichael Ave. (subject of this hearing)	34.75%	refused

66 Carmichael Ave.	34.9%	
82 Carmichael Ave.	37.4%, 37.8%	refused

Mr. Manett said this additional coverage “respects and reinforces” the adjacent building (35%, 9.1 m) and the building across the street (35%, 9.55 m). I am satisfied that this “fitting in” at 49 Carmichael was enhanced by the fact that no side yard variances are sought, that the roof is kept low and there is a relatively small rear deck.

With respect to the remaining tests, Mr. Manett relied on much of the same evidence to reach his conclusion that this house was a “larger residence, but still consistent with the emerging character of the neighbourhood” and is within the range of variances granted to other properties on the street. Although this decision focusses mainly on lot coverage, there was a full discussion of the other two variances, which I do not need to recapitulate. Based on the planning evidence, I therefore conclude that the lot coverage variance of 34.75% meets the four tests for a variance under s. 45 of the *Planning Act*.

DECISION AND ORDER

I authorize the following minor variances:

Under By-law 569-2013		
	Required	Proposed and authorized in this decision
Lot coverage	30%	34.75%
all side exterior main walls facing a side lot line	7.5 m for 100% of the main wall width	9.1 m for 15.00% of the main wall width.
First floor height above established grade	1.2 m	1.49 m
Under By-law 7625		

Decision of Toronto Local Appeal Body Panel Member: T. Yao
TLAB Case File Number: 17 166521 S45 16 TLAB

Lot coverage	30%	34.75%
maximum permitted building height	8.8 m	9.1 m
First floor height above centre of road	1.5 m	1.79 m.


X

Ted Yao
Panel Member
Signed by: Ted Yao

Toronto Local Appeal Body