

DECISION AND ORDER

Decision Issue Date Monday, September 11, 2017

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

Appellant(s): IVAN HAMER

Applicant: TEN 2 FOUR ARCHITECTURE INC (JUDAH MULALU)

Counsel or Agent: ROBERT BROWN (APPELLANT)

Property Address/Description: 58 LEWIS ST

Committee of Adjustment Case File Number: 17 104673 STE 30 MV ((A0036/17TEY)

TLAB Case File Number: 17 168331 S45 30 TLAB

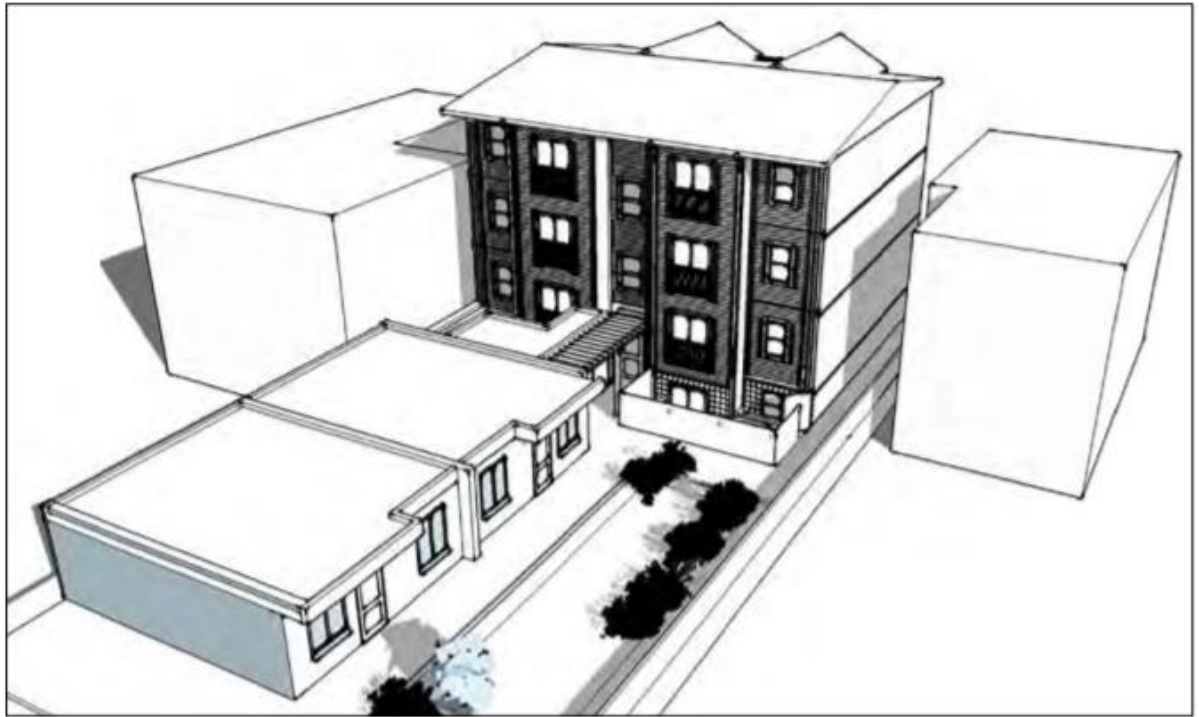
Hearing date: Friday, September 01, 2017

DECISION DELIVERED BY T. YAO

INTRODUCTION

Accommodation Support and Information Inc. ("Accommodation") is a supportive housing organization proposing to build a one storey rear addition. This addition will house two small bachelor units, each with its own wheelchair accessible entrance. Accommodation owns the main building at 58 Lewis St, a 15-unit, three storey apartment building in the Queen/Broadview area of Toronto (the central building in the diagram below). The variances are opposed by Ivan Hamer, the neighbour to the north (the building to the left). Mr. Hamer resides at 66 Lewis St, a detached two storey residential building. The Committee of Adjustment granted the variances requested by

Accommodation and Mr. Hamer appealed. I am rejecting the appeal and granting the variances.



BACKGROUND

There are 13 variances required from the current harmonized zoning by-law and 9 from the former zoning by-law. To make this decision more readable, I have listed them in endnotes. The most important of these are: length of the combined original building plus addition; floor space index and rear yard setback. (These are grey in the tables.)

The original building was built in 1986; Accommodation purchased it in 1991. The interior layout has been unchanged, consisting of 15 bachelor units (each with a combined kitchen/bedroom, separate bathroom), totaling about 500 sq. feet each. In 2011, Accommodation determined that it wished to make a number of physical improvements to better serve its clients.

The present building is a split-level design and there is a flight of steps to each of the front entrances. Because of their age, two long term residents require wheelchairs and need to be manually assisted up the stairs. Second, some residents require counselling and the only space available is in the laundry room. This means that when one use takes place the other cannot. Third, Accommodation desires a common

kitchen/lounge/laundry for a twice a month demonstrations in nutrition and healthy life style choices. The solution was to convert two units (a ground floor unit and the basement unit below it) to a high-ceilinged multipurpose room, and relocate the laundry facilities from the office into this space. Two replacement residential units are proposed to be constructed in the rear, with ground level access to the public sidewalk, specifically for the clients in wheelchairs. The multipurpose room will have a costly item: a one person motorized lift. Mr. Judah Mulalu, Accommodation's architect, stated that in Ontario, there was a very great shortage of accessible supportive housing and I accept his evidence in this regard.

In 2011, the previous architect submitted plans to a zoning plan examiner who found Accommodation needed three variances (Table 1), which were granted June 1, 2011. This is not the Committee of Adjustment decision that is the subject of this hearing. That first decision was not appealed by Mr. Hamer.

Table 1		
	Required	Granted by C of A June 1, 2011
maximum building depth	14 m.	31.9 m
maximum floor space index	1 x lot area	1.13 x lot area
minimum rear yard setback	7.5 m	4.17 m

Accommodation did not build the addition in 2011. It is reliant on funding from the Ministry of Health, private donations and the City of Toronto and one of the funding partners felt the addition was too costly. For unrelated reasons, the previous architect retired from practice, and Accommodation then retained Mr. Mulalu to carry the project forward. He kept the same design but made small accessibility improvements in keeping with stricter guidelines. In 2013, the City passed the harmonized Zoning By-Law 569-2013, and because it has been appealed by others and those appeals are not yet resolved, the City examines the building permit plans for compliance with both the old and new by-laws.

A second zoning plan examination revealed the need for the variances that are the subject of this case and set out in detail in Tables 2 and 3.

Accommodation consulted with its neighbours, especially Mr. Hamer and his spouse, who purchased their property in 2005 with full knowledge of the use at 58 Lewis St. Mr. Hamer asked Accommodation to relocate his garden shed and plant new trees in his rear yard, and Accommodation agreed. They also wished the windows facing their property to be relocated to the roofs of the addition, which was refused. They asked for frosted glass which was agreed to. They asked that the windows be non-opening, which Accommodation refused, since it would decrease the amenity of the units, as well as increase utility costs for its clients. Finally feeling that they were being subjected to a rolling series of demands, Accommodation ended negotiations and proceeded to the Committee of Adjustment.

Accommodation was successful at the Committee and a decision issued on May 10, 2017. After May 3, 2017, Committee of Adjustment decisions come to the Toronto Local Appeal Body instead of the Municipal Board.

MATTERS IN ISSUE

The issue is whether the variances satisfy the four tests under s. 45(1) of the *Planning Act*. Analysis of this issue is simplified because of the first Committee decision in 2011, which was for the same rear addition.

As with every dispute, I have to consider the persuasiveness of the opposing witnesses, in this case, Mr. Mulahu and Mr. Hamer. Mr. Hamer raised this issue at the outset of the hearing by bringing a preliminary motion to disqualify Mr. Mulahu as an expert qualified to give opinion evidence, which I dismissed. I found Mr. Mulahu is qualified. He has participated in five Committee of Adjustment hearings, and is currently seeking minor variances for an embassy in Ottawa. He is a licensed architect with over twenty-five years of experience. His day to day work necessarily involves consideration of the zoning by-law.

Although Mr. Mulahu did not bring a similar motion, I gave Mr. Hamer's evidence less weight whenever there was a conflict. He has no training as a planner, had not fully read the applicable legislation, and put forth sections of the Official Plan without considering their syntactical or policy context.

ANALYSIS - Powerful Official Plan policies supporting this project

Mr. Hamer relied on the sentence "infill development ...will provide adequate

privacy.... for residents of ...existing buildings” in the Toronto Official Plan¹ to advance his argument that the project is disproportionately large.

I don't believe that the height, massing and scale match that of the residences. The prevailing is residential; this is an apartment building; the floor space indexes are not as extensive as the proposed. . .”

In my opinion, this sentence is not applicable; this is not “infill” development. The Official Plan makes it clear that infill development means lots “passed over in the first wave of urbanization” , etc.²; not a rear addition to and existing low-rise apartment building.

Mr. Hamer also referred to sentence 3.d on page 4.4, relating to infill development in “Apartment Neighbourhoods”. “Infill development that may be permitted on a site containing an existing apartment building will. . . d) maintain adequate sunlight, privacy and areas of landscaped open space for both new and existing residents. . .” As the term implies, an “apartment neighbourhood” is a swath of land, not a single lot.³

¹ 9. Infill development on *properties that vary from the local pattern in terms of lot size, configuration and/or orientation* in established neighbourhoods will: a) have *heights, massing and scale appropriate for the site and compatible with that permitted by the zoning for adjacent and nearby residential properties*; b) provide adequate privacy, sunlight and sky views for residents of new and existing buildings by ensuring adequate distance and separation between building walls and using landscaping, planting and fencing to enhance privacy where needed; c) front onto existing or *newly created public streets* wherever possible, with no gates limiting public access; and d) locate and screen service areas and garbage storage to minimize the impact on existing and *new streets* and residences. (page 4.5) (my italics throughout)

² Scattered throughout many Neighbourhoods are properties that differ from the prevailing patterns of lot size, configuration and orientation. Typically, these lots are *sites of former non-residential uses such as an industry, institution, retail stores, a utility corridor, or are lots that were passed over in the first wave of urbanization*. In converting these sites to residential uses, there is a genuine opportunity to add to the quality of Neighbourhood life by filling in the “gaps” and extending streets and paths. Due to the site configuration and orientation, it is often not possible or desirable to provide the same site standards and pattern of development in these infill projects as in the surrounding Neighbourhood. Special infill criteria are provided for dealing with the integration of new development for these sites, and for intensification on existing apartment sites in Neighbourhoods. p 4.4

³ Apartment Neighbourhoods are made up of apartment *buildings* and parks, local institutions, cultural and recreational facilities, and *small-scale retail, service and office* uses that serve the needs of area residents.

Mr. Mulahu presented a more thoughtful analysis, and one I accept. The Toronto Official Plan contains many policies supportive of the type of housing proposed⁴. It recognizes Mr. Mulahu's evidence that there is a crying need for this type of housing:

Specific policies are needed when a particular kind of housing, whether it be *type*, tenure or level of *affordability*, is not sufficiently supplied by the market to meet demand or maintain *diversity* in the housing stock, page 3.21

A full range of housing, in terms of form, tenure and affordability, across the City and *within neighbourhoods*, will be provided and maintained to meet the current and future needs of residents. A full range of housing includes: ownership and rental housing, *affordable* and mid-range rental and ownership housing, *social housing*, *shared and/or congregate-living housing arrangements*, *supportive housing*, emergency and transitional housing for homeless people and *at-risk groups*, housing that meets the needs of people with *physical disabilities* and housing that makes more *efficient use of the existing housing stock*. Page 3.22

We know from Mr. Mulahu's evidence that this project's impetus is the need for wheelchair accessibility; the recognition that counselling cannot be effectively carried on in a laundry room and that lifestyle and life skills demonstrations are helpful in promoting independence and a full quality of life for certain individuals.

Finally, the Official Plan recognizes that certain types of housing must be given financial incentives and the City has recognized this project as eligible for waiver of permit fees and development charges:

Investment in new rental housing, particularly affordable rental housing, will be encouraged by a coordinated effort from all levels of government through implementation of a range of strategies, including effective taxation, regulatory, *administrative policies* and incentives. Page 3.23

⁴ The vision of the Plan is about creating an attractive and safe city that evokes pride, passion and a sense of belonging - a city where people of all ages and abilities can enjoy a good quality of life. A city with: • vibrant neighbourhoods that are part of *complete communities*; • *affordable housing* choices that meet the needs of everyone *throughout their life*; page 1-2

To be successful, our future must also be diverse, *inclusive* and equitable. Our future is one where: • housing choices are available for *all people* in their communities *at all stages of their lives* • well-being is measured by how well we provide for our children and the most *disadvantaged* among us; • the *elderly* can live comfortably and securely; page 1-3

Opposition to this investment puts scarce public funds at risk.

I find that Mr. Mulahu has met the *Planning Act* requirement of maintaining the intent and purpose of the Official Plan, and since the appropriate use of the land is for supportive housing, the variances are desirable for this use. I now turn to the issues of whether the variances are minor and maintain the intent and purpose of the zoning by-law.

ANALYSIS – These variances are already granted and are minor

In the background section, I stated that 58 Lewis already has certain legal rights. The 15-unit main building was created, either as of right, by zoning by-law amendment, minor variance, or otherwise, and is a given. Similarly, the property already enjoys three variances from 438-86: maximum building depth of 31.9 m, floor space index of 1.13 and rear yard setback of 4.17 m. I infer it should also have the equivalent variances from 569-2013 and these three are the most important components. A side by side comparison of the 2011 decision with the present application shows:

- The proposed rear yard setback is the same as already granted;
- The proposed floor space index is somewhat higher – 1.23 instead of 1.13 in one scenario;
- The maximum sought for building length has actually decreased, from 31.9 to 31.74 m.

I can take specialized knowledge notice that the floor space anomaly arises from the passage of the new harmonized by-law; not from any change in the building design. The explanation is that in the basement, of 58 Lewis, the laundry room/lounge will have a one and a half storey height. Under 438 (the old by-law) the extra height created a “void”, because that space could not be used, unless one was on a ladder. Under the new harmonized by-law, floor space includes voids, a simpler system to administer, and so this is not an “additional” variance, but one arising from a change in definition.

What about the remaining variances? I am of the opinion that they are patently minor; the roof eave variance arises simply because the addition will extend the same .33 m from the lot line as does the existing building, and roof eaves must project beyond the exterior wall. Or a variance is grand-parented due to the age of the building; for example, the addition will not provide bicycle or parking spaces. (Residents do have bicycles and can keep them in a shed.)

Mr. Hamer's analysis is that every zoning standard must be obeyed, willy nilly. This is incorrect; the *Planning Act* requires me to interpret purposefully, recognizing these standards are written for the general situation. For example, a front yard setback requirement presupposes a rectangular lot on a street; what happens if the lot is irregular or if the lot fronts on two, three, or more streets? The Neighbourhood designation comprises low rise apartments as well as single detached houses⁵; thus there must cases where the two abut and the zoning cannot be expected to deal with all combinations of building types. It is the Local Appeal Body's task to ascertain the *general purpose* and apply it to non-standard cases. Thus, the soft landscaping variance was needed because wheel chairs cannot easily traverse grassed areas. The distance between main walls is excessive, because of the necessity for wheelchair corridors. The floor space index of the existing building is 1.08 and would rise to only 1.13 were it not for the change in definition for "voids".

The original intent of these standards, whether aesthetic, equitable, architectural or environmental, now become subordinated to public interest goal of all residents leading full and productive lives. This is the overarching purpose of the zoning. Accordingly, I find the variances meet the remaining tests.

DECISION AND ORDER

I authorize the variances authorized by the Committee of Adjustment in its decision of May 10, 2017, on condition that the two north facing windows of the rear addition be frosted or translucent.

I wish to thank Messrs. Hamer, Brown and Mulahu for their civility throughout the hearing.

X



Ted Yao
Chair, Toronto Local Appeal Body
Signed by: Ted Yao

⁵ Neighbourhoods are considered physically stable areas made up of residential uses in lower scale buildings such as detached houses, semi-detached houses, duplexes, triplexes and townhouses, as well as interspersed walk-up apartments that are no higher than four storeys. Parks, low scale local institutions, home occupations, cultural and recreational facilities and small-scale retail, service and office uses are also provided for in Neighbourhoods. page 4-3

**Table 2. Variances required under Zoning By-law No. 569-2013
 and forming part of this decision**

		Required	Proposed
1.	roof eave projection	within .3 m of lot line	.17 m of lot line
2.	landscaped open space for apartment buildings	50%	42.7%
3.	soft landscaping	50% of total landscaping	19.4%
4.	1.5 m soft landscaping strip abutting another residential lot	must provide	not provided
5.	side yard setback for ancillary building in rear yard	1.2 m	.33 m
6.	maximum building depth	14 m	31.74 m
7.	maximum floor space index	1 x lot area	1.23 x lot area
8.	minimum rear yard setback	7.5 m	4.17 m
9.	minimum side yard setback	1.2 m	.33 m
10.	Distance between exterior walls (no openings to dwelling units)	2.0 m	0.54 m
11.	Distance between exterior walls (with openings to dwelling units)	5.5 m	4.4 m
12.	"One additional parking space is required for the two additional assisted housing dwelling units. The lawfully existing number of 0 parking spaces will be maintained with no additional parking", Zoning Notice, S. Cuming, Nov. 24, 2016		
13.	Bicycle parking spaces	3	0

Table 3. Variances required under Zoning By-law No. 438-86 and forming part of this decision				
	Corresponding Number used in Table 1		Required	Proposed
1.	6.	maximum building depth	14 m	31.74 m
2.	7.	maximum floor space index	1 x lot area	1.17 x lot area
3.	8.	minimum rear yard setback	7.5 m	4.17 m
4.	9.	minimum side yard setback	1.2 m	.33 m
5.		Distance between facing exterior walls	11 m	4.40 m
6.	10	Distance between exterior walls (no openings to dwelling units)	2 m	0.54 m
7.	11.	Distance between exterior walls (with openings to dwelling units)	1.2 m	.33 m
8.		Accessory shed setback from main building	1.5 m	1.23 m
9.	13.	Bicycle parking spaces	3 spaces	0 spaces