

# DECISION AND ORDER

**Decision Issue Date**      Monday, October 02, 2017

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

Appellant(s): Qing Lu Guan

Applicant: Nick Hatziantoniou

Property Address/Description: 70 Park St

Committee of Adjustment Case File Number: 17 120562 ESC 36 MV (A0053/17SC)

TLAB Case File Number: 17 170192 S45 36

**Hearing date:**      Tuesday, September 26, 2017

**DECISION DELIVERED BY Ian James Lord**

## INTRODUCTION

This appeal comes to the Toronto Local Appeal Body ('TLAB') from a decision of the Scarborough Panel of the City of Toronto ('City') Committee of Adjustment ('Committee') approving variances to the City's harmonized zoning bylaw ('Bylaw 569-2013'), currently under appeal, and the in-force Cliffside Community bylaw ('Bylaw 9364') in respect of a portion of the lands identified as Part 2 and located at 70 Park Street ('subject property'), now in the City.

The Committee had had before it applications to sever the lot identified as 70 Park Street into two parcels, Part 1 being the westerly and Part 2 being the easterly portion. In addition, the Committee dealt with variance applications for both Parts. The variances, identified by a City plans examiner, are for the purpose of permitting on each Part the construction of a single detached two storey dwelling of near identical, but mirror image, character.

The Committee granted both the severance, with conditions, as well as the requested variances applicable to both Parts. The severance conditions were not supplied. The Appellant, Qing Lu Guan, owner of the property to the immediate east of Part 2, appealed the variances granted by the Committee applicable only to Part 2. No appeals were made by any party in respect of the severance application or the variances granted for Part 1. As such, those approvals are final and binding. The severance approval was not conditional on the variances being granted applicable to Part 2. However, as a practical matter, until such time as the variance appeal on Part 2 is dealt with, the perfection of the severance and commencement of construction at 70 Park Street is in abeyance. No demolition permit has been granted for the existing residence and garage.

## **BACKGROUND**

Mr. Hoffman, counsel, appeared on the appeal for the owner and called one witness, Mr. Jonathan Benczkowski, a Registered Professional Planner, who was qualified without objection to give expert land use planning opinion evidence. Mr. Qing Lu Guan, the Appellant, appeared and spoke on behalf of his family. The City did not appear and there were no other witnesses.

At the outset of the proceeding, Mr. Hoffman raised a preliminary concern that, despite full compliance with TLAB Rules on disclosure on behalf of the owners, Petru and Meshell Alexa, no filings had been received from the Appellant following the Notice of Hearing, contrary to the TLAB Rules for disclosure. The concern was expressed that in the absence of a witness statement, without the disclosure of documents or any filings, that the Appellant should be restricted at minimum to the matters raised in the Notice of Appeal. In this case, as the Notice of Appeal itself was extensive, had obviously been carefully prepared and on the representation that it appropriately canvassed the matters put in issue by the Appellant, the matter was resolved by a Ruling that objection could be raised at the time of any evidence extending beyond the matters raised and listed in the appeal Notice.

The TLAB expects that its Rules are to be respected and applied conscientiously by professional and lay citizenry alike. This is in the mutual interests of advance disclosure and an open and accessible evaluation process; as well, it recognizes that in this transition period, with a new tribunal, some relief under the Rules may be appropriate, particularly in the absence of real prejudice.

The Parties were advised that this Member had had the benefit of a site visit and had read the posted materials but that evidence they wished to have considered needed to be specifically referenced and entered as exhibits to best ensure full consideration of the matters important to each.

## **MATTERS IN ISSUE**

The Applicant had achieved from the Committee severance approval for the lot and final variance approvals applicable to Part 1. Mr. Guan maintained that all the Part

2 variances were the subject matter under appeal and must be considered cumulatively and holistically. That said, I agree with the submission of Mr. Hoffman and the tacit admission by Mr. Guan that the particular variances being challenged related to the main wall height exceedance requested and the reduction in east side lot line setback, both as granted by the Committee applicable to Part 2, the subject property.

The full list of required variances sought are identified in Attachment 1, attached hereto and forming part of this decision. Those that relate to the primary concerns of the Appellant are identified as numbers 3, 5, and 9 on Attachment 1, applicable as listed to the two bylaws above identified.

Despite the apparent narrowing of issues, Mr. Guan was quite forceful in his conviction that all the variances considered together yielded and supported his deep concern as to adverse impact on the use and enjoyment of his property. As important, it is the obligation of the Applicant to demonstrate that the relief requested from the applicable zoning bylaws meets all of the relevant considerations specified by Ontario law.

## **JURISDICTION**

In considering an appeal on an application for minor variances, it is therefore incumbent on TLAB to address several matters as directed by statute, the *Planning Act*.

### **Provincial Policy – S. 3**

A decision of TLAB must be consistent with the 2014 Provincial Policy Statement ('PPS') and conform to the Growth Plan of the Greater Golden Horseshoe for the subject area ('Growth Plan').

### **Minor Variance – S. 45(1)**

In considering the applications for variances from the Zoning By-laws, the TLAB Panel must be satisfied that the applications 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.

A failure to meet any one of the four tests eliminates the variance from approval.

## **EVIDENCE**

Professional planning opinion evidence was supplied by Mr. Benczkowski. He had prepared a document book, filed as Exhibit 2, containing a thorough record of the

history of the application for variances, extracts of relevant documentation, an area study map, descriptive photographs and statistics, as well as portions of both applicable bylaws.

Mr. Benczkowski had prepared an area study map, Exhibit 3, identifying by colour coding characteristic descriptions of his identified neighbourhood anchored on lotting configuration, lot frontages and elements of built form. The neighbourhood description he provided was supplemented by municipal statistics as to lot frontages, lot areas, photographs that depicted building typologies and appearances and, as well, the location of transit stops, 'gateways', walking distances and other amenity features. This evidence was not challenged.

This member is satisfied that Mr. Benczkowski's attendances, air photograph, source material and area identification methodology presented a reasonable and satisfactory base from which he was able to draw relevant descriptions and opinions as to area character, stability, transition characteristics, prevailing character, building typology, lot characteristics and separation distances.

In reviewing each of the variances requested on Attachment 1, he noted the overlap as between the two bylaws, identifying seven distinct and different variances requested for Part 2 on the plans, Ex.4, being Ex.2, Tab 4 and derived from the old (Cliffside) and new (Toronto ) zoning regimes.

His area study yielded the description of a neighbourhood area characterized by one and two storey detached residences undergoing renovation through new builds and severances. In an extensive set of photo boards, recorded in Ex.7, being Ex 2,Tab 26, he provided a lengthy set of example properties that were at or below the lot frontage and lot area measurements of the variances proposed, (being variances 1, and 2 on Attachment 1). These observations included properties at: 100 Park Street, 8 A and B and #25 Natal Street, 57-65 Clarendon, 127-131 McIntosh, 24, 25 and 27 A and B Atlee, 37 Atlee, and 46 Sandown. These examples, with included photographs, were built and were said to reflect almost identical typologies, some with greater reduced front and side yards and lot area, including integral garages, as proposed for the subject lands.

It was Mr. Benczkowski's opinion that the proposed development, reflected in the variances sought, will replicate the look, feel and fit that is prevalent in active, new development in the vicinity of the subject property. This opinion included the subject variances of reduced lot frontage, lot area, reduced side yards, but also demonstrated integral garages and large front and rear yard amenity areas.

The analysis supported the planner's opinion that the Application and proposed variances in Attachment 1 are consistent with the policies of the Provincial Policy Statements (Ex. 9, Ex.2 Tab 13) and conformed to those of the Growth Plan (Ex.10, Ex.2, Tab14). The proposal represents a modest intensification and rejuvenation contribution, including to the range and mix of housing.

In addressing the four tests for each minor variance, the planner Benczkowski reviewed each, individually and collectively. While these opinions are summarized

here, it is noteworthy that there was no contrary planning opinion expressed from any source, either in evidence or in the filings.

Where the differences in opinion occurred, it was Mr. Guan's appreciation of impact and scale that had to be evaluated and considered in light of material facts, opinions and the sometimes hard realities of an urban setting.

The Official Plan (Ex. 11, Ex.2, Tab 15) is the guiding policy direction for investment in the redevelopment of the City's designated 'Neighbourhoods', as is applicable to the subject property. Council has expressed important parameters for Neighbourhoods. These project a tolerance for change within degrees of appropriateness and acceptability. Mr. Benczkowski reviewed these directions and policies and applied them to the Application: Neighbourhoods provide for housing; they are to be 'stable but not static' (s. 2.3.1); some physical change will occur (s. 2.3.1.1); change must respect the existing physical character and reinforce the physical and stability characteristics, with change being sensitive, gradual and a 'fit' (s.4.1). In his view, if these specified criteria 'to respect and reinforce' and as listed in policy s. 4.1.5 (a) to (h) are not offended, the policy direction of the Official Plan is met. In applying each that he found relevant, the planner in his evidence concluded the proposal to be but a further example of ongoing rejuvenation: a respect for the existing and new physical patterns, including consistent design, frontage, setbacks: side yard, (front and rear yards –unvaried), all in keeping with existing examples.

It was the planner's opinion that the proposal was intended to and does ensure a compatible built form without any undue impacts on the streetscape or adjacent properties, conforming to and meeting the intent and purpose of the Official Plan.

In examining each variance to the two zoning bylaws, Mr. Benczkowski also opined that their individual and collective intent and purpose is maintained. On frontage and lot area, his opinion was that the goal of both instruments is compatibility. He concluded the 'fit' was present, including side yard setbacks, increased density, main wall height and garage opening. He found none of these variances to be out of character with multiple neighbourhood examples or to create impact detracting from compatibility. None compromised the functionality of the subject property or its residential uses. For the issues of lot frontage, area, floor space index, floor area adjacent the main front wall and parking space width (Items 1,2,4,6,7,8 and 10 on Attachment 1), he stated the variances and their respective measurements would not be ascertainable to the eye, were nominal and not visible from that permitted as of right. He noted that there were large front and rear yards and no building length or depth variances sought.

On the contentious issue of a reduced side yard, to .76 m (Items 3 and 9 on Attachment 1), he noted that Bylaw 468-2013 set the 'new norm' standard at .9 m, down from the historical east side yard setback requirement of 2.4 m, in the Cliffside Community Bylaw. He stated the requested difference of .14 m (6 inches) was imperceptible in the context of the neighbourhood, including new builds. He was of the opinion that .76 m maintained the bylaw purpose of allowing passage to the rear yard of the subject property, on the lot. Further, that that access would be independent of and not reliant upon the (also) substandard 1.22 m side yard setback to a garage structure,

on the Appellant's lot, to the east. He noted, as well, that the same .76 m standard now applied to both side lot lines of Part 1, had not been appealed and was in full force and effect.

With respect to the main side wall height variance from 7 m to 7.74 m (Item 5 on Attachment 1), Mr. Benczkowski described it as having no consequential effect on building height, light or massing conditions. Indeed, he opined that the variance constituted an improvement over as-of-right conditions. He described the purpose of the maximum wall height limit of 7 m to be a device to discourage three storey dwellings with flat rooves overpowering adjacent residences in height and massing. While the maximum height permitted under Bylaw 469-2013 remains at 9 m (and no variance is sought to that), the main side wall height limit served to allow sloped roof structures, but not permit a third storey. In the proposal, increasing the main wall height to 7.74 m permits a full second storey and a lesser sloped roof consistent with area character, but still under the maximum building height allowance of the bylaw. It was his opinion that by maintaining a consistent design and not using the maximum height permission, the Application keeps the overall height down from what it might be, with consequential benefit for light, air, reduced massing and built form appearance.

The planner indicated that no windows or overlook condition would exist along the east building wall of the subject property and, as such, there was nothing unusual, no privacy loss or anything of an impact nature that rendered the requested variances as unsuitable or inappropriate.

The planning evidence was summarized to the effect that the variances facilitated an overall built form that is compatible and without adverse impact, replicating the reverse image of the approvals already in hand on Part 1 of 70 Park Street.

It was the planner's opinion that the variances are minor, both numerically and in meeting the more important test of no adverse, undue or unacceptable impact on the surrounding neighbourhood or property. In addressing the test of whether the variances were desirable and appropriate, Mr. Benczkowski stated the policy intent to encourage renewal, without undue impact would be accomplished.

He concluded that the variances sought are desirable in that they facilitated a high quality housing investment that demonstrably fits well into a serviced area, whether the variances or considered individually or cumulatively. As such, he supported all the variances that, when analyzed as a whole, furthered and constituted good planning.

The Appellant, Mr. Qing Lu Guan, is the owner of 76 Park Street, the property immediately east of the subject property. The Appellant's property is improved with a well maintained bungalow having an integral garage that is located along the dwellings west side, a distance of 1.22 m from the common lot line. The main house is set back easterly from the attached garage and forms open space in the shape of a upside down and reverse 'L'. Those spaces consist, on his evidence, of amenity areas: two gardens, trees and a pleasant rear yard.

Mr. Guan filed Form 1, the Notice of Appeal, containing a detailed list of the objections and the reasons therefore, in respect of the list of 10 variances, identified in

Attachment 1. These are repeated in the posted Appeal Submission of the Appellant. While nothing further was received from the Appellant, the care and detail evidenced in the Notice of Appeal can have left no doubt as to the position of the Appellant and the reasons therefore. In Form 1 and throughout his evidence, Mr. Guan maintained that: "When combining 10 variances...altogether, the integrated negative effects on my property will be huge."

As confirmed by Mr. Guan, and perhaps to the credit and benefit of both parties, the appeal herein was confined to the subject property. The Appellant, as a matter of prudence, prescience or judgment declined to engage in an appeal of either the lot severance itself or the variances associated with Part 1, with which he maintained he had no objection. This permitted these matters to be finalized and a final and binding decision issued by the Committee, without connection to the matters placed in issue on Part 2, the subject property.

The only delay to the conduct of the Hearing was the request of the owners representative to accommodate a scheduling conflict. A written Motion to that effect was granted on August 8, 2017, without objection.

The Appellant began his evidence by identifying his principle concerns lay in the arenas of the adjacent height of building and the reduced east side yard setback, as proposed for the subject property. From these he described his perceptions of the origin, nature and extent of impact. These aspects included: anticipated storm water management problems arising from the proximity and 'too high' scale of the east wall; the overbearing height having the effect of sun blockage; and consequent degradation of garden plantings and amenity relaxation spaces in the rear yard of 76 Park Street. He attributed these to the proposed main wall height and its proximity, including the potential for the placement of an air conditioner unit along the common lot boundary.

While less specific with the other individual variances sought, Mr. Guan speculated the new dwelling's size, including four bedrooms shown on the Ex.4 plans, would generate additional parking demands for visitors that would involve on-street parking and, possibly, associated safety and proximity issues of parked cars on the street adjacent his property.

Mr. Guan in questioning did acknowledge several factors relevant to assessing his concerns. These included that he had no privacy or overlook concerns given the plans representations as above described and that as-of-right permission existed for a higher total building height than that proposed. He acknowledged no number of parking spaces, building length or depth variances were in issue. In submissions, however, he asserted that there is no reason that the proposed house on the subject property need be the exact mirror image of that approved for Part 1.

In summary, the Appellant constrained his opposition in a prudent and responsible manner to his true concerns on the two principle matters listed, above. He maintained opposition on those aspects of height and proximity as those that could adversely affect his enjoyment and that of his family of his own property.

## ANALYSIS, FINDINGS, REASONS

This Member agrees with Mr. Guan that it is the 'whole picture' to which regard must be had in the determination of the appropriateness and application of all the relevant tests for variance approvals. In that regard, it was the evidence of Mr. Benczkowski that applied a relevant, cogent and largely unchallenged support for the relief requested. As detailed in the evidence, some of which is referenced above, strong and uncontradicted support was provided for the majority of the variances applied for in Attachment 1. Namely, as continuing neighbourhood reinvestment in a manner that replicates or is less than approvals sought and approved on a significant number of nearby properties .

This Member accepts the evidence of the planner Benczkowski that the proposal reinforces the character of the area and is in keeping not only with approvals previously granted but is likely to result in a contribution that is compatible and fits within the established character of this solid, respectable neighbourhood in a highly desirable location, adjacent Sandown Park.

No real challenge was advanced to any of the variances in Attachment 1, save and except for those two identified as the east side yard setback and the minimum wall height relief requested, Items 3, 5 and 9, applicable to the respective bylaws.

In respect of all the other itemized variances in Attachment 1, I accept, agree and adopt the opinion advice and reasons therefore, above expressed, by the planner Benczkowski. Not only was that evidence not seriously challenged, but it provided a thorough and accurate picture of the community, an appropriate application and interpretation of relevant policy considerations and a satisfactory professional assessment of the relevant tests, individually and cumulatively.

That said, the issues of main wall height and the east side yard setback require closer consideration given the well expressed concerns of the Appellant.

I accept Mr. Hoffman's submission that the issue of storm water management, grades and the potential for the pooling or escape of waters off the subject site into the Appellants property is a matter for the City Buildings and Engineering Services personnel who review grading plans in the building permit application process. This is their mandate; there is no relief requested in the Applications and TLAB has limited resources to address an issue which is prospective, speculative and beyond its jurisdiction. I decline to engage in that subject on the evidence before me.

I find also that the concern expressed as to the requested increase in main wall height is speculative, at best. No sun/shadow analysis was conducted; indeed, none would be expected for low density, two storey developments where height limits overall are not being exceeded. I accept Mr. Benczkowski's explanation of the purpose for the bylaw performance standard of main wall height – namely, the avoidance of as-of-right overbearing, three storey flat roof residential buildings of a mass and scale jarring to the surrounding neighbourhood. Not only is that not the proposal, but the plans proffered have the roof structure itself, even with a modestly higher main wall height, that is at or below the height permission of the bylaw, without any exceedance requested. It is often



said that in urban areas, an absolute right to privacy, sunlight, air circulation and appropriate massing of buildings are accepted incursions on the perception of one's use and enjoyment of private spaces. In this case, I agree with Mr. Benczkowski that the permission sought does not result to anything near the degree expressed in the often touted terminology of undue adverse impact.

In some circumstances the proximity of adjacent buildings can be problematic with the reduction in side yard setbacks. Here, the reduction sought is to .76m from that proposed in Bylaw 469-2013 (at .9m) and that set in Bylaw 9364 of 2.4 m. On the evidence, the reduced standard would permit passage to the rear yard, it replicates the approved variances for Part 1 and is consistent with new construction on Committee approved severances and variances granted in the community. This evidence was not refuted. The setback standard is to a wall without openings and is most closely opposite the Appellant's garage, which is not habitable space. In my view, there is neither a conflict with area character nor the issue of precedent present in this variance, whether considered individually or cumulatively.

I agree with Mr. Guan that with a reduced side yard setback there is no entitlement to trespass onto his property; it is not communal property. I have accepted the evidence that there is no basis to expect that this need occur. I also agree with Mr. Guan that the proximity of construction adjacent the common lot line should not also generate the placement of facilities that might unduly inhibit the enjoyment of his property. A condition will be imposed prohibiting air conditioning equipment adjacent the common boundary on the subject property.

I find that all the variances proposed in Attachment 1, whether disputed generally or specifically, have met and comply with all applicable policy direction, meet the intent and purpose of the Official Plan and the zoning bylaw, are minor and desirable. Where not specifically expressed herein, I adopt the evidence of Mr. Benczkowski in that regard.

## **DECISION AND ORDER**

The appeal is allowed in part, subject to the following terms and conditions:

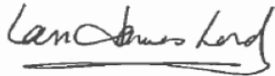
1. The variances as set in Attachment 1 are allowed, the decision of the Committee is confirmed;
2. The variances are subject to the following conditions:
  - a. Fulfillment of the Urban Forestry Conditions, if any, as set out in a letter dated March 30, 2017 and a Memorandum dated May 11, 2017 from the Tree Protection and Plan Review section of the City's Parks, Forestry and Recreation, Urban Forestry division, all as filed with the Committee and included in Ex.2, Tab 6;
  - b. The proposed dwelling shall be constructed substantially in accordance with the 'architectural plans', site plans and elevations dated November 16, 2016 filed and identified as Ex. 4, being Ex.2, Tab 4, applicable to Part 2 (72 Park Street);

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- c. There shall be no exterior heating, ventilation or air conditioning equipment mounted and located within 3.5 m of the east lot line of Part 2 (72 Park Street).
3. In all other respects, the appeal is dismissed.

Attachment 1 forms part of this decision.

X



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Ian James Lord  
Chair, Toronto Local Appeal Body  
Signed by: Ian Lord

Attachment 1

**REQUESTED VARIANCE(S) TO THE ZONING BY-LAW:**

**By-law No. 569-2013**

1. To permit the proposed 7.62 metres lot frontage, whereas the Zoning By-law requires a minimum 9 metres lot frontage.
2. To permit the proposed 323.5 square metres lot area, whereas the Zoning By-law requires a minimum 325 square metres lot area.
3. To permit the proposed 0.76 metres east and west building setback from the side lot line, whereas the Zoning By-law requires a minimum 0.9 metres building setback from a side lot line.
4. To permit the proposed 200 square metres floor area or 0.62 times the lot area, whereas the Zoning By-law permits maximum 194 square metres floor area or 0.6 times the lot area.
5. To permit the proposed 7.74 metres main wall height, whereas the Zoning By-law permits a maximum 7 metres main wall height.
6. To permit the proposed 9.3 square metres of the first floor to be within 4 metres from the front main wall, whereas the Zoning By-law requires a minimum 10 square metres to be within 4 metres from the front main wall.
7. To permit the proposed 3.1 metres wide parking space, whereas the Zoning By-law requires a minimum 3.2 metres wide parking space.

**By-law No. 9364**

8. To permit the proposed 3.1 metres wide parking space, whereas the Zoning By-law requires a minimum 3.3 metres wide parking space.
9. To permit the proposed 0.76 metres east and west building setback from the side lot line, whereas the Zoning By-law requires a minimum 2.4 metres building setback from a side lot line.
10. To permit the proposed 200 square metres floor area or 0.62 times the lot area, whereas the Zoning By-law permits maximum 194 square metres floor area or 0.6 times the lot area.