

DECISION AND ORDER

Decision Issue Date Wednesday, October 18, 2017

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

Appellant(s): Zeinab Roosta and Najim Jamali

Applicant: Elmira Zarrabi

Counsel or Agent: Elmira Zarrabi

Property Address/Description: 93 Kings Park Blvd

Committee of Adjustment Case File Number: 17 112676 STE 29 MV (A0120/17TEY)

TLAB Case File Number: 17 182687 S45 29 TLAB

Hearing date: **Monday, September 18, 2017**

DECISION DELIVERED BY S. Gopikrishna

Appearances: Ms. Elmira Zarrabi for the Appellant

**Mr. Suresh Tumkur and Ms. Helen Julius represented themselves
as Participants**

INTRODUCTION AND BACKGROUND

1. Zeinab Roosta and Najim Jamali are the owners of 93 Kings Park Blvd, which is an 83 square metres one storey detached dwelling with a detached shed on the property located in Ward 29.

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2. Najim Jamali and Zeinab Roosta applied to the Committee of Adjustment (henceforth COA) to alter the existing one storey detached dwelling by constructing a second storey addition, a rear deck and a new front porch.

3. The COA heard the application on 31 May 2017 and refused the application.

4. The matter was then appealed to the TLAB. However, the Appellant canvassed the neighbourhood, researched previous approvals and pursued a proposal suggested as modest in comparison to what had been submitted to the COA. The Appellants were represented at the TLAB hearing held on September 18, 2017 by Ms. Elmira Zarrabi who described herself as the “designer” of the proposal.

MATTERS IN ISSUE

5. The requested variances are:

CITY WIDE ZONING BY-LAW 569-2013

1. The permitted maximum lot coverage is 35% of the lot area or 94.78 square metres. The proposed lot coverage is 37% of the lot area or 99.97 square metres.

2. The permitted height of all exterior side main walls facing a side lot line is 7 metres. The proposed height of the side exterior main walls facing a side lot line is 7.8 metres.

EAST YORK ZONING BY-LAW 6752

3. The minimum required front yard setback is 6.0 metres. The proposed front yard setback is 4.07 metres.

4. The minimum required east side yard setback is 0.6 metres. The proposed east side yard setback is 0.43 metres.

5. The permitted maximum lot coverage is 35 % of the lot area: 94.78 square metres. The proposed lot coverage is 38.4% or 104.17 square metres.

EVIDENCE

6. At the beginning of the hearing, I discussed the privileges of Parties and Participants and pointed out that Participants couldn't ask questions of Parties. Ms. Julius asked how issues could be resolved if she couldn't ask questions of the Appellant. Ms. Zarrabi volunteered to answer questions from the participants. I thanked Ms. Zarrabi for her volunteering to answer questions.

7. Ms. Zarrabi began her presentation with a description focusing exclusively on Kings Park Blvd and developments, completed and in progress. Kings Park Blvd has a number of one storey buildings on the south side. However, there has been considerable change in the neighbourhood in the form of many houses on the north side of the

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street being developed into 2 storey detached dwellings. Major renovations and second storey additions with sloped or flat roofs are common in the area.

8. Coming specifically to the neighbouring houses, it was stated that the building on the west side of the subject property, 91 Kings Park Blvd was constructed 4 years ago. The COA permitted minor variances resulted in the approval of a front yard setback of 0.42 metres and coverage of 39.5%. Since the City wide bylaw wasn't in effect at that point in time, there was no request for a height variance. 91 King's Park Boulevard had solar panels over the roof.

9. The building on the east side of property at 95 Kings Park Blvd is a one storey dwelling with a detached shed and Gross Floor Area of 86 square metres; the house extends 0.74 metres into the rear yard compared to No 93.

10. Coming to the subject property, it was noted that the foot print and lot coverage of the proposed were not being changed from the currently existing house. The subject property is in a "Neighbourhood" according to the Official Plan designation. Ms. Zarrabi alluded to the Provincial Plan's recommendation on change and development-

"While communities experience constant social and demographic change, the general physical character of Toronto's residential neighbourhoods endures. Physical changes to our established neighbourhoods must be sensitive, gradual and generally affirm the existing physical character", which manifested itself in the development of many 2 storied buildings, including constructions in process at 96 and at 94 as well as a 2 storey building with a flat roof at 91Kings Park Blvd.

11. Ms. Zarrabi then stated the property was in an area zoned RS under the City wide by-law and is zoned R2A under East York City by-law. In response to a question of what RS and R2A stood for and what the practical implications were, Ms. Zarrabi responded that she would have to consult the Zoning By-Law to provide the details. She said that she been advised not to "bring the by-laws" because it was available online. She then referred me to the City's website to find out more about what these zoning classifications meant.

12 Ms. Zarabi then discussed the original proposal as submitted to the COA. I requested her to concentrate on the variances requested in the revised proposal before the TLAB.

13. Ms. Zarrabi then reviewed the plans of the proposed house starting off with the site plan and the elevations before discussing the variances (which are listed 1-5 in Paragraph 5 above). She stated that variances (1) and (5) are related to the coverage. She said that the proposed front porch would be smaller than the existing porch; however a technicality about including the front porch in area calculations in the East York by-law resulted in a variance request

14. Ms. Zarrabi then referred to the Notice of Decision from the COA dated August 8, 2012 for the neighbouring property at 91 Kings Park Blvd. She stated that variances requested in the Appellant's revised proposal (or "Proposal 2" in her words) were smaller than to what had been approved next door. As an example, the neighbor had been

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approved at 39% while what was requested on the subject property was 37% under the City Wide zoning by-law and 38.4% under the East York by-law.

15. Coming to the 2nd variance for the height of the side exterior main walls, the side main exterior main wall had been reduced to 7.8 metres in the revised proposal to the TLAB, from the 8.45 metres to the COA was highlighted. Switching to a flat roof with a slight slope to facilitate the drainage of water from the earlier proposal of 8.45 metres, she suggested, addressed concerns brought up at the COA hearing concerning height being excessive

16. Ms. Zarrabi explained that because of the overall reduction in height and changes to the roof, they had chosen the option of raising the basement so that it can have a full ceiling of 9 feet. This methodology resulted in the basement effectively becoming the first floor for GFA calculation purposes. The first floor to be built is effectively considered the second floor and front and rear platforms considered 2nd storey platforms. While the overall height of 7.8 metres does not require a variance under East York by-law, the City Wide by-law measures the height of the exterior main wall from grade triggering the variance request for 7.8 metres –It was pointed out that the proposed building, if approved at 7.8 metres, would still be 5 cm (0.05 metres) shorter than the neighbouring building at 91 Kings Park Blvd based on the drawings provided by the owner Mr. Suresh Tumkur, who was present at the hearing.

17. Addressing Variance 3 pertaining to the front yard setback under the East York by-law, it was pointed out that the front wall of the house itself complied with the standard setback. The request for a setback of 4.07 metres over the standard 6 metres was because of the front bay window projection at the front. The variance is only requested under the East York by law. By way of comparison, it was pointed out that 91 Kings Park, had been approved for 4.22 metres front yard setback according to the COA decision.

18. The fourth variance request was for the east yard setback of 0.43 metres versus a permitted set back of 0.6 metres under the East York by-law. This variance recognized an existing condition because the new building will use the existing walls. There is no variance required however under the City wide by-law

19. Ms. Zarrabi then drew my attention to a table which listed the existing, and permitted parameters pertaining to the variances followed by the proposals before the COA and the revised proposal for the TLAB. This table shows the changes that were made from the first proposal to the second proposal. It was again reiterated that the dimensions of variances requested at the property were smaller in magnitude than what the COA had already approved at the neighbouring property. The revised plan reflected input provided to her at the COA hearing as well as a careful study of what had been granted already in the vicinity of the property. In Ms. Zarrabi's opinion, the development was desirable since the Official Plan was maintained. Ms. Zarrabi went on to state that the proposal would have no significant impact on the neighbourhood and that the variances were minor. She ended her presentation by requesting approval of all variances and volunteered to answer questions.

20. Mr. Tumkur (the neighbor residing at 91 Kings Park Blvd) then asked questions of Ms. Zarrabi - if there was cladding on the west wall and the extent of the

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protrusion onto the mutual driveway. Ms. Zarrabi stated that the cladding would only be on the first floor since that was the new build. Since there are no contemplated changes to the placement of outer walls, there will be no protrusion onto the mutual drive way Mr. Tumkur then asked about the cladding on the east wall. In response, Ms. Zarrabi said that there would be no protrusion again since the wall would not change. Mr. Tumkur stated that he had no further questions for Ms. Zarrabi

21. The next witness to speak was Ms. Helen Julius who lives at 95 Kings Park Blvd. Ms. Julius started off by asking about the scupper drain and specifically which side it would drain from. Ms. Zarrabi stated that this would be dealt with as part of the approvals process from the building department which could be expected to provide an opinion at that point in time. However, the grading plan seems to indicate that the drainage will flow in one direction, probably towards 91 Kings Blvd. However this is not confirmed.

22. I requested Ms. Julius to present her perspective about the contemplated project before asking questions of Ms. Zarrabi. Ms. Julius started by stating that she was opposed to the two floor house. She then said that the space between the two houses was so narrow that there would be just enough space to put up a ladder in the case of a fire. Ms. Julius said that she had looked at 2 storied buildings on neighbouring streets such as Floyd and O'Connor where she noticed that the two storied buildings had driveways which permitted more space between homes and therefore allowed for the porches to be placed in a different direction. Therefore the existing porch should be left as is.

23. Ms. Julius also added that she was opposed to the new porch because it encroaches on her privacy because it would enable people to look into her bay window

24. She then went on to state that the proposed 7.8 metres height was a "problem". Ms. Julius was concerned that she would lose sunlight and privacy in her house as a result if the height of 7.8 metres were approved. She said that the loss of sunlight would have a significant negative impact on the health of herself and her husband, both of whom were more than 75 years old with health issues. She stressed that she had lived in her present house since 1953. She said that she was terrified of fires and had concerns about safety if buildings were so close. She is therefore opposed to the two storey building.

25. Ms. Julius continued by saying that she was opposed to all variances and that she didn't like the idea of anything being changed at 93 King's Park Blvd. She then stated that a Zoning Examiner by the name of Greg Whitfield had advised her that he was "not satisfied" with the plans. When asked if this was before or after the COA hearing, Ms. Julius stated that the statement had been made after the refusal of the original application by the COA.

26. She added that she didn't see any change between the plans submitted to the COA and what had been submitted to the TLAB. The only change is the height was lowered to 7.8 metre. The new house encroaches onto the side yard and that the 0.43 metre sideyard setback would create a problem because it could interfere with the air conditioner placed in her window.

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27. Ms. Julius then referred to a fully developed tree in front of the house and how its roots had grown into her house with a negative impact on her drains. She said that the porch should be maintained in order not to disturb the tree. She ended by reiterating her opposition to all proposed changes and said that she wanted “no change” next door.

28. In her rebuttal, Ms. Zarrabi referred to pictures shown earlier and stated that all houses on the south side of King’s Park Blvd have the same situation with driveway on one side and the separation between houses is similar – they are all close to 0.45 metres. The side yard set-back variance being requested is an existing situation.

29. With respect to the drainage issue, Ms. Zarrabi added that they had chosen a flat roof at 93 Kings Park Blvd over a sloping roof which would have required eaves for the drainage resulting in a projection onto the neighbouring properties. A flat roof would handle drainage without projections onto adjacent properties.

30. She stressed that the walls will have to be made fire proof if the distance between the buildings is less than 1.2 metres as per the Building Code. Failure to ensure this will mean that the building permit can’t be obtained.

31. Referring to the comments of Greg Whitfield, Ms. Zarrabi said that the comments from Ms. Julius about his not being satisfied referred to the need for variances and that these were the very variances that had been submitted to the TLAB.

32. Regarding the front porch, there were no variances for the front porch and rear deck. The planned porch for the new house was smaller and would be on the east side of the house consistent with the street scape of all houses on the south side of the street. Ms. Zarrabi pointed out that 91 Kings Park Blvd. was the exception to the rule with a porch on the west side.

33. Commenting on the possible loss of privacy, Ms. Zarrabi said that neither the privacy nor sunlight at neighbouring houses would be impacted because of the alignment of the houses- 95 Kings Park Blvd projects 0.74 metres into the backyard beyond 93 Kings Park Blvd. Since this condition would not change with the new construction, there would be no loss either to privacy or sunlight.

34. Lastly, The tree at the front of the house will be regulated by Urban Forestry because it is part of the permit process. The construction will not impact the tree because there is no demolition. Ms. Zarrabi ended by stating that the proposed variances were minor and that their individual and collective impact was minor.

ANALYSIS, FINDINGS, REASONS

35. While there is no variance related specifically to the porch, it is important to note that the actual placement of the porch will change from the west side of the house as it exists now to the east side of the house in the proposed build. It is important to point this out since this point was not explicitly stated by either party in the form of oral evidence. It was only alluded to in indirect terms when the possible loss of privacy at 95 Kings Park

Blvd and the realignment of the porch to match the streetscape on Kingsway Park Blvd were referenced.

36. The evidence and rationale provided by the Appellant acknowledges the Official Plan and Zoning by-laws but rely heavily on the granting of variances at 91 Kings Park Blvd by the COA in its decision (File No A0413/12TEY) dated August 8, 2012 as the rationale for approval. The logic of repeated references to what was approved at the neighbouring property and comparing them to the smaller numerical variances at the subject property may be summed by the expression “***What is good for the goose is good for the gander***”.

37. In terms of the weight placed on the evidence brought forward by the appellant and participants when in disagreement, it must be pointed out that Mr. Tumkur had questions of clarification. He had no explicit opposition in relation to the revised proposal. The Appellant’s references to other developments on the street and reliance on actual approvals of variances next door is consistent with the theme of gradual change, as elucidated by the Provincial Policy. The opposition however seemed to found their perspective of the notion of “No change”, an expression used repeatedly in their oral evidence. This perspective is contrary to the Official Plan which recognizes “gradual change”.

Given how the Appellant and Opposition testimony differ with Provincial Policy, greater weight is placed on the Appellant’s evidence.

38. 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.

The Appellant’s approach to these tests rests primarily on comparing the magnitude of the proposed build to the approved build next door. Given that the evidence was provided without the benefit of counsel and expert witnesses, I accept the approach and the evidence notwithstanding the unusual approach of comparison to the approval next door. The proposed variances are therefore held to be minor.

39. I accept the Appellant’s conclusion specific to the proposal being consistent with the Official Plan and applicable policy. The development is desirable given that it is consistent with other developments on the street and causes no significant adverse impact on the neighbourhood. While the zoning issue was not canvassed by the Appellant or the Opposition, the variances there from were .I conclude that the replacement of one residence by another residence, which the requested variances facilitate, in a neighbourhood broadly classified as Residential satisfies the intention and purpose of both Zoning by-laws. The variances discussed under 569-2013 are variances from what is allowed under the RS (Residential Semi-Detached) zone classification for a detached

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dwelling while the variances discussed under East York Zoning By-law are variances from what is allowed under classification R2A for a detached dwelling.

40. The given variances satisfy each component individually and collectively of the 4 part test of Section 45 of the Planning Act. I see no evidence of undue adverse impact.

DECISION AND ORDER

41. The appeal to set aside the decision of the COA is allowed.

42. All variances listed in Paragraph 5 hereof as 'proposed' are permitted and approved subject to the Forestry condition listed in Paragraph 43.

43. Given the nature of issues canvassed and the existence of a fully grown tree in the front yard, it is prudent to impose the following condition:

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

X 

S. Gopikrishna
Chair, Toronto Local Appeal Body