

DECISION AND ORDER

Decision Issue Date Friday, September 29, 2017

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

Appellant(s): Leah Eichler

Applicant: Peter Swinton

Counsel or Agent: Isaiah Banach

Property Address/Description: 750 Markham St

Committee of Adjustment Case File Number: 16 253812 STE 20 MV (A1132/16TEY)

TLAB Case File Number: 17 181665 S45 20 TLAB

Hearing date: Thursday, September 14, 2017

DECISION DELIVERED BY Ted Yao

INTRODUCTION

This is an application to legalize a former laneway garage (the "rear building") used as residential accommodation. The rear building is at the back of 750 Markham St., a two and a half storey detached house. It needs 15 variances. The lot size is 5.52 m by 38.23 m (24' 8 "by 125' 5"), typical for the area. This is at the end of a row of similar houses; on the corner is 38-42 Barton Ave., which is immediately adjacent on the south.

There is no severance sought. There is no new construction. There is no variance sought for parking and indeed the rear dwelling unit has its own parking space, accessible through the parking lot at 38-42 Barton Ave. It has no access from the laneway. Whether this application is granted, the rear building will remain one storey.

The sole objective is to obtain variances from zoning provisions that do not permit a “house behind a house”.

An aerial view is shown below and forms part of this decision. The rear building that is the subject of the sought-for variances has a downward arrow pointing to a dark square; one apartment building is an “H” shape on its side, the other is the longer black rectangle outlined in white, with the greater length along Markham St. and identified as 38 Barton Avenue.



Figure 1 Aerial photo of site and area

EVIDENCE

This hearing arose from the owner Ms. Leah Eichler’s appeal from a refusal to grant variances by the Committee of Adjustment. At the TLAB hearing, no one appeared in opposition. The City of Toronto gave written comments to the Committee but did not appear at this hearing. Those written comments are addressed below. The next door neighbour (he owns a property north of Ms. Eichler) filed an intention to appear, but did not come to the hearing. The three witness who did appear were: Mr. Swinton, Ms. Eichler’s land use planner, whom I qualified to give opinion evidence, and who therefore provided the only expert planning evidence in the hearing; Ms. Eichler; and Ms. Nicolich, who lives three doors away. Ms. Nicolich was supportive of the application, terming it “European”. Even without cross-examination, Mr. Swinton’s evidence took almost one day to complete.

MATTERS IN ISSUE

Since this is a new hearing¹, each of the requested variances must meet the four tests in Section 45(1) of the *Planning Act*: whether the variance is minor, maintains the intent and purpose of the Official Plan and zoning by-law and is desirable for the appropriate development of the land.

However, not all variances are equal; only a few address the central issue of a “house behind a house.”

Mr. Swinton, the planner for the owner, began his zoning analysis by dividing the variances into three kinds and provided extensive background information:

- Those that were technical only, such as the fact that the existing rear building abuts a lane that is slightly undersize;
- Those that resulted from the characterization of the rear building as a “detached house” under City of Toronto ‘harmonized’ zoning bylaw 569-2013 or “residential building” under the in-force zoning bylaw 438-86; and
- Those that go to the essential question of whether to permit a “house behind a house”

Technical variances such as lane width (Variances 1 and 9 in Table 1, below) do not touch the central issue of “a house behind a house”; there is no logical link between having a house in the rear yard and the width of the lane. It is merely a recognition of the fact that any zoning examination may uncover an unexpected deficiency in the zoning that needs to be addressed to obtain a building permit.

The second kind of variance may also be “technical” and arises from the methodology of calculating various zoning parameters. The approach taken by the plan examiner for the City of Toronto was to consider the rear building as a “detached house” that was deficient in several ways. The most important “deficiency” is of course that there are two detached houses on the same lot. However, other deficiencies may be misleading. For example, under the formula for the depth of building of a “detached house” (Variance 4), you measure from the extremities of both buildings to produce a length of building of 37.1 m, which exceeds the permitted depth of 17 m. There is no structure connecting the rear building and the front building. It consists of vacant space for the rear yard and two parking spaces, being some 17 m.

¹ The TLAB must deal with the variances as formulated before it on the appeal and can make any decision that the Committee of Adjustment could have made.

How the rear building is characterized is the starting point for a plan examiner, and is a matter of judgement. An argument could be made that the rear building is a not a “detached house” that is deficient and needs certain variances, but a deficient “ancillary non-residential building containing a bathroom” that needs different variances. Subsection 10.5.60.1 (3) permits food preparation (i.e., a kitchen) or a bathroom in an ancillary building, but not both. If the examiner had analyzed the building this way, a different set of variances, and possibly fewer, would be needed. Ms. Eichler would have to seek permission to add food preparation facilities and permit living accommodation in an ancillary building. The latter would also capture the “house behind a house” issue.

The City’s zoning examination is a commitment that if the variances as determined by the examiner are authorized by either the Committee of Adjustment or the TLAB, then the project can go on to be examined under the Building Code. So, the prohibition of “a house behind a house” may be expressed in many ways. In the current City-wide harmonized By-law, this wording is:

10.5.60.1 General

(2) Living Accommodation in Ancillary Buildings

An ancillary building in the Residential Zone category may not be used for living accommodation.

10.10.60. (2) Number of Residential Buildings on a Lot

A maximum of one residential building is permitted on a lot in the R zone.
(By-law 569-2013)

And in the former By-law,

4(11)(b) No person shall erect or use a residential building in the rear of another building.
(By-law 438-86)

Both provisions are aimed at preventing poor technical servicing and poor land use planning.

ANALYSIS, FINDINGS, REASONS

Mr. Swinton stated that laneway housing is a form of ground-related intensification that could meet demand for “the missing middle”, that is, a type of housing falling between single detached or high-rise condo, both of which Toronto has in abundance. He reviewed relevant City and Provincial policy on laneway suites as set out further, below.

In 2006, Councillor Adam Giambone requested a staff report on whether the construction of housing in laneways “could be made more practical”.

The construction of laneway housing in Toronto raises a number of issues that are broader and more fundamental than the practicality of providing City services such as snow removal, garbage collection and water/sewer connections. The construction of a laneway dwelling almost invariably involves the severance of the rear portion of a lot and relief from the zoning by-law standards for lot size, setbacks, landscaped open space and where there is no severance, for construction of a ‘house behind a house’ on the lot.

Staff went on to cite problems of overlook and privacy (which the report said could be resolved by sensitive design) and the more general problems related to increased demand for services such as snow clearing on laneways. The final recommendation, approved by Council in July 2006, was laneway housing not be permitted, save in “special circumstances where there are no adverse privacy, overlook, shadowing and engineering servicing implications”². It appears that this eleven-year-old policy was followed in Ms. Eichler’s application.

Laneway housing is but one type of housing intensification. In 2011 the Province amended the *Planning Act* to encourage municipalities to authorize one additional unit in single detached houses and similar building forms³. This amendment (now contained in Section 16 of the *Planning Act*) encourages municipalities to reexamine “house behind a house” prohibitions. It encourages official plan policies authorizing one “granny suite” or one basement apartment both, in certain low density house forms. Those policies would not be applicable here as the main building already contains a basement apartment.

² “It is recommended that:

(1) the City not permit construction of housing on existing laneways, except in special circumstances where there are no adverse privacy, overlook, shadowing and engineering servicing implications;

(2) in determining when these special circumstances may apply, City Planning staff will continue to provide their best advice to City Council about the appropriateness of laneway housing, on a site specific basis, on the merits of the specific proposal;

(3) Technical Services staff will continue to work with City Planning in instances where the proposal may have merit; . . .

³ 16 (3) Without limiting what an official plan is required to or may contain under subsection (1) or (2), an official plan shall contain policies that authorize the use of a second residential unit by authorizing (a) the use of two residential units in a detached house, semi-detached house or rowhouse if no building or structure ancillary to the detached house, semi-detached house or rowhouse contains a residential unit; and (b) the use of a residential unit in a building or structure ancillary to a detached house, semi-detached house or rowhouse if the detached house, semi-detached house or rowhouse contains a single residential unit. 2011

Both the 2014 Provincial Policy Statements and the Growth Plan for the Greater Golden Horseshoe promote housing intensification by an appropriate range of residential, including second units. Since these are well known and are not specific to laneway housing, I will not elaborate further here.

RECENT INITIATIVES

On May 26, 2017, Councillors Ana Bailão and Mary-Margaret McMahon wrote an open letter to City Council urging them to support the development of responsible performance standards for laneway housing, to “address the aspirations, sensitivities and needs of residents in our communities”. They reported that they had conducted extensive public consultation, with overwhelmingly positive feedback. They wrote that “Laneway suites can transform underutilized spaces such as rear garages and parking pads, into sensitively scaled housing, utilizing existing infrastructure and respecting the form and character of the dense, walkable neighbourhoods in the Toronto and East York District.”

Concurrently Lanescape⁴ and Evergreen⁵ published a report “Laneway Suites: A New Housing Typology for Toronto”, setting out a planning rationale for this form of housing, addressing concerns and providing performance and technical standards.

In July of 2017, Council requested staff to study the Lanescape and Evergreen report, to consult and report in the near future on changes to implement a laneway suite initiative within the Toronto and East York District. The issue has attracted interest from the public at large. Almost two hundred letters were received at the July 2017 Council meeting. In March 2017, Ms. May Warren, Toronto Star reporter, wrote that the University of Toronto was planning to build two laneway suites for graduate students or visiting faculty near Robarts Library. This was to be the first of fifty such projects. The U of T director of campus and facility planning, Christine Burke, called it “light touch intensification”.

SEVERABILITY, SEWER AND WATER SERVICES

The 2006 Council directive that still applies prohibited laneway housing “except in special circumstances”. “Special circumstances” is not fleshed out, but surely one possibility would be that the proponent introduces a restrained amount of new construction. What constitutes “restrained” might have to await Council’s decision with respect to the July 2017 initiatives on laneway housing. But *no* new construction must

⁴ Lanescape’s website describes Lanescape as a group having “a long history of active interest in laneways and residential design” and lists the following members: Craig Race, co-founder, architect; Andrew Sorbara, co-founder, developer; Alex Sharpe, co-founder, entrepreneur; Cassandra Alves, urban designer; Mark Francis, intern architect; Ryan Fernandes, winner of the net zero energy laneway housing competition.

⁵ Evergreen’s CEO Geoff Cape states Evergreen has evolved from “small charity focused on community and school ground greening to an innovative non-profit with global reach” and runs the Evergreen Brick Works., “a world-renowned community environmental centre” in Toronto.

be considered “restrained”. A second circumstance is whether the owner seeks a severance, which is both a technical and planning issue.

Technical issues are addressed in the existing Zoning By-laws. All land in the City of Toronto must abut a street built to engineering standards and be serviced with municipal sewer and water lines⁶. If a hypothetical new rear lot at 750 Markham were severed, not only would it be forced to gain services from an abutting lot, which would be unsustainable and poor planning, but it would also lose access to a City street. The severed lot would be in contravention of these sections of the Zoning By-law, and likely leave the remainder lot in contravention of setback requirements.

The 2006 report stated a concern that “the construction of a laneway *dwelling almost invariably* involves the severance of the rear portion of a lot . . .” However, this application does not include a severance request. The recent laneway housing initiatives in footnotes 4 and 5 recognize elimination of a severance can mitigate many technical servicing problems.

Landscape’s definition of “laneway suite” explicitly rules out the possibility of severance:

A laneway suite is a *small* dwelling at the rear of a residential lot that is detached from the primary home and fronts onto a laneway. All of its services (water, sewer, electricity, gas, garbage, mail, etc.) come from the front street, not the laneway. The laneway suite can be used by the property owner for personal uses (i.e., housing family or caregivers) or as an income producing rental suite, *however it is not severable from the front house.* (my italics)

In this case the rear dwelling is small, 47.6 sq. m (513 square feet). It is detached from the Eichler home. All its services come from the front street. Fronting on Markham St. has other advantages. Since there is a common ownership, snow removal, garbage storage and other neighbourhood activities can be coordinated on the lot. Ms. Eichler said, “We love our tenants [in the rear building]. We socialize with them. . . .They caught two men trying to break into my house. That wouldn't have happened if we didn't have people living there.” Meeting the Landscape definition – no severance - is a key step to interpreting the intent of the zoning by-law.

CONSIDERATION OF PRIVACY AND OVERLOOK

⁶ 5.10.30.1 General [Regulations Applying to all Zones]

(1) Availability of Services. No land may be used and no building or structure may be erected or used on the land unless: (A) the land abuts an existing street, or is connected to an existing street by a street or streets, constructed to a minimum base curb and base asphalt or concrete; and (B) all Municipal water mains and Municipal sewers, and their appurtenances, are installed to a lot line of the property and are operational. (Bylaw 569-2013)

The rear building faces the rear of Ms. Eichler's residence at 750 Markham and contain two small windows. There are no windows on any of the other three sides. These windowless walls face: to the north, a blank wall of a garage; to the south, the parking lot for 42 and 38 Barton Ave.; to the west, Karma Lane, and opposite the lane sits the Karma Lane Food Co-op. So, the only windows face Ms. Eichler, with whom the rear building's resident(s) will have at least a landlord/tenant relationship, and according to Ms. Eichler, this is positive.

The portion of the building facing west, i.e., the windowless lane elevation, is now a mural by the street artist Media. Inside the building, the garage door has been drywalled over. If there are privacy issues, they are all in the other direction, this application will be overlooked *by* existing taller buildings — the second-floor rear balcony of 752 Markham, and the apartment buildings to the south. I find there are no privacy or overlook issues by introducing residential accommodation to the rear building.

CONSIDERATIONS OF VEHICULAR AND PEDESTRIAN ACCESS

The 2006 report also recognized difficulties in trying to provide the same municipal services for laneway residents as street-side residents, as follows:

- Snow removal is difficult and can rarely be provided;
- Installation of new water and gas lines may be impossible under current environmental standards;
- No sidewalks can be provided; and
- Higher future maintenance costs for infrastructure.

I find that none of these apply to this site, since if anything, the laneway usage will be decreased, owing to the discontinuance of access on Karma Lane.

This site has a most unusual asset. Owing to an accident of history, it has deeded and registered *vehicular right of way* over the rear parking lot of the two apartment buildings to the south (42 and 38 Barton Ave.) as well as a 1 m wide *pedestrian right of way* between 750 Markham St and 38 Barton Ave. In other words, there is no need to use the laneway for access whatsoever. In front of the rear building (between it and the Eichler residence) is a two-space parking pad, which is used by Ms. Eichler and her tenant, access being gained from Barton Ave.

Section 10.10.80.40 (2)⁷ of the Zoning By-law 569-2013 prohibits access to the parking space over a right of way; it must be from the laneway. For lots in the "interior" of Markham St, this makes good sense; the side yard setbacks of adjoining residential properties are unlikely to provide a satisfactory width and turning diameter for egress and ingress from Markham St. However, here the access over private lands is through

⁷ (2) Parking Access to a Corner Lot or a Lot Abutting a Lane in the R zone, on a corner lot, despite regulation 10.5.80.40(3), or on a lot abutting a lane, vehicle access to any parking space on the lot must be from the flanking street or from the lane.

a parking lot of the apartment buildings and in effect the rear building's parking space is an extension of that private parking lot, where parking spaces function just like any other parking space in the City that is accessible from a street. I find that granting this variance meets the intent of Section 10.10.80.40 (2) to provide safe and convenient access to a required parking space.

THE TECHNICAL STAFF REPORT

Once it is determined there are special circumstances, Technical and Planning staff are to work together to give advice to Council. Here, the technical report, dated May 30, 2017, was written one day before the Committee of Adjustment meeting. Technical staff asked Ms. Eichler for three pieces of information: how the rear building would be serviced with water, etc., how fire prevention requirements would be satisfied, and where garbage would be stored and picked up, given that no collection could be made from the lane.

Pending provision of this information, Technical asked the Committee of Adjustment to defer consideration of the application. The Committee refused, and proceeded to deny the variances.

On July 26, 2017, Mr. Swinton submitted a revised site plan that responded to these requests. Servicing was provided through underground lines extending to the rear building, wholly on the lot. Mr. Swinton says the water was in place when Ms. Eichler purchased the property and it may be recalled under 10.5.60.1 (3), sanitary and water facilities are permitted in an ancillary building, provided it is not used for residential purposes.

The information on fire prevention provided was:

- Proof of the pedestrian easement;
- A distance no greater than 45 m from the fire vehicle on the street to the principal entrance of the rear building. (35.27 m provided).
- A distance no greater than 45 m from the fire vehicle to the nearest hydrant; (1.99 m provided).

I find the technical requirements raised, including those of the Fire Prevention Department, have been met.

THE PLANNING STAFF REPORT

Written May 24, 2017 (six days before the Committee of Adjustment decision), the City of Toronto Planning Report to the Committee of Adjustment quotes the Neighbourhoods section of the Official Plan:

The property is in an area designated Neighbourhoods in the Official Plan, which are "considered physically stable areas made up of residential uses in lower scale buildings". Policy 4.1.5 states that "development in established Neighbourhoods will *respect and reinforce the existing physical character* of the neighbourhood, including in particular: heights, massing, scale and dwelling type of nearby residential properties" . . . (my italics)

Stopping here, the report deals only with physical changes in the neighbourhoods, perhaps even confining itself to the italicized words.

The Official Plan should be read as a whole⁸. Indeed, the italicized words in Policy 4.1.5⁹ echo almost word for word the language of Policy 2.3.1¹⁰ and s 2.3.1 says "goals found here apply equally to all neighbourhoods and are to be considered in concert with the policies found in Chapter Four." So, Chapter Two is broad brush and Chapter Four referenced in the staff report is detailed, but both work together.

Section 2.3.1 of the Official Plan is entitled "Healthy Neighbourhoods" and the opening sentence's theme is diversity: "The *diversity* of Toronto's neighbourhoods, in terms of scale, amenities, local culture, retail services and demographic make-up, offers a *choice* of communities to match *every stage of life*." (my italics). Accordingly,

- 2.2.1.1 c) provides a full range of housing opportunities for Downtown workers and *reduces the demand for in-bound commuting*; (1-7)

⁸ The Plan is an integrated document. For any individual part to be properly understood, the Plan must be read as a whole. (p 1-7)

⁹ 4.1.5 5. Development in established neighbourhoods will respect and reinforce the existing physical character of the neighbourhood, including in particular

- a) patterns of streets, blocks, and lanes;
- b) size and configuration of lots;
- c) heights, massing scale and dwelling type of nearby residential properties;
- d) prevailing building types(s);
- e) setbacks of buildings from the street or streets;
- f) prevailing patterns of rear and side yard setbacks and landscaped open space;
- g) continuation of special landscape or built-form features that contribute to the unique physical character of the neighbourhood; and
- h) consideration of heritage buildings. Structures and landscapes.

No changes will be made through rezoning, minor variance, consent or other public action that are out of keeping with the physical character of the Neighbourhood.

The prevailing building type in the one the predominant form of development in the neighbourhood. Some neighbourhoods will have more than one prevailing building types. In such cases, a prevailing building type in one neighborhood will not be considered when determining the prevailing building type in another neighbourhoods.

¹⁰ 2.3.1 policy 1 1. Neighbourhoods and Apartment Neighbourhoods are considered to be physically stable areas. Development within Neighbourhoods and Apartment Neighbourhoods will be consistent with this objective and will respect and reinforce the existing physical character of buildings, streetscapes and open space patterns in these areas.

I find that 750 Markham St is not in Downtown but in the “near” Downtown, within easy walking distance of the Annex and Bathurst Subway Station. (For non-Toronto readers, the Annex is the precinct for the University of Toronto.) The Downtown policies should also be considered as relevant to the issue of the intent of the Official Plan. The Official Plan goes on to state:

- 2.2.1.4. A full range of housing opportunities will be encouraged through . . . b) *sensitive infill* within Downtown Neighbourhoods and Downtown Apartment Neighbourhoods.
- 2.3 STABLE BUT NOT STATIC: Enhancing Our Neighbourhoods And Green Spaces . . .Some physical change will occur over time as enhancements, additions and infill housing occurs on individual sites.
- 3.1.2 BUILT FORM . . . 2. New development will locate and organize vehicle parking, vehicular access, service areas and utilities to minimize their impact on the property and on surrounding properties and to improve the safety and attractiveness of adjacent streets, . . .by: a) using *shared service areas* where possible within development block(s) including public and private *lanes*, . . .;
- 3.2.1 HOUSING 1. 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, . . ., housing that meets the needs of people with *physical disabilities* and housing that makes more efficient use of the existing housing stock.

I find this is mid range rental housing. Its small size may make it intrinsically affordable. It is a bungalow with at grade access, which may be more accessible for tenants with disabilities. The parking space is just outside the front door of the unit. The rear building makes more efficient use of the existing housing stock. It extends the range of housing in all the ways mentioned above and in the following sections of the Official Plan.

- 3.2.1 2. The existing stock of housing will be maintained and replenished. New housing supply will be encouraged through intensification and infill that is consistent with this Plan.

Performing a similar analysis, Lanescape concluded that laneway suites responded to broader Official Plan goals such as increasing the supply of rental housing, making the main building (where Ms. Eichler lives) more affordable by providing income to the owner, increasing access to renters to an established neighbourhood, and making possible multigenerational housing. Accordingly, I find that

this application meets the broad social and strategic goals of the Official Plan, which the City of Toronto Planning report did not analyze.

The Planning report does not come to a conclusion as to whether the development “will respect and reinforce the existing physical character. . . including. . . heights, massing scale and dwelling type of nearby residential properties”. I find heights, massing and dwelling types of nearby residential properties are not threatened. All nearby residential properties are higher, have greater mass and are of the same or similar dwelling type. It is difficult to see how the physical character of the three nearby apartment buildings is not respected and reinforced.

While not every laneway suite conversion will respect the character of the neighbourhood, this is an especially benign conversion because there is no physical change. It reinforces the character of the neighbourhood by being “sensitive to the look, feel and character of low-rise residential streets”¹¹, For example, it removes car movements from the lane. The provision of a mural increases ownership in the laneway and supports artists¹², and the laneway is surely an important built form feature of the Markham/Barton Ave. community.¹³

The planning staff report went on to say:

Planning staff have concerns with the conversion of the existing garage into a dwelling unit. The intent of the provisions in the Zoning By-law are to limit the use of a lot from negatively impacting the amenity of adjacent properties. Permitting a second residential building on the lot will permit the rear yard to be used in a way currently prohibited by the Zoning By-law. Such a use *may* impede on the private amenity of adjacent properties.

The “*may* impede on the private amenity of adjacent properties” conclusion is tentative. As I have previously found, with no new construction, the private amenity of adjacent properties is not impeded.

The City of Toronto Planning report continues as follows:

The area is predominately made up of two and 2 ½-storey dwellings with one storey rear detached garages. A one storey residential building in the rear yard does not make up the predominate character of the area.

¹¹ Lanescape Report, p 8

¹² Toronto’s future must be one where: . . . • the arts and culture are actively promoted (Official Plan p 1-4)

¹³ “continuation of the built form features that contribute to the unique physical character of the neighbourhood” (4.1.5.5. g)).

The existing rear building form is already built. Mr. Swinton stated that the question that must be answered is whether the roof on the rear building should cover a car or a human being. The block from Barton Ave. to Follis Ave is indeed mostly 2 ½-storey. But In the close vicinity are:

- two low rise apartment buildings with surface parking abutting the property (38 Barton Ave - 18 units, 42 Barton Ave – 25 units);
- across the lane are 46 Barton Ave. (6 units) and a commercial use, Karma Food Co-op, the latter with its own parking lot whose only access and visibility is Karma Lane;
- then continuing up the lane to the east (the Markham St. side), one storey garages and a two storey garage building;
- rear yard open storage at 754 Markham;
- and a storage/workshop garage building at the rear of 756 Markham St.

I find the Neighbourhoods designation at this location is more varied than described; it comprehends the variety of house forms and types elaborated in the “Healthy Neighbourhoods” section of the Official Plan.

There will be change if living accommodation is introduced to this former garage building. But the official plan policies do not say “no change”, but that the changes should be sensitive and be managed to meet larger goals.

The City of Toronto Planning report concludes that the application should be rejected. Technical staff requested time to ascertain valuable information, which was provided after the Committee reached its decision. That information helped me in this hearing and was not available to Planning staff. The Committee of Adjustment made its decision without the benefit that was given to me of all technical and planning considerations.

I conclude that this application maintains the intent of the Official Plan. It meets larger goals such as the supply of rental housing, affordability and increasing access to a near downtown neighbourhood etc. It maintains the “respect the character” goals of the Official Plan since there is no physical change and because a “neighbourhood” is more than the narrow attention to predominant house forms. I conclude as well that the variances sought are minor, meet the intent of the zoning by-law and are desirable for the appropriate development of the land because, after an exhaustive review, there are no overlook or servicing issues or issues of vehicular or pedestrian access. I come to these conclusions using the methodology established by the City in 2006 that laneway housing will be considered in special circumstances, and those circumstances were established here.

I wish further to comment on the fact that this appears to be a case of obtaining of a building permit after the rear building is already used for living accommodation. The jurisprudence states that such applications be considered on their merits, without

either advantaging such applications because they have been given a “trial run”, or disadvantaging them because of a supposed flouting of the law. I do not condone this failing to get a building permit before major construction, but I would point out the Plan Examiner’s report requires Ms. Eichler to fulfil all the financial obligations that she would otherwise be subject to, in the normal course of obtaining a building permit.

DECISION AND ORDER

I authorize the following variances as identified in the column to the right and applicable to 750 Markham Road:

Table 1 (and forming part of this order)			
Variances authorized in this decision			
Under By-law 569-2013			
(Note because of outstanding appeals variances to both by-laws are identified to recognize and maintain existing conditions)			
1.	Minimum setback from centerline of public lane	2.5 m	2.28 m
2.	Maximum number of residential buildings on a lot	1	2
3.	Rear dwelling unit not permitted		Rear dwelling unit
4.	Maximum building depth for a detached house	17 m	Total building depth of all buildings appr. 37.1 m
5.	Maximum floor space index	.6	.96
6.	Minimum rear yard setback	7.5 m	0.0 m
7.	Minimum side yard setback for detached house	.45 m	0.0 m to north and south lot lines
8.	Requires access from lane		Access provided over deeded private right of way
Under 438-86			
9.	Minimum setback from centerline of public lane	2.5 m	2.28 m
10.	Maximum gross floor area	.6	.96
11.	Minimum side yard setback for building portions 17 m “deep”	7.5 m	0.0 m to north and south lot lines
12.	Minimum rear yard setback	7.5 m	0.0 m

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13.	One building per conveyable lot		Two buildings per conveyable lot
14.	No residential building behind any other building.		A residential building is behind another building.
15.	Requires access from lane		Access provided over deeded private right of way

9/29/2017

X *Ted Yao*

Ted Yao
Chair, Panel Member
Signed by: Ted Yao