

# DECISION AND ORDER

**Decision Issue Date**      Monday, January 15, 2018

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

Appellant(s): SHU Y CHO

Applicant: SHU Y CHO

Property Address/Description: 321 QUEENSDALE AVE

Committee of Adjustment Case File Number: 17 132461 STE 31 MV

TLAB Case File Number: **17 211248 S45 31 TLAB**

**Hearing date:**      Tuesday, January 09, 2018

**DECISION DELIVERED BY T. Yao**

## INTRODUCTION

Shu Yan Cho wishes to enlarge his two storey semi-detached dwelling at 321 Queensdale Ave, by constructing a two storey plus basement rear addition. The Committee of Adjustment refused his request for a variance and he appealed. His appeal to this Body is also refused.

## BACKGROUND

The proposed rear addition would require a variance to lot coverage under the two applicable by-laws:

<b>Table 1. Variance required</b>			
		Required under Zoning By-law No. 569-2013	Proposed
1.	Maximum permitted lot coverage	35%	38.8%
		Required under Zoning By-law No.6752	Proposed
2.	Maximum permitted lot coverage	35%	38.8%

Mr. Cho applied for a minor variance for almost the same two storey addition in 2015, 2016 and 2017. The first attempt was for an addition extending 18 feet from the rear wall and needed a lot coverage variance to 41%. It was refused by the Committee of Adjustment on November 24, 2015. According to Ms. Malandrino (his immediate neighbour to the east), Mr. Cho did not attend the Committee of Adjustment hearing.

Six months later, Mr. Cho applied for the same variance, which was turned down both at the Committee of Adjustment (May 18, 2016) and the Ontario Municipal Board (Oct 20, 2016). Vice Chair Jan deP. Seaborn of the OMB did allow a variance to the parking space width (at the front of the building), which she stated, “reflects existing conditions”. She went on to say this about Mr. Cho’s proposed rear addition:

While I appreciate that Mr. Cho is prepared to try and accommodate the neighbours and wants more room for the family, the current plans require a variance for maximum permitted lot coverage that has impact and therefore is not minor within the meaning of s. 45(1) of the *Planning Act*. The variance under each by-law seeks a permission for lot coverage of 41% whereas 35% is the standard under By-Law No. 6752 (in-force) and By-Law No. 569-2013 (new by-law). The difference is not supportable on the facts of this case, albeit an application for a reduced variance in respect of lot coverage *could succeed in the absence of any evidence of impact.* (my italics)

Mr. Cho has made her comment the centre piece of his case and his evidence was solely directed to show that he had applied for a “reduced variance” as “told to do” (his words) by Vice Chair Seaborn.

**EVIDENCE**

A key feature of this hearing is that Mr. Cho has not filed any documents, that is, he has not complied with Rules 11 (Applicant Disclosure), 16.2 (Document Disclosure), or 16.4 (Party Witness Statement), whereas the neighbours have complied with these Rules.

**Decision of Toronto Local Appeal Body Panel Member: T. Yao**  
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Shortly before the hearing, Mr. Cho retained a lawyer, Matthew Castel. Mr. Castel explained that he had been retained so recently, he had not had an opportunity to file a Form 5 (Authorized Representative), so that his appearance came as a surprise to the neighbours. Mr. Castel explained that upon being retained, he had advised Mr. Cho that since he (Mr. Cho) had not filed documents as required by the Rules, he might be in some difficulty if he attempted to do so at the hearing.

This is in fact what happened. Ms. Malandrino and Mr. Hoffman objected to Mr. Cho filing documents after the deadlines. Rule 16.3 allows me to disallow documents that are filed late, and I decided Mr. Cho should be restricted to entering documents in the Committee of Adjustment file, which were already known to the neighbours.

Mr. Castel called Mr. Cho and Mr. Dongran Cao (Mr. Cho's son) as witnesses. Mr. Hoffman and Ms. Malandrino testified in opposition. (Their position will be referred to collectively as "the neighbours".)

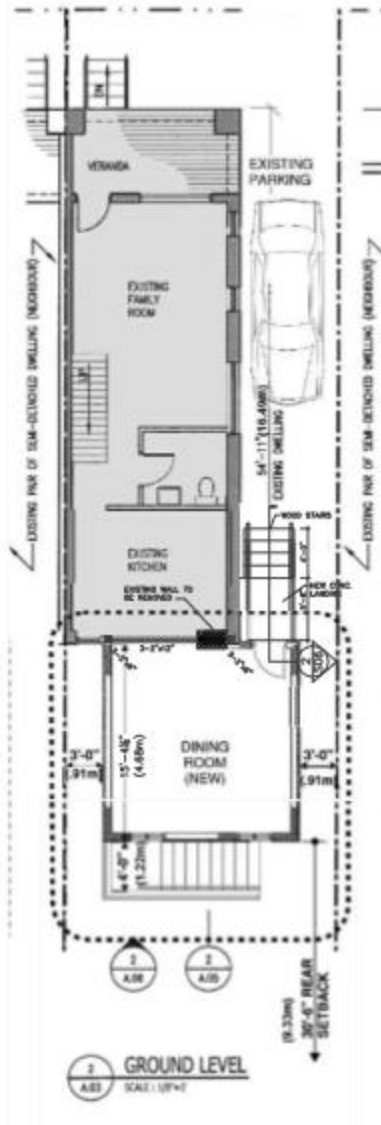


Figure 1

The proposed addition is set out in the site plan to the left. The existing building is shaded, and the proposed addition is indicated within the dotted line.

### Matters in issue

Mr. Cho must demonstrate the desired variance meet the four tests and conforms to and is consistent with, respectively, applicable higher-level plans and Policies. The four tests are:

- that the variance-maintains the intent and purpose of the Official Plan;
- that it maintains the intent and purpose of zoning by-law;
- that it is minor; and,
- that it is desirable for the appropriate development of the land.

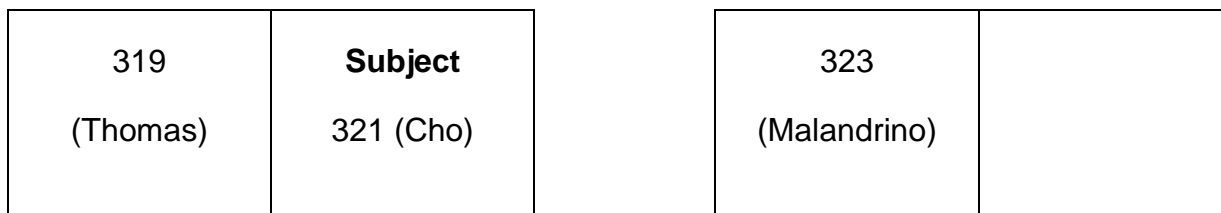
## ANALYSIS, FINDINGS, REASONS

The evidentiary onus is on the person seeking the variance. According to Michael Farkas, zoning examiner, the property is zoned RS (f10.5; a325; d0.75) (x312) under 569-2013 and R2A under Zoning By-law No. 6752. There is complete silence from both sides as to the intent of the two zoning by-laws and on this basis alone, there is insufficient evidence that the lot coverage variance maintains the intent and purpose of the zoning by-law.

I presume the Official Plan designation is “Neighbourhoods”. In the whole of Mr. Cho’s evidence, he did not mention the words “zoning” or “official plan” a single time. Had Ms. Malandrino or Mr. Hoffman brought a motion to dismiss Mr. Cho’s case at the close of his evidence, for failure to meet these two statutory tests, I would have allowed it.

However, my task is to find a just result, despite the lack of preparation by Mr. Cho and I will consider all the evidence available to me. Number 321 Queensdale is located on the south side of Queensdale Ave., an east west street. The addresses from west to east are:

Figure 2 Schematic diagram of location of Mr. Cho’s and participants’ lots



Mr. Cho’s lot is 21.9 by 100 feet deep, which is typical for this block face. The building footprint is 14 feet wide by 36.5 feet deep, also typical. The block is mostly semidetached dwellings, with a few single detached. I find there is a pattern of 14 foot wide semis. The rear addition, the square within the dotted line, in Figure 1 above, is 15 feet by 15 feet, and thus wider than the existing Cho dwelling. As previously stated, in response to the OMB decision, for the 2017 Committee of Adjustment hearing, Mr. Cho reduced the depth from 18 feet to 15 feet. The width has always been the same. The rear addition has large windows on both the east and west elevations overlooking the Thomas and Malandrino properties.

Vice Chairman Seaborn’s words “could succeed in the absence of any evidence of impact.”, require that *no impact* be demonstrated, which Mr. Cho did not do. He did not address how or whether the rear addition would cast shadows, obstruct views, cause overlook and privacy issues, fit in with the prevailing massing or existing physical pattern of buildings or any of the other planning considerations usually addressed in an appeal of this kind.

View to West of Queensdale Avenue (Photo below)

Shows no other building structures on this street allowing for light



View to the East on Queensdale (Photo above)

Shows no other structures allowing for light

The Toronto Official Plan requires that physical changes to Neighbourhoods properties be sensitive, gradual and generally “fit” the existing physical character. Policy 4.1.5 of the Official Plan establishes that development will respect and reinforce the existing physical character of the neighbourhood, particularly the massing and scale of nearby residential properties. Many of the properties including Ms. Malandrino’s have one storey, poorly insulated rear-yard additions that serve as covered storage rooms. Ms. Malandrino was unsure of the size of her addition, but I would assume it is about 12.5 long by 8 feet wide. The two photographs<sup>1</sup> taken by Ms. Malandrino above, looking east and west, and taken from the rear of her addition, show that many of these additions have been removed. Some neighbours have erected small second storey bump-outs, but generally this block of Queensdale does not have any two storey rear additions of the size proposed by Mr. Cho. Accordingly, I find the proposal does not maintain the intent and purpose of the Official Plan to respect the existing pattern of built form. The fact that this seems to be the first such addition in this section of Queensdale Ave., with generally similar sized houses also demonstrates that it is not minor.

The Malandrino and Cho properties are separated by a driveway 9.4 feet wide, of which 7 feet are on the Cho lot and the remaining on the Malandrino lot. It appears to be used exclusively by the Cho family, who occasionally “trespass” on the 2.4 feet belonging to Ms. Malandrino. The fact that Mr. Cho has chosen a wider rear addition means his building will be L shaped, a new form of rear development and indicates that the variance is not minor.

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<sup>1</sup> These are taken from her exhibit and form part of these reasons for decision.

Mr. Cho's residence is a semidetached dwelling sharing a common party wall with Ms. Thomas's home. It seems to me that the ideal situation is that neighbours on both sides of a semi might plan rear additions together to minimize awkward angles and useless sleeves of land. Such ideal circumstances were not present here, but the lack of such coordination indicates to me that for land that contains a semidetached residence, the variance sought for this design of rear addition is not desirable for its appropriate development.

Accordingly, the variance is refused.

This is the fifth time the neighbours have been obligated to appear at either the Committee of Adjustment or OMB or the TLAB for essentially the same proposal. The residents ask if there is any order that the TLAB could make, to stop these repetitive planning hearings. I do not believe the legislation permits any such order, as discouraging as it might seem to the neighbours. I can only suggest, that whatever Mr. Cho plans to do, he should consult with his neighbours.

## **DECISION AND ORDER**

Mr. Cho 's appeal is dismissed, and the lot coverage variance is not authorized.

**X**

*Ted Yao*

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