

## DECISION AND ORDER

**Decision Issue Date**      Wednesday, January 10, 2018

PROCEEDING COMMENCED UNDER section 45(12), subsection 45(1) of the Planning Act, R.S.O. 1990, c. P.13, as amended (the "Act")

Appellant(s): 2489674 ONTARIO INC

Applicant: GRAHAM BARRETT

Property Address/Description: 98 GUESTVILLE AVE

Committee of Adjustment Case File Number: 17 159459 WET 11 MV (A0468/17EYK)

TLAB Case File Number: 17 210212 S45 11 TLAB

**Hearing date:**      Tuesday, December 19, 2017

**DECISION DELIVERED BY G. BURTON**

### APPEARANCES

2489674 Ont Inc

Mr. Carlos Conejo, in person

### INTRODUCTION

This was an application for variances from both the new City By-law No. 569-2013 ("new By-law") and the York Zoning By-law 1-83 ("York By-law") to permit an existing mixed-use, two-storey building in a residential area to be enlarged and converted to a three-storey fourplex. The Committee of Adjustment ("COA") denied the application, and the owner appealed to the Toronto Local Appeal Body ("TLAB").

## **BACKGROUND**

The property is located in the northwest part of Toronto in the Eglinton and Rogers Road area. It is designated Neighbourhoods in the Toronto Official Plan (“OP”), and zoned Second Density Residential (R2) in the York By-law, and RM (f12.0;u2;d0.8(x252) in the new By-law, not yet in force.

The owner wishes to convert the existing “mixed use”, two-storey structure into a fourplex residence with three storeys. It was used as a medical building prior to the enactment of the By-laws, as evidenced at page 2 of the Planning Staff’s report. Thus at one time the use had a non-complying status in this area zoned as residential.

## **MATTERS IN ISSUE**

Although there were many objectors before and at the Committee hearing, only the applicant/appellant spoke at the TLAB hearing. Many neighbours and the local councillor had objected mainly to the increase in the number of units, the increased height and the effect of additional traffic and parking on this neighbourhood street. At the hearing the owner countered with the advantage of adding rental units to the City’s supply.

## **JURISDICTION**

On variance appeals, the TLAB must ensure that each of the variances sought meets the tests in subsection 45(1) of the Planning Act (the “Act”). This involves a reconsideration of the variances considered by the Committee in the physical and planning context. The subsection requires a conclusion that each of the variances, individually and cumulatively:

- is desirable for the appropriate development or use of the land, building or structure;
- maintains the general intent and purpose of the official plan;
- maintains the general intent and purpose of the zoning by-law; and
- is minor.

These are usually expressed as the “four tests”, and all must be satisfied for each variance, individually and collectively. If even one should not be met, the appeal must fail.

In addition, TLAB must have regard to matters of provincial interest as set out in section 2 of the Act, and the variances must be consistent with provincial policy statements and conform with provincial plans (s. 3 of the Act). A decision of the TLAB must therefore be consistent with the 2014 Provincial Policy Statement (‘PPS’) and conform to (or not conflict with) any provincial plan such as the 2017 Growth Plan for the Greater Golden Horseshoe (‘Growth Plan’) for the subject area.

Under s. 2.1 (1) of the Act, TLAB is also to have regard for the earlier Committee decision and the materials that were before that body. I have carefully examined all of these materials. There have been no changes to the original variances sought.

## **EVIDENCE**

The principal of the owner company, Ms. Shannon Conejo, attended the hearing. Her father, Mr. Carlos Conejo, presented the evidence and arguments in favour of the variances. These are the requested variances:

**1. Section 10.80.20.40(1)(E), By-law 569-2013 and Section 2, By-law 1-83**

A fourplex is not a permitted building type in a RM and R2 zone.

**2. Section 10.80.40.40(1)(A), By-law 569-2013**

The maximum permitted floor space index is 0.8 times the area of the lot.

The altered building will have a floor space index ("FSI") of 0.97 times the area of the lot.

**3. Section 10.80.40.70(3)(D), By-law 569-2013**

The minimum required side yard setback is 2.4 m for a fourplex building.

The altered building will be located 0.34 m from the north side lot line.

**4. Section 10.5.50.10(3)(A), By-law 569-2013**

A minimum of 50% of the rear yard shall be maintained as soft landscaping.

A total of 23.2% of the rear yard is being maintained as soft landscaping.

Mr. Conejo explained that he had purchased the property together with number 100 to the north, as they came as a package. He has since sold 100, and seeks to remodel and retain number 98 with a total of four residential units. There were medical offices in both buildings, constituting a non-complying use, but he converted 100 back to residential before it was sold. In the past there had been about 16 medical offices in number 98, the subject parcel, with 11 doctors. This entailed many car trips and parking on and off the site. However, he testified that this use as a walk-in clinic had ceased. In the agreement of purchase and sale of the property in June 2015, he had agreed not to start it up again for a three-year period. He then cast about for a more desirable use.

He first planned on conversion to semi-detached residences. The family then decided on the plan to add a floor and create four rental units, two of which would be occupied by family and the others retained as income-producing rental units. In his view this would not alter the fabric of the neighbourhood. It would reduce the traffic caused by the past use, which operated six days a week.

The COA objected at its hearing to the increase in density and to traffic flow. Members stated that the density did not fit the fabric of the neighbourhood. Mr. Conejo did not understand the argument respecting traffic and parking, as the medical use produced more of both than the proposed. As well, there are several taller apartment buildings in the block to the south.

He testified that the use would be reduced with the fourplex proposal. The duplex proposal made no financial sense, he had concluded. He sees it as very positive that he would be adding four rental units to a market having a great need for them. He stressed that there is no variance required for the increase in height to three storeys, as the design would comply with the zoning requirement. As for the traffic and parking, he discounted the neighbours' objections completely, as he argued that four parking spaces would be more than adequate for the reduced usage compared to the medical offices of the past. There is no variance required for the parking in any event. He pointed out that none of the neighbours had attended the hearing to object to the variances.

Variance 2, the FSI increase, is minor in his view. He stated that in his experience at many COA hearings, an FSI increase from 0.8 FSI to 0.97 was usually granted.

The side yard setback reduction is merely required to legitimize the existing location of the building.

Respecting the soft landscaping variance, number 4, he feels caught by the fact that the City does not classify gravel as soft landscaping. He plans to eliminate the current paving and add gravel instead, with a flowerbed to the north, at the rear. He said that overall, he will be adding to the existing soft landscaping on the property.

Many neighbours had complained about the lack of garbage containment. To this he gave his proposed solution, a garbage room in the basement.

## **ANALYSIS, FINDINGS, REASONS**

I have had a good deal of hesitation over this appeal. The Staff Report of the Planning Staff to the Committee was very much opposed to the variances because they fail to comply with the residential types permitted here by the zoning by-laws. The limitation to detached, semi-detached and duplexes would not include the proposed fourplex.

This Report also pointed out that in the Official Plan, Neighbourhoods are considered physically stable areas, where physical changes must be sensitive, gradual and generally "fit" the existing physical character. By Policy 4.1.5 of the Plan, development is to respect and reinforce the existing physical character of the neighbourhood, particularly the massing and scale of nearby residential properties. No changes should be made that are out of keeping with the physical character of the neighbourhood.

I realize that no height variance is required for this proposed third storey, and that the use would be a reduction from the previous active use as a medical centre. I discount the neighbours' concerns about overlook, lack of privacy or views as not realistic given the design of the plans. This aspect was mentioned in the only letter directed to TLAB, by Lisa Murawsky at 1C Elhurst Court. There would be very small windows at the rear, and 1C is not directly to the rear of the subject property. I also have every sympathy with the proposed addition of rental units to the housing stock, as encouraged in the PPS and the Growth Plan mentioned above.

**Decision of Toronto Local Appeal Body Panel Member: G. Burton**  
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However, I am held back from approval because of the wording of the OP, and the precedent it could set in this two blocks or more of detached and semi-detached homes of a certain vintage.

This building is already quite a bit longer than most on the block. I searched the immediate area carefully, as members of the TLAB are required to take a view of the surrounding neighbourhood. I recognize the existence of the church across the street and the apartments quite a bit further to the south (but not mentioned in the City Staff Report as relevant to the OP consideration). There are also large apartments on Elhurst Court to the west, but not on the east side closest to the subject property. Notwithstanding these larger structures, I am concerned that a three storey building with four rental units on one property might have the long-term effect of destabilizing this residential street, as it may lead to other such applications. By Policy 4.1.8 of the OP, zoning development standards are established to ensure that new development is compatible with the physical character of established residential neighbourhoods. While the increase in FSI is really the only significant numerical increase with this application, it is the use variance that I believe does not comply with the Official Plan provisions cited. A petition from many neighbours was submitted to the COA, including all of the objections mentioned, but I am most convinced by the Planning Staff's opposition to the use variance.

Mr. Conejo mentioned that should this appeal be refused, he could merely recommence the use as a medical centre when the time limit in the agreement of purchase and sale ends. He had testified that that the non-conforming use as a medical centre (otherwise preserved and protected by subsection 34(9)(a) of the Planning Act), ceased prior to his purchase of the property in 2015. However, the TLAB does not have before it an application to alter or continue the use under subsection 45(2) of the Planning Act. The existence of rights that may or may not exist under subsection 34(9) was not a focus of the evidence on the applications before me. As such, I decline to comment on any aspect of the evidence in respect of past uses, beyond acknowledging that the proposal could create a less intensive use for the property than may have been experienced in the past.

In the case before me, a fourplex use is not identified as permitted by the Official Plan or the applicable zoning instruments. This is clear from the fact that the City Planning Staff Report opposed the introduction of this type of use. I had no qualified professional planning opinion evidence before me that would challenge that advice. Therefore I am not able to conclude that the proposed use variance meets either the intent or purpose of the Official Plan or the zoning in place affecting the subject property.

For the reasons given concerning the use as a fourplex, I find that these variances fail as the proposed use does not meet the general intent and purpose of the OP and the Zoning By-laws. The introduction of this type of use appears neither minor nor desirable as a reinforcement of neighbourhood character in terms of use type, scale or built form.

## DECISION AND ORDER

For the reasons expressed, the TLAB orders that the appeal concerning variances is refused and that the variances from the City of Toronto Zoning By-law No 569-2013, and the York Zoning By-law 1-83 as set out above are not permitted.

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G. Burton

Panel Chair, Toronto Local Appeal Body