

DECISION AND ORDER

Decision Issue Date Monday, January 15, 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): RHONDA WISE

Applicant: STEPHEN LEBLANC

Property Address/Description: 1912 QUEEN ST E

Committee of Adjustment Case File Number: 17 106448 STE 32 MV (A0059/17TEY)

TLAB Case File Number: 17 178838 S45 32 TLAB

Hearing date: Monday, December 18, 2017

DECISION DELIVERED BY L. MCPHERSON

INTRODUCTION

This is an appeal to the Toronto Local Appeal Body (the "TLAB") by the owner ("Applicant") of the decision of the Committee of Adjustment ("Committee") for the City of Toronto ("City") to refuse minor variances related to a three-storey rear addition and two-storey front addition to an existing three-storey mixed-use building containing retail uses and two residential units. A total of four residential units would be contained within the altered building. The property is located at 1912 Queen Street East (the "subject property").

BACKGROUND

The subject property is located on the north side of Queen Street East. This property has a frontage of 9.17 metres on Queen Street East and has a depth of 37.49 metres. The lot area is approximately 343.78 square metres. The rear of the property abuts a public lane.

The site is located in the former City of Toronto, east of Woodbine Avenue, between Herbert Avenue and Elmer Avenue.

The site is currently occupied by a three-storey mixed use building with retail uses at grade fronting Queen Street in a one-storey component of the building. There is a dwelling unit behind the retail use on the ground floor. The upper second and third floor contain a second unit. The Applicant is seeking to build a front addition and a 3-storey rear addition containing 2 rental units with parking on the ground level. The requested variances before the Committee of Adjustment were as follows:

1. Section 8(3) Part II 4(A), By-law 438-86

The minimum required building setback from a lot in a residential or park district is 7.5 m.

The altered mixed-use building will be located 5.33 m to a lot in a residential or park district.

2. Section 4(4), By-law 438-86

The minimum required number of parking spaces is four (one for each dwelling unit). In this case, three readily accessible parking spaces and one tandem parking space will be provided.

3. Section 4(17)(b), By-law 438-86

The minimum required width of a parking space is 3.0 m plus an additional 0.3 m for any side with an obstruction. In this case, the interior parking space requires a width of 3.6 m, while the exterior space required a width of 3.0 m.

In this case, the interior parking space which is obstructed on both sides will contain a width of 3.08 m and the exterior parking space will contain a width of 2.47 m.

4. Section 12(2)284(i), By-law 607-2013

The minimum required building setback is 4.8 m from the curb of Queen Street East, immediately adjacent to the property.

The altered mixed-use building will be located 4.3 m from the Queen Street East curb.

5. Section 12(2)284(iv), By-law 607-2013

An additional setback of 3.0 m is required above a building height of 9.5 m adjacent to any municipal road.

The altered mixed-use building will contain a height of 12.0 m and will be setback 0.0 m to Queen Street East.

At the outset of the hearing, the TLAB was advised that the Applicant had revised the drawings to eliminate two of the variances (4 and 5 related to the addition along the Queen Street East frontage). The Applicant formally withdrew variances 4 and 5 at the hearing.

I accept that these revisions are minor and were appropriately reviewed by all Parties. No further notice or consideration is required under s. 45 (18.1) of the Planning Act.

MATTERS IN ISSUE

The key issue was the setback from the rear property line. Specifically, the issue related to the interpretation and applicability of the Urban Design Guidelines for the area as they relate to the setback. The City did not take issue with the parking variances at the hearing.

JURISDICTION

Provincial Policy – S. 3

A decision of the Toronto Local Appeal Body ('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.

EVIDENCE

The City was a Party to the hearing. There were no Participants. The TLAB heard evidence from an architect for the Applicant, the Applicant, and the City's planning witness.

Mr. Doug Dorsey, retained by the Applicant, is a registered architect with the Ontario Architects Association and was qualified to give evidence on architecture and urban design matters. Mr. Dorsey advised that he had walked the area to understand the character. He believes that the proposed development is a good example of what can be done on a typical lot along Queen Street East which backs onto residential uses - a small scale infill project which retains the character and charm of the area. He notes that the City and province are promoting intensification and this provides intensification in a sensitive manner. He described the proposal referring to the revised plans (Exhibit 3). The addition along Queen Street East aligns with the existing main wall along the street. There is a walkway which leads from Queen Street Entrance to an entrance to the existing units and to a small court in the centre of the subject property. The walkway would also connect to the proposed 3-storey addition at the rear of the property.

The rear addition is setback from the west property line at the 2nd floor and further setback at the 3rd floor to provide space between the proposed addition and the existing adjacent building. In his opinion, the siting of the rear addition as proposed is a superior result to the permitted as-of-right permissions, which would allow the building to be built closer to the west property line, in terms of preservation of the existing character of the neighbourhood, sustainability of development and compliance with the general intent and purpose of the Zoning By-law and Official Plan.

Mr. Dorsey referenced the Queen Street East Urban Design Guidelines (“UDG”) which are included in the City’s documents (Exhibit 8, Tab 17). His evidence focused on the rear yard setback which is the subject of the contested variance. He referred to the pg. 25 of the UDG which provides building cross-sections for three lot types along Queen Street East – shallow, regular and deep. The subject property would be considered a regular lot cross section. The cross section requires a 45 degree angular plane beginning at a height of 10.5 m measured at a 7.5 m setback from the rear property line. He disagreed with some of the comments in Mr. Tsang’s witness statement regarding the cross section. Mr. Dorsey’s interpretation of the cross section is that the 7.5 m setback reference is not a building setback but a defining point for measuring the angular plane at a height of 10.5 m. In that respect, his opinion is the rear addition, as proposed, complies with the 45 degree angular plane guideline if the angular plane is extended down below the 10.5 m height. His understanding is that the 7.5 m setback provision from a residential district in the zoning by-law is distinct from the 7.5 m setback shown in the cross section. In that regard, he doesn’t consider the UDG to require a building setback at the rear.

Mr. Dorsey considered the subject property unique in that there is a lane behind it and advises that the UDG do not take into consideration this site specific feature. The lane abuts a side yard condition of a 3 -storey house to the north which fronts on Herbert Avenue. He states that the side yards on this street are generally tight and less than 7.5 m. There is an 8 ft. fence and tall trees within the property to the north along its south property line abutting the lane. Mr. Dorsey notes that Mr. Tsang refers to transition concerns in his Witness Statement. He opined that the UDG would permit a taller building with balconies and windows at the rear which would overlook the laneway and the side yard of the neighbour to the north, which would have a greater impact than the proposed development. The proposed development was designed to provide space along the west property line so that it would not be directly opposite the side windows of the existing building. The existing building to the west would continue to look onto open space. Mr. Dorsey indicates that by configuring the addition to leave space to the west while pushing the addition somewhat to the north, a better transition to the west is provided.

Mr. Dorsey opined that, as a result of the fence, the perception of the addition by the neighbour to the north would be the higher component of the building as opposed to the lower component. The laneway has a number of garage structures along it. In the current proposal, any portion seen from the north would not contain balconies or windows. In his opinion the proposal is much more respectful of views, light and space. The compromise to achieve this proposal is the variance to the 7.5 m building setback provision. He explains that in order to meet the By-law provision, the development would take on a different shape and spread across most of the width of the subject property and would have direct windows and balconies facing the building to the west. In his opinion, the proposal provides a better transition and massing that is respectful of the surrounding uses than the building mass permitted by the UDG. The proposal allows more people to live in this desirable area without causing any adverse impacts. He explained that the upper floor faces inward, and there are no windows along north wall. The second floor window looking west is an upper storey clerestory window that is

frosted while providing light.

Mr. Dorsey refers to some examples of what has been built in the area (Exhibit 4) and noted that they result in a more abrupt and severe form of development, with windows and balconies overlooking the lane and the residential areas beyond. In his view, the current proposal is more respectful of scale, overview, views, and light and more respectful to all neighbours. His opinion is there is no impact from the reduced setback to the north and that other structures encroach further into the laneway. The proposal, he said, will not impact the laneway or its function.

In his opinion, the rear addition as proposed achieves an appropriate transition to the adjacent residential neighbourhood and provides better privacy and penetration of sunlight to the adjacent neighbour.

Further, it is his opinion that the design of the proposal as amended is wholly within the general intent and purpose of the Official Plan and Zoning By-law and in particular with those policies referenced in the Expert Witness Statement of Jason Tsang (Exhibit 6) paragraphs 27, 28 and 32, being the Official Plan policies addressing Built Form, Mixed Use Areas and application of the Queen Street East Urban Design Guidelines.

In cross examination, Mr. Dorsey acknowledged that he did not review Official Plan Amendment 151. He was unaware of the Official Plan designation of the area to the north; however, he agrees that the residential area to the north is a sensitive area. He explained that his understanding of the angular plane in the UDG was to establish air rights, views and sightlines and to provide light in and views out. He could not direct Mr. Longo to a policy which would support his interpretation of extending the angular plane below the 10.5 m height.

Ms. Wise, the owner, provided evidence to the TLAB. Her evidence was focused on the variance to permit the rear addition to encroach into the setback to the north. She supports the opinion of Mr. Dorsey that the proposal is a superior solution to the development of the subject property. She advised that other owners on the block have not been improving or maintaining their properties, as she believes other owners are hoping to sell their properties as part of an assembly. She clarified that the proposal is considered as one building by the Building Department in response to one of Mr. Longo's previous questions.

Ms. Wise identified a development known as the "Licks" building which took place before the UDG and raised significant concern with the neighbours regarding the form of development. She noted the proposed development has avoided some of the issues that were of concern. There are no balconies or decks overlooking the residential district, and the addition has been set back from the side yard where it would interface with the existing building to the west. To accommodate this, the addition has been moved slightly to the north. She advised that the distance separation between the existing building on the subject property and the proposed addition is required for fire regulations.

When questioned by the Panel about the parking variances, she indicated that one

**Decision of Toronto Local Appeal Body Panel Member: L. McPherson
TLAB Case File Number: 17 178838 S45 32 TLAB**

parking space was adjacent to the addition and 2 parking spaces were under the addition at grade. She advised that the dimensions were ample for a typical car and that a Toyota Corolla was used as a model for the dimensions.

Mr. Tsang, the City's Planning Witness, was qualified to provide land use planning opinion evidence. Mr. Tsang is a Planner with the City Planning Division, Toronto and East York District, and is involved in Committee files in this geographic area. He is also involved with site plan approval, rezoning and Official Plan Amendment applications. He is familiar with the area as he was involved in the Queen Street visioning exercise, the UDG, and the other planning instruments having relevance to the subject property.

He also provided preliminary comments to the applicant regarding concerns related to the rear yard and front curb setback prior to the Committee meeting. While he did not author the staff report to the Committee, Mr. Tsang provided input and he concurred with the recommendations. The staff report noted that the Official Plan requires mixed-use buildings to create a sufficient transition to adjacent Neighbourhood designated properties. With respect to the rear yard setback, the report indicated that planning staff had concerns that the proposed 5.33 m setback is a sub-standard distance and would not provide adequate transition to the properties at the rear. The report recommended that the Committee refuse the application.

With the amended variances and drawings, his evidence focused on the rear yard setback issue (Exhibit 6 -Expert Witness Statement). Mr. Tsang opined that the minor variance for the rear yard setback does not meet the four statutory tests of the Planning Act and the appeal should be dismissed.

He provided an overview of the site context and applicable planning documents.

In the vicinity of the subject property on Queen Street East, there are a variety of mixed retail/commercial/residential buildings, up to 3-storeys, with commercial uses on the ground level and residential uses above. Residential uses can be found to the north and south of the site beyond Queen Street East. A fire station and a Toronto Hydro utility station can also be found immediately west of Herbert Avenue. A school is south of Queen Street east of the subject property.

The lane behind the subject property is generally used to for vehicular access to the buildings fronting Queen Street East. There are some accessory structures in the form of garages abutting the lane. There are no residential buildings which penetrate the 7.5 m setback requirement. These garage structures are one-storey and generally up to 4 m in height.

The subject property is located on an Avenue on Map 2 – Urban Structure, of the Official Plan. The land use designation is Mixed Use Areas, as noted on Map 21 – Land Use Designations, of the Official Plan. Queen Street East has a 20 Metre Right-of-Way, as noted on Map 3 – Right-of-Way Widths Associated With Major Streets. Official Plan Amendment 151 (OPA151) also applies to the subject site and is discussed further below.

Zoning By-law 438-86, as amended, of the former City of Toronto (“By-law 438-86”) applies to the subject property. It is not subject to Zoning By-law 569-2013 as the subject property is within an area where a site specific By-law applies: By-law 607-2013, amending Zoning By-law 438-86. The subject site is zoned MCR T2.0 C1.0 R2.0 in By-law 438-86, which permits a building height of 12 metres.

Area Specific By-law 607-2013 introduces additional regulations with regards to building setback from the curb of Queen Street East, maximum ground floor height, additional setbacks when a building is above 9.5 metres in height when adjacent to any municipal road, and other regulations. This By-law was passed in 2013 to support the UDG. It focused on ensuring the sidewalk width of 4.8 m was achieved and it restricted maximum ground floor heights and other provisions for setbacks above 9.5 m. Mr. Tsang explained that the site-specific By-law did not deal with the rear setback issue as the base By-law 438-86 already included a 7.5 m setback. The provisions in By-law 438-86 are consistent with the UDG with regard to rear yard setback and angular plane.

With respect to the Official Plan (Tab 12 of Exhibit 8) Mr. Tsang referred to Chapter 2 and the Avenues policies. He highlighted the following:

Chapter 2.2.3, Avenues: Reurbanizing Arterial Corridors –

Policy 1 states: “Reurbanizing the Avenues will be achieved through the preparation of Avenue Studies for strategic mixed use segments of the corridors shown on Map 2”.

Policy 2 states in part: “To facilitate and shape growth, each Avenue Study will engage local residents, businesses, the TTC, Toronto Parking Authority, and other local stakeholders and will set out:

- i) permitted uses and maximum density and height limits;
- ii) appropriate massing, scale, siting and organization of buildings;
- iii) appropriate scale transitions to adjacent areas;
- iv) restrictions on parking at-grade and driveways in front of buildings; and
- v) transit-supportive measures such as:
 - (1) minimum development densities;
 - (2) maximum and minimum parking standards; and
 - 3) restrictions on auto-oriented retailing and services.”

He emphasized subsections ii) and iii), as underlined. Mr. Tsang indicated that the Visioning Study was the Avenue Study that resulted in the UDG and OPA 151.

With respect to the Built Form policies in Chapter 3.1.2, Mr. Tsang highlighted Policy 3 which states in part:

“New development will be massed and its exterior façade will be designed to fit harmoniously into its existing and/or planned context, and will limit its impact on neighbouring streets, parks, open spaces and properties by:
a) massing new buildings to frame adjacent streets and open spaces in a way that respects the existing and/or planned street proportion;

- b) incorporating exterior design elements, their form, scale, proportion, pattern and materials, and their sustainable design, to influence the character, scale and appearance of the development;
- c) creating appropriate transitions in scale to neighbouring existing and/or planned buildings for the purpose of achieving the objectives of this Plan;
- d) providing for adequate light and privacy;
- e) adequately limiting any resulting shadowing of, and uncomfortable wind conditions on, neighbouring streets, properties and open spaces, having regard for the varied nature of such areas; and
- f) minimizing any additional shadowing and uncomfortable wind conditions on neighbouring parks as necessary to preserve their utility.”

He highlighted subsections c) and d), underlined above, but noted that all of the items must be looked at as a whole.

Chapter 4.5 includes the land use policies for Development Criteria in Mixed Use Areas. Policy 2 states in part:

“In Mixed Use Areas development will:

- c) locate and mass new buildings to provide a transition between areas of different development intensity and scale, as necessary to achieve the objectives of this Plan, through means such as providing appropriate setbacks and/or a stepping down of heights, particularly towards lower scale Neighbourhoods.”

To implement Policy 2.2.3 1), above, Mr. Tsang advised that the “Queen Street East Coxwell Avenue to Nursewood Road Urban Design Guidelines” (UDG) were adopted by Council in November 27, 2012 for this part of Queen Street East. He agreed that the vision study and the UDG were a reaction to development activity such as the Licks development.

Mr. Tsang advised that OPA 151 was adopted by Council on July 11, 2014, and applies to the subject property (Tab 22, Exhibit 8). This OPA is in force and effect. It applies to 3 precincts along Queen Street. The subject property is within the Kew Beach precinct. OPA 151 is intended to guide and shape development by establishing compatible development and redevelopment policies that reinforce the existing character of the area to ensure appropriate building scale in relation to transition between new development and adjacent neighbourhoods and appropriate design details. He identified the following relevant policies set out in Section 2:

“2. The lands shown on the maps attached to and forming Part of this By-law are subject to the following policies:

2.1. This Queen Street East, Coxwell Avenue to Nursewood Avenue Area Specific Policy is intended to guide and shape development/redevelopment within the Queen Street East, Coxwell Avenue to Nursewood Avenue Area by establishing compatible development/redevelopment and built form policies that reinforce the existing character of the area as a whole and each of the three precincts, being the Woodbine Beach Precinct, The Kew Beach Precinct and the Balmy Beach Precinct, as show on Maps 1,

2 and 3 to ensure an appropriate building scale in relation to Queen Street East, appropriate transition between new development and adjacent neighbourhoods and appropriate design details for new development.

2.4. Urban Design Guidelines adopted by City Council for Queen Street East, Coxwell Avenue to Nursewood Avenue will be used as a tool to evaluate proposed development in the area and ensure that such development is consistent with the Official Plan. To this purpose, the Urban Design Guidelines will:

- a) be used to implement Official Plan policies;
- b) provide understanding of the character of the area as a whole and each of the Precincts;
- c) explain how development can respect and reinforce local character for the area as a whole and each of the precincts;
- d) articulate planning priorities for new development in the area;
- e) identify setbacks, stepbacks, height and built form to mass development appropriately within the local context for each precinct; and
- f) describe the prevailing public realm conditions and future public realm goals. “

Mr. Tsang referred to the UDG adopted by Council in October 2012 that formed the background work that lead to OPA 151 and the Site Specific By-law 607-2013. He referred to a number of relevant sections. The Massing Section (Chapter 4.3) states, in part:

“The rear of buildings create the transition area from the commercial frontage along Queen Street East to residential districts to the north and south. The transition area will have massing, setbacks and proportions which mitigate negative shadow impacts on the abutting neighbourhoods. Rear transitions will conform to the proposed cross section for each precinct and also be consistent with the as-of-right shadow.”

He referred to the diagram that Mr. Dorsey had described earlier and referenced Section 6, Kew Beach Precinct Urban Design Guidelines, Policy 6.3 which states: “Buildings will not exceed a 45 degree angular plane beginning at a height of 10.5m measured at a 7.5 m setback from the rear lot line.”

Mr. Tsang explained that the UDG were intended to be the implementation tool of the Avenues policies of the Official Plan for this section of Queen Street East. The rear yard setback was always intended to create a transition zone between any development on Queen Street East and the residential properties to the north and south. The lane is 3.66 m wide and a 1.67 m lane widening would be required.

Mr. Tsang noted that both a Zoning By-law Amendment and an Official Plan Amendment were enacted and in full force and effect to ensure that the setback provisions of the UDG were in place for all new development.

In his opinion, the proposed 5.33 metre rear setback to an adjacent residential property would provide inadequate setback, particularly since the proposed addition will be a three-storey high structure. He explained that while there are structures that abut the

rear lane, they are all one storey in height and used as ancillary uses such as parking, which is a less intense use compared to a residential use. He noted that within the study area between Woodbine Avenue and Kippendavie Avenue, there have been no approvals for buildings with reduced setbacks at the rear adjacent to residential properties.

He indicated that within the overall UDG area, there have very few examples of rear yard setback approvals since the adoption of the UDG. Of the four cases, two were approved to coincide with setbacks of adjacent developments, one was an existing building condition and one was for a daycare, which was a reduction to 7.1 m to allow for the minimum size of the facility. There was no rear lane in the latter case.

It is Mr. Tsang's conclusion that the rear setback variance does not meet the general intent and purpose of the Official Plan. There is no precedent for a rear yard setback reduction through a minor variance process in this area. In his opinion it does not meet the intent of OPA 151 which was recently adopted.

With respect to the Zoning By-law, it is Mr. Tsang's opinion that the general intent and purpose of the Zoning By-laws 438-86 is not maintained with regard to the variance related to the rear yard setback to a residential or park district. To reinforce this, he directed the panel to the Zoning By-law setback provisions. In his view, development is to be contained within the setback combined with the angular plane provision. This constitutes a "no build" zone. Garages are an exception provided for in the By-law. The By-law would not direct that the angular plane line be projected down beyond the 10.5 m height as suggested by Mr. Dorsey. In his opinion, this would violate the intent of By-law provision. The 7.5 m setback is intended to be a transition zone as identified in the Official Plan. The By-law supports the Official Plan in this regard. The intent of the UDG is to prohibit development that encroaches into the transition zone. In his view, approval would create an Official Plan conformity issue because OPA151 directs the UDG to be used to evaluate developments.

It is also Mr. Tsang's opinion that the variance related to the rear setback is not minor in nature and is not within the existing character. He explains that having a three-storey residential structure closer than 7.5 m to the residential areas to the north does not provide adequate transition. In his view, the massing of a building that is 2.2 m closer to the residential neighbourhood at a height of 3 storeys will be noticeable. There are currently no residential structures on the south side of rear lane that have the same intensity of use as proposed by the applicant.

It is Mr. Tsang's opinion that the setback variance is not desirable for the appropriate development of the building or land. He refers to the UDG, the implementing Zoning By-law and OPA 151 all of which were enacted recently between November 2012 and July 2014. These exercises included significant study and public consultation. In his opinion, there has not been enough justification as to why the setback variance would be desirable when compared to the planning instruments.

In conclusion, it is Mr. Tsang's opinion that the application does not meet the four statutory tests listed in Section 45(1) of the Planning Act, does not constitute good

planning, and the appeal should be dismissed.

ANALYSIS, FINDINGS, REASONS

The TLAB has carefully considered the evidence provided on behalf of the Applicant and on behalf of the City. The Panel prefers the evidence of the City's professional planner, Mr. Tsang, and agrees that the proposed variance for the setback at the rear fails to meet the four tests under s. 45(1) of the Act.

The City undertook a number of initiatives in response to development interest along Queen Street East between Coxwell Avenue and Nursewood Road. Policy 2.2.3.1 of the Official Plan directs that "Reurbanizing the Avenues will be achieved through the preparation of Avenue Studies for strategic mixed use segments of the corridors shown on Map 2". Policy 2.2.3.1 states in part: "To facilitate and shape growth, each Avenue Study will engage local residents, businesses, the TTC, Toronto Parking Authority and other local stakeholders and will set out:

- i) permitted uses and maximum density and height limits;
- ii) appropriate massing, scale, siting and organization of buildings;
- iii) appropriate scale transitions to adjacent areas;

The City initiated the visioning study in 2012 for Queen Street East between Coxwell Avenue and Neville Park Avenue. As a result, the UDG were developed. They were adopted by Council in November 27, 2012 and implement Policy 2.2.3.1 of the Official Plan for this segment of Queen Street.

Within Chapter 4.3, Massing, the UDG states:

"The rear of buildings create the transition area from the commercial frontage along Queen Street East to residential districts to the north and south. The transition area will have massing, setbacks and proportions which mitigate negative shadow impacts on the abutting neighbourhoods. Rear transitions will conform to the proposed cross section for each precinct and also be consistent with the as-of-right shadow."

This section clearly includes setbacks as one of the elements of the rear transition that is included in the cross section. Specifically with respect to the Kew Beach Precinct, which includes the subject property, Chapter 6.3 states:

"Buildings will not exceed a 45 degree angular plane beginning at a height of 10.5m measured at a 7.5 setback from the rear lot line."

Ms. Wise and Mr. Dorsey took the position that the 7.5 m setback from the rear lane was solely for the purpose of identifying the point in which the 10.5 m height is measured from as opposed to being a building setback requirement. In reviewing the Official Plan direction for Avenues Studies included in Section 2.2.3.1 and the direction in the UDG regarding setbacks, I agree with Mr. Tsang that the reference on the cross section of "7.5 setback from rear property line" is indeed a policy for a building setback and not simply a point from which to measure the 10.5 m height for the 45 degree

angular plane.

I accept Mr. Tsang's explanation that the site specific By-law to implement the UDG only dealt with matters that were not already found in the parent By-law (438-86). The 7.5 m building setback from a lot in a residential or park district already included in By-law 438-86 had the same effect as the 7.5 m building setback in the UDG cross section. Conversely, the 4.8 m sidewalk identified in the UDG cross section was not in By-law 438-86 and resulted in a By-law amendment that required any building to be setback 4.8 m from the curb of Queen Street East. While the cross-section diagram does not specifically say "building" setback for the front or the rear elevation, a reading of the policies and the amending Zoning By-law would lead one to conclude it is referring to a building setback, and as such, the building mass is intended to be contained within the diagram to meet the UDG.

With respect to the weight given to the UDG, the City undertook an Official Plan Amendment which, among other matters, provided specific direction on the applicability of the UDG. In this regard, OPA 151, adopted by Council in July 2014, includes a policy that elevates the status of the UDG. Policy 2.1 states, among other matters, "the Area Specific Policy is to ensure an appropriate transition between new development and adjacent neighbourhoods". It further states in Policy 2.4 the Urban Design Guidelines will be "used as a tool to evaluate proposed development in the area to ensure that such development is consistent with the Official Plan" and further that "the Urban Design Guidelines will a) be used to implement Official Plan policies and e) identify setbacks, stepbacks, height and built form to mass development appropriately within the local context for each precinct."

On this basis, I agree with Mr. Tsang that the proposal does not meet the intent of the Official Plan as it does not respect the 7.5 setback identified in the UDG.

The TLAB agrees that there was no appropriate planning justification provided that was consistent with the policies of the Official Plan to justify the reduction in setback. I understand Mr. Dorsey's opinion that the proposal represents a better design solution in relation to the property to the west. However, the Official Plan policies regarding transition are directed to areas such as Neighbourhoods that are at a different intensity and scale. As stated in policy 4.5.2: "In Mixed Use Areas, development will:

c) locate and mass new buildings to provide a transition between areas of different development intensity and scale, as necessary to achieve the objectives of this Plan, through means such as providing appropriate setbacks and/or a stepping down of heights, particularly towards lower scale Neighbourhoods."

The Panel recognizes that the Applicant has made an effort to address the concerns relating to the Queen Street East frontage and address the original parking issues. From the Applicant's perspective, the TLAB understands the design rationale for the placement of the addition; however, these design attributes do not outweigh the relevant policy context. The adjacent site is in a Mixed Use designation and along an Avenue, an area of the City where growth is anticipated. In contrast, the house to the north is in a Neighbourhoods designation, an area to be protected. While the addition would provide additional housing in the form of infill/intensification which is a recognized objective at

both the City and provincial levels, the same objective could be achieved on the subject property with a different design which respects the UDG.

I agree with Mr. Tsang that the 7.5 m setback in the By-law is intended to create a transition zone between the Queen Street development and the residential properties to the north. In this case, the UDG supports the By-law provisions and the purpose and intent of the By-law is not maintained with the proposal.

The City has recently adopted various planning instruments to address development in this area. Transition to Neighbourhoods is a key element of all of these documents. It would not be desirable for the appropriate development of the subject property if an appropriate transition were not provided.

The impact of a three-storey building within the 7.5 m setback area is not minor and would not be in keeping with the character of the area. On the basis of the foregoing, I find that the proposed variance related to the rear setback does not meet the intent and purpose of the Official Plan and zoning by-laws, is not desirable for the appropriate development of the land, and is not minor.

There was little evidence regarding the specific variances to the parking provisions; however, the current configuration of spaces proposed by the plans would extend into the required setback as two of the spaces are under the addition. It would not be appropriate to allow the parking variances in this circumstance.

DECISION AND ORDER

The appeal is dismissed and the decision of the Committee of Adjustment is confirmed.

X



L. McPherson

Panel Chair, Toronto Local Appeal Body