

DECISION AND ORDER

Decision Issue Date Monday, January 29, 2018

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

Appellant(s): NANCY REGO

Applicant: SCOTT CAIRNS

Property Address/Description: 1518 DUNDAS ST W

Committee of Adjustment Case File Number: 17 138399 STE 18 MV

TLAB Case File Number: **17 223980 S45 18 TLAB**

Hearing date: Monday, January 15, 2018

DECISION DELIVERED BY T. Yao

INTRODUCTION

Ms. Lisa Klapstock is the owner of 1518 Dundas St West. The Committee granted 11 variances permitting Ms. Klapstock to build a coach house at the back of her property. Ms. Nancy Rego, Ms. Klapstock's immediate neighbour to the east and part owner of 1520 Dundas St West, appealed this decision, and thus this matter is before the TLAB.

Although there are substantial number of variances, this is misleading. Because there are two applicable zoning by-laws, and because each can approach the same issue from different angles, there is really only one zoning regulation behind these 11 variances: the prohibition against "a house behind a house". Unlike many of the cases that come before the TLAB, there is no height, floor space index or setback variance sought.

BACKGROUND

Ms. Klapstock's lot, on the north side of Dundas St West, contains two buildings; On the Dundas side is a 3-storey mixed use building containing ground floor commercial with 2 dwelling units above. To the rear, separated by a 21 x 20 foot outdoor space, is an existing two storey garage. The dimensions of the lot are 5.97 m by 30.47 m (frontage 20 feet, 100 deep).

The proposal is to add a new third floor to the garage. The coach house tenant would park in the garage and enter the second floor by a new external stair way to the second floor. The second floor (currently unused space) would be renovated to make the kitchen /dining room. The new third floor would contain a single bed room and washroom. The total square footage would be modest, about 500 sq. ft.

Immediately next door (west) is the Rego lot, 1520 Dundas St. West. It is larger than the Klapstock lot, with a frontage of 40 feet, and the same 100 foot depth. Ms. Rego's building is all residential, containing eight apartments with 20 individuals as tenants, including herself and Mr. John Siembida. Their building is U shaped, with the bottom of the U fronting on Dundas. On the north side, which faces the proposed coach house, are four units (second and third floors), with balconies. It is from the vantage point of residents at the rear, (which include first floor and basement units) that is the basis of the appeal. Ms. Rego, who occupies the third floor unit nearest the coach house, says that she currently looks over the second floor of the garage; after construction the new roof would be about at her eye level. The nearest corner of existing garage is about 1.3 m from the corner of the nearest balcony.

I now will describe the surrounding land use context, first the lane and then the surrounding residential area. The rear lane is 5.97 m wide, slightly undersized compared to a standard of 7.5 m. It already contains a laneway dwelling unit at 1514 Dundas St W, approved but not yet built. To the north are semi-detached, townhouses and laneway dwellings.

Ms. Klapstock's proposal was circulated to Planning and Engineering. The Planning report said:

The subject site is adjacent to two intersecting lanes, Dundas Lane and Boland lane, both of which contain a number of existing laneway houses. Additional, municipal services including a fire hydrant, sidewalk and street lighting are found on Boland Lane (and) allow it to function more like a standard municipal street than a rear service lane.

The report went on to say, ". . . as the proposed lane house fits the existing built form context of the surrounding neighbourhood, there are no concerns with the proposal."

Engineering Services also examined the proposal and had no concerns.

EVIDENCE

Ms. Klapstock retained Tae Ryuck, as her planner. Mr. Ryuck graduated with a Masters in Planning in 2001, holds professional certification in planning and has been

previously recognized as being entitled to give opinion evidence in land use planning by the Ontario Municipal Board and the TLAB. I also made this finding.

Ms. Rego and Mr. John Siembida testified. Ms. Lindy Rego, Ms. Nancy Rego's sister, was in attendance as well.

Neither side had legal representation.

MATTERS IN ISSUE

The tests for minor variances from a zoning by-law 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.

I am also required to consider the "Growth Plan for the Greater Golden Horseshoe" and the Provincial Policy Statements. This is a convenient place to mention these broad brush policies. Through the Growth Plan, Toronto is obliged to develop policies in its Official Plan to:

Provide housing options to meet the needs of people at any age.¹

This directive encourages the type of small apartment on a laneway that has services similar to a street.

Section 1.1.3.3 of the 2014 Provincial Policy Statements states Toronto shall "promote opportunities for intensification and redevelopment where this can be accommodated taking into account existing building stock or areas".

ANALYSIS, FINDINGS, REASONS

I will now turn to the Official Plan and zoning. The Official Plan designates all Dundas Street West fronting properties, on both the north and south sides as "Mixed Use Area", which permits "a broad range" of commercial, residential, institutional and utilities

The building is zoned CR, Commercial Residential permitting a wide range of uses. Besides commercial, residential, and office, CR permits a wide range of institutional uses. If the building is mixed use, it may be all residential like the Rego

¹ From the Ministry of Municipal Affairs website.

building, all commercial or any combination of residential or commercial, like the Klapstock building.

I now turn to Ms. Rego's specific issues.

Alleged error by the zoning plan examiner

Ms. Rego states that two zoning variances are incorrect and so the variances should not be granted. In variance 5, the Committee of Adjustment decision states that:

The minimum above ground distance between any main wall of a building with windows to another main wall with windows on the same lot is 11 m.

In this case, the distance between main walls will be 8.09 m.

Ms. Rego states that instead of 8.09 m, it should be 6.32 m. The relevant section of the zoning by-law is:

(2) Separation of Building Walls - Development Standard Set 2 and Development Standard Set 3. For a lot in the CR zone, subject to Development Standard Set 2 (SS2) or Development Standard Set 3 (SS3), *the portion of a building which has a height equal to or less than the width of the right-of-way of the street it abuts* must comply with the following: [my italics]

(A) where a main wall of the building has windows and a line projected at a right angle from that main wall intercepts *another main wall with windows on the same lot*, the required minimum above-ground distance between the main walls is 11.0 metres;

I believe that Ms. Rego has failed to take into consideration the italicized words. It is true that if you measure at the third storey, you will get her measurement of 6.32 m, but the first set of italicized words tells the plan examiner how high to take the measurement — equal to the height of the right of way of the street, which is 5.97 m. At that point the nearest “main wall with windows” is in the recessed portion that contains a window and the door, not the main wall that Ms. Rego has selected, which does not contain a window.

In variance 8, the decision says:

The minimum required setback from a lot in Residential or Park District is 7.5 m

In this case, the ancillary building will be set back 5.97 m from the abutting Residential District.

Ms. Rego says this should be 1.3 m, the distance from her porch to the nearest corner of the coach house, because she is in a “residential” building in ordinary language, which is true. However, she is not in a residential zone in the zoning by-law; she is in a

CR Commercial Residential, for which there is no required setback from one CR zone to another².

Accordingly, I find that Ms. Rego's allegation is based on incomplete understanding of the zoning by-law not error on the part of the plan examiner, Theresa Orlando. Ms. Orlando performs this type of examination every day and common sense would dictate I accept her expertise. Even if I thought otherwise, the law compels all persons to accept the decision of the plan examiner unless a judge disagrees under Section 25 of the *Building Code Act*:

Appeal to court

25 (1) A person who considers themselves aggrieved by an order or decision made by the chief building official, . . . may appeal the order or decision to the Superior Court of Justice within 20 days after the order or decision is made.

Both decisions were made in a Zoning Notice by Ms. Orlando to Kohn Schnier Architects, March 23, 2017. If Ms. Rego considered herself aggrieved, she needed to appeal to a judge within 20 days. It is true that there is a mechanism for extending the time for appeal, but the law in this area is complex and it would serve no purpose to speculate on what is now a theoretical appeal right.

There are good reasons for the ultimate authority of the plan examiner. Other people, Ms. Klapstock and the Committee of Adjustment have relied on the zoning plan examiner, and going forward, if they have made errors, which I don't believe has happened here, how would such an error be fixed? Thus, 20 days after the decision, it is not possible legally for me or Ms. Rego to question a decision of Ms. Orlando in her capacity as zoning plan examiner.

Views

Ms. Rego said:

When I have some one walk in my patio, honestly, I have some people say OMG I feel like I'm in Paris. It's gorgeous. And I say the same thing about our building, they either feel like they are in New York, Paris, or old Montreal. We have a beautiful building.

From her balcony, Ms. Rego does indeed enjoy a penthouse type view, but she looks over a Neighbourhoods area (speaking in Official Plan language). The existing zoning

² 40.10.40.70 Setbacks

(2) Development Standard Set 2 - Building Setbacks In the CR zone subject to Development Standard Set 2 (SS2), a building or structure is subject to the following:

...

(C) where the main wall of a building has windows or openings, the main wall must be set back at least 5.5 metres from a side lot line that is not adjacent to a street or lane, otherwise no building setback is required; (D) where the main wall of a building does not have windows or openings, the main wall must be set back at least 3.0 metres from a side lot line that abuts a lot in the Residential Zone category or Residential Apartment Zone category, *otherwise no building setback is required*; (my italics)

(see Figure 1) has given the Rego family rights to build to the rear lot line, which they have chosen not to exercise for the present. But the intention of the CR zone, in the long term is that one day a building will be built to the lot line. This is the long term intention of the zoning by-law, which is the test for granting a minor variance. It shows the obstacle Ms. Rego faces, when questioning a proposal that has much less impact than the as of right building.

Ms. Rego's view would be partially blocked by the erection of a third storey. Her views north and north west will continue. She categorically rejects any conclusion that this is "minor" or "desirable for the appropriate development of the land."

It is a rule of interpretation that words in Acts must be read in their context: In section 45(1) of the *Planning Act* it is stated:

45(1) [the TLAB may] . . . authorize such minor variance from the provisions of the by-law, in respect of the land, building or structure or the use thereof, as in its opinion is desirable for the appropriate development or use of the land, building or structure, if in the opinion of the committee the general intent and purpose of the by-law and of the official plan, if any, are maintained.

Section 45(1) says that what is "minor" is in the opinion of the TLAB, not that of a neighbour.

"Desirable" is "desirable for the appropriate development of the land" which does not mean whether Ms. Rego desires it, clearly she does not. The word means it is desirable for the *planned function* of Ms. Klapstock lands, which, like Ms. Rego's, is to be a target of growth and population density.

The word "minor" refers to the variance from the provision of the zoning by-law being minor, not the change being minor. The variances are required, not because this building represents a significant deviation from the zoning by-law, but because of the shape of the new building, i.e., it is contained in two discrete buildings. Were they connected, no variances would be required at all.

Section 45(1) asks me to see if the minor variance "maintains" the general intent of the Official Plan and zoning by-law. Mr. Ryuck's evidence was that the general intent was to allow an as of right building with the cross-section shape as shown on the next page in Figure 1. I have already explained how the zoning -by-law requires no setback for one CR zone to another.

Ms. Rego's views will be affected toward the north east, although not as much as she perceives, which she said, would amount to "total obstruction". Mr. Ryuck's evidence, which I accept, is that there is no right to a view, so that some impact on views is not a decisive barrier to the minor variances.

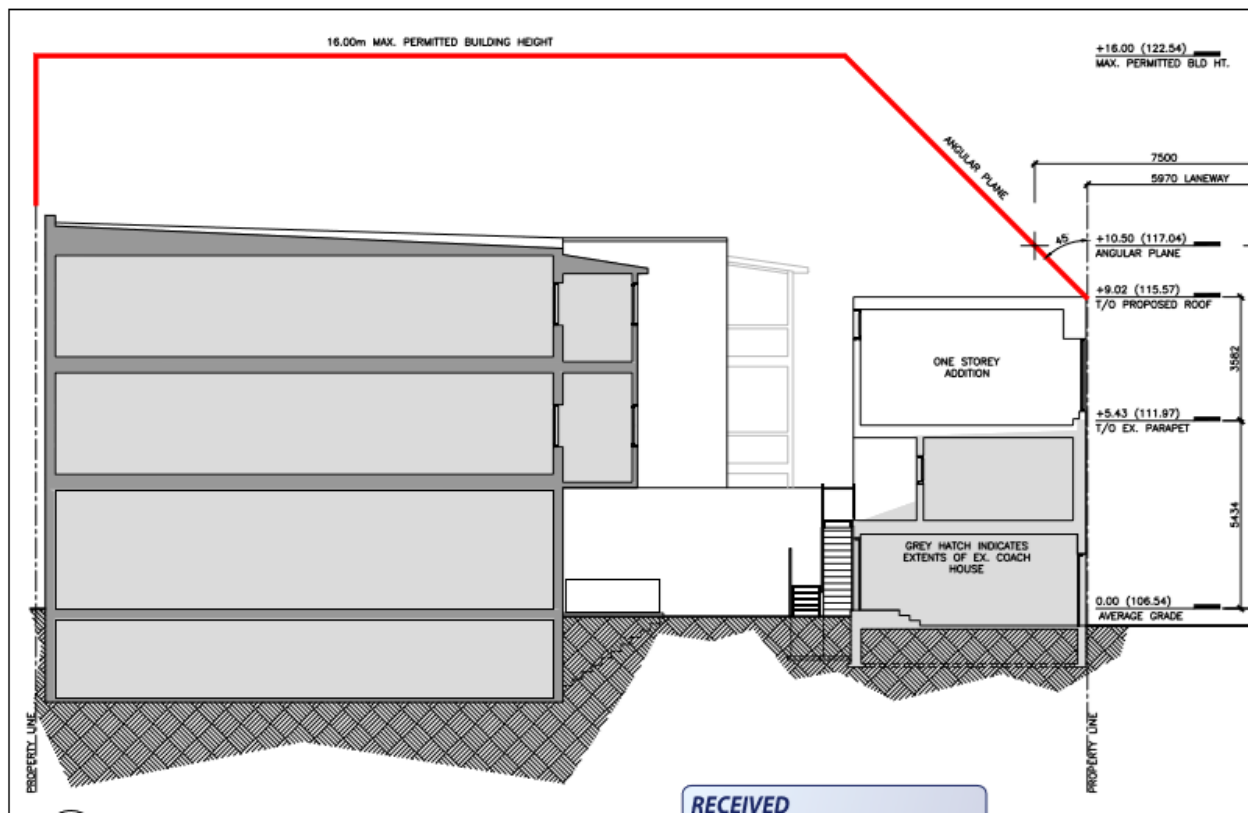


Figure 1. Cross section of an as of right building that would be permitted by the Zoning Bylaw with red line showing permitted building height.

In conclusion, I find that the proposal of new construction, confined to the two floors over an existing garage, far less intrusive than the as of right building and which respects the transition to the residential neighbourhood to the north, meets the intent of the zoning by-law and Official Plan.

Shadows

Ms. Rego complained that the coach house will shadow her building. Section 4.5.2(d) states that in Mixed Use Areas, development will:

- d) locate and mass new buildings so as to adequately limit shadow impacts on adjacent Neighbourhoods, particularly during the spring and fall equinoxes;

Section 4.5.2 (d) does not talk at all about shadow impacts on adjacent *Mixed Use Area* buildings and therefore the Official Plan has *no* limitation as to shadow impacts on her or her tenants' outdoor balconies. Notwithstanding, Mr. Ryuck performed a shadow study with before and after shadows.

Section 4.5.2 (d) specifies “particularly during the spring and fall equinoxes”, which are the dates of the year Mr. Ryuck used. It shows Ms. Rego’s balcony is in shadow from her own building, from 9:18 am to 12:18 pm, which is what you would expect, since her building is roughly north south and the during the spring and fall equinoxes the sun rises in the south east.

At 12:18 pm, the sun swings around and at 2:18 pm it is her building that begins to cast shadows on the coach house. By 5:18 pm, everything is in shade. After all, this is a dense urban location. I find on Mr. Ryuck’s shadow evidence, that the proposal complies with Section 4.5.2(d) of the Official Plan.

Privacy

The final amenity impact was with respect to privacy; Ms. Rego felt that the new tenants could cause a fire risk to her, attempt to climb into her tenant’s porches or peer into her bathroom windows, which she leaves open in the summer, because she does not have air conditioning. There is no reason for the new tenant or tenants at 1518 would misconduct I don’t believe the first two risks are any greater than for other tenants at 1520 Dundas. As to sight lines, the architect has chosen a type of placement for the window that makes it difficult to see out and in, but still gives light. Again, this is a tight urban situation where the zoning requires no setbacks between CR buildings and, so I reject Ms. Rego’s claim as to a privacy impact.

Devaluation of Ms. Rego’s property

Ms. Rego asked that I allow her appeal because, according to her, the coach house would devalue 1520 Dundas and indicated she had spent \$50,000 last year to improve the balconies of her tenants.

Ms. Rego did not attempt to qualify herself as a person entitled to give opinion evidence in appraisal matters and did not lead evidence from qualified persons. I am unable to accept Ms. Rego’s argument.

Conclusion

I am satisfied that the proposed coach house fully meets applicable provincial policy standards and the four tests under s 45(1) of the *Planning Act*. I have indicated that Mixed Use Areas are designated for increased density, subject to tests in Section 4.5.2, which Mr. Ryuck’s evidence has satisfied. I am satisfied as well, that Ms. Rego’s objections, although sincere, are not founded on the four tests, but from an assumption that she can expect development to cause no physical change at 1518 Dundas, whereas this is an urban area, whose vibrancy makes it an attractive living environment. The Growth Plan and Official Plan recognize this and anticipates new residents will want to live here. These policy documents attempt to direct growth to areas with

buildings like 1518 Dundas St West. Based on all the evidence provided, the coach house is compatible with those objectives.

DECISION AND ORDER

I dismiss Ms. Rego’s appeal. I authorize the variances in Table 1 subject to the Conditions of Approval below.

Table 1. Variances required under Zoning By-law No. 569-2013			
and forming part of this decision			
		Required/Permitted	Proposed
1.	Use of ancillary structure on the same lot	Only for a use ancillary to the permitted use	Use is for a dwelling unit
2.	Use of ancillary building	Cannot be for living accommodation	For living accommodation
3.	Dwelling unit permitted	Only in a permitted building type	In an ancillary building, which is not listed as a permitted building type
4.		No intervening building between a building with dwelling unit and street on which the building fronts	Another building intervenes
5.	Minimum above ground distance between any main wall of a building to another main wall, both on same lot	11 m	8.09 m
6.	Minimum width of abutting lane	7.5 m	5.97 m
under Zoning By-law No. 438-86			
7.	Maximum number of principal buildings on a lot	One	Two
8.	Setback from an R lot	7.5 m	5.97 m
9.		No residential building behind another	Residential building behind another

Table 1. Variances required under Zoning By-law No. 569-2013 and forming part of this decision			
10.	Whether residential building in the rear of another building	Not permitted	Proposed
11.	Location of Parking space in garage	3.5 m from centre of lane	2.98 m from centre of lane

1. Conditions of Approval

Building Permit

1. That the owner construct in substantial compliance with the plans filed at the Committee of Adjustment subject to any alterations caused by compliance with condition 3(a).

Planning

2. The maximum height of the ancillary building is limited to 10 m.

2. Engineering Services

3. The owner shall submit, to the satisfaction of the Executive Director, Engineering & Construction Services, the following
 - (a) A revised site plan illustrating:
 - (i) Only the accepted waste route strategy 1;
 - (ii) A separate designated refuse storage area within private property labelled “Non-Residential Refuse Storage” along with the notation “Non-residential refuse must not be stored with residential refuse”; and
 - (iii) the following notations:

“Non-Residential Unit must apply to the City for the City’s yellow Tag Program”; and

“Staff have reviewed this application on the understanding it will comprise a single parcel of land, under one owner, upon completion. If any party, including the applicant or any subsequent owner, submits an application for severance, part-lot control, subdivision, condominium approval or any other form of land division for this development not in

Decision of Toronto Local Appeal Body Panel Member: T. Yao
TLAB Case File Number: 17 223980 S45 18 TLAB

accordance with this assumption, different servicing connections, including all associated stormwater management facilities and any necessary revised plans and studies, may be required by the City at the sole cost to the applicant.”

- (b) An application for the “Yellow-Tag Program” for City refuse collection of the non-commercial refuse.

X

Ted Yao

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