

DECISION AND ORDER

Decision Issue Date Thursday, February 01, 2018

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

Appellant(s): JULIA LAZAR

Property Address/Description: 99 PINEMORE CRES

Committee of Adjustment Case File Number: 17 168218 NNY 34 MV

TLAB Case File Number: **17 221372 S45 34 TLAB**

Hearing date: Wednesday, January 24, 2018

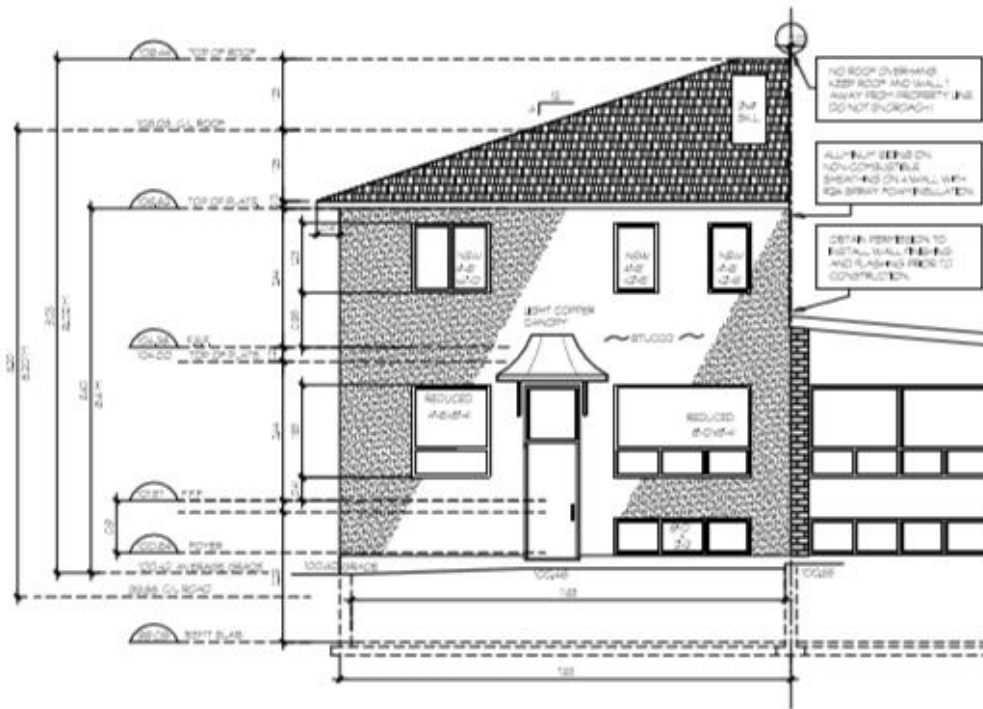
DECISION DELIVERED BY T. Yao

INTRODUCTION

Julia and Stephan Lazar, owners of 99 Pinemore Cres, seek to build a second-floor addition. The Lazar house is a semi; they share a party wall with Paul Rezaie, 97 Pinemore Cres. The Lazars require a variance from Zoning By-Law 7625, in which the minimum side yard setback is 0.6 m from the lot line.

On August 3, 2017 the Committee of Adjustment refused to grant the variance and Julia Lazar appealed. Thus, this matter comes before the TLAB.

The proposed second floor addition is shown below. The two slanting parallel lines on the right indicate the roof line of Mr. Rezaie's house.



MATTERS IN ISSUE

The TLAB Panel must be satisfied that the application meets all the four tests under s. 45(1) of the *Planning 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

Ms. Lazar called Mohammed Maroof, whom I qualified to give opinion evidence in building sciences. Mr. Maroof holds a degree in surveying from Lancaster University in the UK and his work consists, among other things, in reading and evaluating engineering reports for the purposes of acquisition and disposal of real property. He did not seek to qualify himself in the area of land use planning. Mr. Rezaie (97 Pinemore Cres) testified on his own behalf.

ANALYSIS, FINDINGS, REASONS

The intent of North York by-law 7625

In 2013, the City of Toronto passed a new Zoning By-law 569-2013, which superseded the old North York Zoning By-Law 7265. However, appeals were launched against the new by-law, so Buildings Department reviews all development applications for

conformity with both by-laws. The zoning plan examiner did not indicate any variance was necessary from By-law 569-2013, so the primary task here is to determine the intent of 7625. In most cases of side yard setback, the answer is obvious — side yard setbacks are for access and for owners to be able to maintain and inspect their buildings without going on a neighbour's property. The answer is not so obvious for semidetached buildings.

Mr. Maroof began his evidence by filing an email from a colleague, which he received the night before:

Hey Maroof,
Attached is the notice for the public hearing that references the old zoning bylaw and the 0.6m side yard setback.

Below is a link to the RM zone in the new zoning bylaw. In Section 10.5.40.71, the bylaw references exemptions for lawfully existing lots. Essentially 1(c) of that section states that a lawfully existing building on a lot contains the lawful setback. In this case, since the dwelling is attached the setback is zero.

https://www.toronto.ca/zoningfbylawamendments/ZBL_NewProvision_Chapter10.htm¹

The bylaw can be very confusing as the exemptions are difficult to interpret. The simple explanation is that the variance is required only for the old bylaw. Since City Council passed the new zoning in 2013, *it is the intention of the City to permit 0 m setbacks on this property.* (my italics). The old bylaw does not represent the new direction set by Council.

I hope this helps.

Regards,
Joe Cimer

I am required to determine the “intent” of the zoning by-law. Intent is more than just whether you can or cannot build; it is the reason behind why a section is written the

¹ 10.5.40.71 Setbacks Exemptions

(1) Permitted Setbacks for Lawfully Existing Buildings In the Residential Zone category, if the lawful building setback of a lawfully existing building or structure is less than the required minimum building setback from:

...

(C) a side lot line, that lawful building setback is the minimum side yard setback for that lawfully existing building or structure.

(2) Additions to Lawfully Existing Buildings Any addition or extension to a lawfully existing building or structure referred to in regulation 10.5.40.71(1) must comply with the required minimum building setbacks or be authorized by a Section 45 Planning Act minor variance.

way it is. The TLAB panel member would usually receive testimony from someone who, by training or experience, is versed in the application of the operative section of the zoning by-law. No such person was offered by either side. Mr. Rezaie's case consisted of re-iterating his refusal to allow any access to his property for whatever reason, even to repair damage done to it during construction.

So, the Lazars have three issues: planning, building code and the practical matter of how to build a second-floor addition without the cooperation of the other neighbour. I can only deal with the first. Mr. Maroof was prepared to deal with the second, i.e., how to install a "terminal seal" to the roof, should Mr. Rezaie permit access during construction. But he was not a planner and could not help me with the intent of the zoning by-law.

RM zone compared with RS and RT

When a subsequent by-law deletes a requirement in a prior by-law, to determine why this has happened and what the intent of the prior by-law was, both by-laws must be read. Only with a full understanding can one understand the legislative and historical context. We are dealing with a semi in an RM (Residential Multiple) zone. Reading the whole of By-law 569-2013, a semi can also be in an RS (Residential Semi-Detached) zone². RS requires a setback of 1.2 m. The natural question is: why were Pinemore and Combermere zoned RM instead of RS and does this have any significance?

For RT (Residential Townhouse) zones, the side yard setback is .9 m from one semi to another. One might ask if Council's intent is to have a zero side yard setback for additions to RM *semis*, what significance, if any, is there to maintaining of a setback requirement for additions to RT *townhouses*, where the planning considerations might be expected to be similar?

Finally, RM zones may contain triplexes, fourplexes and apartment buildings, besides semis. One can imagine an addition to both halves of a semi, thus converting the building to a fourplex (where there is common ownership of both halves). Is this the type of addition for which the zero side yard setback requirement is intended?

Thus Mr. Cimer's conclusion, "The old bylaw does not represent the new direction set by Council" is not self-evident: The Lazars still must explain the intent 7625. Passage of By-law 569-2013, without further explanation, does not help me determine the intent of By-law 7625 nor does it mean there is no intent to By-law 7625.

The intent of the Official Plan

An applicant for a minor variance must also demonstrate that the variance maintains the intent of the Official Plan. This area is designated "Neighbourhoods" so

² 10.40.20.40 Permitted Building Types

(1) Permitted Residential Building Types - RS Zone In the RS zone, a dwelling unit is permitted in the following residential building types: (A) Detached House; and (B) Semi-Detached House.

any new development must “respect and reinforce the existing physical character.” As far as I can determine, there are dozens of semidetached houses on Pinemore, Combermere, and Cannonbury, but most are still one storey. There are two additions to semis at 49 Combermere and 88 Pinemore, both appear not to be recent construction, and in each, the other owner has remained with the original one storey house. I was not given any evidence whether variances were needed or how these additions came about. No one attended at the Committee of Adjustment to examine the files for these two buildings.

Desirable for the appropriate development of the land

I am also required to determine what is “appropriate development”. Appropriate development means it reflects the long term planned function, i.e. how it operates within all the planning goals of the community. One of those planning goals must surely mean that new construction does not create conflict between neighbours.

Professionals in the construction industry seem to operate on the basis that there will be consent from the other semi-detached owners when one side wishes to create a second storey. Emmanuel Diomis, the Lazars’ architect, has indicated on his site plan signed, January 20, 2017, with the notation “No addition on existing lot!” (the exclamation point is in the original). Mr. Diomis has written on the drawing reproduced above, with arrows pointing to the common party wall:

“No roof overhang. Keep roof and wall away from property line. Do not encroach!

Obtain permission to install wall finishing and flashing prior to construction.

Mr. Maroof said that ideally there should be cooperation between the owners of the semis not only during construction, and forever after, when it comes to maintenance of the roof and eavestroughs. When Mr. Rezaie does not consent, and has made his position clear from the beginning, it would have been of assistance had the Lazars helped me to understand whether this second floor addition represents “appropriate development” as set out s 45(1) of the *Planning Act*.

In conclusion, there is insufficient evidence for me to conclude that the Lazars meet the basic onus on them to demonstrate the four tests have been met. The intent of the zoning by-law and Official Plan on the evidence here are not clear. It was always fully open to the Lazars to hire a professional who could testify on these complexities, but they did not.

Accordingly, I dismiss the appeal.

DECISION AND ORDER

The variance from By-law 7625, minimum side yard setback of .6 m required and 0 m proposed, is not authorized.

X

Ted Yao

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