

DECISION AND ORDER

Decision Issue Date Tuesday, February 13, 2018

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

Appellant(s): PETER VOONG

Applicant: WESTON CONSULTING

Property Address/Description: 87 NORTHDALÉ RD

Committee of Adjustment Case File Number: 17 175999 NNY 25 MV

TLAB Case File Number: **17 224974 S45 25 TLAB**

Hearing date: Thursday, January 25, 2018

DECISION DELIVERED BY L. McPherson

INTRODUCTION AND BACKGROUND

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 approve, modify and approve, and refuse certain minor variances related to the construction of a new two-storey detached dwelling at 87 Northdale Road ("the subject property").

The subject property is located on the south side of Northdale Road, southeast of Highway 401 and Bayview Avenue.

The subject site is designated *Neighbourhoods* in the City of Toronto Official Plan ("the Official Plan") and is zoned RD (f21.0; a975)(x70) in the new Toronto Zoning By-law and R2 in the former North York Zoning By-law 7625. The requested variances are as follows:

1. Chapter 10.50.40.10. (5), By-law No. 569-2013

A minimum of 10 m² of the first floor area must be within 4 m of the front wall.

The proposed first floor is located 10.8 m from the front wall.

2. Chapter 10.20.40.10. (1), By-law No. 569-2013

The permitted maximum height of a building is 11.5 m.

The proposed height of the building is 11.62 m.

3. Chapter 10.20.40.10(2), By-law No. 569-2013

The permitted maximum height of the exterior portion of the main walls facing a side lot line for a detached house is 7.5 m.

The proposed height of the side exterior main walls facing a side lot line is 7.9 m.

4. Chapter 900.3.10(70)(B), By-law No. 569-2013

The required minimum side yard setbacks are 2.4 m each side.

The proposed east side yard setback is 0.9 m.

5. Chapter 900.3.10(70)(B), By-law No. 569-2013

The required minimum side yard setbacks are 2.4 m each side.

The proposed west side yard setback is 1.89 m.

6. Section 11.2.1 & 11.3.2, By-law No. 7625

The minimum required lot frontage is 21 m.

The existing lot frontage is 18.29 m.

7. Section 11.2.4(b), By-law No. 7625

The minimum required side yard setback is 2.4 m each side

The proposed east side yard setback is 0.9 m.

8. Section 11.2.4(b), By-law No. 7625

The minimum required side yard setback is 2.4 m each side

The proposed west side yard setback is 1.89 m.

9. Section 11.2.6, By-law No. 7625

The maximum permitted building height is 9.5 m.

The proposed building height is 10.37 m.

10. Section 6(8), By-law No. 7625

The minimum lot width is not to be less than the lot frontage for the zone in which the building is constructed.

The lot width is less than the required lot frontage.

11. Section 6(3) a, By-law No. 7625

The maximum finished first floor height is 1.5 m.

The proposed finished first floor height is 1.53 m.

12. Section 6(9), By-law No. 7625

The maximum permitted projection for eaves into a required side yard setback is 0.5 m.

The proposed eaves project 0.6 m.

Planning staff prepared a report to the Committee recommending that variance 3, the exterior main wall height variance, be reduced to the by-law standard. In addition, the Committee modified variances 4 and 7 regarding the east side yard setback, to apply to the garage portion of the dwelling only. The remaining variances were approved. There were no other Parties or Participants to the hearing. This decision reflects the oral determination made at the hearing to allow the appeal and the reasons in support of that determination.

MATTERS IN ISSUE

The Committee approved the majority of variances applied for and was therefore satisfied that those variances met the four tests of the Planning Act. The matters at issue are the side yard setbacks and the height of the main walls facing the side yards.

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 TLAB heard from the Applicants professional planner, Mr. Kevin Bechard. Mr. Bechard was qualified to give land use planning evidence. He described the subject property (Exhibit 1, Witness Statement). It is currently occupied by 1.5 -storey dwelling. The current side yard setbacks of the dwelling are 0.9 m on the east yard and 0.8 m on the west yard. The parcel is rectangular in shape and approximately 1,672 square m in area with an approximate frontage of 18.29 m on Northdale Road and a depth of 91.44 m. The east and west property boundaries are lined with landscaping and trees which provide for privacy from both the roadway and the east and west adjacent dwellings. The photos of the subject property and neighbourhood (Exhibit 1 – Appendix 1) demonstrated that the subject property is located within a low density, low rise residential neighbourhood. The dwellings range from single storey bungalows to two-storey executive style housing.

Mr. Bechard described the broader surrounding area as being between Bayview Avenue to the west, the natural feature to the east, the lots along the north side of York Mills Road as the southern limit and the lots along the north side of Northdale Road as the northern limit of the neighbourhood.

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He characterized immediate neighbourhood as the lots fronting onto Northdale Road from the area bounded by Highway 401 to the north, Truman Road to the south, the residential dwellings that front onto a cul de sac on Northdale Road to the east and Gerald Street to the west. The immediate neighbourhood is characterized by lots with frontages ranging from 21 m to 30 m and lot areas ranging from 975 m² to 1375 m².

Mr. Bechard advised that some transition is evident in the area and on Northdale Road with the older housing stock being replaced with 2-storey dwelling with larger footprints with varying design features and architectural styles he described as executive housing.

A Lot Analysis was prepared consistent with the immediate neighbourhood area along Northdale Road (Exhibit 1- Appendix 2). The Lot Analysis shows that there are a number of narrow and deep lots along the south side of Northdale Road with frontages ranging from 18.3 m to 35 m with lot areas between 1,568 m² to 2,490 m². Lot frontages on the north side of Northdale Road range from 21.6 m to 35.7 m. Lot areas on the north side of Northdale Road range from 1129 m² to 4,614 m². Mr. Bechard noted that that the subject property has one of the smallest lot frontages on Northdale Road.

Although the neighbourhood surrounding the subject property is a stable residential area, Mr. Bechard noted that the character is not static as there has been significant reinvestment which has resulted in redevelopment along Northdale Road and within the surrounding area. He advised that three applications have been previously approved for reduced side yard setbacks within the neighbourhood within a 500 metre radius of the subject property. The property at 72 Northdale Road, across the street from the subject property, received a minor variance for an east and west side yard setback of 1.8 m. A number of other approvals have also been granted for various other provisions.

To the west of the subject property, the property at 85 Northdale Road is occupied by a 2-storey residential dwelling which is setback 1.22 m from the east side lot line. The dwelling is situated parallel to the existing dwelling on the subject property.

To the east of the subject property, the property at 89 Northdale Road is occupied by a 2- storey residential dwelling which is setback a minimum of 1.17 m from the west side lot line. The dwelling contains a garage located adjacent to the subject property's east lot line at a minimum of 1.17 m. The remainder of the dwelling is setback a minimum of 2.96 m from the subject property's east lot line. Both adjacent properties are two storeys and have abutting side yards that are less than the by-law requirement of 2.4 m for a 2-storey buildings.

The proposal is to construct a new 2-storey dwelling with a gross floor area of 600.78 m². The proposed dwelling includes a garage which is connected to the main portion of the dwelling and is setback 9.05 m from the front lot line. The remaining portion of the building is setback 24 m from the front lot line.

Mr. Bechard explained the variances referring to Table 1 and 2 in Exhibit 1. The Committee approved variances related to first floor area location, maximum height and first floor height, minimum east side yard setback for garage portion only, minimum lot

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frontage and width (By-law 7625 only - to recognize existing lot frontage), and eaves projection. Variance 1 is required because the front door is more than 4 m from the street, consistent with other houses. The building height (variances 2 and 9) is 11.62 m as opposed to 11.5 m in the new Toronto Zoning By-law and set back significantly from the street. The minimum lot frontage recognizes the current lot frontage (variances 6 and 10). The eaves projection variance and finished first floor variance are considered minor and negligible (variances 11 and 12).

The Committee refused the variance for maximum height of the exterior main wall facing a side lot line (variance 3) and the west side yard setback (variances 5 and 8).

With respect to the exterior main wall height, Mr. Bechard explained that the actual height of the main walls facing a side lot line is 7.5 m. The variance is required as a result of where the main wall height is measured. The By-law determines height based on established grade measured to height of the eaves. The established grade is determined at the front yard setback which in this case is 9 m. The house is set back 24 m and the grade rises marginally resulting in the main walls measuring 7.9 m at the 9 m setback. If the building was located closer to the street line, the variance would not be required.

With respect to the west lot line variance, Mr. Bechard explained how the dwelling had been designed to reduce potential impact on the property to the west. The east side yard setback (1.22 m) of 85 Northdale Road is complementary to the west side yard setback (1.89 m) of the proposed dwelling. The proposed courtyard patio of the proposed dwelling is located adjacent to the rear yard of the dwelling to the west. No relief from the rear yard setback is requested

The Committee modified the variance for the east side yard so that it applied to the garage portion of the dwelling only (variances 4 and 7). The remainder of the dwelling is set back 1.5 m from the east side yard. Planning staff in their report did not indicate concern with the setback but noted that any approval should be tied to the submitted plans to ensure that the entire east side yard could not be built to 0.9 m. The Committee decision ultimately requires the remaining portion of the building to be setback 2.4 m from the east side lot line, as opposed to the 1.5 m shown on the proposed plan. In Mr. Bechard's opinion, the proposed east side yard setback is complementary to, consistent with, and aligns with the design and massing of the adjacent dwelling. At the narrowest point between structures, no privacy issues are created as a result of the adjacent portion of the property on 89 Northdale being a non-livable (garage) area. The proposed development and the proposed east yard setback is consistent with the character of the neighbourhood, where relief of up to 1.8 m for a side yard setback has been permitted along Northdale Road. Mr. Bechard opined that the proposed east side yard setback does not produce an unacceptable adverse impact on the abutting property at 89 Northdale Road.

The applicant prepared and submitted an Arborist Report and Tree Preservation Plan, within (Exhibit 1- Appendix 5) which shows that three trees will be removed along this property line and the balance of trees will be protected. One of the three trees is proposed to be removed due to poor condition. The balance of the vegetation will

remain.

With respect to provincial policy, it is Mr. Bechard's opinion that the proposed minor variances are consistent with the Provincial Policy Statement, 2014 ("PPS") in that the proposed development represents a form of intensification. The PPS emphasizes the need to plan for and promote redevelopment and intensification in a way that takes into account existing building stock and is based on development standards established by the planning authority.

In addition, it is Mr. Bechard's opinion that the proposed minor variances applications conforms to the Growth Plan for the Greater Golden Horseshoe. The proposed development supports a range of housing options in the area within a desirable and compatible built form.

With respect to the Official Plan, the subject property is designated Neighbourhoods. Policy 3.2.1.2 directs that the existing stock of housing will be maintained and replenished. The proposed minor variances would result in a new single detached dwelling to replace an outdated house. Mr. Bechard referenced applicable policies of the Official Plan as set out below.

Section 4.1.5 of the Official Plan allows for new development within designated Neighbourhoods provided the following criteria are met:

"Development in established Neighbourhoods will respect and reinforce the existing physical character of the neighbourhood, including in particular:

- a. patterns of streets, blocks and lanes, parks and public building sites;
- b. size and configuration of lots;
- c. heights, massing, scale and dwelling type of nearby residential properties;
- d. prevailing building type(s);
- e. setbacks of buildings from the street or streets;
- f. prevailing patterns of rear and side yard setbacks and landscaped open space;
- g. continuation of special landscape or built form features that contribute to the unique physical character of a neighbourhood; and
- h. conservation of heritage buildings, structures and landscapes."

Further, section 4.1.5 goes on to state:

"No changes will be made through rezoning, minor variance, consent or other public action that are out of keeping with the physical character of the neighbourhood.

The prevailing building type will be the predominant form of development in the neighbourhood. Some Neighbourhoods will have more than one prevailing building type. In such cases,

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a prevailing building type in one neighbourhood will not be considered when determining the prevailing building type in another neighbourhood.”

In Mr. Bechard’s opinion, the general intent and purpose of the Official Plan is maintained. The height, massing and scale of the proposed dwelling are consistent with a number of properties within the area. The neighbourhood is in transition to larger scale dwellings. The overall height was an approved variance by the Committee. The proposed variances will facilitate the redevelopment of a single-detached dwelling, in replacement of an existing single detached dwelling which is both permitted in the Zoning By-law and in keeping with the neighbourhood character. No variances are required for the front yard setback for the proposed dwelling.

In Mr. Bechard’s opinion, the proposed development provides appropriate side yard setbacks from neighbouring parcels and is consistent with the setbacks of the neighbouring properties. The dwelling has been designed and sited to reduce impacts on adjacent properties.

The built form of the proposed dwelling will be complementary to the varying heights and built form currently found along Northdale Road. The overall height and main wall height of the proposed garage portion of the dwelling meets the current by-law maximum.

Mr. Bechard opined that the proposed additional 0.34 m in height of the main wall of the main residential portion of the dwelling would not be distinguishable from the street. Adequate landscaping will be provided that will be consistent with the neighbourhood character. No variance was required for front yard landscaping.

The subject property has the smallest lot frontage on Northdale Road. To accommodate for the narrower lot within the neighbourhood, in context of the redevelopment to a larger scale homes, Mr. Bechard opined that relief from the side yard setbacks is reasonable and desirable to permit the scale of dwelling that is compatible within this neighbourhood.

The intent of the residential zoning categories under Zoning By-laws 569-2013 and 7625 is to provide for residential uses, limit adverse impacts on neighbouring properties, and to ensure that development is compatible with the existing and planned context of the area. The proposed side yard setback is consistent and compatible with the existing setback of the adjacent dwelling to the east and provides no adverse impact to the adjacent dwelling.

The proposed 1.89 metre west side yard setback is an increase from the existing setback of 0.8 m. It represents an improvement in the existing side yard condition.

The setback for this portion of the building wall of the subject property is greater than and complementary to the east side yard setback of the adjacent two storey dwelling to the west, which is setback 1.22 m from the shared property line.

It is Mr. Bechard's opinion that the proposed west side yard setback is consistent with and has consideration to the outdoor patio use of the neighbouring property. The proposed minimum side yard setback of 1.89 m is only applied to a portion consisting of the less than 50% of the west building wall and is greater than the existing west side yard setback. The proposed west side yard setback is consistent and compatible with the existing setback of the adjacent dwelling to the west and provides no adverse impact to the adjacent dwelling.

It is Mr. Bechard's opinion that the proposed variance meets the general intent and purpose of the applicable Zoning By-laws.

The variances sought would result in the development of a new dwelling which is in keeping with the existing, evolving, and varying neighbourhood character. There is no unacceptable impacts created on the adjacent properties and the surrounding neighbourhood. In Mr. Bechard's opinion, the variances are desirable for the appropriate development of the land and are minor.

In summary, Mr. Bechard concluded that the variances sought represent good planning and meet the relevant criteria as set out in Section 45(1) of the Planning Act and he recommended that the appeal should be allowed and Variances 3, 4, 5, 7 and 8 be approved as originally proposed and in accordance with the proposed Site Plan.

ANALYSIS, FINDINGS, REASONS

The TLAB accepts the uncontradicted evidence of the Applicant's professional land use planner. I am satisfied that the requested variances meet the criteria set out in Section 45(1) of the Planning Act. The general purpose and intent of the Official Plan and Zoning By-laws is maintained. The replacement dwelling has been designed to respect and reinforce the existing and planned context of the area. The variance for the exterior main wall height is the result of the location the height is measured from and I agree that the difference will be indiscernible at the 24 m setback. The side yard variances have been carefully considered by the Applicant and the dwelling has been designed to be consistent with and have regard for the adjacent dwellings and minimize impact. I also accept that the variances approved by the Committee meet the four tests of the Planning Act. The proposal results in an appropriate and desirable development for subject property and the variances are considered minor in the context.

I agree that a condition should be imposed that the dwelling be built substantially in accordance with the site plan to ensure that the side yard setbacks beyond the garage are respected, as noted by Planning staff and Mr. Bechard.

The TLAB is satisfied that the variances are consistent with the Provincial Policy Statement and conform to the Growth Plan.

DECISION AND ORDER

The appeal is allowed and the variances to Zoning By-laws 438-86 and 7625 as proposed and listed below are authorized.

1. Chapter 10.50.40.10. (5), By-law No. 569-2013

A minimum of 10 m² of the first floor area must be within 4 m of the front wall.

The proposed first floor is located 10.8 m from the front wall.

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The permitted maximum height of a building is 11.5 m.

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The required minimum side yard setbacks are 2.4 m each side.

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The maximum finished first floor height is 1.5 m.

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12. Section 6(9), By-law No. 7625

The maximum permitted projection for eaves into a required side yard setback is 0.5 m.

The proposed eaves project 0.6 m.

Conditions

1. The new two-storey detached dwelling shall be constructed substantially in accordance with the plans filed as Appendix 3 and 4, Exhibit 1, attached hereto and forming part of this order.
2. Submission of a complete application for permit to injure or remove privately owned trees.

X 

L. McPherson

Panel Chair, Toronto Local Appeal Body