

DECISION AND ORDER

Decision Issue Date Thursday, February 01, 2018

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

Appellant(s): IVAN IVANCIC

Applicant: CHRISTOPHER PACHECO

Property Address/Description: 44 RANWOOD DR

Committee of Adjustment Case File Number: 17 168638 WET 11 MV

TLAB Case File Number: **17 209369 S45 11 TLAB**

Hearing date: Thursday, January 11, 2018

DECISION DELIVERED BY L. McPherson

INTRODUCTION

This is an appeal to the Toronto Local Appeal Body (the "TLAB") by Mr. Ivan Ivancic of the decision of the Committee of Adjustment ("Committee") for the City of Toronto ("City") to approve minor variances to construct a new 2-storey detached dwelling with an attached garage at 44 Ranwood Drive ("the subject property").

The subject property is located on the west side of Ranwood Road, between Gary Drive and Queenslea Avenue. The subject property is designated Neighbourhoods in the City of Toronto Official Plan ("Official Plan") and zoned RD under Zoning By-law No. 569-2013 ("new City By-law") and R4 under North York Zoning Bylaw No. 7625 ("By-law 7625").

BACKGROUND

The Committee of Adjustment approved the application on July 13, 2017 and Mr. Ivancic has appealed the decision. Other than the Applicant, there were no other Parties or Participants. The Applicant and the Appellant were self-represented (the Appellant by his son Mr. Martin Ivancic). Both parties made representations; however, no witnesses were called. The variances sought by the Applicant are outlined below.

1. Section 10.20.30.40. (1)(A), By-law 569-2013

The maximum permitted lot coverage is 30% of the lot area.

The new dwelling will cover 30.3% of the lot area.

2. Section 900.3.10. (5)(A), By-law 569-2013 and Section 13.2.3. (b), By-law 7625

The minimum required side yard setback is 1.8 m.

The new dwelling will be located 1.41 m from the north side lot line and 1.42 m from the south side lot line.

3. Section 10.5.100.1. (1)(C), By-law 569-2013

The maximum permitted driveway width is 6 m.

The proposed driveway will have a width of 6.57 m.

MATTERS IN ISSUE

The key issue in this proceeding is whether the variances meet the tests set out in Section 45(1) of the Planning Act. In particular, the Appellant's main concern was the north side yard setback variance.

JURISDICTION

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 owners, Mr. Pacheco and Ms. Ramos, represented themselves. They disclosed a number of materials collectively identified as Exhibit 1. The materials related to matters of issue in the appeal. The Appellant took issue with the manner in which the coverage was calculated. The owners provided a letter from the Zoning Examiner who confirmed that the coverage was calculated correctly and included relevant by-law sections and an explanation of the calculations. The proposed coverage is 30.3% as opposed to the By-law requirement of 30%.

The Appellant raised concerns regarding the proposed 1.41 m side yard setback from the north lot line. Both by-laws require a 1.8 m setback. The owners provided a survey of their property that illustrated that the current dwelling has a setback ranging from 1.244 to 1.238 m from the north lot line. They noted that the proposed dwelling would have a greater north yard setback than the current dwelling. Further, the Appellant's home (46 Ranwood Drive) has a south side yard setback of approximately 2.4 m.

The Appellant's appeal indicated that they had an easement over part of the subject property adjacent to the Appellant's driveway. The owners provided a letter from their lawyer providing an opinion that the owner of 46 Ranwood Drive cannot legally assert any claim for adverse possession or for a prescriptive easement.

The final variance relates to the driveway width. No one has raised an issue with this variance and the City's Transportation Services Division had no objection, subject to conditions.

The owners provided photographs of the subject property and neighbourhood houses indicating similar 2-storey homes with integral garages.

Mr. Ivancic, the Appellant's representative, did not file any documents with the TLAB and indicated that he was relying on materials already filed. He confirmed that he is not a lawyer. He acknowledged that the property line issue is unrelated to this hearing. He confirmed that variance #3 related to the driveway width is not of concern. His parents and other residents at the Committee of Adjustment hearing were concerned about the proposal which he described as large and out of character with the neighbourhood. He indicated that he was speaking on behalf of other neighbours as well at the Committee and that the Committee did not give him adequate time to speak. As a result, he did not have the opportunity to address all of their concerns. Mr. Ivancic referred to certain policies in the Official Plan dealing with the physical character and the stability of neighbourhoods. Specifically he noted:

"Physical changes to our established Neighbourhoods must be sensitive, gradual and generally fit the existing physical character. A key objective of this Plan is that new development respect and reinforce the general physical patterns in a Neighbourhood". (S. 4.1)

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

- c) heights, massing, scale and dwelling type of nearby residential properties;
- d) prevailing building type(s);
- f) prevailing patterns of rear and side yard setbacks and landscaped open space; ...

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 ". (S. 4.1.5)

"Zoning By-laws will contain numerical site standards for matters such as building type and height, density, lot sizes, lot depths lot frontages parking, building setbacks for lot lines, landscaped open space and any other performance standards, to ensure that new development will be compatible with the physical character of established residential Neighbourhoods". (S. 4.1.8)

Mr. Ivancic also referenced the policies in Section 4.1.9 dealing with infill development which indicates that such development will have heights, massing and scale appropriate for the site and compatible with permitted zoning for adjacent and nearby properties and will provide adequate privacy, sunlight and sky view for residents of nearby residential properties.

He indicated that the prevailing building type is single-storey bungalows and the proposal for a 2- storey height is, in his opinion, out of character with the neighbourhood. His opinion is the proposal for a 2 -storey home contradicts the land use policies of the Official Plan. He is also concerned that larger homes could cause drainage and ground absorption issues.

Mr. Ivancic was concerned that the Zoning Examiner's response was not clear in relation to lot coverage. He opined that the front porch should be included in the coverage number and questioned the accuracy of the variances. He was also concerned that the Committee had different plans before them.

Mr. Ivancic's primary concern is with the north side yard setback. He referred to Exhibit 1 and the photographs of other homes in the area. He noted that the character of the neighbourhood is single -storey bungalows with garages situated in the back. Currently, there is no fence between the subject property and his parent's property. Mr. Ivancic is concerned that vehicular access to their rear garage will be impeded. The proposed house would have a garage in the front and a fence along the north side yard. He is concerned that his parents will not be able to access the rear garage if a fence is erected. In his opinion, the proposed variance from 1.8 m to 1.41 m will affect his parent's property. It allows for the construction of a larger house on the property. While he recognized that the wall is further away than the current wall, he noted the new building would be two storeys as opposed to one which will have a greater impact. Mr. Ivancic is concerned that sunlight and access to sky view will be impeded. As well he is concerned about privacy issues as there are windows on the north side of the home. He

noted that the new home on Ranwood Avenue that was referenced has a side yard setback of 1.8 m setback.

Mr. Ivancic raised a new issue regarding a wood burning stove that his parents have in their garage adjacent to the subject property. They have a permit from the City of Toronto permitting the stove. He indicated that the Ontario Building Code regulates adjacent structures in terms of clearance between the top of the chimney flue and the roof or adjacent structures. He does not believe the proposal complies and he considers this a safety concern. He acknowledged that the current City by-law setback requirement of 1.8 m would not meet the Ontario Building Code standard as he has interpreted it.

Mr. Dushenko, the neighbour to the south, requested to speak. His concern related to potential damage to his property as a result of new construction.

In reply, the owners confirmed that the plans before the TLAB are the same drawings that were at the Committee hearing. In their view, in terms of land use planning, the proposal maintains the current use of a single-family home, and does not need a height variance or other substantive variances.

ANALYSIS, FINDINGS, REASONS

The TLAB has carefully considered the submissions of the Appellant and the Applicants. The Appellant considers the proposed house to be out of character with the neighbourhood. One of the main concerns was with the height of the building as most of the existing houses in the area are bungalows. While the TLAB appreciates this concern, the proposed application does not require a variance for height or the number of storeys. Similarly, the proposal does not require a variance for an integral garage. In terms of overbuilding, the proposed coverage is 0.3% over the by-law provision. I find that both qualitatively and quantitatively, a difference between 30% coverage and 30.3% to be minor and indiscernible. As noted by the owner, it translates into 18 square feet.

The Appellant raised a concern regarding the manner in which the Zoning Examiner calculated coverage. It is the City Building Department's responsibility to interpret the zoning by-law and identify the variances required. The Zoning Examiner provided a detailed explanation of the calculation. As noted during the hearing, the TLAB is responsible for determining whether the variances before it meet the four tests of the Planning Act and not whether the variances were appropriately identified by the City.

In terms of the proposed north side yard variance from 1.8 m to 1.4 m, which is the substantive issue in this appeal, I understand the Appellant's concern that the difference will be noticeable as the new structure will be 2- storeys. The proposed side yard setback must be viewed in context. The house at 46 Ranwood Drive is setback 2.4 m from the common side yard lot line. Combined with the 1.4 m proposed setback, a total setback of 3.8 m is provided between the houses. As noted there are no height variances required. There are also no variances for building length or rear yard setback. The setback proposed is greater than the existing setback. Taken together, the TLAB is satisfied that the reduction in setback will not cause any undue adverse privacy, sunlight

or sky view issues. While the TLAB appreciates the concerns of the Appellant, there was no technical evidence to support these concerns.

Mr. Ivancic correctly stated that the TLAB is not the appropriate forum to determine a property line dispute. In addition, the TLAB cannot require an owner to provide access over their property to an adjacent neighbour. Similarly, the TLAB cannot deny an owner the right to erect a fence on their property. The owner would be required to meet the applicable provisions of the Toronto Municipal Code.

Regarding the issue of the Ontario Building Code and the distance requirements related to the wood-burning stove, it is the responsibility of the City of Toronto to ensure that their By-laws conform to the Ontario Building Code. This is not a matter before the TLAB.

Mr. Ivancic raised the Official Plan policy 4.1.9 related to infill development. I do not consider that the subject property varies from the established local pattern in terms of lot size, configuration and/or orientation in established neighbourhoods and therefore I do not consider that this policy is applicable.

The TLAB is satisfied that the requested variances, with the conditions applied by the Committee, 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 proposal results in an appropriate and desirable development for subject property and the variances are considered minor in the context.

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

DECISION AND ORDER

The TLAB orders that the appeal is denied and the following variances are authorized subject to the following conditions:

1. Section 10.20.30.40. (1)(A), By-law 569-2013

The maximum permitted lot coverage is 30% of the lot area.

The new dwelling will cover 30.3% of the lot area.

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The maximum permitted driveway width is 6 m.

The proposed driveway will have a width of 6.57 m.

Conditions of Approval

The following conditions shall be fulfilled to the satisfaction of Traffic Planning/Right of Way Management:

1. The site plan must be revised to show the width of the driveway within the public right-of-way being a maximum of 6.57 m wide;
2. The site plan must be revised to illustrate the proposed driveway and curb cut within the abutting Ranwood Drive municipal boulevard, and any removal of the redundant portions of the existing driveway and restoration of the redundant curb cut with raised concrete curb in accordance to City of Toronto Design Standard No. T-600.05-1;
3. The site plan must be revised to include a notation on the drawing stating: "The proposed new driveway shall be constructed to the applicable City of Toronto Design Standard(s)";
4. The site plan must be revised to include a notation on the drawing stating: "The applicant must provide a Municipal Road Damage Deposit (MRDD) for the proposed driveway construction within the municipal boulevard." The applicant must contact Ms. Joanne Vecchiarelli of our Right-of-Way Management Section at 416-338-1045 in this regard;
5. The site plan must be revised to include a notation on the drawing stating: "The applicant must obtain all required permits for work within the public road allowance from the Right-of-Way Management Section of Transportation Services.

X 

Laurie McPherson

Panel Chair, Toronto Local Appeal Body