

DECISION AND ORDER

Decision Issue Date **Monday, April 16, 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): MONICA MOLSON

Applicant: JOHNSTON LITAVSKI LTD

Property Address/Description: 491 PARKSIDE DR

Committee of Adjustment Case File Number: 17 181634 STE 14 MV

TLAB Case File Number: **17 260813 S45 14 TLAB**

Hearing date: Wednesday, April 04, 2018

DECISION DELIVERED BY S. Makuch

APPEARANCES

Name	Role	Representative
Johnston Litavski Ltd	Applicant	
Sohila Nejati	Owner	
Monica Molson	Appellant	Amber Stewart
Wojciech Kozak	Party	
Paul Jurik	Party	
Mike Harrison	Party	
Ana Matic	Party	

**Decision of Toronto Local Appeal Body Panel Member: S. Makuch
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Name	Role	Representative
Linda Cook	Participant	
Ivica Cosic	Participant	
Maria Ivankovic	Participant	
Allan Killin	Participant	
Lucy French	Participant	
Edward Smolinski	Participant	

INTRODUCTION

This is an appeal by the owner of a refusal to approve an application for 21 variances to permit the construction of a fourplex with an accessory garage. 12 variances are required under Bylaw 569-2013 and 9 variances under Bylaw 486-86. They are set out in the “List of Variances and Conditions” in Appendix 1 (Exhibit 4) to this decision.

Three of the four units to be constructed are proposed to have four bedrooms, and one of the four units is proposed to have two bedrooms. The owner proposes to use two of the four units for family purposes and to rent out the other two units.

The objectors to the application include: parties at 493 Parkside Dr., immediately to the north of the site; parties at 78 and 76 Indian Grove to the rear and north of the site; and a party at 34 Ridout St. to the south, at the entrance of a right-of-way to 491 Parkside Dr., as well as participants from the neighbourhood.

The City was not a party. The property is subject to the Ravine Bylaw and staff of Urban Forestry Ravine and Natural Feature Protection and of the Toronto and Region Conservation Authority had no objections to the application. The former recommended one condition, if the application were to be approved. City Planning Staff visited the site; did not object to the application, and recommended a change in the location of the proposed fourplex on the site, and the imposition of a condition, should the application be approved.

BACKGROUND

The construction of the proposed fourplex and garage requires the destruction of a dilapidated dwelling and attached garage which are currently on the site and uninhabitable and unusable. Under the current zoning bylaw the owners could repair and restore the existing dwelling and garage with no variances. Thus, the restoration of the existing building and garage could occur as of right. However, the owners have chosen to demolish the existing buildings and to construct new replacements. It is a

result of the demolition and the construction of the new buildings, that most of the variances listed in Appendix 1 are required.

The variances listed relate to:

- (1) the proposed use as an apartment building which is prohibited - variances 12 and 13;
- (2) minimum frontage, existing condition - variance 3
- (3)
- (4) the building envelope exceeding setbacks for new building, but within setbacks of the existing building - variances 4, 5, 6, 7, 17, 19, 20
- (5) density increase beyond permitted density but comparable to existing building density- variances 7 and 18
- (6) landscaping - variances 11, and 16
- (7) parking reduction within existing building envelope - variances 2, 14, 15
- (8) the accessory garage within existing building envelope - variances 8, 9, 10 and 21

JURISDICTION

The TLAB in making its decision with respect to variances, is exercising jurisdiction under s.45 of the Planning Act which provides the following;

s. 45. (1) The committee of adjustment, upon the application of the owner of any land, building or structure affected by any by-law that is passed under section 34 or 38, or a predecessor of such sections, or any person authorized in writing by the owner, may, despite any other Act, 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.

Moreover, subsection 9 provides that:

Any authority or permission granted by the committee under subsections (1), (2) and (3) may be for such time and subject to such terms and conditions as the committee considers advisable and as are set out in the decision.

TLAB's decision must be consistent with Provincial policies and The Growth Plan by virtue of s.2 of the Planning Act,.

EVIDENCE

It was the uncontradicted evidence of Mr. Litavski, a planner qualified to give expert opinion evidence, that the application meets the four tests of S. 45 of the Planning Act, is consistent with the Growth Plan and the Provincial Policy Statement and represents good planning.

His opinion was based, in part, on the following evidence. The proposal fits within the character of Parkside Dr., an arterial road on the edge of a residential neighbourhood. There are a variety of built forms and densities on the street and thus the variances maintain and reinforce the general intent of the official plan and zoning bylaw. He pointed out that there is a fourplex on the property adjacent to the site on the south. The variances for that building were approved by the Committee of Adjustment in 2015. In addition, he noted the proximity of the proposal to the Keele St. subway station, a major transit station, which justified the density and reduction in parking.

With respect to the PPS and Growth Plan, Mr. Litavski emphasized that the proposal was an efficient use of land since it contained four units. Moreover, each unit is to have at least 2 bedrooms and thus each is suitable for a family and therefore meets Provincial policy with respect to housing types.

Finally he noted that the proposed building and garage fit within the building envelope of the existing structures, although it was moved forward on the lot at the request of planning staff. In response to a question, he was able to calculate that the density of the new building would be very similar to that of the existing building. His opinion was shared by planning staff who, in their report, stated that the proposed building was comparable in size and massing to the existing building and similar in depth the houses in the area and therefore was appropriate in the context of the neighbourhood.

The neighbouring parties in opposition gave evidence of a different nature. Mr. Jurik, owner of 34 Ridout Ave., was concerned about the use of the right of way for the purposes of construction access. Mr. Harrison, owner of 78 Indian Grove, was particularly concerned about the impact of the proposal on the view from his property. Ms. French, owner of 76 Indian Grove, had a similar concern and was further concerned about parking in the right of way. Mr. Kozak, owner of 493 Parkside gave evidence of a number of issues. He had concerns as to: the legality of the existing building at 491 Parkside Dr.; the prohibition of an apartment in this area; the loss of a view of High Park from his front window; the loss of sunlight from the windows on the south side of his house. He was particularly concerned about the size and number of variances. He had a model prepared (Exhibit 6) to demonstrate the size of the proposal in comparison to his own house where he had lived for 25 years. The model, he said, also demonstrated the impact of the proposal on his house. In his opinion, the proponent should not be able to use permission to repair and reconstruct an existing building as justification to construct a new building of the same massing and footprint as the existing building. This was so, in his opinion, especially when the new building was so much larger than a new building permitted by the bylaws, and thus required so many “major” variances.

Other participants generally were in agreement with the opinions of the opposing parties and did not believe the proposal fit in the neighbourhood.

ANALYSIS, FINDINGS, REASONS

While I understand the opposing parties concerns I do not find their evidence persuasive, and none of it , in my opinion, contradicts the evidence of Mr. Litavski.

Mr. Jurik's concern, about use of the lane which abuts his property, is understandable; but I cannot take disruption resulting from construction into account. It is not a relevant consideration under s. 45 of the Planning Act. Moreover, such a consideration, if applied to all variances, could halt a great deal of construction in the City. I note as well, that the City has other bylaws to deal with issues of noise from construction.

With respect to the interference with their views, the evidence of Mr. Harrison and Ms. French was not very strong. While I agree, that there is, in law, no right to a view, I believe TLAB can take into account the impact of granting variances on a view. In doing so, however, It must consider such matters as: context, location, official plan policies, zoning provisions and actual impact. In this case there was no evidence that the official plan policies or zoning bylaws were enacted to preserve views from Indian Grove to High Park. Moreover, they presented no physical evidence that constructing a building within the same footprint as an existing building would impact on their views. For example photos to demonstrate the existing view(s), which they asserted would be lost, were not presented. In addition, it was not denied that their properties were higher in elevation so that their views might not be affected.

Mr. Kozak's evidence is also not persuasive. I will deal with each of his concerns.

With respect to the legality of the existing building at 491 Parkside, he had no physical evidence to contradict the documents submitted by Mr. Litavski. Moreover, he agreed that the building was in existence when he bought his property. He therefore accepted the existence of a building with the massing and footprint of the existing building for 25 years. There was no evidence that he ever challenged its legality.

His concern about permitting the construction of a fourplex, which he asserts is prohibited, is also not compelling. He owned his property and thus received notice of the construction of a fourplex at 489 Parkside Dr. He did not take any action, whatsoever, to oppose it. Nor did he give any evidence as to how the applicant's fourplex would not fit within the physical character of the neighbourhood, or how four units within the building envelope of an existing building, would, in any way, adversely affected him or his immediate neighbours.

His loss of a view of High Park from his front window is not a valid concern since a building constructed as of right would have the same impact. Moreover, the impact of the proposed building on his front view is, in my opinion, almost negligible as the proposed building is to the south of Mr. Kozak's house. He did not demonstrate with photos or by other means how, when standing at the front window of his house, the view of the Park would be affected.

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Concerns that the variances were numerous (21) and that some were large and thus major (e.g., the north wall was 40% higher than permitted, and the FSI 100% over that permitted), was demonstrated forcefully with models (Exhibit 6). The models were of Mr. Kozak's house, the proposed building, and an "as-of-right" dwelling, all placed on the site plan for the proposed dwelling. Mr. Kozak pointed out the difference between the size of the proposed dwelling and his house and, in particular, how the new building would shadow his north wall. The model showed an "as-of-right" new building to be much smaller. There was no model of the existing building on the property.

While Mr. Kozak has degrees in architecture and engineering from overseas, he was not licensed and has not practiced either discipline in Ontario. In spite of his training, he did not oversee, in any way, the preparation of the models and could not attest to their accuracy and brought no witness who could. I am, therefore, unwilling to rely on them.

More importantly, even if I were to accept them as accurate, they do not demonstrate that the variances should not be allowed for the following reasons. The north side wall of the proposed building is increased by a variance but the north side yard setback is increased over that which is existing. It was not at all clear the shadow on Mr. Kozak's north side rooms would be made worse by the variance, given the increase in the setback. Moreover, it was not at all substantiated that those rooms currently receive sunlight. Given his background Mr. Kozak could have taken some photos to demonstrate the amount of sunlight, if any, currently reaching those rooms.

He did not.

In addition, there was no model of the existing building presented. Although it was Mr. Kozak's position that once a new building is to be constructed, the massing and footprint of the existing building which could be repaired and reconstructed is irrelevant, I do not agree. The existing building, which Mr. Kozak and all the witnesses in opposition said was unsightly and needed to be reconstructed, in my view, is very relevant. The proposed building and garage will be within the same footprint and massing as the existing building and garage. Whether it is new or renovated will make no difference in terms of impact on Mr. Kozak's house or the neighbourhood. Almost all of the Listed Variances in Appendix 1 allow a dwelling and garage within the confines of the existing building. There are no significant increases (and some cases reductions) in building envelope, density, parking, accessory garage size. As a result of Planning Staff's recommendation, the building will be moved forward and, thus, the impact of the existing building on Mr. Kozak's backyard will be lessened.

Given the evidence of Mr. Litavski and the lack of impact of the variances on the property of Mr. Kozak's and others, as outlined above, I find that the variances, as set out in Attachment 1, meet the four tests of the Planning Act and implement Provincial policies and the Growth Plan and should be approved subject to the conditions set out in Appendix 1.

DECISION AND ORDER

On the basis of the above analysis I allow the appeal, approve the variances listed in Attachment 1 subject to the conditions therein, and so order

X 

S. Makuch

Panel Chair, Toronto Local Appeal

Case File Number: 17 260813 S45 14 TLAB
Property Address: 491 Parkside Drive
Date Marked: April 4, 2018

**List of Variances and Conditions
491 Parkside Drive**

- 1. Chapter 200.5.10.1.(1), By-law 569-2013**
A minimum of four parking spaces are required to be provided.
In this case, two parking spaces will be provided in the rear detached garage accessed by a right-of-way.
- 2. Chapter 200.5.1.10.(2), By-law 569-2013**
The required parking spaces must have a minimum width of 3.2 m.
The parking spaces will measure 2.8 m in width.
- 3. Chapter 10.10.30.20.(1)(A) & 900.2.10.(675)(A), By-law 569-2013**
The minimum required lot frontage is 18.0 m.
The frontage of the lot is 12.19 m.
- 4. Chapter 10.10.40.10.(1)(A), By-law 569-2013**
The maximum permitted building height is 10.0 m.
The new fourplex will have a height of 10.31 m, measured from established grade to the top of the roof.
- 5. Chapter 10.10.40.10.(2), By-law 569-2013**
The maximum permitted height of all side exterior main walls facing a side lot line is 7.5 m. The height of the side exterior main walls facing a side lot line will be 10.0 m.
- 6. Chapter 10.10.40.30.(1)(B), By-law 569-2013**
The maximum permitted depth of a fourplex is 14.0 m.
The new fourplex will have a depth of 26.3 m.
- 7. Chapter 10.10.40.40.(1)(A), By-law 569-2013**
The maximum permitted floor space index is 0.6 times the area of the lot (348.09 m²).
The new fourplex will have a floor space index equal to 1.22 times the area of the lot (711.3 m²).
- 8. Chapter 10.5.60.30.(1), By-law 569-2013**
An ancillary building or structure with a height greater than 2.5 m, or a gross floor area greater than 10.0 m² must be at least 1.8 m from a residential building on the lot.
In this case, the rear detached garage will be located 1.4 m from the residential building on the lot.
- 9. Chapter 10.5.60.40.(2)(A), By-law 569-2013**
The maximum permitted height of an ancillary building is 2.5 m if the structure is less than 1.8 m from the residential building on the lot.
In this case, the rear detached garage will have a height of 3.2 m.
- 10. Chapter 10.5.60.50.(3), By-law 569-2013**
The maximum permitted floor area of an ancillary building or structure located less than 1.8 m from a residential building on the lot is 10.0 m².
The rear detached garage will have a floor area equal to 36 m².
- 11. Chapter 10.5.50.10.(1)(D), By-law 569-2013**
A minimum of 75% (136.76 m²) of the front yard is required to be soft landscaping.
In this case, 35.7% (57.5 m²) of the front yard will be maintained as soft landscaping.
- 12. 900.2.10.(675)(A) By-law 569-13**
An apartment building is not a permitted use.
In this case, an apartment building or "fourplex" will be permitted.

**List of Variances and Conditions
491 Parkside Drive**

13. Section 12(2) 175, By-law 438-86

An apartment building is not a permitted use.
In this case, an apartment building or "fourplex" will be permitted.

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

A minimum of four resident parking spaces and one visitor parking space are required to be provided. In this case, two parking spaces will be provided in the rear detached garage accessed by a right-of-way.

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

The required parking spaces must have a minimum width of 3.2 m. The parking spaces will measure 2.8 m in width.

16. Section 6(3) Part III 1(B), By-law 438-86

A minimum of 50% of the lot area (290.07 m²) shall be landscaped open space. In this case, 28.3% of the lot area (164.31 m²) will be landscaped open space.

17. Section 6(3) Part II 5(I), By-law 438-86

The maximum permitted depth is 14.0 m.
The new fourplex will have a depth of 34.4 m.

18. Section 6(3) Part I 1, By-law 438-86

The maximum permitted gross floor area is 0.6 times the area of the lot (348.08 m²). The new fourplex will have a gross floor area equal to 1.56 times the area of the lot (904.33 m²).

19. Section 6(3) Part II 2 (II), By-law 438-86

The minimum required front yard setback of a building on an inside lot is 11.9 m.
The new fourplex will be located 5.8 m from the west front lot line, measured to the front stairs.

20. Section 6(3) Part II 4, By-law 438-86

The minimum required rear yard setback is 7.5m.
The new fourplex will be located 5.5 m from the east rear lot line.

21. Section 6(3) Part II 7(III), By-law 438-86

The minimum required setback of an accessory structure to the main building on the lot is 1.5 m.
The rear detached garage will be located 1.438 m from the main building on the lot.

Conditions of Approval

1. The proposed fourplex shall be constructed substantially in accordance with the Site Plan and Elevations dated September 25, 2017.
2. The first, second, and third floors of the proposed fourplex shall have a maximum building length of 24.89 m exclusive of the rear stairs and garage, as shown on the first, second, and third floor plans dated September 25, 2017.
3. The owner shall submit a complete application for a permit to alter grade and injure and/or remove privately owned trees as per City of Toronto Municipal Code Chapter 658.