

DECISION AND ORDER

Decision Issue Date Monday, April 23, 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): GERSHON JAY MISKIN

Applicant: TAMARA ROSENTHAL MISKIN

Property Address/Description: 10 ERICA AVE

Committee of Adjustment Case File Number: 17 244618 NNY 10 MV (A0897/17NY)

TLAB Case File Number: 17 274203 S45 10 TLAB

Motion date: Tuesday, April 10, 2018

Hearing date: Wednesday, May 09, 2018

Name	Role	Representative
Gershon Jay Miskin	Appellant	Aaron Platt, Andy Margaritis

DECISION DELIVERED BY T. YAO

INTRODUCTION

The Miskins intend to tear down the existing house at 10 Erica Avenue and replace it with a new house.

BACKGROUND

Table 1 below, which forms part of the Order, sets out the variances sought.

Table 1 Variances sought			
		required/permitted	proposed
Under By-law 569-2013			
1	Lot coverage	30%	33.59%
2	building length	17 m	21.91 m
3	building depth	19 m	21.91 m
4	front yard setback	7.865 m	7.34 m
Under By-law 7625			
5	building length	16.8 m	21.91 m
6	building height	8.8 m	11.0 m
7	balcony area	3.8 m	10.3 m

The Miskins applied for the above variances but were only partly successful at the Committee of Adjustment. Based on a City planning report, recommending that all variances with respect to building length and depth be refused, the Committee modified and approved the application. Essentially the Committee reduced the sought for variances from 21.91 m to 20 m.

MATTERS IN ISSUE AND JURISDICTION

In considering the applications for variances from the zoning by-laws, the TLAB panel must be satisfied that the variances conform to the growth plan and are consistent with the provincial policy statements. The TLAB must also be satisfied that they meet 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.

THE PROCEDURE

Mr. Platt wished to obtain an Order authorizing the variances in an unopposed telephone motion, based on affidavit evidence and telephone oral evidence of their planner Mr. Ryan Guetter. The hearing date is May 9, 2018 and this telephone motion was heard April 10, 2018, so there was the advantage of a shorter waiting period for Mr. Platt's clients. Mr. Platt submitted that grounds could be found under Rules 2.2 (most expeditious determination), 2.5 (procedures not provided for), and 2.10 (exceptions to rules). However, the TLAB hearings officer in similar circumstances should also consider Rule 24.4 (Factors considered for holding electronic Hearing) and Rule 24.2 (ordinary procedure is to hold oral hearing).

Mr. Platt also cited the following to support a summary manner of proceeding:

- There was no opposing letter or attendance at the Committee of Adjustment
- The TLAB circulated this Hearing Notice to the local Councillor and the City Solicitor, who declined to elect to participate.
- There is a letter of support (Nov. 17, 2017) from the neighbour most impacted, Adam Silverberg.
- The Miskins had fully complied with all TLAB filing requirements except for the expert witness statement. Mr. Platt submits that an affidavit, delivered in support of the motion and only three weeks after the due date for the witness statement, is an adequate substitute;
- Mr. Reutter's affidavit appeared to address all possible issues relevant to the four tests.
- TLAB rules do provide for flexibility in appropriate cases.

Mr. Platt took the position that he retained the right to an oral hearing if he failed on the motion, which suggests to me that this procedure should be used in the rarest of circumstances. The applicant could simply wait for the regular hearing date and then benefit from all persons being in the same room.

Mr. Platt suggested that a telephone conference was more efficient for the TLAB because it "free up" a hearing room. I found the telephone hearing process less convenient for me as the hearings officer, because I did not have the ability to clarify a measurement by pointing to various parts of the site plan. Also, there is no audio transcript to review in preparing the decision or for purposes of appeal. Finally, as I pointed out to Mr. Platt, this telephone conference required a staff member to be present to manage the conference call (about an hour and a half), while in the normal case, TLAB staff can return to their desks to attend to their many other tasks.

EVIDENCE

Present at the telephone conference were Messrs. A. Platt and A. Margaritis, lawyers for Ms. Miskin, Ms. T. Miskin herself, and Ryan Guetter, the Miskins' planner. I

heard an opening submission from the Miskins' lawyer and then qualified Mr. Gutter as by his training and experience as able to give opinion evidence. Mr. Reutter testified that the four tests were met, and that the application did not rise to the level that an impact to the level of a provincial interest under the Provincial Policy Statement or Growth Plan.

ANALYSIS, FINDINGS, REASONS

I conclude the Miskins should obtain the variances they seek. The City Planning Report of November 13, 2017 stated:

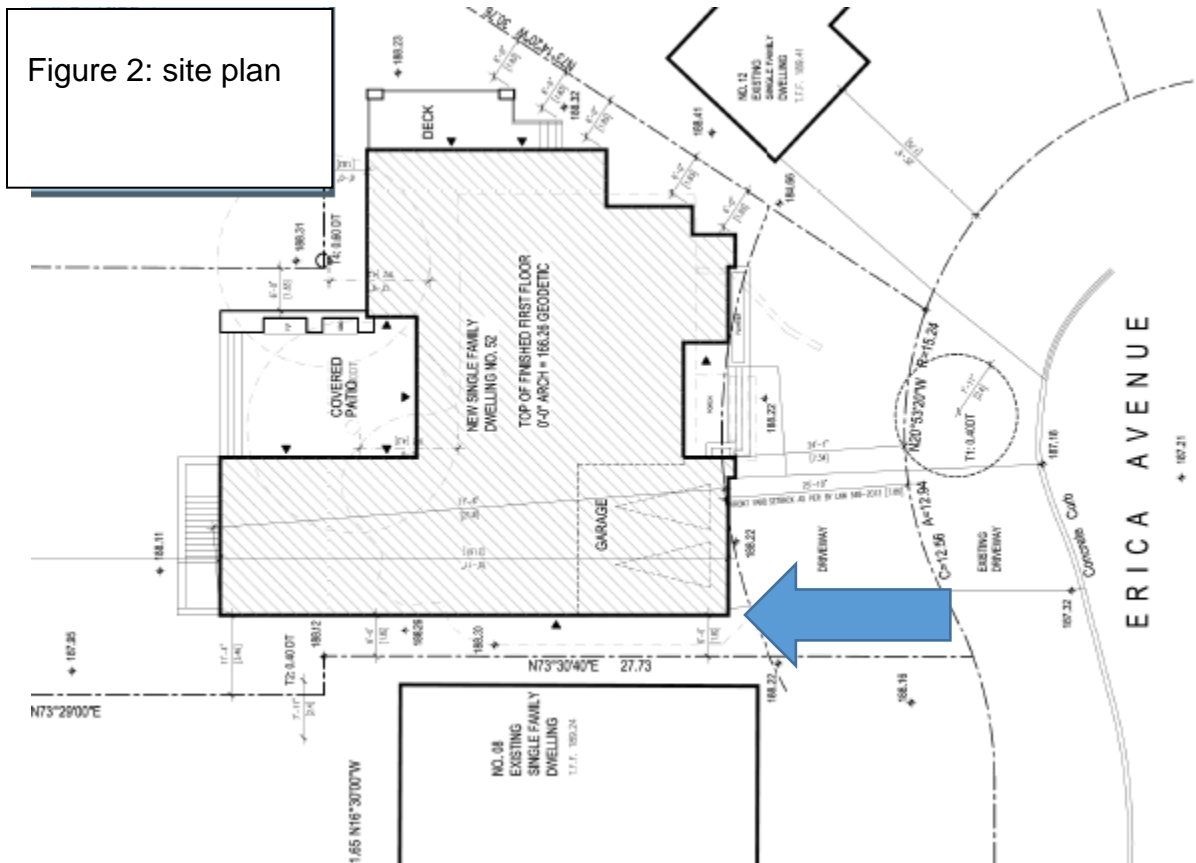
The application proposes a building length and depth of 21.91 metres as measured under Zoning By-law Nos. 7625 and 569-2013, whereas Zoning By-law No. 7625 permits a maximum building length of 16.8 metres and Zoning By-law No. 569-2013 permits a maximum building length of 17.0 metres and a maximum building depth of 19.0 metres.

Building length and depth provisions are intended, in part, to regulate the size of structures and to maintain a consistent pattern of development between neighbouring properties. Development criteria for Neighbourhoods within the Official Plan requires new development respect and reinforce the existing physical character of the neighbourhood including in particular, the height, massing, and scale of nearby residential properties. The southern wall of the proposed dwelling is significantly longer than the dwelling located at 8 Erica Avenue. Staff are of the opinion that the proposed building length and depth does not respect and reinforce the existing physical character of the neighbourhood, particularly as it relates to the scale of nearby residential properties. Staff are of the opinion that Variance Nos. 2, 3, and 5 be refused.

The Committee of Adjustment accepted the planner's recommendation and refused the length/depth variances. The zoning by-laws define "length" of building is front wall to rear wall distance and "depth" is front yard setback to rear wall distance.

The crux of this case is whether the design chosen by the Miskins' architect, which exploits the unusual shape and size of the lot, falls within the intent of the Official Plan, which is to respect and reinforce the existing physical character of the neighbourhood and the intent of the zoning bylaw, for which building length limits are to address overhang, privacy, overlook and so on.

The neighbourhood consists of older detached bungalows. There is redevelopment activity at 6, 14 and 16 Erica Avenue. Mr. Ruetter did not point to recent



If we start at the south east corner of No. 8 Erica Avenue and proceed westerly (the very large arrow, and go to the left), there is a 1.82 m (6 foot) side yard setback to the south property line, which exceeds the required setback and is larger than the equivalent side yard setback from 8 Erica Avenue to its north property line. As one proceeds westerly, at about the point where the legally permitted length of house is 20 m, the property line jogs south so that the side yard setback increases to 3.4 m (11 feet), greatly in excess of the requirement. It is almost as if the subdivider foresaw this minor variance application.

Continuing counterclockwise, the rear face of the proposed dwelling will be 24.58 m from the rear lot line, which far exceeds the requirement under by-law 569-2013 of 13.6 m and under By-law 7625 of 9.5 m. The proposed rear face consists of a wall that encloses the kitchen and a wall with sliding glass doors, containing a so-called “covered patio”. Despite its name, I am considering it to like a normal interior space with windows, for the purposes of privacy and overlook. This rear portion that is longer than permitted faces:

on the west side, the rear yard of 123 Collinson Boulevard; and

on the north, the rear yards of Nos. 71 and 73 Clanton Park Road

so that large building to building distances will mitigate against any direct views into those detached dwellings.

Continuing counter clockwise, the relevant side yard and rear yard setbacks (there are several, owing to the saw tooth nature of the nearest walls) to No. 12 Erica Avenue exceed the by-law requirements. In conclusion, Mr. Ruetter stated the intent of the Official Plan was maintained, particularly as to “dwelling type, and use, composition as well as privacy and maintenance of open space” and I accept his conclusion. I find as well that the variances are minor, meet the intent of the zoning by-law and are desirable for the appropriate development of the land, being an unusually shaped lot

DECISION AND ORDER

I authorize the variances set out in Table 1 on condition that:

1. The applicant/owners construct in substantial conformity with the plans filed with the Committee of Adjustment, and in particular that the proposal be developed in accordance with the front elevation drawing submitted to the Committee of Adjustment, date stamped as received by the City of Toronto Planning Division, November 13, 2017.
2. The applicant/owners submit a tree protection guarantee security deposit to guarantee protection of City-owned trees according to the Tree Protection Policy and specifications for Construction Near Trees or as otherwise approved by Urban Forestry. Accepted methods of payment include debit or card, certified cheque or money order payable to the Treasurer of the City of Toronto, or Letter of Credit
3. The applicant/owners submit a complete application for permit to injure or remove any privately owned trees.

X *Ted Yao*

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