

DECISION AND ORDER

Decision Issue Date Tuesday May 29, 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): EDWARD MACDONELL

Applicant: HOMELAND

City of Toronto Representative:

Property Address/Description: 46 PALOMINO CRES

Committee of Adjustment Case File Number: 17 196039 NNY 24 MV

TLAB Case File Number: 17 243226 S45 24 TLAB

Hearing date: Wednesday, May 16, 2018

APPEARANCES

Name	Role	Representative
Hamid Behesht	Owner	Amber Stewart (lawyer)
Homeland c/o Hamid Behesht	Applicant	
City of Toronto		Francesco Santaguida (lawyer)
Edward Macdonell Marian Macdonell	Appellant, 42 Palomino Cr	
Marilyn Flanagan	Participant, 50 Palomino Cr	

DECISION DELIVERED BY T. Yao

INTRODUCTION

The owner of 46 Palomino Cres, William G. Tynkaluk wishes to demolish his house at 46 Palomino and replace it with a new custom home, needing 10 minor variances. He was successful at the Committee of Adjustment on September 14, 2017. A neighbour, Edward Macdonell, (42 Palomino Cres) filed an appeal and thus this matter comes before the TLAB.

BACKGROUND

This residential pocket, north of the Bayview Village Shopping Centre, and approximately at Bayview/Empress/Citation Drive, is experiencing pressure of demolition of older homes and builders typically seek minor variances in conjunction with the building permit process. It is impossible not to feel some empathy with those who have lived in this well-kept and tightly knit community for 20 or 30 years, are raising or have raised children in circa post WW2 homes, and who now see those houses ripped down and replaced. However, as both opposing neighbours noted, this area has enjoyed significant public and private investment along the Sheppard Yonge corridor, and the Bayview/Sheppard area and those older homes, which for the most part were bungalows, no longer respond to today’s market forces.

Mr. Tynkaluk seeks to build the following new two-storey dwelling¹.



For this, he needs 10 variances as follows:

Table 1 Variances sought for 46 Palomino Crescent			
Under By-law 569-2013 (for the reason for the two by-laws, please see the section entitled “Zoning Intent”)			
		Permitted/Required	Proposed

¹ The diagrams, tables and photos form part of this decision.

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Table 1 Variances sought for 46 Palomino Crescent			
1	Lot coverage	30%	32 %
2	South side yard setback	1.8 m	1.22 m for the front 6.5 m, including both first and second storeys
Under By-law 7265			
3T	Lot frontage	15 m	14.77 m
4	Minimum lot width less than frontage?	no	yes
5	Lot coverage	30%	32 %
6	South side yard setback	1.8 m	1.22 m for the front 6.5 m, including both first and second storeys
7	Building length	16.8 m	19.73 m
8	First floor finish height	Maximum of 1.5 m	1.9 m
9	Front canopy projection	Maximum of 2.1 m	2.74 m
10	Area of side yard canopy	Maximum of 2.3 m ²	3.4 m ²

EVIDENCE

I heard from Mr. Tynkaluk's planner Franco Romano, whom I qualified as able to give opinion evidence in land use planning. I also heard from neighbours Marilyn Flanagan, Edward Macdonell and Marian Macdonell, who supported Mr. Macdonell's appeal.

MATTERS IN ISSUE

A decision of the Toronto Local Appeal Body must be consistent with the 2014 Provincial Policy Statement and conform to the Growth Plan of the Greater Golden Horseshoe. I have alluded to the fact that this application responds in part to infrastructure improvements (transit, road etc.), so I consider this decision at least consistent with these "high-level" policies.

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The TLAB Panel must also be satisfied that the applications 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.

ANALYSIS, FINDINGS, REASONS

This is a less usual case in that the variances were approved at the Committee and a neighbour appealed. The appeal triggers a new hearing, where the applicant must prove all the statutory tests were met, notwithstanding the favorable result at the Committee.

Official Plan intent – physical character

Ms. Flanagan, a neighbour in support of Mr. Macdonnell's appeal, stated:

As you know from my previous submissions, we were concerned that the application wasn't given full oversight at the Committee of Adjustment, and the primary consideration is that we feel the proposed development is not a "fit" with the existing character of the neighbourhood²³. So, I know that I'm just a lay person and not a professional planner, but I have been a resident of Bayview Village for several decades, so I am offering my opinion in that regard.

² 2.3 STABLE BUT NOT STATIC: ENHANCING OUR NEIGHBOURHOODS AND GREEN SPACES

By focusing most new residential development in the Centres, along the Avenues, and in other strategic locations, we can preserve the shape and feel of our neighbourhoods. However, these neighbourhoods will not stay frozen in time. The neighbourhoods where we grew up and now raise our children help shape the adults and the society we become. Some physical change will occur over time as enhancements, additions and infill housing occurs on individual sites. A cornerstone policy is to ensure that new development in our neighbourhoods respects the existing physical character of the area, reinforcing the stability of the neighbourhood.

4. LAND USE DESIGNATIONS

Designations that Reinforce Existing Physical Character

Four land use designations shown on the Plan's land use maps, Neighbourhoods, Apartment Neighbourhoods, Parks and Open Space Areas, and Utility Corridors, will help to protect and reinforce the existing physical character of these areas.

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

³ Ms. Flanagan's position was also echoed in Mr. Macdonnell's written submissions.

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But when I look at the criteria required for people to be given exceptions to the by-law, that seems to be one thing, that it has to respect the character of the neighbourhood, and the environment. . . .I'm not here to discuss aesthetics or personal tastes or those things. When someone purchases a property, it's certainly within their own purview to make additions, deletions, changes, build a house from scratch, et cetera; I understand

We're certainly not anti-development, or any of those types of things. There's been some nice gentrification in Bayview Village and other parts of the City of Toronto. It's just that in this case, on that lot to have an oversized house, I know it is a 2% variance, [30% coverage permitted, 32% claimed], to have that variance allowed, and just the design of that house is not in keeping with what is going on in the neighbourhood.

That's not to say that there aren't much larger homes that have been approved, that's certainly true, more [gross floor area], different configurations, I understand that, but what I am trying to submit to the group here, that predominantly, those homes have been on the more rectangular type lots, than on these reverse pies. That's why I made this little video⁴.

The video shows almost entirely bungalows with a garage-forward design, on Wycliffe, Bayberry, Morewood, Ravenscroft and Canary.

The question I must answer is whether a two storey, integral garage design "respects and reinforces" that neighbourhood characteristic. It may be seen from Ms. Flanagan's remarks that she recognizes that the phrase "respect and reinforces" is a "two-way" — it can both allow development or close the door, but it is also apparent that she recognizes that a bungalow with a separate attached garage is not in the cards for new development, particularly for a community with access to the Sheppard-Yonge, Bayview and Bessarion subway stations. Incorporating the garage into the house puts eyes on the street and a better connection between the entranceway and the public realm and I feel is superior to the garage-forward designs. Finally, Ms. Flanagan recognizes that architectural design issues are not exhaustively regulated by the minor variance process, for which there is no site plan control.

The new house will inevitably be bulkier, higher and longer than the house that it replaces. The key issues is whether such a new house can respect and reinforce the physical character of the neighbourhood?

⁴ https://youtu.be/_Xjysqkgk5U

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I find that it does because Mr. Tynkaluk's architect, Mr. Behesht, has chosen a design that places one storey of living space over the garage, similar to an older style of renovation at 10 Palomino (Photo 1).



The newer, less desirable solution at 30 Palomino is shown in Photo 2.

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This results in what appears to be a three storey house, although legally in zoning



terms, this is still a two storey house. The driveway, although level, is “stepped-in” into the lawn, which was viewed negatively by Mr. Macdonell. It does however take advantage of the topography, to lower the roof. All designs are compromises. According to Mr. Romano, No. 30 Palomino was refused a 32% lot coverage variance, although the house is plainly built. In 2012, the Committee of Adjustment gave No. 10 Palomino the same 32% lot coverage that Mr. Tynkaluk seeks. Although the information seems incomplete, I accept that 32% coverage variance has been found by the Committee to be minor on at least one other occasion.

Official Plan Intent – Trees

The Official Plan is supportive of tree protection, but the need to remove private trees does not prevent development. For example, Section 3.1.2 “Built Form” of the Official Plan states mature trees will be protected whenever possible⁵. Even this section is hedged by being restricted to being adjacent to streets, parks and open spaces. The Tynkaluk property has three large trees, two maples (I believe) and the linden tree. One of the trees will be unaffected by the construction; the other is a couple of meters from the new front wall and cannot be saved and is subject to 813-20 of the Tree By-law, to which Mr. Tynkaluk is willing to submit, and is one of the conditions of

⁵ Policies 1. New development will be located and organized to fit with its existing and/or planned context. It will frame and support adjacent streets, parks and open spaces to improve the safety, pedestrian interest and casual views to these spaces from the development by: d) preserving existing mature trees wherever possible and incorporating them into landscaping designs.

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this decision. The linden tree is currently adjacent to the driveway and the City has settled with Mr. Tynkaluk. Thus Mr. Santaguida, the City's lawyer, "respectfully requests the variances be granted, subject to the agreed upon conditions".

Having found that the proposal respects and reinforces the physical pattern of the neighbourhood and protects mature trees where possible, I find the Official Plan's intent is met.

Zoning Intent and the Remaining Tests

The architect has carefully designed this house to fit closely to the shape of the lot as the by-laws dictate, even though the lot is not rectangular. The reason for the project being assessed for compliance under the two zoning by-laws is the uncertainty created by the appeals of the new City-wide by-law. Those appeals are being resolved (May 2018) and thus the variances to former North York 7625 will shortly be superfluous. This is especially important for "building length", variance 7. Superficially, it looks as if Mr. Tynkaluk seeks to build a building some 3 meters longer than permitted, when in fact the actual building is 14.58 to 15.54 m in length, well under the 569-2013 maximum of 17 m. The reason for this is because the old North York by-law measured from the front setback line, not the actual location of the front wall. This is one of those instances where an ordinary word "length" has acquired a technical meaning that causes confusion for anyone attempting to assess whether a variance is "minor". Because virtually all North York standards will be phased out once the appeals to the City-wide by-law are resolved, the only real issue is lot coverage.

I asked Mr. Romano why the owner couldn't build within the 30% lot coverage permitted. His answer was:

You could; but 30% doesn't make a site design better than what's proposed at 32%. You'd have to show me how the 30% would manifest itself on the lot and may result in different impacts. But you can achieve 30% and still result in reasonable site development.

I find Mr. Tynkaluk, having a range of solutions, has chosen 32% because it is within the range granted by the Committee, and represents a reasonable solution. It responds to the demands of the lot shape, the existing rear yard pool and the integral garage. It is true that he has "filled in" some of the area close to Mr. Chang (48 Palomino), but this filling in responds to front and side yard setback requirements and are within the by-law and so are as of right. The design exceeds the front yard setback maximums by at least 1.5 m. That is to say, there is a more spacious front yard than the zoning requires. I have already discussed how the building length falls within 569-2013 requirements and old By-law 7625 will soon be superseded. There is no height variance requested, which contributes to the one-storey-above-garage, which I have

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found to be respectful. The side yard setback is modest and only for a part of the building and is necessitated by the reverse pie shape. Accordingly, I find that the intent of the zoning by-law is met, and the variances are minor and desirable for the appropriate development of the land.

DECISION AND ORDER

I authorize -the variances in Table 1 on the following conditions

1. The proposed development shall be constructed substantially in accordance with the revised site plan and elevations prepared for 46 Palomino Crescent by Homeland dated February 2, 2018 (site plan) and June 9, 2017 (elevations) and submitted as Exhibit 1, Tabs 10 and 12 in the Toronto Local Appeal Body's hearing for TLAB Case File No. 17 243226 S45 24 TLAB.
2. The owner shall preserve and maintain the privately owned 72 cm little-leaf linden tree located in the front yard of 46 Palomino Crescent, which was identified in the Urban Forestry staff report to the Committee of Adjustment, North York Panel, regarding 46 Palomino Crescent (CoA File No.: A0655/17NY), and dated August 31, 2017. In this regard the driveway shall be constructed with permeable pavers.
3. If required as part of the construction of the proposed development, the owner shall submit the necessary application for permit to injure and/or remove private trees to Urban Forestry, as per City of Toronto Municipal Code Chapter 813, Article III.
4. Where there are no existing street trees, the owner shall provide payment in lieu of planting one street tree on the City road allowance abutting each of the sites involved in the application. The current cost of planting a tree is \$583.

X

Ted Yao

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