

DECISION AND ORDER

Decision Issue Date: Tuesday, May 22, 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): ALAN SPENCE

Applicant: KATARZYNA SENDROWICZ

Property Address/Description: 15 NELLES AVE

Committee of Adjustment Case File Number: 17 147628 WET 13 MV

TLAB Case File Number: **17 208355 S45 13 TLAB**

Hearing date: Thursday, May 10, 2018

DECISION DELIVERED BY S. Makuch

APPEARANCES

Name	Role
Katarzyna Sendrowicz	Applicant/Party
Andrew Biggart	Counsel for the Applicant
Alan Spence	Appellant
Andrew Chachula	Counsel for the Appellant
Design Plan Services, T.Cieciara	Expert Witness for the Applicant

INTRODUCTION

This is an appeal by a neighbour to the rear of the applicant, of minor variances approved by the Committee of Adjustment, which would permit a second floor front balcony at 15 Nelles Ave. and a third floor addition, dormer. At the rear of the third floor dormer is to be a terrace.

The variances sought are as follows:

1. Section 10.10.40.40.(1)(A), By-law 569-2013 and Section 6(3) Part I 1, By-law 438-86
The maximum permitted floor space index/gross floor area is 0.6 times the area of the lot (111.8 m²). The altered dwelling will have a floor space index/gross floor area of 0.98 times the area of the lot (183.2 m²).

2. Section 6(2) 1(iii)(A), By-law 438-86
An addition to a converted house is permitted provided the increase in residential gross floor area does not exceed 0.15 times the area of the lot (39 m²).
The proposed third floor area will increase the residential gross floor area by 0.26 times the area of the lot (49.1 m²).

3. Section 6(3) Part II 3.B(I), By-law 438-86
The minimum required side yard setback is 0.45 m for a depth not exceeding 17 m where the side wall contains no openings.
The altered dwelling will be located 0 m from the west side lot line.

4. Section 6(3) Part II 3.B(II), By-law 438-86
The minimum required side yard setback is 0.9 m, for the portion of the building not exceeding 17 m in depth, where the side wall contains openings.
The altered dwelling will be located 0.6 m from the east side lot line.

5. Section 6(2) 1(iii)(A), By-law 438-86
An addition to a converted house is permitted provided that there is no alteration or addition to the front wall.
The proposed addition will alter the front wall.

6. Section 10.10.40.10.(1)(A), By-law 569-2013
The maximum permitted building height is 10 m. The altered dwelling will have a height of 10.4 m.

7. Section 10.10.40.10.(2)(B)(ii), By-law 569-2013
The maximum permitted height of all side exterior main walls facing a side lot line is 7.5 m. The altered dwelling will have a side exterior main wall height of 10.1 m facing a side lot line.

BACKGROUND

The appellant's counsel informed the TLAB at the commencement of the hearing that he would be calling no witnesses, not even the appellant, and that the only issue for the appellant was the rear third floor terrace because of a privacy concern. City planning staff had no concerns related to the variances but recommended a condition requiring a privacy screen along the east and west sides of the third floor deck because of an issue of overlook in the two neighbouring properties to the east and west. The appellant's home at 14 Weatherall St., is to the south, south west and his property and does not abut the applicant's property.

MATTERS IN ISSUE

The only matter in issue raised by counsel for the appellant was that the terrace should have a 1.5 metre set back on all sides and, in particular, a setback of 1.5 metre set back from the south wall of the second floor and include a green roof which should be installed and maintained within that set back. Moreover, the appellant wanted a hedge, natural or artificial, at least five feet high along the south border of the terrace.

JURISDICTION

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.

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').

EVIDENCE

The appellant, as stated, provided no evidence against the variances and indeed, no evidence in favour of the screening his counsel requested.

The evidence of the applicant's planner, whom I qualified to give expert planning evidence, was clear: the variances individually and cumulatively meet the four tests of s. 45 of the Planning Act and were consistent with the PPS and conformed with the Growth Plan. Moreover, his evidence was that the terrace could be constructed without the variances and no screening on the south side of the terrace was necessary.

The detail of his evidence was as follows: with respect to the variances, the increase in the gross floor area/ floor space index is acceptable, as the increased density is within the existing footprint and largely within the current roof line as it will be within a dormer. Similarly, the increase in the gross floor area of a converted dwelling house will not be noticeable. The variances with respect to the side walls will not have any impact on shadow or existing windows and will not be noticeable as they are an existing condition. Finally the variances respecting height are not out of keeping with the neighbourhood and will have no impact on shadows or light. The resulting building will not have the appearance of a converted dwelling house and the variances are appropriate for the enlargement of the house. The changes to the house represent good planning and the variances are minor.

With respect to the third floor terrace, the appellants' planner gave clear and uncontradicted evidence that the variances were not necessary for it to be constructed. It was therefore unrelated to the variances and could be built as of right. His evidence was further that the applicant agreed with the conditions recommended by planning staff and that there was no need for additional screening for the appellant's house which was 88 feet away, screened by trees along the property line, not directly in line with the applicant's property, and partially hidden by garages. Furthermore, his evidence was that a 1.5 metre setback on the terrace, as required by the appellant, would make the terrace unusable.

ANALYSIS, FINDINGS, REASON

I find no basis to disagree with the evidence of the applicant's planner that the variances should be approved and that the terrace may be constructed subject to the conditions recommended by City planning staff and with which the applicant agrees.

DECISION AND ORDER

The variances set out above in the Introduction to this decision are approved subject to the following conditions:

Include the 3 conditions only from the report below.

X 

S. Makuch
Panel Chair, Toronto Local Appeal



STAFF REPORT
Committee of Adjustment
Application

To:

RECOMMENDATION

Should the Committee of Adjustment see fit to approve the application, it should be subject to the following conditions:

1. The owner shall submit two sets of revised plans to the satisfaction of the Director, Community Planning Toronto showing the inclusion of a privacy screen with screen details, measuring a nominal height of 1.8 metres above the surface of the rear deck and with its location along the east and west sides of the deck.
2. The owner shall provide one copy of the accepted revised plans to Toronto Building to form part of the Building Permit application file and one copy to the Committee of Adjustment office for inclusion in the Committee of Adjustment application file.
3. The owner shall construct the deck substantially in accordance with the accepted revised plans.

APPLICATION

The applicant is requesting permission to construct a third storey addition with a rear terrace above the existing dwelling and a second storey front balcony. The applicant is seeking the following variances:

1. Section 10.10.40.40.(1)(A), By-law 569-2013 and Section 6(3) Part I 1, By-law 438-86

The maximum permitted floor space index/gross floor area is 0.6 times the area of the lot (111.8 m²).