

DECISION AND ORDER

Decision Issue Date Friday, May 11, 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): GENNADY TIMOFEEV

Applicant: GUITBERG GROUP INC

Property Address/Description: 201 HILLHURST BLVD

Committee of Adjustment Case File Number: 17 244062 NNY 16 MV

TLAB Case File Number: **17 270714 S45 16 TLAB**

Hearing date: Friday, May 04, 2018

DECISION DELIVERED BY T. Yao

APPEARANCES

Name	Role	Representative
Guitberg Group Inc	Applicant	
Nina Timofeeva	Owner	
Gennady Timofeev	Appellant	Daniel Artenosi
Franco Romano	Expert Witness	
Lydia Vale	Participant, 199 Hillhurst Blvd	

INTRODUCTION

Nina Timofeeva and Gennady Timofeev, through their agent Guitberg Group Inc., will demolish the existing dwelling at 201 Hillhurst Boulevard and replace it with a new two-story dwelling with integral garage. They require 13 variances as follows in Table 1.

Decision of Toronto Local Appeal Body Panel Member: T. Yao
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The Committee of Adjustment refused the variances on November 21, 2017, Mr. Timofeev appealed, and so this matter has come before the TLAB.

They are opposed by Lydia Vale, the next door neighbour to the east.

Table 1 Variances sought for 201 Hillhurst Blvd			
Under by-law 569-2013			
		Permitted/Required	Proposed
1	Rear deck and canopy setback	Minimum of 1.8 m	1.21 m
2	Building Height	10 m	10.2 m
3	Building length	Maximum of 17.0 m	19.66 m
4	Building depth	Maximum of 19.0 m	19.97 m
5	West side yard setback	1.8 m	1.21 m
6	East side yard setback	1.8 m	1.21 m
7	Lot coverage	35%	38.36%
8	Chimney breast encroachment into east and west side yard setback	Maximum of .6 m	.89 m
9	Roof eave projection, east and west side yard setback	Maximum of .9 m	1.2 m
Under by-law 7265			
10	East side yard setback	1.8 m	1.21 m
11	West side yard setback	1.8 m	1.21 m
12	Rear deck and canopy closer to side lot lines than side yard setback	1.8 m	1.21 m

13	Length	16.8 m	20.88 m
14	Projection of canopy from rear wall	1.8 m	2.08 m

EVIDENCE

Joshua Kuhl, 203 Hillhurst Boulevard, wrote a letter dated April 12, 2018, to support the proposal. Ms. Vale, the other abutting neighbour, entered into a settlement with the owners Ms. Timofeeva and Mr. Timofeev during this hearing on May 4, 2018. The Minutes of Settlement (entitled “Principles of Settlement”) between the owners and Ms. Vale states as follows:

Principles of Settlement

1. The Applicant shall construct, at his own expense, a new privacy fence along the common property line with 199 Hillhurst Boulevard for the distance between the rear property line and approximately one (1) foot to the south of the location of the side yard door proposed along the east wall of the proposed dwelling at 201 Hillhurst Boulevard and shown on Dwg. Nos. A-3 and A-9 prepared by Guitberg Group Inc. dated September 2017.
2. Upon the issuance of the Order of the Toronto Local Appeal Body approving the variances set out in the Notice of Hearing for the Committee of Adjustment Application dated November 10, 2017, the Applicant shall pay to Lydia Vale in her capacity as the owner of 199 Hillhurst Boulevard the total sum of \$2750.00 to subsidize the purchase and installation of cedars on the property at 199 Hillhurst Boulevard along the common property line for the distance between the south rear wall of 199 Hillhurst Boulevard and the north wall of the existing detached accessory garage in the rear yard of 201 Hillhurst Boulevard.

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 for the subject area. I considered those documents in the course of this decision and found no policies that were sufficiently detailed to be dispositive. 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

The planning justification was provided by the Timofeevs' planner, Mr. Franco Romano, whom I qualified to give land use planning evidence. He stated that the area is undergoing "regeneration", with demolitions and additions to older buildings, with the overall scale "in keeping with one another". He said the building height variance of .2 m over the maximum 10 m is to accommodate a skylight; the remainder of the roof structure is at or below 10 m.

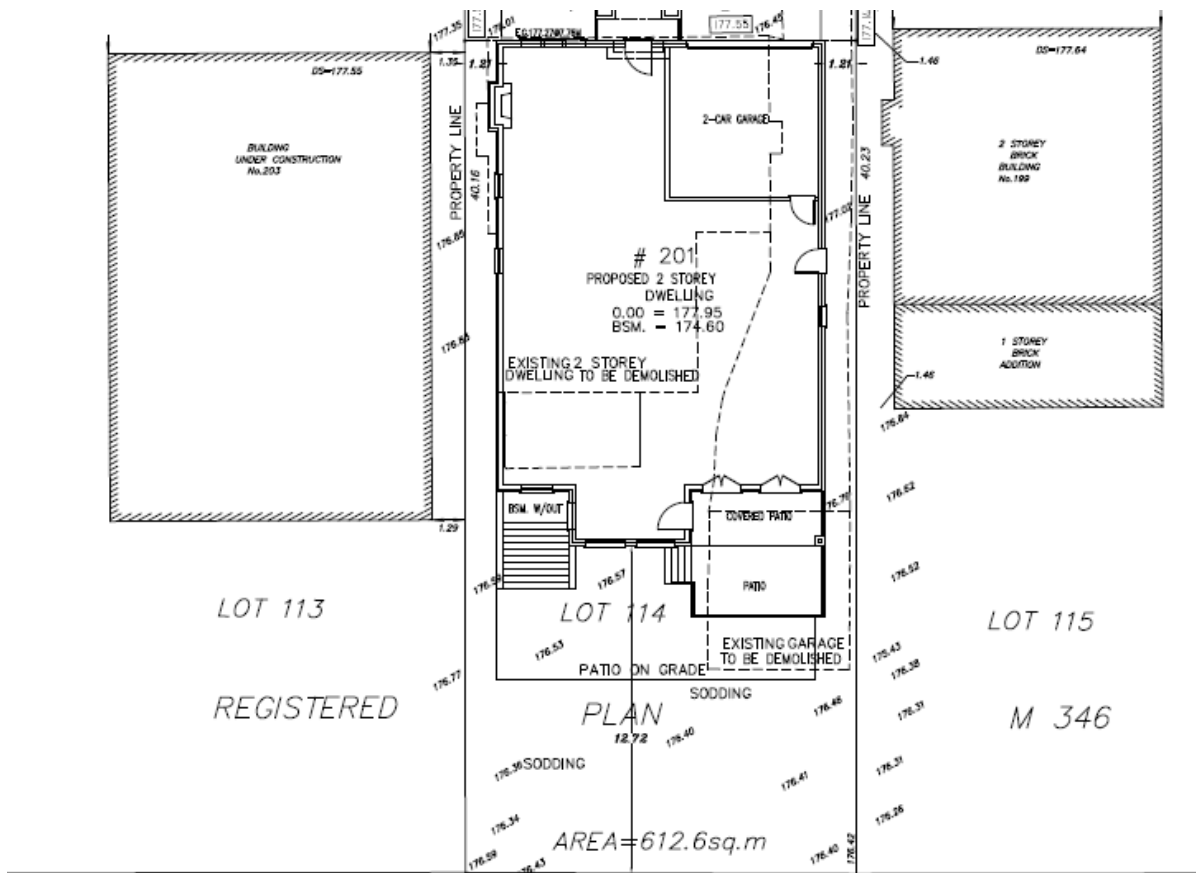
Mr. Romano went on to say that the variances sought are within the range of variances typically authorized and so, given this context, are minor and desirable for the appropriate development of the land. "Minor" and "desirable for the appropriate development of the land" in this case have a technical meaning, not the ordinary English language usage. The technical meaning means you look at and interpret the four tests together, always having regard to the intent of the statute.

In 2015, the Committee of Adjustment approved variances for a new three-story dwelling at 203 Hillhurst with a lot 40.65% and a building length of 21.34 m and smaller side yard setbacks than permitted. No. 203 is longer than what is proposed at 201, and the lot coverage is greater. No 206, a new three-storey dwelling with below grade garage, (a 2011 decision of the Committee) has a building length of 17.56 m, less than 201 but it obtained a variance for a third floor, which no. 201 does not seek. He went on to say that the portions of the former City of North York portions regulated by 7625 are regulated as to the number of stories, whereas on Briar Hill, one block to the south, in the former City of Toronto, the number of stores is not regulated. No. 206's third floor has dormers which are not habitable, according to Mr. Romano. At No. 209 Hillhurst, the Committee approved a new two-storey dwelling with smaller side yards, 38% lot coverage and a building length of 19.78 m.

Mr. Romano indicated:

"So, you don't have to go too far from the subject site to see that regeneration is occurring and regeneration continues the detached building type, dwelling type with some variation of architectural typology. Some of the features on site differ but still, the physical characteristics of a stable detached residential neighbourhood with variances being associated with new construction. Even under the existing conditions there is still some "noncompliance with the zoning bylaw" [i.e., side yards and lot frontages, my indication].

Whether this larger and longer dwelling fits the tests devolves on the physical relationship of the Timofeevs' rear wall in relation to its neighbours' dwellings. To the west is the Kuhl residence (redeveloped); to the east is the Vale residence (not redeveloped).



It may be seen that although the Timofeevs' main rear wall is shorter than the Kuhl rear wall, a small one-storey bump out containing a rear window makes it longer. The deck at the east required variances 5 and 8. I feel the architect did make an effort to respect both properties' rear lot lines and because of this, there is support from Mr. Kuhl.

CONCLUSION

I find that the variances singly and collectively meet the statutory tests and should be granted. Because the TLAB wishes to encourage settlement I will not formally "tinker" with the agreed upon conditions.

However, the fact that the rear deck is located on the east side and is oriented towards Ms. Vale's yard does trouble me. I considered asking whether the kitchen bump-out could be swapped with the barbecue and decided that the portion that would be used the most is in the centre of the rear wall rather than towards the east, so the location of the bump out as designed by Guitberg is superior in terms of privacy. However, I would respectfully suggest to Ms. Timofeeva and Mr. Timofeev, in the spirit of good

neighbourliness, that they consider one or more of the following modifications on an ex gratia basis:

- Making the glassed-in portion of covered deck in the east elevation translucent glass as well;
- Additional plantings and screening on the east side of the uncovered deck;
- Relocating some portions of the uncovered deck away from the common property line.

If these require additional variances, I would be pleased to reopen this decision on an expedited basis and amend this decision.

DECISION AND ORDER

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

1. the Applicants construct in substantial compliance with the plans filed with the Committee of Adjustment.
2. The bathroom window on the second storey east elevation of the proposed dwelling at 201 Hillhurst Boulevard as shown on Dwg. Nos. A-4 and A-9 prepared by Guitberg Group Inc. dated September 2017 shall be translucent glass.

X



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