

# DECISION AND ORDER

**Decision Issue Date**      Wednesday, June 27, 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): JOSHUA ELIOT AUGUSTINO

Applicant: TERESA MARREROS

Property Address/Description: 15 ALMA AVE

Committee of Adjustment Case File Number: 17 221202 STE 18 MV

TLAB Case File Number: **18 116336 S45 18 TLAB**

**Hearing date:**      Tuesday, June 19, 2018

## DECISION DELIVERED BY T. Yao

Name	Role	Representative
Jessica Knight,	Owners	
Joshua Eliot Augustino		
Joshua Eliot Augustino	Appellant	
Joseph Romero	Expert witness	

## INTRODUCTION

Jessica Knight and Joshua Augustino (the owners) have four children, 4, 7, 11 and 21. They live in a cramped (1260 sq. ft plus basement) townhouse. They wish to construct a third-floor addition (393 sq. ft) and also create a self-contained unit in the basement for their eldest child, who is attending university. To do so they need 8 variances from the zoning by-law.

**BACKGROUND**

The owners applied to the Committee of Adjustment for 14 variances on January 24, 2018 and were refused. The very next day, they obtained a new plan examiner's notice with eight variances. Mr. Romero, the owners' construction manager and planner, said this was because of duplications in the original notice; it is not a result of any changes to the plans. The variances are with respect to two by-laws, because the "new" by-law, passed in 2013, and replacing the "old" by-law, still has outstanding appeals. Until the appeals are disposed of, the City Buildings Department examines all building permit applications for compliance with both by-laws

<b>Table 1<sup>1</sup>. Variances sought for 15 Alma Avenue</b>			
From By-law 569-2013 (new, City-wide)			
		Required/ permitted	Proposed
1	Distance between main walls of a townhouse	2 m	0 m
2	Height of exterior main walls facing a side lot line	7.5	8.97 m
3	Floor space index	1.00 times lot area	1.19 times lot area
4	Front porch floor encroachment into front yard setback	Permitted if at least .6 m away from the front lot line	Basement walkout stairs .14 m away from the front lot line
From By-law 438-86 (old, former City of Toronto)			
5	Maximum FSI of an addition to converted house	.15	.20
6	No substantial change to appearance when adding a basement apartment		Substantial change
7	Side yard setback of a rowhouse	2 m	0 m
8	Floor space index	1.00 times lot area	1.19 times lot area

<sup>1</sup> This Table and diagram form part of this decision.

## EVIDENCE

I heard from the owners' witness, Joseph Romero, whom I qualified as an expert planner, entitled to give opinion evidence

## MATTERS IN ISSUE

The application must be consistent with the 2014 Provincial Policy Statement and conform to the 2017 Growth Plan of the Greater Golden Horseshoe. The TLAB Panel must be satisfied that the applications meet all 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
- is minor.

This map shows the location of the property.



Figure 1. Excerpt of Official Plan map.

## ANALYSIS, FINDINGS, REASONS

### 2014 Provincial Policy and Growth Plan

Section 1.4 *Housing* of the Provincial Policy Statement requires that Toronto provide for “an appropriate range and mix of housing types and densities required to meet projected requirements of current and future residents.” It goes on to say that new development should be directed where it will use land, resources and hard and soft services efficiently. There are similar themes in the Growth Plan.

Both sides of Alma Avenue enjoy an extensive system of laneways (a hard service), as well as proximity to bus and street car lines. It is about a 20 minute walk to the Parkdale Masaryk-Cowan Community Recreation Centre a (a soft service). I find this proposal to add a basement apartment and third floor addition is “consistent with” and “conforms to” these two documents.

### **The Official Plan**

The property is on the south side of Alma Avenue, an east-west street, indicated by an arrow on the Official Plan map (please see page 3).

The property is in a “Neighbourhoods” area east of the Employment lands west of Dufferin, north of the rail line, and separated by Peel Avenue from the mixed use area on the north side of Queen Street. At the southeast quadrant of Queen and Dufferin is a regeneration area. No. 15 Alma is within walking distance of office, retail and employment uses on those lands.

In the Official Plan, “Neighbourhoods” lands are intended to be “stable but not static” and new development must meet a number of familiar policies, such as “respecting and reinforcing the existing physical character of the neighbourhood”. But in my view, these are not the primary policies to be applied, because the *Planning Act*, through amendments to s. 16(3)<sup>2</sup>, directs municipalities to insert second suite policies in their Official Plans. These policies also have antecedents in the Provincial Policy Statement and Growth Plan, reflecting a fundamental interest by the Province in providing more lower cost housing.

In support of this argument, Mr. Romero cited Bill 140, the *Strong Communities through Affordable Housing Act, 2011* (Royal Assent March 4, 2011). Although the *Strong Communities Act* was passed in 2011, it came into force on April 8, 2018, presumably to give municipalities time to bring their official plans into compliance. I accept Mr. Romero’s argument that the *Planning Act* is supportive of this proposal.

Toronto does have policies that encourage second units, although they do not mention the house forms in which the second units are to be located:

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<sup>2</sup> *Second unit policies*

16(3) An official plan shall contain policies that authorize the use of a second residential unit by authorizing,

- (a) the use of two residential units in a detached house, semi-detached house or rowhouse if no building or structure ancillary to the detached house, semi-detached house or rowhouse contains a residential unit; and
- (b) the use of a residential unit in a building or structure ancillary to a detached house, semi-detached house or rowhouse if the detached house, semi-detached house or rowhouse contains a single residential unit. 2011, c. 6, Sched. 2, s. 2; 2016, c. 25, Sched. 4, s. 1 (1).

Chapter 3.2.1

1. A full range of housing, in terms of form, tenure and affordability, across the city and within neighbourhoods, will be provided and maintained to meet the current and future needs of residents. A full range of housing includes: ownership and rental housing, affordable and mid-range rental and ownership housing,.. and *housing that makes more efficient use of the existing housing stock*.
2. The existing stock of housing will be maintained and *replenished*. New housing supply will be encouraged through intensification and infill that is consistent with this plan. (my italics)

“Affordable” is defined as a rent below the average Toronto rental rate, (as found by the latest Canada Mortgage and Housing Corporation survey) and “mid-range” is 1.5 times this figure:

Bachelor      \$1019; and  
1-Bedroom    \$1202.

The Plan also states:

All levels of government need to do all they can to create a business environment in which private rental housing, especially at affordable and mid-range rents, is an attractive investment. (3.2.1 Housing)

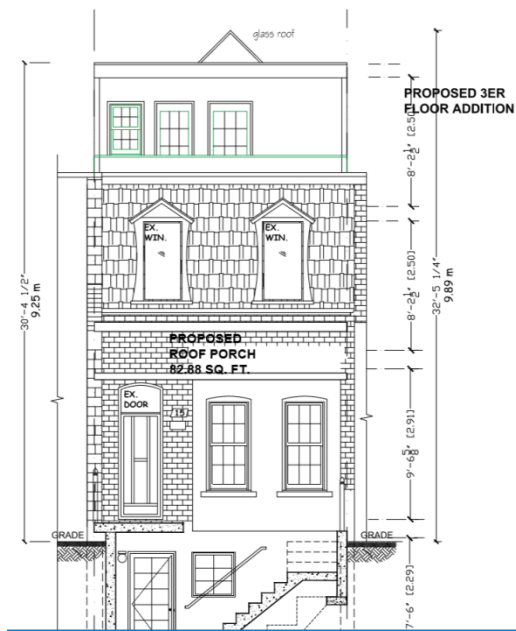
Ms. Knight writes that she considers this a bachelor unit and that when it is put on the market after the adult child completes university, it would bring in \$900-1000 per month, which places it in the “affordable” rental category. Thus, her proposal falls within these policies which speak to *form, tenure and affordability*. These considerations take precedence over the “respect and reinforce physical character” tests for the reason it is more important that people have a place to live in a Building Code-compliant unit in “replenished” housing, than be prevented from so doing by possible overlook and shadowing objections of the neighbours. This is not to say that 15 Alma has those negative consequences; as is evidenced by the lack of neighbour or City objection.

I find that the application maintains the intent of the Official Plan.

**Intent of the zoning by-law**

I will now turn to a more detailed description of the addition and alterations. In order to comply with the Building Code, a self-contained basement apartment requires a second means of egress. There is an existing walkout at the rear. The new front walk out triggers variances 4 and 6. I find these to be of minor impact. The present roof is 6.94 m high, and despite the need for a main exterior wall height variance, there is no building height variance requested. Whatever effect this may have, is greatly mitigated by a design that partly hides the massing from the street.

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This is a very modest addition. There will be no change to the first floor except to construct three pillars in the rear yard to support the balconies.. Similarly, there is no change to the second floor except the rear balcony. The owners will construct a new third floor addition about half the size of the second floor, plus a balcony over the proposed second floor balcony. There will be no new foundations.

The front façade will be unchanged from the first floor up. (Please see the new front elevation inset to the left on this page.). Neighbours on either side have indicated they have no objection to the two new balconies.

I feel the only real

substantive variance is floor space index: 1.19 times lot area where 1.00 is permitted. A very similar addition at was approved by the Committee in October 2011 at 16 Alma and is now built (photo to the right).

No. 16 Alma required nine variances. Their design from a street view is identical to 15 Alma. Unlike 15 Alma, the owners of 16 Alma added a new first floor bay window; the owners of 15 Alma will leave the front façade unchanged except for the basement walkout.

No. 16 Alma required nine variances, including a depth of building variance (17.12 m whereas 14 m permitted). The owners say they would have liked to increase the length of their building (existing = 11.9 m or 39 feet) but they could not afford to.

I found it puzzling that 15 Alma's floor space index (1.19) is higher than 16 Alma's (1.097). No 16 Alma needed a building length variance (length 17.12 m or 56.2 feet), whereas I have already mentioned that the owners of 15 Alma could not afford to extend their building of 11.9 m (39 feet).

We can break down Mr. Romero's calculation of allowable gross floor area into equivalent FSI as follows:

FSI



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3 <sup>rd</sup> floor	393 <sup>3</sup> sq. ft	0.204
2 <sup>nd</sup> floor	630 sq. ft	0.328
First floor	630 sq. ft	0.328
<u>Basement</u>	630 sq. ft	0.328
Total	2283 sq. ft.	1.188

In my opinion, the plan examiner may have erred in not deducting the basement gross floor area from total GFA by overlooking section 10.5.40.40 (3) of (new) Zoning By-law 569-2013<sup>4</sup>. If this is done, the proper FSI is .86, which does not need a minor variance (variances 3 and 8).

I recently issued a decision on *12 Montrose Avenue*, dealing with a similar third floor addition in a similar neighbourhood (Trinity Bellwoods). This case also considered section 10.5.40.40 (3), which I found encourages secondary units in a house form building where there is little or no change to the outside shell.

However, the building plan examiner is the final authority on the numerical calculation of the variance. The TLAB is the final authority on whether the intent of the zoning by-law is maintained. I find the intent of section 10.4.40.40 (3) (A) is to encourage basement apartments and the variances meet all the statutory tests under the *Planning Act*.

### **A constructive suggestion to the City Planning Department**

In *15 Montrose Avenue*, the City Planning Department wrote a report; in this case there was none. In neither case, did the Committee of Adjustment have the benefit of advice from the City planners as to the relatively complex housing policies in the Official Plan and, in both cases, the Committee of Adjustment refused the application. The Official Plan says “all levels of government” must foster private investment that produces affordable and mid-range rents. It seems to me that the City Planning Department could provide advice, perhaps as an online guide, to homeowners about the intent and purpose of the Official Plan and zoning provisions, relevant to a minor variance application.

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<sup>3</sup> These numbers are taken from the plans and differ somewhat from the plan examiner’s notice.

<sup>4</sup> 10.5.40.40 (3) Gross Floor Area Calculations for a Residential Building Other Than an Apartment Building in the Residential Zone category, the gross floor area of a residential building, **other than an apartment building**, may be reduced by: (A) the floor area of the basement, [By-law: PL130592 Mar\_2018].. [my bold]

The definition of “apartment building” is “A building that was originally constructed as a detached house, semi-detached house or **townhouse** and has one or more secondary suites is not an apartment building.” [my bold]

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The 15 Alma Avenue application has taken a year to work through the system. It has been costly in terms of time and money. This must dissuade many others who are contemplating the same sort of addition.

In his evidence to me, Mr. Romero said he was often asked by clients to by-pass the building permit process, which, to his credit, he has always refused to do. It is well known that there are many basement apartments in Toronto that contravene zoning and Building Code regulations, with deleterious consequences for both tenants and purchasers. I may be mistaken; perhaps the City already offers plenty of helpful advice in this area. But if I am not, then perhaps some of the ideas in this decision could be of assistance.

**DECISION AND ORDER**

I authorize the variances set out in Table 1 on condition that the owners construct in substantial compliance with the plans under zoning certificate 17 170218 ZC 00 ZR Folder RSN 4173832.

X

*Ted Yao*

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