

# DECISION AND ORDER

**Decision Issue Date**      Thursday, June 21, 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): MICHAEL MACIEJEWSKI

Applicant: RASKO VUCKOSKI

Property Address/Description: 96 WEDGEWOOD DR

Committee of Adjustment Case File Number: 17 208480 WET 05 MV

TLAB Case File Number: **18 110834 S45 05 TLAB**

**Hearing date:**      Wednesday, June 13, 2018

**DECISION DELIVERED BY T. YAO**

## APPEARANCES

Name	Role	Representatives
Rasko Vuckoski	Owner/Party	Mary Flynn-Guglietti, Kailey Sutton
Alan Young	Expert Witness	
Michael Maciejewski	Appellant	
Martin Whelan	Participant	

## INTRODUCTION

Mr. Vuckoski wishes to demolish a 1949 era one-and-a-half-storey house and erect a new one. He needs four variances, set out in Table 1<sup>1</sup> below.

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<sup>1</sup> Table 1, and all photos form part of this decision.

The Committee approved the variances in January 2018; Mr. Maciejewski appealed, and so this matter came to the TLAB.

**BACKGROUND**

<b>Table 1. Variances sought by Mr. Vuckoski for 96 Wedgewood Dr</b>			
		Required/permitted	Proposed
City wide By-law 569-2013 and Etobicoke By-law 1992-23			
1	GFA	135 m <sup>2</sup> plus 25% of the lot area (=322 m <sup>2</sup> )	135 m <sup>2</sup> plus 39% of the lot area (=427 m <sup>2</sup> )
2 <sup>2</sup>	Maximum height of all front exterior main walls	7 m	7.07 m
3	Maximum height of first floor above established grade	1.2 m	1.68 m
4	Maximum soffit height	6.5 m	7.07 m

The proposal meets or exceeds all other zoning requirements, notably for setbacks for front, rear and side yards.

**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. 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.

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<sup>2</sup> Variance 2 and 3 are from By-law 569-2013 only; variance 4 is from By-law 1992-23 only.

## EVIDENCE

Mr. Alan Young, whom I qualified as an expert land use planner, testified on behalf of Mr. Vuckoski. Michael Maciejewski and Martin Whelan testified as neighbours.

## ANALYSIS, FINDINGS, REASONS

Since this is an appeal by Mr. Maciejewski, I will start with his letter to the Committee dated Sept 15, 2017:

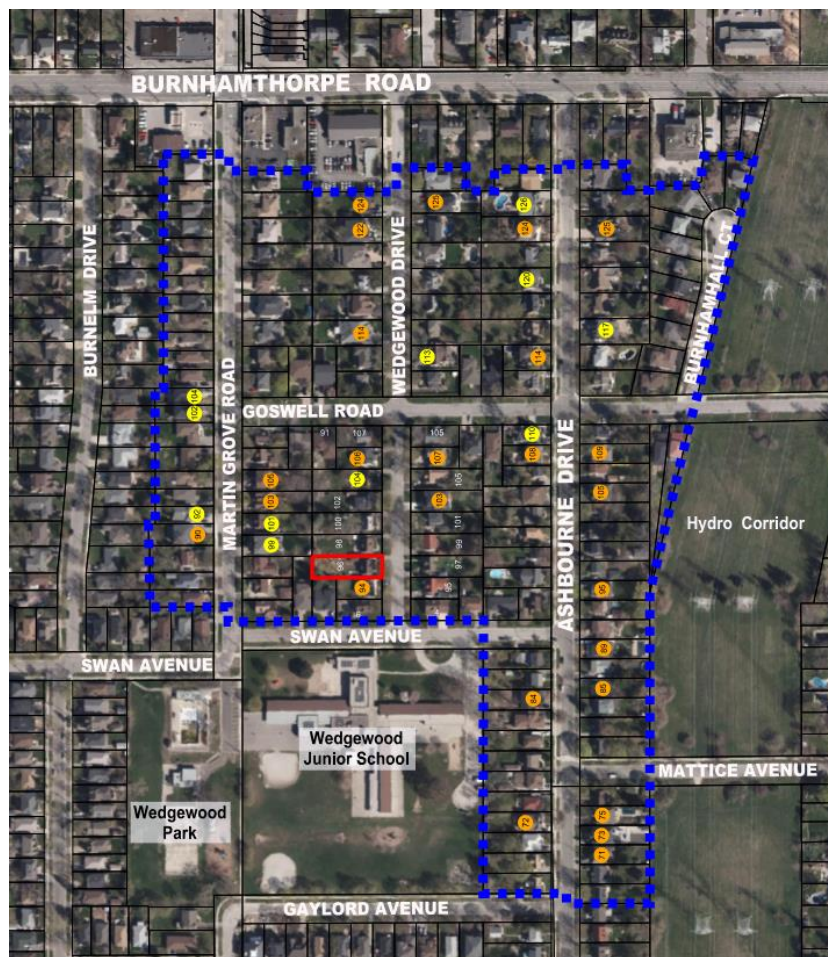
What appealed to my family was the space, privacy, density, the mature trees, light and air. . . Over the years, there have been some changes to the surrounding houses, but none of them exceed the limits allowed by city bylaws. Please see the attached pictures of the Wedgewood Drive view. So far, all houses on the street exhibit reasonable uniformity in style, scale or design preserving the neighborhood's character.

All efforts to revitalize our neighborhood are very welcome but in the case of proposed variances for 96 Wedgewood Drive, all limits are broken on an unparalleled scale, being in contrary to established esthetics and uniformity of the streetscape.

Mr. Maciejewski said that the exceedance is large; sought-for GFA of 42 m<sup>2</sup> is "32%" greater than what is permitted. Mr. Maciejewski likened this to a cut in pay of the same magnitude. This analogy does not address the planning test that must be applied.

The Official Plan requires that new development must "*respect and reinforce* the existing physical character of the neighbourhood, including in particular: c) heights, *massing, scale* and dwelling type of nearby residential properties" (my italics).

The Committee granted 5 variances, including height. (There were two previous iterations of the proposal, with 9 and 7 variances respectively.) After the appeal, Mr. Vuckoski retained Mr. Young, who recommended reducing the height to 9.48 m, just under the 9.5 m permitted, so building height is taken off the table. (There are two variances relating to main wall and soffit height, which are in my estimation, minimal in impact). "Dwelling type" and first floor height were never a consideration, since the replacement house is single detached, just like every other house in the neighbourhood. The RD zoning (D for Detached) only permits this type of residential use, although a wide range of non-residential uses are permitted, with conditions.



This reduces the relevant test to considerations of “massing and scale” in the relevant neighbourhood, shown in the heavy dotted outline in the aerial photo above, which I accept. Mr. Young found this neighbourhood comprises 161 houses, of which 21 have been demolished and replaced, and at least 14 are original houses plus additions. (The period goes back 18 years). He said these new larger houses are relatively evenly distributed across the neighbourhood, except for the newer Burnhamhall Court subdivision (facing the Hydro corridor).

Gross floor area can be a measure of “massing and scale”. Mr. Young said that Etobicoke zoning originally did not use this measure, preferring to control size by means of setbacks. In 1992, “gross floor area” was introduced in the zoning by-laws as a performance standard:

a maximum of 135 m<sup>2</sup> plus 0.25 times lot area,  
subject to a density cap of 0.5 FSI.

Gross floor area now had to include garages, whether attached or detached, above or below ground. It also allowed very long rear additions if they were less 50% of the lot width, which may account for some very large additions that may be seen in other aerial photos (not included in this decision).

Mr. Young worked with two sources of City data:

- “Selected Property and Structural Characteristics” (the SPSC data); and
- Recent building permit activity, where available.

He used the building permit data to modify the SPSC data, which in most cases still reflects the “original” gross floor areas. The SPSC data **excludes** garages, even though the zoning standard requires us to include it. With this caveat, the proposed house will be 427 m<sup>2</sup> (322 m<sup>2</sup> permitted), both numbers **including** the garage. The 161 houses analyzed by Mr. Young using modified SPSC data range in size from 83 m<sup>2</sup> to 439 m<sup>2</sup> (**excluding** garage). The average is 182.43 m<sup>2</sup>. (excluding garage). Mr. Young concluded that there are two houses larger than the proposed house, (excluding garage).

The proposed house will have a floor space index (that is, floor area divided by lot area) of .57 (.5 permitted, both numbers **including** garage). Mr. Young concludes there will be five of 161 properties equal to or greater than the proposal. I am presuming this conclusion would also **include** the garage, since Mr. Young was working with Committee decisions that are looking at variances from gross floor areas as they are calculated under the zoning by-law.

This indicates Mr. Vuckoski’s proposal is at the top end in gross floor area and near the top end in density, but all appeals at the TLAB exceed the by-law norms in some way. The test requires me to ask if the new development respects the existing character of the neighbourhood, and be “sensitive” and “fit in”. In applying the tests, the proposal should not be measured against original homes, built under very rudimentary zoning before the Cloverdale Mall and the 427-highway existed. It must be measured against previously granted variances from By-law 1992 2013, permitting an FSI of .5, which is more than triple the FSI of older homes.

It is a credit to the neighbours that they understood this. Both Mr. Maciejewski and Mr. Whelan expressed an interest in the uniformity of the streetscape, now presently interspersed with these modern homes. They attempted to argue that even though other new large houses required variances, they still fitted in, whereas Mr. Vuckoski’s proposal will not. To make this argument successfully requires a sophisticated ability to read drawings and blueprints. Both Mr. Maciejewski, an

engineer, and Mr. Whelan, past director of Fire Prevention Division for the City of Etobicoke, have this ability.

Mr. Whelan said the architect for 102 Wedgewood “did an excellent job in fitting in the peaks and dormers”. Speaking of 113 Wedgewood, Mr. Maciejewski said:

With an FSI of .58, it’s built on a 60-foot lot; and that side of the street has 60-foot widths, and that’s why that side of the street is a little bit different. However, if you look at the streetscape, it still has the same look, similar, and caring about keeping the streetscape the same.

He likened No. 113 to a successful dental implant, where “nobody notices it’s an implant”; this is pretty close to the concept of “fitting in” in the Official Plan. Both these comparison properties received minor variances close to what Mr. Vuckoski seeks and are summarized in Table 2.

Table 2. Comparison of Subject and two other Committee Decisions			
	Lot area	GFA sought/granted	FSI
<b>96 Wedgewood (Jan 2018)</b>	<b>748 m<sup>2</sup></b>	<b>427 m<sup>2</sup></b>	<b>.57</b>
102 Wedgewood (November 2017); in construction	748 m <sup>2</sup>	389 m <sup>2</sup>	.52
113 Wedgewood (February 2011); built	610 m <sup>2</sup>	356 m <sup>2</sup>	.58



The above photo of 113 and 111 Wedgewood was taken by Mr. Maciejewski. I find that No. 113 (left) does fit in. First I believe 113 has a larger frontage than 111, but it has a front facing sloping roof, which softens the upper mass of the second floor. Although 113's garage is a double-car, there is no central pillar, which gives the illusion that it is narrower, and echoes the attached single car garage of No 111 Wedgewood, to the right. The upper windows of both are vertically divided and in line, in part due to consideration of the number of steps to the front door. One could also argue that the rhythm of door-window-garage is repeated, and the whole effect is enhanced by the mature trees in front.

The question is then: does the proposed house also "fit in"? At my suggestion, Mr. Vuckoski, who attended the hearing agreed to the roofline changes as shown below. Messrs. Maciejewski and Whelan agreed that these changes were positive.



On the whole of the evidence I find that the variances singularly and cumulatively meet the statutory tests. I should also add, that because of the settlement related to the roofline, the FSI and gross floor area variances authorized here should not be considered precedents.

If there is a minor error or omission or if further changes are needed in this decision, would Ms. Flynn-Guglietti kindly email me, care of the TLAB, with copies to Messrs. Maciejewski and Whelan.

## DECISION AND ORDER

I authorize the variances set out in Table 1 on the following conditions:

1. The applicant builds in substantial compliance with plans filed in Tab 19 of the Applicant's Document Book (Exhibit 1 of these proceedings), with the front elevation as modified by Exhibit 5.



**X**

*Ted Yao*

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