Toronto Local Appeal Body

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DECISION AND ORDER

Decision Issue Date Monday, June 18, 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): CITY OF TORONTO (ALEXANDER SURIANO)

Applicant: BRIAN ABBEY

Property Address/Description: 16 WOODVILLE AVE

Committee of Adjustment Case File Number: 17 213105 STE 29 MV (A0928/17TEY)

TLAB Case File Number: 18 116579 S45 29 TLAB

Motion Hearing date: Monday, June 11, 2018

DECISION DELIVERED BY D. Lombardi

APPEARANCES

Owner	PETER LIVISIANOS
Applicant	BRIAN ABBEY
Appellant (CITY)	CITY OF TORONTO
Appellant's Legal Rep.	ALEXANDER SURIANO
Party (TLAB)	BRIAN L ABBEY

INTRODUCTION

This is an application seeking relief from the provisions of the Zoning By-law to legalize and to maintain a new two-storey detached residential dwelling at 16 Woodville Avenue (subject property), which was constructed beyond the variances permitted in the Committee of Adjustment Decision dated January 24, 2018 (A0888/14TEY. A total of 10 variances are sought.

The subject property is located on the north side of Woodville Avenue, east of Broadview Avenue and south of O'Connor Drive.

The property is designated "Neighbourhoods" in the City of Toronto Official Plan, and is zoned R1C in Zoning By-law 6752 of the former Borough of East York (the existing By-law) and RD (f6.0; a185; d0.75) in Zoning By-law 569-2013 of the City of Toronto (the new By-law).

BACKGROUND

In 2014, Peter Livisianos (owner), applied for and was granted by the Committee of Adjustment (the COA) variances from the existing and new By-laws to construct a new two-storey detached dwelling. The variances granted included variances related to lot coverage, landscaping, parking, building height, building length, and front, rear, and side yard setbacks (Exhibit E).

Subsequent to the COA Decision of November 5, 2014, the owner commenced construction of the dwelling.

On June 3, 2016, the owner was issued an order to comply by the Toronto Buildings Division when it was discovered that the fully constructed dwelling on the subject site did not comply with the variances granted.

The discrepancy between the building permit drawings and the constructed dwelling resulted from an error in calculations related to the established grade on the subject property, and ultimately contributed to the construction of a dwelling that was taller in height than what was approved by the COA.

As a result, the owner applied to the COA for further variances from the existing and new By-laws to legalize and maintain the already constructed residential structure (COA File No. A0928/17TEY). That application was heard by the COA on January 24, 2018.

The variances requested by the owner included variances for an increase in building height, main wall height, and first floor height, as well as reductions to the minimum landscaping requirements, and changes to parking standards.

In addition, the owner sought relief of 8 additional variances to recognize a proposed ancillary building/detached garage to be constructed in the rear yard of the subject property.

At the January 24, 2018 COA hearing, The Committee had before it a number of submissions including reports from City Planning and Transportation Services Staff (TSS), and a letter from the local Councillor.

In its January 19, 2018 Revised Staff Report, Planning Staff raised a number of concerns with the application and, specifically, questioned the variances related to the large ancillary structure proposed by the owner in the revised application. Planning Staff questioned the ultimate purpose of the structure, noting in their comments that, "the proposed ancillary building or structure is unusually large for the area and is not required for parking."

Staff recommended that if the Committee approve the application as submitted, the variances with respect to the ancillary building or structure be refused because they do not pass the four tests of a minor variance.

Concerns regarding the proposed ancillary structure were also raised by the local Councillor in correspondence dated January 23, 2018. In that correspondence, the Councillor noted that the variances being sought by the owner for the proposed ancillary building would, if granted, result in larger than permitted floor area, lot coverage, and height for such a structure in the neighbourhood.

The Councillor noted that her concerns were predicated not only on the size of the structure but also because the proposed structure was not intended to be used for garage parking since the applicant was also seeking a variance to permit a front parking pad.

Transportation Services Staff raised a concern regarding parking on the subject property as well, noting that the owner was proposing one parking space to be confined totally on private property. As a result, TTS requested that if the COA granted the parking and landscaping variances being sought, a condition be included requesting that the boulevard within the right-of-way abutting the subject property be paved with semi-permeable paving materials.

As a result of these concerns, the owner agreed to remove the proposed ancillary building from the application and to delete the 8 additional variances sought as part of his revised application (Exhibit D – Minutes of the January 24, 2018 Committee of Adjustment Hearing for 16 Woodville Ave.).

Subsequently, the COA unanimously approved the following 10 variances, on conditions:

1. Chapter 10.20.40.10.(1)(A), By-law 569-2013

The maximum permitted building height is 8.5 m. Minor Variance Decision A0888/14TEY permits a height of 8.98 m. In this case, the new detached dwelling will have a height of 9.18 m.

2. Chapter 10.20.40.10.(2)(B)(ii), By-law 569-2013

The maximum permitted height of all side exterior main walls facing a side lot line is 7.0m.

The height of the side exterior main walls facing a side lot line will be 7.15 m.

3. Chapter 10.20.40.10.(6)(B), By-law 569-2013

The permitted maximum height of the first floor above established grade is 1.2 m.

The first floor of the new detached dwelling will have a height of 1.42 m above established grade.

4. Chapter 10.5.50.10.(1)(B), By-law 569-2013

A minimum of 50% (28.95 m²) of the front yard is required to be landscaping. In this case, 47% (27.23 m²) of the front yard will be maintained as landscaping.

5. Chapter 10.5.50.10.(1)(D), By-law 569-2013

A minimum of 75% (43.42 m²) of the required front yard landscaped open space shall be in the form of soft landscaping.

In this case, 39% (23.02 m²) of the required front yard landscaped open space will be in the form of soft landscaping.

6. Chapter 10.5.80.10(3), By-law 569-2013

A parking space may not be located in a front yard or a side yard abutting a street.

The parking space will be located in the front yard.

1. Section 7.4.3, By-law 6752

A minimum of one parking space must be provided behind the main front wall.

In this case, zero parking spaces will be provided behind the main front wall.

2. Section 7.4.3, By-law 6752

The maximum permitted building height is 8.5 m.

Minor Variance Decision A0888/14TEY permits a building height of 8.98 m. In this case, the new detached dwelling will have a height of 9.18 m.

3. Section 7.1.5(b), By-law 6752

A minimum of 50% of the front yard shall be maintained as landscaping (28.95 m²).

In this case, 47% of the front yard will be maintained as landscaping (27.23 m²).

4. Section 7.1.6.(a), By-law 6752

A minimum of 75% of the front yard not covered by a permitted driveway or a permitted parking pad shall be maintained as soft landscaping (43.42 m²). In this case, 39% of the front yard not covered by a permitted driveway or a permitted parking pad will be maintained as soft landscaping (23.02 m²).

On February 2, 2018, the City of Toronto appealed the COA's Decision to the Toronto Local Appeal Body (the TLAB). The reasons for this appeal included, but were not limited to, the following:

- The 2017 COA Application and the proposed variances do not meet the intent and purpose of the Official Plan and the by-laws;
- In particular, the proposed increases to building height, main wall height, and first floor height are out of character with the surrounding neighbourhood and do not respect and reinforce the existing or planned context of the area;
- The Application previously sought and was granted a number of variances in the 2014 Application by the Committee on November 5, 2014. The proposed structure, which is now constructed, was not built in accordance with the approved permit drawings and has higher than permitted building height, main wall height, and first floor height. Coupled with the variances already granted in the 2014 Application, the additional height may result in adverse impacts on surrounding properties;
- The requested variances, both cumulatively and individually, are not minor. The proposed variances represent a significant departure from the standards set out in the by-laws;
- The proposal does not represent good planning and is not desirable for the appropriate development of the subject property. The resulting built form will be out of scale with the surrounding properties; and
- Any further reasons that counsel may provide and that the TLAB may allow.

The TLAB issued a Notice of Hearing (Form 2) on February 20, 2018 and scheduled a hearing date of June 11, 2018 to hear the matter pursuant to Rule 10.1 of the TLAB's Rules of Practice and Procedure (the Rules).

Following the filing of the City's appeal, both the City and the owner entered into informal discussions in order to determine if one or more of the issues in dispute could be resolved prior to the hearing date. The negotiations have been successful and have resulted in a resolution of the matter.

Although the negotiated resolution does not change the variances being requested by the owner, the City has proposed 3 standard conditions that have been agreed to by all parties.

The 3 conditions are follows:

1) Condition 1

This condition is a standard condition tying the January 24, 2018 COA approval to a specific set of plans/drawings dealing with the subject property. The Applicant, Brian Abbey of Adtek Building Consultants, has submitted a revised Site Plan dated February 22, 2018 (Exhibit B2 – Site Plan, Site Planning Data as Proposed) and an Architectural Elevation drawing dated March 3, 2017 (Exhibit B1 – Proposed Front (South) Elevation) in this regard. As a result, the owner and the City have agreed to the following condition:

"The proposed development shall be constructed substantially in accordance with the revised site plan dated February 22, 2018 and architectural elevation dated March 3, 2017 prepared for 16 Woodville Avenue by Adtek Building Consultants and submitted as Exhibit B1 and B2 in the Toronto Local appeal Body's hearing for TLAB Case File No. 18 116579 S45 29 TLAB."

2) Condition 2

This condition addresses Transportation Service Staff's request that the boulevard within the right-of-way of the subject property be paved with semi-permeable paving material in order to accommodate the proposed parking space at the front of the subject property. As a result, the parties have agreed to the following condition:

"The Owner shall construct and maintain the driveway portion within the public right-of-way with semi-permeable pavers as shown on the site plan referenced in Condition No. to the satisfaction of the Manager of Right-of-Way management, transportation Services."

3) Condition 3

This condition addresses the City's concern regarding an ancillary or garage structure that may be proposed at the rear of the subject property in the future. At the January 24, 2018 COA hearing, the City raised an issue with the variances being sought by the applicant to accommodate the proposed structure in the rear yard.

Both the size of that structure and the fact that it was not intended to be used as a garage were of concern to the City, as there was an intimation that its intent was for additional habitable space within the subject property. In order to prevent this possible situation, both the owner and the City agreed to the following condition:

"Any accessory or garage structure constructed in the rear yard shall not be used as habitable space and shall not be connected to any municipal services, including but not limited to sanitary services."

JURISDICTION AND MATTERS IN ISSUE

Should I give special consideration because of the successful settlement negotiations? — I concluded that I should, in the special circumstances of this matter. However, I still must find that the variances meet the four tests in subsection 45(1) of the *Planning Act*.

Although the parties had resolved to their own satisfaction the specifics of this application, the TLAB must hear evidence respecting all of the variances sought, so as to satisfy itself that they meet the four tests.

The appeal is a hearing *de novo* and therefore a new consideration of the merits or otherwise of the original application.

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-law;
- Are desirable for the appropriate development or use of the land; and
- Are minor.

Given the fact that there has been a successful settlement of the issues and that there are no proposed revisions to the variances as approved by the COA on January 24, 2018, the City solicitor, Mr. Suriano requested direction from the panel member on how to proceed to deal with the application.

I stated the following in addressing the City and the Applicant:

"In order to resolve this appeal today, we still need to hear the same brief evidence and arguments from Mr. Abbey that he presented to the COA. The reason is that we must be convinced that the variances meet the tests in the Planning Act, just as the COA did...it will be a rehearing of the matter at the COA, even though the variances remain the same."

EVIDENCE

In his evidence, the applicant gave a brief outline of the variances requested, submitting that they were indeed minor and met the intent of both the Official Plan and the two Zoning By-laws. In addition, he addressed each test individually and submitted that:

- The existing dwelling is similar to new dwellings recently constructed in the neighbourhood and is in keeping with the character of the area. Therefore, the proposal meets the general intent and purpose of the Official plan;
- The variances are desirable variations in the by-law requirements and therefore maintain the general intent and purpose of the zoning By-laws;
- The variances have resulted in a dwelling that represents a very appropriate and desirable development of the subject property; and
- The variances are minor in nature.

Mr. Abbey further noted that the owner received a number of letters of support for his proposal from neighbours immediately adjacent to the subject property, which he submitted to the COA at the January 24, 2018 hearing. The panel member notes that no other parties attended the TLAB hearing in opposition to the variances.

In his summation, Mr. Suriano commended both Mr. Livisianos and Mr. Abbey for being extremely cooperative in this matter and assisting in arriving at an amicable resolution by accepting the conditions recommended by the City.

ANALYSIS, FINDINGS, REASONS

A negotiated settlement allows the parties to craft a custom-made solution, often one that cannot be reached in a contested hearing. It may result in one that best satisfies competing public and private interests.

What constitutes a 'reasonable' settlement? My colleague and fellow TLAB panel member, Ted Yao, answered this question rather adeptly in his decision on 263 Gamble Avenue dated October 3, 2017. In that decision, Panel Member Yao opined the following:

"It is my opinion that a reasonable settlement has these characteristics:

- Responsibly arrived at, for example, one that produces a public good;
- Where one party to the settlement is a government body, such as the City of Toronto, and the settlement is not just between private parties; and
- Where there is also evidence that the settlement meets the tests under the Planning Act."

While I will not restate the legal principles cited by Member Yao in his decision, I will, or the record, summarize them more succinctly as follows:

- Being faced with a settlement, the TLAB need not accept it. This is premised on the fundamental obligation of the TLAB to apply the statutory tests, which obligation is not displaced because of any agreement by the parties;
- II. The TLAB should be encouraged to accept settlements because the parties wish us to do so and the Planning Act and other legislation call on us to do so. In fact, the TLAB Rules were drafted to encourage mediations and settlements almost as a first priority; and
- III. There should be a high threshold before the TLAB refuses to accept a settlement.

The Application of the Above Principles to 16 Woodville Avenue

This was a settlement between the City and Mr. Livisianos. No one else appeared. The City is a government and in a unique situation. It is not only the author of the official plan and zoning by-law but also can and did provide expertise in zoning plan review and transportation management, two of the areas at issue in this case. As noted above, there are apparent public benefits and so the settlement is entitled to deference.

Is there any evidence supportive of a conclusion that the settlement is unreasonable? The answer to that question is no since the only evidence tendered was in support. Although Mr. Abbey was not qualified to give expert planning opinion, he did interlink the issues addressed in the settlement factually with the variances being sought and, in my judgement, successfully summarized how the variances met the statutory tests.

TLAB is to consider conformity with provincial plans and consistency with provincial policy. There was nothing in the TLAB file, including the COA documentation, or the evidence, that raised any issue on these matters.

As previously noted, Mr. Suriano complimented the owner and the applicant on their efforts in reaching an amicable agreement with the City, which is an example of how a consensus reached through settlement negotiations, may be superior to one that is "winner takes all." And, while this settlement is an attempt to address an existing built condition that required resolution, it was done to permit the legalization of what was ultimately determined to be an "appropriate built form."

The settlement also results in a solution that produces a public benefit – that is the removal of a proposed overly large structure in the rear yard of the subject property that, if approved, would have negatively impacted the abutting neighbours. As a result, the settlement removes the potential for such a structure to be used illegally as habitable space in the future.

Accordingly, I do not find that this settlement is unreasonable. The entire process of the TLAB Rules is designed to encourage and facilitate discussions and settlement. To ignore a settlement when it occurs would be a repudiation of this desirable and transparent process.

I find that the variances meet the statutory tests. The result in this matter is a development that fits the character of the neighbourhood despite the fact that it has taken multiple iterations to achieve. It also has been reached by way of a reasonable settlement with a public body.

Finally, the fact that the City is asking that the TLAB allow the appeal in part and permit the variances as approved by the COA on January 24, 2018, subject to the 3 conditions requested by the City, is a testament to a settlement that best satisfies competing public and private interests.

DECISION AND ORDER

The appeal is allowed in part, and the following variances are approved subject to the following conditions:

1. Chapter 10.20.40.10.(1)(A), By-law 569-2013

The maximum permitted building height is 8.5 m. Minor Variance Decision A0888/14TEY permits a height of 8.98 m. In this case, the new detached dwelling will have a height of 9.18 m.

2. Chapter 10.20.40.10.(2)(B)(ii), By-law 569-2013

The maximum permitted height of all side exterior main walls facing a side lot line is 7.0m.

The height of the side exterior main walls facing a side lot line will be 7.15 m.

3. Chapter 10.20.40.10.(6)(B), By-law 569-2013

The permitted maximum height of the first floor above established grade is 1.2 m.

The first floor of the new detached dwelling will have a height of 1.42 m above established grade.

4. Chapter 10.5.50.10.(1)(B), By-law 569-2013

A minimum of 50% (28.95 m²) of the front yard is required to be landscaping. In this case, 47% (27.23 m²) of the front yard will be maintained as landscaping.

5. Chapter 10.5.50.10.(1)(D), By-law 569-2013

A minimum of 75% (43.42 m²) of the required front yard landscaped open space shall be in the form of soft landscaping.

In this case, 39% (23.02 m²) of the required front yard landscaped open space will be in the form of soft landscaping.

6. Chapter 10.5.80.10(3), By-law 569-2013

A parking space may not be located in a front yard or a side yard abutting a street.

The parking space will be located in the front yard.

1. Section 7.4.3, By-law 6752

A minimum of one parking space must be provided behind the main front wall

In this case, zero parking spaces will be provided behind the main front wall.

2. Section 7.4.3, By-law 6752

The maximum permitted building height is 8.5 m.

Minor Variance Decision A0888/14TEY permits a building height of 8.98 m. In this case, the new detached dwelling will have a height of 9.18 m.

3. Section 7.1.5(b), By-law 6752

A minimum of 50% of the front yard shall be maintained as landscaping (28.95 m²).

In this case, 47% of the front yard will be maintained as landscaping (27.23 m²).

4. Section 7.1.6.(a), By-law 6752

A minimum of 75% of the front yard not covered by a permitted driveway or a permitted parking pad shall be maintained as soft landscaping (43.42 m²). In this case, 39% of the front yard not covered by a permitted driveway or a permitted parking pad will be maintained as soft landscaping (23.02 m²).

CONDITIONS OF MINOR VARIANCE APPROVAL (16 Woodville Avenue)

- The proposed development shall be constructed substantially in accordance with the revised site plan dated February 22, 2018, attached as Attachment 1, and architectural elevation dated March 3, 2017, attached as Attachment 2, prepared for 16 Woodville Avenue by Adtek Building Consultants and submitted as Exhibit B1 and B2 in the Toronto Local Appeal Body's hearing for TLAB Case File No. 18 116579 S45 29 TLAB. Any variance(s) that may appear on these plans but are not listed in the written decision are NOT authorized.
- 2. The Owner shall construct and maintain the driveway portion within the public right-of-way with semi-permeable pavers as shown on the site plan referenced in Condition No. 1 to the satisfaction of the Manager of Right-of-Way Management, Transportation Services.
- Any accessory or garage structure constructed in the rear yard shall not be used as habitable space and shall not be connected to any municipal services, including but not limited to sanitary services.

D. Lombardi

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Panel Chair, Toronto Local Appeal Body

Attachment 1



