

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): MICHAEL JAMES MCDOWELL

Applicant: BRAD ABBOTT (architect)

Property Address/Description: 47 WROXETER AVE

Committee of Adjustment Case File Number: 17 178575 STE 30 MV

TLAB Case File Number: **18 111420 S45 30 TLAB**

Hearing date: Tuesday, June 05, 2018

DECISION DELIVERED BY T. Yao

APPEARANCES

Helja Teras, Michel Globe	Owners	Michael Connell (lawyer)
David Riley	Expert Witness	
Michael McDowell	Neighbour/Appellant	

INTRODUCTION

Helja Teras and Michel Globe (whom I shall call "the owners") wish to enlarge a rear two storey addition and add a third storey at 47 Wroxeter Avenue.

BACKGROUND

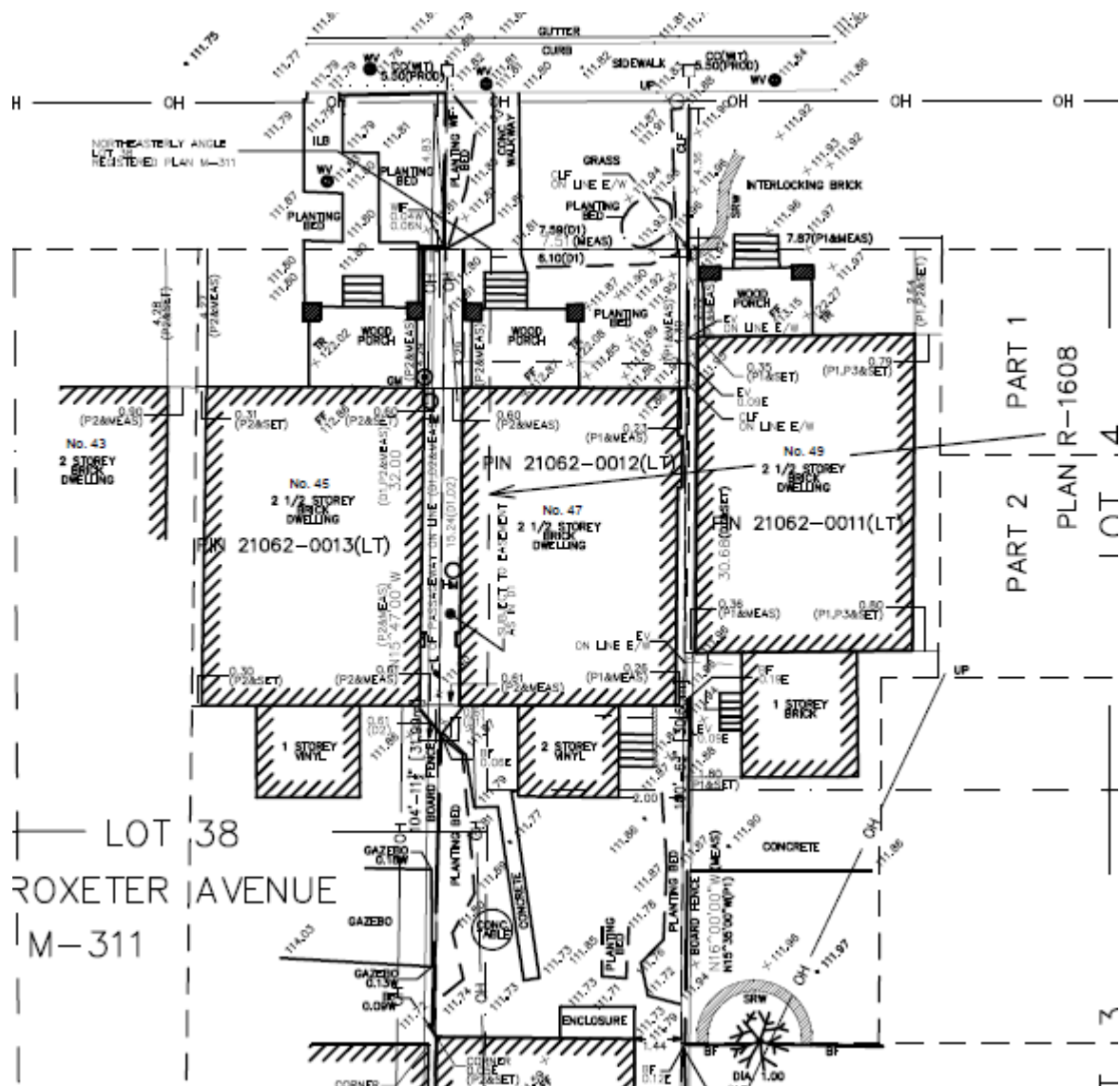
Mr. Michael McDowell (49 Wroxeter Avenue) and the owners live in the Pape-Danforth area. The owners' property is on the south side of Wroxeter, an east-west

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street. Both properties are on the south side, Mr. McDowell living to east of the subject property.

At some unspecified time in the past, Mr. McDowell and his family lived at 10 Wroxeter Ave; he and his family were transferred to Brooklyn New York on business and then back to Canada. He knew he wanted to live on this street as he had friends in the vicinity. No. 49 Wroxeter is to be his “forever” house.

He was surprised that the owners did not contact him to discuss their plans before going to the Committee; so right away “it was in the system”. The Committee deferred the hearing so that settlement discussions could happen. The two parties did not reach a consensus and on the second go-around (January 17, 2017), the Committee approved the variances on condition that a second-floor balcony be excised. Mr. McDowell appealed.



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The above survey shows from left to right Nos. 45, 47 (owners), and 49 Wroxeter (McDowell). The McDowell lot is the easternmost lot on the south side of Wroxeter Avenue before one reaches Pape. It is not a corner lot. Four Pape Avenue properties back onto his east lot line. His lot is shorter than the owners' by about 7 m; the owners have a garage at their south end, which is only partly shown in the diagram. But because Mr. McDowell has no garage, the two properties have roughly the same sized rear yard. The McDowell property is also pulled a little forward, compared to the owners' house creating an overhang.

Table 1¹. Variances sought by the Owners			
Zoning By-law 569-2013			
		Required/ permitted	proposed
1	Building height	10 m	10.46 m
2	Height of side walls facing lot line	7.5 m	9.5 m
3	Floor Space Index	.6 times lot area	.94 times lot area
4	Exception for roof eave projection	May project .9 m when at least .3 m from lot line	Eaves are 0 m from east side lot line
5	Rear yard soft landscaping	50%	46%
Former City of Toronto By-Law 438-86			
6	Maximum gross floor area	.6 times lot area	.94 times lot area
7	Minimum east side yard setback for portion of building not exceeding 17 m, where the wall contains openings	.9 m	.23 m
8	Minimum building setback for adjacent building (49 Wroxeter) containing openings	1.2 m	58 m

¹Tables and photos etc. form part of this decision.

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 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.

EVIDENCE

The owner's planner, David Riley, whom I qualified as an expert, put forward the owners' case. Mr. McDowell testified on his own behalf. They produced the two photos: upper from Mr. McDowell; and the lower from Mr. Riley.

Upper Photo 1 showing view of present addition from Mr. McDowell's second storey window **Lower Photo 2:** existing addition at rear of 47 Wroxeter.





ANALYSIS, FINDINGS, REASONS

These houses were built in 1919. Both the owners' and Mr. McDowell's predecessors built a one storey rear addition located in the centre of the rear wall. The McDowell property still has this feature. At some time, the previous owner of 47 Wroxeter added a second storey to the one storey addition. The owners now propose to take a further step by adding a third storey and widen all three stories. This phenomenon has already occurred at 19, 33 and 35 Wroxeter.

The gist of this case can be seen from the photos on pages 4 and 5. The owners wish to demolish the white vinyl addition and replace it with a new three storey addition. It will be .254 m (10 inches) higher than the existing roof (not shown) and extend .3 m (1 foot) farther back. Because it will follow the existing line of the sidewall, it will come nearer (to the east) to the McDowell residence by about 2 m. Mr. McDowell's concern is the height of this replacement addition and its closeness to their residence.

The owners' case can be summed up by two key propositions. First, the architect has tried to work within the existing shell as far as possible. The third floor currently has two "shed" roofs in the central part of the third floor. These will be extended to the rear, forming a "barn roof" similar to the peaked roof at the front. The architect has tried to minimize the impact of the third floor at the rear which means that there will be less interior room than if he had gone straight up. Mr. Riley felt this was "sensitive" and "respected and reinforced the existing physical pattern in the neighbourhood".

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The second proposition is that the gross floor area, floor space index and height variances are within those typically granted by the Committee. For example, the FSI sought is about the 66th percentile – i.e. about a third of cases obtained higher FSIs and two thirds received lower ones. The complete findings are set out in Table 2.

Table 2. Distillation of Committee of Adjustment decisions			
Variance type	What the owners of 47 Wroxeter seek	Rank	Range in data base
Floor space index	.94 (.6 permitted);	35 th highest out of 102 COA cases;	max. 1.5 times lot (discarding an outlier); min. .61 times lot
Gross floor area	241 m ² (rounded); 153.64 m ² permitted	14 th highest out of 102 COA cases	Max. 279 m ² ; min 98 m ²
Height	10.46 m (10 m permitted)	8 th highest out of 22 COA cases	max. 11.53 m, min. 9.74 m

Mr. McDowell’s data

Mr. McDowell and Mr. Riley worked from two separate data bases. Mr. McDowell used property data for 219 properties from Pape to Carlaw; Harcourt to Dingwell. Note: this is an area one block east to west and five blocks from north to south. For each address, the spreadsheet contains year of construction, lot area, frontage, total GFA, GFA above and below grade and above and below grade FSI. It does not include any of the other variances at issue here such as side lots, main walls, heights etc. Mr. McDowell’s data may be seen as a “snapshot” of all lots, whether or not they have been subject of a minor variance application.

Mr. Riley used the actual Committee of Adjustment decisions (at least 102) for all properties within a 500 m radius. He discarded non-relevant decisions. Mr. Riley’s data gives us an insight into typical Committee decision-making on the application of the four tests to properties in the same residential neighbourhood – the same task as I have. Together, the two data bases were helpful to me.

Mr. McDowell attempted to answer the question whether the cumulative effect of the variances was not minor. So, he posited the question whether there were properties that sought in the same application three types of variances: FSI, GFA and height. He found:

- 89% properties have a lower FSI than what is sought (.94;);
- 93% have a lower GFA than what is sought (240.82 m²); and

- eight properties that had **both** an FSI and GFA that were greater than what is sought.

He then cross checked these eight properties with those properties in Mr. Riley's height rankings. He found no matches, so he concluded that, taken together, the height and FSI variances sought are unique, and as such, not minor.

I don't accept this as proof of too many variances in too great a degree. One would expect that FSI and GFA, both being measures of internal space, would be highly correlated. Second, while height is a reasonable "second cumulative minor variance", we don't have height from his data. He had to go to Mr. Riley's. The fact that there were no "hits" using Mr. Riley's data is not conclusive because the two study areas are not congruent.

High number of non-conforming exceedances

Mr. McDowell's spreadsheet shows a high number of existing nonconforming exceedances: 23% are within the .6 floor space index permitted and 77% exceed it. His data shows all three properties at the south east end of Wroxeter exceed the by-law standards.

Table 3 Nonconforming statistics for the subject and its two neighbours			
	Total GFA (m ²) rounded	Total FSI	Above Ground FSI
45 Wroxeter	166	.69	.69
47 Wroxeter (subject)	164	.63	.63
49 Wroxeter (McDowell)	175	.99	.99

While the GFA and FSI for the first two properties are similar, Mr. McDowell's FSI is the fifth highest of the 209 properties in his study area. Why is that?

Mr. McDowell has an unusually small lot, backing onto a Pape Avenue property. On the other hand, the owners have a large lot, with about 25 m² which, while technically owned by them, is subject to an easement and for all practical purposes is laneway property, usable only for car turning movements. I find that both these properties are unusual, one smaller than "usual"; one larger than "usual" and so the zoning intent must be recalibrated. One cannot take the standards at face value; so, this is supportive of Mr. Riley's first proposition that the architect has tried to fit within the existing shell. I find Mr. Abbott's attempt is successful at the front; the new roof will

be virtually the same as the old in every dimension. However, I must decide if this is also true at the rear, particularly with respect to the side yard setback and third floor, or whether it creates an unacceptable adverse impact.

Official Plan and zoning intent

The Official Plan requires me to judge whether the addition will “fit in”. But the Plan, read in its entirety, has a vision of a successful inner city like the Pape/Danforth area. This is what motivated the McDowell family to return to Wroxeter. The owners have a commensurate wish: to renovate to create a multigenerational living space.

Although this was not an easy decision, I conclude that the proposed changes do fit in, and the increased mass, especially at the rear third floor level has been sensitively managed. I know this will be disappointing for the McDowell family, who feel that they already have a rear yard impacted by numerous other rear yards, and the owners’ house already overhangs theirs. It will be a change, but the Official Plan’s vision is that:

The neighbourhoods where we grew up and now raise our children help shape the adults and the society we become. Some physical change will occur over time as enhancements, additions and infill housing occurs on individual sites.

I feel this is a reasonable and modest addition to a home in a desirable neighbourhood, and thus an appropriate development of the land.

The other variances

The main wall height permissions are exceeded. This reflects an existing condition. The soft landscaping is deficient. This arises from a situation previously described where owners’ land is being used for a neighbour’s garage access. If this land were not considered, the owners would comply with the zoning.

To conclude, I find the variances are minor, both singularly and cumulatively, and that the other statutory tests are met.

DECISION AND ORDER

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

1. The alterations to the dwelling shall be constructed substantially in accordance with the elevations, received by the Committee of Adjustment on June 12, 2017. Any other variances that may appear on these plans but are not listed in the Committee's written decision of January 17, 2017 file A0669/17TEY are not authorized.
2. The second-floor planter balcony shall not be permitted.

X 

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