

DECISION AND ORDER

Decision Issue Date Tuesday, August 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): JOSEPH DI CLEMENTE

Applicant: JOSEPH DI CLEMENTE

Property Address/Description: 259 OAKWOOD AVE

Committee of Adjustment Case File Number: 17 257810 WET 17 MV

TLAB Case File Number: **18 129301 S45 17 TLAB**

Hearing date: Tuesday, August 07, 2018

DECISION DELIVERED BY **Stanley M. Makuch**

APPEARANCES

Aaron Platt. Counsel, Applicant/Appellant

Oz Kemal Expert Witness, Applicant/Appellant

INTRODUCTION

This is an appeal from a decision of the Committee of Adjustment refusing minor variances and refusing permission for the extension or enlargement of a nonconforming use. The purpose of the variances and the permission to expand or enlarge an existing use is to allow a total of four dwelling units on the lot.

BACKGROUND

A dwelling house and the accessory building are existing and permitted on the lot and no enlargement of either structure is proposed. The extension or enlargement of the nonconforming use applies to the conversion of permitted storage space to a residential unit in a permitted accessory building in which there is already a permitted residential unit. The variances relate specifically to: permitting a second unit in the

dwelling house; permitting four units on the lot; the location and type of parking on the site; the height of the accessory building; and permitting the roof top terrace.

No one appeared at the hearing to oppose the application. The file discloses that no one in the community opposes the application, and that, indeed, there is support for it from neighbours and the ward councillor. Planning staff opposed the application on the grounds that it was an over development of the site, although no physical expansion of either building was proposed.

MATTERS IN ISSUE

There were no matters in issue and the only evidence was in support of the application. That evidence was presented by the qualified planner for the applicant/appellant.

JURISDICTION

A decision of the Toronto Local Appeal Body ('TLAB') must be consistent with the 2014 Provincial Policy Statement ('PPS') and conform to the Growth Plan of the Greater Golden Horseshoe for the subject area ('Growth Plan').

In considering the applications for variances from the Zoning By-laws, the TLAB Panel must be satisfied that the applications meet all of 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
- are minor.

i) S. 45(2), Upon Appeal, the TLAB, upon any such application where any land, building or structure, on the day the pertinent by-law was passed, was lawfully used for a purpose prohibited by the by-law, may permit ... (ii) the use of such land, building or structure for a purpose that, in the opinion of the committee, is similar to the purpose for which it was used on the day the by-law was passed or is more compatible with the uses permitted by the by-law than the purpose for which it was used on the day the by-law was passed, if the use for a purpose prohibited by the by-law or another use for a purpose previously permitted by the committee continued until the date of the application to the committee

EVIDENCE, ANALYSIS, FINDINGS, REASONS

The evidence of Mr. Kemel, the planner, both verbally and in his witness statement was comprehensive and persuasive, as was the argument of Mr. Platt. The

variances sought and set out in Appendix 1 meet the four tests of the Planning Act and conform with the Growth Plan and are consistent with the PPS. It is of little use to repeat his witness statement here. I note, however, that this application provides additional affordable housing when there is a serious demand for such housing. In addition, there is no increase in the GFA (FSI) of the buildings, no adverse impact, similar buildings and densities can be found in the area and transportation staff reported on the application and raised no concerns. Finally, I disagree with Planning Staff's conclusion that the permissions sought would result in an overdevelopment of the site. I cannot reach such a conclusion since there is no new development occurring.

DECISION AND ORDER

The appeal is allowed and the variances set out in Appendix 1 are approved as is the expansion of the residential use in the accessory building.

X 

S. Makuch

Panel Chair, Toronto Local Appeal

Appendix 1



Toronto Building
Diana E. Damiano, Chief Building Official and Executive
Director

2 Civic Centre Court
2nd Floor
Toronto, ON M9C 5A3

George Vona
Zoning Examiner

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Fax: (416) 696-4170
Email: George.Vona@toronto.ca

Folder Name: 259 OAKWOOD AVE
Application Number: 17 235806 ZCC 00 ZR

You must present a copy of this Zoning Certificate along with the necessary 'Applicable Law' approvals other than any of the fees or charges identified above, at the time of your building permit submission.

Building permit applications without Zoning Certificates and these approvals will be considered incomplete submissions and will not be subject to prescribed timeframes in Article 1.3.1.3. of Division C, Part I of the Ontario Building Code.

Applicable Law Notice

ITEM DESCRIPTION

Applicable Fees

1. DC(Development Charges) Charges will be calculated at the time of processing the Building Permit
Authority: O.B.C. Div A - 1.4.1.3.(1)(b)(ii) under Reg 332/12, or Div A - 1.4.1.3 (1)(b)(i) under Reg 350/06 (as applicable); Sections 28 and 53 of the Development Charges Act, 1997
Form of Approval: Confirmation of payment prior to building permit issuance
Contact: Toronto Building
http://www.e-laws.gov.on.ca/html/statutes/english/elaws_statutes_97d27_e.htm
2. EDC(TCDSB Education Dev. Charge) Charges will be calculated at the time of processing the Building Permit
Authority: O.B.C. Div A - 1.4.1.3.(1)(b)(iii) under Reg 332/12, or Div A - 1.4.1.3 (1)(b)(ii) under Reg 350/06 (as applicable); Sections 257.83 and 257.93 of the Education Act
Form of Approval: Confirmation of payment prior to building permit issuance
Contact: Toronto Building
http://www.e-laws.gov.on.ca/html/statutes/english/elaws_statutes_90e02_e.htm
3. Parkland Dedication/Park Levy
Authority: O.B.C. Div. A - 1.4.1.3.(1)(a)(xxi) under Reg 332/12, or Div. A - 1.4.1.3.(1)(a)(xxxi.1) under Reg 305/06 (as applicable); Section 42 of the Planning Act with respect to the payment of money or making arrangements satisfactory to the Council of a Municipality for the payment of money, where the payment is required under subsection 42(6) of that Act.
Form of Approval: Appraisal letter and payment made to Building Division
Contact: Rosanne Clement at rclement@toronto.ca
For information regarding the appraisal process or status of the appraisal for the parks levy Contact: Peter Cheng at pcheng1@toronto.ca
http://www.e-laws.gov.on.ca/html/statutes/english/elaws_statutes_90p13_e.htm

Folder Name: 259 OAKWOOD AVE
Application Number: 17 235806 ZZC 00 ZR

Zoning bylaw Notice

ITEM DESCRIPTION

City-wide Zoning By-law

Your property is subject to the City-wide Zoning By-law No. 569-2013, as amended. Based on By-law No. 569-2013, your property is zoned RM (f12.0; u2; d0.8) (x252).

4. Use - RM Zone

10.80.20.10.(1); By-law 569-2013

The site contains one detached dwelling house and one rear yard accessory building which the Committee of Adjustment File CA-96-114 granted permission to change the existing lawfully non-conforming rear yard accessory building from warehouse to one dwelling unit with the condition that the ground floor storage area being used only for residential storage purposes.

The proposal is to change the existing detached dwelling house having one dwelling unit to two dwelling units and to permit one additional dwelling unit to the existing lawfully non-conforming rear yard accessory building which will have two dwelling units that is not permitted in the Residential Zone.

5. Number of Dwelling Units on a Lot

10.80.40.1.(2); By-law 569-2013

The permitted maximum number of dwelling units on the lot is 2.
and

The Committee of Adjustment File No. CA-96-114, approved 2 dwelling units.

The proposed number of dwelling units on the lot is 4.

6. Height Restrictions for Platforms

10.5.60.40.(5)(A); By-law 569-2013

A platform, such as a deck or similar structure may not be located on top of any ancillary building.

The proposed north side yard steel stairs located on the second floor level which access to a platform area having area of 50.2 m² that will be located on top of the existing ancillary building.

7. Maximum Height of Ancillary Buildings or Structures

10.5.60.40.(2)(A); By-law 569-2013

The maximum height of an ancillary building or structure if the ancillary building or structure is less than 1.8 metres from the residential building on the lot, is 2.5 metres.

The proposed height of the ancillary structure including the privacy fence is 8.23 metres.

8. Street Yard Parking Space

10.5.80.10.(3); By-law 569-2013

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

The proposed 2 tandem parking spaces is located in a front yard abutting a street which is not permitted.

York Zoning By-law

Your property is located in the former municipality of York which is subject to the York Zoning By-law 1-83. Based on the York Zoning By-law 1-83 the property is zoned R2 and is also subject to By-law 3623-97.

9. Parking Space Requirements

3.2.3.B.(a); York By-law 1-83

The required parking space for each a residential dwelling unit shall be in entirely within the side or rear yard.

The proposed 2 tandem parking spaces on site which is not permitted, requires Traffic Planning/Right of Way Management approval under Section 4; York By-law 1-873, as amended.

10. Accessory Building

3.4.11(c); York By-law 1-83, as amended

The maximum height of building accessory to residential is 3.1 metres for flat-roofed buildings.

The proposed height of the ancillary structure including the privacy fence is 8.23 metres.