

# DECISION AND ORDER

**Decision Issue Date**      Thursday, September 06, 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): 1801378 ONTARIO INC

Applicant: JASON RODRIGUES

Property Address/Description: 429 BROADVIEW AVE

Committee of Adjustment Case File Number: 17 258234 STE 30 MV

TLAB Case File Number: **18 155307 S45 30 TLAB**

**Hearing date:**      Thursday, August 30, 2018

**DECISION DELIVERED BY** Ian James LORD

## APPEARANCES

Name	Role	Representative
Jason Rodrigues	Applicant	
1801378 Ontario Inc.	Appellant/Owner	Ron Kanter
Martin Rendl	Expert Witness	

## INTRODUCTION

This is an appeal on behalf of the Owner from a decision of the Toronto and East York District division of the City of Toronto (City) Committee of Adjustment (COA) refusing variances to increase the unit count, and related matters, at 429 Broadview Avenue (subject property).

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The Toronto Local Appeal Body (TLAB) heard from four witnesses: Martin Rendl, a Registered Professional Planner on behalf of the Applicant, Ms. Nancy Wolf, owner of 427 Broadview (the other half of the semi-detached dwelling), Ms. Mary Novak, 1 Victor Avenue, adjacent (both expressing concerns) and Jason Rodrigues on behalf of the owner, relating to the history of building permit applications for the subject property.

## **BACKGROUND**

The matters before the COA were refused in a decision mailed May 1, 2018. In accord with the disclosure obligations of the TLAB, the Appellant made certain revisions to the application and provided revised drawings in furtherance of the revisions.

A Site Plan and set of elevation plans was entered as Exhibit 3, incorporating revisions dated June 4 and June 6, 2018, prepared by InterArch Ltd. The revisions included a reduction in the requested dwelling unit count for the subject property from 7 to 6 dwelling units. This spawned variance revisions to requested relief from the required 6 to 5 parking spaces and increased the average floor area of all dwelling units proposed, from 46 sq. m to 52.79 sq. m, whereas the by-law would require a minimum average unit size of 65 sq. m.

The subject property remains subject to the City's harmonized zoning by-law 569-2013 (new zoning, not yet fully in effect) and By-law 438-86 (existing zoning). The variances sought to each by-law largely overlapped.

No Party or Participant registered under the TLAB Rules to speak to the matters on appeal. However, Ms. Wolf and Ms. Novak attended the TLAB hearing and asked to speak to the Appeal, effectively requesting recognition as Participants. Despite a legitimate concern expressed by Mr. Kanter as to the surprise appearance of Ms. Wolf and Ms. Novak at the Hearing, they were allowed to speak as immediate neighbours - both of them had participated before the COA proceeding, including filings.

On this bases I felt it appropriate to hear their observations.

I advised I had visited the site and generally had familiarized myself with the filings but that matters felt of special importance needed to be brought to my attention.

## **MATTERS IN ISSUE**

As a result of the COA refusal, the variance tests under 'Jurisdiction', below, were applicable to the relief requested. The variances sought are set out in full detail in a chart found in section E, of the Witness Statement of Martin Rendl, found in Exhibit 1.

The requested variances are more particularly detailed in **Appendix 1** hereto. In addition, the residents at this Hearing raised concerns about past construction activities on site, pre-emptive construction and the size and number of units as not respecting and reinforcing the neighbourhood in a manner or through proper consultation.

## **JURISDICTION**

### **Provincial Policy – S. 3**

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').

### **Minor Variance – S. 45(1)**

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.

## **EVIDENCE**

There are two framing considerations that the TLAB has to assist in the consideration of the evidence in respect of this appeal. The first relates to the correspondence and the evidence of the residents that suggest prior building/construction activities are relevant to the examination of the requests on appeal. The second relates to the nature of the variances sought where substantially no exterior expansions or enlargements are proposed to an existing semi-detached dwelling.

In the first instance, even if the unit count or associated works had already, in part or whole, occurred giving rise to the COA request, on appeal it is the responsibility of the TLAB to examine the requested relief on its merits and in accordance with good planning principles, with the assumption that none of the alleged illegalities exist. That is, as if the work had not proceeded. This is not to turn a blind eye, if the evidence was led, as to elicit construction, but to consider independently the relief requested, on its merits – with whatever the resultant consequences might be. The TLAB is not an enforcement body nor is it generally in the business of chasing down fault or blame.

In this circumstance, the evidence of the owners contractors', who described all building permits applied for and issued over a period of some five years, effectively dispelled concerns over abuses to City regulations. There was no evidence of violations and there is no specific regulation limiting the number of dwelling units, only their average size.

In the second instance, as described earlier in this section the evidence demonstrated that a significant number of the 11 variances requested were duplicative as between the two zoning by-laws; moreover, several were the result of simply recognizing existing conditions

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(street setback; building depth) or the filling in of existing space within the building or structures, without any exterior additional built form (floor space index (fsi)).

Even with these elements, the evidence of Martin Rendl was thorough and compelling. His Witness Statement, Exhibit 1 and oral testimony provided a full and complete record of expert land use planning opinion evidence on the statutory tests, which is briefly recited below. The accepted full content is available in the Witness Statement, Exhibit 1.

He described the subject property, located on the south east corner of the intersection of Broadview Avenue and Victor Avenue, as being in the “attractive and desirable” Riverdale Community, on three higher order transit routes, and across from Bridgepoint Hospital. As a semi-detached unit, it was described as accommodating three (or more) dwelling units in a 2 1/2 storey brick structure built to the lot line.

Exhibit 3 contains the site plan and elevations, including layout plans for the proposed 6 units. The TLAB is not concerned with this specific internal layout.

Required parking is proposed to be accommodated within 300 m via a lease agreement, for a 5 year renewable term, executed in the form of Exhibit 2. While on-site parking appears to be available, Mr. Rendl described it as substandard, the lot itself being only some 5.5 m wide.

He did not acknowledge any excess in units above 3 or any history of renovations.

Parking on the municipal boulevard at this corner location is not advisable and the City’s Transportation Services Division considered and, in reviewing the matter, was content with the off-site lease location permitted by zoning, as stated in the submitted Memorandum.

Mr. Rendl described that the attached garage would be rehabilitated to provide two dwelling units, at and below grade, with an existing rooftop balcony. Internal space to the building would be reconfigured to create a third new dwelling unit and amenity space. No new exterior construction is required, apart from the introduction of windows to the garage, an entrance (opening onto the street), fire-escape provision and landscaping. The landscape plan, found in Exhibit 3 as part of the Site Plan involves returning concrete pads on the City road allowance to greenspace and a walkway to access a stairwell to the unit below the garage. The stairwell has been built with an approved and issued building permit, on the evidence of Mr. Rodrigues.

In the absence of a change to the footprint of the building, or its massing or built form, Mr. Rendl was of the opinion that traditional impact concerns are simply not present.

The conversion of existing space to full dwelling units via internal alterations did trigger the need for zoning variances. He examined and found each for consistency with the Provincial Policy Statement (PPS), conformity to the Growth Plan and the four statutory tests for variances, above cited.

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On parking, he noted that provision for the now required spaces was being met by Exhibit 3, the lease agreement; on that basis, recognition of 0 on-site spaces was felt appropriate, without objection and an available solution supported by the City.

On density, while the maximum floor area was being increased from 1.0 x to 1.23 x (new zoning) and to 1.70 x (existing zoning,) none of that space contributed to scale, massing or height changes. Further, ( densities granted by the COA) within the neighbourhood, were said to be well in line with the proposal.

On the addition of secondary suites, relief was sought to place window fenestration on the street sidewall of the garage (new zoning). Under the existing zoning, a recognized reduction in average unit size was requested, from 65 sq m to 52.79 sq m. While somewhat undersized on the average, Mr. Rendl said neither he nor the City took issue with the 6 units or their resultant size. He felt they reflected a modest intensification of the use of existing space in the building, a more efficient use of all services, and all accomplished without any resultant off-site impact. He felt the façade improvements would enhance a more residential streetscape perspective, 'fit' the neighbourhood, and respect and reinforce the existing physical character in mutual support for Provincial and City policy documents.

The actual conversion of space itself, he described, required recognition of the amount of space being added, from 0.15 x to 0.25 x in the case of the new by-law, and relief from the prohibition against 'substantial alterations', in the existing. He described this space as an efficient use of an existing condition through conversion of existing space.

Mr. Rendl described that the last 2 listed variances, ( i.e., the request for a 0.0 m flanking yard setback for necessary side, deck, canopy and fire escape improvements, and the final one being the recognition of the existing building depth, moving from 14.0 m to 28.8 m, )as both being 'technical' recognition of essentially existing realities.

In applying each test, from its regulatory purpose to its fulfillment, the planner opined that the variances maintained the intent and purpose of the existing low density Neighbourhood designation and zoning. The Applications are making more efficient use of a common building type, are compatible to surrounding residential uses and meet the design criteria of section 4.1.5 of the Official Plan.

There are no changes to impact measures of shadow, new views, or impact on overlook/privacy.

Mr. Rendl provided corroborative evidence of multiple occupancy buildings in the neighbourhood, similar in type, character and size in his Appendix E.

He concluded that the approval of the **Appendix 1** variances was appropriate, would produce desirable, more affordable housing and did so without undue adverse impact, consistent with principles of good Provincial and local planning.

Ms. Wolf, next door, indicated she had two units and expressed concerns as to poor communications with the neighbours, open building permits and parking being greater than

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300 m. distant. She agreed that the location was vibrant and that rental space is limited. She appropriately accepted the City concurrence with the parking solution. .

Ms. Novak had sold the subject property, was familiar with it, and felt that the number of proposed units would not reinforce the neighbourhood. She was not impressed with the owners' lack of discussion with the neighbours.

## **ANALYSIS, FINDINGS, REASONS**

I find it appropriate and acceptable and am compelled to accept the professional evidence tendered by Mr. Rendl.

The variances sought are compliant. I agree that they are minor and desirable, for the reasons expressed.

I agree with his expression of opinion evidence given viva-voce and in his Witness Statement, Exhibit 1.

The Riverdale Neighbourhood is one greeted with much affection. I cannot help but conclude that making productive use of derelict garage space will act to respect and reinforce the neighbourhood's residential ambiance and streetscape. External improvements to its façade should improve the acceptance into the neighbourhood but otherwise there will be no physical manifestation of the presence of the additional units.

I find the variances are reasonable and granting their approval is consistent with principles of good community planning.

While I was supplied with several cases indicative of reinvestment and variance approvals in the Riversdale area, the more compelling support rational was the evidence of Mr. Rendl and Mr. Rodrigues.

I find also that the genuine desire for better communications with immediate neighbours is an important element of good citizenry and would urge the corporate owner to post contact particulars to facilitate that communication, should elements of mutual interest arise.

I accept the representations of Mr. Rendl and Mr. Kanter as to the acceptance by the owner of works to be undertaken as improvements to the adjacent public right-of-way and that the parking solution be recognized.

## DECISION AND ORDER

The decision of the Committee of Adjustment mailed May 1, 2018 is set aside and the variances identified in **Attachment 1**, below, are approved.

The approved variances in **Attachment 1** are subject to the following conditions:

1. Construction is to proceed substantially in compliance with the Site Plan and elevation drawings, only, referenced above and identified in Exhibit 1 in the Hearing.
2. The owner undertake, subject to the satisfaction of the Director of Public Works or Transportation Services, as the case may be, the works indicated on the Site Plan for the public right-of-way adjacent the main north wall of the subject property, including restoration thereof to greenspace, inclusive of an access walkway. For greater certainty, restore the area in front of the existing integral garage within the Victor Avenue right-of-way to green space, except for a walkway with a width of 1 m.
3. The maintenance of a renewable lease for 5 parking spaces for an initial term of five years and thereafter at the discretion of the Director of Transportation Services, acting reasonably, on the basis of the owners records of supply and demand over the prior five year period. More generally, to commence as per the following: provide five (5) parking spaces at 652 Gerrard Street secured through a long-term lease

### Attachment 1.

#### AUTHORIZED VARIANCE(S) TO THE ZONING BY-LAW:

##### (By-law 569-2013)

1. Chapter 200.5.10.J., By-law 569-2013

A minimum of 5 parking spaces is required to be provided.

In this case, zero parking spaces will be provided.

2. Chapter 10.10.40.40.(I)(A), By-law 569-2013

The maximum permitted floor space index of a semi-detached dwelling is 1.0 times the area of the lot (250.88 m<sup>2</sup>).

The altered semi-detached dwelling will have a floor space index equal to 1.23 times the area of the lot (309.08 m<sup>2</sup>).

3. Chapter 150.10.40.1(3)(A), By-law 569-2013

A secondary suite is a permitted use provided that an addition or exterior alteration to a building to accommodate a secondary suite does not alter or add to a main wall or roof that faces a street.

The converted garage will alter a main wall and roof that faces the street.

4. Chapter 150.10.40.40.(3), By-law 569-2013

The average floor area of the dwelling units in a building containing more than two dwelling units shall not be less than 65.0 m<sup>2</sup>.

In this case, the average floor area of the seven dwelling units will be 52.79 m<sup>2</sup>.

**(By-law 438-86)**

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1. Section 6(2) Qualification 1(iii)(A), By-law 438-86

The maximum permitted floor space of an addition to a converted house is 0.15 times the area of the lot (37.63 ml).

The converted garage will have a residential floor area equal to 0.25 times the area of the lot (63.54 ml).

2. Section 6(2) Qualification 1.(iv), By-law 438-86

The minimum required average floor area of the dwelling units in a building used as a converted house is 65.0 m<sup>2</sup>.

In this case, the average floor area of the seven dwelling units will be 52.79 m<sup>2</sup>.

3. Section 6(2) Qualification 1.(v), By-law 438-86

A converted dwelling is permitted provided that there is no substantial change in appearance of the dwelling as a result of the conversion.

In this case, substantial change will occur in the appearance of the dwelling

Section 6(3) Part 11, By-law 438-86

4. The maximum permitted gross floor area is 1.0 times the area of the lot (250.88 m<sup>2</sup>).

The altered semi-detached dwelling will have a gross floor area equal to 1.70 times the area of the lot (427.32 m<sup>2</sup>).

5. Section 6(3) Part II 3A(I), By-law 438-86

The minimum required setback from a flanking street is 3.17 m.



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The altered semi-detached dwelling will be located 0.0 m from the north side flanking street, Victor Avenue.

6 Section 6(3) Part II 5(1), By-law 438-86

The maximum permitted depth of a semi-detached dwelling is 14.0 m.

In this case, the altered semi-detached dwelling will have a depth of 28.8 m.

7. Section 4 (4), By-law 438-86

A minimum of 5 parking spaces is required to be provided.

In this case, zero parking spaces will be provided.

X



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Ian Lord

Chair, Toronto Local Appeal Body

Signed by: Ian Lord