

DECISION AND ORDER

Decision Issue Date Monday, September 10, 2018

PROCEEDING COMMENCED UNDER Section 53, subsection 53(19), and Section 45(12), subsection 45(1) of the Planning Act, R.S.O. 1990, c. P.13, as amended (the "Act")

Appellant(s): JAFAR MARANDI

Applicant: RICHARD WENGLER ARCHITECT INC

Property Address/Description: 67 BANBURY RD

Committee of Adjustment Case File: 18 102801 NNY 25 MV

TLAB Case File Number: **18 140347 S45 25 TLAB**

Motion Hearing date: Tuesday, September 04, 2018

DECISION DELIVERED BY L. MCPHERSON

APPEARANCES

NAME	ROLE	REPRESENTATIVE
HAI YAN FENG	OWNER	
JAFAR MARANDI	APPELLANT	
WEN LIANG WANG	PARTY	DAVID BRONSKILL
JANICE ROBINSON	EXPERT WITNESS	

INTRODUCTION

This is an appeal to the Toronto Local Appeal Body (TLAB) by the Appellant of the decision of the Committee of Adjustment (Committee) for the City of Toronto (City) to approve a minor variance to construct a new two-storey detached dwelling with integral garage at 67 Banbury Road (the site).

The site is located on the east side of Banbury Road, north of Lawrence Ave and east of Leslie Street in the Don Mills neighbourhood. The subject property is designated Neighbourhoods in the City of Toronto Official Plan (Official Plan) and zoned RD (f21.0;

a975) x 70 under Zoning By-law No. 569-2013 (new City By-law) and R2 under former North York By-law 7625.

BACKGROUND

On March 21, 2018 the Committee approved the following variance:

1. Chapter 10.20.30.40. (1)(a), By-Law 563-2013

The permitted maximum lot coverage is 30% of the lot area.
The proposed lot coverage is **33.85%** of the lot area.

The Applicant had made changes to the proposal at the Committee to reduce the coverage and delete a variance for rear yard setback. Other than the Appellant and the Applicant, there were no other Parties or Participants to the Hearing.

MATTERS IN ISSUE

The only issue is whether the increase in coverage from 30% to 33.85% meets the relevant tests for minor variance. There were no other variances requested.

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

Mr. J. Marandi, the Appellant, represented himself. Mr. Marandi lives at 65 Banbury Drive, directly to the south of the site. Mr. Marandi did not file a Witness Statement or

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any other disclosures. The day of the Hearing, Mr. Marandi filed documents he wished to present to the TLAB. The Applicant's representatives reviewed the documents and did not object to their filing. The TLAB allowed the materials to be entered as Exhibit 1.

Mr. Marandi had 3 main concerns with the variance, summarized as follows:

a- Reduced Sunlight: based on Applicant's submitted plan, if they comply with the by-laws, assuming the building depth will be 2.75 meter less, Mr. Marandi calculated that his backyard would get approximately 26% more sunlight in the afternoon using a computer program.

b- Increased Runoff of Storm water: based on Applicant's submitted plan, the grade of the site slopes approximately 0.5 meter down towards Mr. Marandi's property, and in Mr. Marandi's opinion, any non-absorbed rainfall would run off to his property (he attached a calculation of relative extra flow which he noted was not accurate as there are many variables).

c- General: Mr. Marandi's area has a basement flooding problem; the Applicant's Lot and immediate neighborhood have relatively shallow lots with smaller backyards. The extra coverage reduces backyard-to-building-size ratio, and in his opinion, increasing the runoff water would overwhelm the storm and sewer system.

Mr. Bronskill questioned the accuracy of the shadow program, as the angle of the sun relative to the site was unclear or incorrect. Mr. Marandi replied that the image included was a screen shot included to show the computer program used. The TLAB questioned why Mr. Marandi assumed that if the coverage was reduced to the by-law standard it would result in an increased rear yard setback as opposed to an increased side yard setback or other solution. Mr. Marandi replied that it was common sense to assume that the Applicant would want a larger backyard.

The Applicant retained Ms. J. Robinson who was qualified to give expert land use planning opinion (Witness Statement and Document Book – Exhibits 2 and 3).

Ms. Robinson provided an overview of the neighbourhood and her study area, which is generally bounded by Leslie Street to the east, Lawrence Avenue to the south, the ravine to the west and the north side of Denewood Cres and Chelford Rd to the north (Exhibit 2 –tab 2). Within this area, she advised that older bungalows are being replaced by larger houses, due in part, to the relative large size of the lots. In addition, improvements and additions to existing dwellings are taking place. She described the neighbourhood as stable and a highly desirable with well maintained, high quality properties. Her photo study (Exhibit 2-tab 7) demonstrated the relatively large size of the new dwellings in comparison to the original bungalows and side splits that were developed in the 1960's. From the street, the houses looked similar in size and configuration on the lot even though the coverage of the new homes ranged. This, in part is a result of the size of the lots with certain streets having deeper lots or ravine lots. As outlined in her Committee Decision Analysis, there are a number of recent (since 2007) Committee decisions approving variances for coverage greater than 30%, with many over 35% (Exhibit 2 – tab 6).

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In terms of the proposal, Ms. Robinson referred to Exhibit 2 – tab 4 which superimposed the permitted building envelope on the site plan. The diagram indicated that the proposed dwelling has a greater rear yard setback than required, has substantially greater side yard setbacks than required (and an increase from the existing dwelling on both sides) and meets the required front yard setback based on the frontages of the adjacent dwellings. Further, the elevations demonstrated that the height of the dwelling, including the exterior main walls, was by-law compliant. The proposal met all of the landscape requirements. In summary, the proposed dwelling was within the building envelope permitted by the by-laws and the only variance required was for coverage which is a mathematical calculation based on site size.

Ms. Robinson advised that there were no reports or comments from the Planning Department, Engineering Department or Urban Forestry.

Ms. Robinson reviewed applicable provincial policy and opined that the variance would be consistent with the PPS and conforms to the Growth Plan. The variance for increased coverage was essentially a local issue and the provincial documents direct a review based on the Official Plan.

The Official Plan designates the site Neighbourhoods. Ms. Robinson explained that the theme of the Official Plan in the context of the proposed variances is to ensure that new development fits within the physical character of the area. She reviewed Sections 2.3, 3.1.2.1, 4.1, 4.1.5 and 4.1.8 of the Official Plan. With respect to the built form guidelines, the proposal addressed the applicable policies with appropriate massing, materials and scale to fit within the neighbourhood. With respect to sunlight, Ms. Robinson opined that the proposal would have a minimal impact on Mr. Marandi's property given its orientation to the south of the site. The impact could have been greater as of right as the proposed dwelling has greater setbacks than required and notches in at the rear adjacent to Mr. Marandi's property.

The direction that new development fit and respect and reinforce the existing physical character of the neighbourhood is found in policy 4.1.5 which provides development criteria. With respect to the proposal, she advised that there is no change to the patterns of streets, blocks, parks or public buildings (a), no change to the size and configuration of the lots (b), the height, massing scale and dwelling type of nearby residential properties is similar based on her photos and Committee summary (c), the dwelling is single detached which is the prevailing built form (d), the setbacks from the street meets the by-law requirements, the proposal has greater setbacks from the rear and side lot lines than required (f) and there are no special features or heritage involved (g and h).

In summary, it was her opinion that the minor variance requested maintains the general intent and purpose of the Official Plan.

Ms. Robinson advised that the intent and purpose of the zoning by-laws is to ensure compatible development. The coverage provision is intended to ensure that the dwelling does not exceed the lot area to an extent that the other provisions could not be met. In this case, the proposal meets all side yard and landscaping requirements and is

compatible with other new homes in the neighbourhood. In her opinion, the proposed variance maintains the general intent and purpose of the zoning by-laws.

In terms of minor, Ms. Robinson advised that the magnitude of the variances is numerically minor. With respect to impact, she advised that the variance would not give rise to adverse planning impacts. The side yards setbacks are greater than the requirement, are greater than the current dwelling and are greater than those of neighbouring parties. The proposed length of the building is similar to the adjacent buildings. There would be minimal shadow impacts as previously stated. The issues of storm water runoff and flooding raised by Mr. Marandi would be addressed at the building permit stage whether a variance was required or not. A grading plan would be required which would have to ensure that no runoff occurs on adjacent properties and is directed to the public street. Further, the proposed dwelling is in keeping with the character of the neighbourhood and would not have a visual impact. In Ms. Robinson's opinion, the proposed coverage variance is within an order of magnitude to be considered minor and will not bring rise to any adverse planning impacts and is considered minor.

Ms. Robinson advised that the proposal represents reinvestment in a neighbourhood that has experienced considerable redevelopment with new replacement buildings and renovations and expansions. In her opinion, the size, scale and standards applied to the proposal will be compatible with the neighbourhood and would contribute to its ongoing stability. In her opinion, the application is desirable for the appropriate development of the land.

In summary, it is Ms. Robinson's opinion that the development represents good planning and the Committee decision should be upheld and the appeal dismissed.

In cross-examination, Ms. Robinson indicated that in her opinion, the increase in coverage would not materially impact the environment.

ANALYSIS, FINDINGS, REASONS

The only variance before the TLAB is to increase the coverage of the proposed dwelling from 30% to 33.85%. The TLAB accepts the uncontradicted evidence of Ms. Robinson that the proposed dwelling fits within the existing physical character of the neighbourhood as demonstrated in the visual evidence and Committee summary. The boundaries of her study area are reasonable and uncontested. The evidence shows that there are many examples of variances that permit a coverage in excess of 30% and in excess of the proposal. The dwelling type, size and scale of the proposal is not unusual for the area is keeping with the built form and character of the neighbourhood.

The shadow analysis of Mr. Marandi cannot be accepted as accurate. The dwelling is further from his property than required and does not require a variance for height, length or rear yard. Further, any reduction in coverage could be achieved at the side yard and not affect the length of the dwelling. Any issues related to flooding or storm water runoff would be dealt with by qualified City staff at the building permit stage.

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I am satisfied that the requested variances meet the criteria set out in Section 45(1) of the Planning Act. The general purpose and intent of the Official Plan and the zoning by-laws is maintained. The proposal results in an appropriate and desirable development for subject site and the variance is considered minor in the context.

The TLAB is satisfied that the variance is consistent with the Provincial Policy Statement and conforms to the Growth Plan.

DECISION AND ORDER

The appeal is dismissed and the decision of the Committee dated March 21, 2018 is upheld.

X 

Laurie McPherson
Panel Chair, Toronto Local Appeal Body