TORONTO

Toronto Local Appeal Body

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DECISION AND ORDER

Decision Issue Date Wednesday, October 03, 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): RAGHAVAN RAMANATHAN

Applicant: REXFORD DESIGNS

Property Address/Description: **30 CLONMORE DR**

Committee of Adjustment Case File Number: **17 227135 ESC 36 MV (A0333/17SC)**

TLAB Case File Number: **17 278929 S45 36 TLAB**

Motion Hearing date: Friday, May 18, 2018 and Thursday, June 21, 2018

DECISION DELIVERED BY S. Gopikrishna

APPEARANCES

Ms. Madhuparna Debnath for the Appellant

Ms. Cindy Clarke, Mr. David Meadus, Ms. Veronica Hartaja and Mr. Timothy Hartaja for the Opposition

INTRODUCTION AND BACKGROUND

Mr. Raghavan Ramanathan is the owner of 30 Clonmore Dr, located in Ward 36 of the Municipality of the City of Toronto. He applied to the Committee of Adjustment (COA) to seek relief from the provisions of the Zoning By-law to construct a second storey over the existing dwelling with a two storey rear and side addition. On December 7, 2017, the COA heard the application and refused the same.

On December 21, 2017, Mr. Ramanathan appealed to the TLAB. On 17 February, 2018, Ms. Cindy Clarke and Mr. David Meadus, the neighbours at 28 Clonmore Drive elected to be Parties. On the same day, Ms. Veronica Hartaja and Mr. Timothy Hartaja, the neighbours at 32 Clonmore Drive, also elected to be Parties. A hearing date of 18 May,

2018 was set by TLAB. Since the hearing could not be completed that day, TLAB assigned a second hearing date of 21 June, 2018.

MATTERS IN ISSUE

City Wide By-law No. 569-2013

1. To permit the proposed 0.29 metres south side yard setback, whereas the Zoning By-law requires a minimum 0.45 metres side yard setback.
2. To permit the proposed 343 square metres floor area (note: this includes the basement), whereas the Zoning By-law permits maximum 204 square metres floor area.
3. To permit the proposed 38.2% lot coverage, whereas the Zoning By-law permits a maximum of 33% lot coverage.
4. To permit the proposed 7.6 metres building height, whereas the Zoning By-law permits maximum 7.2 metres building height for a dwelling with a flat roof.
5. To permit the proposed 3 storey dwelling (basement is closer to the established grade than the ground floor and is considered the first floor), whereas the Zoning By-law permits maximum 2 storey dwelling.
6. To permit the proposed 7.8 metres parapet wall height, whereas the Zoning By-law permits maximum 7.5 metres parapet wall height.
7. To permit the proposed 5.05 metres front yard setback, whereas the Zoning By-law requires a minimum 5.6 metres front yard setback.

Scarborough By-law No. 8786

8. To permit the proposed 5.05 metres front yard setback, whereas the Zoning By-law requires a minimum 6 metres front yard setback.
9. To permit the proposed 0.29 metres south side yard setback, whereas the Zoning By-law requires a minimum 0.45 metres side yard setback.
10. To permit the proposed 39% lot coverage, whereas the Zoning By-law permits a maximum of 33% lot coverage.
11. To permit the proposed 232.2 square metres floor area, whereas the Zoning By-law permits maximum 204 square metres floor area.
12. To permit the proposed 4.4 metres garage height, whereas the Zoning By-law permits maximum 3.7 metres garage height.

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 form 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

The Appellants were represented by Ms. Madhuparna Debnath,a Registered Professional Planner and a self-identified friend of the Appellant. As stated earlier, the opposition consisted of Ms. Cindy Clarke and Mr. David Meadus, who live at 28 Clonmore Drive and Mr. Timothy Hartaja and Ms. Veronica Hartaja, both of whom live at 32 Clonmore Drive.

By way of editorial comment, I have presented the evidence from the Appellants in as much detail as possible while the opposition perspective is captured at a fairly high level, without dwelling on the details. This contrast is acknowledged herewith; the underlying reasons for this contrast are discussed in the Analysis, Findings, Reasons section that follows this section.

At the beginning of the hearing, there was a Motion from Ms. Clarke asking that Ms. Debnath be qualified as a Witness and not as an Expert Witness, notwithstanding her professional qualifications as a Registered Professional Planner, because of a "conflict of interest" resulting from the fact that Ms. Debnath worked as a Planner for the City of Brampton. Ms. Debnath stated that she had applied to be just a Witness, as opposed to being an Expert Witness notwithstanding her professional qualifications and experience, and that she was there in her personal capacity as opposed to representing the City of Brampton. I acknowledged ed Ms. Debnath's comments and stated that she was recognized as a Witness, and not as an Expert Witness.

For reasons explained in the Analysis and Reasons Section, I asked the Parties at the beginning of the hearing if they were open to the idea of mediation facilitated by the TLAB to help them understand what the project entailed, and if they could resolve their differences. While the Parties in opposition agreed to the mediation, the Appellants declined the invitation, stating that there were "no mediable (*sic*) issues".

I stated that there would be no mediation, and began the hearing by stating that I had completed a site visit to familiarize myself with the community.

Ms. Debnath then introduced herself and spoke about her being a Registered Professional Planner , a Full Member of the Canadian Institute of Planners, with more than 25 years of experience in Canada and other countries .She then stated that for a better and in depth understanding of the community she had conducted a "visual survey", she had limited her study to approximately 200m radius or 3-4-minute walking distance.

Ms. Debnath began by describing her study area as spanning a 200 metre radius with 30 Clonmore as the centre. She stated that the study area lay within a 200-300 metre walk of the Subject Property, and emphasized that the study area included 14 Parkview Blvd, a nearby property, which was also owned by Mr. Ramanathan. Apparently, an application seeking variances, similar to the subject property, had been approved by the COA in December 2017. Ms. Debnath then brought up pictures providing a photo tour of the study area, and provided examples of contemporary design. When asked why none of the houses had been identified through their address, Ms. Debnath stated that the addresses had been deliberately left out due to “privacy concerns”. I then asked how it would be possible for me to ascertain that the photo in question, depicted a property within the study area. Her answer was that one could zoom onto the front of the address and identify the house number, if possible.

Ms. Debnath then described a “sunshine study” which had been completed to address the issue of shadowing brought up by the neighbours. She stated that the study compared the shadows of the existing building and planned building on dates and time as required by the City, and that the Shadow Study had confirmed “minimal impact”. I asked Ms. Debnath to describe the conditions under which a shadow study was required and she said that it was required for buildings of 4 floors or more. I then asked her the reasons for completing a study for a two storey building, Ms. Debnath replied that it had completed to satisfy the concerns of the neighbours.

Ms. Debnath stated that the neighbourhood is a typical residential area in that is stable but not static**.** Referring to Section 2.3.1 in Toronto’s Official Plan, she said that the community exemplified the very change discussed in Section 2.3.1, through continuous physical change occurring over time as a result of enhancements, additions and infill housing**.** Ms. Debnath opined that, as with many other neighbourhoods in Toronto, this neighbourhood had also experienced change through complete new builds or renovations.

Returning to her study area, Ms. Debanth said that 9 out of 22 houses (or 45%) along Clonmore Drive, and 6/17 (or 35%) along Parkview Heights had undergone some form of redevelopment**,** and that the area had seen a development of a vibrant mix of traditional and contemporary designs, which had added character and richness to the streetscape. She ended this part of the discussion by stating that the request for side yard, and front yard setbacks, maximum lot coverage, height of the dwelling, garage door height and other variances requested, were no different from what had already been granted in the neighbourhood.

Ms. Debnath then noted that this project was a renovation project, which meant that only a small part of the house could be demolished. The side yard and front yard setbacks, she said, “represent the existing setbacks”, and that the “new proposed addition confirms to the current setback requirements”. Ms. Debnath then showed us pictures of houses from the neighbourhood which represented a “dropped garage” condition, in order to “maintain a consistent second floor level”. She said that the door height would be maintained at 3.3 m, and that the “dropped garage condition would be addressed with various architectural elements like a coach light”. She then stated that the planned building would have a flat roof as opposed to a traditional roof, and that this was possible because the area was not part of a Heritage Conservation District.

Ms. Debnath then discussed the similarity between the variances refused by the COA at 30 Clonmore and the approval of similar variances at 14 Parkview Heights, a property well within the 200 m radius described by her earlier. She shared that 14 Parkview Heights, had been previously owned by Mr. Ramanathan, but had been sold subsequently. She reviewed the approved variances at 14 Parkview Drive at a high level, and pointed out that the proposed variances at 30 Clonmore Dr. were "lower" than what had been approved at the property at 14 Parkview Heights

Ms. Debnath then highlighted the fact that Mr. Ramanathan had considered all the concerns brought forward by the neighbours, and attempted to provide a rationale and/or mitigation measures for them. After referring to the written submission, she said that she would like to discuss the sun/shadow study in particular that was commissioned by the Appellant, in order to address concerns about sun/shadow, natural light and privacy. Ms. Debnath then described the sun shadow study and how it helped determine the impact and viability of the proposed house on its neighbours. Comparing the two sets of diagrams modelling the shadows as they exist today and when the additions would be completed, she concluded that the impact would be minimal. She added that no windows were proposed on the north and south sides of the building to protect the privacy of the adjacent buildings, and emphasized that the setbacks requested for were "legal, non-confirming."

Ms. Debnath then concluded that the proposal met the general intent and purpose of the Official Plan, as per Section 2.3.1 and that the zoning variances were minor in nature. She also stated that the proposal was consistent with the policy objectives of the Provincial Policy Statement because the latter "directed development to established , built up areas". In response to my follow up question about conformity with the Growth Plan, Ms. Debnath said that it conformed to Section 2.2.1.2(a), but did not provide any further explanation.

I then asked Ms. Debnath to discuss the 4 tests under Section 45(1) and how the application was consistent with the 4 tests. Ms. Debnath stated that the proposal had to be consistent with the Official Policy because the latter was the "Bible" that guided growth. She also stated that the project had to be consistent with the intent of the zoning by-laws, and that the applicable laws were the City Wide By-law 569-2013 and Scarborough by-law 8786. Ms. Debnath then stated that the development would also fit adequately with the community because what was being requested was no different from what had been already granted in the community. Ms. Debnath then asked me what the 4th test was, to which I responded by saying that the 4th test was the test of being "minor". Ms. Debnath then asserted that the proposal was also minor, based on her professional experience. I then asked her if she had anything to add to her evidence about the 4 tests, to which Ms. Debnath that she had nothing more to say because she respected everybody's time.

It may be pointed out that I asked Ms. Debnath questions about the proposal's ability to conform to the 4 tests under Section 45(1) on three different occasions over the two day hearing and did not get any other information, other than what has been recited above, either in the form of oral or written evidence.

Ms. Debnath was then questioned by Ms. Clarke following which the Hartajas provided evidence followed by Ms. Clarke and Mr. Meadus. Party Ramanathan, however, had no questions for the other Parties after the conclusion of their evidence.

The Hartajas focused on the impact that the construction would have on, what they described as the fragile health condition of one of their family members, and the narrow side yard setbacks between the houses which made it difficult for the Hartajas to bring in appliances into their backyard. After pointing out that the proposal spoke to a three storeyed house rather than a two storeyed house, Mr. Meadus and Ms. Clark insisted that the GFA should be reported as 343 sq. m., because that was the sum total of area across the three floors of the house. Ms. Debnath disagreed and said that under the standard methodology for GFA calculations, the basement was left out of the calculations resulting in a GFA of 255 sq. m. The opposition argued that 14 Parkview Heights could not be a comparator since it had two floors as opposed to the three floors requested at 30 Clonmore. They also disputed the fact that a large number of houses had undergone change and development, as claimed by the Appellants.

According to Ms. Clark, there were no more than 5 houses, out of a total of 196 in the neighbourhood, which exemplified contemporary design, comparable to what was requested at 30 Clonmore. She questioned how 5 examples out of 196 houses represented “significant” change? Ms. Debnath responded that the numbers cited merely buttressed her point about change taking place in the community and that what constituted “significant” change was subjective. The opposition also complained about the “industrial nature and look of the proposed garage” and stated that it was not compatible with the neighbouring community. They questioned the scaling measurement and representation of the buildings in the shadow studies and disputed Ms. Debnaths conclusion about the impact being minimal. They then made references to the Building Code with respect to the material being used for the chimney, before proclaiming the latter to be a health and safety hazard. I pointed out that building code was not an issue under the jurisdiction of the TLAB, and ruled the evidence out.

The Opposition also attempted to introduce evidence in the form of a video recording of the COA hearing where the proposal for 30 Clonmore was considered- the stated purpose was to illustrate the questions asked by COA Members, the answers provided and the reactions of the members resulting in a unanimous refusal. I pointed out that the TLAB hearing was considered “ *de novo*”, explained what the expression meant and what the hearing entailed, before ruling the material out from being used as evidence.

The Opposition also expressed their concern about the house being sold, as had happened in the case of 14 Parkview Heights, and insisted that the single family nature of the dwelling was at risk because of the plans for a three floor house , as well as the substantial garage sought by the Appellants. They then stated their concern that the basement could be converted into a Secondary rental suite, thereby changing the single family residence status of the house. Mr. Meadus, stated that he was a Member of the OBOA(Ontario Building Officials Association), and that he was familiar with how Zoning Examiners do their work, and identify variances. Based on this knowledge, he questioned the Zoning Notice itself and opined that there ought to have been more variances then were listed. I ruled out this line of questioning after pointing out that the TLAB relied on the Zoning Notice to identify variances, that any changes to the listed

variances was the choice of the Applicants, and that there was no mechanism to identify and include variances not appearing in the Zoning Notice, but requested by the neighbours.

In her reply evidence, Ms. Debnath stated that many of the objections raised by the opposition were not based on planning rationale, and were therefore beyond the jurisdiction of the TLAB. She then discussed some of the mitigation strategies to concerns within the TLAB jurisdiction and requested that that the variances be approved. Lastly, Ms. Debnath provided a brief closing statement, which reflected the points cited in this narrative.

Ms. Clarke provided a long closing statement on behalf of all the neighbours in opposition which spoke to the points discussed above, and asked for the COA decision to be upheld and the appeal be refused.

I requested all Parties to send in the statements that they had relied on to present evidence. This request was a consequence of the fact that not all Parties had submitted Witness Statements, and that there was significant evidence referred to in the oral statements, which had not been referenced in the written submissions.

ANALYSIS, FINDINGS, REASONS

When I first reviewed the material submitted by the Parties, the imbalance of information between the Appellants and the opposition was evident- The Appellants submitted no more than a Site Plan diagram, a statement that compared the variances sought at 30 Clonmore Drive with that of 81 Parkview Heights, a property owned by Mr.Ramanathan (the Appellant) in the vicinity of the subject property, and a document with mitigation strategies to address concerns from the neighbours. On the other hand, the opposition's submissions constituted a veritable treatise, with references to the Building Code, an OMB decision respecting a neigbouring property, questions about the methodology of various calculations used by the Appellants, a request to play a DVD of the COA meeting and other material. Reviewing the submission made me realize that what the Appellants had provided were responses to the opposition's questions, without adequate definition, or support of their own proposal.

The opposition had also complained about the Appellants' reluctance to interact with them, and answer their questions. I therefore proposed a TLAB facilitated mediation to provide a forum for the Appellants to better define what they had in mind, and for interaction with the opposition, to address the latter's concerns, in the hope of arriving at a mutually acceptable solution. My hope was , that irrespective of a settlement or a contested proceeding, the mediation attempt would result, at the very least, of a comprehensible proposal and its relationship to the 4 tests under Section 45(1), an important matter that was absent from the pre-hearing submissions.

However, my proposal for mediation, was turned down by the Appellants.

While no conclusion may be arrived at from the length of a presentation, it is interesting to note that the Appellants spoke for less than an hour notwithstanding seven hours of hearing time, while the rest was taken up the opposition.

The Motion referred to in the evidence section, namely asking that Ms. Debnath be recognized as a Witness as opposed to an Expert Witness, did not have to be ruled on, because Ms. Debnath's submission was clear on this matter- I merely confirmed what Ms. Debnath said in both her written and oral submissions.

As may be seen from the Evidence section, the oral evidence from the Appellants was very brief and did not address the 4 tests listed in Section 45(1) adequately, much less comprehensively. Notwithstanding numerous attempts by me to obtain evidence about compatibility between the 4 tests and the proposal, I was unsuccessful about eliciting any response. While I genuinely appreciate Ms. Debnath's sensitivity towards other people's time and duties, the strategy of providing very brief, and inadequate evidence does not fulfil the Appellant's onus of demonstrating agreement with the hierarchy of policies starting with Provincial Policies, and the 4 tests under Section 45(1).

I note that under the discussion of conformity to the Official Plan, there was no reference, whatsoever to the Neighbourhoods Section (Chapter 4 of the OP), notwithstanding the property's being in a typical Toronto Neighbourhood. The zoning by-laws governing the property (namely Scarborough by-law 8786 and the City of Toronto by-law 569-2013) were alluded to; however there was no explanation of how the variances satisfied the performance standards under these zoning by-laws. The tests for appropriate development and minor were addressed with no more than an assertion of "minimal impact", or "impact comparable to as of right" construction. The photo tour provided did not state the addresses of the properties, preventing me from contextualizing the information.

The Appellants' emphasis on the variances approved at 81 Parkview Heights resembles a "what is good for the goose is good for the gander" strategy. Unfortunately, one swallow does not a summer make, and specific reference to just one clearly identifiable comparator, does not constitute sufficient evidence of change in the community. It is important that the Appellants provide fulsome evidence of compliance of the 4 tests under Section 45(1), whether the requested variances are proposed, or existing but non-conforming.

The Appeal therefore fails because of the lack of adequate evidence to satisfy the four tests under Section 45(1).

The dearth of information from the Appellant has what has resulted in a refusal of their Appeal; illustrating this paucity of information even when the evidence is repeated verbatim is the reason for my delving into the details of the Appellants' evidence. It is important to state that I reviewed both the written and oral submissions of the Appellants in great detail, in order to satisfy myself, that no detail had been missed.

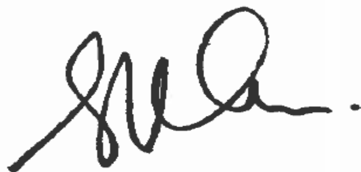
However, it wasn't necessary to provide any more than a high level view of the Opposition's evidence since it is not the basis of any significant decision.

On the matter of submissions from the opposition, I agree with the Appellants that a significant part of the evidence from the opposition lies outside the jurisdiction of the TLAB. Conversion to multiple rental units and Building Code issues may be dealt with through other legal forums, while there is no mechanism under the existing TLAB rules, to recognize and admit variances suggested by the opposition, unless it is a through a specific motion before, or at the very beginning of the hearing to enable discussion of Section 45.18.1, which discusses notice to the community. I had to intervene vigorously on numerous occasions to ensure that evidence that was not pertinent, including the COA proceeding and Building Code, would not be discussed. .

Consequently, the Appeal respecting 30 Clonmore Dr. is refused, and the COA decision dated 7 December, 2017, is confirmed.

DECISION AND ORDER

1. The Appeal respecting 30 Clonmore Drive is refused in its entirety, and none of the variances are approved.
2. The Decision of the Committee of Adjustment dated 7 December, 2017, respecting 30 Clonmore Drive Is final.

X 

S. Gopikrishna
Panel Chair, Toronto Local Appeal Body