

## DECISION

**Decision Issue Date** Monday, October 01, 2018

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

Appellant(s): SOLANGE DESAUTELS

Applicant: MELISSA MANDEL

Property Address/Description: 56 SEYMOUR AVE

Committee of Adjustment Case File: 17 259357 STE 30 MV

TLAB Case File Number: **18 157227 S45 30 TLAB**

**Hearing date:** Wednesday, September 05, 2018

**DECISION DELIVERED BY T. Yao**

### APPEARANCES

Name	Role	Representative
Solange Desautels	Appellant	
Andrea Macecek	Participant	
Melissa Mandel	Party (TLAB)/ Applicant	
City of Toronto <sup>1</sup>		

### INTRODUCTION

Melissa Mandel wishes to add a two storey rear addition to her two storey house. On April 25, 2018, the four-person Committee of Adjustment granted a floor space variance, by a 2 to 1 vote, with one abstention. Solange Desautels appealed and so this matter comes to the TLAB.

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<sup>1</sup> The City of Toronto elected to become a party but withdrew by email from Gabe Szobel, August 30, 2018.

## MATTERS IN ISSUE

I must be satisfied that the proposal application meets 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.

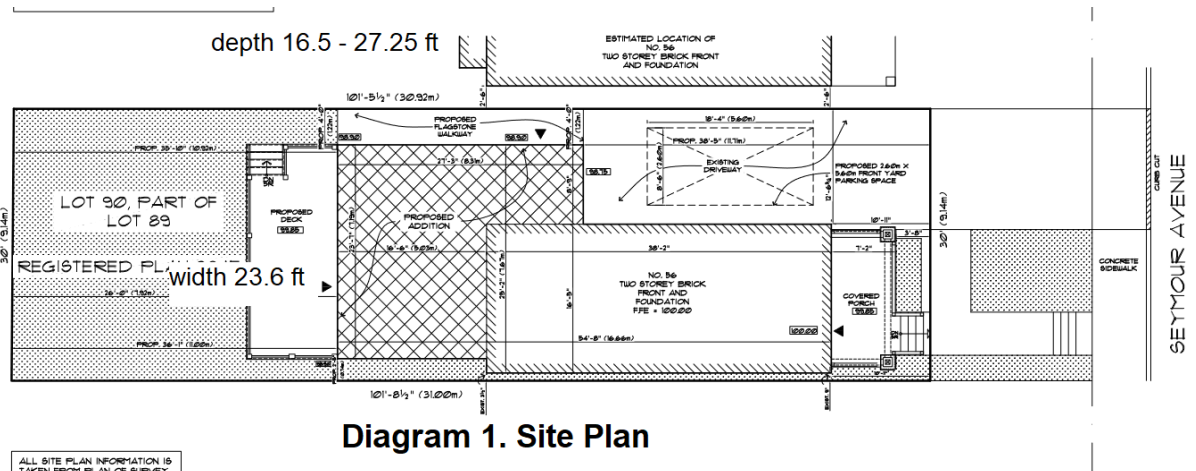
## EVIDENCE

I heard from Ms. Mandel, a crown attorney, Ms. Desautels, a manager in the Ministry of Environment, and Andrea Macecek, a practicing architect. None sought to be qualified to give opinion evidence. Nonetheless, through their various professional skills, I was furnished with a great amount of relevant evidence.

## BACKGROUND

There are two by-laws being considered because there are still outstanding appeals of the zoning By-law 569-2013 (enacted in 2013), and until they are resolved, the Buildings Department requires applicants to seek variances under both the more recent city-wide harmonized By-law 569-2013 and its predecessor, (former City of Toronto) Zoning By-law 438-86. Ms. Mandel the owner of 56 Seymour Ave., requests a floor space index (FSI) variance from 0.6 permitted to 0.71 under 569-2013 and an equivalent gross floor area variance under 438-86.

## The proposal



The subject property is on the west side of Seymour Avenue, a north-south street south east of Jones/Danforth. Ms. Mandel proposed a rear two storey addition that wrapped around the rear of her house, taking advantage of an unusual feature — a large north side yard setback. The north side building-to-building distance from 56

Seymour (Ms. Mandel) to 58 Seymour (Ms. Desautels) is 15.25 feet, of which 83% is owned by Ms. Mandel and the remainder (a strip 2.5 feet wide) by Ms. Desautels. Both buildings have windows facing this common amenity.

### **The evidence in support of the increased FSI**

Ms. Mandel's case consists of three arguments. First, she set out the relevant neighbourhood (which the City calls the "Blake/Jones neighbourhood"). After describing it verbally and with photographs, she set out a spreadsheet of Committee of Adjustment decisions that awarded FSI variances in the last 10 years. Typical variances granted are well above what she is seeking:

Boulton Ave: 9 decisions with an average FSI of 1.00

Seymour Ave.: 3 decisions with an average GFA of 0.98

Shudell Ave.: 5 decisions with an average GFA of 0.96

She pointed out that Ms. Macecek (an abutting neighbour at 76 Shudell), has herself obtained an FSI variance of 1.25.<sup>2</sup>

Ms. Mandel then filed a number of as-of-right diagrams showing that she could build an addition with a by-law compliant FSI that would have similar impacts on the neighbours, particularly Ms. Macecek. The existing FSI is 41.33%, whereas it could be 60%, which means she can build a further 52.84 m<sup>2</sup> (570 sq. ft.) of interior space as of right. This translates into an addition that will project back about 8.6 ft (2.63 m) instead of the 16.6 feet currently sought (5.03 m). Her diagrams demonstrate that she could also build in the direction of the other objector Ms. Desautels, with some of the same exterior dimensions, which Ms. Mandel argues, will cause the same adverse impact as the proposed addition.

Finally, Ms. Mandel points to the withdrawal of the City from this hearing. She says she has heard that it was because they could not find a planner to support their position.

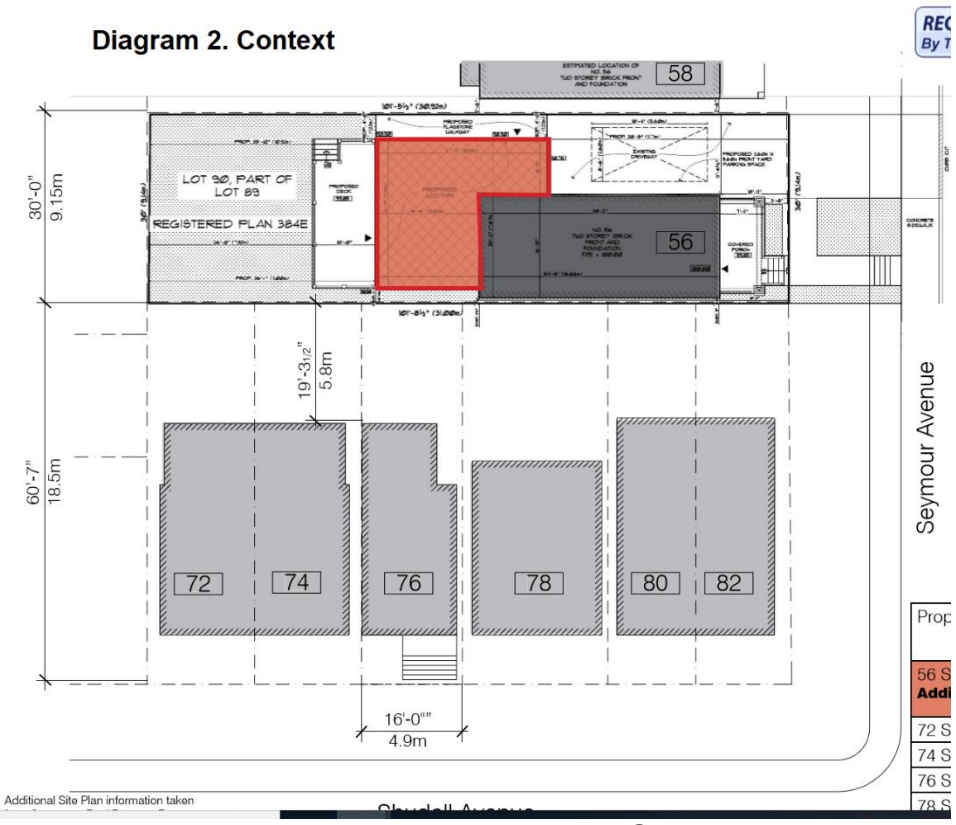
### **The objectors' position**

From Ms. Desautels' perspective (the neighbour to the north), the building-to-building distance will shrink from 15.25 feet to 6.5 feet and whereas presently the two rear walls line up, the addition will overhang her building by about 16.5 feet. Ms. Desautels stated in her appeal that her sunlight hours will be reduced:

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<sup>2</sup> Ms. Macecek is seeking or has obtained an even higher variance. I am not ignoring the Macecek GFA number but hers is a "straight-up" addition and based on a smallish lot. In any case, as I state, raw numbers have to be placed in site-sensitive context.

Existing situation is sunlight all day. The new addition will shade most of my rear yard from 9 am to 4 pm as shown by the shadow study attached. This is a significant change in light conditions. . .



Ms. Macecek, the other objector, stated that Gorgio Lolos, the designer, had not provided any information showing the addition in relation to its context, and accordingly, she created such a diagram (Diagram 2.).

Ms. Macecek resides at 76 Shudell, the east-west street south of Ms. Mandel’s house. She speculated that in the original layout of the Seymour/Shudell neighbourhood, that 56 Seymour was an “afterthought”, being created from the rear yards of numbers 72 to 82. If this is true, Shudell properties’ rear yards, instead of being 15 m, became instead 5.8 m (rear yard setback requirement 7.5 m). Ms. Mandel’s property has an awkward spatial relationship to the Shudell properties, presenting a side wall to numbers 80 and 78 as an existing condition. The addition will create a massing across 90% of Ms. Macecek’s rear lot line. If this was a “standard” side to side orientation, the massing would a more limited adverse impact, primarily on the side to side neighbours.

**ANALYSIS, FINDINGS, REASONS**

I find both parties’ positions have weaknesses. However, since Ms. Mandel bears the primary onus and must convince me that the four tests are met, and she has not

done so, I have no choice except to allow the appeal and reject the application. I will first consider the intent of the Official Plan.

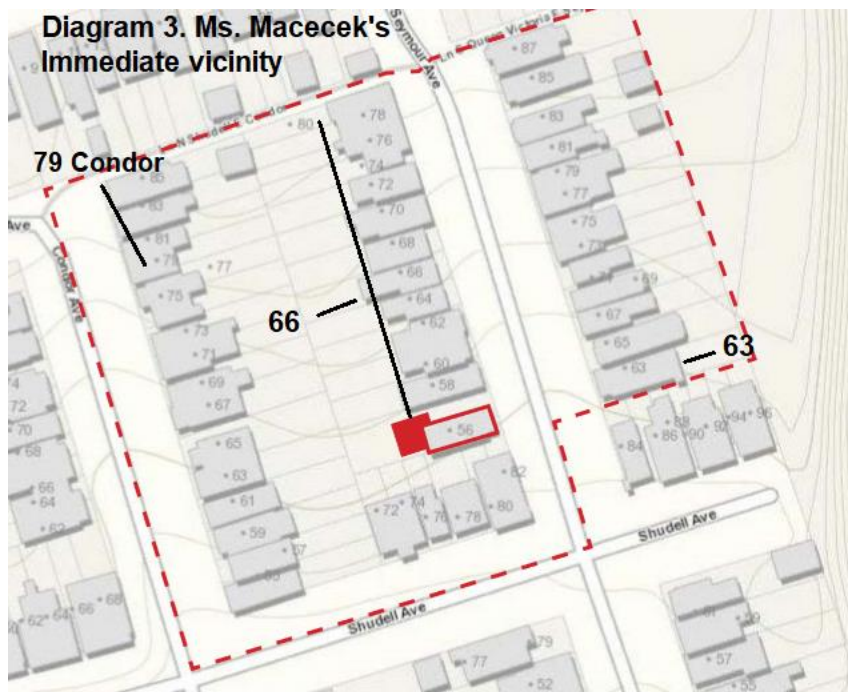
### The Official Plan test

The Official Plan requires that that:

4.1.5 Development in established Neighbourhoods will respect and reinforce **the existing physical character of the neighbourhood**, including in particular:

; c) heights, **massing**, scale and dwelling type of nearby residential properties;

Ms. Mandel's spreadsheet shows FSIs averaging 0.94, generally well above her request of 0.71; however, the numbers are derived from lots in a side-to-side relationship with neighbours. Ms. Mandel's house is the end property in a row of houses on a north-to-south street. Being the southernmost house, an addition will cast shadow over the house to the north. Being the last house and abutting the rear yards of the Shudell houses, any GFA increase, even as of right, will impact Ms. Macecek's property disproportionately.<sup>3</sup>



ZONING ANALYSIS - IMMEDIATE VICINITY  
56 SEYMOUR AVE, CASE # 18 157227 S45 30 TLAB

I don't fault Ms. Mandel. The City's provides a compendium of Committee of Adjustment decisions, but they do not always come with drawings. Other persons offering urban planning evidence who come before this Body also calculate averages and ranges, just as Ms. Mandel has done. However, a "range" hides important spatial

<sup>3</sup> I dealt with a similar situation in *90 Mona Drive* and also refused a GFA variance, even though the owner had retained a lawyer and planner.

context; and these may be small numerically but cast a deceptively larger adverse impact because of the side-to-rear orientation. This is the physical character of existing pattern of massing which Ms. Mandel’s development must respect and reinforce. The proposed addition does not do this.

Ms. Macecek asks me to draw the inference that the black line at the rear of the properties for the west side of Seymour indicates the relevant “physical character” of rear lot additions. I find it shows a consistent pattern for rear walls more or less in line with Ms. Desautels’ rear wall (with the exception 66 Seymour). Ms. Mandel’s proposal juts beyond this line.

One can draw other inferences from the larger neighbourhood that also do not support the variance. Properties that have the same atypical side -to-rear relationship such as 48 Boulton, 21 Dawson, 62 82 and 84 Condor, 4 Queen Victoria and 57 Hunter (none are shown in Diagram 3) are not in Ms. Mandel’s spreadsheet. No. 63 Seymour, also a side -to-rear lot, abuts the rear yards of 84 to 92 Shudell, where the rear yards are even more constrained than at 72 to 82 Shudell. It is not on Ms. Mandel’s spreadsheet and so does not appear to have had a gross floor area variance that could serve as a “precedent”.



Diagram 4 shows the lower part of Seymour south of Shudell, where two of the three comparables are located. No. 34 and 36 Seymour do stick out (or

should stick out)<sup>4</sup>, but not markedly. I would assume that the addition at no. 36 Seymour should be updated by the City's mapmakers to be in line with no. 34 in Diagram 4.

48 Seymour (Diagram 4) was one of the most important photographs chosen by Ms. Mandel, to illustrate the existing character of the neighbourhood. It also has a side yard with the front portion used for parking and the wider addition at the rear. However, unlike her addition, the rear wall of 48 Seymour is in line with the neighbouring houses.

Finally, no 65 Seymour, the third property with Committee of Adjustment decision, sticks out farther than 63 and this variance does support Ms. Mandel's position.

Taking all this evidence in its totality, I find:

- No side-to rear property has applied for a minor variance;
- Two of the three reported Committee decisions on Seymour have rear walls that jut out generally to a lesser degree than does the Mandel proposal;
- The west side of Seymour Avenue's houses have rear walls with a common line, with one exception;
- If the City's property data map showing outlines of buildings is to be relied on, the rear wall of no. 48 Seymour does not stick out at all. In any case there is no record of it having received a variance.

I find the Official Plan test is not met.

### **Ms. Macecek's numerical analysis**

According to *Degasperis*, analysis of the tests of minor and "desirable, etc." are composed of a numeric element and an assessment of adverse impact. Ms. Macecek's "zoning analysis" is intended to be a numeric comparison. She compared Ms. Mandel's property data with:

(a) all the lots in the "immediate vicinity" neighbourhood in Diagram 3, i.e. Condor, Seymour and Shudell; and

(b) all the lots in Ms. Mandel's "Blake/Jones" spreadsheet (50 properties that received FSI or GFA minor variances), i.e. the above three streets plus Boulton, Chatham, Dawson, Earl Grey, Euston, Hunter, Queen Victoria and Ravina.

Comparison (a) showed that the Mandel lot was the biggest in this immediate vicinity area, and 3.8 times the smallest lot, 69 Condor Avenue. The subject 52.84 m<sup>2</sup> is close in size to the entire building at 69 Condor. However, 69 Condor is a very small

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<sup>4</sup>I have indicated both 34 and 36 Seymour as having a GFA of 1.04 so as not to crowd the diagram although no. 36, the northerly one is at 1.06.

house and itself not typical<sup>5</sup>. Comparison (b) showed that the Mandel lot is 1.3 times larger than the average lot that is a recipient of a minor variance. If the variance were granted for the subject the resulting building would be 1.1 times the average. Presumably the average building that has been added to is larger than the average of all buildings, (ones with additions and without).

This certainly suggests that the lot is one of the largest in the broad neighbourhood and the absolute largest in the narrower immediate neighbourhood. A larger lot of course has a larger entitlement to gross floor area, but nonetheless the test is the same; it must respect and reinforce the existing physical character of the neighbourhood. And since the addition is already large or largish, at least in absolute terms, it is a challenge for this addition to respect and reinforce the **existing** physical character of somewhat smaller additions and build-outs.

Ms. Macecek analyzed the adjacent land uses, north, south, east and west for all the properties on a lot by lot basis in area (b). The typical lot had:

- one property on each side,
- one in the rear and
- the front abutting a street,

although in many cases the property abutted a lane, railway and in two cases, open space. By comparison, the Mandel property abuts 6 properties to the south. So, the challenge of meeting the Official Plan test mentioned in the previous paragraph is made more difficult by the side yard to rear yard relationship to Ms. Macecek's lot.

I find the variance is not minor or desirable for the appropriate development of the land.

### **Weakness in objectors' (Ms. Desautel's and Ms. Macecek's) position**

I stated that neither end position was correct. As I am sure Ms. Desautel and Ms. Macecek are aware, the Official Plan does not contemplate **no** change in land in the Neighbourhood designation:

"Some physical change **will occur** over time as enhancements, **additions** and infill housing occurs on individual sites. A cornerstone policy is to ensure that new development in our neighbourhoods respects the existing physical character of the area, reinforcing the stability of the neighbourhood, provided they respect the existing physical character of the area and reinforce the stability of the neighbourhood." (my bold)

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<sup>5</sup> There appears to be an error somewhere. The most visibly small buildings are at 79 Condor (66 m<sup>2</sup>) and 74 Seymour (59 m<sup>2</sup>). Here, the numbers and pictures line up. However, 69 Seymour (54 m<sup>2</sup>) and 69 Condor (53 m<sup>2</sup>) have small house sizes in Ms. Macecek's spreadsheet but appear to be average sized in the map (Diagram 3).



However, it is for the parties, hopefully with consultation with each other, to write the final chapter. For the present, I find the evidence demonstrates that the application does not meet all the statutory tests.

**DECISION AND ORDER**

The appeal is allowed, and the variances not granted. The decision of the Committee of Adjustment is set aside.

X

*Ted Yao*

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