

DECISION AND ORDER

Decision Issue Date Monday, October 29, 2018

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

Appellant(s): LEONID KOTOV Applicant(s):

Appellant(s): SEROUJ KALOUSTIAN

Property Address/Description: 1258 BROADVIEW AVE

Property Address/Description: Committee of Adjustment File. Number(s): 17 246528 STE 29 MV (A1119/17TEY)

TLAB Case File Number(s): 18 184831 S45 29 TLAB

Hearing date: Thursday, October 18, 2018

DECISION DELIVERED BY T. Yao

APPEARANCES

Name	Role	Representative
Leonid Kotov,	Owner/Appellant	Amber Stewart
Michael Dror	Expert Witness	
City of Toronto	Party	Ben Baena
Michelle Bittel, 83 Hillside Dr	Participant	
Jason Groves, 77 Hillside Dr	Participant	
Margaret McRae, 1253 Broadview Ave)	Participant	
Labrina Stanoulis, 80 Don Valley Dr	Participant	

INTRODUCTION

Mr. Kotov owns the two storey building pictured below. In October 2017, he applied for 17 variances for a “third storey addition and conversion to triplex”. The Committee refused the variances with a 3 to 1 vote; Mr. Kotov appealed, and so this matter comes to the TLAB. At the TLAB hearing, four neighbours appeared and except for two variances, none were seriously contested. The two variances both address a single issue: permission to have **two** secondary suites instead of one.



Minor variances have to be considered under two by-laws, since the appeals against the most recent (2013) by-law have not been disposed of. This makes the number of variances larger but there is considerable duplication in meeting two sets of regulations for the same issues.

Table 1. Variances sought by Mr. Kotov for 1258 Broadview Ave			
		Required/permitted	Proposed
City wide By-law 569-2013			
1	Building length	17 m	21.43 m
2	Driveway width	2.6 m	5.88 m
3	Building height	8.5 m	9 m

Table 1. Variances sought by Mr. Kotov for 1258 Broadview Ave			
4	Front main wall	7 m	7.56 m
5	Rear main wall	7 m	8.55 m
6	North and south main walls	7 m	8.55 m
7	Depth (front lot line to rear main wall)	17 m	21.43 m
8		One secondary suite	Two secondary suites
9	No alteration of exterior when secondary suite added		Front main wall will be altered
10	Parking spaces	3	2
East York Zoning bylaw 6752			
1A	Building height	8.5 m	9 m
2A	Building length	17 m	21.43 m
3A	Number of parking spaces	3	2
4A	South side yard setback	.6 m	zero
5A		One additional dwelling unit	Two secondary suites
6A	Minimum driveway width	2.6 m	2.25 m
7A	Maximum driveway width	2.6 m	5.88 m

BACKGROUND

The proposal is to add a rear addition, 7 m long and the width of the existing building, plus a third floor, to create a three-unit building as follows:

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3 rd floor unit	651 sq. ft	2 Bedr, 2 bath
2 nd floor unit	950 sq. ft	3 Bedr, 2 bath
First floor and Basement unit	1587 sq. ft	3 Bedr, 2 bath
<hr/>		
Total	3188 sq. ft	

MATTERS IN ISSUE

The TLAB Panel must be satisfied that the variances meet 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.

They must also be consistent with the Provincial Policy Statement. and conform to the Growth Plan.

EVIDENCE

Michael Dror, whom I qualified to give opinion evidence in the area of land use planning, testified for Mr. Kotov. Ms. McRae, Ms. Stanboulis, Ms. Bittel, and Mr. Groves gave evidence for themselves. Mr. Baena, the lawyer for the City appeared to support the imposition of conditions in the event that the TLAB approved the minor variances.

ANALYSIS, FINDINGS, REASONS

15 out of 17 variances are not disputed by the objectors

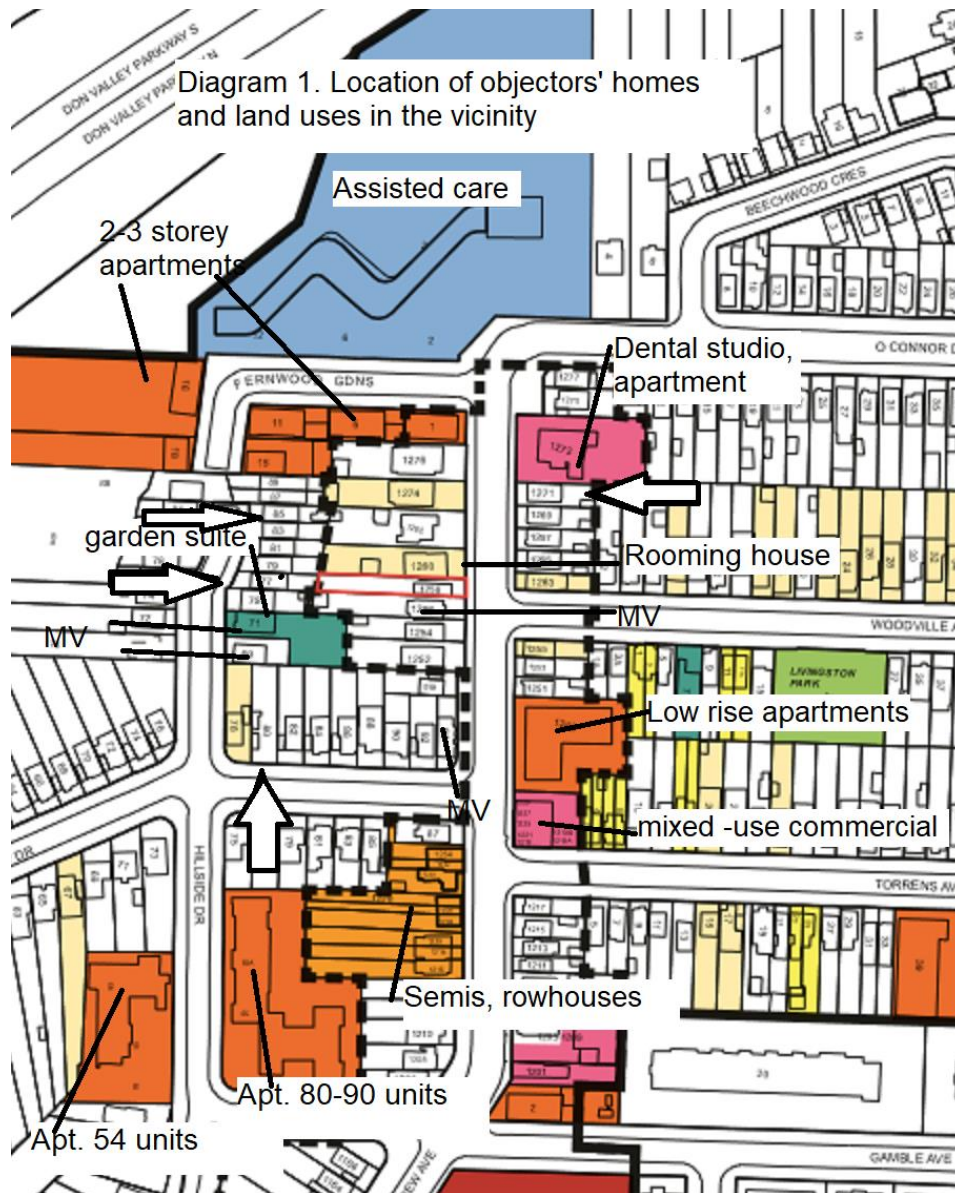
The “physical dimensions” variances were by and large accepted by the objectors. Mr. Dror’s witness statement dated August 2018, in any case, provided a very detailed and thorough demonstration how these other variances met the tests in the *Planning Act*. For example, because this is a multi-unit building, each unit must have two separate means of egress, and the rear stairways are counted in building length. Otherwise the building would only exceed the 17 m length by one meter. The former East York by-law makes a 2.6 m wide driveway both the minimum and the maximum, so that a driveway virtually always requires a variance.

Objection is to number of units.

Mr. Kaloustian, the architect, labelled the proposal a “triplex” in the construction drawings, which has led to much of the concern evidenced at this hearing. Assuming that the architect was using the term in the same parlance as defined in the zoning by-

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law, Ms. Bittel checked to see if the RD zone permits a triplex. Seeing no permission, she wrote to the Committee to advise that a triplex belongs in a RM Residential Multiple zone, not a RD Residential Detached zone¹.



¹ 1258 Broadview Ave is currently zoned as a residential detached home, (RD). Per chapter 1.40.10.(3).(B), By-Law 569-2013, (RD) is the specified zoning for residential detached houses. The developer is proposing to convert a single detached home into a Triplex. Triplexes are zoned separately under Chapter 1.40.10.(3).(E), By-Law 569-2013 as residential multiple (RM). The developer should apply to re-zone the property from a residential detached home (RD) to a triplex (RM). The Committee of Adjustment and the City should require that a re-zoning request be included in the proposal. The developer is attempting to circumvent the specifications and original intent of By-Law 569-2013. Requesting an exceptionally large number of variances on an (RD) zoned property when in reality the property should be properly zoned as (RM) is unacceptable. (letter Michelle Bittel, May 31, 2018)

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The nearest RM zone is the Massey Centre for Women at 1102 Broadview Avenue, which Mr. Dror described as:

. . .a non-profit organization that offers mental health and support services to pregnant and parenting adolescents, and includes a number of buildings including office uses, institutional uses including a secondary school and a daycare, along with townhouses and apartment units. (This is not shown in Diagram1).

The complexity of uses and the special-purpose nature of the Salvation Army RM zoning suggests to me that the analysis is more complicated than set out in Ms. Bittel's letter.

Mr. Dror replied to Ms. Bittel by saying that the owner is governed by zoning examiner Greg Whitfield's interpretation. Mr. Whitfield wrote that:

A secondary suite is a permitted use if it is with a detached house or semi-detached house, each dwelling unit may have a maximum of one secondary suite. The proposed number of secondary suites is 2. [150.10.20.) Secondary Suite – Number Permitted in a Detached house or Semi-Detached House

Mr. Whitfield has made the following findings:

- The zone is RD (f6.0, a185; d0.75);
- The use is one dwelling unit in a detached house, which is a permitted use;
- The use of a secondary suite in a detached house is also permitted;
- "Clause 2"² of the Secondary Suites regulation permits a maximum of one secondary suite and so if the owner wants two secondary suites he needs a variance.

Accordingly, the issue is whether two secondary suites and other variances meet the four tests under the *Planning Act*. Even though the architect, Mr. Kaloustian labelled it a "triplex", the plan examiner has not interpreted the proposed use as a triplex.

The *Building Code Act* provides for an avenue of appeal by a person who is "aggrieved" by a decision of the chief building official. Unless such an appeal is taken everyone (including the owner and the TLAB) is bound by that decision.

The RD (Residential Detached) zoning has little to do with what is on the ground in a mature urban community like Broadview-O'Connor. This is acknowledged by the objectors: "Those apartments were built in the thirties and forties." The nearby land uses are shown in Diagram 1, where:

- arrows indicate the homes of the objectors;
- darker areas indicate higher density;

² That is, 150.10.20.1(2)

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- lighter shading shows possible secondary suites, as determined by Mr. Dror from multiple mail boxes etc. and
- “MV” are minor variance decisions.

The area depicted is all RD. This is a successful and livable area, and unlike some suburban areas, has a diversity of residential, institutional and commercial uses within walking distance. It exemplifies Official Plan and Growth Plan policies, which promote “mixed neighbourhoods that offer and support opportunities for people of all ages and abilities to conveniently access most of the necessities for daily living, including a full range of housing”.³

I find that the two secondary suites requested amply meet the general intent of the Official Plan. Section 3.2.1 (Housing Policy) ends with these words: “More than half of Toronto households rent, yet no new rental housing is being built in quantity.” The Plan goes on to list four objectives: the first two being to stimulate production of private sector rental supply and preserving what rental housing exists. This application is an incremental opportunity to create two new rental apartments in furtherance of those policies.

Secondary suites

I now turn to the test of meeting the intent of the zoning by-law. Most nearby secondary suites as ascertained by Mr. Dror are along Woodville and Torrens. “Everybody has them”, said Ms. Stanoulis. The question is whether there is an intention in the zoning by-law, read on in context of the *Planning Act* and the Official Plan, that permits one additional secondary suite.

Mr. Whitfield has pointed to Clause (2) of the Secondary Suite regulation⁴ as making the maximum number of secondary suites to be “one”. However, Clause (4)⁵ is an exception to Clause (2); it permits more than one secondary suite if:

1. the house was originally constructed as a detached house or semi; and
2. has been “converted” to multi-unit use.

³ Growth Plan, definition of “complete community”.

⁴ 150.10.20.1(2) Secondary Suite - Number Permitted in a Detached House or Semi-Detached House Within a detached house or semi-detached house, each dwelling unit may have a maximum of one secondary suite.

⁵ 150.10.20.1(4) Despite regulation 150.10.20.1(2), in the R zone, a residential building that was originally constructed as a detached house or a semi-detached house may be converted to have **more than one** secondary suite.

Thus, a semi-detached house, if sufficiently large, could be converted to one secondary suite in each dwelling unit, or four units for both halves of the semi. This would be as of right.

In 2011, through the *Planning Act*, the Province required that all municipalities introduce official plan policies to permit secondary suites in detached houses, semi-detached and row houses. Toronto's OP is currently being expanded to row houses in response (As-of-Right Zoning for Secondary Suites, Planning and Growth Management Committee report, consideration on July 5, 2018, PG31.12). So, policies are moving in the direction of encouraging secondary suites as a means of more efficient use of existing housing stock.

Prior to 2011, the old City of Toronto zoning by-law contained policies for a "converted dwelling house" which was defined as being more than five years old and which could be renovated to add units without making exterior changes. Toronto, being a progressive city, anticipated today's Provincial Policy statements, and realized that there were many older larger homes which could be converted to two **or more** dwelling units, provided there was concurrent compliance with building and fire code regulations. The "more than five years" old requirement was intended to restrict the policy to **existing** homes. The prohibition against external alterations was maintain the "look" of a single detached house and to "fit in", which was a requirement for change under the Official Plan.

In obtaining factual information for his report, Mr. Dror walked the neighbourhood, looking for evidence of secondary suites, such as an additional mail boxes, gas meters or separate entrances. He conceded readily that this was not a scientific method and indeed may be an incorrect indication of the prevalence of such uses. One of his photographs showed one basement door tucked under the porch; but even this discreet modification might require a minor variance because of a physical change to the front wall. In the present case, some variance is required notwithstanding that the two secondary suites will share a common side entrance and the building will present to the casual observer as being one dwelling unit. The changes are:

1. Removal of the dormer, porch roof and a different set of front stairs, to give the façade a sleeker, more updated appearance. This is a change to the front wall (Variance #8).
2. Mr. Kotov is creating more space by the rear and third floor additions; otherwise he would not need variance #7 but could rely on Clause 4 of the Secondary Suites regulation when the owner merely "converts" in the technical sense that it used in the Clause 4 sense a detached house originally constructed as such.

In my opinion, Clauses (2) and (4) read together indicate an intent to allow more than one secondary suite when the building can physically accommodate these extra secondary suites is reasonable to add to a building originally constructed as a detached house since Mr. Kotov started with a very small floor plate and he has a 69 m long lot.

In summary, I find that there is a general intent in the zoning by-law to permit some exceptions to Clause (2) and allow more than one secondary suite for houses originally constructed as a detached house and the means of creation of the additional secondary unit is either **conversion** of existing space or reasonable **addition** to the existing space. I find that the size of the addition is reasonable for the reasons set out and creation by **addition** is minor, compared to “conversion”. After all, the units will be rather modest in size and layout.

The objectors are reasonable in not objecting to the physical and massing changes; they only object to the extra unit. The neighbour to the south, 1256 Broadview Ave, obtained a minor variance and building permit in July 2018 for a similar built form but without a third floor or secondary suite. This was apparently without any opposition.

1258 Broadview is on two bus routes, and the unusually deep lot allows on-site parking (more of this later) making this a good opportunity for possibly affordable or mid-range rental housing. The objections from the two Hillside objectors may be considered in the light of the distance to the subject house. They live on land that was originally severed from Broadview lots including 1258 Broadview. The Hillside lots are extremely shallow front to rear, are three stories in height and resemble townhouses since there is only .5 m between detached homes. The back yard alone for 1258 is almost the entire depth of a Hillside lot. Having regard for these shallow rear lots, the objectors were also reasonable in not making a complaint about the physical proximity of a Broadview development.

The Broadview study

The subject lands are part of the Broadview Urban Design Guidelines, initiated in 2013 and culminating in a final report April 22, 2016⁶. The study area, from Danforth to O’Connor, is now subject to a Site and Area Specific Policy (SASP), adopted by Council in OPA 343. For the Avenues portion of Broadview, (roughly Danforth to Bater) the SASP set out design maximum building heights of five to six stories. For the remainder of Broadview, Character Area E, containing 1258 Broadview Ave:

This area can be characterized as stable residential, with single detached houses being the main built form. . . .Current zoning only allows residential uses with a maximum height limit of 8.5 meters (approximately 2-3 stories). . . . As this is an area where major intensification is not anticipated, any new development will respect and reinforce the existing physical character in the form of a single detached house of 2 to 3 stories in height.

The Site and Area Specific Policy’s vision was to guide and manage “moderate incremental development” for the whole of the study area, which in Mr. Dror’s opinion, includes one additional secondary suite in a detached house form building at 1258 Broadview Ave. I agree with Mr. Dror that the policies point to the possibility of a three storey residential development for Character Area E lots.

⁶ 14 134157 STE 29 OZ

Parking

Two parking spaces will be provided. Ms. Stanoulis was concerned with overnight parking on Don Valley Drive. I recognize this is a problem all over the City. In response to her concern, Mr. Kotov has offered an alternative site plan that will provide for three parking spaces. Having gone to the neighbourhood and observed the asphalt sweep behind the Fernwood apartments, and I think it is not appropriate to require more hardscaping, which might not be needed. The tenants may not have a car or may use informal means, such as tandem parking. Broadview is well served by transit and the Study mentions “opportunities for improving sidewalk conditions and bicycle facilities and reorganization of street furniture that encourages walking and cycling”.

There is more. The City agreed to support the present site plan in return for a reduction in the third-floor apartment length and lowering the height. This is an agreement between a public body and a landowner to resolve a planning dispute in a principled way. I think I should not upset such an agreement.

Conclusion

I find the variances satisfy the statutory tests set out in the *Planning Act*, are consistent with and conform to higher level policies, and are minor and appropriate for the desirable development of the land.

DECISION AND ORDER

I authorize the variances set out in Table 1 for 1258 Broadview Ave on condition:

That the third floor of the proposed dwelling have a maximum building length of 16.99 metres exclusive of the stairs and balcony and that the second and ground floor maximum building length is 18.00 metres exclusive of the stairs and balcony, as per the floor plans shown on drawings A-3.2 to A-3.5 received by the Committee of Adjustment on May 9, 2018.

X



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