

DECISION AND ORDER

Decision Issue Date Friday, June 15, 2018 and amended December 7, 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): DHANWANT SINGH DHILLON

Applicant: BIKRAMJIT DHILLON

Property Address/Description: 12 MONTROSE AVE

Committee of Adjustment Case File Number: 17 236232 STE 19 MV

TLAB Case File Number: 18 131841 S45 19 TLAB

Hearing date: Monday, June 11, 2018

DECISION DELIVERED BY T. Yao

APPEARANCES

Name	Role	Representative
Bikramjit Dhillon	Applicant/Appellant's	Legal Rep
Dhanwant Singh Dhillon	Appellant	
Jasmine Gujral	Planner	

INTRODUCTION

The Dhillon family wishes to add a basement apartment to their detached 2-unit dwelling, thus making a three unit residential building. They will remove and modify the roof. From the front it will look pretty much the same; in the rear, they will add a dormer giving them about 20% more floor space on that floor. The other floors will be the same except for the addition of some balconies. The City has no objection and the next-door neighbour supports the application. Both at the Committee and the TLAB, no objector appeared.

On February 28, 2018, the Committee of Adjustment refused their application. The Dhillons appealed and so this matter comes before the TLAB.

MATTERS IN ISSUE

A decision of the Toronto Local Appeal Body must be consistent with the 2014 Provincial Policy Statement and conform to the Growth Plan of the Greater Golden Horseshoe for the subject area. The TLAB Panel must also be satisfied that the applications meet 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 Jasmine Gujral¹, whom I qualified as able to give opinion evidence planning evidence on land use planning.

Table 1.Variiances sought by the Dhillons²			
		Required/ permitted	Proposed
By-law 569-2013 (new)			
1	Minimum no. of parking spaces	Two	One
2	Maximum building height	10 m	11.35 m
3A	Maximum front exterior main wall height	7.5 m	9.47 m
3B	Maximum rear exterior main wall height	7.5 m	<u>9.91m</u>
4	Minimum building setback from centerline of a lane	2.5 m	1.5 m

¹ I am aware that Ms. Gujral is the daughter of the owners. I urged her to seek a planner who was not related to them and advised that even if qualified, I would have to view her evidence skeptically and searchingly.

² The table, photos and plans form part of this decision.

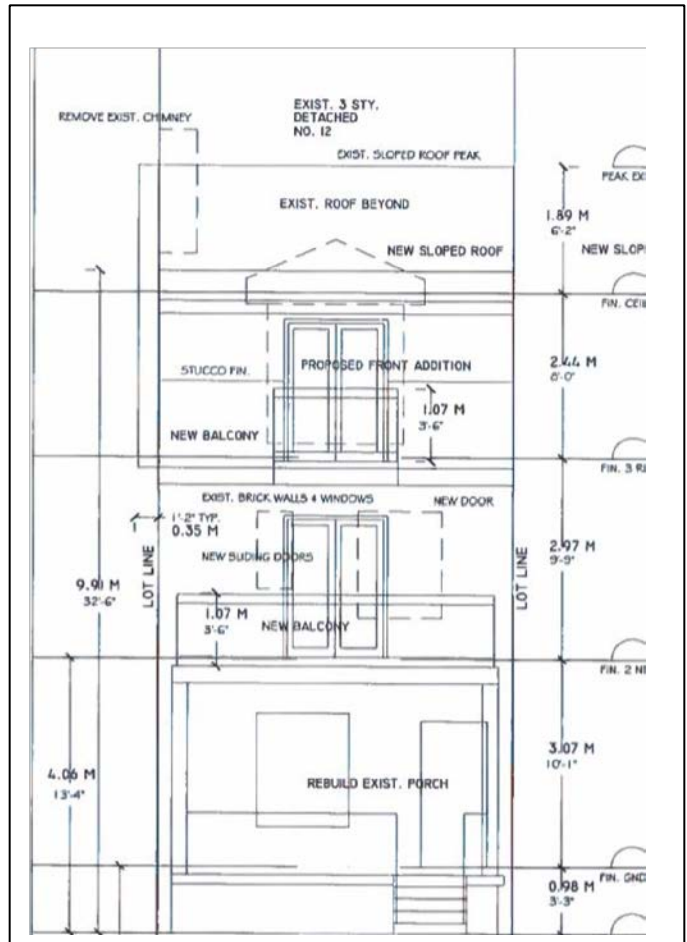
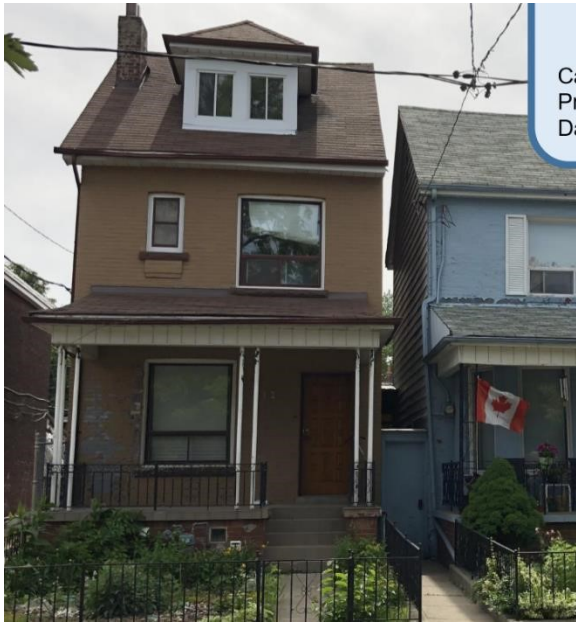
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5	Stair encroachment permitted if stairs no closer to a lot line than .6m		Stairs 0 m from front lot line
6	Roof eave projection may project .9 m when at least .3 m from lot line		Eaves are 0 m from south side lot line
7	Maximum building depth	17 m	19.77 m
8	Maximum floor space index	.6 times lot area	1.23 times lot area
9	Minimum front yard setback	2.61 m	.29 m
10	Minimum side yard setback	.9 m	0 m from north and south lot line
11	Secondary suite permitted if no alteration to wall facing street		Alteration to wall facing street
12	Secondary suite permitted if floor area of suite smaller than main unit		Floor area of suite greater than main unit ¹
Former City of Toronto By-Law 438-86 (old)			
1	Maximum gross floor area	107.65 m² (.6 times lot area)	312.20 m² (1.74 times lot area)
2	Minimum front yard setback	2.61 m	.29 m

¹ The Plan Examiner has considered the 3rd floor unit (1587 sq. ft) to be the suite and the first floor unit (855 sq. ft) to be the main unit.

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3	Minimum side yard setback where the wall contains openings	.45 m	0 m from north and south side lot lines
4	Maximum building depth	17 m	19.77 m
5	Total soft landscaping	30% of the lot area	26% of the lot area
6	Front yard soft landscaping	30%	0 %
7	Minimum building setback from centerline of a lane	2.5 m	1.5 m
8	Maximum building height	10 m	11.35 m
9	Converted dwelling permitted if no exterior alteration to front wall		Exterior alteration to front wall
10	One addition permitted		Second addition
11	Minimum number of parking spaces	Two	One



ANALYSIS, FINDINGS, REASONS History of ownership and request for change of hearing date

Dhanwant Singh Dhillon acquired this property in 2005. He works as a welder near Kitimat, British Columbia (a fifteen-hour drive from Vancouver) and a July wedding will prevent him from attending this hearing on July 12, 2018. Through his representative Bikramjit Dhillon, his son, he asked for the hearing date to be moved to June 11, 2018, which I granted.

The higher-level policy documents

The property is a corner lot a few houses north of Trinity Bellwoods Park. Ms. Gujral stated the property is less than a ten-minute walk to three TTC streetcar lines and the Ossington/Old Orchard Jr Public School; and a 15-minute walk to the Toronto Western Hospital. The themes of better use of existing infrastructure, complete communities and moderate intensification in appropriate areas run through the higher order plans and the Official Plan. This intensification is an appropriate use of the land.

I accept the conclusions of Ms. Gujral's planning report and find the variances sought are consistent with the policy objectives of the Provincial Policy Statement, which directs development to established built-up areas. The proposal will conform to the policy objectives of the Greater Golden Horseshoe Growth Plan:

- Policies 2.2.1.2(a), (c) and (d), which direct growth to settlement areas that have existing municipal infrastructure, locations with existing or planned transit and public service facilities, and can support the achievement of complete communities.
- Policies 2.2.1.3 (c) which encourages the achievement of complete communities through a more compact built form.
- Policies 2.2.1.4(c) which supports a range and mix of housing options, including second units to accommodate the needs of all household sizes and incomes.

The Official Plan requires that new development be sensitive, “fit in” and “respect and reinforce the existing physical character of the neighbourhoods”, as well as repeating the above intensification themes. Prior to the Committee meeting, the Planning Department requested a change in the massing of the front of the third storey addition. The owners agreed and provided a one meter step back to allow the third storey addition to align with the established cornice line along Montrose. The February 22, 2018 report specifically mentions that the “respect and reinforce” test and states “the revised plans sufficiently address Planning’s concerns”. Accordingly, I find that the variances maintain the intent and purpose of the Official Plan.

Intent of the Zoning By-laws

This is a very modest construction project despite all the variances. Because the building predated the zoning by-laws, all the variances, except the number of parking spaces and “secondary suite permitted if no alteration to wall facing street” are a result of a non-conforming situation. In view of this, I find the variances are minor.

According to Ms. Gujral, there were two issues underlying the Committee’s refusal. The first was the number of variances and the second was the apparent discrepancy between FSI under the old (438-86 and passed in 1986) and new (5692013, passed in 2013) zoning by-laws. Because of appeals from 2013, the plan examiner tests both by-laws, which can double the total number of variances.

To comply with current zoning standards, the house would have to be demolished. For example, the property line is 2.61 m from the front door and in order to conform to the required setback, the porch landing would have to be eliminated. This would be unsafe and violate the Building Code. The neighbour’s front steps are actually **in** the City’s boulevard, so this is a common condition on Montrose. As far as the parking space variance is concerned, Ms. Gujral says that in ten years of rentals, only one tenant had a car. A height variance is needed; but the replacement roof will replicate the existing height. I accept Ms. Gujral’s evidence that “At least 16 houses within a one block radius of 12 Montrose are three-storey with a comparable height to the existing structure at 12 Montrose.”

I turn now to the apparent discrepancy in Floor Space Indexes; the earlier by-law states that it will be 1.74 times lot area, while the new by-law states it will be 1.23. Floor Space Index is a measure of interior habitable space divided by lot area and obviously the lot area is unchanged from by-law to by-law.

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The new units will be arranged as follows:

		FSI per unit
2 nd and 3 rd floor unit	1587 sq. ft	.82
First floor unit	855 sq. ft	.44
<u>Basement unit</u>	<u>855 sq. ft</u>	<u>.44</u>
Total	3298 sq. ft	1.70

(These numbers are taken from the plans and differ somewhat from the plan examiner's notice.) The new by-law, 569-2013, **deducts** basement habitable space from total gross floor area for "residential buildings **that are not apartment buildings**". The definition of "apartment building" states:

A building that was originally constructed as a detached house, semi-detached house or townhouse and has one or more secondary suites is not an apartment building.

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This is an indication of a zoning intent to encourage secondary units (although this is actually a third unit) where the outside shell is more or less unchanged.⁴

I find the variances maintain the intent of the zoning by-law and both individually and cumulatively satisfy all the tests under the *Planning Act*.

The February 22, 2018 planning report requested that the Committee impose a condition which I am doing. It also included as an attachment the modified plans. Unfortunately, the Dhillons did not return to the Plan Examiner to see if any change was needed due to the readjustment of the front dormer. I assume this was not necessary. If this decision needs to be amended, would they speak to me.

DECISION AND ORDER

I authorize the variances in Table 1 on condition:

1. That plans submitted to Toronto Buildings for [a] building permit [after issuance of this TLAB decision] are substantially in accordance with revised plans date stamped by City Planning on February 23, 2018 and attached to the report under File 1023/TEY dated February 22, 2018, or the revision to such plans being the west elevation dated 22-10-2018 and marked A311.

X



Ted Yao
Panel Chair, Toronto Local Appeal Body

Signed by: Ted Yao

⁴ It is also within the spirit of “second unit” policies in s. 16(3) of the *Planning Act* 16(3) An official plan shall contain policies that authorize the use of a second residential unit by authorizing,

(a) the use of two residential units in a detached house, semi-detached house or rowhouse if no building or structure ancillary to the detached house, semi-detached house or rowhouse contains a residential unit; and

(b) the use of a residential unit in a building or structure ancillary to a detached house, semi-detached house or rowhouse if the detached house, semi-detached house or rowhouse contains a single residential unit.