

DECISION AND ORDER

Decision Issue Date Thursday, December 20, 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): ESTEBAN ARIEL YANQUELEVECH KORNGOL

Applicant: ESTEBAN ARIEL YANQUELEVECH KORNGOL

Property Address/Description: 87 BROOKSIDE AVE

Committee of Adjustment Case File Number: 18 166238 WET 13 MV

TLAB Case File Number: **18 199174 S45 13 TLAB**

Hearing date: Monday, December 03, 2018

DECISION DELIVERED BY S. GOPIKRISHNA

APPEARANCES

Name	Role	Representative
Esteban Yanqueleveh Korngol	Appellant/Owner	

INTRODUCTION AND BACKGROUND

Mr. Esteban Yanqueleveh Korngol is the owner of 87 Brookside Ave. He applied to the Committee of Adjustment (COA) to construct a south-side addition with an attached garage, a second storey addition, a third storey addition, platforms on the front, south side and rear of the third storey and a new front porch. His application was heard by the COA on 5 July, 2018, and was refused.

Mr. Yanqueleveh appealed the COA Decision to the Toronto Local Appeal Body (TLAB), which scheduled a hearing for 3 December, 2018.

MATTERS IN ISSUE

The Zoning Notice dated April 26, 2018, was provided to the TLAB as part of the Appellant's discovery, and is reproduced below. This document was used as a reference when questioning the Appellant on his proposal, and was relied upon by me to arrive at my Decision.

The property is subject to the City-wide Zoning By-law No. 569-2013, as amended. Based on By-law No. 569-2013, your property is zoned RM (f12.0; a370; u2; d0.6) (x123).

- 1) The permitted maximum floor space index is 0.6 times the area of the lot: 162.79 square metres. The proposed floor space index is 1.03 times the area of the lot: 279.66 square metres. [10.80.40.40.(1) Floor Space Index]
- 2) The permitted maximum height of all front exterior main walls is 8.5 metres. The proposed height of the front exterior main walls is 10.01 metres. [10.80.40.10.(2) Maximum Height of Specified Pairs of Main Walls]
- 3) The required minimum side yard setback for a detached house is 1.2 metres. The proposed north side yard setback is zero(0) metre; and the proposed south side yard setback is zero (0) metre. [10.80.40.70.(3) Minimum Side Yard Setback]
- 4) The permitted maximum area of each platform at or above the second storey of a detached house is 4.0 square metres. The proposed areas of the front, side and rear terraces at the third storey are 8.58 square metres, 6.86 square metres and 18.99 square metres respectively. [10.80.40.50.(1) Platforms at or Above the Second Storey of a Detached House]
- 5) A platform without main walls, attached to or less than 0.3 metres from a building, with a floor no higher than the first floor of the building above established grade may encroach into the required front yard setback 2.5 metres if it is no closer to a side lot line than the required side yard setback (1.2m). The proposed front yard platform is 1.02 metres closer to the north side lot line than the required setback. [10.5.40.60(1)Platforms]
- 6) The minimum required parking space must have a minimum width of 3.2 metres. The proposed parking space will have a width of 2.84 metres. [200.5.1.10.(2) Parking Space Dimensions - Minimum]

York Zoning By-law

The property is located in the former municipality of York which is subject to the York Zoning By-law 1-83. Based on the York Zoning By-law 1-83, the property is zoned R2 and is also subject to By-law 3623-97.

7) The required parking space must have minimum width of 3.2 metres. The proposed parking space will have a width of 2.84 metres. [Section 3.2.1(a)(i) Parking Space Dimensions - Minimum]

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

I note that there were no Parties nor Participants in opposition to the Appeal.

After appealing the COA decision to the TLAB, the Appellant, Mr. Yanqueleveh submitted a Witness Statement on October 22, 2018. The crux of the submission was that he would reduce the size of the balconies discussed in Variance (4), reproduced below, to 4 sq m, 4 sq. m and 7.35 sq. m. respectively.

- 4) The permitted maximum area of each platform at or above the second storey of a detached house is 4.0 square metres. The proposed areas of the front, side and rear terraces at the third storey are 8.58 square metres, 6.86 square metres and 18.99 square metres respectively. [10.80.40.50.(1) Platforms at or Above the Second Storey of a Detached House]

In other words, the new variance request would have read:

- 4) The permitted maximum area of each platform at or above the second storey of a detached house is 4.0 square metres. The proposed area of rear terrace at the third storey is 7.35 sq. m. [10.80.40.50.(1) Platforms at or Above the Second Storey of a Detached House]

At the hearing held on 3 December, 2018, Mr. Yanqueleveh represented himself, accompanied by his framing contractor and builder, Mr. Diego Friguglietti.

According to Mr. Yanquelevecch , neither he nor Mr. Friguglietti are planners. However, he said that he was an interior designer, while Mr. Friguglietti had “ built houses”, including some in the vicinity of the subject property.

The crux of Mr. Yanquelevecch’s oral evidence was that his application had been refused by the COA, on the basis of a City of Toronto Planning Department report which had recommended deferral of the application, because of the substantial size of the balconies. Notwithstanding the issuance of report, Mr. Yanquelevecch had proceeded to have the application heard, resulting in the refusal. As a result of the refusal and the information in the City report, he had reduced the size of the balconies, as per his communication of October, 2018. He also submitted from his neighbours saying that they had no objections to the building of the house, as long as it was consist with the site plans they had been shown.

Mr. Yanquelevecch did not have provide any planning evidence. He said that he needed the house because he had a family of six members. He had been advised by Mr. Friguglietti that the size and design of the house would be appropriate for his family, and that it could be approved on a street such as Brookside Avenue, because of the development, and existence of a number of properties, similar to what was proposed in the Appeal before the TLAB. Mr. Friguglietti was apparently sure of his information because he himself had helped build the neighbouring house at 86 Brookside Ave, as well as the house at 101 Brookside Ave.

Mr. Yanquelevecch added that according to the submitted plans, the side yard setback on the north had a “4 inch” setback”. This statement was not consistent with the stated description of Variance (3), in the Zoning Notice, which read:

- 3) The required minimum side yard setback for a detached house is 1.2 metres. The proposed north side yard setback is zero(0) metre; and the proposed south side yard setback is zero (0) metre. [10.80.40.70.(3) Minimum Side Yard Setback]

When I drew Mr. Yanquelevecch’s attention to the difference between the zoning notice and what he had said, and asked him to explain the thinking behind the change, he simply repeated “it is 4 inches” twice.

I then asked Mr. Yanquelevecch to explain how the proposal was compatible with the 4 tests under Section 45(1), and was given the same answer, as stated in the previous paragraph- the gist of which is that the Appellant had relied on Mr. Friguglietti’s advice. My next question was about the possible change to the first variance, respecting FSI, which was listed as 1.01 x lot area, in the Zoning Notice. I asked Mr. Yanquelevecch if this FSI number would reduce because he had reduced the size of the decks from 8.58 sq. m., 6.86 sq.m. and 18.99 sq.m, respectively to 4 sq.m. 4 sq.m, and 7.35 sq.m. respectively, as per his communication of October 2018. He maintained that “nothing had changed”, notwithstanding my illustrating the logic behind my question about FSI being linked to living space, and that depending on whether the balconies were considered “living space”, the FSI could change.

I then asked him for copies of the COA decisions respecting 86 Brookside Ave., and 101 Brookside Ave. since they seemed central to his reasoning. Mr. Yanquelevecch said that he did not have copies of the decisions, and asked to submit them later, along with copies of other houses, which he claimed, had been built, and were similar to his proposal. The hearing concluded with Mr. Yanquelevecch's stating that his proposal would be approved, and my giving him 10 days to complete the submissions.

Mr. Yanquelevecch sent in his submissions within 3 days, completing the file and allowing me to make a Decision on his Appeal.

ANALYSIS, FINDINGS, REASONS

I reiterate that neither Mr. Yanquelevecch nor Mr. Friguglietti are planners; I realize that they should not be held to the same standards as a planner would, when evidence regarding Section 45(1) of the Planning Act is concerned. However, it is necessary for the TLAB Panel to be offered a minimum quantum of evidence to demonstrate that the proposal complies with the 4 tests under Section 45(1). The ability of the Appellants to respond to questions from the Panel also lends assurance to the latter that the applicants are aware of, and have the ability to adhere to the common condition of approval, about building in substantial conformity with the submitted plans and elevations.

After reading the submissions, and rehearing the tape carefully to ensure that nothing was missed, I conclude that there are 3 issues with this Appeal:

- 1) There was no planning evidence submitted, or orally stated, with respect to any of the 4 tests under Section 45(1) of the Planning Act, notwithstanding my specifically drawing attention to the need for such information. As noted, Mr. Yanquelevecch and Mr. Friguglietti may not be planners, but would have some familiarity with the process of planning and construction by virtue of being interior designers, and involvement with building houses. There is an elliptical connection at best, between their evidence about the existence of new houses in the community, and the the Official Plans (OP)'s prescriptions about communities needing to be "stable, but not static". There was no other reference to Official Policies, or zoning, throughout the hearing.
- 2) It was difficult to see the relevance of the evidence submitted to me by way of the COA decisions respecting 86 Brookside, and 101 Brookside. While both applications requested, and were approved by the COA for an FSI in the 1x range, neither requested for relief from the by-law respecting balcony size. Clearly, the examples provided do not result in an apples-to-apples comparison, with the Appeal before the TLAB. It is difficult to approve the proposal on the basis of similar FSI numbers, because the FSI parameter is influenced by various attributes, including length, depth, height, covered areas, and lot sizes. Thus, while comparable FSI numbers may come across as apples-to-apples

comparisons, the built form, and consequent impact, may be closer to a melons-to-lemons comparisons of the two lots. Approving a proposal on the basis of similarities in FSI can result in negative impact on the neighbourhood, if not downright destabilization.

- 3) I was not persuaded by the explanations for the changes in variances, that the Appellants recognized the interrelationships between variances, and could be expected to adhere to the standard condition about building in substantial accordance with the submitted plans and elevations. There was no explanation forthcoming from the Appellants about changing the 0 m side yard setback to “4 inches”. If this change could be accepted *prima facie* because of the *de novo* nature of the Appeal, and the less severe nature of the proposed changes from a 0 metre setback, I am really uncomfortable with the Appellants’ seeming inability to explain the FSI number not changing, despite significant reductions to the sizes of the balconies. There was no information about whether these balconies were covered, and would contribute towards the FSI. From this I concluded that that the Appellants were not sure of what they wanted, and may not adhere to the condition about building in conformity with the submitted Plans and Elevations, if the proposal were approved.

Based on these reasons, I would like to err on the side of caution, and refuse the Appeal in its entirety.

DECISION AND ORDER

1. The Appeal is refused in its entirety, and all the variances are refused. The Decision of the Committee of Adjustment, respecting 87 Brookside Avenue, dated 5 July, 2018, is herewith confirmed.

So orders the Toronto Local Appeal Body

X 

S. Gopikrishna
Panel Chair, Toronto Local Appeal Body