

DECISION AND ORDER

Decision Issue Date Monday, January 14, 2019

PROCEEDING COMMENCED UNDER Section 53, subsection 53(19), and Section 45(12), subsection 45(1) of the Planning Act, R.S.O. 1990, c. P.13, as amended (the "Act")

Appellant(s): MARY SHECHTMAN

Applicant: JASON RODRIGUES

Property Address/Description: 597 WOODBINE AVE

Committee of Adjustment Case File: 18 121706 STE 32 MV

TLAB Case File Number: **18 218718 S45 32 TLAB**

Hearing date: Thursday, January 03, 2019

DECISION DELIVERED BY T. YAO

APPEARANCES

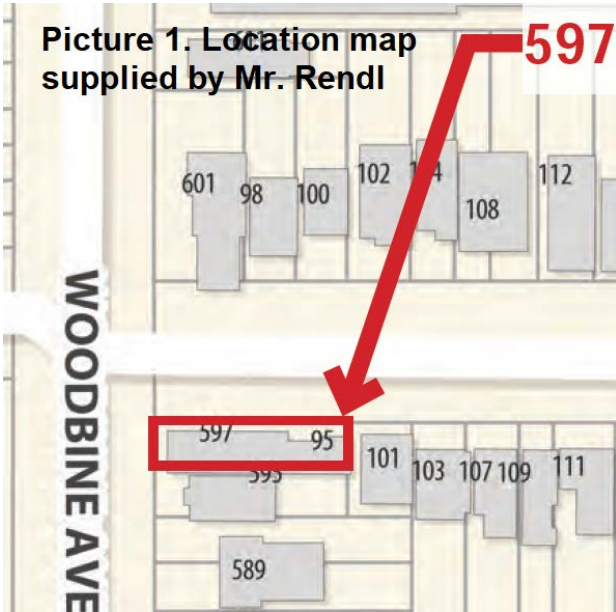
NAME	ROLE	REPRESENTATIVE
NMR Properties, Mary Shechtman	Owner	Ron Kanter
Martin Rendl	Expert Witness	
Leah Jarvis 98 Duvernet	Participant	
Jonathan Jarvis 98 Duvernet	Participant	
Jimmy Huang	Participant	

INTRODUCTION AND BACKGROUND

NMR Properties and Ms. Shechtman (the "owners") wish to construct two rear additions to their 2½ storey building. The building currently has two dwelling units, which with the additions will be increased to three.is

Decision of Toronto Local Appeal Body Panel Member: T. Yao
TLAB Case File Number: 18 218718 S45 32 TLAB

Picture 1. Location map supplied by Mr. Rendl

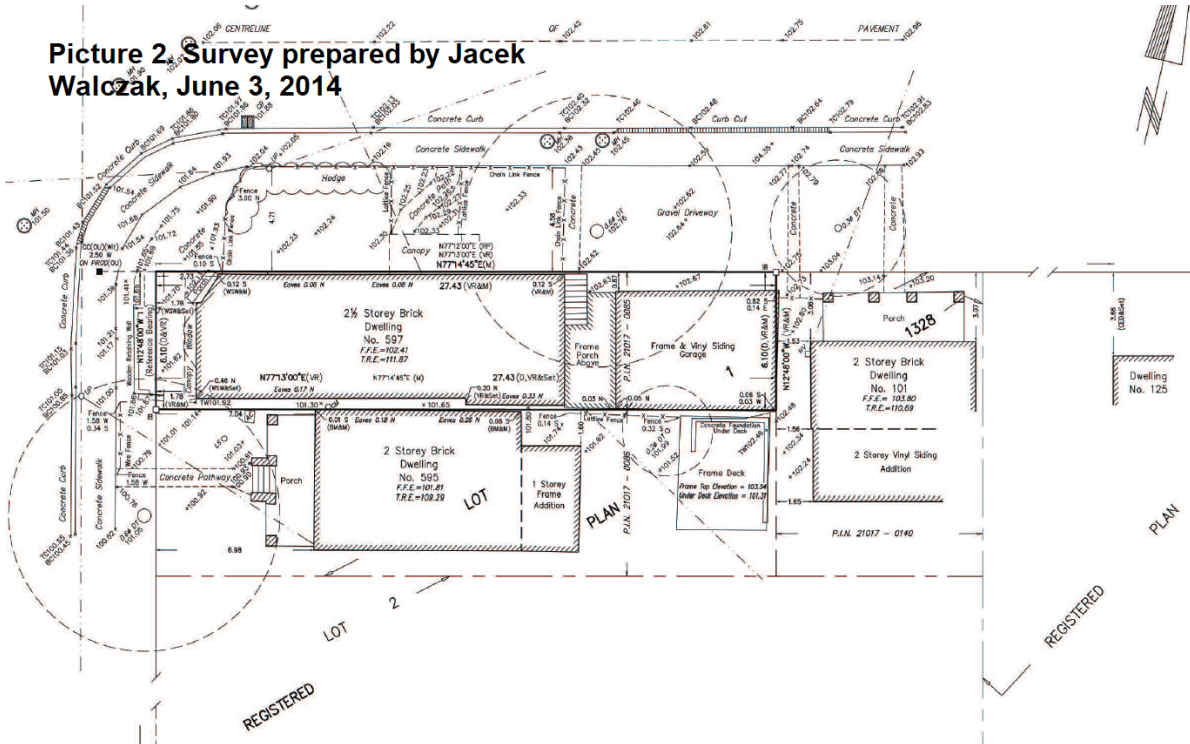


The current City zoning by-law (adopted in 2013) is still under appeal, requiring two sets of zoning examinations and thus two sets of variances. I will defer until later the exact measurements of the sought-for variances, because it is easy to get lost in the details. The application states that the owners' building was built in the "early 1900's" and Toronto's first zoning by-law was 1953. The lot measures 6.1 m (20 feet) by 27.43 m (90 feet), a common size in the Beach neighbourhood. However, the building is built right to the lot lines, which of course is not permitted by any zoning by-law, either the recent one or its predecessor. The second point to consider is that this is an application to "legalize" a number of built form characteristics that have existed since construction. These issues make the case appear much more complex than it is,

which is really just a two-part rear addition without change in the footprint.

Comparing the location map, Picture 1 and the survey (Picture 2), the building falls virtually on the lot lines; the **north setback** is about 10 centimeters and the **south setback** 46 centimeters. The rear garage (eastern most part of building, right) **encroaches** on 101 Duvernet (the owner of this building did not participate in this hearing nor sent anything to the Committee.) The owners intend to remove a tiny encroachment from 101's property and also remove an encroaching fence from 595 Woodbine's land (this is the lot to the south).

Picture 2. Survey prepared by Jacek Walozak, June 3, 2014



Decision of Toronto Local Appeal Body Panel Member: T. Yao
TLAB Case File Number: 18 218718 S45 32 TLAB

Mr. Rendl stated that he had “understood” that 597 and 101 had been created from lot 595 which had at the time an extensive side yard on the Duvernet side. This would explain why 101 has a short rear yard and also the unusually tight building to building distances between 597 and 595 as well as a lack of involvement by those properties’ present owners. To sum up, the present building has virtually no excess space on the lot; this explains the need for landscaping, rear and side yard setbacks and building depth variances. It also explains, to some degree, the floor space index variance: the building starts at 1.35 and seeks a 25% increase to 1.69. The present by-law permits 0.6. The 1.35 is a result of the lack of side yards, just explained, and so, the main issue in this hearing is whether an early 1900’s building, built to the lot lines may still be granted a modest increase in interior space.

To return to the history, on August 15, 2018, the Committee of Adjustment refused the variances and the owners appealed. Once the matter was at the TLAB, the owners changed their plans. Originally, they had sought convert their garage to interior storage space; because of comments by the neighbours, including Mr. Huang, they reconsidered and will now make the garage into a carport, removing at the same time the encroachment on 101 Duvernet and adding a rear stairway to the deck over the carport. This requires that I make an order under s. 45(18(1.1) and I find that this change is minor, and no further notice is needed for this amendment to the original application. The original application required an amendment to the **number of parking spaces**. The amendment requires a variance to the **size of the parking spaces** inside the carport. The size of the parking spaces is not disputed thus the only real issue is the floor space index.

Table 1. Variances sought from Zoning By-law 569-2013			
		required	proposed
1	Building Depth	17 m	25.60 m
2	Rear yard setback	7.5 m	0.07 m
3	Landscaping	Street yard requires 60% (4.31 m ²)	19.3% (1.39 m ²)
	Soft Landscaping	Side yard requires 75% (3.24 m ²)	16.2% (0.7 m ²)
4	Floor Space Index	0.6 times area of the lot	1.69 times area of the lot
5	Side yard setback for addition	.2 m	.14 m
6	Exterior stairs	May be located in the required	.37 m from lot line

**Decision of Toronto Local Appeal Body Panel Member: T. Yao
TLAB Case File Number: 18 218718 S45 32 TLAB**

		setback if >.6 m from lot line	
7	Roof eaves	May project 0.9 m if > .3 m to lot line	Project 0.05 m and located 0.07 m from north side lot line; Project .0.05 m 0.09 m from south side lot line
8	Parking space width	2.9 m	2.6 m
Variances Sought from Zoning By-Law 438-86 (former Toronto zoning by-law)			
1	Gross floor area (this differs from #4 above because of differences in measuring interior space)	0.6 times area of the lot	1.81 times area of the lot
2	Side yard setback from wall containing no openings.	0.45 m	0.14 m from south side yard lot line
	Side yard setback from wall containing openings.	1.2. m	0.55 m from north wall of building to the south
3	Setback from flanking street	3.07 m	0.12 m
4	Exterior stairs encroachment	> .6 m to any lot line	0.37 m to east lot line
5	Rear yard setback	7.5 m	0.07 m
6	Building Depth (this differs from first variance #1 because the by-law limit was smaller)	14 m	25.60 m

MATTERS IN ISSUE

I must be satisfied that the application meets the four tests under s. 45(1) of the *Planning Act*, that is, 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.

The decision must also be consistent with the 2014 Provincial Policy Statement and conform to the 2017 Growth Plan. Furthermore, since the setbacks and existing gross floor area exceedance predate both by-laws, under section 45(2) of the *Planning Act*, the TLAB may permit the enlargement of a legal conforming building. The *Planning Act* does not specify how the TLAB should decide when it considers such an enlargement. That is, the Act does not set out specific tests. It would be reasonable to take the approach that a small expansion that has no impact on the neighbouring

properties would be permissible, provided it is in line with the philosophy expressed in s. 45(1).

EVIDENCE

The owners retained Mr. Rendl to give planning evidence. I qualified him as able to give opinion evidence in the area of land use planning. The other persons listed above each gave evidence as affected neighbours. While I listened to their evidence, they did not elect to become formal participants; Mr. Kanter and Mr. Rendl had no knowledge of their concerns and had no opportunity to prepare rebuttal evidence. Mr. Huang seemed satisfied with the resolution regarding parking spaces. I will deal with the Jarvises concerns in the next section.

ANALYSIS, FINDINGS, REASONS

The Jarvises object to the Floor Space Index variance because the additional massing may block their views of Lake Ontario and because they have a general misgiving as to the numerical extent of the exceedance. Even if they had not come to the hearing, the owners still bear the primary onus of convincing me that the four tests are met.

I reject that view obstruction should prevent the variances from being granted. First, the Jarvises did not bring photographs but simply asserted this proposition. Second, they admitted that the window they spoke of at 98 Duvernet is higher than the roofline of 597 Woodbine as the topography slopes down to the Lake. Together with Mr. Rendl's evidence that Woodbine slopes down to the lake and 98 is about 3 m (10 feet) higher than 597, in my view, the blocking may be considered minor. Finally and most important, there is **no height variance** being sought; and because it is only because of the front to side orientation of the two properties that a side view could be seen at all, I do not accept this objection as an obstacle for the granting of a variance.

I now move onto the floor space index increase. Mr. Rendl's evidence here was very extensive; he pointed out for example that by using the City boulevard along Duvernet, the side yard will be so similar to the front yards along Duvernet that the variances will be undetectable. Along with the modest increase in size is the purpose for the increase, which is in part to facilitate rental housing, for which both the Official Plan and higher-level documents encourage:

2.1.1 Toronto will work with neighbouring municipalities to . . . to develop a [growth framework which;]

(f) . . . encourages GTA municipalities to provide a full range of housing types in terms of form, tenure and affordability, and particularly **encourages the construction of rental housing** in all communities;

3.2.1 The current production of ownership housing, especially condominium apartments, is in abundant supply. What is needed is a healthier balance among high rise ownership housing and other forms of housing, including purpose-built rental housing,

Decision of Toronto Local Appeal Body Panel Member: T. Yao
TLAB Case File Number: 18 218718 S45 32 TLAB

affordable rental housing and affordable low-rise ownership housing for large households with children and multi-family households. . . **More than half of Toronto households rent, yet no new rental housing is being built in quantity.** (My bold)

3.2.1.2 The existing stock of housing will be maintained and replenished. New housing supply will be encouraged through intensification and infill that is consistent with this Plan.

Affordable housing is to be especially promoted. Mr. Huang said that in his view these units were to be luxury apartments. However, Mr. Rendl said the basement unit might be intrinsically affordable, that is, small enough and pitched towards a lower segment of the market that rents might be in the affordable or mid-range scale. The owners propose two small apartments:

the front basement unit	481 sq. ft., and
a third-floor unit	490 sq. ft.

Neither has access to any outdoor amenity space such as a deck or balcony. Both are essentially one bedroom plus a sitting area. The remainder unit is 2007 sq. ft and I assume it is indeed luxury. It is possible that these smaller units could be "affordable" or "mid-range". Affordable rent means equal or less than the Canada Mortgage survey of average Toronto shelter costs, which in October 2018 was \$1468 for a two-bedroom unit and \$1261 for a one-bedroom unit. "Mid-range" is defined as 150% of affordable.

I find that even if these units are not affordable nor even mid-range, they are a contribution to rental housing stock and as such meet the "complete communities" provisions of the Official Plan and higher-level documents. In this respect the built form conclusions together with rental housing policies allow me to conclude that all the statutory considerations are met.

DECISION AND ORDER

I authorize the variances and legal non-conforming use expansion and enlargement as set out in Table 1 on condition that the owners build in substantial compliance with the plans filed January 2, 2019 on the TLAB website as "Appellant_M. Shechtman_Revised Plans, InterArch Inc., Dec. 21, 2019-R2_filed by R. Kanter".

X



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