TORONTO

Toronto Local Appeal Body

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DECISION AND ORDER

Decision Issue Date Friday, April 26, 2019

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): ROSS BAIN

Applicant: SIXTEEN DEGREE STUDIO INC

Property Address/Description: 342 LOGAN AVE

Committee of Adjustment Case File: 18 133618 STE 30 MV

TLAB Case File Number: 18 207282 S45 30 TLAB

Hearing date: Tuesday, December 18, 2018 and

Friday, April 5, 2019

DECISION DELIVERED BY S. GOPIKRISHNA

APPEARANCES

NAME	ROLE	REPRESENTATIVE
JOHANNA HOYT	OWNER	
SIXTEEN DEGREE STUDIO INC	APPLICANT	
ROSS BAIN	APPELLANT/OWNER	KELLY DOYLE
ROSE MINA MUNJEE	PARTICIPANT	

INTRODUCTION AND BACKGROUND

Johanna Hoyt and Ross Bain are the owners of 342 Logan Ave, located in the Municipal Ward of Toronto-Danforth, in the City of Toronto. They applied to the Committee of Adjustment (COA) to alter their two-storey, semi-detached dwelling by constructing a two-storey addition, a deck; as well as a third-storey addition. The COA heard the application on August 1, 2018, and rejected the proposal in its entirety. The

Applicants then appealed the Decision to the Toronto Local Appeal Body (TLAB) on August 9, 2018, which set a hearing date for December 18, 2018. The Hearing commenced and had to be adjourned for reasons discussed in the Evidence section of this Decision, and was completed on April 5, 2019.

MATTERS IN ISSUE

REQUESTED VARIANCES

1. **Section 6(3) Part 1, By-law 438-86**
The by-law limits the residential gross floor area in an area zoned R3 Z0.6 to 0.6 times the area of the lot: 103.74 square metres. The proposed residential gross floor area of the building (173.31 sqm) exceeds the maximum permitted by approximately 69.57 square metres.
2. **Section 6(3) Part II 3.C(I), By-law 438-86**
The by-law requires a semi-detached house in an R3 district to have a side lot line setback of 0.45 metres, where the side wall contains no openings. The proposed side lot line setback is 0 metres on the North side. If a Party wall Administration permit is applied for and issued this variance is not required.
3. **Section 6(3) Part II 3.C(II), By-law 438-86**
The by-law requires a semi-detached house in an R3 district to have a minimum side lot line setback of 0.90 metres, where the side wall contains openings. The proposed side lot line setback is 0.776 metres on the south side
4. **Section 6(3) Part II 3(I), By-Law 438-86**
The by-law requires a building to be located no closer than 0.90 metres to the side wall of an adjacent building that contains no openings. The proposed building is located 0 metres from the adjacent building on the north side. If a Party wall Administration permit is applied for, and issued, this setback is not required

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

At the Hearing that commenced on December 18 , 2018; the Appellants were represented by Ms. Kelly Doyle, an architect, and Ms. Rose Mina Munjee, a Participant and the owner of 344 Logan Ave, attended in opposition to the application

Ms. Doyle stated that the owners intended to make their semi-detached house bigger to adequately meet the needs of their family, “squaring” the two- storey addition at the rear of the house, and adding a third storey, to make the living space more functional. She stated that the living/family room was so narrow that it was “nearly impossible” to have adequate furniture to meet the needs of a small family, while maintaining access to the backyard. She added that the existing, unheated crawlspace below the family room caused the latter to be very cold. The Appellants’ proposal also included a side entry to provide some relief to a cramped front entry due to the narrow property, as well as bedrooms upstairs to meet the needs of their family.

Ms. Doyle said that the Appellants’ intention “was not only to stay within the current City-wide By-Law”, but also to maintain existing outdoor living space, and create the least amount of impact on adjacent properties. In order to achieve these objectives, the Appellants intended to shorten the building length, maintain side yard setbacks, and add a third storey. She said that “building up” would be “consistent” with the existing house footprint , resulting in minimal impact on immediate neighbours.

Describing how the neighbours had made optimal use of their own properties to create more space, she pointed out that the neighbour to the north, at 344 Logan, had an existing single storey addition that extended to the rear beyond the existing back wall of #342 Logan. Ms. Doyle also added that the neighbour to the south, at 338 Logan, had an “existing three storey house, with a two storey addition”, and then reiterated that the proposal for 342 Logan looked to decrease the overall building length slightly, while adding a third storey. She pointed out that the proposal would maintain the existing eaves of the house, and that the new roof would be 1.63m higher than the existing roof, which would be similar in height to 338 Logan.

Ms. Doyle described the neighbourhood as being bounded by Dundas Street East to the north, Carlaw Avenue to the east, Queen Street East to the south, and the CNR train tracks to the west. She said that this area “had a number of dwellings with greater than two stories”. She added that within this area, there were a variety of housing types, “amongst beautiful mature trees”. According to Ms. Doyle, the result was “a varied streetscape and lovely shaded laneways”, and that the proposal for 342 Logan would be compatible with the existing streetscape. When I asked Ms. Doyle to provide me with examples of similar projects approved in the neighbourhood by the COA, she said that she did not have access to such information, and would need time to provide the same.

When I asked Ms. Doyle to describe the compatibility of the proposal with the zoning, she said that there were no variances requested under Section 569-2013, and that the only requested variances were with respect to By-Law 438-86. When asked about the tests of minor and appropriate development, Ms. Doyle asserted that there would be no impact on the neighbouring properties, but did not elaborate any further.

Ms. Munjee then took the stand, and spoke in opposition to the proposal. Referring to a letter filed by the previous owner of her property, she explained how the former owner had retained Ms. Virginia McLean, Q.C., a lawyer, because she wanted the Appellants to provide them with guarantees that would help safeguard her property. Ms. Munjee added that the concerns expressed in that letter from the neighbour were still valid, and said that she was worried about the disruption to her home business, the impact of construction, and the basement being dug out. She reiterated the need for a guarantee from the Appellants indemnifying her for any impact on her property. Mr. Bain then asked to speak, and provided information on the differences of opinion, and conflicts that they experienced with the previous owner- by way of editorial comment, the details are not reproduced here because of the lack of relevance to planning matters.

I asked the Appellants to establish the nexus between the requested variances and the concerns expressed by the neighbours, and could not get a firm answer. I adjourned the session, after instructing the Appellants to have a discussion with the Opposition to establish the nexus between their objections and the variances. I asked the Appellants to provide me with evidence of how the proposal was compatible with higher level provincial policies, as well as the four statutory tests in the Planning Act, and that I expected to review the material before the next hearing.

On January 15, 2019, the Appellants sent in a written explanation with references to the higher level provincial policies, the Official Plan, and a list of COA decisions, and a discussion of how the proposal would not impact the privacy of the neighbour, nor would it reduce their exposure to sunlight, both of which were asserted by the neighbour.. In March 2019, the TLAB received an email from Ms. Munjee regretting her inability to meet with the Appellants in person because of a death in her family, but reiterating her earlier concerns. She emphasized that she expected guarantees from the Appellants to indemnify her. In early April 2019, the Appellants sent an email expressing disappointment about the position taken by Ms. Munjee, and that the “ issue was in her (i.e. Ms. Munjee’s) court” for continued negotiation.

The second hearing took place on April 5, 2019. At this hearing, Ms. Kelly and Mr. Ross gave evidence on behalf of the Appellants, and briefly demonstrated the nexus between the higher level provincial policies, and the proposal. They stated that the only concern raised by the Opposition pertinent to the Appeal was the variance pertaining to the Party wall. Through a brief discussion of Policies 3.1.2 and 4.1.5., they demonstrated how the proposal was compatible with the City’s Official Plan. Their evidence on the proposal’s compatibility with the zoning focused on the fact that they did not need variances under By-law 569-2013, and the only variances requested for, were under By-law 438-86. The COA table was referred to for demonstrating that “many” properties in the neighbourhood had been approved for variances similar to what was requested in their

Appeal. There was no additional evidence provided about the tests of being minor, and the tests of appropriate development. I tried to get the Appellants to address the compatibility between their proposal and the corresponding performance standards under By-Law 438-86, but did not get a satisfactory response. The Appellants responded to my questions about zoning standards and the COA table by stating that they would get a clarification from the City about how the Zoning standards applied to the proposal.

Ms. Munjee repeated the arguments raised at the first hearing, and referenced in her email of March 2019. She stated that her lawyer had advised her not to meet with the Appellants until the requirements in the aforementioned email were met. She also stated that if the construction were to proceed without her demands being fulfilled, both the Appellants and the City of Toronto "could be taken to court". When I asked Ms. Munjee the specific branch of law in which her lawyer specialized, she made a reference to "property standards, then said that she wasn't sure, and could find out if necessary.

I thanked the attendees, and advised them that I would reserve my Decision. On the afternoon of April 5, 2019, I then received an email from the Appellants clarifying the zoning standard sent to them by Ms. Simona Rasanu, a planner with the City of Toronto.

ANALYSIS, FINDINGS, REASONS

I start my analysis by noting that it is trite law to state that the onus of proof rests firmly with the Appellants. In this case, I was disappointed that the Appellants had not come adequately prepared to present their case on December 18, 2018. The adjournment was granted to allow the Parties with an opportunity to settle their differences, but more importantly to define the nexus between the guarantees requested by Ms. Munjee, and the proposal. I also hoped that the hiatus would allow the Appellants a better opportunity to expand on how their proposal satisfied the 4 tests, irrespective of whether a Settlement could be reached with the opposition.

During the second hearing, the Appellants stated that the only possible nexus between the concerns of the neighbour and their proposal, was the variance respecting the party wall. They pointed out that there was no undue hardship faced by the neighbours in the form of dust and digging because redevelopment could not take place without the occurrence of the latter . With respect to the City's being exposed litigation with the Participants if the Appeal were to be allowed, I was not sure of whether the Opposition's reference was to the City of Toronto, or the TLAB, because these are two separate entities. Ms. Munjee could not explain how the City would be exposed to litigation if the Appeal was allowed and couldn't identify the specific branch of law in which her lawyer specialized . Since no details were provided and my questions were not answered, I do not assign any weight to Ms. Munjee's testimony, including the prospect of litigation against the "City", however the latter is defined. I agree with the Appellants that the only nexus between the opposition's concerns and the proposal

involves the party wall; consequently other issues brought up by the opposition are not assigned any weight.

I was satisfied by the Appellants' presentation about how the proposal corresponded to higher level provincial policies, and the Official Plan policies. Their evidence, while cursory, was not contradicted by the Participant. Notwithstanding their bare bones approach to providing evidence, I accept their conclusion that the proposal is consistent with the Official Plan.

However, I was not satisfied with their evidence respecting the other three tests under Section 45(1) of the Planning Act. Irrespective of how many COA decisions are provided to demonstrate the compatibility between the proposal and the zoning, the thrust of the evidence should demonstrate the fulfillment of "performance standards" as set out in the By-law. In the entire presentations on two separate days, and the emails in between, there was no reference to the concept of "performance standards", or any synonym thereof. In fact the sole reference to performance standards is in the forwarded email from the Appellants after the hearing. In this email, Ms. Simona Rasanu, a City planner, refers to zoning "performance standards" , without demonstrating how the proposal meets these standards- I don't expect Ms. Rasanu to provide any such explanation of the compatibility between the proposal and performance standards because providing addressing these standards is solely the responsibility of the Appellants . Based on these comments, I conclude that the proposal does not meet the test of maintaining the intent and purpose of the Zoning By-Law.

While the Appellants assert that there would be no impact on the neighbours by way of loss of privacy, or exposure to sunlight, there is no discussion of which tests this information pertains to- the test of minor, or the test of appropriate development, or both. The Appellants missed an opportunity at the hearing to discuss the lack of impact in detail, and demonstrate the nexus between their evidence and the tests of appropriate development, and minor. Although the COA table may be relied upon to demonstrate the lack of impact by way of secondary evidence; it is not a substitute for a theoretical explanation of how impact is assessed, an actual site specific assessment along those lines, nor the performance standards.

I believe that the Appellants have been given a fair opportunity to explain why their Appeal should be allowed, but have not fulfilled their obligation by providing adequate reasons, either because the evidence is incomplete, or is nebulous in terms of illustrating the nexus between the evidence and the specified tests under Section 45(1) of the Planning Act. Given the lack of appropriate explanations in writing or presentations at the Hearing, I therefore conclude that there is a lack of adequate evidence that can be relied upon to demonstrate the compatibility between the proposal, and the tests of minor, appropriate development, as well maintaining the purpose of the Zoning By-law.

Based on the above commentary highlighting the paucity of evidence respecting all tests under Section 45(1), except upholding the purpose of the Official Plan , I cannot approve the proposal, and consequently refuse the Appeal.

DECISION AND ORDER

1. The Appeal respecting 342 Logan is dismissed in its entirety, and the Decision of the Committee of Adjustment dated August 1, 2018, is confirmed.

So orders the Toronto Local Appeal Body

X

S. Gopikrishna
Panel Chair, Toronto Local Appeal Body