

INTERIM DECISION

Decision Issue Date Thursday, August 30, 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): DAPHNE BROWNE

Applicant: DANIEL WONG

Property Address/Description: 23 LINNSMORE CRES

Committee of Adjustment Case File Number: 17 246926 STE 29 MV

TLAB Case File Number: **18 140459 S45 29 TLAB**

Hearing date: Tuesday, August 21, 2018

DECISION DELIVERED BY T. YAO

APPEARANCES

Name	Role	Representative
Daniel Wong	Applicant	
Tran Luu	Owner	
Daphne Brown	Appellant	
Phat Tim Tieu	Party	Amber Stewart
Marie Charbonneau	Participant	
Italo Leonardi	Participant	
Norma Birbalsingh	Participant	

INTRODUCTION

Tran Luu wishes to add a second floor and rear addition to an existing bungalow at 23 Linnsmore. He needed a number of variances, granted on March 21, 2018 by the

Committee of Adjustment. Daphne Browne, a neighbour, appealed, and so this matter comes to the TLAB

EVIDENCE

I heard from Mr. Romano, planner for Mr. Luu, whom I qualified as able to give opinion evidence on land use planning. I heard from Ms. Browne on her own behalf. I was advised that the parties had reached a settlement for the TLAB’s consideration.

BACKGROUND

There are two by-laws being considered because there are still appeals of the zoning By-law 569-2013 (enacted in 2013), and until they are resolved, the Buildings Department requires applicants to seek variances under both the more recent city-wide harmonized By-law 569-2013 and its predecessor, (former City of Toronto) Zoning By-law 438-86. Prior to the settlement, Mr. Luu needed the following variances for the planned addition:

Table 1. Variances sought for 23 Linnsmore Crescent			
		Required	Proposed
Variances from new city-wide harmonized By-law 569-2013³			
1	Roof eave projection	A projection of 0.9 m if at least 0.3 m from lot line	A projection of 0.32 m but only 0.18 m from lot line
2	Floor space index	0.6 times area of lot	0.66 times area of lot
Under former City of Toronto By-law 439-86			
1	Gross floor area	0.6 times area of lot	0.66 times area of lot
2	Distance from 21 Linnsmore’s side wall, which contains windows	1.2 m	1.14 m
3	South side yard setback (existing condition)	0.9 m	0.5 m

4	Driveway width (existing condition)	2.6 m	2.18 m
5	Proportion of front yard landscaping that is soft landscaping (existing condition)	75%	65.7%

As a result of the settlement, the application has been modified. Under the *Planning Act*, the application needs to be recirculated unless I make a finding under Section 45(18.1.1)¹ that the modifications from the original request are minor, and I make this finding.

MATTERS IN ISSUE

Mr. Romano stated that as far as such documents were applicable, the proposal is consistent with the 2014 Provincial Policy Statement and conforms to the 2017 Growth Plan of the Greater Golden Horseshoe. I must also be satisfied that the application meets 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.

ANALYSIS, FINDINGS, REASONS

Because this is a settlement, I will not review all the evidence. However, I do provide the settlement drawing which shows the proposed changes.

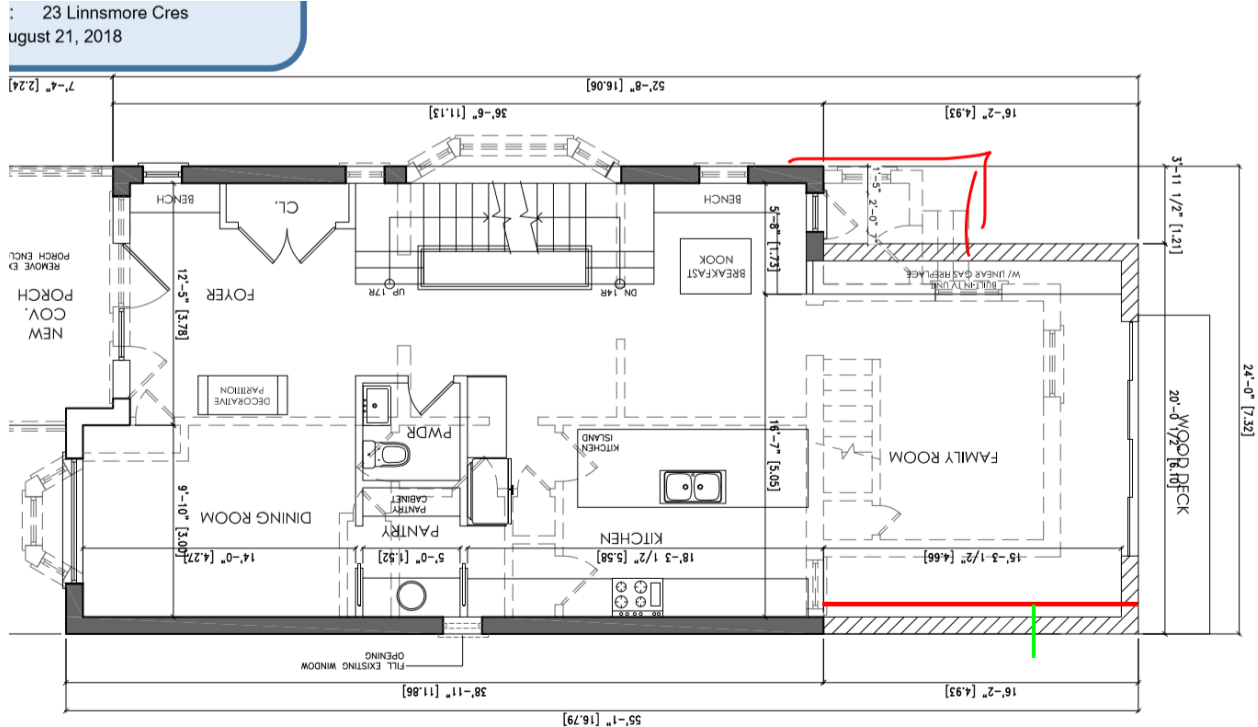
¹ Amended application

(18.1) On an appeal, the Tribunal may make a decision on an application which has been amended from the original application if, before issuing its order, written notice is given to the persons and public bodies who received notice of the original application under subsection (5) and to other persons and agencies prescribed under that subsection. 1993, c. 26, s. 56; 1994, c. 23, s. 26 (7); 2017, c. 23, Sched. 5, s. 80.

Exception

(18.1.1) The Tribunal is not required to give notice under subsection (18.1) if, in its opinion, the amendment to the original application is minor. 2017, c. 23, Sched. 5, s. 98 (5).

Diagram 1. Settlement drawing



Terms of the Settlement

Reaching settlement is one of the purposes of the *Planning Act*² and having a settlement is considered a matter of provincial interest³. Mr. Luu has agreed to pull back the wall of the rear addition (lower heavy line) so that it is .9 m from the lot line and no longer needs the second variance #3 (under 438-86). Additional space will be sought in the opposite corner (“L shape”). Ms. Browne agrees not to oppose the variances.

The project

² 1.1 The purposes of this Act are, (e) to encourage co-operation and co-ordination among various interests;

³ 2. The Minister, . . . and the Tribunal, in carrying out their responsibilities under this Act, shall have regard to, among other matters, matters of provincial interest such as, . . . (n) the resolution of planning conflicts involving public and private interests;

Mr. Luu wishes to increase the space to his bungalow by adding a second storey by going “straight up”, i.e., using the existing walls. He will also replace a rear portion of the bungalow with a new two storey addition, extending about 1.2 m farther than the old wall. The new addition would have lined up with the existing south side wall. Because of the settlement, it will now be set back 0.9 m (as required under the old by-law) and rest on a new foundation wall.

Mr. Luu shares a mutual drive with the neighbour to the north (“ET”⁴) and because the addition must not intrude on the rear parking area to the northeast, that section will be “notched”. From the aerial photo, this configuration is common in rear yards on Linnsmore and was this was one of Ms. Browne’s arguments against the previous minor variances. To Ms. Browne’s credit, she attempted to ensure that “ET”’s interests were protected and that the shifting some of the interior space would not be “robbing Peter to pay Paul”.

The Official Plan

The Official Plan requires that additions be sensitive and generally “fit in”. As may be seen from the following sections, there are many rear additions in the neighbourhood, and they are generally larger than what Mr. Luu proposes.

The Zoning By-law —floor space index

Mr. Luu needs roof projection and floor space variances. Since the roof projections were not an issue I will discuss only floor space and the south side yard setback.

Mr. Romano said that the floor space indexes in the area range from 0.16 to 3.37. On Linnsmore, the existing floor space indexes range from 0.22 to 0.85. All of the five Committee of Adjustment decisions within the last 10 years except for one were granted. The exception was an application to legalize enclosure of a front porch built without a building permit and, even so, it was approved by the OMB in April 2014⁵. Table 2 below sets out information about floor space index variances in the area:

Table 2. Selected Committee of Adjustment decisions for rear additions	
	Floor Space Index

⁴ Mr. or Ms. ET signed a petition in opposition, but I cannot decipher the name.

⁵ “[8] The Applicant has owned the house since 1996 and the porch enclosure was done in April 2013. The construction was done without a Building Permit. The in-force Zoning By-law No. 438-86 allows enclosure of an existing one-storey porch provided certain conditions are satisfied, and in this case, all the conditions are satisfied: the enclosure consists of walls with windows that were erected on the footprint of the existing porch, and under an existing roof.” K. Hussey, PL131194.

53 Linnsmore	legalize and maintain enclosed front porch constructed without permit	0.64
68 Linnsmore	new carport at rear	Under 0.6
77 Linnsmore	rear one storey addition with rooftop deck	Under 0.6
83 Linnsmore	rear two storey addition	0.81
79 Donlands	rear addition to two-unit dwelling	0.82
97-99 Donlands	Rear 2nd floor addition	0.82, 1.04
462 Sammon	Rear 2 storey addition	1.01
664 Greenwood	rear two storey addition	.76
249 Milverton	rear 2nd storey addition to semi-detached	.74
18 Queensdale	rear two storey addition	.76
213 Monarch Park	two storey addition to rear	.88
258 Glebeholme	rear two storey addition	.85

I find that 0.66 requested in this case is less than floor space variances routinely granted in this neighbourhood. While not determinative, it indicates to me that neighbours to these developments with probably the same concerns as Ms. Browne were not able to convince the Committee of Adjustment — that the intent of the Official Plan and zoning by-law was not maintained, or that the additions or changes did not “fit into” the neighbourhood.

The Zoning By-law —side yard setbacks

A side yard setback is required under former by-law 438-86 but not under the new harmonized by-law. Under the new by-law, I believe the building examiner is interpreting “the minimum side yard setback” in s. 10.5.40.71 (1)(C) as .05 which is the sideyard setback to Ms. Browne’s property if the existing wall is extended. This is all rendered moot by Mr. Luu’s agreement to move the wall back .9 m, which would be the permitted setback if no exemption were claimed.

These considerations bear on Ms. Browne’s principal concerns, which are that the new rear addition will deprive her of northern light, which is essential to her work as a visual artist. While not unsympathetic to these issues, I explained to Ms. Browne that the Official Plan evaluates additions in both existing and planned context⁶. The planned context is that both Mr. Luu and she have the right to build additions or a completely

⁶ 3.1.2 Built Form 1. 1. New development will be located and organized to fit with its existing and/or planned context

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new structure 10 m high and within .9 m from the side lot lines. In this light Ms. Browne has benefited for many years from having a bungalow as a neighbourhood when the planned context is two storey, but this benefit is not guaranteed to be forever.

Accordingly, I find the variances for the proposal as modified satisfy the tests under the *Planning Act*. I will await Ms. Stewart's new calculation of the variances and an order will issue when that information is received.

I wish to thank Mr. Luu and Ms. Browne for reaching this settlement and their cooperation throughout.

X



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