

DECISION AND ORDER

Decision Issue Date Monday, April 8, 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): ERIN CRUMP

Applicant: ERIC VAN ZIFFLE

Property Address/Description: 47 DINGWALL AVE

Committee of Adjustment Case File: 18 128287 STE 30 MV

TLAB Case File Number: 18 227371 S45 30 TLAB

Hearing date: Wednesday, February 20, 2019

DECISION DELIVERED BY J. TASSIOPOULOS

APPEARANCES

NAME	ROLE	REPRESENTATIVE
ERIC VAN ZIFFLE	APPLICANT	
ERIN CRUMP	APPELLANT	LEE ENGLISH
MATTHEW LEE	PARTY (TLAB)	SAMANTHA LAMPERT
MARCUS GAGLIARDI	EXPERT WITNESS	

INTRODUCTION AND BACKGROUND

This was a Settlement Hearing before the Toronto Local Appeal Body (TLAB) in the matter of an appeal of the Committee of Adjustment (Committee) approval of a ~~minor~~ variance application as amended, by the owners Amy Kwang and Matthew Lee, and the Appellant Erin Crump.

It was disclosed by the TLAB Panel Member that he had visited the site prior to and in preparation of the hearing.

Decision of Toronto Local Appeal Body Panel Member: J. TASSIOPOULOS
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On August 29, 2018, the Committee approved variances to permit a new two-storey rear addition, a third storey addition, a new front porch, and a rear deck at 47 Dingwall Avenue.

Following the Committee's approval of the variances, the decision was appealed to the TLAB by their neighbour, Erin Crump. On October 10, 2018 a Notice of Hearing for a TLAB hearing on February 20, 2019 was issued. Subsequently, both the Applicant and the Appellant engaged in settlement discussions and reached an agreement in December 2018 on the revised plans dated November 29, 2018 (Exhibit 2a).

These revised plans were reissued and submitted to the City for a Zoning Certificate to confirm the revised variances list agreed to. Toronto Buildings issued a zoning notice on February 11, 2019 indicating technical amendments and additions to the revised variance list. Subsequent to this an Amendment to the Minutes of Settlement was prepared to reflect the zoning notice variances and both Parties consented to their inclusion through an Amended Variance List. The Amendment to the Minutes of Settlement is dated February 15, 2019 (Exhibit 2b).

The TLAB was advised at the Hearing on February 20, 2018 that a Settlement had been reached between the Parties. The revised variances and agreed conditions of approval are set out in Exhibit 3, included as Attachment 1, hereto.

MATTERS IN ISSUE

The Parties entered into Settlement discussions which resulted in changes to the plans and a revised set of variances and conditions. The matter at issue is whether the proposed revised variances, resulting from the revised zoning notice, meet the applicable tests of Section 45(1) of the Planning Act.

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

Ms. Lampert and Mr. English confirmed that the matter had been settled between the Applicant and the Appellant and the agreement was outlined in the Minutes of Settlement. Mr. English indicated that given the agreement he would not be calling any evidence on behalf of the Appellant and that cross-examination of the Applicant's Expert Witness would not be required. Ms. Lampert proceeded to provide background with respect to the process leading up to the Minutes of Settlement and presented evidence in support of the Minutes through Mr. Marcus Gagliardi, whom I found to be qualified to give expert planning opinion evidence before the TLAB. In addition, he recognized his duty to give impartial and truthful evidence to the TLAB. He had previously given evidence before the Committee on this matter.

Mr. Gagliardi provided background and history with respect to the Committee hearing and the variances that were requested initially through a waiver, with respect to height and floor space index. He indicated that these variances were approved by the Committee. He then described the variances that resulted from the agreement between the Applicant and Appellant and included in the Minutes of Settlement and the Amendment to Minutes of Settlement. Mr. Gagliardi noted that the revised variances indicated in Exhibit 3 were in fact reduced and of a slightly lesser impact than the variances originally approved by the Committee.

It was Mr. Gagliardi's evidence that the revised variances and conditions represented good planning met all four tests of s. 45 of the Planning Act and were consistent with all relevant provincial policies. His opinion was also in support with respect to the conditions as outlined in Exhibit 3 and included as Attachment 1.

ANALYSIS, FINDINGS, REASONS

Mr. Gagliardi's uncontested evidence respecting the variances, the Minutes of Settlement, and the Amendment to Minutes of Settlement as agreed to by the Parties, supported the granting of the variances. The TLAB has no reason to question any of the evidence presented, and the Appellant's representative, Mr. English, raised no objection to it.

The TLAB is satisfied that the revised variances, together with the proposed conditions, meet the applicable provincial policy and tests, the latter criteria set out in Section 45(1) of the Planning Act, and above. I accept that the revised variances are minor from the Application that was before and approved by the Committee. No further notice or consideration is required under s. 45 (18 1.1) of the Planning Act of the revised application.

DECISION AND ORDER

The TLAB allows the appeal in part. The proposed dwelling be constructed substantially in accordance with the revised plans dated November 29, 2018 and filed with the TLAB. The variances and the conditions set out in Attachment 1 to this decision, are approved.

X



John Tassiopoulos
Panel Chair, Toronto Local Appeal Body
Signed by: John Tassiopoulos

ATTACHMENT 1

47 Dingwall Avenue, City of Toronto

REVISED VARIANCE LIST

1. **Chapter 10.10.40.40.(1)(A), By-law 569-2013**
The permitted maximum floor space index is 0.6 times the area of the lot (113.71 square metres).
The proposed floor space index is **1.12** times the area of the lot (**212.2** square metres).

2. **Chapter 10.10.40.10(2)(b)(ii), By-law 569-2013**
The maximum permitted height of all side exterior main walls facing a side lot line is 7.5 metres.
The proposed height of the side exterior main walls facing a side lot line is **9.3** metres.

3. **Section 6(3), Part II 3.B.(I), By-law 438-86**
A detached house in a (R2, R3, R4, R4A) district must have a minimum side lot line setback of 0.45 metres for a depth not exceeding 17.0 metres where the side walls contain no openings.
The proposed east side lot line setback is **0.08** metres.

4. **Section 4(2)(a), By-law 438-86**
The maximum permitted building height is 10 metres.
The proposed building height is **10.59** metres.

CONDITIONS:

5. That the proposed dwelling be constructed substantially in accordance with the revised plans dated November 29, 2018 and filed with the TLAB and notwithstanding the preceding:
 - (i) the rear main wall of the basement, main and second floors of the proposed dwelling shall be no closer than 12.91 metres to its rear lot line;
 - (ii) the rear main wall of the third floor of the proposed dwelling shall be no closer than 15.41 metres to its rear lot line;

- (iii) the southerly 6 metres of the third floor portion of the east main wall shall be setback at least 960 millimetres from the easterly side lot line;
- (iv) the rear deck on the ground floor shall not extend beyond the rear main wall of the ground floor by more than 1.229 metres in depth;
- (v) the rear deck on the third floor shall not extend beyond the rear main wall of the third floor by more than 2.5 metres in depth; and
- (vi) the side yard setback from the east lot line shall be at least 72 millimetres.