Toronto Local Appeal Body

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DECISION AND ORDER

Decision Issue Date Monday, May 13, 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): THOMAS TANG

Applicant: SHAUN WU

Property Address/Description: 10 SHOULDICE CRT

Committee of Adjustment Case File Number: 18 239614 NNY 25 MV

TLAB Case File Number: 18 266633 S45 15 TLAB

Hearing date: Wednesday, May 08, 2019

DECISION DELIVERED BY Ian James LORD

APPEARANCES

Name	Role	Representative
Shaun Wu	Applicant/Party	
Judy Tong	Owner/Party	
Thomas Tang	Appellant	

INTRODUCTION

This is an appeal from a decision of the North York Panel of the City of Toronto (City) Committee of Adjustment (COA) approving a single revised variance applicable to 10 Shouldice Court (subject property).

The owners sought, following acquisition, to renovate and enlarge the subject property and to construct a one storey front garage addition, and a one storey sun room addition to the existing dwelling (Project).

The neighbours on both sides of the subject property expressed concerns in writing to the COA, although none were able to attend to voice their opposition. While written submissions are important, actual attendance is often viewed as more weighty participation.

The Appellant is the owner of 12 Shouldice Court, located immediately to the north.

Both the Applicant, Shaun Wu, and the Appellant, Thomas Tang, appeared and gave testimony before the Toronto Local Appeal Body (TLAB). No other persons gave evidence; there were no counsel and no professional witnesses called.

The owners of 8 Shouldice Court, in particular, Sophie Qiu, appeared to seek clarification that no revisions were proposed to the south side of the subject property, adjacent their dwelling. That assurance was acknowledged by the Applicant.

I indicated I had visited the subject property and surroundings and had familiarized myself with the pre-filed materials.

BACKGROUND

The subject property was acquired by the Applicant in or around 2018 and the application to enable the Project was pursued in the latter third of the year. There is no real dispute as to the Application, its subsequent modification to reflect the advice of City Planning Staff, the Notice of the COA Hearing or the fact that its consideration was conducted in the normal course.

Some sensitivity existed as to what was purported to have been said before the COA, as apparently documented in a video record of its meeting.

At the outset of the proceeding on the appeal, Mr. Wu wished to advance several propositions which were the subject of the following rulings:

a) The TLAB does not sit on appeal as to the conduct of the COA or its assessment of the applications before it. The TLAB is limited to having regard to the COA Decision and the materials that the COA had before it. What was said to the COA and how it may have been heard, construed or received is not a matter for the TLAB's function. The video and audio tape of the COA Hearing was ruled in this instance as excluded and as not being of concern or relevance to the TLAB function of considering the variance request on its merits.

b) The request that the appeal be dismissed as being misdirected as to the relief being sought was to be deferred to the hearing of the evidence and the submissions thereafter. Though framed under TLAB Rule 9, no formal Motion had been brought. In the absence of Notice and the protective procedures to avoid surprise,

arguments on a motion to dismiss were ruled inadmissible and for consideration in the argument phase of the Hearing.

c) A request to exclude the late filing of potential exhibits was argued. At issue was whether late disclosure should be condoned. The Parties were asked to exchange any new materials. I ruled the admissibility of a document book, primarily neighbourhood photo's, would be addressed at the time of tendering and on an objection basis, as well as being subject to the laws of privilege, privacy and prejudice.

On the basis of these directions, the Hearing proceeded by hearing from the Applicant and the Appellant, each having the opportunity to ask questions of the other. Submissions followed.

MATTERS IN ISSUE

As indicated, there was but one variance sought in the Project building plans of Shaun Wu and Judy Tong, namely:

1. Chapter 900.3.10(5), By-law No. 569-2013 The minimum required side yard setback is 1.8m. The proposed north side yard setback is **1.22m**.

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 for the Greater Golden Horseshoe for the subject area ('Growth Plan').

Minor Variance – S. 45(1)

In considering the applications for variances form 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

Mr. Wu described the variance to the north side yard setback of the subject property as instrumental to effect a rear sunroom addition and extension westward of a single storey garage structure by approximately 3.25 m (10 feet 8 inches). The north side lot line is angled somewhat as a result of the curvature of Shouldice Court. It appears the existing building already encroaches on the 1.8 m setback of the existing building, at least as set in By-law 569-2013. Construction on the subject property clearly predated the now applicable zoning. The proposed construction further encroached on the 1.8 m setback standard, resulting in the one variance request accommodating all aspects of the Project.

He described the revision to the variance resulting in the 1.22 m request arising from discussion with the City Staff Planner. Ultimately, she wrote a Report that the variance so revised could be considered 'to meet the general intent and purpose of the zoning by-law', one of the requisite tests of which all four must be present and in compliance.

Mr. Wu reviewed portions of the City Official Plan (OP), the '*Neighbourhoods'* designation on the subject property and the inapplicability of any Secondary Plan, Special Policy Area or other site specific policy area mapping characteristic. He asserted the COA found compliance. He acknowledged he had not read, familiarized himself with nor applied the policy language of the OP, especially section 4.1.5, being the criteria for the evaluation, inter alia, of variance requests.

He urged the Planning Staff conclusion as satisfactory of the 'zoning test'.

As to desirable, by way of several photographs of properties within 500 m of the subject property (radius not explained), he demonstrated multiple instances of full garage projections toward the adjacent streets. He suggested such built form was replicated as a common element of area character and responded directly to the Appellant's concern for 'view' interruption. He also provided several COA decisions with side yard setback reductions in excess of that proposed, also within the circle described.

As to whether the request is 'minor', he asked deference to the COA decision, the application of logic to the scale of the change and the representation that the integrity of the appeal turned not on the effect of the side yard setback variance, but a misdirection that the request was for a front lot line setback variance.

Questions by Mr. Tang elicited the admission that the existing structure may encroach into the side yard setback prescribed by the By-law.

Mr. Tang had the following reasons and apprehensions concerning the Project:

1. There was a failure to consider the effects of the garage extension on the neighbours.

2. The reasons given in support of the four tests were not rigorous.

3. The extension had a negative local and community impact, materially reducing sight lines to the disadvantage and disbenefit of the neighbours arising from:

a) restrictions of view plane and sight lines;

b) loss of safety and security from an 'eyes on the street' and reversing out of the driveway

c) inconsistent design parameters to the neighbourhood streetscape and existing built form that failed the OP test to respect and maintain area character.

From this framework, he drew, lay person, 'personal opinion ' consequences:

1. The setback undermined neighbourhood stability contrary to the OP, disrupting openness and established an inappropriate setback character;

2. On the *de Gasperis* decision, that the relief requested was not desirable because of his photographic evidence showing a detraction from streetscape aesthetics, and

3. On the same basis, that the relief is not minor, not for numerical reasons but by virtue of its importance being not minor through the impact of creating a significant barrier between neigbours and a sense of seclusion, loss of sight lines, inconvenience to the public attending the site and potential environmental and other consequences related to snow, wind and property values.

He proffered the suggestion that extra storage space could be accommodated in a rear yard shed structure.

Mr. Tang also referenced section 4.1.5 of the OP asserting that the desirability of respecting and reinforcing the neighbourhood was not being addressed.

In questioning, Mr. Tang was not responsive to the suggestion he misunderstood the variance under consideration, attributing impact to the garage extension toward the street, as opposed to the incursion into the side yard setback.

He acknowledged that all the opinions expressed were his own personal opinions as a 'normal person' and he had taken no professional advice on planning measures or opinions, procedures, property values, or measures of impact.

ANALYSIS, FINDINGS, REASONS

In the absence of any professional opinion evidence, I acknowledge that I am left with an evidentiary base formed largely by lay citizen research on perceived relevant considerations.

As well, I am charged with the responsibility to make a decision on the appeal, and not to create additional problems or defer a decision for resolution at another time.

All of the evidence in this Hearing consisted of lay opinions. While Planning Staff penned a report, Staff were not summonsed and the Report, while described as such by the Applicant, can hardly be accepted as determinative of a professional planning opinion. That said, the Appellant did not challenge the planning opinion expressed and avoided any contrary opinion that the variance requested did not meet the intent and purpose of the zoning by-law.

I accept the submission of the Applicant that the main focus of the concern expressed by Mr. Tang is the increased interruption of views from the immediate front of his property, southerly and westerly. This concern pervaded almost every measure or descriptor of impact including those identified in a) – c), above.

I have looked carefully at the photographs, new and old, provided on line, and Mr. Tang's comprehensive compilation of materials. I am prepared to admit those materials into evidence as Exhibit 1; however, that acceptance is with the significant caveat that many (noted in the Exhibit with an 'N') were forthcoming only during the Hearing and had not been disclosed to the Applicant.

The TLAB does not condone the late presentation of exhibits upon which reliance is intended to be placed arriving at the 11th hour, or later. This is an element of 'trial by ambush', a practice eschewed by the TLAB Rules. In this case, to parse photographs and their commentary as to time of arrival and content was accepted as being unnecessary, subject to the general submission that prejudice should not accrue.

I find from the evidence, as a whole, that there are many examples of area character that demonstrate residential garages protruding towards the street, ahead of the dwelling units themselves. I find there are instances reinforcing the COA decision in this case, of reduced side-yard variances, to below that requested by the Applicant.

I see nothing from the photographs from all sources that suggests a further extension of the garage on the subject property would be out of character or undermine the stability of the neighbourhood. I was directed to no provision in section 4.1.5 of the

OP that I can conclude is infringed upon, either in terms of area aesthetics or any fundamental change in character attributes that would be condoned by an approval.

Mr. Tang was frank in presenting Exhibit 1 to demonstrate on pages 1, 4, 5, 8 and 16 that the proposed front line of the garage does not materially exceed that of other buildings on the same street as the subject property. The extension replicates, if perhaps to a slightly different degree, existing conditions in the immediate neighbourhood.

There is, however, a more fundamental aspect appropriately argued by Mr. Wu and apparently referenced in the consideration of the COA. Namely, that the variance sought is to the side yard setback.

It is not a variance to change the front yard setback or to establish a lesser relationship than that which is permitted as-of-right by the zoning by-law.

On the variance identified by the zoning examiner, there is no consequence of the location of the proposed garage extension other than its effect on the encroachment on the side yard. There is no variance requesting relief for gross floor area because of the enlargement, or to compromise any other siting aspect of the building. The garage extension, including all its implications arguably affecting an adverse impact on view planes, weather, inconvenience, security and otherwise – could occur, largely as-of–right.

None of the evidence that I heard from Mr. Tang focused the assertions of non-compliance with the four tests on the side yard setback variance.

This is unfortunate for if early advice had been taken that focused on the variance itself, settlement discussions might have been more effective or at least the evidence made more focused on impact measures attributable to the variance sought.

The TLAB can appreciate that sometimes change occurs in a hard way. I have no doubt that the concerns and apprehensions of Mr. Tang are genuine, albeit somewhat misdirected in respect of relief aspects not being sought.

And I can appreciate the frustration of Mr. Wu, faced with an apparent battle over arguably irrelevant justifications for opposition, to be the subject of a TLAB appeal.

Such are the inefficiencies of our system. This is a classic example of how a more deliberative communication effort on the part of both neighbours, might have advanced a solution. Non-attendance at the COA Hearing apparently contributed to the lack of communication; however, I have no evidence to suggest that deliberate decisions, inadvertence or any other factor failed to serve the interests of either party.

It is perhaps trite to add some common concerns of the TLAB that advice from counsel or a registered professional planner might have contributed:

1. there is no policy support advanced in the PPS, Growth Plan or the City OP respecting *'Neighbourhoods'* that affords policy recognition to a 'right to a view';

2. Assertions of influence on property values is subject to adequate proof and is not, generally, a matter going to generally accepted planning principles;

3. As-of-right construction entitlements are a relevant consideration in land use planning decision making.

I am not prepared, as argued latterly as an element of a Motion to Dismiss, to find the appeal to be 'frivolous' or 'vexatious'. There was not sufficient evidence presented of conduct unbecoming to support such an allegation at this late stage. I do find that the apprehensions expressed so well by Mr. Tang are genuine but just that: apprehensions. I find they do not rise to the level of constituting proof of 'undue adverse impact', the descriptive measure often used to weigh evidence.

I find there is no provincial policy issue. The improvements sought to the subject property are properly supported in the gradual renovation of this City neighbourhood,and conform.

I accept that the intent of the zoning by-law is maintained, in part by the recognition and maintenance of an existing setback.

I find that the incursion into the side yard to recognize existing both the existing building and to permit a modest building expansion that does not contravene any other zoning performance standard, to be in keeping with neighbourhood examples and to be minor. I find the resultant impacts from construction, if any, and even if real, cannot reasonably be attributed to the variance sought on the evidence that I heard.

I agree with Mr. Tang that the measure of 'desirability' is not the owner/Applicant’s own aspirations, but rather must be inclusive of and hinged to other considerations relevant to the public interest.

In this circumstance, noting that a building incursion of 3.25 m closer to the street can occur as-of-right, I find the Project to be desirable and to support reinvestment in the housing infrastructure of the community, as proposed by the Applicant.

Consequently, I am content that all relevant land use planning considerations have been canvassed and met by the Application and the variance sought.

Again, I express my appreciation for the controlled and respectful demeanor of the witnesses. Toronto is a community of neighbourhoods and neighbourhoods function better where these elements prevail over the lesser angels of human contact.

DECISION AND ORDER

The appeal is dismissed; the decision of the Committee of Adjustment is confirmed.

X 

Ian Lord
Panel Chair, Toronto Local Appeal Body
Signed by: Ian Lord