

DECISION AND ORDER

Decision Issue Date Thursday, May 02, 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): IAN HAMILTON

Applicant: NICHOLAS SKUBIC

Property Address/Description: 825 SHAW ST

Committee of Adjustment Case File Number: 18 189316 STE 19 MV

TLAB Case File Number: **18 261017 S45 19 TLAB**

Hearing date: Tuesday, April 30, 2019

DECISION DELIVERED BY T. YAO

APPEARANCES

Name	Role	Representative
Cianci Investments Corp (Nick Cianci, president)	Owner/Applicant	Mary Flynn-Guglietti
Franco Romano	Expert Witness	
Victoria Hamilton	Appellant	Matthew Di Vona

INTRODUCTION AND BACKGROUND

Cianci Investments is in the process of completely renovating 825 Shaw St, including an underpinning of the basement. The property is north of Bloor, between Bathurst and Ossington. All but the third-floor construction, which is already completed, is within the existing building envelope and did not require a variance and proper building permits were obtained.

Cianci is adding 14 m² to a third-floor, which will bring the Floor Space Index to 1.13 times the lot area of 199 m², so this does need a minor variance. The additional

14 m² represents about .07 FSI, so even before any work was started, the FSI exceeded the 0.60 permitted. The Committee of Adjustment granted the variance on November 7, 2018; but Ian and Victoria Hamilton (the next door neighbours to the south) appealed, and so this matter comes to the TLAB.

At this point the Hamiltons retained Mr. Di Vona, lawyer, and Weston Consultants, planners, and with their assistance, signed Minutes of Settlement on April 29., 2019. The elements of the settlement are that:

- a) Cianci will revise the roofline to incorporate a pitched section at the front and rear elevations. This does not affect the variance sought, except that the condition tying construction to approved plans requires revision;
- b) Cianci agrees to construct a privacy fence at the third-floor level; and
- c) Cianci agrees to construct a fence at ground level.

Both parties wish the TLAB to impose the new roof design as a condition to implement the settlement.

MATTERS IN ISSUE

Even though the parties have settled, the TLAB panel member does not “rubber stamp” the settlement and must still apply the tests under the *Planning Act*. That is, I must be satisfied that the variance meets the four tests under s. 45(1) of the *Planning Act*, that is, whether it:

- maintains the general intent and purpose of the Official Plan;
- maintains the general intent and purpose of the Zoning By-law;
- is desirable for the appropriate development or use of the land; and
- is minor.

In applying the four tests in these circumstances, my approach is to respect a reasonable settlement, bearing in mind I must still exercise an independent judgement.

ANALYSIS, FINDINGS, REASONS

The PPS

Mr. Romano said that these higher-level documents were not necessarily applicable to this case, but insofar as they were, the variance was consistent with the 2014 Provincial Policy Statement and conformed to the Growth Plan for the Greater Golden Horseshoe. I agree they are not applicable.

The Official Plan

The variance must maintain the general intent of the Official Plan, which stipulates that development must respect and reinforcing the existing physical pattern, through development criteria set out in section 4.1. Mr. Roman said that although the concept of Floor Space Index is not explicitly mentioned in these criteria, it is “informed” by related measures: height and massing. He found that the proposed third floor height (below 10 m) and massing maintained the intent of the Official Plan. In his opinion, the height being under the limit of 10 m, and the massing similar to what exists throughout the study area, assisted him in arriving at this conclusion. He said that the variance fully conforms to the Official Plan

Under 4.1.1 of the Official Plan, communities are experiencing constant change while still maintaining the general physical character of the neighbourhood. Any change that does occur, should be sensitive, gradual and generally fit the existing character. In particular, the “heights, massing and scale of nearby properties should be respected and reinforced.”

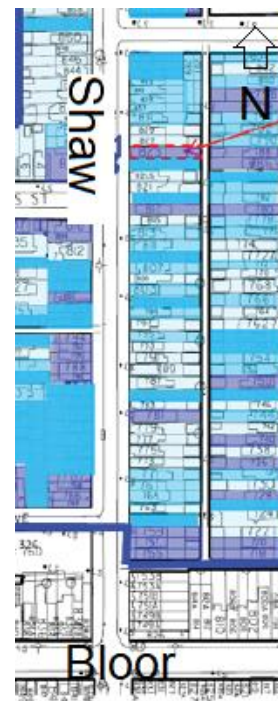
Mr. Romano testified that “existing” was not to be interpreted as a single point in time, but as a continuum; for example 870 Shaw (Committee of Adjustment approval for 1.05 FSI) was in the process of demolition when he wrote the witness statement for Cianci, and today at the hearing stage, 870 Shaw is partially enclosed. In other words, I think he is suggesting that the document acknowledges any development occurs in real time and in some neighbourhoods the goal posts may move and here they are moving in the direction of the FSI sought.

I find the Official Plan test is met on the basis of this evidence.

Zoning Intent and Minor

The diagram (right) shows the existing Floor Space Indexes in a portion of the study area, with the less prevalent dark shade (e.g. the five properties at the south end) indicating FSIs greater than 1.00. The less prevalent dark shade¹ shows indexes between 0.81 and 1.00. Recall that the pre-existing FSI was 1.06 and the sought-for index is 1.13. Similar FSIs have been granted in many instances on Shaw, Crawford, Essex and Pendrith. Looking at the aerial photo, Mr. Romano concluded the rear building wall line on Shaw is fairly regular and not surprisingly in this older downtown area, buildings are built close to side lot lines.

Mr. Romano concluded, “



¹ Less prevalent = purple; more prevalent = royal blue for those viewing this in colour.

Decision of Toronto Local Appeal Body Panel Member: T. YAO
TLAB Case File Number: 18 261017 S45 19 TLAB

An FSI of 1.0 or more than 1 are commonplace in the neighbourhood, in terms of the forms of regeneration that are occurring. in 59 examples [of 500+ properties], and the order of magnitude that is being sought, . . .in terms of the numbers and how they manifest themselves in a three storey building and it is my opinion that there is no unacceptable adverse impact that is of a significant nature, . . so, the variance that is sought is minor

As a result, I agree that these two tests are met.

Desirable for the Appropriate use of the land

Mr. Romano stated:

The variance results in a regeneration of the site that is sensitive and context-suitable. It is an addition, so it minimizes the interruptions in the street [that is, he is saying it is not a tear-down] and in the surrounding area and results in an appropriately sized three-storey dwelling. . .

Conclusion

I find the four tests under the *Planning Act* are met. As a result, I find the settlement is reasonable and acceptable.

DECISION AND ORDER

I authorize the variance in Floor Space Index to 1.13 times the area of the lot, subject to:

1. the Applicant builds in substantial compliance with the revised plans filed as Schedule B to the Minutes of Settlement which is Exhibit 3 to this hearing;
2. the Applicant builds a 6-foot privacy fence screen on the 3rd floor master bedroom walkout as set out in the plans; and
3. The Applicant erects a standard wood fence (minimum 6 feet high) on the shared property line between 823 and 825 Shaw Street.

X



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