

DECISION AND ORDER

Decision Issue Date Wednesday, June 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): TARESA CONSTRUCTION INC

Applicant: TARESA CONSTRUCTION INC

Property Address/Description: 64 EMPRESS AVE

Committee of Adjustment Case File Number: 18 198245 NNY 23 MV (A0556/18NY)

TLAB Case File Number: 18 236323 S45 23 TLAB

Hearing date: Tuesday, June 11, 2019

DECISION DELIVERED BY S. Gopikrishna

APPEARANCES

Appellant	Taresa Construction Inc
Appellant's Legal Rep.	Patrick Bakos
Appellant's Expert Witness	Jane McFarlane
Party	City of Toronto
Party's Legal Rep.	Matthew Schuman
Owner	Anjuman Ara Shahid

INTRODUCTION AND BACKGROUND

The hearing for the Appeal respecting 64 Empress Ave., commenced on February 6, 2019, where the Parties, namely the Appellants (Taresa Construction Inc.), and the City of Toronto (then in opposition to the Appeal) requested an adjournment, through mutual

consent. The adjournment was granted, and the next steps were discussed in my Motion Decision dated February 15, 2019.

The Parties submitted their Statements as per the scheduled deadlines in May 2019, following which they arrived at a Settlement. The Settlement was presented to me for approval on June 11, 2019.

MATTERS IN ISSUE

City-wide Zoning By-law

The subject property is subject to the *City-wide Zoning By-law No. 569-2013, as amended*. Based on By-law No. 569-2013, the subject property is zoned RD (f15; a550) (x5).

Variances Sought

1. The minimum required side yard setback is 1.8 metres. The proposed west side yard setback is 1.55 metres. [Chapter 900.3.10(5) Exceptions for RD Zone, Exception RD5]
2. The permitted maximum lot coverage is 30 percent of the lot area. The proposed lot coverage is 32 percent of the lot area. [Chapter 10.20.30.40.(1) Maximum Lot Coverage]

North York Zoning By-law

The subject property is located in the former municipality of North York and is subject to *Zoning By-law No. 7625, as amended*. Based on *Zoning By-law No. 7625*, the subject property is zoned R4, and is located in the McKee Neighbourhood (Schedule Q) in District No. 4 (Schedule A).

Variances Sought

3. The maximum finished first floor height is 1.5 metres. The proposed finished first floor height is 1.58 metres. [Section 6(30)a - Maximum First Floor Height]
4. The maximum permitted building height is 8.8 metres. The proposed building height is 8.86 metres. [Section 13.2.6 – Maximum Building Height]

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 beginning of the hearing held on June 11, 2019, the Parties confirmed that they had reached a Settlement, which would be presented to the TLAB. Mr. Peter Bakos, a lawyer, represented the Appellant, Taresa Construction Inc., while the City was represented by lawyers Messrs. Mathew Schuman, and Roman Ivanov. Ms. Jane McFarlane, a Registered Professional Planner (RPP), was affirmed to give evidence, and was recognized as an Expert Witness in the area of land use planning.

Ms. McFarlane briefly described the community in which the Subject property is located, and provided a photo tour of the community. The subject property is located in the Willowdale Neighborhood of Toronto, northeast of the intersection of Yonge Street and Sheppard Avenue East. The Subject property is located on the north side of Empress Avenue., and is currently occupied by a one storey brick dwelling, with detached aluminum-clad addition and framed garage in the rear. It is important to note that there is a walk-out basement, whose placement is of interest to this Appeal. While Doris Ave is the western boundary of Ms. McFarlane's study area, the east is bounded by Dudlee, the southern boundary is Elmwood Ave, while Norton Ave forms the northern boundary

Ms. McFarlane then recited the variances, with a brief account of why they were needed. Since some of the variances had changed from the application made to the COA, Mr. Schuman requested that relief be granted from Section 45(18.1.1) of the Planning Act, since he submitted that the changes were minor, and did not require further notice. I agreed with Mr. Schuman's reasoning, and waived the requirements under Section 45(18.1.1.), allowing the Hearing to proceed.

Ms. McFarlane began by identifying higher level Provincial Policies that the proposal had to align with, such as the Growth Policy for the Golden Horseshoe (2017), and the Provincial Policy Statement (2014). In terms of conformity between the proposal and the higher level Provincial Policies, Ms. McFarlane said that the proposal was consistent with OPA 320, which had been crafted by the City such that it was consistent with the

PPS and the Growth Plan- the inference was that the proposal was consistent with the higher level Provincial Policies because of mutual compatibility with OPA 320.

Ms. McFarlane then described the compatibility between the proposal and OPA 320. She discussed Policies 2.3.1, 3.1.2, 3.2.1 and 4.1.5 of OPA 320, followed by a discussion of how the proposal satisfied each of the policies. She also drew my attention to a corpus of decisions made by the COA, dating back ten years, within a 500 m radius of the subject property, to demonstrate that variances similar to those requested by the Appellants, had been approved at multiple sites. She said that the proposed application would permit a dwelling that is consistent with the setbacks, massing, scale and dwelling type of nearby residential properties, and added that the building would respect and reinforce the existing physical character of the neighbourhood, including buildings and open spaces, thereby contributing to the stability of the neighbourhood.

On the basis of this evidence, Ms. McFarlane concluded that the proposal maintained the purpose and intention of the Official Plan.

Ms. McFarlane discussed the compatibility between the proposal and Zoning By-laws 569-2013, and 7625, which applied to the Subject property. She pointed out that the revised application consisted of variances for side yard set-back and lot coverage under By-law 569-2013, and first floor height and Building height under By-law 7625.

She said that the intent of the side yard setback is to ensure appropriate separation distances between dwellings on adjacent lots to allow for privacy and sunlight considerations. She emphasized that the west side yard setback had increased from 1.2m in the previous version of the proposal, to 1.55m in the new proposal, and that the new side yard setback, was consistent with other west side yard setbacks in the community.

Ms. McFarlane discussed the variance respecting Lot Coverage, and said that the intent of the lot coverage, is to ensure an appropriate area of permeable surfaces existed on the Subject property. She pointed out that the requested lot coverage is 32% versus the as-of-right 30%, and added that the proposed lot coverage did not include the rear deck, because of the provision in Section 10.5.30.40(2) of the City wide By-law, which precludes the inclusion of the rear deck into lot coverage calculations.

Ms. McFarlane next spoke to the variance respecting building height under the former North York By-law, and said that the intent of the building height is to ensure there are no unacceptable adverse impacts, respecting shadowing and privacy on adjacent lots. She said that the extra height of 0.06 m would not contribute to any adverse impact, and added that both the Community Planning, and Urban Forestry, did not identify any concerns with the proposed variance. She also stated that the variance had been approved at the COA for 8.89 m, but was being reduced to 8.86 m, as a result of the Settlement with the City.

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Lastly, Ms. McFarlane spoke to the need for a variance for the first floor height from the old By-law (i.e. By-Law 7625), which she said was a consequence of the measure of grade, and where it was measured from. Stating that this was a “technical variance”, she added that both Community Planning and Urban Forestry had not objected to the variance.

Based on these discussions, Ms. McFarlane concluded that the proposal was consistent with the intent, and purpose of the Zoning By-laws.

Ms. McFarlane then discussed how the proposal is desirable for appropriate use of the land.

She said that the reinvestment in housing stock in close proximity to transit, parks and other amenities, in the midst of an area that has experienced significant redevelopment in the recent past, as a result of its proximity to the North York Centre, is consistent with the concept of appropriate use of the land. She emphasized that the new dwelling was consistent with the dwelling types that exist in the neighborhood, as evidenced through the earlier photo walk of the community. Based on this evidence, Ms. McFarlane concluded that the proposal was desirable for the appropriate use of the land.

Finally, Ms. McFarlane discussed the test of how the proposal fulfilled the test of minor. She said that the proposal will not create any new, or unacceptable adverse impacts on the adjacent properties, or streetscape, including shadowing, privacy or overlook. While the proposed dwelling is larger than the existing dwelling, Ms. McFarlane opined that the proposed built form is reasonable, consistent and compatible, with the many new dwellings in the neighborhood.

Based on this evidence, Ms. McFarlane concluded that the proposal fulfilled the test of minor, and asked that the appeal be allowed. In terms of conditions, she agreed to the addition of a standard condition requiring the Appellants to build substantially in accordance with the submitted plans and elevations. Mr. Schuman added that as a part of the Settlement, the City would ask the TLAB to impose the following conditions:

- Any basement walkout must be located at the rear (north) wall of the dwelling and not in any side yard
- The Appellant will apply to the City’s Urban Forestry division for permits to injure or remove private trees, consistent with the provisions of the City’s Municipal Code.

Mr. Bakos said that his client did not take an issue with any of these conditions, and requested that the Appeal be allowed.

I thanked the Parties for their presentation, and advised them that I would reserve my Decision. I directed the Appellants to submit the drawings reflecting the revised Plans and Elevations to be submitted to the TLAB, with the name of the architect/individual preparing the drawings, and the date on which the plans were prepared, indicated

clearly on the drawings. I advised the Parties that these diagrams would be part of the final Order.

On June 12, 2019, I received an update by way of an email from Mr. Bakos, where he stated that "I should receive the architectural plans requested with the architect's name and date on them shortly. When I do, I will deliver the same."

ANALYSIS, FINDINGS, REASONS

It may be noted that the Parties came to a Settlement, resulting in changes being made to the proposal, which was then presented to the TLAB. I also emphasize that there were no Parties nor Participants in opposition to the proposal

Ms. McFarlane's evidence provided me with a high-level overview of how the proposal satisfied the test of upholding the intent and purpose of the OP, because of its compliance with various policies governing Built Form, and the Neighbourhood Policies. She then identified appropriate performance standards for various types of variances being sought, and demonstrated how the variances satisfied the corresponding performance standards. Her evidence about the proposal's compliance with the tests of appropriate development, and minor, focused on reinvestment in the context of an area that has witnessed significant redevelopment, lack of adverse impacts on the neighbours, and conformity with the houses that exist in the vicinity of the Subject property.

While I understand the logic behind Ms. McFarlane's stating that the proposal complied with the higher level policies, by virtue of its agreement with OPA 320, I believe that it would have been important to show direct alignment between the proposal and the higher level Provincial Policies. I believe that direct alignment between the proposal and higher-level policies should be demonstrated, notwithstanding the granularity of many projects that don't rise to the level of significance contemplated in the higher-level Provincial Policies.

Notwithstanding the remarks in the previous paragraph, I agree with the conclusion that the proposal satisfies all tests under Section 45(1), and should be approved. All the modified variances, as submitted to the TLAB, as a result of the Settlement, are approved herewith, and the the Appeal is therefore allowed in part.

The following conditions are imposed on the proposal:

- Construction should take place substantially in accordance with the drawings and elevations submitted to the TLAB. The drawings and elevations must be date stamped, and clearly list the name of the architect or individual who has prepared the drawings.
- Any basement walkout must be located at the rear (north) wall of the dwelling and not in any side yard.

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- The Appellants will apply to the City's Urban Forestry division for permits to injure or remove private trees, consistent with the provisions of the City's Municipal Code.

At the Hearing, we had also agreed in principle to the imposition of a standard condition requiring substantial compliance with the plans and elevations as submitted to the TLAB. I had advised Mr. Bakos at the Hearing, that I required the plans and elevations to be date stamped, with an explicit declaration of who had prepared the drawings.

While the drawings have been supplied, Mr. Bakos stated in his email of July 12, 2019, that he was waiting for the architect to submit the final version of the plans and elevations, with their name, and date of preparation, which would then be forwarded to the TLAB.

This Order is therefore considered to be an Interim Order, since the final Plans and Elevations have not been received by the TLAB. This Order will be confirmed after the submission, and review of the Plans and Elevations respecting 64 Empress Avenue, as per my instructions to the Appellants, at the Hearing.

INTERIM DECISION AND ORDER

1. The Appeal is allowed in part, and the decision of the Committee of Adjustment respecting 64 Empress Ave., dated July 13, 2018, is set aside.
2. The following variances are considered approved:

City-wide Zoning By-law

The subject property is subject to the *City-wide Zoning By-law No. 569-2013, as amended*. Based on By-law No. 569-2013, the subject property is zoned RD (f15; a550) (x5).

Variances Sought

1. The minimum required side yard setback is 1.8 metres. The proposed west side yard setback is 1.55 metres. [Chapter 900.3.10(5) Exceptions for RD Zone, Exception RD5]
2. The permitted maximum lot coverage is 30 percent of the lot area. The proposed lot coverage is 32 percent of the lot area. [Chapter 10.20.30.40.(1) Maximum Lot Coverage]

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The subject property is located in the former municipality of North York and is subject to *Zoning By-law No. 7625, as amended*. Based on *Zoning By-law No. 7625*, the

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subject property is zoned R4, and is located in the McKee Neighbourhood (Schedule Q) in District No. 4 (Schedule A).

Variances Sought

3. The maximum finished first floor height is 1.5 metres. The proposed finished first floor height is 1.58 metres. [Section 6(30)a - Maximum First Floor Height]
4. The maximum permitted building height is 8.8 metres. The proposed building height is 8.86 metres. [Section 13.2.6 – Maximum Building Height]
5. No other variances are granted
6. The approval is subject to the following conditions:
 - a) Any basement walkout must be located at the rear (north) wall of the dwelling and not in any side yard.
 - b) The Appellant will apply to the City's Urban Forestry division for permits to injure or remove private trees, consistent with the provisions of the City's Municipal Code.
7. The Interim Order will be confirmed after the TLAB receives, and reviews the date stamped Plans and Elevations, with the name of the architect, listed clearly on the Plans and Elevations. A Final Decision, accompanied by the relevant Plans, and Elevations, will be issued by the TLAB.

So orders the Toronto Local Appeal Body

X



S. Gopikrishna
Panel Chair, Toronto Local Appeal Body