

# DECISION AND ORDER

**Decision Issue Date**      Wednesday, May 15, 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): ESTHER KIN

Applicant: SARAH IFRAH ARCHITECT INC

Property Address/Description: 97 DELL PARK AVE

Committee of Adjustment Case File Number: 18 245417 NNY 08 MV

TLAB Case File Number: **18 267533 S45 08 TLAB**

**Hearing date:**      Friday, May 10, 2019

**DECISION DELIVERED BY TED YAO**

## APPEARANCES

Name	Role	Representative
Esther Kin, Modechai Kin	Appellant/Owners	Denise Baker
Michael Goldberg	Expert Witness	

## BACKGROUND

The owners, Esther and Modechai Kin, wish to tear down an existing bungalow and build a new three storey house. They need the variances as set out in Table 1 below. Their application was denied at the Committee of Adjustment on November 27, 2018, and they appealed, and hence this matter comes to the TLAB.

<b>Table 1 Variances requested for 97 Dell Park Ave</b>			
<b>From By-law 569-2013<sup>1</sup></b>			
		By-law Standard	Proposed
1	Side yard setback for front porch	1.8 m	1.22 m,
2	Exterior stairs	2 m	2.39 m
3	Vehicle access for corner lot	Must be from a flanking street	From the fronting street
4	Coverage	35%	44.86%
5	Building Height	10 m	10.39 m
6	Number of storeys	2	3
7	Building length	18 m	18.58 m
8	Rear yard setback	7.79 m	6 m
9	Front yard landscaping	Minimum of 60%	56%
10	Driveway width	3.96 m	5.99 m
11	Side yard setback	1.8 m	1.22 m, east and west side yards
<b>From North York Zoning By-law 7625</b>			
12	Building Height	8.8 m	8.91 m
13	Number of storeys	2	3

The application has been recently amended. At the Committee of Adjustment, the owners originally sought 18 variances. A Community Planning Report authored by Yishan Liu, November 13, 2018, expressed concern with the variance permitting three stories instead of two (variance # 6) and with the below grade garage (now deleted). I note in Mr. Goldberg's (the planner's) Decision Analysis that six below grade garage variances have been granted to addresses between 45 and 86 Dell Park, although the

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<sup>1</sup> The present City-wide zoning by-law was adopted in 2013 and because appeals are still being resolved, the City's zoning examiners require two sets of zoning compliance (testing for any variances from 2013 zoning by-law and the previous North York Zoning By-law).

latest of these decisions was 2012. At any rate, an engineer's report revealed that 97 Dell Park was at the lowest point on Dell Park Avenue and this variance is not tenable because the below grade garage would attract drainage from the entire street. Accordingly, this variance request was deleted.

The architect, Sarah Ifrah, revised the drawings, and the number of variances dropped from 18 to 13. This occurred only a few weeks before this hearing. The Kin family's lawyer advised that an effort should be made to give fresh notice to every person who would have been on the circulation list and this was done on April 26, 2019. In a "belt and suspenders" fashion, Ms. Baker (the lawyer) also asks me to grant discretionary relief waiving new notice. No-one appeared at the hearing today.

On May 10, 2019, the TLAB was short-staffed and I asked Ms. Baker if she could compress her evidence in the light of the fact that her case was unopposed. She did so, on the understanding that it would not compromise her clients' right to a full hearing. I express my thanks to Ms. Baker and Mr. Goldberg for so doing.

## **MATTERS IN ISSUE**

I must be satisfied that the application meets the four tests under s. 45(1) of the *Planning Act*, that is, 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.

Planning decisions must also be consistent with and in conformity with higher level planning documents. I do not think these are applicable in this case. This is a hearing in which neither the City of Toronto nor any interested other person attended. Nonetheless, I must exercise my independent judgement as to the statutory tests.

## **EVIDENCE**

Mr. Goldberg was the only witness. I qualified him as able to give opinion evidence in the area of land use planning.

## **ANALYSIS, FINDINGS, REASONS**

### **Notice under s. 18.1**

At the outset, Ms. Baker requested that I make a finding under Section 18.1.1 of the *Planning Act* (waiving notice of amendments to the original application). I have done so and that is part of the Order.

If this Order is not made, then written notice must be given “in the manner prescribed”, which is 10 days’ notice, done 13 days ago April 26, 2019. However, a person receiving such notice has thirty days to indicate that she or he intends to appear at the TLAB hearing. Obviously, Ms. Baker does not wish to rely on that path, and so the supplementary notice of April 26, 2019 is more to ensure me that as much transparency as possible has been undertaken.

In making the finding that the amendments are minor, some flavour may be seen in the planning report of Ms. Liu, the City Planner, in which she requested a lowering of the coverage from 46.5% to 44.46% of the area of the lot. In this application the coverage has gone up to 44.86% but, in my opinion, compared to 44.46%, is minor.

### The context

This property is a corner lot at the south east corner of Englemount and Dell Park Avenue in the Bathurst/Lawrence area. It is southeast of the Lawrence Avenue entrance/exit to the Allen Expressway.

This house is in a neighbourhood with many “tear downs”. Close by, only no. 97 (the subject) and 93 are original houses. The three photos below, showing left to right, nos. 87, 89, part of 91, skipping 93 and then 95 and 97 (subject), show that the predominant character of the replacement buildings are somewhat similar to what is proposed — two stories over a below grade integral garage, high first and second floor ceilings, tight side yards. However, this is a three storey house, an issue that will be addressed below.



25. 87 Dell Park Avenue

Park Avenue



i. Panoramic view southerly towards 95 Del Park Avenue and 97 Dell Park Avenue (Subject Site) (digitally combined)

Mr. Goldberg said

The reinvestment has taken the form of replacement houses . . . [which] are almost universally longer in length, higher in height, greater in GFA, larger in lot coverage than what the original vintages houses were this neighbourhood. To give you a sense, . . . the

small bungalow, that exists on the subject property today, its length is about 7 and a half metres deep, front to back; its width is about 10.28 m wide, it's just a one storey structure and if you do the math on that, you get about an 825 sq. foot bungalow.

### **Side yards (Variance #1 and #11)**

Virtually every Committee of Adjustment decision in Mr. Goldberg's compilation has side yard variances in this range. I find these variances appropriate for the neighbourhood.

### **Front stairs width and front yard landscaping (Variances #2 and #9)**

I find this front stairs width (2.39 m wide instead of 2 m) minor both numerically and in terms of overall impact on the neighbourhood. I make the same finding with respect to landscaping (56% instead of 60%).

### **Access for corner lot not from flanking street (Variance #3)**

Mr. Goldberg said that for some reason, there are no corner lots in this neighbourhood that have obeyed this section of the Zoning by-law; other owners preferring to get access from the frontage side. I find this proposed design meets the Official Plan test of "respecting and reinforcing of the local neighbourhood physical pattern."

### **Coverage (Variance #4)**

This is a common variance and, as set out previously, the City's planning report required a lowering to 44.46% and I found that a new increase to 44.86% is minor, in the circumstances of this case. Variances in the high thirties were granted for nos. 45, 53, 57, 80, 85, 104, 105, and 112 Dell Park. No. 117 had a coverage of 40%, no. 72 a coverage of 45% and 62 a coverage of 55%<sup>2</sup>. The applicants seek 44.86%. I find this is minor, in this specific restricted neighbourhood context.

### **Building Height (Variance #5 and #12)**

The owners request 10.39 m where 10 m is permitted. Ms. Ifrah has created a "crease" at the 10 m level, where the slope is almost flat. Mr. Goldenberg testified that passersby will see this crease as the perceived building height and the additional .39 m ( 1.28 ft) will not be visible from the ground. The owners will be tied to the plans proposed at this hearing.

### **Three stories (Variance #6 and #13)**

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<sup>2</sup> This is a 2016 Committee of Adjustment decision that was refused and approved on appeal.

I had concerns with this variance because I have come across this issue in North York before. Besides his evidence on the design of the roof (Building Height, above), Mr. Goldberg said:

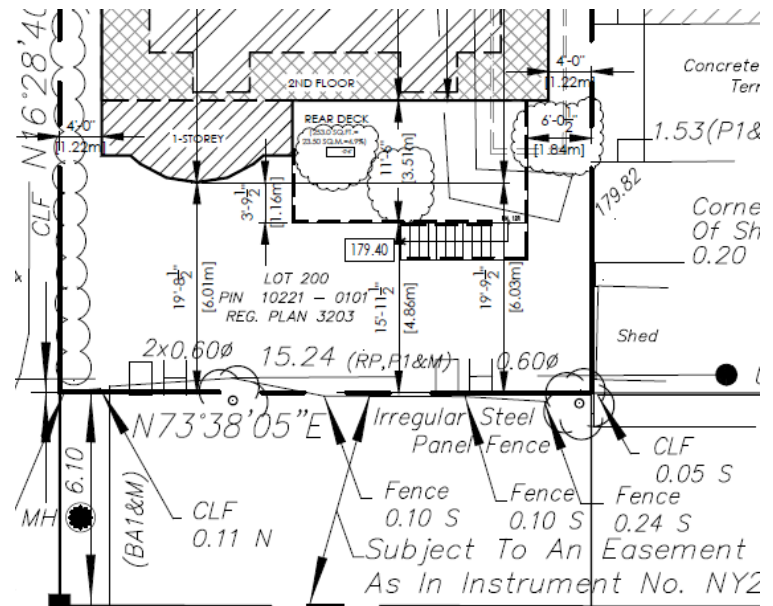
There are many properties that have actual third stories; and there are many properties that have what I call "faux" third floors. In other words, roofs just like this, with dormer windows and they don't have habitable space behind them, but on the outside, they look like three storey stories; but they're actually a two storey house. And you can't tell the difference between that house and this house.

For the two to three blocks in from Bathurst one the east side and on the west side, I'm going to tell you, and this is both north and south of Lawrence, for some distance, . . . that within that band, it's populated predominantly by orthodox Jewish families. And the reason I'm saying that is that the orthodox Jewish families have very many kids. It's not uncommon to have sometimes seven, eight children. It's not uncommon to want to have unencumbered main levels, so that living rooms, dining rooms are basically one space, so that you have family celebrations around the table and so on. So, the third floor is required of this family. . . it's not unique to this family [i.e. the Kin family]. So, I've represented a number of families in the Lawrence and Bathurst neighbourhood, within this **two to three block band**, . . . where this specific variance . . . for a third storey [was sought]. This is not the first one and this will not be the last one. (my bold)

I find that with this explanation, the variance meets the intent of the Zoning By-law, maintains the "full range of housing"<sup>3</sup> provisions of the Official Plan and is desirable for the appropriate development of the lands, **provided** that this policy is restricted in the way Mr. Goldberg's evidence suggests, to this particular neighbourhood and there is evidence that this form of housing will meet the needs of current and future residents.

**Rear yard Setback (Variance #8)**

The rear yard setback requirement is 7.79 m; the **easterly** portion of the rear wall is 8.87 m, beyond the required setback. There is a breakfast nook, creating a one storey "bump out", and the apex of the curved portion is 6.01 m from the rear lot giving rise to the need for this variance<sup>4</sup>. Mr. Goldberg said that this breakfast nook feature was deliberately



<sup>3</sup> 3.2.1 1. A full range of housing, in terms of form, tenure and affordability, across the City and within neighbourhoods, will be provided and maintained to meet the current and future needs of residents.

<sup>4</sup> This is an earlier version of the plans, but it illustrates why this variance is authorized.

located on the west side, away from the neighbour at 95 Dell Park. Again, I consider this to be minor and acceptable provided the owners build in substantial compliance with this plan.

### **Driveway Width (Variance #10)**

The design places the walkway to the front door adjacent to the driveway and Mr. Goldberg said that since this could be used as an auxiliary parking area, the plans examiner has considered it part of the driveway and thus indicated a variance should be sought.

I note that the existing curb cut is to be doubled in width, in effect making the front pedestrian walkway fully accessible to a vehicle. In the compressed circumstances of the case I did not get evidence from Mr. Goldberg as to the parking restrictions in front of 97 Dell Park, but in my experience, street parking is not usually permitted close to the corner. Accordingly, I find that this variance is minor and an appropriate use of the land in this context.

### **Conclusion**

In the above sections I have highlighted a particular aspect of each of the variances, but for brevity I have not attempted to go through each of the four tests for the 13 variances but concentrated on the most relevant test. In conclusion, I find all the variances individually, and in their totality, meet the statutory tests under the *Planning Act*.

### **DECISION AND ORDER**

I find the amendments to the original application are minor and accordingly the TLAB is not required to give notice under 18.1 of the *Planning Act*.

I authorize the variances in Table 1 on condition that the owners build in substantial compliance with the plans circulated April 26, 2019.

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