

DECISION AND ORDER

Decision Issue Date Monday, July 8, 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): SOLANGE DESAUTELS

Applicant: MELISSA MANDEL

Property Address/Description: 56 SEYMOUR AVE

Committee of Adjustment Case File: 17 259357 STE 30 MV (A1230/17TEY)

TLAB Case File Number: **18 157227 S45 30 TLAB**

Hearing date: Tuesday, May 21, 2019

DECISION DELIVERED BY S. Makuch

APPEARANCES

Name	Role	Representative
SOLANGE DESAUTELS	Appellant	
ANDREA MACECEK	Participant	
MELISSA MANDEL	Party (TLAB)/ Applicant	
CITY OF TORONTO	Party (TLAB)	GABE SZOBEL

INTRODUCTION

This is a new hearing of an appeal from a decision of the Committee of Adjustment. That decision granted a variance to allow an FSI/GFA of 0.71 for the construction of a rear two story addition and rear deck when By-law 569-2013 permitted an FSI of .6 and By-law 438-13 also permitted a GFA of 0.6.

BACKGROUND

A first TLAB appeal allowed an appeal by a neighbour and denied the variances. A Request for Review ordered a new Hearing which does not include a review of the first TLAB decision or the review order. This Hearing, therefore, is based entirely on the evidence filed with TLAB and the evidence and argument presented at the May 21, 2019 Hearing.

MATTERS IN ISSUE

The only matter in issue was whether the variances to permit the FSI/GFA increase should be granted when no other variances were required. In other words: should the addition which would be 31.02 m² (334 ft²) larger than the bylaws permitted, be allowed, given that it would meet side yard, rear yard, and length provisions, of the bylaw. Moreover, it would not breach the height limitation in the bylaw. It was the owner's position that she could build an addition with the same impact on neighbours to the north or south as of right.

There were no significant issues raised respecting Provincial policies or plans.

JURISDICTION

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').

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

There were only three witnesses at the Hearing: the Applicant who is the owner of the property, the neighbour to the north who is the appellant, and the neighbour to the south who is a participant. The evidence which I found relevant is as follows.

As stated above there was no need for variances respecting performance standards. The proposed addition did not breach any standards which were designed to prevent negative impacts in the rear yards neighbouring properties. The variances were for an addition mainly to the rear of the existing house and would not have a negative

impact on the streetscape of the neighbourhood. The variances were for an FSI/GFA of 0.71 when the average of such variances granted in the neighbourhood was well above that at 0.94. The Participant had a house on her property with an FSI/GFA of 1.46; over double the density requested.

The lot of the Participant was short with a short backyard. The addition would, therefore, be very close to her rear wall. She would not have the benefit of a rear yard to rear yard separation distance; rather, the relationship was one of short rear yard to side yard. This relationship was rather unique, as a result of the Applicant's property being adjacent to short lots on a street perpendicular to the street it faced. The Appellant's property to the north would have increased shade and the addition would protrude significantly beyond the rear wall of her house.

Most importantly, perhaps, this is an area of small lots where houses are very close to each other and where development will easily affect neighbouring properties. In this case there was no evidence of an attempt being made to accommodate neighbours' concern or to seek a design which would lessen the impact on the neighbours.

ANALYSIS, FINDINGS, REASONS


I find that the issue in this case is unique because it is one in which the applicant only requires one variance in each bylaw, that is for density. The reason for this, in my view, is that the bylaws were not designed to address the situation of a short lot facing a side yard.

However, I also find that the density provision in the bylaws is, in part, designed to address situations where, although a development may meet setback and height limitations, that provision can be used to restrict development where there is an adverse impact, in spite of compliance with those limitations. In this case the proposed addition will have an adverse impact in looming over the property to the south and negatively impacting on the shadow on the property to the north. I therefore conclude, that the variances are not desirable for the appropriate development of the land and thus does not meet that requirement of the Planning Act.

Moreover, I find that they are not desirable because the applicant has made no attempt to make them desirable by a discussion with the neighbours in an attempt to lessen the impact of an addition on their property. I appreciate that it may be difficult and, indeed, impossible to meet the requirements of a neighbour. Indeed, in some cases it may be unnecessary; however if the courts can impose an obligation for good faith consultation respecting major matters such as aboriginal land claims, it would appear that such consultation is desirable with respect to minor variances such as these. At a minimum, a discussion with neighbours prior to seeking a variance would appear appropriate.

DECISION AND ORDER

The appeal is allowed, and the variances are not granted.

X 

S. Makuch
Panel Chair, Toronto Local Appeal