

DECISION AND ORDER

Decision Issue Date Monday, August 12, 2019

PROCEEDING COMMENCED UNDER Section 53, subsection 53(19), and Section 45(12), subsection 45(1) of the Planning Act, R.S.O. 1990, c. P.13, as amended (the "Act")

Appellant(s): JENNIFER ANDERSON

Applicant: SHAWN FREEMAN

Property Address/Description: 9 GIBSON AVE

Committee of Adjustment Case File: 18 185858 STE 27 MV (A0631/18TEY)

TLAB Case File Number: 19 125357 S45 11 TLAB

Hearing date: Thursday, August 01, 2019

DECISION DELIVERED BY T. YAO

APPEARANCES

| NAME | ROLE | REPRESENTATIVE |
|-------------------|-----------------|-----------------|
| Jennifer Anderson | Appellant/owner | Johanna Shapira |
| David McKay | Expert witness | |
| Janice Anderson | In attendance | |

INTRODUCTION

Dr Jennifer Anderson wishes to widen a rear two storey addition to her existing semidetached house at 9 Gibson as well as build a detached two car garage at the rear of her property. To do so, she requests the following variances:

| Table 1. Variances sought for 9 Gibson Ave | | | |
|--|--|----------|----------|
| | | Required | Proposed |
| | | | |

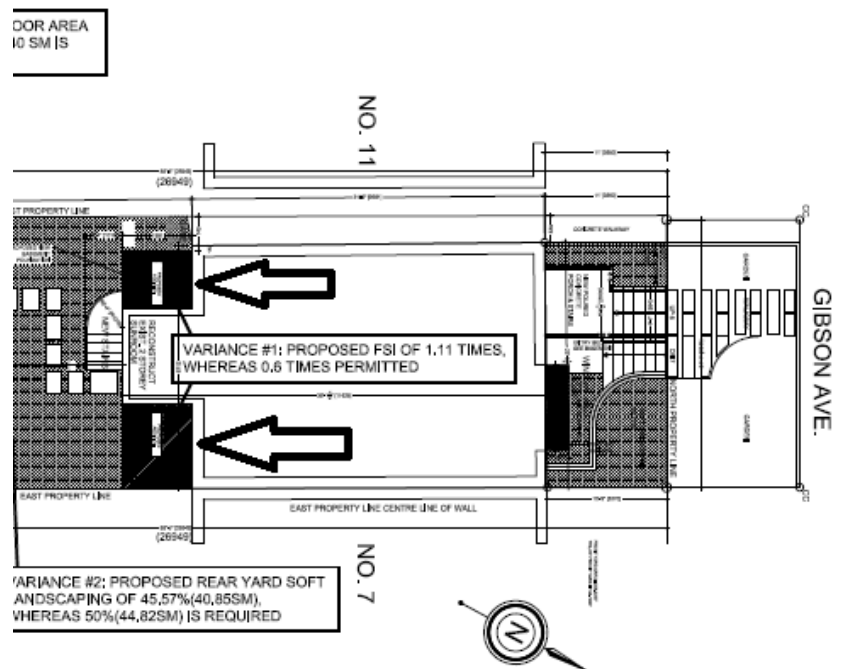
| Variances from Zoning By-law 569-2013 | | | |
|--|---|-------------------|---------------------|
| 1 | Floor space index | 0.6 | 1.11 |
| 2 | Rear yard landscaping | 50% | 45.57 % |
| 3 | Garage rear yard setback to an alley called Ramsden Park Road | 1 m | Zero m |
| 4 | Max size of garage | 40 m ² | 40.8 m ² |

BACKGROUND

The application was refused at the Committee of Adjustment on March 6, 2019; Dr. Anderson appealed and so this matter comes before the TLAB.

This matter includes a settlement. To understand the settlement, it is necessary to describe the proposed construction in some detail. Dr. Anderson's house is in poor condition and she wishes to gut the interior (three floors and basement). She currently has a building permit for the non-variance related changes, i.e., interior, rear deck and front façade) and there was extensive work being performed pursuant to this permit at the time of the hearing. The rear addition consists of two portions. In the diagram below right, Gibson Ave is at the right and the dark squares on the left with arrows show the portions to be added and incorporated as additional gross floor area on the 1st and 2nd floors.

The present rear wall has a centre portion which was "bumped out" by a previous owner. The building length, including this sunroom, is 11.6 m, below the 17 m permitted. This building length will not be changed and no variance is sought or needed for building length.



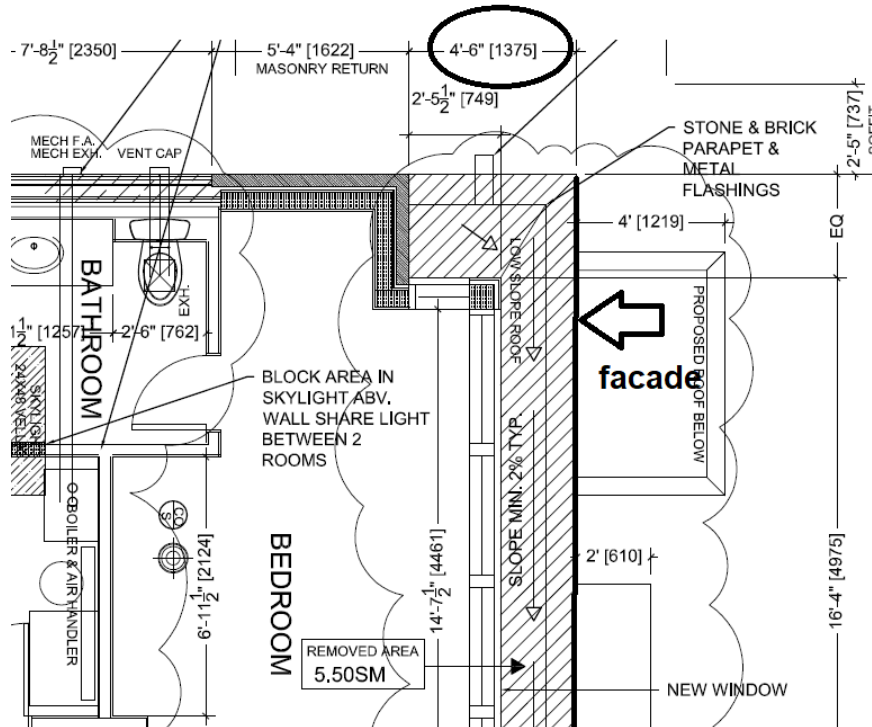
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The existing gross floor area of 207 m² is equivalent to a 1.04 floor space index (0.6 permitted) and these additions will bring the FSI to 1.11. On the third floor rear portion, there will be a deck 1.98 m wide and 5.7 m long extending nearly the entire width of the house.

This 1.11 FSI is a slight reduction from the originally sought-for FSI of 1.12 which was refused at the Committee of Adjustment. The lowering of 0.01 FSI was part of the settlement now to be described. Although the original front façade design did not need any variances, it elicited the greatest concern among Dr. Anderson's neighbours. Accordingly, Dr. Anderson voluntarily recessed the third-floor portion, that is, relocated it slightly back from the street so that it would be less prominent, and made other changes (please see picture to right). She did not need to do this. Although it seems as if there is to be a new third floor, that space already exists. The parapet walls are to be raised, and thus the total additional gross



floor area is about 12 m², distributed over three floors.



The diagram to the left is a detail of this third-floor relocation. The brick portion is stepped back 1.375 m or four feet six inches (the number in the oval). The glazed portion protrudes .749 m from the brick portion so that the third-floor window glass is .626 m from the front façade, or 2.05 feet.

The Harts, who live in the other half of the semi, No 7 Gibson Ave, had additional concerns and these became part of the formal Settlement Agreement. (These are not made an exhibit at the hearing). Specific matters of concern include the shape of the soffit and the treatment of the side walls of the third-floor rear deck. The Settlement Agreement incorporates references to the façade and are the only written documentation of the

agreement discussed previously. However, the Harts are the only other Gibson Avenue neighbours signing the Settlement Agreement.

MATTERS IN ISSUE

The variances must meet all four tests under s. 45(1) of the *Planning Act*: that is, whether the variances individually and cumulatively:

- 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

I heard from David McKay, Dr Anderson's planner, whom I qualified as able to give opinion evidence in the area of land use planning.

ANALYSIS, FINDINGS, REASONS

Because this is a settlement, I will not repeat all the evidence. The variances conform to and are consistent with higher level Provincial and City policies. In particular, 2.2.4 "Transit corridors and station areas" encourages growth which is near to and supportive of transit; Gibson is within walking distance of the Rosedale Subway Station. With respect to the Official Plan, Mr. McKay wrote:

9.4 As noted in Section 2.2.1.1(c), the Downtown is intended to provide a full range of housing opportunities, to reduce the demand for in-bound commuting. Furthermore, a full range of housing opportunities is to be encouraged within Downtown Neighbourhoods through "sensitive infill", such as within the Ramsden Park area (Official Plan, 2.2.1.4(b)).

9.5 Chapter 2.3 of the Official Plan, Neighbourhoods, however, notes that Neighbourhoods are considered to be physically stable areas but not static. They are not to be "frozen in time" and it is expected that "[s]ome physical change will occur over time as enhancements, additions and infill housing occurs on individual sites" (Official Plan, .3.1).

The Official Plan also requires that the development respect and reinforce the existing physical character of the neighbourhood. Mr. McKay found numerous Committee of Adjustment decisions granting higher FSIs in the Broader Context¹; five decisions within the last ten years on Gibson itself which were higher than 1.11. The existing average FSI on Gibson is 1.17, or higher than what Dr Anderson seeks. With respect to "light,

¹ Chosen by Mr. McKay as, south of the CPR, north of Ramsden Park and Yonge to Avenue Road

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privacy and shadow impacts", (Official Plan, 3.1.2.3 d and e). he wrote "the rear additions "fill in" existing structural areas approved for construction . . .(as per permit number 18 161061 BLD 01 SR) and as such do not create any further shadow impacts beyond that which exists and has been approved."

Moving to the other variances, Mr. McKay found none of the existing garages that front on Ramsden Park Road complied with the 1 m setback and indeed many encroached on the public right of way. With respect to the soft landscaping and larger garage, not only is the deficiency small, but Dr. Anderson has, for environmental sustainability reasons, opted for green roofs for the garage and agreed to make these a condition of the granting of the variances.

I find that the *Planning Act* tests are met in considering these variances, cumulatively and individually.

DECISION AND ORDER

I authorize the variances set out in Table 1 on condition that the owner construct in substantial compliance with the site plan, external elevations and green roof in the drawings filed August 1 2019 in the TLAB file.

Note to plan examiner Mr. Abdelmalek. These plans may be found in this file marked as Exhibits 1 and 2. Two of the most important plans are:

- Appendix A: The site plan A1.0 is page 75, Tab G of Mr. McKay's planning report.
- The soffit modification is the "bubbled area" in the plan entitled Third [Floor] GFA 60 m² at page 94, Tab H. This bubbled area supersedes the other similar third floor plans, but only with respect to the soffit modification. That is, Mr. Abdelmakek is requested to look for a "notch" at the south east corner of the soffit.

If any of this is unclear, could Dr Anderson or Mr. Abdelmalek please email me care of the TLAB at tlab@toronto.ca.

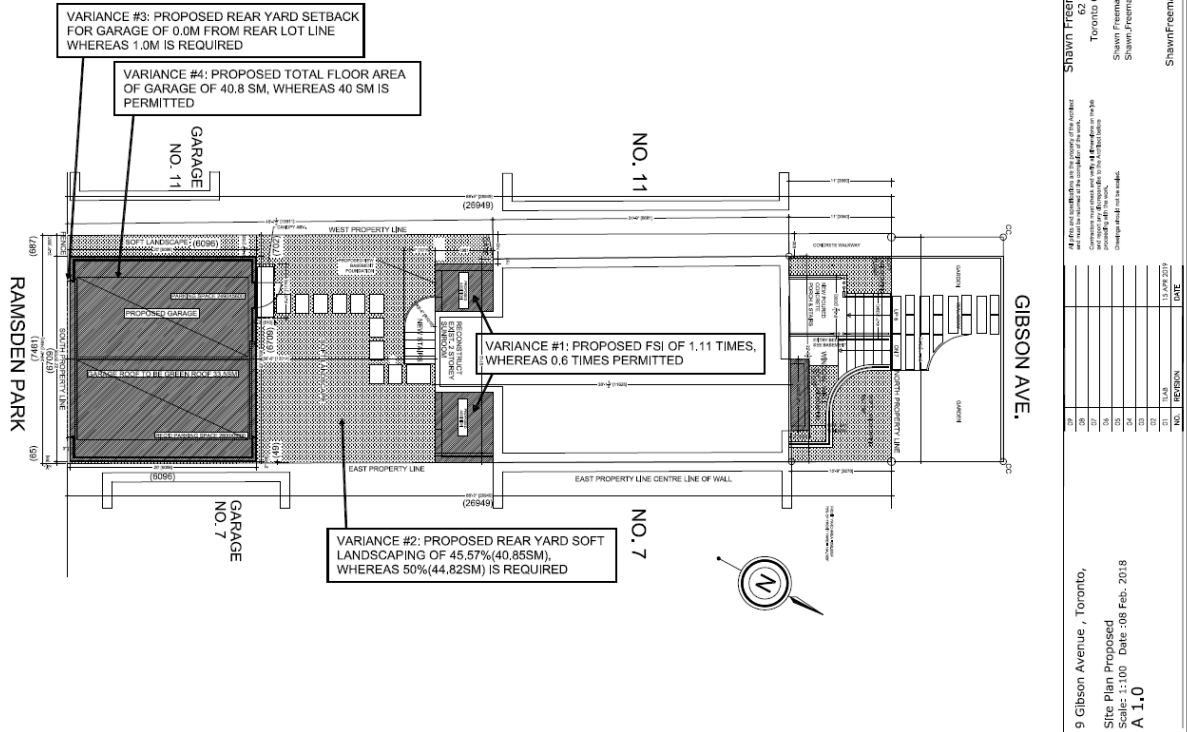
X



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

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Appendix A



Appendix B

