

DECISION AND ORDER

Decision Issue Date Friday, August 23, 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): RITA ARAUJO

Applicant: DREW LASZLO ARCHITECT INC

Property Address/Description: 242 Roselawn Avenue

Committee of Adjustment Case File: 19 109034 NNY 08 MV (A0055/19NY)

TLAB Case File Number: 19 138488 S45 08 TLAB

Hearing date: Thursday, August 08, 2019

DECISION DELIVERED BY JUSTIN LEUNG

APPEARANCES

NAME	ROLE	REPRESENTATIVE
ROCHELLE SHANI SHARP	Owner	
DREW LASZLO ARCHITECT INC	Applicant	
MARVIN LEONARD SHARP	Primary Owner	
RITA ARAUJO	Appellant	NAREG JUSTIN KUTYAN
PAUL JOHNSTON	Expert Witness	

INTRODUCTION

This is an appeal from a decision of the North York Committee of Adjustment (COA) pertaining to a request to permit a series of 3 variances for 242 Roselawn Avenue (subject property).

The variances had been applied for to COA to permit the construction of a two storey addition to the rear of the existing building and a two storey addition to the easterly portion of this building as well.

This property is located in the Yonge-Eglinton neighbourhood of the City of Toronto (City) which is situated south of Castlefield Avenue and bounded by Avenue Road to the west and Rosewell Avenue to the east. The property is located on Roselawn Avenue, south of Castlefield Avenue and north of Eglinton Avenue West.

At the beginning of the hearing, I informed all parties in attendance that I had performed a site visit of this subject property and the neighbourhood and had reviewed all materials related to this appeal.

BACKGROUND

The Application consists of the following requested variances:

- 1. Chapter 10.10.40.10.(1), By-law No. 569-2013**
The maximum permitted building height is 9.00m. The proposed building height is 9.27m.
- 2. Chapter 10.10.40.30.(1), By-law No. 569-2013**
The maximum permitted building depth is 17.00m. The proposed building depth is 17.75m.
- 3. Chapter 900.2.10.(951), By-law No. 569-2013**
The maximum permitted building length is 14.00m. The proposed building length is 16.99m.

These variances were heard and partially approved at the January 23, 2019 North York COA meeting. Variance #1 was approved, variance #2 was refused and variance #3 was approved with modifications, being reduced to 16.0 metres, by the COA.

Subsequently, an appeal was filed on April 10, 2019 by Rita Araujo of 240 Roselawn Avenue within the 20 day appeal period as outlined by the *Planning Act*. The TLAB received the appeal and scheduled a hearing on August 8, 2019 for all relevant parties to attend.

MATTERS IN ISSUE

The minor variance applicant has not actively participated with this Toronto Local Appeal Body (TLAB) appeal. As such, the planning evidence and other considerations of the applicant have not been able to be fully assessed by the TLAB. The TLAB must then solely rely on the evidentiary materials which have been brought before it to reach a ruling on this matter.

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 *Planning 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 commencement of the hearing, the appellant's legal counsel, Nareg Kutyan of KPMG Law, informed the TLAB that the applicant, Drew Laszlo Architect Inc., has not provided formal responses to correspondences provided to them by the *TLAB relating to this appeal nor met any of the filing deadlines established by the Toronto Local Appeal Body-Rules of Practice and Procedure*. In addition, neither the applicant nor registered owners, Rochelle Sharp and Marvin Sharp, of this property were in attendance at the TLAB hearing. Mr. Kutyan stated that even with such circumstances he believes that the TLAB hearing should proceed with the participation of the appellant only. There is email correspondence from the primary owner Marvin Sharp, dated June 10, 2019, where he indicates that they are now proceeding to sell the subject property (242 Roselawn Avenue) and no longer intend to pursue the original minor variance proposal. Subsequently, no further submissions or participation was received from the applicant and owners.

The appellant's expert witness, Paul Johnston of Johnston Litavski Planning Consultants, was called to provide evidence with regards to this appeal. Mr. Johnston stated that shortly after the rendering of the decision by North York COA on this minor

variance matter, he was approached by the appellant to assess the decision made by the COA. He assessed related materials in this instance and also conducted a site visit. He opined that based on this initial review, that the proposal does not meet the four tests for a minor variance as outlined in the *Planning Act*.

Mr. Johnston described that the subject property has a lot frontage of 7 metres, lot depth of 41 metres and lot area of 309 square metres with a shared right of way with adjacent 240 Roselawn Avenue property. There is a two storey semi-detached dwelling at this property attached to an adjacent dwelling. To the immediate south of this property is Eglinton Park. The neighbourhood is typified by narrow and deep lots. The subject property's building footprint is described as one of the deepest in relation to other neighbouring houses. This proposed addition to the rear of the building would act to alter the existing neighbourhood character and aesthetics.

Official Plan Amendment 320 (OPA 320), the City's amendments to its Apartment Neighbourhoods, Healthy Neighbourhoods, and Neighbourhood policies of the City's Official Plan as part of City's 5 year Official Plan review, is cited by Mr. Johnston by focusing on the defined term of 'geographic neighbourhood' as outlined in this amendment. 'Geographic neighbourhood' acts to delineate that a development site must conform to the overall neighbourhood context that it is situated in. With the neighbourhood in question, the area is characterized by low rise dwellings. The maximum building length of 14 metres is applicable for this area as part of City's Zoning By-law 569-2013. The maximum building depth is 17 metres which is separately addressed by the Zoning By-law. Development criteria such as fit and respecting the existing physical character of area are also applicable for this proposal. The proposed extension of the building length would not be consistent with this criteria. In conducting his site visit of the area, Mr. Johnston noted that this proposed addition would have a negative visual impact for several adjacent residential properties and could adversely affect the enjoyment of those properties rear yards. Although this neighbourhood is within an urban context, this addition would not be appropriate for the prevailing neighbourhood rhythm and fabric.

Mr. Johnston recognized the provincial growth policies, such as the Growth Plan for the Greater Golden Horseshoe, but he does not believe they are pertinent to this single residential dwelling addition proposal. As part of his assessment, he argues that the four tests for a minor variance, listed above, are not met for this proposal, and as such this minor variance proposal should be refused by the TLAB. In addition, the character and massing of this proposal would not be adaptable to this neighbourhood. A potential 'tunneling condition' is cited by Mr. Johnston which would result in deteriorated privacy and sunlight access to adjacent properties.

Mr. Johnston goes on to outline the City's Zoning By-law 569-2013 which acts to implement the City's Official Plan policies. Prevailing side and rear yard setback and landscaped space are preserved through established building length and depth requirements. A 1988 area specific Zoning By-law exception acted to restrict the building length to 14 metres which was adopted as part of the City's new Zoning By-law. He also returned to describing how the massing of this proposed addition is incompatible in relation to the neighbouring properties which would not make it

desirable for the neighbourhood in question. In looking at the series of minor variances, they would not be minor in nature as the proposal, especially with the rear addition, would create an overlook condition. In addition, he opined that the length and depth variances should be refused and would not meet municipal planning policies.

When inquired by the presiding TLAB member if they had conducted research on other in-fill development in the area, Mr. Johnston responded that he had. However, he had only found 1 similar proposal which was located further away from this immediate neighbourhood. There were no similar proposals in this study area. In terms of the right of way between the subject property and 240 Roselawn Avenue, Mr. Johnston commented that it appears this would be more of a pedestrian access way due to its narrow dimensions and would not be feasible in terms of vehicle parking. He goes on to note that several of the properties along the street have front facing parking pads. When asked to further elaborate on potential privacy issues, Mr. Johnston responded that this would be most evident as it related to the enjoyment of his client's rear yard. Mr. Johnston, when asked about the individual variance requests and how they appeared to be a slight increase from the established numerical values of the Zoning By-law, he indicated that the proposed building length variance has not been approved for any properties in the immediate area. As such, the building length requirement of 14 metres has been retained in this neighbourhood thus far. This proposal would then be prominent in appearances in relation to the other residential properties. Mr. Johnston does concur with the TLAB member that in-fill development is a development pattern which has been occurring in this area, but he did articulate that this proposal is inconsistent with other in-fill or site alteration projects which have been happening in the area recently. In addition, he contends that OPA 320 provided more specific policy guidance to require more localized assessment of in-fill development and how it relates to immediate properties of the neighbourhood it is situated in. The Applicant did not do this assessment work.

The appellant Rita Araujo outlined that at the previous COA meeting, while she did not object to the height variance the building depth and length variances were raised as being of concerning. Variance #3 pertaining to building length was reduced so as to address privacy and sunlight issues as it related to her neighbouring property. Mr. Kutyan, as part of his representations for Ms. Araujo, requested that the TLAB review and consider Ms. Araujo written submission to the COA earlier as also being relevant for the matter at hand. In addition, Mr. Kutyan had inquired if the TLAB may have to make a ruling with respect to the non-attendance and non-participation of the application in this matter. No other parties were present and as such no further submissions were presented to the TLAB.

Ms Araujo's submission outlines specific planning case law to posit her contention that the proposal being considered would not constitute good planning. The *Vincent v. DeGasperis* case is used to reinforce the argument that the overall size and scale of the proposal would not be minor in context. In addition, *Fiorino v Toronto (City) Committee of Adjustment* is further presented to demonstrate how a proposal must be in keeping with the broader neighbourhood character. In terms of the Zoning By-law, Ms. Araujo states that the building length requirement is to ensure that the prevailing housing footprints would be consistent for the area. Allowing variance #3 would act to

disrupt the neighbourhood fabric. She further recites the development criteria contained in the City's Official Plan, as previously outlined by her expert witness Mr. Johnston, in surmising that this proposal is not in keeping with municipal policy planning objectives. Finally, as the applicant should serve to be the proponent for this proposal, Ms. Araujo does not believe they have presented an incontrovertible and persuasive planning rationale for their minor variance request to the COA. In assessing all these issues comprehensively, it would appear the proposal is not appropriate and should not be allowed to proceed.

ANALYSIS, FINDINGS, REASONS

Both the materials presented by the appellant's expert witness and the written submission as referenced to by the appellant focus on the development criteria for Neighbourhoods as contained in OPA 320. As previously described, this Official Plan Amendment to the City's Official Plan was to further define and revise policies as they related to the development and character of the City's residential areas. It was approved by City Council December 9 and 10, 2015 and subsequently approved, with modification, by the Minister of Municipal Affairs on July 4, 2016. Subsequently, this Amendment was appealed by several parties to the Local Planning Appeal Tribunal (LPAT). ON December 7, 2018, a settlement was reached with the parties to this appeal which has resulted in this Amendment now coming into full force and effect for the entire City.

It is noted that OPA 320 provides more specific policy guidance to higher density development such as apartment buildings. Most notably the policies elaborate on how further intensification in existing apartment block areas could occur and how revitalization of these existing blocks can be achieved. A substantial portion of this Amendment does focus on that development form underlining its increasing significance to the City's residential inventory. However, the element of OPA 320 which is most pertinent to this appeal relates to its Neighbourhood policies. Here, Paul Bain, land use planner representing the City, explained to the LPAT the development criteria for established neighbourhoods as follows:

Mr. Bain's commentary illustrates that the City, while recognizing that regeneration in existing residential neighbourhoods will occur, also opines that such development must be accomplished in a manner which acts to complement and

¹ Preserved Stories (2018, December 19). Settlement reached regarding City of Toronto Official Plan Amendment (OPA) 320. Retrieved from <https://preservedstories.com/2018/12/19/settlement-reached-regarding-city-of-toronto-official-plan-amendment-opa-320-text-and-pdf-is-available-at-this-post/>

enhance the current residential character in which it will occupy. While the Amendment does provide certain exceptions to larger and irregular lots from having to comply as rigidly to such requirements, this development criteria as promulgated by the City provides a more formalized rubric which developers and builders will have to adhere to when approaching in-fill development and alteration work for existing residential dwellings.

In relation to this appeal, the expert witness has outlined in comprehensive detail, that through a series of site visits to the neighbourhood and research on the development pattern of the area, how this minor variance proposal is unique in that a similar development of this scale and massing has not occurred thus far in the immediate area. As such, the existing housing pattern which defines this neighbourhood could be disrupted by the introduction by this proposed addition to the rear and easterly portion of the existing house on this subject property. In addition, while minor variance approvals are not precedent setting and are to be assessed on a case-by-case basis, the allowance of this minor variance could potentially result in further development proposals of a similar nature being pursued which, in turn, could constitute an 'over development' phenomenon beginning to take hold in this area. This would act to undermine the neighbourhood character. The appellant's written submission provides similar commentary in providing more specific statements relating to the neighbourhood in which she resides by describing how this proposal would result in a new building footprint which is narrower than other existing housing stock. The visual impact to neighbouring properties would be enhanced, this would negatively affect her and neighbouring property-owners enjoyment of their properties thereby interrupting the existing neighbourhood cohesiveness contrary to the prescribed development criteria of the City's Official Plan.

With this, the evidence as provided by both parties articulated the intent of OPA 320 in describing how this minor variance proposal does not adhere to Neighbourhood policies and would be inappropriate for this area of Yonge-Eglinton neighbourhood.

In terms of Zoning By-law 569-2013, again both parties who presented to the TLAB specifically identified the building length requirement of 14 metres for residential dwellings. They contend that while the Official Plan provides guidance on how development is to unfold over time, the Zoning By-law acts to implement the objectives and intent of the City's Official Plan by regulating and controlling it at the 'ground level'. Here, the Witness Statement as submitted by the expert witness has a series of photographs of the existing housing stock for the neighbourhood (Appendix 5 of Witness Statement), providing a visual statement, which clearly shows the prevailing housing footprints for residential dwellings, located in this area. This, and coupled with site visit as conducted by the presiding TLAB member, lends credence to the argument that the building length of the houses in the area are of a uniform composition. The expert witness had also described how the building length provisions of the current Zoning By-law 569-2013 were carried over from the previous Zoning By-law 438-86. He surmises that this decision was made by City planners to recognize the relevancy of this zoning provision to continue to be applicable for such residential areas moving forward. The appellant's written submission focuses more specifically on how this elongated structure, especially in relation to the rear addition, would protrude into the rear yard

and would compromise privacy and sunlight conditions for the neighbouring properties. As the Zoning By-law acts as the implementing planning instrument of the Official Plan, it has been written to ensure that the prevailing characteristics of a neighbourhood are retained as effectively as possible. Within such a context, it is appropriate to surmise that the specific lot dimensions as outlined for this zone were adopted to ensure that the overall neighbourhood characteristics could be preserved and enhanced over the long term. Attempts to interrupt this character would not be in keeping with City planning policies and could create undesirable local development conditions.

At the beginning of the hearing, it was expressed by the appellant that the applicant has not been an active participant in this appeal and its proceedings. They had provided an email correspondence to the TLAB indicating they were pursuing sale of their property and were no longer intending to pursue this minor variance proposal. It is noted that the TLAB focuses on the planning merits and legal parameters of the appeals brought before it. The TLAB is typically not involved in property/land ownership matters. As minor variance approvals effective 'run with the land', ownership is not generally taken into consideration as part the review process of such applications. However, as part of established practices as demonstrated in other TLAB appeals, the non-participation of the applicant does not act to disrupt this appeal and its related hearing from proceeding. Conversely, in such circumstances the TLAB can only assess the materials of the parties who have elected to participate in this appeals process and render a decision on the matter as per the *Toronto Local Appeal Body - Rules of Practice and Procedure*.

With the material that have been presented, I have chosen to accept the evidence of the appellant, who is also the sole participant to this appeal, in arguing for the refusal of these variances. The appellant, through their minor variance and appeal materials, showed that the proposed addition to the rear and easterly portion of the subject property would be inconsistent with the development pattern which has been occurring in the broader area. The appellant and their expert witness presented issues such as privacy loss and loss of sunlight access in a persuasive manner by demonstrating that the impact would not only be towards their adjacent property of 240 Roselawn Avenue but for the other neighbouring properties as well. The development criteria of the Official Plan as articulated by the expert witness comprehensively outlines the planning direction of the City as it relates to development in established neighbourhoods. This variance proposal shows that, while in fill development and alterations in existing neighbourhoods is contemplated for by the City, such development must be done with a view to the retention of the neighbourhood character. It must not be done in a manner which acts to transform and irreparably damage such character. The preservation of such character ensures that existing residents are able to continue to enjoy their neighbourhood while also attracting new residents who would be encouraged to locate to such an area specifically for these existing neighbourhood traits. The vibrancy of these neighbourhoods can be retained while also providing a welcoming environment for new families to locate in the area as well.

DECISION AND ORDER

The appeal is allowed, and the decision of the Committee of Adjustment is set aside.
The variances are not authorized.

X 

Justin Leung
Panel Chair, Toronto Local Appeal Body
Signed by: Leung, Justin