

DECISION AND ORDER

Decision Issue Date **Wednesday, August 14, 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): Ling Hu

Applicant: Melissa Shea

Property Address/Description: 369 Walmer Rd

Committee of Adjustment Case File: 18 243929 STE 21 CO (B0091/18TEY), 18 243934 STE 21 MV (A0983/18TEY), 18 243935 STE 21 MV (A0982/18TEY)

TLAB Case File Number: 19 121602 S53 12 TLAB, 19 121614 S45 12 TLAB, 19 121616 S45 12 TLAB

Hearing date: Tuesday, July 09, 2019

DECISION DELIVERED BY S. Makuch

REGISTERED PARTIES AND PARTICIPANTS

Appellant	Ling Hu
Appellant's Legal Rep.	Raj Kehar
Party	City of Toronto
Party's Legal Rep.	Ben Baena
Party	Susannah Ketchum
Party	Sarah Coysh
Party	Peter Ketchum
Participant	Stephanie Churcher
Participant	Dan Woloszanskyj

Participant	Regan Anne Stewart
Participant	Yves St-Cyr
Participant	Cheryl Ann McEwen
Participant	Rob McEwen
Participant	Graham Campbell
Participant	Elizabeth Rotman
Participant	Joseph Heath
Participant	Edward Eng
Participant	Dale Ruth Joffe
Participant	Judith Leslie Greenbaum
Participant	Bernard Boaz Fresco
Participant	Karin Ann Fresco
Participant	Gordon David Hoops
Participant	Demetris Michaelides
Participant	Ulrich Menzefricke
Expert Witness	David Hardy
Expert Witness	Sebastian Bravo

INTRODUCTION

This Hearing respected an application in which the Committee of Adjustment refused: (1) to permit the severance of the property, known as 369 Walmer Rd., into two undersized residential lots subject to various easements/rights of way, and (2) to grant a number of variances for the construction of a new three story semi-detached duplex and a rear detached garage on the created lots. The existing dwelling which contained three units would be demolished.

BACKGROUND

The application was strongly opposed by adjacent property owners to the north and south as well as neighbours to the south east. A land use planner who owns

property and resides across the street from the property gave expert testimony in opposition, as did the abutting neighbours. A planner and arborist gave testimony in favour of the application.

MATTERS IN ISSUE

The matters in issue related to conformity with the Provincial Policy Statement (PPS), the Growth Plan for the Greater Golden Horseshoe (Growth Plan), and the four tests of the Planning Act relating to minor variances and the provisions of the Planning Act regarding the subdivision of land. However, towards the end of three days of evidence, the Parties reached a settlement. That settlement indicates that the real concerns of the parties in opposition relate to the impact of the proposed building on the neighbours. Those concerns related to such matters as: the protrusion of the proposed building into the rear yard, the overlook from decks, the width of the driveway, a side window, and the appearance of the basement.

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

The evidence was that the matter was settled on the following terms:

1. The building is to be moved forward by 3 metres in the rear yard by reducing the front porch by 1.3 metres and moving the front wall towards the tree protection zone by 1.3 metres and reducing the building depth itself by 0.4 metres.

2. Adding dormers to the front facade.

3. Having double doors as the front entry.
4. Setting the third floor decks 1.1 metres from the side walls of the building and the decks having 2 metres opaque side screening.
5. Setting the second floor decks 1.1 metres in from the side walls.
6. The applicant replacing the existing fence along the south property line with a new 2 metre high fence and constructing a 6-inch curb from the fence to the western property line.
7. The building being constructed so that the driveway is 0.4 metres wider than currently proposed and the northern side yard setback being 0.8 metres.
8. A detailed landscape plan will be prepared for the front yard including new plantings to hide the basement windows.
9. A revised site plan and elevations will be prepared showing the above changes and construction will be substantially in accordance with the revised site plan and elevations.

ANALYSIS, FINDINGS, REASONS

The evidence of the planners supported the settlement and the terms of settlement set out above, and found the revised application met the requirements of the Planning Act and relevant Provincial Policy and were minor revisions. Subject to the revisions and terms set out above, the consent and variances cumulatively and individually meet the requirements sections 45 and 51 of the Planning Act and meet relevant Provincial policy requirements. Moreover, no new notice is required as a result of the minor amendments pursuant to s. 45 (18.1.1) of the Planning Act.

It is nevertheless necessary that I ensure that the plans are revised to accurately reflect the settlement. Therefore, the revised Plans must be filed with TLAB for final approval at which time an order granting the appeal can be issued.

DECISION AND ORDER

The appeal is allowed, based on the terms of the settlement, the consent is granted, and the variances approved, both in principle, subject to the final approval of plans which will show;

1. the building moved forward by 3 metres in the rear yard, by reducing the porch by, 1.3 metres and moving the front wall towards the tree protection zone by 1.3 metres and reducing the building depth itself by 0.4 metres.
2. dormers added to the front facade.

3. double doors as the front entry.
4. the third floor decks set 1.1 metres from the side walls of the building and having 2 metres opaque side screening.
5. The second floor decks set 1.1 metres in from the side walls.
6. the existing fence replacing the existing fence with a new 2 metre high fence along the south property line and a 6-inch curb to be constructed from the fence to the western property line.
7. The building to be constructed so that the driveway is 0.4 metres wider and the northern side yard setback will be 0.8 metres.
8. A detailed landscape plan for the front yard including new plantings to hide the basement windows.
9. A revised site plan and elevations prepared showing the above changes.

The plans are to be submitted to TLAB for final approval or before, February 14, 2020.. Before the plans are submitted, they shall be served on all Parties who shall have at least three weeks to review them to ensure they conform with the above terms of settlement. If the Parties in opposition find, within three weeks of such service, that the plans do not conform with the terms of the settlement they may request that I be spoken to in order to hear reasons as to why the plans do not conform with the terms of the settlement prior to their final approval. If the Parties do not object to the plans they may be submitted to TLAB for final approval informing me that there is no objection.

I remain seized of this matter until my final order is issued.

X 

S. Makuch
Panel Chair, Toronto Local Appeal