

DECISION AND ORDER

Decision Issue Date Thursday, January 09, 2020

PROCEEDING COMMENCED UNDER Subsection 45(1) of the Planning Act, R.S.O. 1990, c. P.13

Appellant(s): XING LIN

Applicant: CHAUN LIANG

Property Address/Description: 2744 VICTORIA PARK AVE

Committee of Adjustment Case File: 19 158906 NNY 17 MV (A0393/19NY)

TLAB Case File Number: 19 196095 S45 17 TLAB

Hearing date: Tuesday, December 7, 2019

DECISION DELIVERED BY T. YAO

APPEARANCES

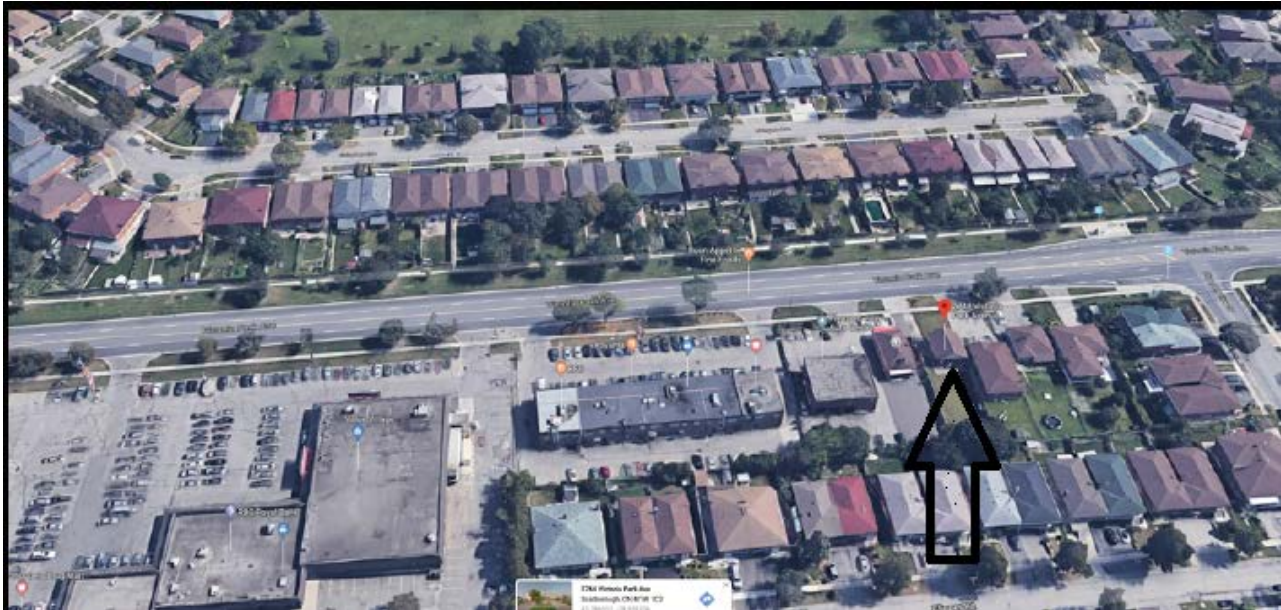
NAME	ROLE	REPRESENTATIVES
Xing Lin	Owner/Appellant	Anthony Soccia
Jonathan Benczkowski	Expert Witness	

INTRODUCTION

Mr. Lin is in the process of constructing a new residence and is at the point of obtaining an occupancy permit. The residence is on the east side of Victoria Park Ave, a major street with both commercial and residential uses. The block on the east side of Victoria Park, between Pleasant View and Van Horne, transitions from residential to entirely commercial, with Mr. Lin's property being the end house of about five "house form" buildings as one moves north (towards the left in photo next page), ending in two commercial plazas.

Mr. Lin needed 11 variances, which he obtained on March 22, 2018. That should have ended the building permit process. However, one variance was missed; namely, permission for the parking of one motor vehicle **in the front yard**. The Buildings

Department considers this an entirely new application since the issued building permit¹ has not been cleared.



Mr. Lin is required to obtain ten variances as follows:

Table 1. Variances sought for 2744 Victoria Park Ave.			
		Required	Proposed
Variances from Zoning By-law 569-2013			
1	Side main wall height	7.5 m	North side main wall 8.30 m
2	Building length	17 m	17.98 m
3	Lot coverage	30% of the area of the lot	32% of the area of the lot
4	Platform side yard setback	1.8 m	1.24 m
5	Location of parking space	Must not be in front yard	In the front yard
6	Similar to #1 but for south side main wall	7.5 m	South side main wall 8.30 m
7	Minimum number of parking spaces	1	zero

¹ Permit 18 182451 BLD OO NH

8	Side yard setback	1.8 m	North side yard setback is 1.2 m
9	Similar to #8 but for south side yard setback	1.8 m	South side yard setback is 1.2 m
VariANCES from (former North York) Zoning By-law 7625²			
10	Minimum number of parking spaces	2	zero

On July 18, 2019, the Committee of Adjustment refused his application; Mr. Lin appealed, and so this matter comes before the TLAB.

MATTERS IN ISSUE

The variances must:

- maintain the general intent and purpose of the Official Plan;
- maintain the general intent and purpose of the Zoning By-laws;
- be desirable for the appropriate development or use of the land; and
- be minor.

They must also be consistent with and conform to higher level Provincial policies.

EVIDENCE

I heard from Mr. Lin's planner, Jonathan Benczkowski, whom I qualified as able to give opinion evidence in the area of land use planning.

ANALYSIS, FINDINGS, REASONS

This application is unopposed and so I will not review all the evidence. The full list of variances before me is the same as what was granted in the first (March 2018) application, except for variance #5. Therefore Mr. Benczkowski treated this as an application for the single front yard parking variance, which is bolded in Table 1. I agree with this approach. Mr. Benczkowski's evidence was comprehensive and thorough.

The origin of the error

Mr. Benczkowski stated that the history of the file reveals both an "error" and lack of clear explanation given to the second Committee of Adjustment members. Mr. Lin's

² Appeals against City wide Zoning By-law 569-2013 have not been entirely dealt with so that the Plan Examiner studies all building permit applications for compliance with both the present and former zoning by-laws. This results in a duplication of Variances 7 and 10.

pre-March 2018 site plan clearly showed parking in the front yard, but he also indicated a slightly modified curb cut on the City boulevard. This modification was withdrawn before the second meeting, and all City-owned property is to remain exactly as it was before the first Committee of Adjustment application but this failed to be explained in July 2018 which resulted in the denial of variances that had already been granted. As explained in the introduction, even though a building permit covering everything Mr. Lin intends to construct is issued, and no changes will be made to its already-built form, the Committee of Adjustment treated this as a wholly new application, instead of a revision.

The first Committee of Adjustment decision granted what is listed here in Table 1 as Variances #7 and #10, permitting "zero" parking spaces. Unfortunately, the various players in the process failed to put their minds to the possibility that parking might occur in the front yard on the "asphalt driveway" and "proposed paved driveway", clearly marked on the plans and as I shall explain in the following sections what is the prevailing built form in the neighbourhood.

Landscaping

The proposal results in no loss of landscaping. The front yard is 121 m² (all figures rounded) in area with about 41 m² being the paved portion. **This leaves 80 m² of "landscaping"**, of which the porch and walkway is 21 m². Therefore, Mr. Lin is only required to have 50% "landscaping" or 60.5 m². I put "landscaping" in quotes because in this context, the word "landscaping" may include walkways. The actual soft landscaping is 58 m².

Mr. Benczowski's opinion was that the intent of the relevant Official Plan policies is maintained. Clauses a), b), and e) of section 3.2.1³ (regulating the organization of vehicular access) are met because 2744 Victoria Park shares a driveway with the neighbour to the north; has limited curb cuts (no new curb cut is necessary) and has exceeded the landscaping requirements, as detailed in the previous paragraph. In fact, this is one of the few properties of the nine in this block to have **any** soft landscaping. In addition, most properties on the street, including the house form buildings on either side of 2744, have large curb cuts and entirely hard surfaced front yards, exclusively used for front yard parking.

³3.1. 2. New development will locate and organize vehicle parking, vehicular access, service areas and utilities to minimize their impact on the property and on surrounding properties and to improve the safety and attractiveness of adjacent streets, parks and open spaces by: a) using shared service areas where possible within development block(s) including public and private lanes, driveways and service courts; b) consolidating and minimizing the width of driveways and curb cuts across the public sidewalk; . . . ; e) limiting surface parking between the front face of a building and the public street or sidewalk; . . .

Official Plan clause 4.5.1 (e)⁴ is satisfied because the design of the driveways respects and reinforces the prevailing physical pattern of front yard parking on extensive hardscaping. To the south (right of arrow) is a travel agency and beyond that a residence; both with wall to wall hard surfaced front yards. To the north is a restaurant (which contains the largest part of the shared curb cut), then an auto repair and two plazas, all of which have front yards used exclusively for front yard parking. On the opposite side of Victoria Park are the rear of residences, so there are no "front yards". Therefore I accept Mr. Benczkowski's evidence that the variances meet both higher order Provincial policy documents and the four tests in s. 45(1) of the Planning Act.

DECISION AND ORDER

I authorize the variances as set out in Table 1 on condition that the owner construct in substantial compliance with the plans filed under tab 10, page 38 of Exhibit 1 under this TLAB file.



Ted Yao
Panel Chair, Toronto Local Appeal Body

⁴ 4.5.1 Development in established *Neighbourhoods* will respect and reinforce the existing physical character of each geographic neighbourhood, including in particular: . . .(e), design and elevations relative to the grade of driveways and garages;