

DECISION AND ORDER

Decision Issue Date Monday, January 13, 2020

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): MOHAMMAD SOORESRAFIL

Applicant: ALI MALEK-ZADEH

Property Address/Description: 9 CAREY RD

Committee of Adjustment Case File: 19 152742 STE 12 MV

TLAB Case File Number: 19 215532 S45 12 TLAB

Hearing date: Monday, January 06, 2020

DECISION DELIVERED BY TED YAO

APPEARANCES

Name	Role	Responsibility
Mohammad and Sina Sooresrafil	Owner/Appellant	Amber Stewart
Jonathan Benczkowski	Expert Witness	
Gene Parker	Party	
Shelley Fowley	Participant	

INTRODUCTION

Mohammad Sooresrafil and his son Sina wish to enlarge 9 Carey Rd. They will keep the existing side walls, remove everything else, add a third floor, and a rear addition. The main opposition is from the neighbour to the east at 11 Carey. Both

properties are on the south side of Carey, an east-west street. The site is about four blocks south of the Yonge/Eglington intersection.

The Sooresrafilis need the following variances:

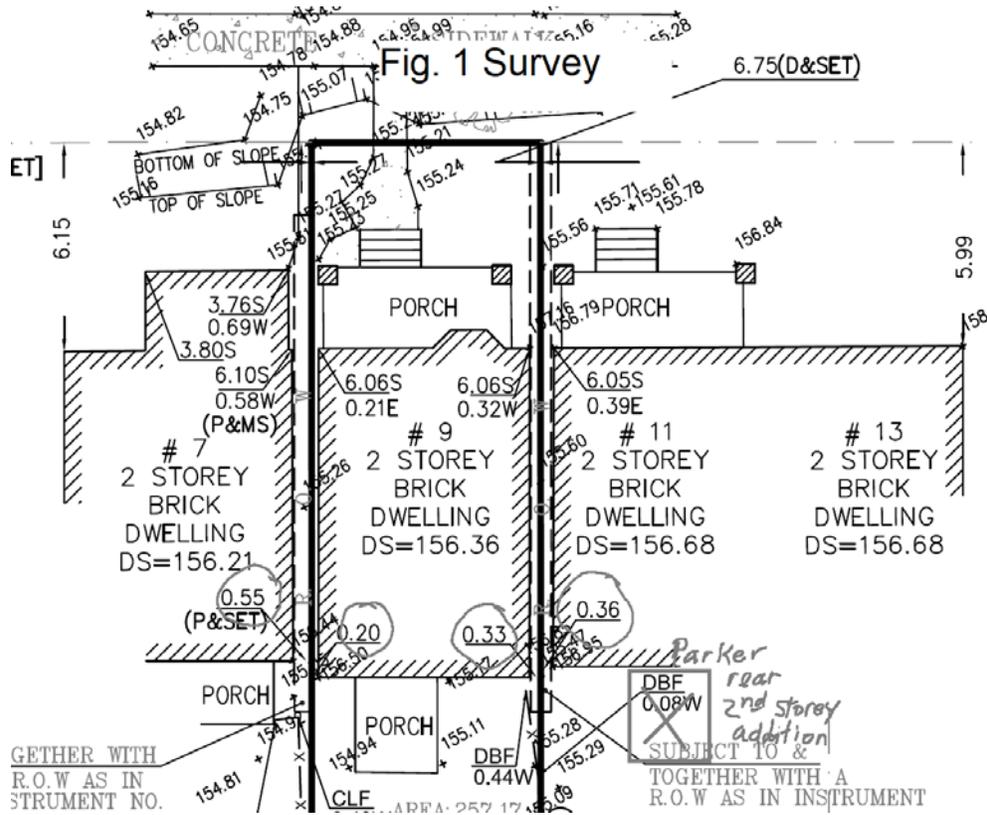
Table 1. Variances sought for 29 Carey Rd			
		Required	Proposed
Variances from Zoning By-law 569-2013			
1	Side yard setback	.45 m	0.2 m from the west side lot line and 0.33 m from the east side lot line.
2	Side yard setback for platform	1.8 m	1.29 m from the east side lot line.
3	Building height	9.0 m	9.63 m
4	Main wall height	7.0 m	7.49 m
5	Floor space index	0.6 times the lot area	0.77
6	Exterior stair encroachment	May contravene a required setback if the stair is least 0.6 m to a lot line	0.2 m from the west side lot line.
7	Roof eaves	Projection may be no closer than 0.3 m to a lot line.	0.0 m from the west side lot line and 0.1 m from the east side lot line.

On August 14, 2019, the Committee of Adjustment refused the application; the Sooresrafilis appealed, and so this matter comes before the TLAB.

MATTERS IN DISPUTE AND KEY ISSUES

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.



In addition, there must be conformity and consistency with higher level Provincial Policy Statements, where applicable. In this case, the proposed physical changes are to enlarge an existing building, and I do not believe these rise to

the level that policies designed for the entire Province of Ontario are to be applied.

EVIDENCE

I heard from the Sooresrafi's planner, Jonathan Benczkowski, whom I qualified as able to give opinion evidence in the area of land use planning. Gene Parker (the immediate neighbour to the east) and Shelley Fowley, another neighbour, testified on their own behalves.

ANALYSIS, FINDINGS, REASONS

In her August 2019 letter, Ms. Parker (11 Carey) wrote:

The three storey rear extension will be constructed a mere 0.33 m from my lot (the east side lot) vs. an allowable 0.45m. Not only will this greatly reduce the sunlight entering my deck and **result in me viewing a brick wall from my deck**; should my east-side neighbor wish to similarly construct an extension I will be completely boxed-in. Furthermore, a balcony at the front of the house **will disrupt the continuity of the street**. In the last few years we have seen builders/developers, none of whom live on the street, purchase houses, build new monster homes, take the profits and move on after totally destroying the fabric and character of the street. I was not opposed to the owner

renovating or adding an extension, but **the extent of the development and the not so minor variances he is requesting will result in an overwhelmingly large house.**

I summarize these comments as follows:

- The rear addition unreasonably impacts Ms. Parker's views and "boxes her in";
- The front balcony is not characteristic of the existing physical pattern of Carey Rd; and
- The variances are "not-so-minor."

The existing building

Figure 1 (previous page) is a portion of the survey. Even though Nos 11 and 13 Carey (right hand building) are a pair of semis and Nos. 7 and 9 are single detached, each house is roughly the same size. Each is on a narrow but deep lot. No. 9's lot is 6.75 m x 38 m (22.1 ft by 125 ft). The footprint of the house is 6.22 x 9.7 m (20.5 x 31.8



ft). The main changes will be at the rear and the question is whether those changes are "acceptable" in terms of the tests set out in the Planning Act where "acceptable" doesn't mean that the neighbours accept the variances, but that they pass muster after having gone through the mandated legal process.

Figure 2, a photo of 9 and 11 Carey shows two cantilevered rear additions, located roughly in the centre of each house's rear wall. In oral testimony, Ms. Parker repeated her objections:

I'm going to be looking at this two-storey brick wall. I'm going to have my view impeded. I'm going to be feeling like I'm living in a little shed, beside this big three storey home.

The Sooresafilis' planning justification

In my view, the rear additions have been carefully designed. For example, the third-floor addition goes no farther back than the brick rear wall. The new second floor will go about one foot farther back than the present cantilevered second floor's rear wall. Only the first floor will be constructed close to the maximum building length; but it still stops short of the permitted building length of 17 m (55.8 feet).

It is helpful to break the analysis into three dimensions, **length, height and width.**

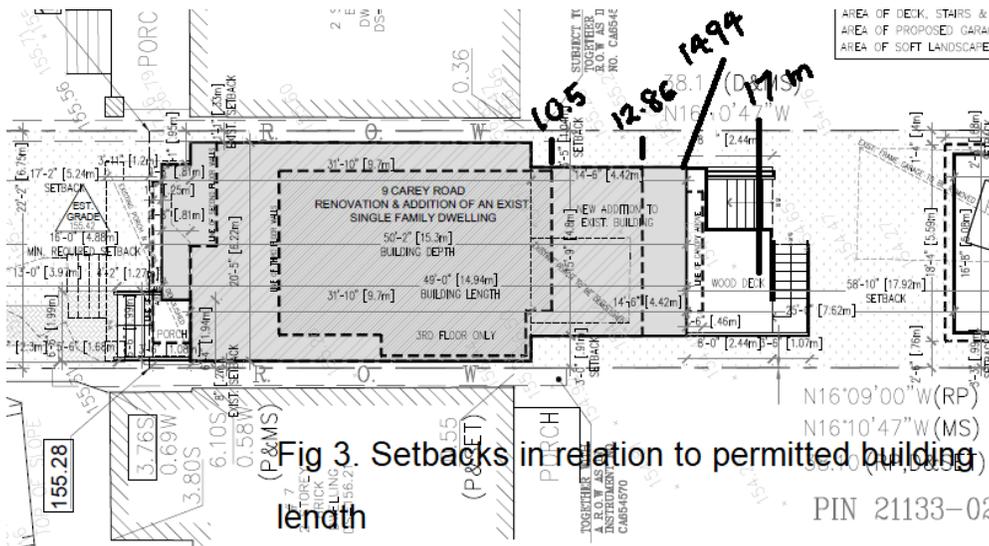


Fig 3. Setbacks in relation to permitted building length

Length

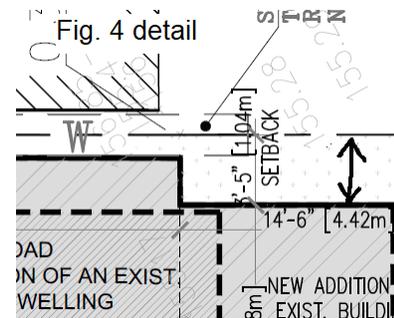
An RD building can be 17 m (55.8 ft) long¹. The proposed first floor length is 14.94 m (49 ft); the second floor will be 12.86 m (42.2 ft) long; and the third floor 10.5 m (34.4 ft) long. Figure 3 (left) shows these three wall-to-wall lengths,

all below the maximum.

Width

¹ 10.20.40.20 Building Length (1) Maximum Building Length if Required Lot Frontage is in Specified Range in the RD zone with a required minimum lot frontage of 18.0 metres or less, the permitted maximum building length for a detached house is 17.0 metres.

In the lower part of Figure 1 (page 3) I have circled the present side yard setbacks, which are tight, as is typical for all of the South Eglinton area. For example, the present building at 9 Carey is 0.33 m (1.1 ft) from the Sooresrafil/Parker lot line while Ms. Parker's home is 0.36 m. The zoning requires 0.45 m (1.5 ft). Since most of these tight setbacks predate the zoning (circa 1953), they could be justified as **existing nonconforming uses**. The .33 m figure that Ms. Parker mentions on page 3 is incorrect²; the nearest part of new construction will be 1.04 m (3.4 ft)³ from her lot line and there is a similar "pinch-in" to the west lot line (7 Carey) of .91 m (3 feet). In both instances, I find that the design respects and reinforces the existing physical pattern of tight side yards, which is the requirement imposed by clause e of s 4.1.5 of the Official Plan.⁴



Height

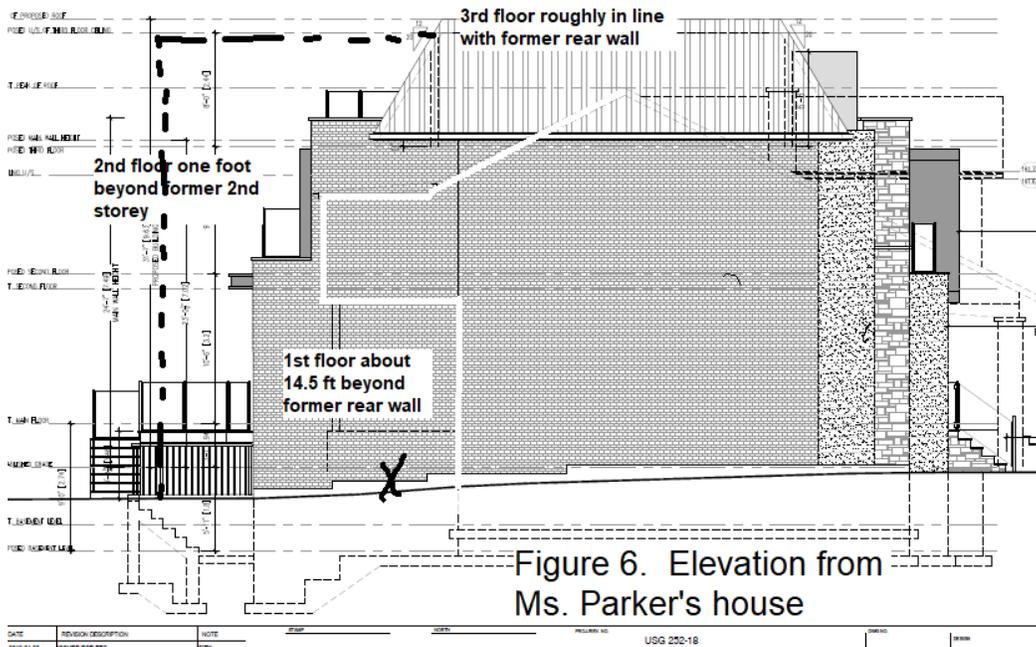
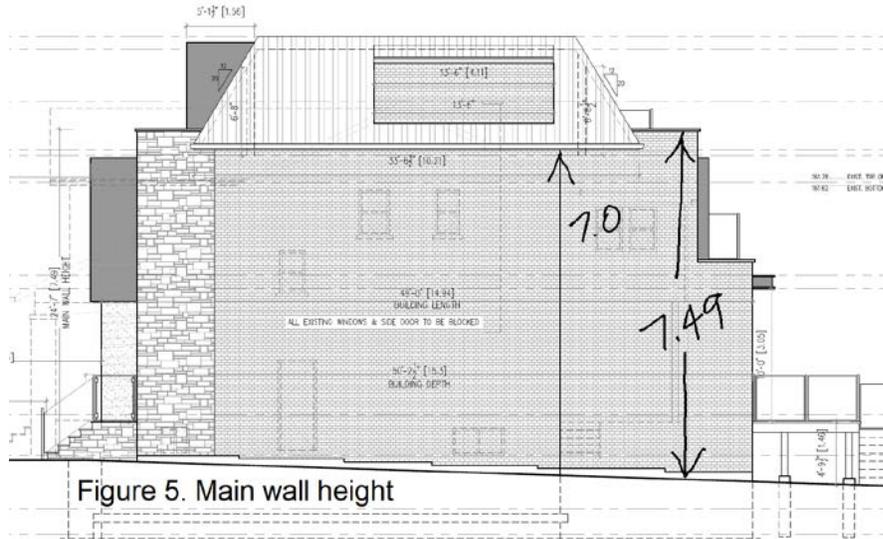
Up to this point we have looked at what was **not** constructed. Now we shift to how the proposed construction will exceed the by-law provisions. The first height-related variance is the **main wall** building height, which is measured from the ground to the eaves. The Sooresrafilis seek a 0.49 excess over the 7 m required. In Figure 5 (next page), I show the eave height marked on two places on the west side elevation. At least 80% of the building's main walls are **within** the by-law requirement of 7 m; it is only two short portions at the front and the back that requires the variance. While the resultant Mansard style roof may be not to everyone's taste, the Sooresrafilis cannot be faulted for attempting to obey in large degree, the rules adopted by City Council. Incidentally, the notation in Figure 5 that 6 openings in the side walls are to be blocked, to assist privacy considerations with respect to No. 7 Carey is also a benefit and

² I don't fault Ms. Parker for misunderstanding this variance. Plan examiners' notices do not have explanations or diagrams and short of sitting down with the examiner it is difficult to decode how they arrive at their conclusions. I believe that in respect of the side yard variances (#1 in Table 1), the examiner is merely requesting that the Sooresrafilis "legalize" the **existing** side walls and is not referring to the new addition.

³ The words, which are hard to read, say "3' 5" [1.04 m] setback". I have drawn the dimension that 1.04 m refers to.

⁴ 4.1.5 Development in established *Neighbourhoods* will respect and reinforce the existing physical character of each geographic neighbourhood, including in particular . . . (g) prevailing patterns of rear and **side yard setbacks** and landscaped open space. .

supports a finding that the variances respect and reinforce the existing physical character.



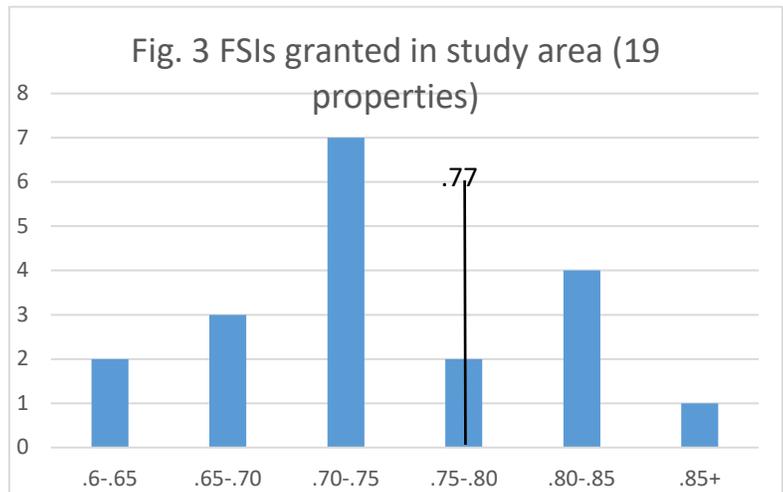
The next height-related variance is overall **building height** of 9.63 m, which is 0.63 m over the limit (heavy dotted line intersecting the third-floor addition). It may be seen that the height is exceeded only at the central portion and Mr. Benczkowski's opinion was that it would be camouflaged by the stepped-back design.

"Stepping back" the third floor to minimize the appearance of height is a recognized technique. By section 16(2)⁵ of the Statutory Powers Procedure Act, I may "take notice," (that is accept, without formal tendering of evidence) generally recognized "opinions" and those would include issued decisions of this Body: 9 Gibson, decision Aug 12, 2019⁶, and 199 Macdonell, decision Oct. 12, 2019. In both of those cases the architect used the same design to deal with a new third floor addition. So, this stepped design is a meaningful concession.

In figure 6 I have drawn this step back in profile, contrasted with the original house profile in a white line. It is evident that the original profile has greatly influenced the new design. I find that this is further evidence of Official Plan conformity⁷ as the builder is aware that they must "fit in," when the site is in an established neighbourhood.

Floor Space Index

Mr. Benczkowski compiled 19 Committee of Adjustment decisions granting increases in floor space index from 0.65 to 0.94. it is a simple matter to sort and count them. (Please see chart to the right.) Although the variance is in the .75 to .80 range, one of the higher brackets, it does seem to be not much different



⁵ 16. A tribunal may, in making its decision in any proceeding, . . . (b) take notice of any generally recognized scientific or technical facts, information or opinions within its scientific or specialized knowledge.

⁶ "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." Picture not reproduced.

⁷ By focusing most new residential development in the *Downtown*, the *Centres*, along the *Avenues*, and in other strategic locations, we can preserve the shape and feel of our neighbourhoods. However, these neighbourhoods will not stay frozen in time. The neighbourhoods where we grew up and now raise our children help shape the adults and the society we become. Some physical change will occur over time as enhancements, additions and infill housing occurs on individual sites. (c. 2.3.1 Healthy Neighbourhoods)

from the median or average⁸. Again, this supports the proposal as reasonable and not "overwhelmingly large."

The balconies

The renovation/gutting will create three balconies, two on the second floor (2.95 m², front, and 3.05 m², rear) and one on the third floor (3.95 m² rear). Two of the three balconies are also "pinched-in" and so the only variance to consider is the second-floor front balcony; the smallest, probably only room for a chair and small table. Ms. Parker's objection is that there is not a general pattern of second floor front balconies on Carey so variance #2 is "disruptive."

This balcony was inserted at the request of Community Planning, so I am told, as a way of reducing the gross floor area. I find it also provides "eyes on the street" and sidewalk animation, both policies in the Official Plan⁹. I do not disagree with these objectives and they are supportive of a more cohesive community, which is the ultimate objective of planning.

It should be noted that **the front balcony itself is permitted**; it is only side lot distance of 1.29 m instead of 1.8 m that triggers a variance. In my view, this is reasonable and desirable for the appropriate development of the land. The balconies do raise the question of the necessity of privacy screens. To her credit, Ms. Parker said, that she **does not like** overlook into her yard, and yet she accepts that there may be obtrusive views from balconies in this highly urban location. Others may not be so tolerant.

Summing up

I now answer the question of impact on Ms. Parker's view. In figures 1 and 6, I have placed an "X" where Ms. Parker will be sitting from which her views will be impacted and I agree that some impact will occur. I observe that impacts will occur during only warm weather, since she is likely not to be outside otherwise and that she is

⁸ Average is .76; median is .75

⁹ More recently, as the economy has changed, thousands of Torontonians have begun working from their homes, creating valuable economic activity, enhancing safety by providing "eyes on the street", and reducing trips to work. (chapter 4.1 Neighbourhoods). Toronto's future must be one where: . . . sidewalks are animated and attractive people places; (p 1-4 A City of Beauty)

already under a cantilevered rear addition, maybe two metres above her head. I observe that she still has a view to the left of the addition and observe that her view was already somewhat degraded by the existing Soaresafil cantilevered addition (please refer to Figure 6). An effort has been made to minimize the rearward building length and that the Official Plan requires me to consider the planned context; that is, what might be built under the zoning permissions, which include development potential on both lots. Taking all these into consideration, I find the impact is “acceptable,” in the technical sense of the word (page 4, “The Existing Building” discussion). I find that the variances individually and cumulatively meet the statutory tests.

I thank Ms. Parker and Ms. Fowler for taking time off from their schedules to make their views known.

Decision and Order

I authorize the variances set out in Table 1 on the following conditions:

1. Substantial compliance with the site plans and elevations on file with the Building Department;
2. Preparation of a drainage plan; and
3. Five foot opaque or translucent screens should be installed on both the rear balconies on the east and west sides.



Ted Yao
Panel Chair, Toronto Local Appeal Body