

DECISION AND ORDER

Decision Issue Date Friday, February 14, 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): 2644117 ONTARIO INC

Applicant: BOLT DEVELOPMENTS INC

Property Address/Description: 60 SHAFTESBURY AVENUE

Committee of Adjustment Case File: 18 235732 STE 27 MV (A1088/18TEY)

TLAB Case File Number: 19 187723 S45 11 TLAB

Hearing dates: Friday, November 29, 2019 and Thursday, January 30, 2020

DECISION DELIVERED BY JUSTIN LEUNG

APPEARANCES

NAME	ROLE	REPRESENTATIVES
BOLT DEVELOPMENTS INC	Applicant	
2644117 ONTARIO INC.	Owner/Appellant	DAVID BRONSKILL
1601033 ONTARIO INC	Party (TLAB)	MAURICE FUOCO
JAMES DOUGLAS HAMILTON	Party (TLAB)	
DEBORAH BRIGGS	Party (TLAB)	
MOHAMED KHIMJI	Party (TLAB)	
YCC-352	Party (TLAB)	
RAMEZ KHAWLY	Party (TLAB)	ROBERT BROWN A MILLIKEN HEISEY
DAVID MCKAY	Expert Witness	

- 3. Chapter 10.10.40.10.(1)(A), By-law 569-2013**
The maximum permitted building height is 11.0 m. The altered three-storey office building with a rear three-storey addition will have a height of 11.19 m.
- 4. Chapter 10.10.40.40.(1)(A), By-law 569-2013**
The maximum permitted floor space index is 0.6 times the area of the lot (187.34 m²). The altered three-storey office building with a rear three-storey addition will have a floor space index equal to 2.19 times the area of the lot (685.16 m²), which includes the basement.
- 5. Chapter 10.10.40.70.(2), By-law 569-2013**
The minimum required rear yard setback is 7.5 m. The rear three-storey addition will be located 6.93 m from the rear lot line.
- 6. Chapter 200.5.10.11.(2), By-law 569-2013**
A minimum of four additional parking spaces are required to be provided. In this case, no additional parking spaces will be provided.
- 7. Chapter 220.5.10.1.(5), By-law 569-2013**
A minimum of one Type "B" loading space is required to be provided. In this case, no loading space will be provided.
- 1. Section 6(3) Part II 3(II), By-law 438-86**
The minimum required setback from the side wall of an adjacent building that contains openings is 1.2 m. The rear three-storey addition will be located 0.9 m from the side wall of the east adjacent building and 0.98 m from the side wall of the west adjacent building.
- 2. Section 6(3) Part II 3.F(I)(2), By-law 438-86**
The minimum required side lot line setback is 0.9 m where the side wall contains openings. The rear three-storey addition will be located 0.49 m from the west side lot line, and 0.81 m from the east side lot line.
- 3. Section 6(3) Part II 5(I), By-law 438-86**
The maximum permitted depth is 14.0 m. The altered three-storey office building with a rear three-storey addition will have a depth of 18.79 m.
- 4. Section 4(4)(b), By-law 438-86**
A minimum of seven parking spaces are required to be provided. In this case, there will be no parking spaces provided.

These variances were heard and refused at the June 26, 2019 Toronto-East York COA meeting. Subsequently, an appeal was filed on July 11, 2019 by the property-owners of 60 Shaftesbury within the 20 day appeal period as outlined by the *Planning Act*. The TLAB received the appeal and scheduled 2 days of hearings on November 29, 2019 and January 30, 2020 for all relevant parties to attend.

MATTERS IN ISSUE

The subject property, while situated within a predominantly residential area, contains a business/office-type use which the City's requisite zoning permits although it is zoned with a residential designation. The Official Plan (OP) does contemplate for other uses such as local institutions and shops which are to service the local populace. This variance application as presented by the owner/appellant is to construct an addition to the existing structure thereby increasing the overall useable office space. In the process, further relief in the parking space requirement is also being posited. The property is setback from the major thoroughfare of Yonge Street and the Summerhill Toronto Transit Commission (TTC) station. Residents adjacent to this property contend that an increase in the scale of business/office use here would be inconsistent with the residential character of the area. The owner/appellant argues that the provincial policies are supportive of such a development proposal and that it is in keeping with the overall transition and progression of this area. The TLAB must consider the matter at hand to assess whether this proposal is appropriate for both the local context and planning directives of the area in light of the statutory considerations identified below.

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 for 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 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

Mr. David Bronskill, legal counsel for the applicant and appellant, commenced by indicating the Applicant had a revised proposal which they had achieved and were looking to see if they could discuss with the other interested parties in attendance. I allowed a brief recess to allow permit this discussion to take hold.

Once the hearing resumed, Mr. Bronskill stated that the party, Ramez Khawly, and the representing legal counsel A. Heisey, had reviewed the revised materials as presented and were, at this preliminary stage, looking to withdraw their objection to the proposal and also to recuse themselves as an interested party for these proceedings moving forward. The overall gross floor area (GFA) and setbacks have been reduced and increased, respectively, in this revised proposal. Building length and depth have slightly been revised as well. However, Mr. Bronskill contends that the overall proposal is reduced as a result. Mr. Heisey further commented that he was also discussing potential conditions of approval with Mr. Bronskill and those materials would be presented to the tribunal at a later date. Mr. Heisey further indicated that the party, James Hamilton, appeared to be accepting of this revised proposal as well. However, it does appear the other interested parties were not accepting of this revised proposal. As such, the TLAB member stated that adjudication would have to occur with these remaining parties.

David McKay of MHBC Planning, expert witness for the Applicant/appellant, came up to the stand. I qualified Mr. McKay in the field of land use planning. He stated that prior to this hearing, he had reviewed the materials of this matter and also conducted a site visit. The parking space and loading space variances are being requested to be reduced to zero. Other additions to buildings have occurred in this area. The Summerhill TTC station is located in close proximity to this property and, in his opinion, could be defined as a Major Transit Station Area (MTSA) as per provincial planning policies. As part of the revised proposal, the step back for the addition as proposed is to be increased, to further reduce potential impact to the adjacent properties. He further commented that he does believe the sun/shade conditions on the site will be less impactful for the area. Small scale retail and office uses are permitted here, in addition to the established residential buildings for this area. Although parking is recommended for development, policies do support alternative transportation modes as well. With respect to the floor space index (FSI) variance request, Mr. McKay continued to describe, in his opinion, that the request is consistent with other buildings in the area.

Mr. Schlaepfer, legal counsel for the Summerhill Residents Association (SRA), initiated his cross examination of the witness by stating that he had previously worked with the expert witness on matters separate of this appeal. As a long-standing resident of this area, he has actively participated in planning studies for this area. Mr. Schlaepfer inquired that in previous TLAB and Local Planning Appeal Tribunal (LPAT) appeals, if he has ever provided testimony in opposition to a planning proposal. Mr. McKay responded that for appeal matters within the City of Toronto, he cannot recall such an instance. However, he did elaborate that prior to taking on a retainer for a proposal, he would review it to ensure it was a matter which he could support at the requisite planning tribunal.

Mr. Schlaepfer further stated that the policies in review at this hearing are not accurate. Mr. McKay responded that the policies, such as Official Plan Amendment (OPA 320), are referenced accurately in these proceedings. Mr. Schlaepfer inquired if the proposal had properly applied OPA 320 policies. Mr. McKay stated that his analysis of this proposal had assessed the variety of built form which exists in this

neighbourhood and how the proposal in question would potentially be compatible in such a local context.

On the 2nd day of hearings, Mr. Bronskill commenced by outlining that conditions of approval that had been agreed upon with the party, Ramez Khawly. The conditions include that drawings as provided at building permit review stage be in substantial conformity with the variance drawings and that screening be provided on certain portions of the addition in relation to the adjacent properties. These elements are included in the drafted Minutes of Settlement between Mr. Khawly and the Applicant/appellant which were also provided to the TLAB. I stated that, in recognizing the practice direction of the tribunal to encourage mediation or settlement amongst the relevant parties, I would accept as an exhibit this settlement agreement in principle and as such, Mr. Khawly would effectively be released of any continued participation in these proceedings. However, I did comment that the other opposing parties continued to have issues with the proposal. As such, this 2nd hearing date would proceed with an adjudicated decision rendered as a response to all parties' issues and concerns.

Mr. Richard Pernicky of NXT Trans, a transportation engineer, was called to the stand by the Applicant/appellant's legal counsel. I was able to qualify Mr. Pernicky in the field of transportation engineering. He outlined that this appears to be a professional office use which would have approximately 45 staff on site. The area is served by the TTC Yonge subway line and there are TTC bus routes in operation in the vicinity as well. He has used data as compiled by the University of Toronto to assess the non-transit traffic use for this area. In terms of the loading space reduction, he was of the opinion that this office use in question would not require the loading space.

Mr. Schlaepfer asked about the data provided by Mr. Pernicky and also as to why he used traffic information for the Downtown Toronto area. Mr. Pernicky responded that he used the data as he determined that the ward that this property is situated within would comprise in the downtown area as well. I asked if potential employees would be obtaining permit parking on the streets in the surrounding area. Mr. Pernicky stated that they would not as these permit parking spaces would be allocated for the local residents. Moreover, he further contends that the adjacent subway line provides for alternative transportation needs to these potential employees. Mr. Schlaepfer asked that this property is zoned for residential with the commercial use as an exception and if the site could be converted for other uses. Mr. Pernicky responded that he assessed the use as was being proposed. Other issues would be speculative in nature.

The participant Mr. Woollatt provided a statement on this matter. He raised concerns that the addition and raised potential privacy issues as the windows could 'peer' or observe into the adjacent properties. He also had continued issues with parking in the area and the impact this proposal may have on that parking supply.

Maurice Fuoco, representing party 1601033 Ontario Inc., also provided a statement on this matter. He did preface his remarks by commenting that he has previously applied for variances for other projects in the area. For the proposal at hand, he does not believe that this is a 'minor' proposal and is more significant in nature.

Mr. Bronskill commented that if the matter is approved, that their submission on conditions of approval and revised variances be considered by the tribunal.

Mr. Schlaepfer made closing comments whereby he contended that OPA 320 had not been properly applied. The analysis as presented by Mr. McKay, he stated, had been flawed in comparing the proposal to other established uses and buildings of the area. He went on to argue his belief that the proposal does not meet the four tests for a ~~minor~~ variance, as stipulated within the *Planning Act*.

ANALYSIS, FINDINGS, REASONS

The proposal which has been presented by the Applicant/appellant is unique in that the property has a R (d0.6) (x843) & R2 Z0.6 (ZZC) type zoning which, at its genesis, is a residential designation. However, it is contended that the office use is permitted due in part to:

“124. For this Site, however, Exception R843(A) and Permissive Exception 12(1)21, an office is permitted if it is located in a building that existed on the lot on June 29, 1959. Toronto Buildings dates the building(s) on the subject Site as from 1909 and 1919, so the permissive exception that allows an “office” use is qualified for the Site and building.”¹

This quote, as outlined in the Document Disclosure as provided by Christian Chan of C2 Planning, can equate that the office use has effectively been ‘grandfathered’ for this site as it has existed for a prolonged period of time. The proposal being proffered to the TLAB is to construct an addition which may, if approved, result in an overall increase in the scale and intensity of this office use. While the site is situated off of Yonge Street and within a neighbourhood of a more residential character, it is within walking distance to Yonge Street and the adjacent Summerhill TTC station. It is further noted that to the immediate south of this subject property is the former North Toronto railway station which now functions as a Liquor Control Board of Ontario (LCBO) retail store. The regional transportation agency Metrolinx has, as part of its *the Big Move* plan identifies the potential of reviving this station for active use as part of its proposed Midtown GO line. However, no funding has been allocated for this project by the provincial government. Moreover, and evident through the site visit and statements as provided by opposing parties, there is still considerable automobile use in this area. The interior residential streets which connect onto Yonge Street have a vastly different set of characteristics to the commercial nature of Yonge Street. Within this dynamic, it is further noted that the subject property is located on a local street, Shaftesbury Avenue, and does not directly intersect with Yonge Street. This street is also in close proximity to a Canadian Pacific (CP) line which is still in active use by CP to transport rail freight into the City. As such, this property possesses unique qualities which must be afforded appropriate consideration by the tribunal to determine if such an office related proposal would be an appropriate enhanced land use for this area.

¹ Chan, C. *Witness Statement of Christian Chan*. October 2019, pp. 28-29

The proposal's main element of contention relates to the parking reduction variances as requested by the Applicant/appellant. To address these issues, they had specifically retained a qualified transportation engineer to address the overall traffic and transportation trends for this area. While the engineer outlined that there is a subway line in close proximity, it was noted by the TLAB member and acknowledged by this engineer that there is currently overcrowding issues on the Yonge subway line. In support of this, the TTC has commissioned studies on this matter in an attempt to find means by which to alleviate such overcrowding issues. It is noted that this study finds that while the Yonge line is facing such issues, the Bloor-Danforth line appears to not be under a similar passenger capacity strain. The Summerhill TTC station is projected to be near capacity for 2016 with the chart below providing a more succinct breakdown of these patterns being described:

Figure 2: Yonge Subway Demand vs Scheduled Capacity – Morning Rush Hour

	2001	2006	2011	2016
Finch	G	G	G	G
North York Centre	G	G	G	G
Sheppard-Yonge	G	G	G	G
York Mills	G	G	G	G
Lawrence	G	G	Y	G
Eglinton	G	G	Y	Y
Davisville	G	G	Y	Y
St Clair	G	G	R	Y
Summerhill	G	G	R	Y
Rosedale	G	G	R	Y
Bloor-Yonge	Y	R	R	R
Wellesley	Y	R	R	R
College	Y	Y	R	R
Dundas	G	G	G	G
Queen	G	G	G	G
King	G	G	G	G

G	Less than 85% full: Sufficient capacity to serve demand
Y	Between 85% and 100% full: Approaching capacity, crowded vehicles that slow down service and may not accommodate localized surges in demand
R	100% full: Capacity exceeded, trains bypass waiting passengers frequently

Figure 1: TTC data on Yonge line morning rush hour passenger demand (source: [http://ttc.ca/About the TTC/Commission reports and information/Commission meetings/2018/January 18/Reports/6 Managing Crowding on Line 1 Yonge.pdf](http://ttc.ca/About%20the%20TTC/Commission%20reports%20and%20information/Commission%20meetings/2018/January%2018/Reports/6%20Managing%20Crowding%20on%20Line%201%20Yonge.pdf))

It is noted that for the 2016 year, while Summerhill station is not at capacity, the requisite TTC chart does outline that as it approaches capacity, service may be slowed down and local service may be adversely impacted. This chart provides a visual representation which shows the continued increasing pressures which the Yonge line faces. This could potentially be impactful for employees of this office use. Furthermore, other alternative public transit options such as the Midtown GO line as referenced earlier have not been prioritized or provided funding as opposed to other transit projects such as the Finch West light rail transit (LRT) line.

In terms of bicycle and ride sharing opportunities as expressed by the transportation engineer, these alternative transportation options as assessed by this engineer do not appear to have taken in account the potential of employees commuting to this site from outside the City boundaries. In such an event, there is the possibility that automobile use would continue to be a predominant use for these employees. These are variables which cannot be definitively accounted for at this juncture. The limited on-street parking options in the area could potentially be exacerbated by this proposal.

The tribunal, while recognizing that the province is now adopting a transit oriented development model for urban communities, must also take into account that most of these communities were constructed within an auto-centric infrastructure model. The paradigm shift, as stated by Mr. Pernicky in his testimony, towards a transit focused model is recognized as a development pattern as positing by requisite provincial polices. However, the tribunal must also be cognizant of existing site conditions and that this transit centric model has not been fully implemented in *Neighbourhoods* such as the one being assessed. As such, there must be a balancing of a variety of transportation needs of residents and other visitors to this area which must be accounted for.

Within this dynamic, to permit an expansion of the office use here could invariably result in more people traversing through this area which could act to disrupt the predominantly residential character of Shaftesbury Avenue through introduction of increased traffic on a weekly basis. Moreover, the reduction in loading spaces would result in any deliveries to this site having to conduct loading/unloading procedures along Shaftesbury which could present additional traffic pressures for this local street. Although the Applicant/appellant contends there would not be substantial deliveries for this proposed office use, it would be contemplated that there would still be occasional delivery services (including delivery of office supplies) which would need to occur.

While Mr. Pernicky argues that this location, on cursory review, would be a suitable candidate for an MTSA, it is noted that the MTSA delineation has not yet been provided for the Summerhill TTC station. As such, any provision for increased density for this area could be construed as pre-mature prior to any formal announcements by the Ministry of Municipal Affairs and Housing (MMHA), the lead agency overseeing such matters.

In analyzing the proposal which is for a three storey addition to the existing structure on the site, it is noted that a series of 11 variances have been sought to facilitate this development to occur. While certain variance requests such as for building height are not substantially greater than what the requisite zoning permits, others such as floor space index (FSI) and for building setbacks result in an overall larger building footprint and for a building now closer to the adjacent ~~properties~~ building structures. While the tribunal recognizes that revisions to the proposal have been made to address concerns of the neighbouring property to the east (with which preliminary Minutes of Settlement have been accomplished), there would still be the impact to the other adjacent properties which would need to be appropriated for. The reduction in setback results in an addition being brought close to properties, especially those to the rear of the subject property. Issues such as privacy and sun-shade impacts would need to be addressed as a result. The tribunal further notes that these considerations or issues as raised would be weighed differently if the subject property had frontage along a major thoroughfare such as the nearby Yonge Street. Major commercial and retail uses are contemplated along such major streets. However, this property is situated on an interior residential street with the building itself surrounded by mostly residential structures. The property itself is principally zoned with an R, residential, zone category which does allow an ancillary office use as a site-specific recognition. In recognizing such zoning provisions, the tribunal surmises that although the office use is permitted here as it predates 1959, this 'grandfathered' condition has allowed the use to continue in

perpetuity. However, any attempts to enlarge such a use would require certain planning permissions, as evident with the variance application which was submitted by the property-owner. As such, the submission of the Application acknowledges the need to undergo addition assessment to determine if an increase in the overall intensity of the office use is appropriate.

Despite the material evidence as presented to the TLAB, including a potential settlement with one of the interested parties, the tribunal finds the argument and evidence as presented by the opposing parties, including the Summerhill Residents Association (SRA), to be more persuasive in nature. These parties have presented a compelling case outlining how an expansion of this office use within a residential neighbourhood could act to further strain the parking and vehicular traffic of this area. The existing transit infrastructure servicing this area is also facing continued pressure which would be a negative component for any future employees to this site. The addition as proposed would introduce a building structure which would be incompatible for this area. The office uses in existence in the area are, as evident with a site visit, small scale in nature and complimentary to the neighbouring residential structures. To permit this enlarged office building would be to introduce a more substantial commercial component which would disrupt the prevailing neighbourhood streetscape.

More specially, the variances as they pertain to floor space index (FSI), building depth and reduction in parking spaces and loading spaces constitute a proposal which would be inconsistent with the surrounding physical character. It would act to potentially allow a proposal which would result in a large size and scale office use which, as evident of planning policies established for this area, be not in keeping with the overall residential uses in the immediate vicinity.

While the tribunal recognizes that the City continually experiences progression and development, it further opines that such change must also be done to ensure that established neighbourhoods are not-adversely impacted in the process, that change is 'sensitive, gradual and must fit'.

The development model to be pursued needs to recognize current and future trends to ensure both current and new residents are sufficiently considered and provided for.

DECISION AND ORDER

The appeal is refused, and the Committee of Adjustment decision, dated June 26, 2019, is upheld. The variances are not authorized.

X 

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