

Toronto Local Appeal Body

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DECISION AND ORDER

Decision Issue Date Thursday, June 18, 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): Wayne Long Architect

Applicant: Wayne Long Architect

Property Address/Description: 401 Hillsdale Ave E

Committee of Adjustment Case File: 19 148676 NNY 15 MV (A0388/19NY)

TLAB Case File Number: 19 201365 S45 15 TLAB

Hearing date: Wednesday, June 10, 2020

DECISION DELIVERED BY D. Lombardi

REGISTERED PARTIES AND PARTICIPANTS

Appellant Wayne Long Architect

Primary Owner Tedd Avey

Party Michael Joseph Ladanyi

INTRODUCTION

This is an appeal to the Toronto Local Appeal Body (TLAB) by Tedd and Janet Avey, the Owners of 401 Hillsdale Avenue East (subject property) from a July 18, 2019 decision of the North York Panel of the Committee of Adjustment (COA) refusing variances to the new harmonized Zoning By-law 569-2013 (new By-law) to permit the construction of a front, second storey addition to the existing dwelling on the subject property.

The subject property is located on the south side of Hillsdale Avenue East, east of Mount Pleasant Road and south of Eglinton Avenue East, in the 'Davisville Village' neighbourhood

The subject property is a semi-detached residential dwelling connected by a party wall to 405 Hillsdale Avenue East, the abutting, attached dwelling to the east. That dwelling is owned by Michael Ladanyi, a Party to the proceeding in opposition to the subject Application and the variances being requested.

There are no other Parties or Participants in this matter.

BACKGROUND

On July 18, 2019, the COA refused the subject Application and Wayne Long (Applicant/Appellant), Wayne Long Architect, appealed the decision to the TLAB. A Hearing date was subsequently set for December 3, 2019.

At the commencement of the Hearing on the return date, the two Parties in the proceeding agreed on the encouragement of the presiding Member to engage in a TLAB-led confidential and non-binding Mediation session which consumed much of the day. At the conclusion of that session the Parties advised the Member that the basis for a settlement of the outstanding issues in the matter had been reached.

As a result, the Member issued a Mediation Summary on December 6, 2019, encapsulating the outcome of the mediation and confirming a new Hearing return date for February 3, 2020, to conduct an expedited Settlement Hearing on the terms of the proposed settlement.

In advance of that Hearing, the Member directed the Parties to exchange documentation in the form of Minutes of Settlement (MOS) memorializing the matters agreed to at the Mediation session. As well, the Applicant/Appellant was also directed to submit a revised set of drawings and a new Zoning Examiner's Notice (new Notice) confirming the list of required variances identifying any new variances resulting from the MOS.

Pursuant to Rule 19.2 of the TLAB's Rules of Practice and Procedure (new Rules) as they were constituted after May 6, 2019, the Applicant/Appellant was directed to serve the terms of the agreed to settlement on all Parties and to file same with the TLAB prior to the Settlement Hearing.

However, as of the morning of the return Hearing date on February 3, 2020, the TLAB had yet to receive any of the requisite documents, above cited, from the Appellant.

Nevertheless, the Applicant/Appellant, the owners of the subject property, and Mr. Ladanyi, all attended the Hearing on February 3rd. At the start of that Hearing, Mr. Long advised the Panel Member that he had encountered some difficulty in obtaining a new Notice from the City confirming the variances required as a result of revisions to the Application. He acknowledged that although he expected a new Notice to be issued shortly, he could not confirm the timing of that issuance.

In responding to this information, Mr. Ladanyi did acknowledge receiving revised drawings from the Appellant but advised the Member that there continued to be some inaccuracies in the drawings which were not reflective of the agreed to settlement terms. Mr. Long conceded this was an issue but agreed to continue to dialogue with Mr. Ladanyi to finalize the drawings to reflect more accurately the agree upon spirit of the terms of Settlement.

As a result, the Member adjourned the matter on consent, pursuant to TLAB Rules 17.2 and 23.2, and directed TLAB staff to canvas the Parties for a new Hearing date following which a new, revised Notice of Settlement Hearing could be issued.

The Parties agreed to a return Settlement Hearing date on March 26, 2020 at which time the TLAB would hear the evidence in the matter regarding the elements of the MOS and the evidentiary basis for the variances sought for the TLAB to address its mandate.

On February 4, 2020, the Member issued a decision in this regard and in the 'Decision and Order' section ordered the following:

"The Applicant is directed to file with the TLAB and serve Mr. Ladanyi with a revised and final set of drawings, a revised list of variances being requested and corresponding new Zoning Examiner's Notice, and an executed copy of the agreed to terms of Settlement by no later than March 13, 2020."

In the ensuing period prior to the March 26th return date, the world encountered a global pandemic in the form of COVID-19. As a result, effective as of March 16, 2020, the TLAB ordered a cessation of all Hearing events and the suspension of filing timelines, pursuant to the Government of Ontario's Emergency Order, Ontario Regulations 73/20. This interval, in effect a 'Suspension Period', reflected the widespread concern for the 'COVID-19' virus, evident across the world and in the City.

That Suspension Period has subsequently been extended by the TLAB to July 3, 2020.

However, the TLAB has recognized the possibility of undertaking *limited* 'virtual or remote' Hearings such as consent and settlement proceedings where appropriately supported. The subject appeal was identified by the Tribunal as falling within this category and after consultation with the Parties, and on consent, issued a Notice of Electronic Hearing pursuant to Rule 10.1 setting a Hearing date of June 10, 2020 to hear the subject appeal.

No one other than the Parties above recited attended the Hearing and the TLAB received no further responses.

MATTERS IN ISSUE

Notwithstanding the settlement, the Tribunal must hear evidence in order to be satisfied that the variances meet the statutory tests. The reason is that the Hearing is a

hearing '*de novo*' and therefore a new consideration of the merits or otherwise of the original application.

As such, the TLAB must heard evidence as to whether the settlement agreement reflects good planning and whether the requested variances, as revised and agreed upon, meet the four statutory tests in subsection 45(1) of the *Planning Act (Act)*.

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').

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 subsection requires a conclusion that each of the variances, individually and cumulatively:

- 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.

These are usually expressed as the "four tests," and all must be satisfied for each variance, individually and collectively.

Under s. 2.1 of the Act, the TLAB is also to have regard for the earlier Committee decision and the materials before that Body although that decision is in no way a determinant of the appeal.

EVIDENCE

On convening the Remote Hearing, I registered the presence of Mr. Long, Mr. Avey, and Mr. Ladanyi. No other Parties, Participants or representatives joined the virtual proceedings.

I confirmed that the requisite materials had been filed with the TLAB and the other Party, Mr. Ladanyi, as directed in the February 3rd Order. The Parties acknowledged the executed MOS as reflective of the issues resolved and matters agreed to.

At the request of Mr. Long, the following exhibits were entered and referenced: the revised and updated set of Site Plan drawings (**Exhibit 1**); Summary Letter from Mr. Long, dated March 11, 2020, addressing the Planning Act tests (**Exhibit 2**); a new Zoning Examiner's Notice dated March 11, 2020 (**Exhibit 3**); the executed **MOS** dated March 13, 2020 (**Exhibit 4**); and previous COA decisions with respect to the subject property, dated July 18, 2019, and November 8, 2020 (**Exhibits 5 & 6**, respectively).

Mr. Long, a professional architect registered to practice in Ontario, was the only witness proffered by the Owners. As there was no contrary evidence and no questioning of the witness by Mr. Ladanyi, it is necessary only to briefly allude to the principle opinions.

Mr. Long primarily reviewed the revised, updated drawings (Exhibit 1 and Appendix 2 to this Decision) and his Summary Letter (Exhibit 2). In addressing the history of the Application, he referenced the COA decision of July 18, 2019, in which the Committee refused the following variances (Exhibit 5):

1. Chapter 10.10.40.40.(1), By-law 569-2013

The maximum permitted floor space index is 0.6 times the area of the lot. The proposed floor space index is 0.99 times the area of the lot.

Chapter 10.20.40.10.(2), By-law 569-2013
 The maximum permitted height of all front exterior main walls is 7.0m. The proposed height of the front exterior main walls is 7.87m.

3. Chapter 10.10.40.30.(1), By-law 569-2013 The maximum permitted building depth is 17.0m. The proposed building depth is 23.70m.

As a result the mediation session undertaken on December 3rd, subsequent ongoing discussion with Mr. Ladanyi and the executed *'ad idem'* MOS document now before the TLAB, the Owners revised their proposal resulting in slight revisions to two of the three variances, below recited, as reflected in the new Zoning Notice (Exhibit 3). The numerical differences are highlighted:

- The proposed floor space index is 1.02 times the area of the lot (or 320.10 m²) as opposed to the previously proposed 0.99 x.
- **2.** The proposed building height is 7.87 m (no change from the original Application).
- **3.** The proposed building depth is **24.97 m** as opposed to the previously proposed building depth of 23.70m.

Mr. Long advised that the proposed second storey addition to the existing dwelling on the subject property is required to accommodate changing family dynamics for the Owners since their son and grandchildren have moved into the home. As a result, the Owners are adding a new bedroom on the second floor of the dwelling as well as re-configuring part of the existing 2nd floor to accommodate two adjacent, additional bedrooms.

From an architectural and massing perspective, the original proposal included significant massing related to the addition situated above the front landing and stairs of the subject dwelling immediately adjacent to the abutting dwelling at 405 Hillsdale Ave. E. Mr. Ladanyi asserted in his *prima facie* evidence that this structural component negatively impacted his adjoining semi-detached dwelling.

At the COA meeting, Mr. Ladanyi argued that the proposed front addition would ruin the staggered nature of the two dwelling, would not mirror the façade building materials, and adversely impact the enjoyment of his property by creating a' tunnel effect' in relation to his front door.

He subsequently confirmed these concerns at the December 3, 2019 TLAB Mediation session and following discussions between the two Parties the Owners agreed to reduce the size of the 2nd floor addition limiting the addition's footprint to the structural dimensions of the existing garage/family room below, with only a 0.30 m projection overhang. In addition, the Owners agreed to match the façade materials of the sloped, asphalt, shingled roof with that of the abutting dwelling at 405 Hillsdale Ave. E. (Mr. Ladanyi's home), and to maintain the ground or main vestibule extension in line with the roof canopy above.

The revised design also incorporates a new, flat roof canopy for weather protection for the entrance to the subject dwelling which was added due to the reduction in the 2nd floor overhang.

With respect to the variances being requested, Mr. Long noted that the subject property was the subject of two previous COA decision; the first issued on November 8, 2002 (COA File No. A599/02M) and the second issued on January 19, 2006 (COA File No. A0920/05TEY). The COA approved both variance applications which, in essence, approved a Floor Space Index (FSI) of 0.91 times the area of the lot, and a dwelling depth of 22.7 m for the subject dwelling.

In addressing the current Application, Mr. Long submitted that the proposed revisions would result in a small additional 19 m² of floor space, or an increase of only 6.5% to the FSI previously approved by the COA, and an indiscernible increase of just 0.3 m at the 2nd floor of actual building length, or an additional 1.35% of length.

He noted whereas the permitted maximum height of all front exterior main walls is 7.0 m the Application requests a variance for a proposed height of 7.87 m. He clarified that the additional proposed height for the new wall will be slightly taller than the existing to create the architectural square façade at the front or north elevation. The result is the addition of only 0.3 m above the existing roof parapet or an increase of 4%.

As to the *Planning Act* tests, I advised that the TLAB was under a statutory jurisdiction to address the appeal independent of the decision of the COA premised upon the considerations above noted, under 'Jurisdiction'. Mr. Long provided assistance in this regard. Although he was not proffered as an expert witness in the area of land use planning in this matter, he did address each of the four tests individually. I summarize his 'prima facie' testimony below.

1. Are the Variances in Keeping with the General Intent and Purpose of the OP?

Mr. Long highlighted the Built Form policies of the OP and, specifically, Policy 3.1.2.3 b) and d) with respect to the harmonious fit of the massing and exterior façade of new development. This Policy directs that:

"New development will be massed, and its exterior façade will be designed to fit harmoniously into its existing and/or planned context, and will limit its impact on neighbouring streets, parks, open spaces and properties by...:

b) incorporating exterior design elements, their form, scale, proportion, pattern and materials, and their sustainable design, to influence the character, scale, and appearance of the development; and

d) providing for adequate light and privacy."

He submitted that the revisions to the proposal are in keeping with the intent and purpose of this OP Policy given that the architectural design, massing, and exterior building materials have been altered to address Mr. Ladanyi's concerns and fit 'harmoniously, with the front architecture exterior of his dwelling.

2. Are the Proposed Variances in Keeping with the General Intent and Purpose of the Zoning By-law?

He opined that the intent of the existing By-law is *"to create and allow for "single family" (his words) residences in neighbourhoods adjacent to and walkable to existing neighbourhood shops."* (p. 2, Exhibit 2) He submitted that the numerical magnitude of the variances being requested, in terms of FSI and building depth, are incremental increases to those already granted by the COA through previous Committee decisions, above cited.

Anecdotally, Mr. Long argued that there have been "a number of applications in the neighbourhood asking for increases in FSI, length of dwellings, building heights and reduction of setbacks." (p.3, Exhibit 2)

Furthermore, he asserted that this is representative of "growing pressure within neighbourhoods for homeowners to stay in their home longer while improving their property and allowing for increases in the number of occupants within the same house." (p. 3, Exhibit 2) The proposal, he asserted, will accommodate additional family members within the existing dwelling and that "is not only good for the city but good for the family and increases the overall standards of housing within the neighbourhood." (p. 3, Exhibit2)

3. Are the Proposed Variances Desirable for the Appropriate Development or Use of the Land?

In addressing this test, Mr. Long contended that the requested variances are desirable given that the proposal will accommodate the Owners' family to continue living in the dwelling in more comfort thereby reducing the need to occupy new

housing stock. He also asserted that the proposed renovations would make it more practical to allow a growing family to stay together longer in the current home.

4. Are the Variances Minor?

He submitted that the FSI of 1.02 times the area of the lot is a relatively small increase to the FSI granted by the COA in 2002 and that any impacts on Mr. Ladanyi's home will be 'negligible' (his word) because of the agreed to revisions to the proposal. More importantly, he asserted that there will be no material impact on Mr. Ladanyi's enjoyment of his property and the exterior façade materials being incorporated into the 2nd storey addition will match with those of the abutting home.

With respect to the variance for building depth, Mr. Long confirmed that the COA, in their decision in November 2002, granted a variance for a building length of 22.7 m. The Owners are requesting a depth of 24.97 m due to the starting point of the depth measurement. He clarified that while the building length will increase by only 0.3 m due to an overhang of the 2nd storey addition at the front elevation, the actual building length will not change from the previous COA approval.

In clarifying this further, he submitted that this variance is, in fact, a technical update to satisfy Chapter 10.10.40.30.(1) of Zoning By-law 569-2013.

He concluded that the variances requested, individually and cumulatively, reflect the discussions and agreement reached with Mr. Ladanyi, they satisfy the tests contained in s. 45(1) of the *Act*, and he respectfully requested that the TLAB approve the variances as outlined in Appendix 1 in this Decision.

ANALYSIS, FINDINGS, REASONS

I must take this opportunity to thank the Parties, Mr. Long, Mr. Ladanyi and the Aveys, for their cooperation, civility, and collaboration throughout these proceedings. Their participation in advancing discussions and their perspicacity in arriving at a settlement of the issues is greatly appreciated.

In closing statements, both Mr. Avey and Mr. Ladanyi further acknowledged this collegiality and thanked the TLAB for its assistance in accommodating mediation which they conceded contributed directly to the crafting of a settlement agreement. In fact, Mr. Ladanyi reiterated his acknowledgement of the improvements made to the proposal by the Owners and requested that the TLAB approved the variances before the TLAB based on the terms of settlement agreed to by the Parties.

I agree with Mr. Ladanyi that the subject Application and the revised proposal before the TLAB represent improvements to the plan that was previously advanced by the Applicant and presented to the Tribunal on December 3, 2019. With respect to the issue of a revised proposal and the notice requirements under the *Planning Act* (s. 45(18.1.1), I addressed this matter in the Hearing with an oral ruling. I advised the Parties that I find the revised proposal acceptable for consideration by the TLAB and

that, in accordance with established practices of previous Tribunal decisions, I find the public interest is not compromised.

Furthermore, I find that the revisions to the proposal now before the Tribunal lessen the overall impact of the second storey addition on the adjacent property owner, specifically, and are more in keeping with the immediate neighbourhood, generally. Therefore, I find the changes are within the spirit of s. 45(18.1.1) and no re-notification is required.

I find on the strength of the materials submitted by the Parties and the evidence provided at the Hearing by the Applicant, that provincial policy is not contravened, the general intent and purpose of Official Plan policy and the purpose of the Zoning By-law are maintained, and that the related construction and re-investment in the existing dwelling are minor and desirable.

I accept the settlement and provide for its implementation.

DECISION AND ORDER

The appeal is allowed, and the decision of the Committee of Adjustment is set aside. Variances in accordance with **Appendix 1** hereto are approved, subject to the following condition. **Appendix 2 and 3** are incorporated and form part of this decision.

If difficulties arise in implementation, the TLAB may be spoken to.

Appendix 1

- 1. Chapter 10.10.40.40.(1), By-law 569-2013 The maximum permitted floor space index is 0.6 times the area of the lot. The proposed floor space index is 1.02 times the area of the lot.
- Chapter 10.20.40.10.(2), By-law 569-2013
 The maximum permitted height of all front exterior main walls is 7.0 m.
 The proposed height of the front exterior main walls is 7.87 m.

3. Chapter 10.10.40.30.(1), By-law 569-2013 The maximum permitted building depth is 17.0 m. The proposed building depth is 24.97 m.

The following condition will apply:

 The proposal shall be constructed substantially in accordance with the attached revised Site Plan drawings and elevations set out in Appendix 1 to this Decision, consisting of drawings A1 (Site Plan), A3 (Main Floor), A4 (2nd Floor Plan)m A6 (West (Side) Elevation), and A7 (North (Front) Elevation), all dated February 16, 2020, prepared by Wayne Long Architect. Any other variances that may appear on these plans that are not listed in this decision are **NOT** authorized. Appendix 2 – Site Plan Drawings

Appendix 3 – Minutes of Settlement

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D. Lombardi Panel Chair, Toronto Local Appeal Body

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SITE PLAN 1/16"=1'-0" REV. 3 Feb.16/20 REV. 2 Jan.10/20 REV. 1 APR.10/19 Proj. Name Dwg. Title SIT Dr'n By:LL Date: Aug.2018	STATISTICSLOT AREA -313.8 m2BASEMENT FLOOR AREA -EXIST. 100 m2NEW 0 m2TOTALMAIN FLOOR AREA -EXIST. 101 m2NEW 2 m2TOTAL2ND FLOOR AREA -EXIST. 86.5 m2NEW 17 m2TOTALTOTAL AREA -EXIST. 287.5 m2NEW 19TOTAL 3LANDSCAPE COVERAGENO CHANGE 30% OF FRONT YARD6.0 m6.87 mFRONT YARD6.0 mEXISTING15.76mSETBACKSREQUIRED/ALLOWED6.87 mFRONT YARD7.5 mEXISTING15.76mSIDE YARD0.9 AND 0 mEXISTING1.2m AND 0.0mMAX DEPTH17 m24.97 PER NEW FRONT SETBACKBUILDING HEIGHT10.0 mEXISTING 7.6 PER PREVIOUS		AVG. 397 AVD 401 HILLSDALE DEPTH OF BI'-11"	23'-5' [9.74M] 23'-11J' 27.14M] 23'-5' [9.74M] 20'-11J' 20'	*105 HILLSDALE EXIST.	[44.10M]
FE PLAN Ck'diwL Proj.:18210	W 0 m2 TOTAL 100 m2 2 m2 TOTAL 103.0 m2 17 m2 TOTAL 103.5 m2 19 TOTAL 306.5m2 I YARD I YARD DED m M ND 0.0m FRONT SETBACK FRONT SETBACK PER PREVIOUS VARIANCE	HILLSDALE	11-6 [3.51M]	EXIST. 2-STUREY DWELLING	r. 2-STOREY	
ADDITION TO 401 HILLSDALE TORONTO 8 Compb Tei: (416	Cofa #A599/02 HAS PROPOSED FLOOR ARE INCLUDING THE 2ND F EXISTING BUILDING DE PRIOR TO ISSUANCE (40'-2j" [12.25M]	REAR LOT LINE 23.37' (20.94M)	COMMON LOT LINE 144'-8"" (44.10M) 23.37' (20.94M)	

Mar 11, 2020



DEPTH HAS BEEN APPROVED BY CofA #A599/02M OF BUILDING PERMIT #02=193506 BLD 00 SR

\S APPROVED GFA OF 286 M2 (FSI 0.91) \REA = 306.5 M2 > 286 M2 MAX FLOOR ADDITION ABOVE EXIST. GROUND FLOOR









Settlement Agreement

Between

Tedd Avey

401 Hillsdale Avenue East, Toronto, Ontario

And

Michael Ladanyi

405 Hillsdale Avenue East, Toronto, Ontario

WHEREAS Tedd Avey proposes to construct an addition to 401 Hillsdale, as set out in the attached drawings listed below;

IT IS HEREBY AGREED THAT:

1. Michael Ladanyi will not oppose proceedings before the Toronto Local Appeal Body ("TLAB") directed to Tedd Avey seeking approval from TLAB to construct an addition to 401 Hillsdale that conforms to the attached City of Toronto PPR and the attached drawings listed herein as:

A1 - SITE PLAN R3 DATED FEBRUARY 16, 2020

A2 - BASEMENT PLAN R2 DATED JANUARY 10, 2020

A3 - MAIN FLOOR PLAN R3 DATED FEBRUARY 16, 2020

A4 - SECOND FLOOR PLAN R3 DATED FEBRUARY 16, 2020

A5 - NOT USED

A6 - NORTH ELEVATION R3 DATED FEBRUARY 16, 2020

A7 - WEST ELEVATION R3 DATED FEBRUARY 16, 2020

A8 - BUILDING SECTION R3 DATED FEBRUARY 16, 2020

2. For clarity, Michael Ladanyi is permitted to attend TLAB proceedings in this matter to observe, and in the event that drawings other than those listed herein are submitted to TLAB for approval, Michael Ladanyi may oppose, entirely at his discretion.

3. This Agreement supersedes all previous agreements and acknowledgments between the parties and is binding on both parties.

4. If no building permit is issued by the City of Toronto in this matter by March 12, 2021, this Agreement shall terminate, unless both parties agree to extend the term of the Agreement, in writing.

Page 1 of 2

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Signed,

Tedd Avey Tell Over Date MARCH 13/20 Michael Ladanyi Jank March 12, 2020

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