

DECISION AND ORDER

Decision Issue Date Friday, May 22, 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): City of Toronto

Applicant: Irfan Akram

Property Address/Description: 1039 Weston Rd

Committee of Adjustment Case File: 19 128510 WET 05 MV (A0161/19EYK)

TLAB Case File Number: 19 184820 S45 05 TLAB

Hearing date: Wednesday, November 06, 2019

DECISION DELIVERED BY S. Talukder

REGISTERED PARTIES AND PARTICIPANTS

Applicant	Irfan Akram
Appellant	City of Toronto
Appellant's Legal Rep.	Marc Hardiejowski
Participant	Leo Mieles
Expert Witness	Allison Smith

INTRODUCTION

1. This is an appeal by the City of Toronto (City) of the Committee of Adjustment's (CoA) decision. The CoA approved the application of variances (noted below) for the property located at 1039 Weston Road (Subject Property). The approved variances permitted the Applicant to maintain an existing double duplex and remove the existing secondary suite in the basement.

2. The Applicant at the CoA, Irfan Akram, is the owner of the Subject Property.

MATTERS IN ISSUE

3. The CoA approved the following variances, which are now at issue on appeal:

1. Section 10.5.40.50.(2), By-law 569-2013

The minimum required side yard setback for a platform without main walls such as a deck, balcony or similar structure, attached to or within 0.3 m of a building is 1.2 m.

The existing platform at the rear is located 0.09 m from the east side lot line and the existing basement walk-out is located 0.33 m from the east side lot line.

2. Section 10.5.50.10.(3)(B), By-law 569-2013

A minimum of 25% of the required rear yard landscaping shall be maintained as soft landscaping (18.24 m²).

A total of 11% of the required rear yard landscaping is being maintained as soft landscaping (7.96 m²).

3. Section 200.5.10.1.(1), By-law 569-2013 & Section 3.2.1D.1, By-law 1-83

A minimum of 2 parking spaces are required.

A total of 1 parking space is being provided.

JURISDICTION

Provincial Policy – S. 3

4. 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)

5. In considering the applications for variances from the Zoning By-laws, the TLAB Panel must be satisfied that the applications meet all 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

6. The City filed all the necessary documents for disclosure, including an expert witness statement of Allison Smith, an Assistant Planner with the City for the Etobicoke York District.
7. The Applicant did not file any documents or witness statements. The Applicant filed the Document Disclosure form (Form 3) wherein the Applicant indicated that “No changes are proposed to the design. Please refer to the documents filed to the Committee of Adjustment.”
8. The Applicant’s architect, Leo Mieles, filed a participant’s statement supporting the Applicant’s position. As the Applicant did not have any witnesses and did not file any documents for the hearing, I proposed that Mr. Mieles provide his testimony as a witness of the Applicant, which Mr. Mieles agreed to.
9. Mr. Mieles stated that the application for variances at the CoA was to maintain a double duplex. There was an existing secondary suite in the basement which would be removed. The resulting space would be used for storage and mechanical space.
10. Mr. Mieles commented on the four tests for approval of variances. He stated that the variances are minor because there are no external changes to the existing site or building elevations. The existing double duplex is appropriate for the development of the property as it is consistent with the original intent of the building. The rear balcony condition is similar to the rear balcony found in the adjacent building at 1041 Weston Road and is in keeping with the existing local character. The soft landscaping conditions is also an existing condition while the building can have only one parking space because of the current space available. He noted that the zoning designation for the Subject Property, which is Residential Multiple Dwelling (RM), would be maintained, as the duplex will remain as residential use. He also referred to additional conditions such as proximity to public transit. I did not consider this condition as an appropriate legal consideration with respect to the requirement for parking spaces in this matter.
11. The City called Ms. Smith, who was qualified at the hearing as an expert in land use planning.
12. Ms. Smith testified that the Subject Property is located in the Mount Dennis neighbourhood. The Subject Property fronts on Weston Road and is between Eglinton Avenue West in the north and Saint Clair Avenue West in the South. The neighbourhood surrounding Weston Road is primarily low-scale residential, with some retail, schools, places of worship and larger apartment buildings present throughout.
13. The Subject Property is designed as Neighbourhoods under the OP and Residential Multiple Dwelling (RM) under Zoning By-law No. 569-2013 and R3 under the former City of York Zoning By-Law 1-83.

14. Ms. Smith stated that the major reason the City appealed the CoA's decision was because of the ongoing planning framework study undertaken by the City's planning staff.
15. Ms. Smith stated that the Community Planning Staff prepared a report titled Mount Dennis Planning Framework Study – City Initiated Official Plan Amendment – Status Report, dated June 13, 2018. In this report, the Community Planning Staff recommended that the City Council direct the Planning staff to review and update the planning framework for the Mount Dennis area. This was for the study area generally along Weston Road between Jane Street and Humber Boulevard/Black Creek Drive including some lands between Weston Road and Black Creek Drive fronting Eglinton Avenue West and including those lands subject to Official Plan Site and Area Specific Policies 39, 40, 41, 42, 43, 53, and 320. This review will include public consultation. As a result of this review, it is expected that the OP and the Zoning By-Law applicable to the Mount Dennis area will be amended. The City Council accepted this recommendation, following which the Planning staff is currently in the process of completing the planning framework study.
16. Ms. Smith testified that the Mount Dennis Planning Framework Study was anticipated to be completed by 2020. She recommends that the approval of the variances include a condition that the approval is valid for a period of three years, expiring on June 20, 2022. I inquired whether the date of expiration should be three years from the date of issue of the TLAB's decision, which the City and Ms. Smith confirmed would be an amendment to the condition that they would accept.
17. Ms. Smith recommended this condition because the Mount Dennis Planning Framework Study may include potential changes to the land use planning tools for the area where the Subject Property is located, including amendment to OP policies and zoning by-laws. Limiting the approval of the variances to three years will allow the City to return to this proposal for the Subject Property based on the findings and recommendations of the Mount Dennis Planning Framework Study.
18. Ms. Smith objected to the approval of the variances without the condition based on two of the four tests – whether the variances are minor in nature and whether the proposal is desirable for the appropriate development or use of the land. She noted that if the condition were not included in the approval, then the variances would not be minor in nature or desirable for the appropriate development of the land, as it will negatively impact the City's ability to plan for future change globally for the Mount Dennis area. The City will not have the opportunity to evaluate the Subject Property and the application in relation to the findings of the Mount Dennis Planning Framework Study.

ANALYSIS, FINDINGS, REASONS

19. I find that the Applicant has not provided sufficient evidence to support the Applicant's position in the appeal or to refute the City's position that the condition should be placed with the approval of the variances. The Applicant is not required to retain a land use planner to provide expert testimony on the four tests for variance;

however, explanation of how the proposal fits and is comparable with the neighbourhood characteristics where the Subject Property is located is needed. For example, Mr. Miele testified that the rear balcony was similar to the rear balcony of the adjacent building but did not provide further details of how this feature, or soft landscaping and single parking space, is in keeping with the neighbourhood characteristics and satisfied the policies in the OP.

20. The City's opposition is based on the ongoing study by the City of the Mount Dennis area, which may result in amendments to the Toronto's OP and Zoning By-Laws for the Mount Dennis study area, which includes the Subject Property. I am satisfied that the imposition of the condition proposed by the City is suitable to allow the City's planning for the Mount Dennis area once the study is completed. Without this condition, the proposal for the Subject Property may not be an appropriate use of the Subject Property, as it may negatively impact the City's ability to plan for future changes globally for the Mount Dennis area.

DECISION AND ORDER

21. The variances are approved and are subject to the following condition:

The approval of the variances shall be valid for a period of three years from the issue of this decision, expiring on May 19, 2023.

X 

S. Talukder
Panel Chair, Toronto Local Appeal Body
Signed by: Shaheynoor Talukder