

DECISION AND ORDER

Decision Issue Date: Thursday, August 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): ROBERT ULICKI

Applicant: LEA WILJER

Property Address/Description: 459-461 SACKVILLE ST

Committee of Adjustment Case File Number: 17 253383 STE 28 MV

TLAB Case File Number: **18 150889 S45 28 TLAB**

Hearing date: Monday, June 29, 2020 Friday, December 7, 2018, Monday, January 14, 2019, Wednesday, January 16, 2019, Friday, January 25, 2019, Friday, March 22, 2019, Monday, June 10, 2019, Friday, June 14, 2019, Monday, October 21, 2019, Tuesday, October 22, 2019, Monday, October 28, 2019, Wednesday, October 30, 2019, Friday, December 13, 2019, Monday, June 29, 2020 and Tuesday, June 30, 2020

DECISION DELIVERED BY STANLEY MAKUCH

APPEARANCES

Name	Role	Representative
Lea Wiljer	Applicant	
Sherry D'Costa Correia	Owner	
Robert Ulicki	Primary Owner/Appellant	Ian Flett
City of Toronto	Party	Matthew Longo

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Jane Pepino	Party's Legal Rep	
Paul Stagl	Expert Witness	
Alun Lloyd	Expert Witness	
Name	Role	Representative
Michael Tedesco	Expert Witness	
David Sajecki	Expert Witness	
Ryan Sankar	Expert Witness	
Kassel Prince	Expert Witness	
Saius Jaskus	Party	
Patricia Brubaker-Poulin	Party	
Judy Woodin	Party	
Glen Woodin	Party	
David Cole	Party	
Colette Hegarty	Party	
Gary Hill	Party	
Lillian Maniscole	Party	
Lorraine Mackenzie	Party	
Michael Butler	Party	
Patricia Milne	Party	
Shauna Macdonald	Party	
Robert Jerrard	Party	
Nara Jung	Party	
Alexandra Vandelle-Gillespie	Party	
Gregory Turcot	Party	
Trudy Macneill	Party	

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Douglas Woodall	Party	
Abdurrahman Al-Hesayan	Party	
Patrick Robertson	Party	
Name	Role	Representative
Jason Van Bruggen	Party	
Russell Goodfellow	Party	
Deirdre Sadler	Party	
Gabrielle Mcintire	Party	
Thomas Keeling	Party	
Howard Bortenstein	Party	
Mark Angelis	Party	
Katherine Tozer	Party	
Blaine Pearson	Party	
Caroline De Angelis	Party	
Alastair Dadds	Party	
Hasan Uran	Party	
Erin Blair	Party	
Jane Roffey	Party	
Mark Alboino	Party	
Jutta Polomski	Party	
Jim McNamara	Party	
Charles Fahlenbock	Party	
Kenneth Mathieson	Participant	
Beverley Jenkins	Participant	
Elizabeth Reynolds	Participant	

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Johanne Laperriere	Participant	
Louise Garfield	Participant	
Brandeis Jolly	Participant	
Name	Role	Representative
Susanne Hudson	Participant	
Christina Best	Participant	
Randy Brown	Participant	
Judy Lu	Participant	
Sara Josselyn	Participant	
Thorben Wiedilz	Participant	
Rosemary Macklem	Participant	
Maggie O'Connor	Participant	
Marc Cote	Participant	
Catherine Steinmann	Participant	
Jocelyn Richardson	Participant	
Ronan Rogers	Participant	
Lee Anne Rogers	Participant	
Janice Williams	Participant	
Douglas Wilson	Participant	
Lindsay Matheson	Participant	
Derek Sweeney	Participant	
Allen Zhang	Participant	
Christopher Wirth	Participant	
Alexandra Conliffe	Participant	
Linnea Obern	Participant	

Introduction

This is an appeal by the owner of property (459-461 Sackville St.) in the Cabbagetown area of Downtown Toronto of the refusal by the Committee of Adjustment (COA) of variances to permit a child care centre (day care centre) in an existing historically designated building. The property, in turn, is in a Historic Conservation District. The appeal is opposed by the City of Toronto (City), which is a Party, and numerous residents, who elected Party and Participant status. Three of the residents are represented by legal counsel, who brought expert evidence on their behalf.

The variances sought are set out in Appendix 1 to this decision and can be summarized as follows:

Rear yard - a requirement that 50% of the rear yard be maintained as soft landscaping is not being met; none of the rear yard will be maintained as soft landscaping.

Exterior stairs are too close to the south lot line; this variance was deleted.

Existing fsi of 1.72 is in excess of the permitted fsi of 1.

Minimum 2 parking spaces are required; none is to be provided.

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A day care is not permitted in a building that is not originally constructed as a detached or semi-detached house. The building was not constructed for such a purpose and is not a detached or semi-detached house.

The existing building is too close to the north and south lot lines.

The question before me is: Do the variances, individually and collectively, meet the four tests of the Planning Act? Are the variances:

Desirable for the appropriate development or use of the land, building as a day care centre?

Do they maintain the general intent and purpose of the official plan?

Do they maintain the general intent of the zoning bylaw?

Are they minor?

These tests do not require an evaluation or consideration of the social need or desirability of the daycare centre.

Background

The property is on the south-east corner of Sackville Ave and Amelia St., in an area designated as a Historical Conversation District. The building was built in the nineteenth century, and, as stated, is designated historic. Sackville St. is a north/south street which is one way south, and Amelia St. is an east west street which is one way west. The building is two stories and is composed of two adjoining semi-detached buildings; each has a large window fronting on Sackville. It has a large veranda which fronts on Sackville as well. The veranda occupies the City owned Sackville St. boulevard. The building

is currently not in use; immediately prior to this time it was used as a butcher shop and retail store. By its appearance and age, it fits with the physical character of the neighbourhood, does not stand out, and is currently not out of keeping with the neighbourhood. The rear yard abuts Amelia St. Its interior is not visible from the street because of a wooden fence which runs along the property's northern boundary. The Amelia St boulevard is occupied by parking spaces and an urban garden.

Matters in Issue

The basic issue before me was whether the property should be allowed to be used as a child care centre for up to eighty children. The reasons for opposition to the day care centre can be summarized as follows:

- 1) First and foremost, traffic and parking are a concern. This issue obviously arises from the variance related to parking. There was a serious concern that the day care would cause traffic and parking congestion in the morning and afternoon when children are being dropped off and picked up by parents parking on the streets and crossing the streets to and from the day care. Related concerns were whether the allocation of street parking spaces for the pickup and drop-off would adversely affect residents' parking availability and whether the additional traffic generated by the day-care would impede access to the surrounding arterial roads from local streets.

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2) The second major issue was whether this historic building should be used for day-care purposes. Of concern was whether a non-residential use (day care) should be permitted in this residential area, and whether it fit in the area, or whether it was really a commercial use which was out of keeping with this historic residential district and the building's historic designation. An important part of this issue was whether a children's play area in the Amelia St. boulevard should be allowed and whether strollers should be allowed to be stored on the veranda given the residential and historic character of the property and building.

3) The third issue of importance related to whether the size of the building, with a fsi of 1.72 times the area of the lot, would result in a daycare with too many children for the site and, thus, whether the use was too intense for the neighbourhood?. This, in turn, related to whether the City would rent space for a playground on the Amelia St. boulevard and for the storage of strollers on the front porch on the Sackville St. boulevard. This concern was subject to the issue of whether the building and property were suitable for a daycare use at all. A related concern was the adequacy of the space in the building for the children. These concerns also raised the issue of whether it was premature to approve the daycare when the adequacy and availability of the interior and exterior space was uncertain as no required provincial approval had been obtained.

4) There also were site plan issues related to the adequacy of the size of the rear yard since the zoning by-law requires 50% of the rear yard to be of soft landscaping. There was a need to buffer the property to the south, and there was also need for space for

the storage and pick up of garbage and the delivery of supplies while accommodating a children's play area.

5) The variance to permit a staircase too close the north property line was withdrawn and created no issues.

6) There was also an issue respecting the applicant's conduct and his failure to fully and openly consult with the residents of the neighbourhood in seeking approval of the variances.

Jurisdiction

The jurisdiction of the Toronto Local Appeal Body (TLAB) in this case is clearly limited in that the Tribunal's approval of the variances would not necessarily result in the approval of the establishment and operation of the proposed daycare.

The Child Care and Early Years Act , 2014 (the Act) governs whether a daycare can ultimately be established on the site. It states in section 1(1):

The purposes of this Act are to foster the learning, development, health and well-being of children and to enhance their safety.

It is, therefore, the primary purpose of the Province to evaluate how successful and safe the operation of the day care will be if the variances are granted. Equally important, section 13. (1) states: "Any person who provides child care,... shall do so in accordance with the regulations." passed pursuant to the Act.

The Regulations under the Act set out the details respecting the construction of the facility and its operation. O.Reg 137/15 (the Regulation) states in section 14. (1):

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Where a person proposes that a new building be erected or an existing building be used, altered or renovated for use as a child care centre or that alterations or renovations be made to premises used as a child care centre, the person shall not commence the erection, use, alteration or renovation until plans are approved by a director.

A director is a person appointed under the Act. Therefore, any approval of the variances by the TLAB may be meaningless as the plans for the day care must also be approved by a director appointed under the Act and conform to the provisions of the Regulations before the daycare is permitted to operate. While daycare plans are subject to provincial approval, they are not subject to the City's site plan control bylaw.

Having noted the requirement for provincial approval, I also note that the daycare must conform with certain other City bylaws by virtue of Section 13. (1) of the Regulation which states:

Every person who applies for a licence to operate a child care centre under section 20 of the Act shall at the time of application file with a director, evidence that the premises to be used as a child care centre complies with,

- (a) the laws affecting the health of inhabitants of the municipality
- (a)(b)
- (b) any rule, regulation, direction or order of the local board of health and any direction or order of the local medical officer of health that may affect the provision of child care;
- (c) any by-law of the municipalityand any other law for the protection of persons from fire hazards;
- (d) any building by-law passed by the municipality pursuant to the Planning Act or any predecessor of that Act...

The daycare is, therefore, subject to the zoning bylaw of the City. Although it is not governed by, as I stated, the City's site plan control bylaw it is subject to TLAB authority by virtue of section 45(1) of the Planning Act with respect to variances to the zoning bylaw.

That is the reason for this appeal.

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In considering the applications for variances from the zoning by-laws, a TLAB panel must, as stated earlier, be satisfied that all the variances, individually and cumulatively, meet all of the four tests under s. 45(1) of the Planning Act. This requires an evaluation of the variances from a municipal planning and land use perspective which includes maintaining the general intent of the official plan and the zoning bylaw as well as finding that the variances are desirable for the appropriate use of the land and buildings, and that they are minor.

In addition, a decision of the Toronto Local Appeal Body must be consistent with the 2014 Provincial Policy Statement ('PPS'), and conform to the Growth Plan of the Greater Golden Horseshoe ('Growth Plan'). In my view, if a variance meets the four tests it conforms to the Official Plan which in turn implements the PPS and thus conforms to the PPS and the Growth plan. If it does not meet the general intent of the Official Plan logically it cannot be implementing provincial policy.

Evidence

There was a great deal of evidence presented at this Hearing. The evidence was based on a draft plan for the daycare centre providing for the care of 80 children, although it is uncertain whether a director will, indeed, approve such a plan as required by the Act.

There was the evidence of three traffic engineers, two planners, a mathematician, and the evidence of approximately sixty residents, both parties and participants. The evidence of most residents was in opposition to the appeal, although it is important to point out that my decision cannot be based on how many witnesses are in favour or opposed

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to an appeal but must be based on my application of the four tests of the section 45 of The Planning Act to the variances.

I do not propose to repeat all of the evidence that was presented at the Hearing. The TLAB recording system provides for interested persons to hear all or part of the oral evidence and witness statements are available on line. What follows is reference to the evidence I found relevant and significant in making my decision. It is imperative to note that, as I informed the Parties, I visited the site a number of times. Such visits were important in my application of the four tests.

Much of the submitted evidence related to traffic and parking, as it appeared to be the most important issue. In my view, the evidence of the three different traffic experts amounted to three different traffic studies. Each study, with somewhat different findings, was presented by an expert, one for the applicant /appellant, another for the City and an expert for certain neighbours. In addition, two local residents gave specialized evidence regarding parking. Each found a need for parking to drop-off and pickup spaces to be provided on the street for a daycare of 80 children, the maximum number of children which a day care on the site might hold. Such an on street provision for parking has been made for other daycare centres in the City. The experts' evidence varied in the number of spaces required on the street from 4 to 6. There was, however, also evidence that more parking should be provided. For example, there was evidence that additional spaces were required for staff, and that, therefore three parking spaces should be provided on site for this purpose. In addition, there was evidence that additional spaces were needed because the number of vehicular drop-offs, as opposed to the

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number of pedestrian drop-offs, would be higher than anticipated, and that additional spaces were needed because of snow ploughing in the winter.

The major disagreement among the experts respecting drop-off and pickup was with respect to the required time required for each drop off and pickup and the resulting number of spaces required for this activity. The applicant's expert's opinion was 4 spaces would be required, the City's expert's opinion was 5 spaces and the residents' expert opined that at least 6 spaces were required. I find, based on the evidence of all three experts, that 4-6 spaces will be required on the street.

There is no doubt that traffic and parking was the main concern of all parties. The residents gave a great deal of evidence respecting parking. Insufficient parking could result in the blockage of streets if parents simply stopped in the middle of the street because there was no parking space available; or, when properly parked, they opened car doors on the street as opposed to sidewalk side of their cars. Photos demonstrated how that could happen. Parents might pull up onto sidewalks to pass cars blocking the street. Parents would have to circulate around on neighbouring streets and lanes if they could not find a parking space causing congestion as a result.

In addition to the evidence regarding the sufficiency and location of parking spaces for the day care, there was evidence that any reservation of parking spaces on the street for the day care would deprive residents in the area of parking spaces for their cars.

It is significant that the parking and traffic evidence with respect to drop-off and pick up basically related to a two and one half hour period in the morning and a two and one half hour period in the afternoon. It was generally agreed among the experts that space would have to be allocated for the day care during the following times: 7:00am-

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7:30am, no parking at all to ensure the space was available; 7:30am-9:30am, 10 minute parking limit for actual drop-off and pickup; 3:30-4:00pm, no parking to ensure the space is available; 4:00pm-6:00pm, 10 minute limit for actual drop-off and pickup. There was uncontradicted evidence that any provision of on street parking would require an amendment to the City's parking bylaw by City Council.

With respect to the issue of staff parking, there also was not unanimity among the experts. Two of three experts gave the opinion that staff parking was not required. There is a public parking lot in the area, public transit is available, and staff might bicycle or walk. It was clear that, if parking were provided on site, then the boulevard on Amelia St. would be the location for such parking. Under the City's bylaws a poll of the residents on the street would be required to permit parking on the boulevard.

Evidence with respect to on street parking also made reference to the impact which the allocation of parking spaces to the daycare would have on the residents in the neighbourhood. There was a serious concern expressed on behalf of and by residents that there would not be sufficient parking available for residents if space were located to the daycare. The evidence demonstrated that there currently are sufficient spaces although permits for 100% of the street parking spaces in the area have been allocated. Of particular concern were shift workers who would come home in the morning and be unable to find a parking spot.

In all of this evidence there was a concern on the part of the residents that there would be an increase in illegal vehicular activity and parking in the area, if the day care were approved with on street parking.

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Thus, it was clear from the evidence that there would be a total of six fewer spaces available on Amelia St. and Sackville St., in the vicinity of the day care centre for five hours per weekday if the required parking spaces were protected for day care use. The maximum number of parking permits for spaces have been allocated for the area, although the City as a matter of practice issues more permits than actual spaces available and there is no certainty that if one has a permit that a space will be available on the street one resides on. In any event, there are, therefore, additional permits available and indeed, in this area around the proposed daycare there are there are some spaces currently available.

The expert evidence was not clear that boulevard parking was required for staff, given access to the TTC, the possible use of bicycles by staff, and the public parking lot in the area. Nor was it clear that on street parking was so dangerous to the children and parents, as a result of needing to cross the street to reach the day care from a parked car, that it should not be allowed. Moreover, it was not clear that there would be significant congestion on the streets or that a reduction in the level of service in the intersection of Amelia St. and Sackville Ave. would occur as a result of the day care. There was evidence that bollards in the vicinity of the day care could reduce any the illegal mounting of sidewalks by vehicles. There was no significant evidence that access to arterial roads from neighbourhood streets would be significantly impaired. Finally, with respect to parking and traffic, it was not clear that potential breaches of the law respecting these matters was relevant.

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Evidence with respect to the second major issue, the use of the property for day care purposes, was largely given by two planners, one for the applicant and the other for the three residents. There was no planning evidence proffered by the City. There was, in addition, evidence by residents, and in particular, interesting evidence from a neighbouring resident regarding the history of the building. The evidence respecting use related largely to whether a day care centre should be permitted in this building, as the City's bylaw designating the site historic stated, that it was constructed as a retail facility. It was for this reason one of the variances was necessary: since the bylaws requires a daycare centre be in a detached or semi detached house and constructed as such. The appellant's evidence was that the building's appearance was preserved since no significant changes were being made to the external designated facade and that the building's appearance was appropriate for the neighbourhood. The residents' planner's evidence was to the contrary. In his opinion, the building had a retail appearance, and thus was different from the residential physical character of the neighbourhood. Moreover, in his view there were substantial changes being made. A non-residential use, the daycare centre, was being introduced into this residential area and strollers were to be stored on the front porch, adversely affecting the building's appearance and a boulevard garden space was being converted to a children's play area which was possibly not permitted and certainly had an adverse impact on the appearance of Amelia St. He also had a concern about the lack of soft landscaping in the rear yard as part of his overall objection to the proposed day care.

The residents' planner had additional concerns which the appellant's planner did not address. He noted the large number of children permitted by the 1.72 fsi and opined that

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this was too intense a use. He noted that the provision for bicycle storage, garbage collection, and stroller storage appeared to be on City property and that the site plan providing for these matters had not been approved by City or a director and thus it was uncertain if the daycare would meet provincial standards. He also opined that the storage of strollers, the loss of green space on the boulevard, the intense use of the site with garbage pickup and service delivery generally would all interfere with the site's historic designations, and were too intensive for a residential neighbourhood. Heritage Preservation gave no evidence in opposition to the appeal. Although he gave evidence evidence that its approval would be required for any significant physical changes under the City's heritage preservation bylaw. Importantly, in his opinion, the change to the day care use did not respect and reinforce the character of the neighbourhood.

In the opinion of the residents' planner the variances did not meet the four tests individually or cumulatively and no approval should be granted on condition of the applicant obtaining approval of the City or the director. On cross examination, the planner for the applicant/appellant had serious difficulty in disagreeing with this opinion.

The evidence respecting site plan concerns has been briefly summarized above. In addition, there was some evidence that noise could have an impact on neighbours, and that landscaping the rear with interlocking brick may be insufficient to meet soft landscaping requirements. In addition it should be noted that a neighbouring property owner who specialized in researching the history of the street testified that the building to be converted to the day care centre was originally constructed as two farm houses which

were attached. There was no evidence to rebut complaints that there was insufficient public consultation.

Reasons, Analysis and Findings

It is clear that there is strong neighbourhood opposition to this appeal. That is understandable as it would bring a change to the neighbourhood. A property that is currently basically unused would be put to active use as a daycare centre with up to 80 children. The question that I face is whether the variances to enable such a change meet the four tests of the Planning Act.

Based on the evidence I heard, read and summarized above, and based as well on a number of visits to the site, I conclude for the reasons I set out below that the variances individually and cumulatively meet the four tests. The appeal, therefore should be allowed and the variances approved; subject, however, to the following condition: the approval will not come into effect until December 31, 2021.

Having heard the evidence and reread the witness statements of the three traffic experts as well as all of the residents' evidence, particularly that of Mr. Bortenstein and Prof. Jerrard I am persuaded that sufficient parking spaces can be designated on the adjacent streets to provide for pickup and drop-off at the appropriate times recommended by Mr. Tedesco and not disputed by the other traffic experts. I appreciate that such parking is seen to be sufficient for other daycare centres in the City. Whether the number of spaces is 4, 5, or 6 will ultimately depend on how many children are in the

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day care, but it is clear to me that based on the evidence, with a maximum of 80 children, 6 spaces should be sufficient. If all spaces are occupied, then parents can circulate on the neighbouring streets until a space is available. It is certainly appropriate to provide parking on Amelia and Sackville Streets. Current residents do not have a monopoly on their use. Based on the evidence some residents will be inconvenienced and may have to park further from their homes than they do now. However, the evidence was clear to me as well, that no resident is guaranteed a parking space on his/her street or close to his/her house, and the evidence did not demonstrate that a permit will not be available to current residents if 6 spaces are allocated in the morning and afternoon for the times agreed to by all three traffic experts. While it was suggested that a person residing close to the day care returning from work at 8 a.m. will have to park further from home, a similar person returning at 9 a.m., may more easily find an empty space close by.

I also find that the evidence indicates that the level of service at the intersection of Amelia and Sackville Streets will not will not be adversely affected by the proposed drop-off or pick up or any resulting recirculation if a space cannot be found. I find that in the downtown area of the City parking spaces do not need to be provided for staff on site, as was it was uncontested that the area is served by public transit, a public parking lot, and the day care could be reached on foot or by bicycle. For staff to park on the neighbourhood streets would be impractical as they would need to leave the day care periodically to pay for on street parking. Ensuring compliance with the parking and traffic restrictions is a matter of enforcement. The safety of on street drop-off and pick up is, as will be discussed below, a matter of provincial concern, but in my view crossing a street

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to a daycare in a neighbourhood like this in downtown Toronto is not a serious risk but one which any parent will have to evaluate in deciding whether to use the facility.

I should point out that my conclusion runs counter to the opinion of the planner in opposition to the variances. A significant part of his opinion, in my view, was based on his determination that the variances would permit the day care, a non-residential use, in a residential area. In his opinion such a use is out of character with the area and it would adversely affect the appearance of the building and in particular its historic nature. I disagree; I do not find that there would be a significant adverse impact from the daycare centre on the residential character of the area.

The Cabbagetown area is designated Neighbourhoods in the Official Plan. Section

4.1.11 of the Plan states:

Neighbourhoods are considered physically stable areas made up of residential uses in low scale buildings such as detached houses, semi-detached houses, duplexes, triplexes and townhouses, as well as interspersed walk-up apartments that are no higher than four storeys. Parks, low scale local institutions, home occupations, cultural and recreational facilities and small-scale retail, service and office uses are also provided for in Neighbourhoods. Low scale local institutions play an important role in the rhythm of daily life in Neighbourhoods and include such uses as: schools, places of worship, community centres, libraries, day nurseries and private home daycare, seniors and nursing homes and long-term care facilities, public transit facilities, utility and telecommunications installations, and public services and facilities provided by the local, provincial and federal governments.

The Official Plan, therefore, treats daycare centres as “local institutions” which “play an important role in the rhythm of daily life” in low density residential area such as this. It does not consider them to be undesirable or unsuitable uses in this area, but rather a

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use which is appropriate as it “plays an important role.” The zoning bylaw also anticipates such a use in an area designated Neighbourhoods. It states in

Section 2 (2) Purpose of the Residential Zone Category: The Residential Zone category permits uses associated with the Neighbourhoods designation in the Official Plan. ... the zones within this category also include permission for parks and local institutions.

The zoning bylaws make specific reference to “local institutions” which includes a day-care centre and has clear language pointing out an intent to allow such a use even though it is qualified.

I find, therefore, an opinion which attempts to reduce the desirability of a day care use as such, by describing it as a non residential use or equivalent to a commercial use in an area designated Neighbourhood is not helpful. I find that while there is no basis or obligation upon which to find need, the Official Plan clearly provides for and supports daycare centres in Neighbourhoods

An approach which does not recognize this support also detracts from the important historic preservation aspect of this particular site as it neglects to consider the benefit that the proposed use will have for heritage preservation. It would provide for the almost complete preservation of an historically designated building. Policy 3.1.5.6 of the Official Plan states:

The adaptive re-use of properties on the Heritage Register is encouraged for new uses permitted in the applicable Official Plan land use designation...

Therefore, the Plan encourages this proposal, with a policy to which the planner in opposition did not give sufficient weight. Moreover, the Official Plan has additional policies which will ensure the historic integrity of the building.

Policy 3.1.5. 4. provides that:

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Properties on the Heritage Register will be conserved and maintained consistent with the Standards and Guidelines for the Conservation of Historic Places in Canada, as revised from time to time and as adopted by Council.

Policy 3.1.5.5 states that:

Proposed alterations, development, and/or public works on or adjacent to, a property on the Heritage Register will ensure that the integrity of the heritage property's cultural heritage value and attributes will be retained, prior to work commencing on the property and to the satisfaction of the City.

Finally, under s. 42 of the Ontario Heritage Act, the plans for the site will need heritage approval. I find that providing parking off site and on the street is an important means of preserving the historic character of the property and ensuring a new use for the building. As a result, this proposal provides an opportunity for a reuse that benefits and supports heritage conservation for the reuse of "local institution," which is desirable from a planning perspective. If there is an issue whereby the reuse of the veranda for stroller storage or the change of a garden to a playground does not support the historic preservation of the site there may well be other solutions to those problems.

There is another section of the Official Plan which the planners neglected to fully address. Map 2 of the Official Plan provides an overlay which designates the site to be within the "Downtown" of the City. I note before addressing the Downtown policies in greater detail that the Official Plan includes a provision which states:

The architectural and cultural heritage of Downtown will be preserved by designating buildings, districts and open spaces with heritage significance and by working with owners to restore and maintain historic buildings.

This proposal gives a significant opportunity to fulfill this policy.

Policy 2.2.1.3(d) of the Plan provides as follows:

The quality of the Downtown will be improved by:... preserving and strengthening the range and quality of the social, health, community services and local institutions located Downtown.

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The Plan, by encouraging the strengthening of the range of local institutions in the downtown is encouraging daycare centres. In addition Policy 3.2.2.1(a).1, which addresses Community Services and facilities states that:

Adequate and equitable access to community services and local institutions will be encouraged by: a) providing and preserving local community service facilities and local institutions across the City dedicated to this purpose.....

There is no requirement in the Official Plan to prove need for such facilities as day cares or inequity with respect to them; rather, the Plan encourages this particular use across the City. These policies were not appropriately considered by the planners.

I find that a major concern respecting this proposal is whether it “respects and reinforces” the physical character of the neighbourhood as this is an important requirement of the Official Plan which must be considered in any minor variance application in an area designated Neighbourhoods. The planner in opposition clearly was of the view that the variances did not. In his opinion this proposal “did not fit.” His opinion was based on a number of factors: such as historic preservation; intensity of use; and, use of public realm for private purposes. I have visited the site and reviewed the plans. I do not agree. The historic building is to be maintained, the new use is indirectly encouraged by the Official Plan, the use of the boulevard for a play area (if permitted by the City) instead of a garden does not override the other factors I have addressed. Children playing as opposed to plants growing is not necessarily a significantly adverse result. I make these findings as a result of my site visitations and reading of the applicable Official Plan policies I have outlined above and because I did not find the evidence of either planner addressed these policies to my satisfaction.

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Nor did I find sufficient evidence to dismiss the appeal on the basis of insufficient community consultation, which of course is not one of the tests I am to apply. While this can be a relevant consideration in some cases in this case I find, after hearing all the evidence, that it is very unlikely that community consultation would have resulted in a resolution of the issues.

In conclusion, I find all the variances individually and cumulatively meet the four tests. They are appropriate and desirable for the development of the property as a daycare centre. I find that the variances permit the reuse of a historic building which fits in the neighbourhood; the variance regarding density, proximity to the lot lines, and original construction provide for preservation of the historic building; and I find that the variance respecting parking, based on the traffic evidence, demonstrates that parking can be adequately provided on the street as is done for other daycare facilities. I am of the opinion that the variance regarding soft landscaping can be addressed through surface treatment as there was no significant evidence contrary to that proposition .

The variances permitting the use of the property as a daycare centre also maintain, individually and cumulatively, the Official Plan policies and zoning bylaw provision I have referred to above. These policies provide for local institutional uses in Downtown Neighbourhoods and the zoning bylaw recognizes those policies. The Official Plan policies also provide for historic preservation which these variances maintain.

In addition, it is important to note that the variances are minor as there is no reliable evidence of any significant physical negative impact on neighbouring properties, provided there is a buffer along the south lot line.

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Having made a finding that the variances should be granted there are nevertheless issues of implementation. I find that the day care will only function properly, and variances will only be meaningful if: (a) street parking is approved by City council, (b) a provincial license is obtained based on a plan approved by a provincial director demonstrating that such matters as: street parking (where children and their parents cross the street) and play areas, garbage and stroller storage, and access and egress, for example, are shown to be appropriate; (c) a site plan is approved by the Chief Planner of the City, or his delegate, demonstrating such matters as landscaping, including soft landscaping, and buffering, and any boulevard use; (d) approved heritage preservation is provided for; and, (e) a boulevard lease is entered into, if necessary.

To make my approval conditional upon all of these matters it was argued would be an improper delegation of my approval authority. While I do not agree with that position, in order to avoid a dispute respecting it, my Order is an Interim Order unconditionally granting the appeal and approving the requested variances.

However, it will become final and into force on December 10, 2021 and this Hearing is adjourned to December 3, 2021. This will give the applicant/appellant or other operator the opportunity to obtain all the approvals I have listed on the basis that the variances are granted and approved, albeit on an interim basis.

Since the TLAB Hearing is to continue before the Order becomes final a request can be made to change the adjournment date if circumstances warrant. In this way the variances are approved with an opportunity to alter the approval in the unlikely event that it becomes necessary to do so.

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The interim order, the unusual delay in the coming into force of my final order, and the recommencement of the Hearing prior to the Order coming into force, will ensure that the appellant has an opportunity to obtain all appropriate approvals and that no bodies will refuse an approval because the variances have not been approved. On the other hand, a failure to act in good faith to obtain an approval may result in the final Order being vacated.

Decision and Order

The appeal is allowed and the variances in Appendix 1 are granted and approved on an interim basis. This Interim Order will come into force and effect on December 10, 2021; however, it is subject to the continued hearing of the matter on December 3, 2021.

X 

S. Makuch
Panel Chair, Toronto Local Appeal

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APPENDIX 1

1. Chapter 10.5.50.10.(3), By-law 569-2013

A minimum of 50% (56.62 m²) of the rear yard must be maintained as soft landscaping. In this case, 0% (0 m²) of the rear yard will be maintained as soft landscaping.

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

The maximum permitted floor space index of the mixed-use building is 1.0 times the area of the lot (354.82 m²). The building will have a floor space index equal to 1.72 times the area of the lot (610.37 m²).

3. Chapter 15045.20.1 j2)(A), By-law 569-2013

A day nursery is a permitted use provided that it is located in a building originally constructed as a detached house or semi-detached house and that the day nursery occupies the entire building. In this case, the day nursery will not be located in a detached house or semi-detached house.

4. Chapter 200.5.10.1.(1), By-law 569-2013

A minimum of two parking spaces is required to be provided. In this case, zero parking spaces will be provided.

1. Section 6(2)(12)(i), By-law 438-86

A day nursery is a permitted use provided it is the whole of a detached house or semi-detached house.

In this case, the day nursery will not be located in a detached house or semi-detached house.

2. Section 4(5)(B), By-law 438-86

A minimum of two parking spaces is required to be provided for on-site.

In this case, there will be zero parking spaces provided for on-site.

3. Section 6(3) Part III 1(A), By-law 438-86

A minimum of 30% of the lot area (106.45 m²) shall be landscaped open space.

In this case, 0% of the lot area (0 m²) will be landscaped open space.

4. Section 6(3) Part 11, By-law 438-86

The maximum permitted gross floor area of a mixed-use building is 1.0 times the area of the lot

(406.45 m²). The building will have a gross floor area equal to 1.72 times the area of the lot (610.37 m²).

5. Section 6(2)(12)(iv), By-law 438-86

A day nursery is a permitted use provided no part of the building is closer to the nearest side lot line than 0.5 m. The building will be located 0.0 m from both the north and south lot lines.