

**Toronto Local Appeal Body** 

40 Orchard View Blvd, Suite 211 Toronto, Ontario M4R 1B9 Telephone: 416-392-4697 Fax: 416-696-4307 Email: <u>tlab@toronto.ca</u> Website: <u>www.toronto.ca/tlab</u>

# **DECISION AND ORDER**

**Decision Issue Date** Wednesday, December 23, 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): JON HYMAN

Applicant: FERDINAND WAGNER

Property Address/Description: 4891 YONGE ST

Committee of Adjustment Case File: 19 184580 NNY 18 MV (A0478/19NY)

TLAB Case File Number: 20 110308 S45 18 TLAB

Hearing date: Tuesday, December 01, 2020

**DECISION DELIVERED BY S. GOPIKRISHNA** 

APPEARANCES

NAME	ROLE	REPRESENTATIVE
FERDINAND WAGNER	APPLICANT	
JON HYMAN	APPELLANT	TONY CARIATI
MICHAEL BARTON	EXPERT WITNESS	

# INTRODUCTION AND BACKGROUND

Junction Investments is the owner of 4891 Yonge Street, located in Ward 18 (Willowdale), of the City of Toronto. Junction Investments applied to the Committee of Adjustment (COA), for the approval of variances to construct a one storey rear addition to the existing commercial structure.

On 16 January, 2020, the COA heard the Application and refused it in its entirety. The Applicant appealed the decision of the COA to the Toronto Local Appeal Body (TLAB) on 30 January, 2020. The TLAB convened a Hearing on **1 December, 2020**, which was

then converted to a Hearing by way of Videoconference, as a result of the Province of Ontario's restricting in-person Hearings.

# **MATTERS IN ISSUE**

#### 1. Chapter 23.2.1, By-Law 7625

The maximum permitted lot coverage is 33.3% of the lot area. The proposal has a lot coverage of 78%.

#### 2. Chapter 23.2.2, By-Law 7625

The minimum required rear yard setback is 7.5m. The proposal has a rear yard setback of 5.6m.

#### 3. Chapter 6a(2)a, By-Law 7625

The minimum required number of parking spaces is 10. The proposal will provide two parking spaces.

### 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**

The Hearing held on 1 December, 2020, was attended by Mr. Michael Barton, a Registered Professional Planner (RPP), representing the Appellant, Junction Investments. There were no other Parties or Participants involved in this Proceeding.

After being sworn in, and recognized as an Expert Witness in the area of land use planning, Mr. Barton provided the following evidence in support of the proposal:

The Subject property is located on the northeast corner of the intersection of Yonge Street and Greenfield Avenue/Elmhurst Avenue, and is accessible from the rear by a lane connecting to Greenfield Avenue



FIGURE 1- LOCATION OF THE SUBJECT PROPERTY

Mr. Barton said that the subject property is 165.35 m2 in area, with frontage of 6.1 metres on Yonge Street. He said that the existing two-storey mixed use building had been constructed up to the front and side property lines with no setbacks- the building abuts the existing buildings to both the north and south. The existing floor area consists of 76.2 m2 on each floor, including retail floor space on the first floor, a residential

dwelling unit on the second floor, and accessory storage space and mechanical areas in the basement. The existing Floor Space Index (FSI) is 0.92 times the lot area, including 0.46 commercial and 0.46 residential.

Mr. Baton said that the proposal for the subject property includes the construction of a one-storey rear addition, which will increase the commercial I floor area on the first floor. There will be no changes to the basement or dwelling unit on the second floor. The Site is designated "Mixed Use", is zoned C1, under the former North York By-Law 7625, but is excluded under the Harmonized City By-Law 569-201. The Site is surrounded by Mixed Use buildings, high-rise residential buildings and parking/vehicular circulation areas to the East, commercial and residential high-rise buildings on the West, Multi-storey mixed use buildings on the North and Multi-storey mixed use and commercial buildings.

Mr. Barton then provided a photo tour of the surrounding community, on the basis of which he concluded that:

- The buildings adjacent to the Subject property ghave smaller rear yard setbacks and, in some cases, are nearly built up to the rear property line and abutting the lane;
- Some of the buildings in the area have higher lot coverage than the subject property; and
- The adjacent properties have little or no on-site parking spaces and the properties that have on-site parking would not satisfy the requirements of the Zoning By-Law.

Mr. Barton next spoke to how the Site is served by Public Transportation, and by Municipal Parking.

The Subject property fronts onto Yonge Street, close to Municipal street parking on Elmhurst Avenue, which lies immediately to the west of the Yonge/Greenfield/Elmhurst intersection. Surface transit routes run on Yonge Street directly in front of the Subject property. There are transit stops in the immediate vicinity on the northwest, and southeast corners of the Yonge/Greenfield/Elmhurst intersection. The Sheppard subway station is also located within walking distance to the south. There are wide sidewalks on both sides of Yonge Street, and Greenfield Avenue/Elmhurst Avenue, which make for a very walkable and transit-friendly environment. Driveway access to the Subject property is from Greenfield Avenue to the common public laneway at the rear of the property. Moreover, the surrounding area has a number of streets identified as *Transit Priority Segments*, according to the City of Toronto's OP.

Mr. Barton also stated that the Subject Property is also located within the North York Centre Secondary Plan Area, which establishes policies and objectives to be followed within the Secondary Plan Area, in addition to the Mixed Use Areas and general policies of the Official Plan.



FIGURE 2- View of Rear of Subject Property and Adjacent Buildings from Laneway



FIGURE 3-View of Rear Lane towards Greenfield Avenue

Mr. Barton next spoke to what was specifically being planned for the Site.

The proposal for the Subject property involves the construction of a rear addition to the ground floor retail/commercial space. The proposal does not contemplate changes to the building height, front and side yard setbacks, and no changes to the basement, or dwelling unit on the second floor. The proposed floor areas will consist of a lot area of 165.36 m2, the residential floor space index will remain unchanged at 0.46. However, the commercial floor space index will increase from 0.46 to 0.83 and the total FSI will increase from 0.92 to 1.29.

Floor	Use	Existing Area	Proposed Area	Change
Basement	Accessory storage	76.2 m2	76.2 m2	0
Ground Second	Commercial Dwelling Unit	76.2 m2 76.2 m2	132.36 m2 76.2 m2	56.16 m2 0

Adding that the existing rear yard and surface parking area will be reduced to 5.6 metres, Mr. Barton emphasized that there will be a total of two parking spaces, as a result of the proposed one-storey addition. The addition will also increase the lot coverage on the property from just over 46% to just under 80%. Mr. Barton said that the intent of the proposed addition is to make more efficient use of the Subject property, by providing additional commercial floor area in a manner that conforms to the character of the area. He opined that the addition is compatible with the surrounding area, and conforms to the purpose and intent of the Official and Secondary Plans. Mr. Barton reiterated that the proposal will not result in any changes to the maximum building height or the front and side yard setbacks.

Discussing the relationship between the proposal and the higher level Provincial Policies, Mr. Barton opined that the proposal was consistent with the applicable policies of the Provincial Policy Statement (2020) and the Growth Plan (2020), because it would make more efficient use of the Subject property, and increase economic activity at the Site, without creating any unacceptable impacts from a traffic perspective.

Mr. Barton discussed how the proposal adhered to Policies 4.4.1, 4.4.2 and 4.4.5 of the Official Plan (OP) because it directed growth to appropriate Mixed Commercial Residential areas of the City, while protecting neighbourhoods and green spaces from the adverse impacts of development, as well as reducing the dependency on cars, while improving air quality.

He then added that the proposal was consistent with the Mixed Use Area Designation because "many of the properties within Downtown, the Centres and along the Avenues" are designated Mixed Use Areas, encouraging a broad range of commercial, residential, institutional and open space uses. Flexibility is provided for future redevelopment in these areas to accommodate increases in population and jobs along transit lines..

He next discussed the North York Centre Secondary Plan, which indicates that "North York Centre is an important focus of transit-based employment and residential growth", and that the "North York Centre is an important focus of transit-based employment and residential growth". According to Mr. Barton, the area covered by the that North York Centre South Secondary Plan is the primary location for employment within North York Centre. The Secondary Plan also advises that the distribution of densities is to be maintained, such that the built form of redevelopment is compatible with the abutting stable residential community, and that the reliance on the use of the automobile be reduced.

Mr. Barton then referred to Section 2.1 of the Secondary Plan which addresses land uses for the North York Centre South, with specific reference to Mixed Area Use B, which permits a maximum of 50% residential uses. He emphasized that the "total of all residential uses on a site in Mixed Use Area B will not exceed 50 per cent of the maximum permitted gross floor area on the Site, or portion of the site designated Mixed Use Area B", and that the Subject Area is permitted a maximum Density of 4.5 times the Lot Area. Mr. Barton discussed how the total FSI apportioned the resulting FSI between the Residential and Commercial uses satisfied the above policies, and opined that the proposed combination of residential/ commercial use was an appropriate, optimal mix of both uses.

Lastly, Mr. Barton addressed Section 4- Transportation related Objectives of the Secondary Plan in great detail. He emphasized that Section 4.7 of the Secondary Plan encouraged public transport use, and established a high transit modal split in North York Centre. He also referred to Section 1.1 of the Motor Vehicle Parking Policy, which emphasized that the "standards of motor vehicle parking provision which, in recognition of the availability of rapid transit and the limited road network, are lower than the requirements of the general Zoning By-law elsewhere in the North York District". He demonstrated that the proposal satisfied the recommended parking requirement - "Section 2.1 sets a minimum standard of 0.9 spaces per 100 m2 of gross floor area for all commercial uses. Section 2.2 sets a minimum of 1 space per dwelling unit for residential uses, and a maximum of 1.2 spaces per dwelling unit for properties with access to rapid transit". Moreover, section 2.3 states the following with respect to Mixed Use projects: "For projects comprising more than one of the permitted uses (and containing shared parking arrangements) reductions from the above stated standards may be considered where supported by discussions and agreement of the City Staff"

Mr. Barton summarized the discussion of the proposal's conformity to the Official Plan by reiterating that the the requested minor variances will directly facilitate built form, uses and urban development that conform to the purpose and intent of the Official Plan and Secondary Plan, while being compatible with the surrounding area. In his perspective, the variances allow for more intense and efficient use of land in the urban area along a priority transit segment. He said that the proposal's minimizing surface parking, and taking advantage of existing municipal infrastructure, supports objectives for transit and non-automotive modes of transportation. He also said that the building will maintain appropriate massing, relative to the immediately adjacent buildings, and will not result in adverse impacts to any surrounding uses. This balance of

intensification, compatibility and transit-oriented development maintains the general intent of the Official Plan (OP).

Mr. Barton next addressed the test of appropriate development. He said that requested minor variances are desirable for the appropriate development or use of the land, because they will allow for a modest increase in commercial floor area, without increasing building height. He added that the total and commercial floor area will also remain well below the maximum permitted under the zoning regulations, and that there would be minimal impacts to adjacent properties. As a result, Mr. Barton concluded that the proposal satisfied the test of appropriate development

Mr. Barton then spoke to the test of the Zoning By-Law , and said that the general intent of the Zoning By-Law is to implement the Official Plan. One of key objectives of the Zoning By-Law is to set regulations that guide use, and built form to ensure appropriate, and compatible development occurs in communities and across the City. He opined that the building on the Subject property represents the existing built form character of the surrounding properties, including the lack of open space and surface parking area. He suggested that the development proposal represents an appropriate addition of commercial floor area , such that the built form conforms to the policy objectives of the Official Plan. Based on this discussion, Mr. Barton concluded that the proposal satisfies the test of appropriate development.

Speaking to the test of minor, Mr. Barton said that variance to permit two (2) spaces is consistent with the policies of the Official Plan, and Secondary Plan as they relate to encouraging transit usage and reducing surface parking in the North York Secondary Plan Area. The minor variance respecting the rear yard setback facilitates the maximum commercial floor space, without reducing the existing residential uses or increasing the building height. The reduction in the rear yard is mitigated by the transition in height from two storeys at the front to one storey at the rear. Mr. Barton asserted that there will be no adverse impact on the community ,since this addition does not significantly increase building massing. On the basis of this discussion, he concluded that before concluding that the proposal satisfied the test of minor.

I thanked Mr. Barton for his presentation, and asked him if he had any advice for me regarding conditions to be imposed, if the proposal were to be approved. On 12 December, 2020, the TLAB received correspondence from him suggesting that the following conditions be imposed:

- 1. The proposed development shall be constructed substantially in accordance with the site plan submitted and held on file by the Committee of Adjustment.
- The conditions requested by the Toronto Transit Commission in the memorandum from Matthew Taylor to Laleh Farhadi, dated December 23, 2019, be satisfied.

The conditions in the Memorandum dated December 23, 2019 are reproduced below:

A) TTC Technical Review: Prior to the issuance of the first, or any building, or demolition permit, the owner shall complete a TTC Technical Review of the proposed development, and obtain the TTC's written acknowledgement that the owner has satisfied all the conditions arising out of the review. As part of the review process, the owner shall provide the requisite information and pay the associated review fee to the TTC.

B) Interferences Warning:

Prior to starting any construction, or the issuance of the first below grade permit, the owner shall submit a letter that acknowledges and accepts the following:

a) The proximity of the proposed development to TTC infrastructure may result in noise, vibration, electromagnetic interference, stray current, smoke and particulate matters, transmissions (collectively referred to as "Interferences") to the development.

b) the City and TTC will not accept responsibility for such effects on any of the development and/or its occupants.

c) It has been advised by TTC to apply reasonable attenuation/mitigation measures with respect to the level of the Interferences on, and in the development

d) a TTC Interferences Warning clause, as provided below and satisfactory to the TTC has been, or shall be inserted into all rental agreement(s) and offers of purchase and sale or lease applicable to the property:

The Owner, Purchaser, and/or Lessee specifically acknowledges and agrees that the proximity of the property of the lands municipally known as 4891 Yonge Street to TTC Operations, presently in existence, or subsequently constructed or re-constructed, may result in noise, vibration, electromagnetic interference, stray current, smoke and particulate matters, transmissions (collectively referred to as "Interferences") on, or onto the Property and despite the inclusion of control features within the property. Interferences from transit operation or construction activity may continue to be of concern, occasionally interfering with some activities of the occupants in the property. Notwithstanding the above, the Owner, Purchaser, and/or Lessee agrees to release and save harmless the City of Toronto, the Toronto Transit Commission, together with their Commissioners, Officers, Employees, Successors and Assignees, from all claims, losses, judgements, or actions arising or resulting from any, all interferences. Furthermore, the Owner, Purchaser, and/or Lessee acknowledges and agrees that an Interferences clause substantially similar to the one contained herein shall be inserted into any succeeding lease, sublease or sales agreement, and that this requirement shall be binding not only on the parties hereto, but also their respective successors and assignees and shall not die with the closing of the transaction.

# ANALYSIS, FINDINGS, REASONS

As stated at the beginning of the Evidence section, there is no Party, nor Participant, besides the Appellant in this case. It is important to note that the City did not take a position on this Appeal- the lack of opposition from the City is interpreted to mean that the City's Transportation and Planning staff do not have concerns with the proposal.

The main planning issue in this Appeal is the adequacy of the proposed number of parking spaces- there is an appreciable difference between the Appeal's seeking no more than the two existing spots, as opposed to the request for ten (10) spots under the former North York By-Law 7625. Mr. Barton discussed in detail the North York Centre Secondary Plan governing this Site, and how it encouraged the use of Public Transit. He emphasized that both clients and staff could commute to the Site either by walking, or taking public transportation from the nearest TTC Station. The key evidence to substantiate that two parking spots would be adequate for the Site, is inferred from the Policies 2.1-2.3, respecting Parking in the Secondary Plan, where 1 parking spot is deemed to be adequate for a Residential Unit, and 0.9 units are recommended for 100 m2 of Commercial Space. When applied to the existing Residential Unit, and the proposed 136 m2 of Commercial Floor Area, the proposed parking of 2 spots seems reasonable.

On the basis of the evidence, I conclude that the possible increase in the number of staff, and clients requiring access to parking, as a result of the expansion of the office, will not result in a similar increase in parking requirements, as a result of the option of travelling by public transportation. The justification for not increasing the number of parking spaces is supported by the Transportation Policies of the Secondary Plan, and the Official Plan. Since the Zoning By-Law looks to implement the OP, including the Transportation Policies of the North York Centre Secondary Plan, I find that the parking solution is consistent with the intent and purpose of the former North York Zoning By-Law. There is no perceptible impact on overall parking, or transportation, as a result of only two parking spaces being provided, because the extra traffic will be accommodated through public transportation. proposed parking meets the test of minor, and is appropriate for the development of the Site. As a result of these conclusions, I find that the variance respecting parking passes all the four tests under Section 45.1 of the Planning Act, and can be approved.

The evidence also demonstrated that the Lot Coverage of the building, if increased to 78%, will result in a built shape and form that is not inconsistent with what already exists in the vicinity of the building. Given that both the neighbouring buildings have been developed all the way to the back of the Property line, the development of extra office space at back of the existing building at the Site will result in the building at the Site aligning with its neighbours. The evidence demonstrated that there would be an appropriate transition in the heights of the proposed building, which is in the Mixed Use

Areas, and the buildings to the east, which are in the "Neighbourhoods" classification. The requested increase in lot coverage will result in an FSI that hat is within the range of what is recommended for FSI by the Secondary Plan, with specific reference to Mixed Use Area "B". There is no demonstrable negative impact on the built form, or access to other offices, if the proposed one storey addition at the back of the existing building were allowed. The decrease in the width of the parkway at the back of the Office will not result in any negative impact, because the cars can still access the parking spots by approaching them through the laneway parallel to Yonge Street, perpendicular to Greenfield Avenue, as illustrated in Figure 1 on Page 3 of this Decision.

On the basis of the above evidence, I find that the variances respecting the Lot Coverage, and the proposed rear yard reduction maintain the intent and purpose of both the OP, as well as the former North York By-Law 7625. As a result of no demonstrable negative impact, as a result of these two variances, the proposal satisfies the test of minor. Lastly, because the proposal will result in a built form consistent with what exists in the immediate vicinity, satisfies the height transition from Mixed Use Areas into Residential Areas, without introducing any new, hitherto unexperienced impact in the vicinity, I find that the variances respecting Lot Coverage, and reduction in the rear yard setback, are consistent with the tests of appropriate development, and minor.

Given the above conclusions, I find that the proposal satisfies all the four tests under Section 45.1 of the Official Plan, and may be approved. The Approval requires that the Appeal respecting 4891 Yonge Street be allowed, and the decision of the Committee of Adjustment be set aside.

It is important to acknowledge that an interesting challenge posed by the Appeal arises out of the Site's being within the TTC's 60 metre Development Review Zone, and its proximity to the Subway Tunnel. However, this challenge is an engineering issue, which is outside the purview of the TLAB. I note that the Appellant and the TTC have been in correspondence with each other, and that the TTC submitted a letter to the COA dated December 23, 2019, which discussed the conditions to be imposed to address the aforementioned challenge, should the proposal be approved. These conditions are recited verbatim at the end of the Evidence Section, and may be imposed on the approval of the proposal. In addition, the standard clause about requiring the Appellant to build in substantial accordance with the submitted Plans and Elevations , are attached to this Decision. I note that the name of the individual(s) who prepared the drawings, and the date on which they were prepared, are not explicitly listed in the drawings themselves. However, these drawings mention "Mass Construction Tony Cariati 416 305 3727", and were received by the TLAB on 1 December, 2020.

# **DECISION AND ORDER**

1. The Appeal respecting 4891 Yonge Street is allowed, and the decision of the Committee of Adjustment (COA) dated 16 January, 2020, respecting 4891 Yonge Street is set aside.

2. The following variances are approved:

#### 1. Chapter 23.2.1, By-Law 7625

The maximum permitted lot coverage is 33.3% of the lot area. The proposal has a lot coverage of 78%.

#### 2. Chapter 23.2.2, By-Law 7625

The minimum required rear yard setback is 7.5m. The proposal has a rear yard setback of 5.6m.

#### 3. Chapter 6a(2)a, By-Law 7625

The minimum required number of parking spaces is 10. The proposal will provide two parking spaces.

3. The following conditions are imposed on the approval of the proposal:

 The conditions requested by the Toronto Transit Commission in the memorandum from Matthew Taylor to Laleh Farhadi, dated December 23, 2019, need to be satisfied. The conditions in the Memorandum dated December 23, 2019 are reproduced below from the correspondence:

A) TTC Technical Review: Prior to the issuance of the first, or any building, or demolition permit, the owner shall complete a TTC Technical Review of the proposed development, and obtain the TTC's written acknowledgement that the owner has satisfied all the conditions arising out of the review. As part of the review process, the owner shall provide the requisite information and pay the associated review fee to the TTC.

B) Interferences Warning:

Prior to starting any construction, or the issuance of the first below grade permit, the owner shall submit a letter that acknowledges and accepts the following:

a) The proximity of the proposed development to TTC infrastructure may result in noise, vibration, electromagnetic interference, stray current, smoke and particulate matters, transmissions (collectively referred to as "Interferences") to the development.

b) the City and TTC will not accept responsibility for such effects on any of the development and/or its occupants.

c) It has been advised by TTC to apply reasonable attenuation/mitigation measures with respect to the level of the Interferences on, and in the development

d) a TTC Interferences Warning clause, as provided below and satisfactory to the TTC has been, or shall be inserted into all rental agreement(s) and offers of purchase and sale or lease applicable to the property:

The Owner, Purchaser, and/or Lessee specifically acknowledges and agrees that the proximity of the property of the lands municipally known as 4891 Yonge Street to TTC Operations, presently in existence, or subsequently constructed or re-constructed, may result in noise, vibration, electromagnetic interference, stray current, smoke and particulate matters, transmissions (collectively referred to as "Interferences") on, or onto the Property and despite the inclusion of control features within the property. Interferences from transit operation or construction activity may continue to be of concern, occasionally interfering with some activities of the occupants in the property. Notwithstanding the above, the Owner, Purchaser, and/or Lessee agrees to release and save harmless the City of Toronto, the Toronto Transit Commission, together with their Commissioners, Officers, Employees, Successors and Assignees, from all claims, losses, judgements, or actions arising or resulting from any, all interferences. Furthermore, the Owner, Purchaser, and/or Lessee acknowledges ad agrees that an Interferences clause substantially similar to the one contained herein shall be inserted into any succeeding lease, sublease or sales agreement, and that this requirement shall be binding not only on the parties hereto, but also their respective successors and assignees and shall not die with the closing of the transaction.

2. The rear extension shall be built in substantial conformity with the Plans and Elevations submitted by the Appellant to the Toronto Local Appeal Body on 1 December, 2020. These Plans and Elevations, consist of 11 pages, and are numbered A1- A11. The drawings refer to "**Mass Construction Tony Cariati 416 305 3727**" on each page of the document. The Plans and Elevations are appended to this Decision

So orders the Toronto Local Appeal Body

S. Gopikrishna Panel Chair, Toronto Local Appeal Body







Proposed One Storey Commercial Addition

4891 Yonge St., Toronto

Mass Construction-Tony Cariati-(416) 305-3727

A3



#### a transmission and the second s



Proposed One Storey Commercial Addition

4891 Yonge St., Toronto

Mass Construction-Tony Cariati-(416) 305-3727

























