

DECISION AND ORDER

Decision Issue Date Monday, November 30, 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): JORDAN LOUIS WAXMAN

Applicant: RICHARD WENGLE ARCHITECT INC

Property Address/Description: 34 GREEN VALLEY RD

Committee of Adjustment Case File: 19 136157 NNY 15 MV

TLAB Case File Number: 19 176990 S45 15 TLAB

Hearing date: **Thursday, November 28, 2019**
 Wednesday, February 12, 2020
 Thursday, May 7, 2020
 Tuesday, September 15, 2020
 Tuesday, September 22, 2020

DECISION DELIVERED BY STANLEY MAKUCH

APPEARANCES

Name	Role	Representative
Richard Wengle Architect Inc	Applicant	
Jordan Louis Waxman	Owner/Appellant	David Bronskill
Evelyn Waxman	Alternate Owner	
City of Toronto	Party	Lauren Pinder
Lydia Dhillon	Party	
Harjit Dhillon	Party	
Nicolas Dhillion	Party	William Roberts
Terry Mills	Expert Witness	
Name	Role	Representative

Simona Rasanu	Expert Witness
Michael Goldberg	Expert Witness
Sharon Jones	Participant
Christine Acconcia	Participant
Daniel Mida	Participant
Chris Hewat	Participant

INTRODUCTION

This is an appeal of 13 variances to permit the construction of a detached dwelling with an integral garage on a site in the Hoggs Hollow area of the City of Toronto (City). Only two of the thirteen variances were refused by the Committee of Adjustment (COA) but all are under appeal in this Hearing as is required by the *Planning Act*. The variances are set out in Appendix 1 to this decision.

The two variances refused by the COA relate to the front yard setback and the setback of the front stairs. The additional variances that were granted relate to building length, lot coverage, building height, eaves and building side yard setbacks, the number of stories, and balcony areas.

BACKGROUND

Many of the variances are technical in nature and some are the result of the slope of the property from the rear to the road at the front. Indeed, the site is composed of a lot with a very steep downward slope in its rear with a gentler slope down to the street. Construction on the rear portion of the property is subject to the approval of the Toronto Region Conservation Authority (TRCA) which has no objection to the application. The variances which relate to length, lot coverage, the rear and sides of the property and balcony size were not significantly challenged at the Hearing.

The Hearing, therefore, primarily focused on the following variances: (No. 8) to permit a building of 3 stories while 2 stories are permitted and (No. 3) further to permit that building to be a height of 33.27 m whereas a height of 18.8 m is permitted; and (No. 12) to permit the building to have a front yard setback of 8.63 m, when the required minimum front yard setback is 23 m, and (No. 13) to have a front stair projection of 16.27 m when the maximum permitted front yard stair projection is 2.1 m.

MATTERS IN ISSUE

The two major matters in issue relate to: firstly, whether the proposed building would respect and reinforce the physical character of the area and secondly, whether

the location of the proposed dwelling would diminish the view from the patio on the roof of the garage at the front of the neighbour's dwelling immediately to the north of the site. There were also concerns raised respecting the rear area of the proposed dwelling and its resulting length, but these were of little consequence as they had no impact on neighbourhood character or neighbouring properties.

As a result, the focus of the Hearing was on whether the proposed dwelling would be: (a) too close to the road; (b) too high; and thus (c) negatively impacted on the open space character of the street which culminated in a restricted entrance to a golf course which is a short distance to the south. In addition, as stated, there was the particular concern respecting the impact on the neighbour's view.

JURISDICTION

Provincial Policy – S. 3A 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

I do not propose to repeat in detail the evidence of the witness which is set out in the required witness statements. In my view, it may be summarized as follows: the evidence fell into two broad categories; quantitative and qualitative as it related to the character of the area and impact on neighbouring properties. The variances respecting the front yard, setback, stairs, height, and stories are numerically significant and thus quantitatively substantial. As stated above, the building is proposed to be: 3 stories in height while 2 stories are permitted and further to be 33.27 m high, whereas a height of 18.8 m is permitted; with a front yard setback of 8.63 m, where the required minimum front yard setback is 23 m, and a front stair projection of 16.27 m when the maximum permitted front yard stair projection is 2.1 m. While all these variances are numerically

large the evidence was that they are also technical in nature, resulting from the slope of the site and from an old bylaw which required a front yard setback much larger than for other properties in the area and for which there was no rationale. There was also clear evidence that the dwellings across the street from the proposal are numerically closer to the front lot line than the distance proposed by the variances.

The uncontradicted evidence of Mr. Mills was that the proposed height of the dwelling would appear higher as the dwelling was moved closer to the road. Mr. Mills also gave the following evidence that was unreliable and, therefore, not helpful to me in making my decision. He presented a sketch which was not entirely to scale, and which was misleading in demonstrating the impact of the proposal on the view of the rear slope from the street. Moreover, he appeared to give inaccurate evidence respecting access to the nearby golf course and respecting other properties.

Mr. Goldberg's evidence was clear and concise, and he presented examples of dwellings in the neighbourhood similar to the proposal. He noted that this is a neighbourhood with an eclectic character, with a mix of newer and older dwellings of different sizes and locations on their respective sites, and that height and set back would not be out of keeping with that character and, in his opinion, would respect and reinforce the character of the area. .

All of the residents gave evidence and believed that the proposal was out of character and too high and too close to the road. Mr. Dhillon's evidence primarily focused on the loss of view from his parents' patio that would result from the location of the proposed dwelling the front yard of the site.

My visit to the area demonstrated to me a unique neighbourhood which, although eclectic in building size and location, also had the character of one where nature abounded. The dwellings, while different, were sensitive to the waterway, trees, and ravine with the result that the existing homes appeared to be sensitively placed so as to respect and reinforce nature and not to dominate it or diminish its importance. '– .

ANALYSIS, FINDINGS, REASONS

I agree with Mr. Goldberg that I should evaluate the proposal on a qualitative basis and not a quantitative basis; however, I find on a qualitative basis that the variances should not be granted. The quality of the proposed dwelling is one that would loom large and high over the street and in front of the ravine and not respect the existing neighbourhood character in the surrounding area. There appears to be no

attempt to take into account the verdant setting in which the dwelling is to be located, Other buildings of a similar size and height are not as obtrusive on their sites as the proposed dwelling would be and do not appear to dominate their natural surroundings as the proposal would.

While there is no right to a view and I do not find that the front yard variance should be denied because of its impact on the Dhillon's patio, and while I agree that variances should not be evaluated on a numerical basis, I am left nevertheless with the obligation to determine if these variances will result in a dwelling which respects and reinforces the existing physical character of this neighbourhood as required by policy 4 of the Official Plan.

I find, based on the evidence, they do not result in a dwelling which respects and reinforces the natural character and topography of the neighbourhood. To simply place such a high building so close to the street edge with the result that the building will tower over the street and dominate it, does not respect and reinforce that special natural character of the neighbourhood and is not appropriate for the development of the site. While the rear portion of the building meets TRCA approval, that portion of the building is not visible from the street and does not address the adverse impact discussed above of the front of the dwelling on the character of the area. While my analysis focuses on variances 8, 3, and 13 which relate to the front of the dwelling and I find those variances in particular should not be allowed, I also find that the remaining variances should not be approved as they facilitate and result in the variances which relate to the front of the dwelling.

DECISION AND ORDER

The appeal is denied, and the variances are not granted.

X 

S. Makuch

Panel Chair, Toronto Local Appeal

APPENDIX 1

List of Minor Variances

By-law 7625:

1. **Section 12.5A, By-law No. 7625**

The maximum permitted building length is 16.8 m.
WHEREAS the proposed building length is 33.27 m.

2. **Section 12.6, By-law No. 7625**

The maximum permitted lot coverage is 30% of the lot area.
WHEREAS the proposed lot coverage is 30.7% of the lot area.

3. **Section 12.7, By-law No. 7625**

The maximum permitted building height is 8 m.
WHEREAS the proposed building height is 11.59 m.

4. **Section 6(9), By-law No. 7625**

The maximum permitted projection for eaves into a yard setback is 0.5 m.
WHEREAS the proposed eaves project 0.61 m to the south.

5. **Section 6(9), By-law No. 7625**

The maximum permitted projection for eaves into a yard setback is 0.5 m.
WHEREAS the proposed eaves project 0.91 m to the north.

6. **Section 12.4(b), By-law No. 7625**

The minimum required side yard setback is 1.8 m.
WHEREAS the proposed north side yard setback is 1.5 m.

7. **Section 12.4(b), By-law No. 7625**

The minimum required side yard setback is 1.8 m.
WHEREAS the proposed south side yard setback is 1.52 m.

8. **Section 12.7, By-law No. 7625**

The maximum permitted number of storeys is 2.
WHEREAS the proposed number of storeys is 3.

9. **Section 12.7A, By-law No. 7625**

The maximum permitted balcony area is 3.8 m²
WHEREAS the proposed rear balcony area on the third floor is 17.45 m²

10. **Section 12.7A, By-law No. 7625**

The maximum permitted balcony area is 3.8 m²
WHEREAS the proposed rear balcony area on the second floor is 92.1 m²

11. **Section 12.7A, By-law No. 7625**

No more than one balcony is permitted on each elevation of the building. WHEREAS two balconies are proposed on the rear elevation.

12. **Section 12.4(a), By-law No. 7625**

The minimum required front yard setback is 23 m.

Decision of Toronto Local Appeal Body Panel Member: S. MAKUCH
TLAB Case File Number: 19 176990 S45 15 TLAB

WHEREAS the proposed front yard setback is 8.63 m.

13, **Section 6(9)(b), Bylaw No. 7625**

The maximum projection of a stair in the front and rear yard is 2.1m.

WHEREAS the proposed front stair projects 16.27 m into the required minimum front yard setback.