

DECISION and ORDER

Decision Issue Date Monday, March 08, 2021

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): JENNIFER BAIN

Applicant(s): WEISS ARCHITECTURE AND URBANISM LIMITED

Property Address/Description: 11 SHUDELL AVE

Committee of Adjustment File

Number(s): 20 172170 STE 14 MV

TLAB Case File Number(s): 20 233413 S45 14 TLAB

Hearing date: June 11, 2021

DECISION DELIVERED BY TED YAO

APPEARANCES

Name	Role	Representative
Jennifer Bain	Owner/Appellant	
Weiss Architecture & Urbanism Ltd	Applicant/Expert Witness	
Mark Vanderwouw	Expert Witness	

INTRODUCTION

This matter concerns recent zoning amendments to permit "laneway suites", which is a term in the zoning by-law for a secondary dwelling on the same lot, where the lot also has a laneway to the rear. I shall use the term "laneway house" instead of the more accurate term "laneway suite".

Jennifer Bain wishes to construct a laneway house behind her home and requires three variances to do so. On December 10, 2020, the Committee of Adjustment refused to grant the variances and Ms. Bain appealed. On January 7, 2021, the TLAB set the hearing for June 11, 2021 and the date for all persons to elect to be parties was set as February 8, 2021. The list published February 9, 2021 shows just Jennifer Bain and her architect, Weiss Architecture have come forward as “ appellants, parties, participants, and legal representatives”. According to the TLAB Rules then, her appeal is unopposed.

On February 15, 2021, Ms. Bain filed a motion to advance the June hearing date and either treat March 2, 2021 as the hearing date (essentially converting this to a written hearing) or to set an earlier date for an oral hearing. I am agreeing to her first request.

Table 1. Variances sought for the laneway suite house at 11 Shudell Ave			
		Required	Proposed
Variances from Zoning By-law 569-2013			
1	Rear yard soft landscaping	85%	48%
2	Separation between buildings	7.5 m	4.13 m
3	Angular plane of front main wall of ancillary building	May not penetrate 45 degree angular plane	Does penetrate

MATTERS IN ISSUE

Under s. 5 of the *Planning Act*, a decision shall be consistent with policy statements such as the Provincial Policy Statement and conform to or not conflict with provincial plans such as the Growth Plan for the Greater Golden Horseshoe. I find that these higher-level policies are not applicable to such a fine-grained planning issue as is raised here.

Under s. 45(1) of the *Planning Act*, the variances must individually and cumulatively:

- maintain the general intent and purpose of the Official Plan;
- maintain the general intent and purpose of the Zoning By-laws;
- be desirable for the appropriate development or use of the land; and
- be minor.

Although the application is unopposed, I have an independent duty to be satisfied that these tests are met.

EVIDENCE

There are numerous documents filed by both Ms. Bain and her architect Kevin Weiss, including Zoning By-Law 810-2018, By-law 1210-2019 and portions of the Provincial Policy Statement, and Official Plan as well as an arborist report from Mark Vanderwouw. She also filed another TLAB case, *49 Glenholme*, similar to this one in that no person appeared at the hearing to oppose the laneway house.

Mr. Weiss has a Bachelor of Architecture (1989) and Master's in Urban Design (2002) and I find that he is qualified to give opinion evidence in both architecture and urban design. Mr. Vanderwouw has 31 years' experience and holds an Urban Arboriculture Tree Care Certificate from Humber College Institute of Technology and Advanced Learning. I find he is qualified to give evidence in the area of tree care.

ANALYSIS, FINDINGS, REASONS

Mr. Weiss's Expert Witness statement begins as follows:

. . . Jennifer Bain and Richard McKenzie [wished] to design a new home for their family. The design mandate was to provide a home which will be theirs in the long-term; that it be designed for 'aging at home' equipped with an elevator and adaptable for mobility needs if need be in the future; and that it provided a laneway suite for inter-generational living for grown children, or if needed, a suite for a future caregiver.

I note that this intention responds to the "complete community"¹ and "gradual and sensitive change"² and sustainable urban design³ portions of the Official Plan. The

¹³ Building A Successful City

The policies in this Chapter will guide our growth by integrating social, economic and environmental perspectives in our decision making to create an attractive Toronto with a strong economy and complete communities. (p 3-1)

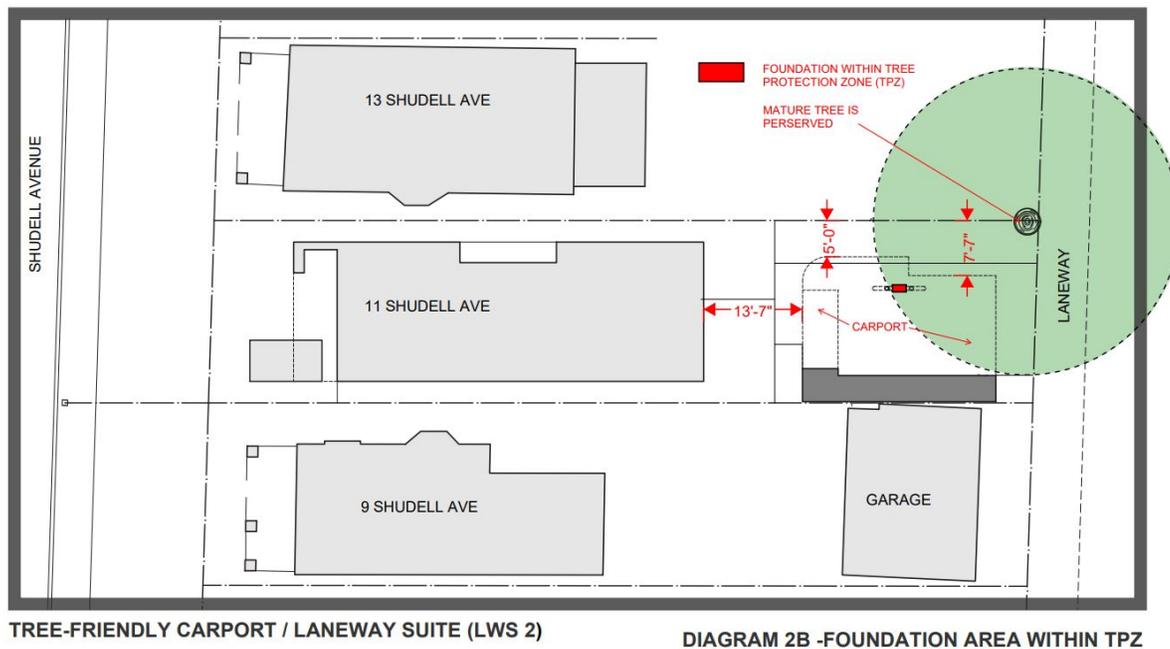
2 Development Criteria in Neighbourhoods

The stability of our Neighbourhoods' physical character is one of the keys to Toronto's success. While communities experience constant social and demographic change, the general physical character of Toronto's residential Neighbourhoods endures. Physical changes to our established Neighbourhoods must be sensitive, gradual and "fit" the existing physical character (page 4-3)

³ 3.1 The Built Environment

. . . This Plan demands that both the public and private sectors commit to high quality architecture, landscape architecture and urban design, environmentally sustainable design, consistent with energy efficiency standards. (p 3-2)

main house went forward in June 2018, before the adoption of zoning amendments permitting laneway houses⁴. The laneway house was put on hold.



Because of a large red oak at the corner, Mr. Weiss proposed a “tree friendly carport”, with limited foundations within the tree protection zone. He met with City planner George Pantazis, who advised him not to attempt the tree friendly design and pursue an “as-of right” project. Heeding Mr. Pantazis’ advice, Mr. Weiss confined himself to the as-or-right envelope, which, in his estimation would be “critically harmful to the tree”. Ms. Bain applied and was issued for a building permit for the as-of-right laneway house and paid the development charges of \$29,758. Thus, this application and appeal seeks merely to revise the location of a building for which she already has a building permit.

Concurrent with the above applications, Ms. Bain applied for a permit to **remove** the red oak tree and was refused. Mr. Weiss is not specific as to whether the refusal was appealed further to Council, but this is not important, as both persons felt that a tree friendly carport was the preferable option.

After the refusal by Urban Forestry, they returned to Mr. Pantazis who stated:

...that while for Planning, the as-of-right approach is the preferred approach, in the instance where there is a healthy tree that is by-law protected, and if the as-of-right approach may not be appropriate, minor variances can be sought for and will be

⁴ Ms. Bain filed By-Law 810-2018 amending By-law 569-2013, to permit laneway suites, adopted June 26, 2018. However, this by-law was refined over the next year and June 26, 2018 was too late for Ms. Bain to wait before proceeding with construction.

considered as The Official Plan Amendment (sic) for [a laneway house] recognizes these circumstances.⁵

Arborist report and opinion

Intending to pursue the variance/ tree friendly approach, Ms. Bain then retained arborist Mark Vanderwouw (Shady Lane), who produced a report dated May 4, 2020. He recommended that an application be made to Urban Forestry to **injure** a tree. He noted that the tree was a private “boundary tree”, that is, with ownership being shared between Ms. Bain and the owner of 13 Shudell, and that Ms. Bain would be required to pay \$758, as there is an extra fee when boundary trees are involved. However, he stated that:

If the tree protection steps are properly followed and no significant roots are found during the root sensitive excavation it is my opinion that the tree injury will be minor and the tree will survive for many years.

Mr. Vanderwouw’s report, included ten recommendations such as:

All excavation work within the minimum tree protection zone of [the red oak] must be completed using minimally invasive methods such as a low pressure hydro-vac; an airspade/knife method or careful hand digging. . .

And

Prior to site disturbance the owner must confirm that no migratory birds are making use of the site for nesting. The owner must ensure that the works are in conformance with the Migratory Bird Convention Act and that no migratory bird nests will be impacted by the proposed work.

On the basis of Mr. Vanderwouw’s report, Urban Forestry issued a tree injury permit on July 22, 2020.

Architect’s report and opinion

Mr. Weiss sets out the variances and explains how they comply with the tests.

For the setback of rear wall of the main house to the front wall of the laneway suites house, the by-law requires 7.5 m (24 feet 7 inches) and only 4.13 m (13 feet 7 inches) is provided. He explains that:

This variance results from setting back from the tree for its preservation and maintaining a reasonable second level living area of 479 square feet. For this reason, the Tree-Friendly Carport / LWS⁶ is oriented more in the north / south direction than the ‘as-of-right’ LWS which is oriented east / west and within the Tree’s Protection Zone.

⁵ This is Mr. Weiss’s recollection of Mr. Pantazis’s position.

⁶ LWS is an acronym for “Laneway Suites”

For the 45 degree angular plane:

As this slope would result in significant floor area loss within the minimal living space of the Tree Friendly Carport / LWS, this Zoning requirement is problematic. The Tree Friendly [laneway suites house] is already significantly smaller in Gross Floor Area than the “As-of-Right” LWS.

Mr. Weiss concedes that the rear yard soft landscaping is less than the “as-of-right building requires but points to mitigating factors:

This, however, does not consider that the entire rear yard has been designed to maximize pervious and planted in order to sustain the mature tree. 81% or 733 square feet of the entire rear yard surface remains pervious and tree friendly. In comparison, the “As-of-Right” [laneway suites house] results in 206 square feet less pervious surface, in addition to the necessity of tree removal.

He concludes that the laneway house completes the overall family residential project, is “appropriately scaled and “contextually harmonious”. “The variances are minor in nature as they merely shift the location of foundations and building mass away from the tree for its preservation.” I agree with these assessments.

Official Plan and zoning provisions

Section 3.3 “Building New Neighbourhoods” states:

The urban forest is essential to the City’s character City-building and development pressures, however, can create a difficult environment in which to sustain the urban forest canopy. **We must not only protect the existing urban forest**, but also enhance it, especially by planting native trees and trees that increase canopy coverage and diversity, or other non-invasive species where urban conditions may limit the survival of native species. (my bold)

By-law 810-2018 created the zoning regulations for laneway suites in s. 150.8 of the general zoning by-law. Those regulations are deemed to conform with the Official Plan by virtue of s. 24(4) of the *Planning Act* since 810-2018 was not appealed. Mr. Weiss’s and Mr. Vanderwouw’s evidence indicates how the spirit of the laneway suites regulations is met by the tree friendly design. On the basis of this evidence, I find that the variances individually and cumulatively meet the tests under s. 45(1) of the *Planning Act*. Ms. Bain seeks to vary the by-law solely to preserve the urban forest, one tree at a time, which is an important goal of the Official Plan.

DECISION AND ORDER

As a preliminary matter I order that the hearing for June 7, 2021 under this file number⁷ be cancelled and converted to a written hearing with a hearing date of Tuesday March 2, 2021.

I authorize the variances in Table 1 on condition that construction is substantial compliance with the plans on file 18 261803 BLD 01 SR in the office of Zoning Building Code Examiner Hyoung Keun (Brian) Lee.

Because errors arise when parties do not have a chance to communicate back and forth, if anything is unclear or if there are minor errors, please contact me at tlab@toronto.ca.

X



Ted Yao
Panel Chair, Toronto Local Appeal Body

⁷ 20 233413 S45 14 TLAB