

DECISION

Decision Issue Date Thursday, March 11, 2021

PROCEEDING COMMENCED UNDER Section 53, subsection 53(19), and Section 45(12), subsection 45(1) of the Planning Act, R.S.O. 1990, c. P.13, as amended (the "Act")

Appellant(s): ROCHELLE CAROL LEVINE

Applicant: PARISA AMIRI KANKARI

Property Address/Description: 119 WESTGATE BLVD

Committee of Adjustment Case File: 20 108567 NNY 06 MV

TLAB Case File Number: 20 162414 S45 06 TLAB

Hearing date: Friday, February 05, 2021

DECISION DELIVERED BY T. YAO

APPEARANCES

NAME	ROLE	REPRESENTATIVE
Rochelle Carol Levine	Appellant	
Yehuda Zarchi	Owner	
Sula Kogan	Contractor	
Parisa Amiri Kankari	Architect, Expert Witness	
Randal Dickie	Planner, Expert witness	

INTRODUCTION

Yehuda Zarchi wishes to wish to construct a two-storey rear addition to his current one and a half storey home. To do so he needed four variances. On June 11, 2020, the Committee of Adjustment granted the variances and his southern neighbour, Shelley (Rochelle Carol) Levine, appealed, and so this matter came to the TLAB. The variances requested are set out below.

Table1. Variances sought for 119 Westgate Blvd			
		Required	Proposed
Variances from Zoning By-law 569-2013			
1	South side yard setback	1.8 m	1.2 m
2	Building length	17 m	18.16 m
3	Lot coverage	30% of lot area	35.73% of lot area
Variances from Zoning By-law 438-86			
4	Building height	8.8 m	10.04 m

Matters in issue

The variances must be consistent with and conform to higher level Provincial Policies. However, I did not find these were helpful in deciding this case, in that issues such as major infrastructure investments, air and water quality, agricultural land and climate change were not involved.

S. 45 of the *Planning Act* requires that 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.

The most relevant policy of the Official Plan (OP) of the City of Toronto is para. 3.1.2 Built Form:

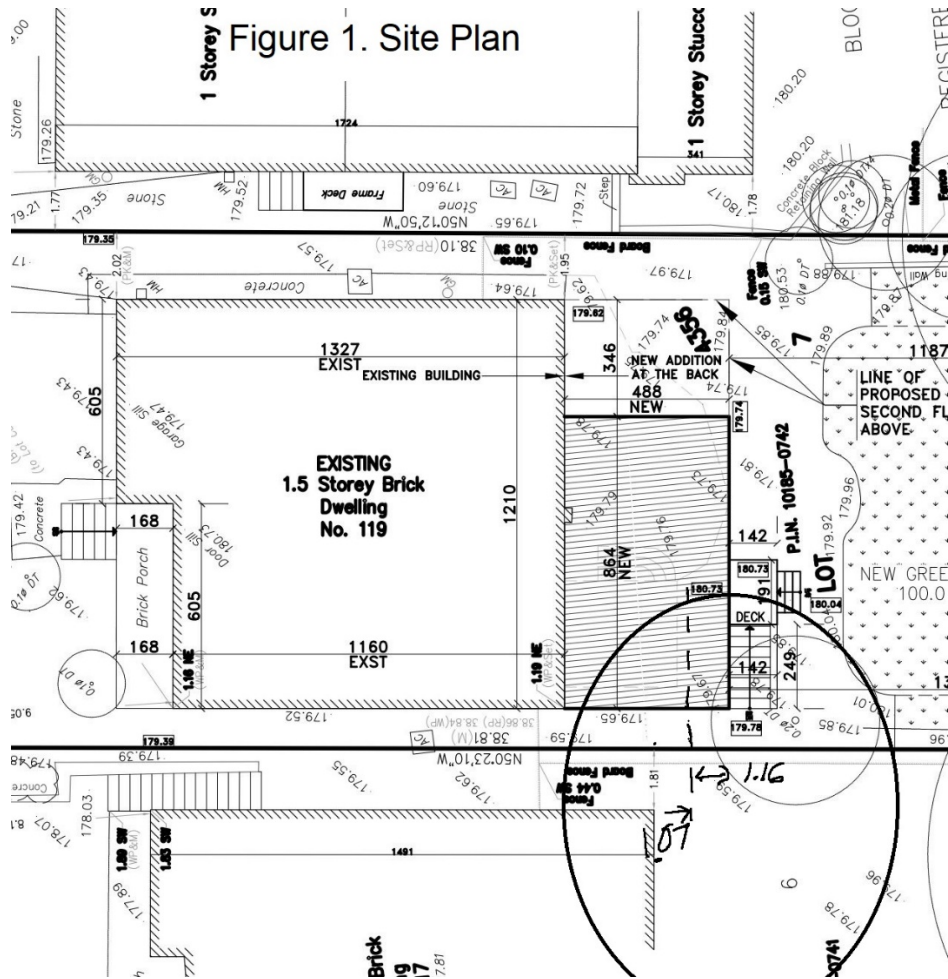
Most of Toronto is already built with at least one generation of buildings. For the most part, future development will be built on infill and redevelopment sites and will need to fit in, **respecting and improving the character of the surrounding area.** (my bold)

EVIDENCE

The following persons gave evidence: Sula Kogan, the contractor, Parisa Amiri Kankari, the architect, Randal Dickie the planner, and the two persons who own

properties on Westgate: Rabbi Zarchi and Ms. Levine. I qualified Ms. Amiri Kankari and Mr. Dickie as able to give opinion evidence in their specialties.

ANALYSIS, FINDINGS, REASONS



Rabbi Zarchi has a large family and recently purchased this property with the express intention to add to it. Because of a limited budget, he has worked closely with Ms. Kogan, the contractor, and Ms. Amiri Kankari, the architect. Although a second storey “bump up”, that is, raising the roof on the existing footprint would be the cheapest solution, this is not possible without extensive structural reinforcement. Their solution is to expand via a rear two storey addition, (shaded area in Figure 1). This also shows the key numbers in this hearing; an addition with **no** variance would extend 1.07 m beyond the Levine residence; the Zarchi family wishes to extend **another** 1.16 m. (The handwritten numbers are inserted by me.)

The renovation will leave almost all the existing house unchanged. The addition, basement, kitchen and master bedroom addition will extend the entire width of the

existing house, minus a “notch” for a ground floor patio, at the north side, away from the Levine residence. Ms. Levine asks why an extension that meets the by-law (3.72 m from the existing wall) should not be sufficient for her neighbour’s needs.

The Levine residence was constructed in 1994, when they tore down the original side split and built the present building. She feels that since she obeyed the former by-law, almost to the letter, Rabbi Zarchi’s new addition should also do so¹. Otherwise, in her view: “Why should there be rules at all? How big can the building be before the Committee of Adjustment would not approve it? I don’t know where you would draw the line. What do the by-laws mean? This is the main basis of our argument.”

In 1994, the Levine new house needed a height variance and so does this project. Ms. Levine does not object to this, since Architect Amiri Kankari demonstrated that under the old by-law even a roof at ground level would already be about 2 m above the reference point. Nor does Ms. Levine object to the side yard, which is required because the existing side wall was extended along the same setback line

I understand Ms. Levine’s view that laws should be obeyed, but the statutory regime permits applicants to seek any variance, not just those a neighbour has previous obtained.

Planner Dickie said that the zoning by-law has tightened since 1994:

This area of Armour Heights, there’s been a lot of reinvestment in the neighbourhood, a lot of new construction, a lot of renovations. And there certainly has been discussion about additions on both the property to the south, Ms. Levine’s new builds or property as well as the abutting property to the north. I don’t have 100% clarity on whether they are new builds . . .

¹ I am responding as the southside neighbour at 117 Westgate Blvd, to matters that reference or relate to our property. We have lived here since 1981; when we first moved in our house was the same one and a half storey sidesplit design built by the same builder in 1958. Our lot is the same, being a good size (based on Toronto standards) rectangle with 50 foot frontage and about 6389 square feet.

In 1993 we engaged an architect to design a renovation to enlarge our house, considering an addition on top of the one storey side of the house and extending at the rear. We did not require a variance other than in respect of height. The house designs were wonderful and would result in a larger beautiful home for our growing family. However, once we costed it out, recognizing that we would still have the same basement configuration with lower ceilings and the same furnace crawlspace we then considered a new build.

We asked our architect to design a new two storey house, proceeded to obtain the variance required in respect of height, and then proceeded with the demolition and construction in May of 1994. We took advantage of the previous version of By-law 569-2013 Chapter 10.20.40.20 (2) allowing a one storey addition on the back if indented 4 feet from the outer wall and not wider than about 12 feet where the back wall length does not exceed the length allowed in (1) thereof.

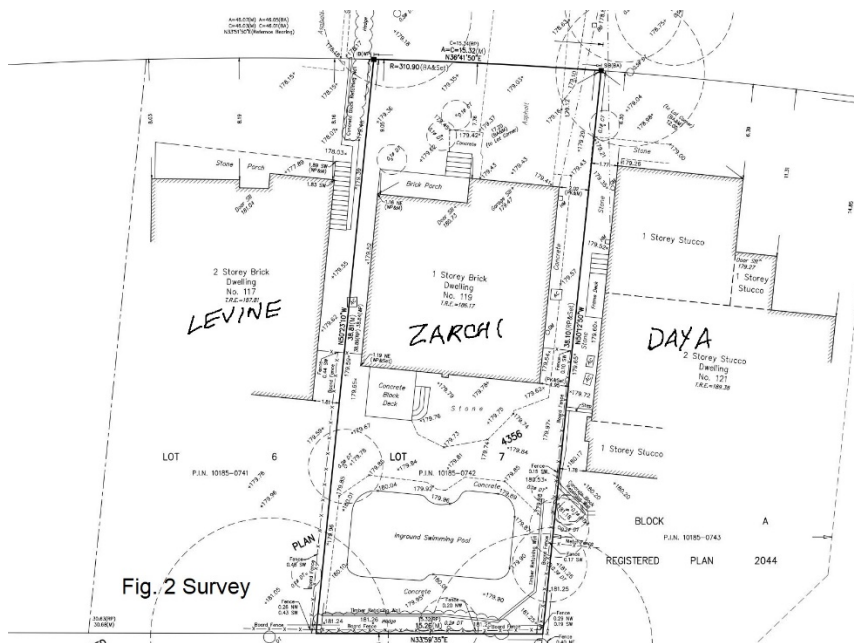
In conclusion I have considerable experience with the actual determination of the best use of the lot to create an efficient larger house without overriding bylaws as to length and coverage. There are as noted above, many options.

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The subject site is still in its originally constructed condition; the abutting properties to the north and the south have had additions. I have not been able to ascertain if Committee of Adjustment minor variances were required in the past for either one of those, but I assume because they have been built, they complied and got the necessary zoning approvals and building permits that were in place at the time. . . . The bottom line is that whatever happened to the properties to the north and the south (they) went through a permit review process, they were granted approvals based on the municipal requirements of the day um, and they do exist. . . . A lot of the components to both the north and to the south would **probably not comply with the current bylaws**, I'm assuming they did comply with the by-law in the day. And I think it is a fair statement to say that the current by-law today is more onerous than the by-laws in the past. And I would just leave it at that. (emphasis added)

I rely on Mr. Dickie's conclusions as expert evidence. The conclusion I draw is that his inability to find other "17 m or longer" buildings is because the majority of redevelopment took place over ten years ago so records are no longer available.

There are at least three pieces of evidence to support an increasingly restrictive zoning regime in Toronto. The survey (Figure 2) shows while the Levine house is within the 17 m building length, the Daya house to the north is longer and must have needed a variance.



In 1994, there was no tree by-law and no Ravine and Natural Features Protection By-law. Rabbi Zarchi has commissioned an arborist's report to deal with the Tree Bylaw. He has clearance from a planner of the Toronto and Region Conservation Authority, on March 17, 2020 dealing with the latter. Rabbi Zarchi also proposes to remove the large unused swimming pool in his back yard and return it to sod, which can only be regarded as positive, as more "soft surfaces" are desirable in back yards, even though in this instance, it is not captured by the zoning by-law. The soft landscaping

requirements of the zoning by-law have as an intent to increase infiltration of rainwater into the ground, especially for a site like this, which is near Earl Bales Park.

The Official Plan requires the Zarchi development respect and improve the surrounding character of the neighbourhood. As Mr. Dickie observed, almost every other house has been redeveloped, either as a new build or an addition. Since the Zarchi family proposes a rear addition which is similar to those that exist but are likely more than 10 years old, they “respect” the surrounding character, built up over the years by redevelopments such as the house to the north. Accordingly, the development maintains the intents of the Official Plan and Zoning by-law. Mr. Dickie found that the other statutory tests are met and I accept his expert evidence. I find that the individually and cumulatively all the variances meet the statutory tests in s. 45(1) of the *Planning Act*.

ORDER

I authorize the variances in Table 1, on condition that:

1. Construction is in substantial compliance with the plans filed at the Department of Buildings (excluding internal layout); and
2. The requirements of the Parks and Recreation, Urban Forestry Division are met namely:
 - i. Submission of a complete application for a permit to injure or remove a privately owned tree(s), as per City of Toronto Municipal Code Chapter 813, Trees Article iii Private Tree Protection.
 - ii. Where there is no existing street tree, the owner shall provide payment in lieu of planting of one street tree on the city road allowance abutting each of the sites involved in the application. The current cash-in-lieu payment is \$583/tree.

X



Ted Yao
Panel Chair, Toronto Local Appeal Body