

DECISION AND ORDER

Decision Issue Date Tuesday, March 30, 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): BOKO MARICH, ALIZA LAVEE

Applicant(s): IDA EVANGELISTA

Property Address/Description: 17 ANETA CIRCLE

Committee of Adjustment File

Number(s): 19 257001 NNY 18 MV (A0748/19NY)

TLAB Case File Number(s): 20 179337 S45 18 TLAB

Hearing date: March 05, 2021

DECISION DELIVERED BY JUSTIN LEUNG

APPEARANCES

Name	Role	Representative
Boko Marich	Appellant	
Aliza Lavee	Appellant	

INTRODUCTION

This is an appeal from a decision of the North York Committee of Adjustment (COA) pertaining to a request to permit a series of 6 variances for 17 Aneta Circle (subject property).

The variances had been applied for to COA to permit the construction of a detached dwelling.

This property is located in the Willowdale neighbourhood of the City of Toronto (City) which is situated south of Llyodminster Crescent and bounded by Montford Drive to the west and Maxome Avenue to the east. The property is located on Aneta Circle, south of Lloydminster Crescent and north of Newton Drive.

At the beginning of the hearing, I informed all parties in attendance that I had performed a site visit of this subject property and the neighbourhood and had reviewed all materials related to this appeal.

BACKGROUND

The Application consists of the following requested variances:

1. Chapter 10.20.30.40.(1)(A), By-law No. 569-2013
The permitted maximum lot coverage is 30% of the lot area. The proposed lot coverage is 32% of the lot area.
2. Chapter 10.5.80.40.(1), By-law No. 569-2013
For a lot with a detached house or a semi-detached house and a minimum required lot frontage is less than 24.0m, the maximum combined width of all vehicle entrances through the front main wall of the residential building is 6.0m. The proposed combined width of all vehicle entrances through the front main wall is 7.32m.
3. Chapter 10.20.40.10.(2)(ii), By-law No. 569-2013
The maximum permitted main wall height is 7.5m for 100% of all side main walls facing a side lot line that does not abut a street. The proposed main wall height is 8.78m.
4. Chapter 10.5.100.1.(1)(C), By-law No. 569-2013
For a detached house, semi-detached house, or duplex, and for an individual townhouse dwelling unit if an individual private driveway leads directly to the dwelling unit, a driveway that is located in or passes through the front yard may be for lots with a lot frontage of 6.0m to 23.0m inclusive, or a townhouse dwelling unit at least 6.0m wide, a maximum of 6m wide. The proposed driveway is 7.62m wide.
5. Chapter 900.3.10(5) - Exception RD 5, By-law No. 569-2013
The minimum side yard setback is 1.8m The proposed side yard setback is 1.5m.
6. Section 13.2.6, By-law No. 7625
The maximum permitted building height is 8.8m. The proposed building height is 9.68m.

These variances were heard and approved at the July 23, 2020 North York COA meeting.

Subsequently, two appeals were filed on August 7, 2020 by Aliza Lavee and August 8, 2020 by Boko Marich. The TLAB received these appeals and scheduled a hearing on March 5, 2021 for all relevant parties to attend.

MATTERS IN ISSUE

The minor variance applicant has not actively participated with this Toronto Local Appeal Body (TLAB) appeal. As such, the planning evidence and other considerations of the applicant have not been able to be fully assessed by the TLAB. The TLAB must then rely solely on the evidentiary materials which have been brought before it to reach a ruling on this matter.

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 of 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 *Planning 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

Appellant Aliza Lavee commenced with her opening statement to the TLAB. She referred to variance 2 relating to lot frontage. She argued that this reduction will result in an oversized house being built on this lot. She further contends it would not be compatible for this neighbourhood context. Ms. Lavee then described variance 4 relating to driveway width and indicated that the applicant had commented they intend to park a boat there. I responded that generally the parking of boats or commercial vehicles is not permitted on driveways, as per municipal regulations.

Ms. Lavee argues that the proposal will allow an incompatible built form for this neighbourhood. She also described that the building height will create sun-shade issues for her house as a result.

I inquired if there had been discussions with the applicant regarding this proposal. Ms. Lavee responded that they had not been able to attend the previous COA meeting where this matter was being heard. As she had concerns with the proposal, she elected to appeal this matter to the TLAB.

Appellant Boko Marich provided testimony to the TLAB. He also indicated that he had not been able to participate with the COA meeting. As such, he also acted to file an appeal here, concurrent with Ms. Lavee.

I inquired if the appellants were arguing that the proposal was not consistent with planning policies. Both Ms. Lavee and Mr. Marich responded that they do not believe it conforms with said policies. Mr. Marich stated that he believes that an in-fill house could be constructed without the need for several variance requests, as seen here. Ms. Lavee argues that, in her opinion, the variances are being utilized to allow an 'oversized' house for this sized lot.

Ms. Lavee stated that she had spoken to the applicant previously by telephone and indicated she does not oppose construction of a new house on the property but did not believe it needed to be done through the application of variances.

Ms. Lavee then commented about variance 5 as it relates to setback reduction. She states that it would bring the proposed house closer to adjacent properties acting to negatively affect privacy.

Mr. Marich stated that he had been in discussion with other neighbours on Aneta Circle who he describes as also having concerns with this proposal.

Ms. Lavee commented that there are bungalows in the neighbourhood which she believes will be replaced with in-fill housing as well. I indicated that the TLAB is convened to hear and consider the proposal at hand and I would not be able to speculate on development patterns which may occur in the area.

Mr. Marich then outlined variance 6 for increase in building height. He described this as a 10% increase from the permitted building height. He stated that the 6 variance requests were, in his opinion, a major type of proposal and not compatible for this neighbourhood.

Ms. Lavee referenced the Thornhill Heritage Conservation District (HCD) in the City of Markham and the unique character which the houses there retained. I responded that the subject proposal is not a heritage property so the provisions of the *Ontario Heritage Act* would not be considered herein.

The TLAB notes that both appellants were self-represented and did not retain legal counsel or expert witnesses in support of their appeal. They acknowledged that they were residents and not professionally trained in land use planning.

As had been noted earlier in this document, neither the variance applicant, or any appointed representative was in attendance to provide testimony on this matter. The TLAB has attempted to reach them by email on two occasions and did not receive a response, within an appropriate timeframe, as to explain their non-attendance. Due to this, the testimony as provided by both appellants is uncontroverted or unchallenged as a result.

This hearing then concluded with no closing statements being proffered.

ANALYSIS, FINDINGS, REASONS

This matter is unique in that besides appeal forms being submitted by both Ms. Lavee and Mr. Marich, respectively, there were no other disclosure documents submitted prior to the hearing. In addition, at the hearing, both appellants were self-represented with no expert witnesses being proffered to outline the subject proposal. This appeal was also further influenced by the non-attendance of the variance applicant. No disclosure documents were submitted by them to the Tribunal for its review. They also did not elect to send a representative to attend either. After several attempts to contact them, the applicant Ida Evangelista did contact the TLAB requesting further instructions on how to proceed. It was noted that her email correspondence was received 12 days after the scheduled hearing. Due to this, the Tribunal responded that the hearing has concluded and that, as per *TLAB Rules*, no further submissions would be permitted. As is the established principles of administrative law, the TLAB is required to weigh the arguments as presented to it and to decide which is the more persuasive. It also has to consider the matters relating to this appeal anew as, by convention, this is a *de novo* hearing. As there is only one 'set' of arguments, those in opposition to this subject proposal, the TLAB will have to review and consider what has been presented to it as such.

The commentary which I am able to proffer to this matter is limited as it was a shorter hearing coupled with no disclosure documents or expert witnesses being provided to me for my review. The appellants had stated that they are residents who appealed due to concerns not regarding in-fill development, but of this proposal in particular and its potential to disrupt the urban fabric of this area. The terminology and rationale they provided was of a layman's approach, which the TLAB, as part of its *Rules*, does comprehend and permit. However, as the arguments were presented without contest by the applicant or other parties, I will only be able to assess the material herein in a *prima facie* manner.

The appellants arguments were focused on the overall cumulative effect of the 6 variance requests and a resulting built form which would not meet the four tests for minor variance, as per the *Planning Act*, and would also not conform to the policies as stated in *Official Plan Amendment 320 (OPA 320)*. Concerns were raised that this proposal, if allowed, would constitute a new built form for this area which would not be appropriate for the neighbourhood context. Certain variances, such as number 5 and 6 pertaining to side yard setback and building height, respectively, were highlighted by the appellants as being a material difference of approximately 10-20% from what is permitted as per the Zoning By-law. These issues would demonstrate two of tests for minor variance, if it maintains the general intent of the Zoning By-law, and is it minor in nature, are not sufficiently met. The variance requests constitute a material increase from what is permitted in the Zoning By-law which would allow a built form which would not be consistent with the development pattern of the area. In addition, these variances

would not be minor as the cumulative effect of the 6 variance requests acts to permit a built form which would be larger than other housing stock along Aneta Circle.

The appellants also described that this house was 'oversized' for the subject lot. This would relate to the lotting fabric of the area and to the type of house these lots were to accommodate, in accordance with the Zoning By-law. The issue which is being raised is that if this proposal were permitted, it would not be able to respect and reinforce the prevailing character of this area. In this regard, the test relating to whether a proposal meets the general intent of the Official Plan would not meet the threshold of success. OPA 320 clearly delineates how in-fill housing must act to represent the prevailing character, in both the local and broader neighbourhood context. This subject proposal would be unable to meet such requirements and its allowance would act to disrupt the neighbourhood 'rhythm' as a result. Although the appellants did not allude to this test in detail as part of their testimony, the test for appropriate development or use of the land is being indirectly referenced to in this assessment. This proposal will constitute a built form that would, if permitted, result in a 'disruption' on the current development pattern of the area, hence this test would also fail as a result. Although urban development cannot be prohibited outright by a municipality, it may be regulated as per planning policies and legislation. This is to ensure proper and orderly development occurs in urban areas.

With the material that have been presented, I have chosen to accept the evidence of the appellants, who are also the sole participants to this appeal, in arguing for the refusal of these variances. As part of the testimony to the TLAB, the appellants have provided a comprehensive argument as to why the decision as rendered by the COA should be overturned and the variances should now be refused. The four tests for minor variance, as per the *Planning Act*, have not been met in this instance. Furthermore, other relevant policies such as OPA 320 would also not be consistent in relation to this subject proposal. The Tribunal, as discussed previously, recognizes that development will occur in urban areas. While so, especially in established residential areas, the development must be done in a manner which is respectful of local neighbourhood context. The cumulative impact of this proposal results in a house type which would be incompatible for the urban fabric herein and could act to destabilize the prevailing neighbourhood characteristics.

DECISION AND ORDER

The appeal is allowed, and the decision of the Committee of Adjustment is set aside.
The variances are not authorized.

X 

Justin Leung
Panel Chair, Toronto Local Appeal Body