

DECISION AND ORDER

Decision Issue Date Tuesday, March 23, 2021

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

Appellant(s): Han Kim
Applicant(s): Jennifer Kudlats

Property Address/Description: 6 Mc Master Ave
Committee of Adjustment File
Number(s) 19 230997 STE 12 MV (A1104/19TEY)

TLAB Case File Number(s): 20 196553 S45 12 TLAB

Hearing date: March 01, 2021

DECISION DELIVERED BY T. Yao

REGISTERED PARTIES AND PARTICIPANTS

Applicant	Jennifer Kudlats
Party	Younji Seo
Appellant	Han Kim
Appellant's Legal Rep.	Sylvain Rouleau
Expert Witness	Franco Romano
Party	David Michael Symes
Party	Elizabeth Craig Symes

INTRODUCTION

Han Kim and Younji Seo wish to construct a third storey addition at the front of their house and a two-storey rear addition with a deck. The front addition does not need variances and a building permit has been issued and construction is under way. The rear addition required the variances set out in Table 1, except for variance 3, which has been changed. The original variance sought for Floor Space Index was 0.961 times the area of the lot but was reduced to 0.91 as a result of the settlement.

On September 2, 2020, the Committee of Adjustment denied the variances and the Kim/Seo family appealed. Their west-side neighbours David and Elizabeth Symes wrote letters of objection and appeared in opposition, both at the Committee of Adjustment and at the TLAB. At the TLAB appeal, with the consent of the parties, I conducted a mediation, after which the parties settled, with a reduction in Floor Space Index.

Table 1. Variances sought for 6 McMaster Ave.			
		Required	Proposed
Variances from Zoning By-law 569-2013			
1	Building height	10 m	10.35 m
2	Front and rear main wall height	7.5 m	10.35 m
3	Floor space index	0.6 times the area of the lot	0.93 times the area of the lot
Variances from Zoning By-law 438-86 ¹			
4	Building height	10 m	10.35 m
5	East side yard setback (for portion of house < 17 m in length)	0.9 m	0.68 m

The TLAB must be satisfied that the applications meet all four tests under s. 45(1) of the *Planning Act*. The tests are whether the variances cumulatively and individually:

- 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

¹The LPAT is still hearing appeals, so the final form of By-Law 569-2013 is not completely confirmed. Therefore, the Buildings Department examines plans under both the former City of Toronto 438-86 and present Zoning By-law 569-2013, resulting in variance 5 being sought for the former by-law and not needed under the new by-law. Mr. Romano testified that the LPAT dismissed appeals to the side yard setback in 569-2013 on March 1, 2018 so that it is technically not needed but out of an abundance of caution, I will treat it is being needed.

I heard evidence only from Mr. Romano. I qualified him as being able to give opinion evidence in the area of land use planning. His position was that he supported the Kim/Seo original position as meeting all the tests under the *Planning Act* and because the settlement results in a variance that is less than originally requested, he could support the settlement as well.

ANALYSIS, FINDINGS, REASONS

My approach to a settlement is to adapt the Law Society Tribunal case of *Cooper*², which suggests that although the tribunal receiving the settlement retains the right to reject the settlement, it should give deference to it and in any case advise the parties if it is not prepared to accept the settlement, so that they can address the specific concerns of the tribunal member.

Mr. Romano stated that in the immediate neighbourhood, 71.4 % of dwellings exceed a floor space index of 0.60 and 8 out of 28 (29%) exceed 0.90. In the broader neighbourhood the figures are 76.2% and 46% (56 homes out of 123). I find that this satisfies the Official Plan policy in s. 4.1.5:

4..1.5 Development in established *Neighbourhoods* will respect and reinforce the existing physical character of each geographic neighbourhood, including in particular:
(c) prevailing heights, massing, scale, density . . . of nearby residential properties;

Mr. Romano concluded:

[This is] A modest building addition that does enlarge a little bit the existing footprint but essentially overlaps where the zoning by-law expects . . . a building to occupy this lot. Not only in length, depth, width and height. So, it is my opinion that the proposal will maintain a detached dwelling . . .and result in a detached dwelling that is respectful and reinforces the existing physical character along McMaster and the neighbourhood in an appropriate manner.

Treats the zoning bylaw in a manner that is similar and inclined to what is frequently found in this neighbourhood and on the street. As a whole, the proposal is in my opinion within the planning [regime] . . . and the public interest and satisfies that test as well.

So, it is my opinion the variances being sought as modified under the settlement satisfies all four tests for a minor variance, represent good planning, and to the extent that there is a modification to the variances it's my opinion there is no need for any public notice to be provided as . . .the settlement results in a downward movement or an improvement to the variances that is minor in nature and there is no need for further public notice.

² *Law Society of Upper Canada v. Stephen Alexander Cooper, 2009 ONLSAP 7 (CanLII)*<https://www.canlii.org/en/on/onlst/doc/2009/2009onlsap7/2009onlsap7.html?autocompleteStr=cooper&autocompletePos=10>

Decision of Toronto Local Appeal Body Panel Member: T. Yao
TLAB Case File Number: 20 196553 S45 12 TLAB

Accordingly, I find that the statutory tests in the *Planning Act* are met and no further notice is needed.

DECISION AND ORDER

I authorize the variances set out in Table 1 on condition that the construction is in substantial conformity with the Site Plan (A1.00), North Elevation (A5.01), South Elevation (A5.02), East Elevation (A5.03), and West Elevation (A5.04), all dated 21-03-08 and prepared by Studio A/C. These should include a west facing privacy screen on any second floor balcony.

X 

Ted Yao
Panel Chair, Toronto Local Appeal Body