

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

Appellant(s): SIESTO PROPERTIES INC
Applicant(s): ERIKA STRANGIS

Property Address/Description: 814 GLENCAIRN AVE
Committee of Adjustment File
Number(s): 20 146483 NNY 08 MV (A0227/20NY)

TLAB Case File Number(s): 20 191312 S45 08 TLAB

Hearing date: March 24, 2021

DECISION DELIVERED BY T. YAO

REGISTERED PARTIES AND PARTICIPANTS

Applicant	Erika Strangis, Architect
Appellant/owner	Siesto Properties Inc.
Appellant's Legal Rep.	Max Laskin, Mathew Lakatos-Heyward
Expert Witness	Andrew Dales
Expert Witness	Richard Pernicki

INTRODUCTION

Siesto Properties Inc. owns a 4-unit rental building and wishes to reconfigure two units to make a 6-unit building. The two new units will be 500 to 600 sq. feet in size and in the basement. Concurrently two existing units on the first floor will lose their basement space. The plan examiner has found that Siesto must obtain eight variances as set out in Table 1 in order for it to proceed with their reconfiguration.

: Table 1. Variances sought for 814 Glencairn Ave			
		Required	Proposed
Variances from Zoning By-law 7625 (City of North York zoning by-law)			
1	Parking Spaces	9 of which 1 must be a visitor parking space	4 spaces and none are visitor
2	Lot area	835 m ²	465 m ²
3	Lot frontage	21 m	11.57 m
4	West side yard setback	5.98 m	1.22 m
5	Building height	11.5 m	11.96 m
6	Landscaping	91.98 m ²	Originally zero; revised to 86.76 m ²
7		No parking space closer than 3 m to an R zone	One parking space zero m to an R zone
8	East side yard setback	5.98 m	2.74 m

On August 20, 2020, the Committee of Adjustment refused the application. Siesto appealed, and so this matter came to the TLAB.

EVIDENCE

I heard from Andrew Dales, Siesto’s planner, whom I qualified as able to give opinion evidence in the area of land use planning. I also heard from Richard Pernicki, whom I qualified as able to give opinion evidence in the area of transportation planning. There were no other witnesses than these two persons.

MATTERS IN ISSUE

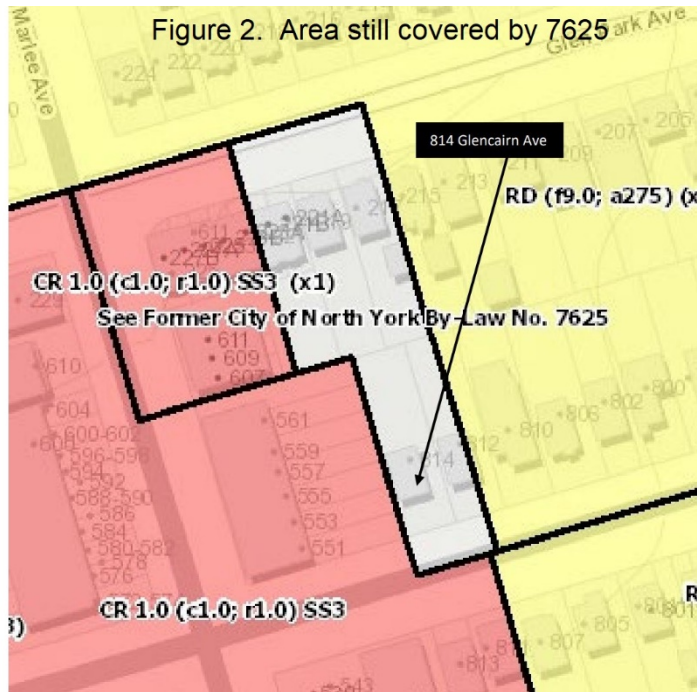
The variances must meet all four tests under s. 45(1) of the *Planning Act*: that is, whether they individually and cumulatively:

- 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

ANALYSIS, FINDINGS, REASONS

Overview

I have an independent duty to assess the *Planning Act* tests notwithstanding the lack of opposition at the TLAB hearing. That being said, this is a case where Siesto amply and convincingly assured me of the soundness of granting the variances.



Nomenclature

Siesto's site's Official Plan designation is "Mixed Use Area"¹ which is similar to what we commonly visualize as a "High Street", or the local shopping uses along major streets. The site has this designation even though it is along Glencairn Avenue, not Marlee², which contains commercial at ground level with residential above.

This is a "pocket" where the current comprehensive zoning bylaw does not apply. Instead, the site is

governed by Zoning By-law 7625 of the former City of North York, which zones this chunk of land C1³. This C1 pocket is sandwiched between the rear of the Marlee commercial / residential establishments and the residential Neighbourhood area to the east.

All residential uses are permitted in C1. Since C1 permits R5 and RM we have to look at those categories. The "R-related" categories are cumulative; that is, the most restrictive R zone permits only single detached; the next level permits single detached

¹ *Mixed Use Areas* achieve a multitude of planning objectives by combining a broad array of residential uses, offices, retail and services, institutions, entertainment, recreation and cultural activities, and parks and open spaces. Torontonians will be able to live, work, and shop in the same area, or even the same building, giving people an opportunity to depend less on their cars, and create districts along transit routes that are animated, attractive and safe at all hours of the day and night. (Official Plan 4.5)

² Marlee has commercial uses with residential above. It is not an Avenue.

³ The word "C1" is on the 7625 map, which is not shown.

and semis etc., up to RM Residential Multiple, which permit all the previously mentioned categories plus apartment buildings.

The multi-unit categories are:

duplex – two units divided horizontally;

double duplex – two attached duplexes;

triplex – three units in any configuration;

multiple attached dwelling – what are commonly known as row housing. and

apartment house dwelling - more than four units with an internal corridor. This is the use that Mr. Dales says most resembles the proposed 6-unit building.

The zones include:

R5 (one-family detached dwelling fifth density zone) which permits only detached dwellings.

RM5 (multiple-family dwellings fifth density zone) which permits single family, semidetached and all multiple dwellings. In addition, hospitals and nursing homes are permitted but the C1 zone does not list a triplex as a permitted use. This appears to me to be an anomaly or perhaps an oversight.

C1 (general commercial) permits commercial, R5 and all RM5 residential uses.

Performance standards, that is numerical controls: An R5 lot containing a single detached home must have a 15 m frontage and 550 m² lot area. An RM lot containing an apartment house dwelling, must have a frontage of 21 m and lot area of 835 m². Since the frontage requirement is tied to the type of building, a building that gains additional dwelling units must meet a higher frontage standard, even if there is no external change. This is how the plan examiner has analyzed the application, leading to the majority of the variance requirements.

To sum up, the C1 permits commercial and residential uses including RM5 which permits 1, 2, and more than 4 units, but not 3 and four only if they are “double duplexes”. In my view, the singular nature of this site, being governed by a by-law written forty or fifty years ago (7625 still refers to sites as to whether they are serviced with septic tanks) has led to many of the variances the zoning plan examiner has indicated. This is relevant to my assessment of the intent of the zoning by-law, which must be read as a whole and considered in its historical as well as other contexts.

Chronology

I presume that prior to 2017, the site was occupied by a single detached residence. On May 18, 2017, the owner obtained a minor variance from the Committee of Adjustment to permit a triplex. As the above section indicates, a triplex is the one use that does **not** appear on the C1 list. A triplex may have any configuration; Siesto's was the following:

3 rd floor – rental apartment
2 nd floor – rental apartment
1 st and basement – rental apartment

Stopping at this point, the plan examiner could have concluded that a triplex being similar to row housing or an apartment building, might also need variances for lot area, frontage and height and therefor the present application would have been seen for what it is, namely a minor adjustment in internal layout. But that is not what happened.

After having constructed the above layout, the owner found that the ground floor and basement was too large for the market. It sought to divide this unit to create a new third and fourth unit. (Please see below). On May 3, 2018 it obtained approval for the new configuration from the Committee of Adjustment.

3 rd floor – rental apartment	
2 nd floor – rental apartment	
1 st and basement – rental apt. #3	1 st and basement – rental apt. #4

Apparently, the plan examiner considered Siesto's interior renovation to require only a single variance:

The minimum required number of parking spaces is 6 spaces of which 1 must be for visitors. The proposed number of parking spaces is 4 spaces of which 0 are for visitors.

I consider then that the effect of this variance is to put a "floor" of "six spaces of which one must be for visitors", for this building so long as there is no change in the exterior and as long as the number of dwelling units remains at four.

Mr. Dales did not have detailed knowledge of the construction and occupancy at this point in the history, but states that in pivoting to the present 6 unit proposal, his

client “followed all the rules”. In 2021, Siesto now wishes to create a third configuration as follows:

3 rd floor – rental apartment	
2 nd floor – rental apartment	
1 st floor – rental apt. #3	1 st floor rental apt. #4
Basement – rental apt. #5	Basement – rental apt. #6

Parking reduction

I will briefly set out my conclusion, that despite all the complexity, there is really only one issue, and that is whether there should be a reduction from the stated requirement of 9 spaces plus a visitor parking space. Throughout its existence since 2017, the building has only had four parking spaces.

There was no opposition either at Committee of Adjustment or the TLAB. It appears the Committee’s refusal was caused by letters written by Community Planning and Transportation Services. Mr. Dales said that he interpreted Community Planning’s letter as supportive of the entire project, except for the landscaping issue. On page 2, my Table states the plan examiner first advised that the project could provide only zero m² of landscaping. This was in error and on November 17, 2020, after the Committee of Adjustment’s refusal, a new zoning by-law notice was issued to change zero to 86.76 m² of landscaping. This is because walkways may be included in landscaping for multiple unit buildings. In my opinion, the revised deficiency of about 5% of the required amount of 91.98 m² is minor and meets the other *Planning Act* tests.

As set out previously, matters like the frontage and lot area are pre-existing and could have been requested and granted in the two previous Committee of Adjustment applications but were not. Since they involve no change in built form and are only ascertainable if one traces the multiple unit definitions in the North York by-law, Mr. Dale considered these “technical” and I agree.

This leaves the parking reduction variance. On August 10, 2020, the City’s Transportation Services Department wrote a one sentence opinion to the Committee of Adjustment, advising that it could not support the proposed parking reduction. Mr. Dales said that this is a standard comment when an owner does not supply a transportation study. Siesto remedied this by retaining Mr. Pernicki, whose evidence is discussed later.

I now apply the tests, starting with Provincial Policy. This is one of those rare cases where a small internal physical change can attract provincial policy implications. S. 2.2.4.3 of the Growth Plan states:

3. Major transit station areas on . . . subway lines will be planned for a minimum density target of: a) 200 residents and jobs combined per hectare for those that are served by subways;

Mr. Dale said that the Plan considers areas within 800 m of subway lines to be “on a subway line” and this site is within 150 m. I should add Mr. Dale extensively discussed other sections of the Growth Plan as well as the 2020 Provincial Policy Statement.

Turning the Official Plan, Mr. Dale said his planning opinion was that the proposal:

- integrates land use and transportation (2.2);
- provides a transition to neighbouring residential areas (2.3.1.2);
- creates private sector rental housing (3.2.1)
- creates a balance of land uses that reduces automobile dependency (4.5.2)
- limits shadow impacts (4.5.2)

to name only a few policy areas. In short, this development is consistent with and conforms to higher level Provincial policies and maintains the intent of the Official Plan.

CITY OF TORONTO
WARD 15



Figure 3

We now turn to Mr. Pernicki’s (Siesto’s transportation expert) evidence on transportation and whether the parking space variance is good planning.

Mr. Pernicki said 53 % of the trips by persons in (former) Ward 15 (about 60,000 persons, Figure 3, left) are by auto, 37% by transit, 0% by GO train , 9% by walking and cycling and 1% “other” (e.g., taxi and Uber etc.). He noted that this survey was carried out in 2016, based on 2012 data and that the 2020 survey would soon be published, where he would expect to see the non-auto modes increased due to increased use of Uber etc.

Furthermore, the small size of the units (500+ sq ft) and their rental status would suggest that the occupants would probably not be able to afford to maintain a car (10-15,000\$ annual cost) and that even those who could afford to own a car to might make the decision to forego ownership because they would know in advance that they would have to find a space offsite and pay an additional monthly rental. He noted that Ward 15 covered a very large area and he would expect that car ownership would vary across it. Since it was within two blocks of the Glencairn subway station, the transit trips for residents on Glencairn would likely be even more than the ward-wide average of 37%.

Mr. Pernicki noted as well that provision of parking contributes to increasing housing costs as the provision of a parking space adds 50 to 80 thousand dollars to the cost of a dwelling unit.

Stepping back, and looking at the gamut of development in Toronto, he said that he receives about 100 requests for development studies a year and “99%” involve some sort of request for a reduction in parking demand. He concluded:

We've got to change our approach as to how we have done things in the past. Just building roads and highways is not working. . . .And the availability to build roads and highways just isn't there anymore. So, what we have to do is support other modes. And people still need to travel. . . obviously. People still need to get to work and shop and go to school and so on. So, what we need to do is change that whole dynamic from a car oriented dependency to a more transit or alternative form of modes of travel. The number one way of one way of reducing that. . .is to reduce parking dependence. In this instance, it makes logical sense to me that this is an opportunity to . . .make that social change . . . for this one site. . . One site at a time, right?

I agree with Mr. Pernicki this is a case where reducing parking space requirements are reasonable and desirable for the appropriate use of the land. I find the variances cumulatively and individually meet all the tests required by the *Planning Act*.

DECISION AND ORDER

I authorize the variances as set out in Table 1.



X

Ted Yao
Panel Chair, Toronto Local Appeal Body