Toronto Local Appeal Body

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INTERIM DECISION

Decision Issue Date Tuesday, May 04, 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): JILL LAUREN HASS

Applicant(s): EVOQ ARCHITECTURE

Property Address/Description: 216 SEATON ST

Committee of Adjustment File

Number(s): 19 114496 STE 13 MV (A0147/19TEY)

TLAB Case File Number(s): 20 176436 S45 13 TLAB

Hearing dates: February 11, 2021, April 19, 20, 2021

DECISION DELIVERED BY T. YAO

Seaton Development Corporation (Steve Thompson)	Applicant/Appellant	David Neligan
Andrew Dales	Expert Witness	
Mandy Bonisteel	Party	
Joseph Kary	Party	
Cabbagetown South Residents' Association	Party	Karen Marren
Tanya English	Party	

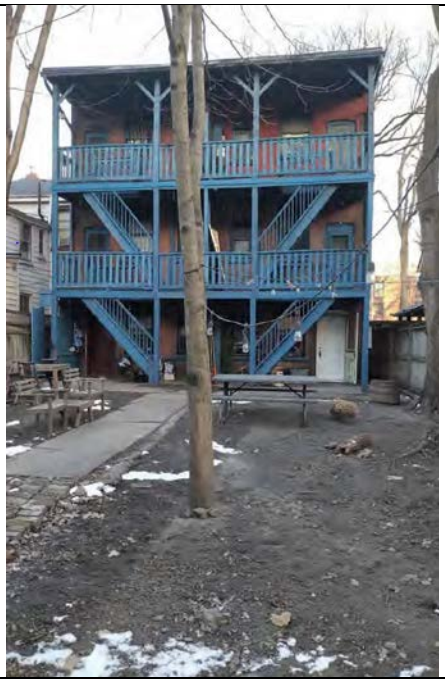
Peter Bregg	Party
Jordan Allison	Party

DECISION

Background

Seaton Street Development Corporation wishes to build a three storey rear addition. The property is a six unit apartment building, largely unchanged since its construction a century ago and will remain six rental units. Most apartments will be enlarged and have a more usable outdoor private amenity space (i.e., a patio or balcony). To gain zoning approval, it needed three variances under s. 45(1) of the *Planning Act.* Because of a last minute change in plans, it now needs only one — for building depth[1] (variance number 2 in Table 2 below). The project is shown in Figure 1, with the inset (middle right) showing an earlier proposal.

Figure 1. Left: present rear façade; Right: proposed rear addition



[1] Depth is the length of the building measured from the front setback line. In this case depth and building length are equal.

Table2. Variances originally sought for 216 Seaton St			
		Required	Proposed
Variances from Zoning By-law 569-2013			
1	Landscaping (now not needed)	50% of lot area	48.9%
2	Building depth for apartment building	14 m	24.9 m
3	Floor Space Index (now not needed)	1.0 x lot area	1.18 times lot area

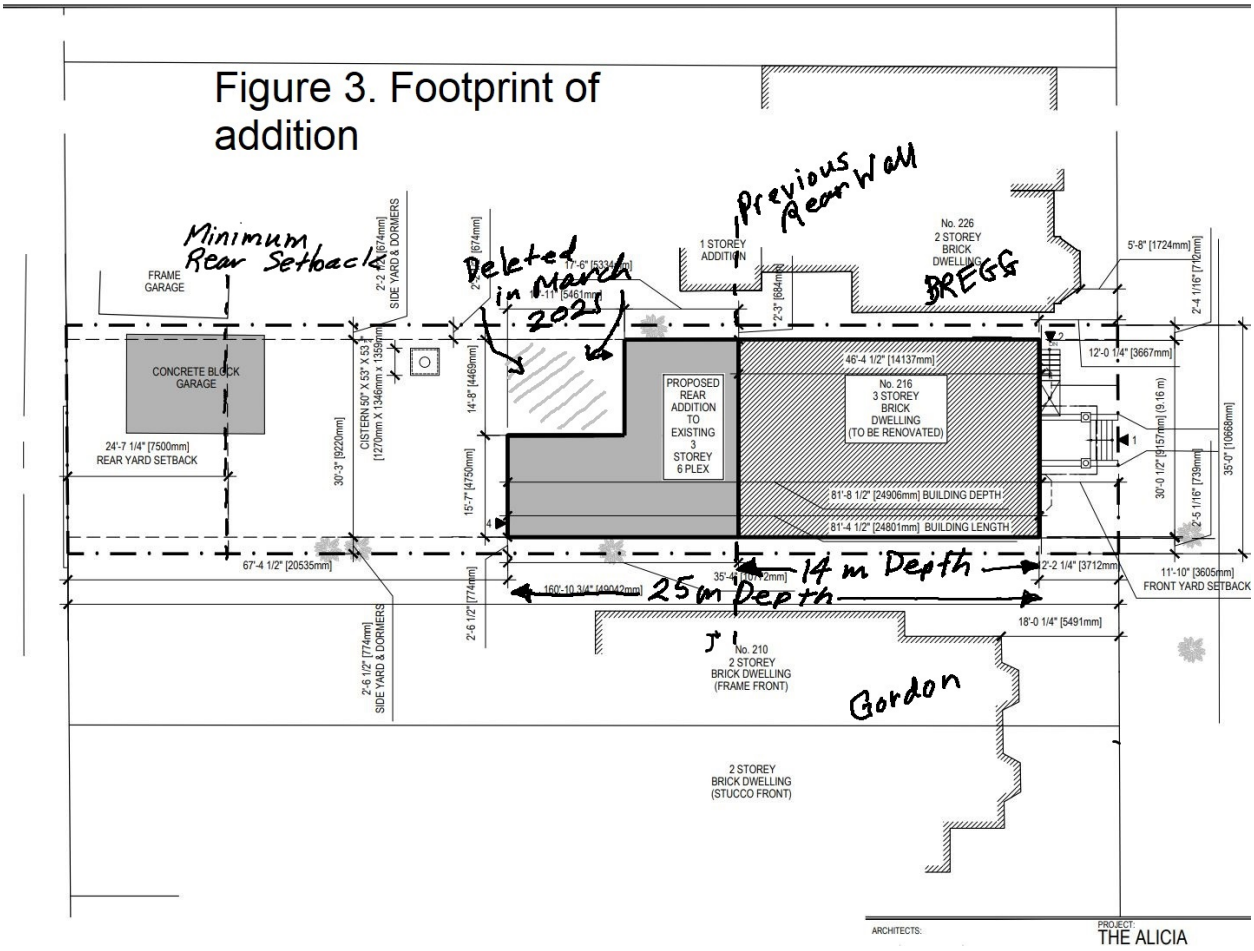
Chronology

In July 2020, the previous owner's (Jill Hass's) application for the three variances was denied by the Committee of Adjustment. Ms. Hass both appealed to the TLAB and listed her property for sale. If the property did not sell, she would go ahead at the TLAB and modify her proposal. But a buyer was found and the new owner was interested in continuing with the modification. It felt would be improper to reach out to the neighbours until the hearing at the TLAB. When the neighbours learned that the hearing would actually proceed, they brought motions to participate in the Hearing. The new owner agreed and presented its version of Ms. Hass's modification. As a result, there was less opposition at the TLAB hearing than initially at the Committee of Adjustment. I will now review the above events in more detail,

February 2019	Ms. Hass applies for a 16 m long rear addition (i.e., building depth of **30 m**).
Sept 2019	Ms. Hass is urged to defer her application at the Committee of Adjustment to consider Community Planning's view that the depth should be no more than **25 m**, which it considers typical and reasonable.
March 2020	Ms. Hass submits a revised application in which the depth is **25.03 m**, which is marginally beyond 25 m. Community Planning advises it is "holding fast" (Mr. Dales' words. Mr. Dales is the planner for Seaton Street) to 25 m or less.
June 11, 2020	The depth of the building plus extension is reduced to **24.92 m**, i.e., a whisker below 25 m. The plans have deleted step backs.

July 2020

The Committee of Adjustment refuses the application and Ms. Hass appeals to the TLAB. Mr. Dales notes that because of the fairly minor change from 25.03 to 24.92 m, there was no new planning report indicating that its guideline had been complied with. It is Mr. Dales' opinion that this silence from the Planning Department plus the lack of setbacks led to the refusal by the Committee of Adjustment. However, we cannot be certain as the Committee does not give detailed reasons.



Fall 2020

According to Mr. Kary (a tenant at 216 Seaton, the subject property), he thought Ms. Hass **would not proceed** with the appeal because of the time "required to engage in the regulatory process". Mr. Allison was even more critical. He said in his affidavit that "[Ms. Hass] has duped my fellow neighbours and me into believing the TLAB Appeal was not being pursued."

October 2020	The TLAB set February 11, 2021 for the hearing and notifies a broad list of Seaton residents, but no one elects to participate by the deadline of November 30, 2020.
Feb 11, 2021	This is the formal start of the hearing. Seaton Street Development Corporation advises it has taken over the appeal and asks for an adjournment to meet with the neighbours. In granting the adjournment, everybody who wished to participate was granted party status.
March 6, 2021	At a meeting with interested persons, Seaton Street Development Corporation reduces its massing. This has the effect of deleting 2 variances. The step backs are reintroduced; the portion next to the neighbour to the south [Walter Gordon, please see Figure 3] keeps the 24.92 m depth but the portion next to the north neighbour [Peter Bregg's] is reduced by 5.4 m (18 ft). The late reduction in massing introduces an issue in that modification of plans after the Committee has ruled needs to be dealt with procedurally under TLAB Rules and the *Planning Act.*
April 19, 20, 2021	This hearing recommences . Ms. Marren (Cabbagetown South Residents' Association), Mr. Allison and Mr. Bregg attend the hearing as observers[2]. Only the tenant of the subject property Mr. Kary and Ms. Bonisteel, a neighbour, speak in opposition.

MATTERS IN ISSUE

The variances must be consistent with and conform to higher level Provincial Policies.

S. 45(1) 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.

Mr. Kary also raised the issue of a second adjournment of the hearing, owning to the changes raised at the March 6, 2021 meeting. I denied the adjournment as it resulted in

[2] As this was a Webex meeting, many persons would attend briefly.

a decrease in the size of the proposal on the same principle as the issue of further notice under s. 45(18.1.1) of the *Planning Act*, discussed on the next page.

Finally, I deal with **conditions** to the granting of the variance. I have tried **no**t to make this an afterthought because conditions, especially for Mr. Kary, represent a final implementation detail of a complete resolution of the issues.

EVIDENCE

I qualified Mr. Dales as able to give opinion evidence in the area of land use planning. Mandy Bonisteel and Joseph Kary testified on their own behalves.

ANALYSIS, FINDINGS, REASONS

This is a modest and carefully designed addition to an existing privately owned rental building. The Official Plan strongly supports the renovation and improvement of this type of housing, particularly where it can be done in a growth area like the downtown. There are other housing related goals, such as housing choice and the retention of affordable rental units, which I discuss below. Adverse impacts can fit under a number of the four tests and indeed I am reopening this tearing to deal with a site specific examination of the impact.

Whether more notice is needed.

Section 45(18.1.1)of the *Planning Act* allows me to find that a change in plans need **not** be recirculated if I find the change is a minor one[3]. The relevant case law suggests that if the change is downward, it will be considered minor. The changes were downward and fairly significant. I note that at the compromise meeting, the attendees, including Cabbagetown South Residents' Association and others were given actual notice; "circulation" just requires that they be sent a notice, which may not arrive or if it does, they may not read. Actual notice is better than re-circulation. In any case, I find

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[3] *Bickham v. Hamilton (City),* 2016 CanLII 72356 (ON LPAT)
"The Board found that the second variance of the side yard would, **escalate,** rather than diminish, the potential impact of the sunroom addition, an outcome clearly at odds with the intent and purpose of s. 45(18.1.1) . […]
Serpa v Toronto (City), 2017 CanLII 74744 (ON LPAT)
"This revision to the variances, pursuant to s. 45(18.1.1) of the Act was allowed because it involved a **reduction** of the requested variances. . ."
Dong v. Toronto (City), 2016 CanLII 8496 (ON LPAT)
The Board finds that as the application as modified, represents a **betterment** in the relief being sought, pursuant to s. 45(18.1.1) of the Planning Act , ("Act ") no further notice is required. […]
The Board explained that not only is this common practice, but it is also something that is permitted by the Act (s. 45(18.1.1)).[…]

the change is minor in terms of the relevant LPAT jurisprudence and no further notice is needed.[4]

Housing Choice and Higher Level Policies

The Provincial Policy Statement says multi-unit housing should be "accommodated" and this type of intensification making better use of transit infrastructure should be promoted[5]. This site is served by bus and streetcar service along the major east-west streets. The Growth Plan also supports "housing choice" and explicitly supports multi-unit housing[6]. The Toronto Official Plan states that the market

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[4] The following sections of the *Planning Act* are applicable:
Amended application
(18.1) On an appeal, the Tribunal may make a decision on an application which has been amended from the original application if, before issuing its order, written notice is given to the persons and public bodies who received notice of the original application under subsection (5) and to other persons and agencies prescribed under that subsection.
Exception
(18.1.1) The Tribunal is not required to give notice under subsection (18.1) if, in its opinion, the amendment to the original application is minor.
Notice of intent
(18.2) Any person or public body who receives notice under subsection (18.1) may, not later than thirty days after the day that written notice was given, notify the Tribunal of an intention to appear at the hearing or the resumption of the hearing, as the case may be.

[5] Healthy, liveable and safe communities are sustained by . . .
; b) accommodating an appropriate affordable and market-based range and mix of residential types (including single-detached, additional residential units, **multi-unit housing**, **affordable housing** and housing for older persons), employment (including industrial and commercial), institutional (including places of worship, cemeteries and long-term care homes), recreation, park and open space, and other uses to meet long-term needs;. . .e) promoting the integration of land use planning, growth management, transit-supportive development, **intensification** and infrastructure planning to achieve cost-effective development patterns, optimization of transit investments, and standards to minimize land consumption and servicing costs; (1.1.1. of the 2020 Provincial Policy Statement)

[6] S 2.2.1 of the Growth Plan says about housing:
Upper- and single-tier municipalities, in consultation with lower-tier municipalities, the Province, and other appropriate stakeholders, will:

a) support housing choice through the achievement of the minimum intensification and density targets in this Plan, as well as the other policies of this Plan by:
   i. identifying a diverse range and mix of housing options and densities, including additional residential units and *affordable* housing to meet projected needs of current and future residents; and
   ii. establishing targets for *affordable* ownership housing and rental housing;
b) identify mechanisms, including the use of land use planning and financial tools, to support the implementation of policy 2.2.6.1 a);
c) align land use planning with applicable housing and homelessness plans required under the Housing Services Act, 2011;

does not provide new affordable rental housing: "More than half of Toronto households rent, yet little new affordable rental housing is being built." (p. 3-21[7]). Even if the new housing is not affordable, it will be rental.

Ms. Bonisteel acknowledges the higher level policies and the official plan promote intensification. However, she feels a Seaton Street rear yard is an inappropriate place:

> . . .Your [i.e., Seaton Street Development Corp.'s] Evidence Statement says that it is in keeping with the *Planning Act* because it is supportive of the efficient use of land and supporting the ability for more people to live in an urban area and I'm saying that **this particular street is not a good place to do that on.**

I now turn to whether this project "fits", as required by the Official Plan and what the zoning by-law means when limiting the depth of an apartment building to 14 m, which in this case would mean no addition since the building is already 14 long.

Intent of numerical standards

Ms. Bonisteel has accepted the thrust of higher order policies support intensification and multi-unit housing but rejected their implementation here. The scheme of planning instruments do in fact contemplate implementation should consider compatibility, that is the juxtaposition of physical elements of the proposed development on adjacent neighbours.:

- The Provincial Policy states that the Official Plan is the most important **implementation tool**[8]

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d) address housing needs in accordance with provincial policy statements such as the Policy Statement: "Service Manager Housing and Homelessness Plans"; and
e) implement policy 2.2.6.1 a), b), c) and d) through official plan policies and designations and zoning by-laws.

[7] S. 3.1.2 begins
The current production of ownership housing, especially condominium apartments, is in abundant supply. What is needed is a healthier balance among high rise ownership housing and other forms of housing, including purpose-built rental housing, affordable rental housing and affordable low-rise ownership housing for larger households with children and multi-family households. Policies, incentives and assistance are needed in order to respond to the City's unmet housing needs, especially mid-range and affordable rental housing. More than half of Toronto households rent, yet little new affordable rental housing is being built.

[8] 4.6 The official plan is the most important vehicle for implementation of this Provincial Policy Statement. Comprehensive, integrated and long-term planning is best achieved through official plans.

- The Plan states that the zoning by-law **will contain** numerical standards to "reflect the variety of communities[9]and ensure compatibility[10]. That is, the zoning by-law will be quantitative and precise, not qualitative and policy driven.
- The four tests state both the Official Plan and zoning have to be considered together.

My task is to determine the **intent** of those numerical standards; not to merely observe that the number is exceeded and, on that basis alone, deny the project. I point out that there is only one variance sought. Variances in the plural have to cumulatively meet the four tests and the elimination of two of the variances suggests that Seaton Street was sensitive to this part of the four tests. Since only one variance is sought, the other standards by implication have been met. Thus, the use, height, etc. are all met, suggestive of overall compatibility.

Mr. Dales noted that lots on the west side of Seaton are unusually deep (49 m). As well, he found numerous Committee of Adjustment decisions indicating a general tendency to vary the standard to permit 20 to 22 m depths, irrespective of lot depth.

Table 4 showing typical lot depths and variances for building depth

	Seaton even numbers	Seaton odd numbers	Ontario even numbers	Ontario odd numbers	Berkeley odd numbers
1.Typical lot length	49 m	34 m	32 m	37 m	37 m
2. Avg COA depth awards	21.2 m (6 decisions)	none	20 m (5 decisions)	20.5 m (3 decisions)	21.2 (4 decisions)

The actual words of the zoning by-law are:

> 10.10.40.30 Building Depth
> (1) Maximum Building Depth in the R zone, the permitted maximum building depth is:
> (A) 17.0 metres for a detached house or semi-detached house; and
> (B) 14.0 metres for a duplex, triplex, fourplex, townhouse or **apartment building.**

[9] The land uses provided for in each designation are generalized, leaving it to the Zoning By-law to prescribe the precise numerical figures and land use permissions that will reflect the tremendous variety of communities across the City. (OP chap. 4)
10 8. Zoning by-laws will contain numerical site standards for matters such as building type and height, density, lot sizes, lot depths, lot frontages, parking, building setbacks from lot lines, landscaped open space and any other performance standards to ensure that new development will be compatible with the physical character of established residential Neighbourhoods. (OP 4.1.8)

The intent of the difference between 14 m and 17 m is not intuitive. For example, Mr. Dale's rear wall (Figure 5, page 13) shows that there was probably an original historical depth for Seaton St buildings of 14 m (the red line running through #216's existing rear wall.) Since that time there have been many rear additions, including the two neighbours one of whom has the 14 m limit and the other with a 17 m limit. As set out, the City considers a 25 m deep building to be reasonable for 49 m deep lots and I note a disparity has existed for many years in which the neighbours' additions are longer than #216's current rear wall.

Mr. Dales concluded:

> In terms of the zoning, the property is currently zoned Residential or R. . . .The R zone is the most permissive of the residential zoning categories. It permits a wide variety of residential buildings, all the way from detached dwellings to four storey apartment buildings, and everything in between. So detached, semidetached, duplex, triplex, townhouses -- all the way up to four storey walk-up apartments buildings.
>
> In terms of the overarching general intent of the R zone is to protect the character and form of low density residential areas and ensure that properties are not overdeveloped in relation to neighbouring properties . . . . In terms of the building depth, the general intent and purpose of that provision . . . is to maintain a generally consistent alignment of rear building walls and rear yards, so that there aren't unreasonable or undue impacts on adjacent properties.
>
> So, on blocks with especially deep lots, ...variances to exceed the building depth maintain the general intent and purpose if minimum rear yard setbacks are maintained and generous rear yards are provided . The proposed addition on this 50 m deep lot is reasonable in context."

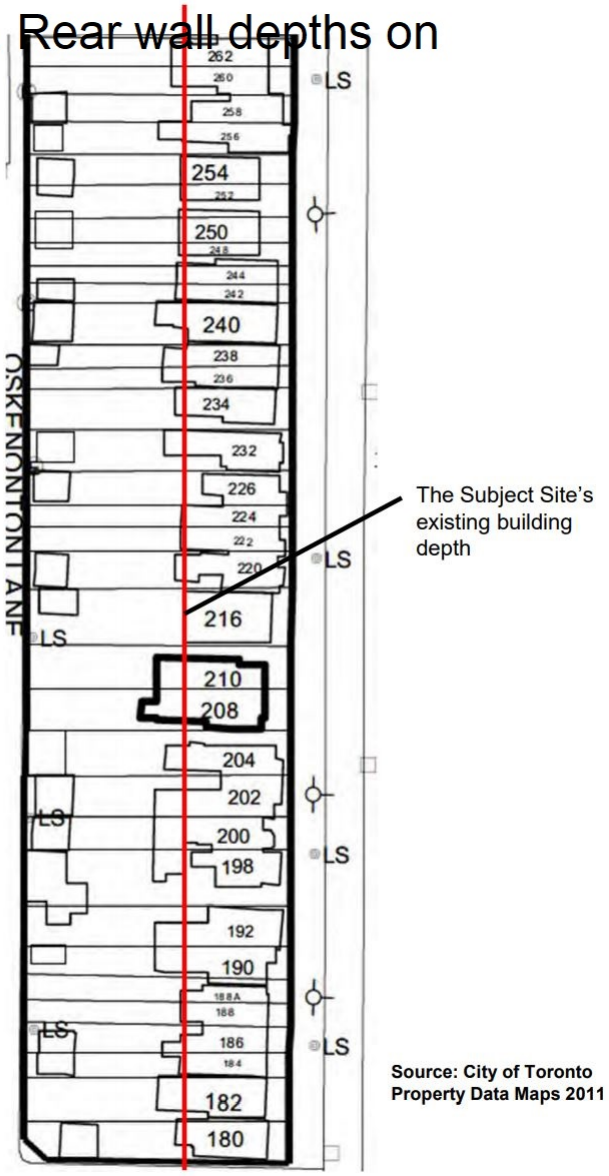
I now highlight the rear yard setback. The **minimum** rear yard setback for all R buildings is 7.5 m (25 feet) and this line passes through the rear garage of #216[11] (please see Figure 3 on page 4). The actual setback is 20 m (67 feet), a generous amount. I agree with Mr. Dales and I find the general intent and purpose of the Official Plan and zoning bylaw are maintained.

Nor do I see this as a negative precedent. Although it will be longer than any existing building, its additional length is only for a one storey, whereas Mr. Gordon's footprint is for two stories, albeit with somewhat larger side yard. I am aware that both Mr. Kary and Ms. Bonisteel are concerned that Mr. Gordon's opposition will not register at this hearing because he is too ill to attend. But I did consider this relationship and found it to be sensitive, despite not hearing from Mr. Gordon.

[11] The garage is the small square at the rear of 216 Seaton. I gather 210-208 Seaton i(Gordon rear addition and main building) is outlined in a heavier black line because it is the deepest.

An examination of the artist's conception (right side Figure 3, page 4) shows that the current rear wall of Mr. Gordon extends about 6.2 m farther back than the #216 Seaton rear wall. After construction, the situation will be reversed; the #216's rear wall will extend about 4.7 m (15 feet) beyond Mr. Gordon's. Moreover, at the second and third storey level, the former situation will still occur; Mr. Gordon's building is still longer than #216's second and third floors. If this is a "precedent", then this is a respectful one that continues the characteristic physical pattern of rear additions. As a precedent, it is also necessary to consider that it is an apartment building, which has a lower maximum depth but that preservation of rental stock is also promoted by the Official Plan. This important Official Plan objective is not mentioned by Community Planning, which considered solely the typical depths of rear additions in the neighbourhood.

Figure 5. Rear wall depths on Seaton



The owner complied with the City's specification. The ratepayers' group has accepted the compromise. Compromise is at the heart of the consultation process.

I turn now to the loss of affordable housing issues.

Loss of affordable housing

The opening words of 3.1.2 of the Official Plan mention three types of rental housing that are to be encouraged: **purpose-built rental housing, affordable rental housing and affordable low-rise ownership housing for larger households**

3.2.1 HOUSING

Adequate and affordable housing is a basic requirement for everyone. . . . Current and future residents must be able to access and maintain adequate, affordable and appropriate housing. The City's quality of life, economic competitiveness, social cohesion, as well as its balance and diversity depend on it.

The current production of ownership housing, especially

> condominium apartments, is in abundant supply. What is needed is a healthier balance among high rise ownership housing and other forms of housing, including **purpose-built rental housing, affordable rental housing and affordable low-rise ownership housing for larger households with children and multi-family households.** Policies, incentives and assistance are needed in order to respond to the City's unmet housing needs, especially mid-range and affordable rental housing. More than half of Toronto households rent, yet **little new affordable rental housing is being built.** We need to address four areas:
>
> - Stimulating production of new private sector rental housing supply . . . (other three areas omitted)
>
> Preserving what we have
>
> As long as there is insufficient new supply to meet the demand for rental housing, our existing stock of affordable rental housing is an asset that must be preserved. In this sense, rental housing is not unlike our heritage buildings - we need to do all we can to prevent the loss or **deterioration of units**. . . .

The Official Plan goes on to speak of preventing of "deterioration" and rental stock being **maintained, improved and replenished**[12].

I can observe that these four goals may conflict and it is the decision maker's task to balance them. For example, if preservation of affordable rental housing is the single most important goal, then we can expect that in a practical sense, improvements to housing stock will be less frequent. If we prioritize only purpose-built rental, affordable rental will slowly disappear or be confined to areas that do not have the amenities that this neighbourhood has. If we leave all these responsibilities to the public sector, we can anticipate the type of housing like the nearby Dan Harrison Complex, criticized by Ms. Bonisteel as a "mistake" due to its size, and as a dense infill at the back of Sherbourne St properties.

The Provincial Policy Statement is an "integral part" of the Minister's Housing Plan; the second document sets out the difficulties facing renters and first time homeowners:

> Ontario's Housing Crisis
> This infographic [showing for example 83% of buyers can't afford an average resale home and less than 2% or rentals are vacant] details the realities of Ontario's housing crisis. But how did we get here? To start, building housing takes too long and costs too much. There is red tape, unexpected changes and government fees that add years of paperwork and can also contribute tens of thousands of dollars to the cost of an average

[12] The existing stock of housing will be maintained, improved and replenished. The City will encourage the renovation and retrofitting of older residential apartment buildings. New housing supply will be encouraged through intensification and infill that is consistent with this Plan.

> home. These layers of regulation and "not-in-my-backyard" attitudes make it hard to build different kinds of homes – the townhomes, mid-rises and family-sized apartments that the people need. Meanwhile, rents skyrocket because it is difficult and costly to build new rentals and to be a landlord. (*More Housing , More Choices*, Minister's Housing Plan)[13]

Mr. Kary's position is that preservation of affordable housing at 216 Seaton St should be the **only** or paramount goal. But this is not what the Plan says; as indicated above, there are several policy goals. I appreciate approval of this project may result in a loss of affordable rental housing units. However, it responds to other goals in the Official Plan despite being a small number of rental units.

I now turn to the conditions Mr. Kary asked me to impose in the event that I approve the variance. By way of background, he is a long-term tenant at 216 Seaton and a litigation lawyer with expertise in landlord and tenant law and states his current rent is affordable. In his witness statement, he asks:

> Accordingly, if the plan (sic.) is approved, I would ask that terms be imposed that would protect and provide reason for the owner to honour my right to return to the premises. These would include, as conditions for approval, that the landlord keep me informed regularly as to the progress of the work and the anticipated completion date**, that they sign a lease with me three months before the completion date with rent protected against above-guideline increases for at least 10 year**s, that the landlord provide rent gap compensation for the duration of construction and provide move-out and move-back moving allowances, and that the landlord provide written consent to my placing a lien against the property as security for my rights. These are the kinds of conditions that the City often imposes on construction renovation in larger projects. (Kary Witness Statement)

Mr. Dales' position was that his client is aware of a "**Section 111** process" for affordable housing issues which his client intends to follow. His evidence is that usually a s. 111 application does not get triggered until after the planning approval, since there is no point to inquire into a speculative loss of affordable rental housing until other issues are resolved[14].

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[13] https://www.ontario.ca/page/more-homes-more-choice-ontarios-housing-supply-action-plan

[14] Demolition and conversion of residential rental properties
111 (1) The City may prohibit and regulate the demolition of residential rental properties and may prohibit and regulate the conversion of residential rental properties to a purpose other than the purpose of a residential rental property.
Same
(2) The power to pass a by-law respecting a matter described in subsection (1) includes the power,
(a) to prohibit the demolition of residential rental properties without a permit;(b) to prohibit the conversion of residential rental properties to a purpose other than the purpose of a residential rental property without a permit; and (c) to impose conditions as a requirement of obtaining a permit.

Municipal Code s. 667-3 requires a landlord to obtain a permit to demolish part or all of a rental property[15]. The plans show that there will be extensive interior renovations so there will be demolition. The granting of a s. 111 permit is an administrative decision by the Chief Planner and Executive Director, City Planning. According to Mr. Kary, the Chief Planner can take into account the increased rental costs for displaced tenants and also to ensure their right to return after construction is finished. The Chief Planner can require the landlord to post a bond to ensure the condition is met.

Thus Mr. Kary asked that I make a condition for granting the variance that he be guaranteed, a right to return to his former unit and that Seaton Street pick up the differential between Mr. Kary's alternative housing arrangement during construction and his former rent. He also asked that there be a 10 year rent freeze beyond the guidelines for rent increases. His grounds are s. 3.2.1.5 of the Official Plan ("Housing"):

5. Significant new development on sites containing six or more rental units**, where existing rental units will be kept in the new development:**

a) **will secure** as rental housing, the existing rental housing units which have affordable rents and mid-range rents; and
b) should secure needed improvements and renovations to the existing rental housing to extend the life of the building(s) that are to remain and to improve amenities, without pass-through costs to tenants. These improvements and renovations should be a City priority under Section 5.1.1 of this Plan where no alternative programs are in place to offer financial assistance for this work. (my bold)

Subsection 5 comes into play when there is significant new development**,** which this proposal may or may not be. But clearly a precondition is that existing rental units will be **preserved in** the new development. The words "will secure" indicate that clause (a) is mandatory. The words in (b) following "should secure" are not mandatory. Whether the improvements are "needed" is something I was given no evidence on. The following words "should be a City priority under 5.1.1" (density bonusing) do not apply because this is not a rezoning.

The following section 3.2.1.6 does recite conditions to be secured that are similar to what Mr. Kary asks[16]. However, it is prefaced with the words "and would result in the

[15] § 667-3. Demolition prohibited. No person shall demolish, or cause to be demolished, the whole or any part of a residential rental property unless the person has received a section 111 permit for the demolition of the residential rental property and except in accordance with the terms and conditions of the section 111 permit and any preliminary approval.

[16] 3.2.1.6. New development that would have the effect of removing all or a part of a New development that would have the effect of removing all or a part of a private building or related

loss of six or more dwelling units. In other words, Mr. Kary asks me to import into section 5 the type of conditions that can be imposed under section 6.

Even if the jurisdiction to impose conditions were clear, I find the following counterarguments to Mr. Kary's proposed conditions:

- This would be novel for this tribunal; Mr. Kary has not provided me with case law or another instance where this has been imposed as a condition of a variance under S 45(1) of the *Planning Act;*
- The proposed conditions do not contain a remedy in the case of default; I could not rescind the variance or order that a building constructed in accordance with a variance be torn down. While I could consider a bond be posted as a condition of granting the variance, if something happened in the future to require that the bond be drawn upon, I or another TLAB member would have to reconstitute the hearing to supervise this.
- What is affordable may depend on how a family is constituted – two single mothers who happen to be sisters or close friends may be able to achieve an affordable rent by living as a single household unit. This type of evidence has not been supplied.
- The condition would be personal, i.e., of benefit only to Mr. Kary. Planning conditions should relate to the property regardless of who owns or occupies it.
- The plan examiner or building inspector has no statutory duty to enforce affordable housing conditions; how could they check for example if Mr. Kary's moving expenses have been reimbursed?
- There is an alternative s. 111 process is envisaged in the Official Plan.

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group of buildings, **and would result in the loss of six or more rental housing units** will not be approved unless:

a) all of the rental housing units have rents that exceed mid-range rents at the time of application, or

b) in cases where planning approvals other than site plan are sought, the following are secured:

i at least the same number, size and type of rental housing units are replaced and maintained with rents similar to those in effect at the time the redevelopment application is made;

ii for a period of at least 10 years, rents for replacement units will be the rent at first occupancy increased annually by not more than the Provincial Rent Increase Guideline or a similar guideline as Council may approve from time to time; and

iii an acceptable tenant relocation and assistance plan addressing the right to return to occupy one of the replacement units at similar rents, the provision of alternative accommodation at similar rents, and other assistance to lessen hardship, or

c) in Council's opinion, the supply and availability of rental housing in the City has returned to a healthy state . . ..

i.

Conditions

Except for Mr. Kary and Mr. Neligan there was little discussion about conditions. I am willing to entertain the following possible conditions:

1. The owner build in substantial compliance with the plans A-010, 100, 101, 102, 103, 104, 201, 202, and 203 of the Applicant's Disclosure April 6, 2021 filed in this hearing.
2. Any windows on the north or south external walls on the second or third floor of the proposed addition that directly overlook the rear yard of the neighbouring properties or that provide direct views into existing windows of the neighbouring dwellings shall incorporate frosting to preserve privacy and protect against overlook.
3. The owner shall apply to the City under s. 111 of the *City of Toronto Act* for a permit to demolish residential rental property.

I note that that Seaton Street Development Corporation's plans contain more windows than did the Ms. Hass's plans dated February 2019. I need assurance that none of the windows looks directly into any windows in Mr. Gordon's house. While I expect more windows are desired and perhaps are justified, I would like some evidence on their number and placement. I will reopen the hearing as to the wording of these conditions.

Conclusion

I am prepared to authorize a depth variance to 24.92 m. I am not prepared to impose the conditions Mr. Kary requested. This is my decision. However, I withhold the final order until I hear submissions on the final wording of the conditions.

I set 9:30 am Tuesday, May 25, 2021 as a Webex conference to hear oral submissions. I will cancel this appointment if parties agree on the conditions. Alternatively, if this date is not convenient, would the parties please contact me at tlab@toronto.ca

X

Ted Yao
Panel Chair, Toronto Local Appeal Body