

PURPOSE OF THE APPLICATION: To legalize and to maintain the existing two-storey semi-detached dwelling which was not constructed in accordance with OMB Decision PL160231

REQUESTED VARIANCE(S) TO THE ZONING BY-LAW: Section 6(3) Part II 5(I) By-law 438-86 The maximum permitted building depth is 14.0 m. OMB Decision PL160231 permits a building depth of 16.86 m, measured from the front second floor balcony to the rear main wall. The dwelling has a depth of 17.17 m.

In other words, the owners desire a variance for a **building depth** of 17.17 m where a 14 m maximum building depth is mandated by a former relevant by-law. On September 2, 2020, the Committee of Adjustment refused the variance; the Feras appealed and so this matter comes before the TLAB.

EVIDENCE

I heard from Robyn Fera, Joe Fera, and Raymond Liu. Joe Fera is the son of the late Giuseppe Fera, who did the work at 45 Pendrith St prior to his son taking over. No other persons spoke and there was no evidence against the granting of the variance. Nonetheless, I have an independent duty to ascertain that the *Planning Act* is complied with, before any variance is granted.

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

The variances must be consistent with and conform to higher level Provincial Policies. The 2020 Provincial Policy statement and the Growth Plan for the Greater Golden Horseshoe discuss high level issues such as land use coordination, employment, housing infrastructure, climate change and resource management. I did not find these useful for this particular application.

ANALYSIS, FINDINGS, REASONS

Mr. Fera's father enclosed a front porch and made other changes to his home at 45 Pendrith St, all under a building permit. When his father passed away, Joe Fera says he "took over". A building inspector found that his father deviated from the approved plans and Joe received an Order to Comply dated August 21, 2013:

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The length of the building on the 1st floor has been increased to 17.17 m (56 ft 4 in) instead of 16.21 m (53 ft 2 in) as indicated on the approved plans.

Three things happened. A Building Code violation was issued to Mr. Fera, which is still before the Courts. Mr. Fera says that the Building Inspector is very reasonable, in view of Mr. Fera's efforts to regularize the situation. Second, his architect drafted new plans. Unfortunately, an error was made in measurement of the as-built depth (which in this case, is the same as the building length, and should have been 17.17 m.) This incorrect number 16.86 m was given to the plans examiner, leading to the granting of the wrong depth variance by the OMB in 2016. That decision, by OMB Vice Chair Seaborn also granted other variances: five to the new by-law and eight to the old bylaw. Everything requested was granted. The OMB wrote:

Mr. Fera explained that he undertook a renovation to cover an existing front porch. The building inspector advised that the renovation did not fully comply with the building permit, as issued. Plans were re-submitted to the City and the zoning examiner identified the required variances under both By-law No. 438-86 and By-law No. 569-2013 ("new By-law"). The application before the Committee was "to legalize and maintain the one-storey front addition, front basement walkout, and front second floor balcony which were constructed without a building permit".

Her reasons for so doing are that this is a "dense" part of the City and that most variances are "technical":

While it is clear that Mr. Fera strayed from the terms of his original building permit and Mr. Kvas [a neighbour] feels inconvenienced, this is a dense area of the City and many of the existing dwellings were built prior to the introduction the in-force by-law which means that most renovations require **technical variances**. In this regard, Mr. Kvas was fair in acknowledging that he re-built his family home about three years ago and required several variances to accommodate the new dwelling. (my bold)

I concur with Vice Chair Seaborn's reasoning and will amplify her ascription of the variances being "technical", below. I now go through the application of the four tests, as I am obliged to do.

The Official Plan intent

S. 4.1.5 of the Official Plan states:

5. Development in established *Neighbourhoods* will respect and reinforce the existing physical character of each geographic neighbourhood, including in particular:
- (a) patterns of streets, blocks and lanes, parks and public building sites;
 - (b) prevailing size and configuration of lots;
 - (c) prevailing heights, massing, scale, density and dwelling type of nearby residential properties;

Building length or depth is not mentioned as a category. I have visited the site and the front façade does not seem out of place. There are several porch enclosures all similar to what Mr. Fera's dad has constructed. The character of the neighbourhood is respected and reinforced.

The property is two blocks north of the Ossington subway station and intensification is to be encouraged near major transit stations. It contains a secondary suite and the Official plan supports private rental and housing choice. I find that the intent of the Official Plan is maintained.

Zoning intent

I note Vice Chair Seaborn characterized the variances as "technical". Her decision was made September 28, 2016. As the TLAB has explained in other cases, after 2013 to the present, Buildings Department reviews all applications under both the new and old by-laws. For the former City of Toronto, the former by-law is 438-86. The new by-law increases permitted depth from 14 to 17 m, but we don't know what the plan examiner would have done in 2016 had they been given the correct number.

A useful summary of the appeals can be found in a report to Council of July 5, 2019 stating that most of the appeals had been dealt with, **including building depth**¹. In my estimation the need for a depth variance under 438-86 disappeared on the date of the LPAT's² partial order of March 1, 2018.

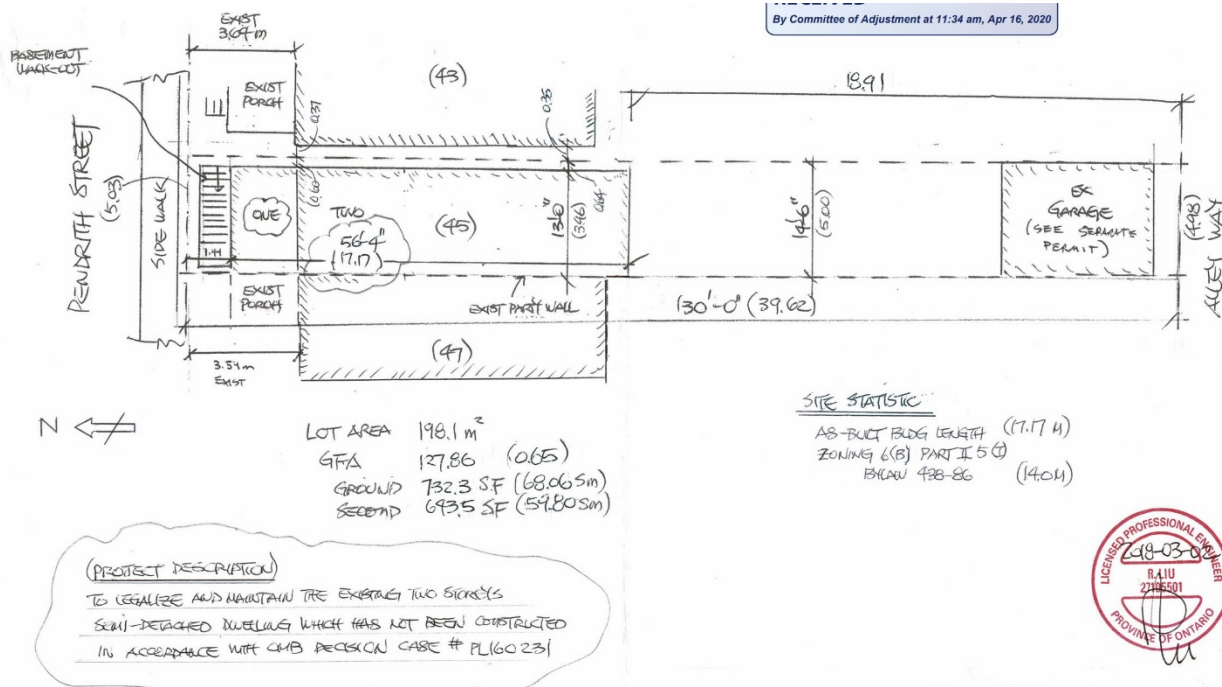
If I am incorrect, I note that the lot has a depth of almost 37 m, so there is ample room for a building 17.17 m long, and **if** the plans examiner had been supplied with the right number and thought that the new depth limit of 17 m triggered a second variance, the excess over the larger number is only 0.17 m (6.7 inches).

The site plan shows that the present building is not unreasonably longer than either of its neighbours and the building to the north is much higher. I find the zoning intent has been maintained.

¹The Phase 2 Hearing of the appeals of regulations of Chapter 10 Residential Zone Category of By-law 569-2013 was heard by the Ontario Municipal Board (the OMB), predecessor to the Local Planning Appeal Tribunal (the "Tribunal"), on June 26 to July 7, 2017. In addition to the City, the Parties participating in the Phase 2 Hearing can be categorized into two groups. Three Parties represented the Architects & Developer perspective: The hearing was chaired by Vice-Chair C. Conti who issued his Decision and Order on March 1, 2018. The decision can be found at this link: <http://www.omb.gov.on.ca/e-decisions/pl130592-Mar-01-2018.pdf> The OMB Decision and Order mainly agreed with the evidence and opinion of the City's witnesses. The OMB approved most of the regulations in Chapter 10 as appropriate and in compliance with the Official Plan, including regulations for maximum building length and **depth**, gross floor area, setbacks and separations, platforms (decks and balconies) and ancillary buildings. (my bold) Appeals of City-wide Zoning By-law 569-2013 - Request for Direction - Supplementary Report (toronto.ca)

² The OMB changed its name to LPAT and Member Seaborn and Member Conti are part of the same tribunal.

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I find as well that the variance is minor and desirable for the appropriate development of the land. Accordingly, I find the statutory tests under the *Planning Act* are met. I thank the Ferars for diligently rectifying this issue. They attended the Webex meeting but did not have a computer available to display documents. So, if there is an issue arising out of the fact that we could not display documents to each other, I would ask them to write to me at tlab@toronto.ca.

DECISION AND ORDER

I authorize a building depth variance of 17.17 m with respect to both By-laws 569-2013 and 438-86, on condition that construction is in substantial compliance with the site plan contained in this decision.

Ted Yao

X

Ted Yao
 Panel Chair, Toronto Local Appeal Body