

DECISION AND ORDER

Decision Issue Date Thursday, July 15, 2021

PROCEEDING COMMENCED UNDER Section 53, subsection 53(19), Section 45(12), subsection 45(1) of the Planning Act, R.S.O. 1990, c. P.13, as amended (the "Act")

Appellant(s): SHARON KAMIEL

Applicant(s): BRYAN HACKETT

Property Address/Description: 147 B BEDFORD PARK AVE

Committee of Adjustment File
Number(s): 19 243336 NNY 08 MV

TLAB Case File Number(s): 20 111935 S45 08 TLAB

Hearing date: Wednesday, June 23, 2021

REGISTERED PARTIES AND PARTICIPANTS

| Name | Role | Representative |
|---------------------|-----------------|-----------------|
| Bryan Hackett | Applicant | |
| Sharon Kamiel | Owner/Appellant | Jonathan Minnes |
| Courtney Heron-Monk | Expert Witness | |

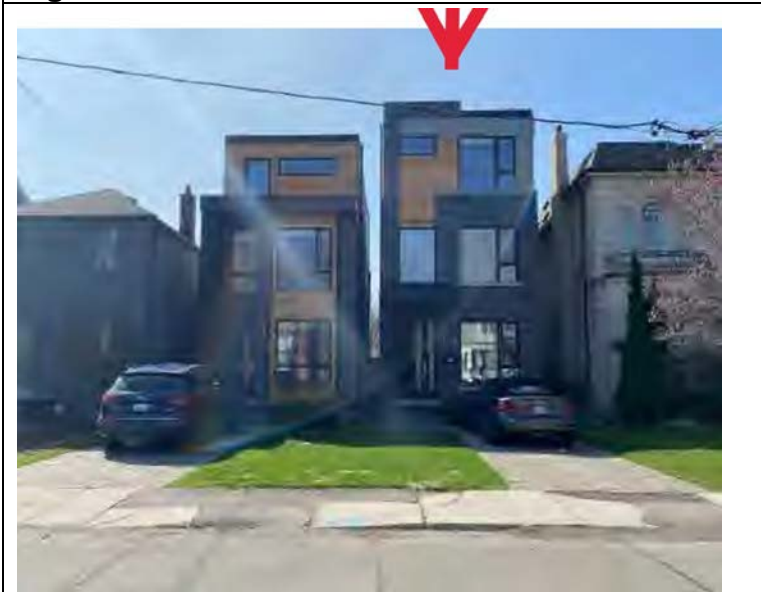
Hearing date: Wednesday June 23, 2021

DECISION DELIVERED BY T. Yao

INTRODUCTION

Ms. Kamiel wishes to legalize an existing parking pad in the Yonge Lawrence area and needs a single variance to do so— to be permitted to have a parking space in the front yard.

Figure 1. Photo of house



BACKGROUND

Ms. Kamiel purchased 147B Bedford Park in 2015: part of a severance of a formerly 40 foot wide lot. A Google photo (Figure 1, above) shows the two semis (hers is on the right); both with cars on their parking pads. On May 28, 2019 she received a notice from the City advising that it was a contravention of the zoning by-law to park there. She applied for a variance, which Committee of Adjustment refused on January 16, 2020. She appealed and so this matter comes to the TLAB.

Member's Site visit

As required by my conditions of employment I visited the site for the sole purpose of better assessing the evidence given at the hearing.

Order under 45(18.1.1)

Ms. Kamiel's original application contained three variances, two of which were deleted on recommendation of her planner, Ms. Heron-Monk. The deleted variances relate to the size of parking space. As a result; there is a single variance, to be permitted to park in the front yard¹. Because of this change , Mr. Minnes requested an

¹ [10.5.80.10.(3) Street Yard Parking Space] Street Yard Parking Space In the Residential Zone category, a parking space may not be in a front yard or a side yard abutting a street. This regulation does not apply if a parking space in the front yard is permitted by the City of Toronto under the authority of the City of Toronto Act, 2006, or its predecessor.

order under s. 45(18.1.1) of the *Planning Act* (in which no further notice is required for minor changes to the original request when the minor change is made after the Committee's decision). I make this order to dispense with further circulation as the changes eliminate two variances and as such, there is a reduction in the number of variances sought, considered a "betterment"². Jurisprudence suggests that such an order is routinely made.

MATTERS IN ISSUE

The variances must conform to and be consistent with higher level provincial policies. Under s. 45(1) of the *Planning Act*, they must also cumulatively and individually:

- 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.

EVIDENCE

The sole witness was Ms. Heron-Monk, the owner's planner, whom I qualified as able to give opinion evidence in planning matters.

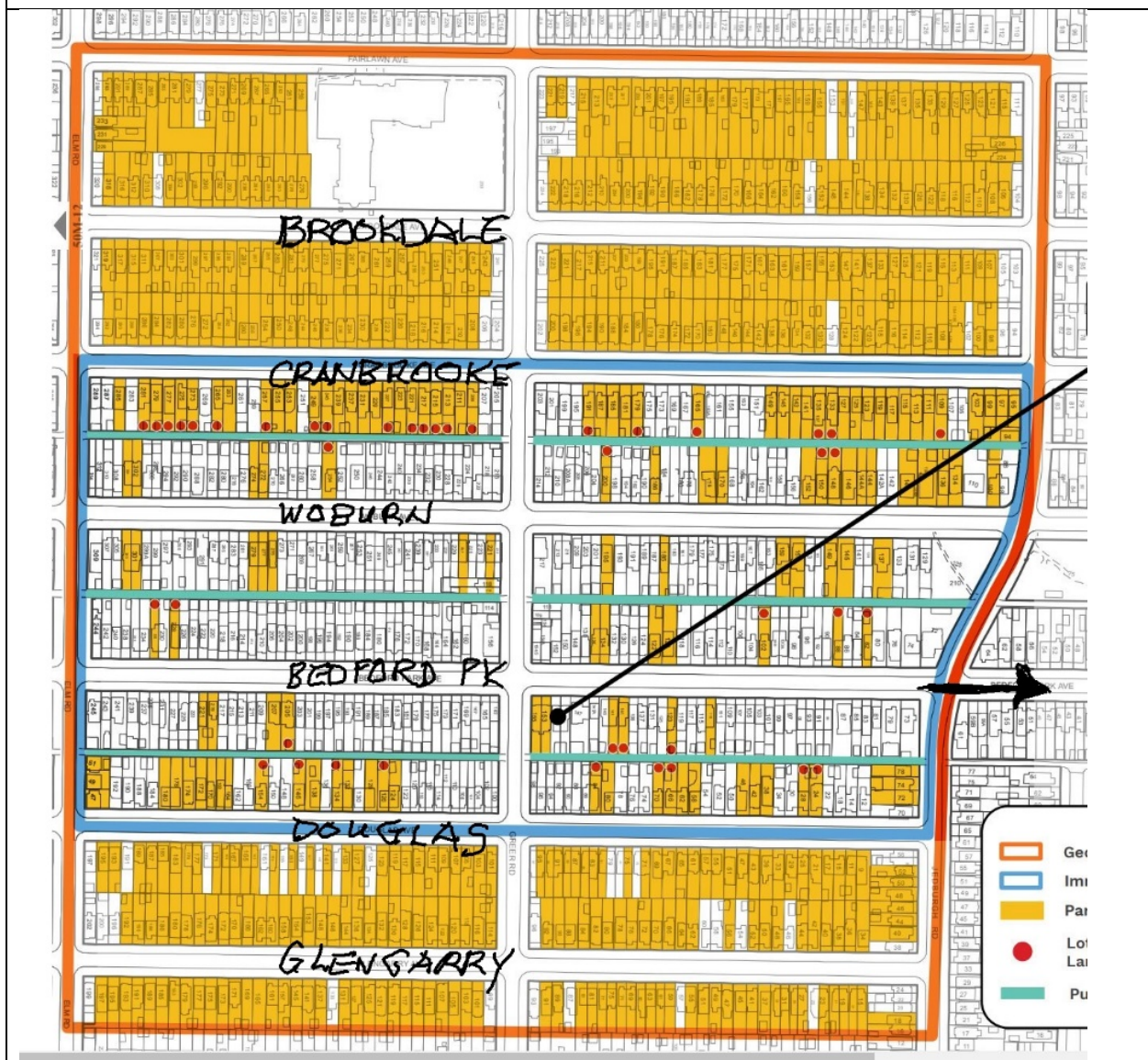
ANALYSIS, FINDINGS, REASONS

S. 4.1.5 of the Official Plan requires that the development "respect and reinforce the existing physical character in the neighbourhood"³. In this test, the "location of driveways" and "prevailing pattern of landscaping" are specifically mentioned.

² *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)).[...]

³ Development in established Neighbourhoods will respect and reinforce the existing physical character of each geographic neighbourhood, including in particular:.. prevailing location, design [of] driveways and garages; prevailing patterns of rear and side yard setbacks andlandscaped open space;

Figure 2. Heron-Monk lot study



The dots (red in the file material), drawn at the rear of each property, show lots with both front yard parking **and** lane access. The dot's location then shows a laneway garage or an opportunity for a garage or parking spot where neither is in the front yard. There are eight "red dots" on the block where 147B is located. I find these are too few to create an existing physical pattern in the immediate context, which is defined as the block where the subject property is located. As a result, I find the proposed variance does not meet s. 4.1.5 of the Official Plan because the development must be materially consistent with both the immediate block and the wider neighbourhood and the facts disclose that this is not the case.

The Official Plan goes on to say:

2. New development will locate and organize vehicle parking, vehicular access, service areas and utilities to minimize their impact on the property and on surrounding properties and to improve the safety and attractiveness of adjacent streets, parks and open spaces by . . .e) **limiting surface parking between the front face of a building and the public street or sidewalk**; (3.1.2.2 Built Form) (my bold)

By drawing this policy to my attention, Ms. Heron-Monk acted in the best traditions of a professional urban planner. The policy requires the proponent to “limit surface parking” in front of the house. Because this is the relief sought for this property, I find that the variance does not maintain the intent of this policy. This is a second provision of the Official Plan whose general intent is not maintained.

There is a third policy which I find to be relevant, which is not mentioned by Ms. Heron-Monk. This is with respect to the Official Plan’s transit friendly policies⁴. The arrow in Figure 2 shows the site is two blocks from the Lawrence subway station. I find that this well located property can take full advantage of its accessibility to higher order transit as well as use the garage at the rear.

Turning to the zoning by-law, it provides that for an RD zone, there must be a 50 percent of the front yard for landscaping:

Landscaping means an area used for trees, plants, decorative stonework, retaining walls, walkways, or other landscape or architectural elements. Driveways and areas for loading, parking or storing of vehicles are not landscaping.

The casual observer would think landscaping equals lawns, but asphalt can be landscaping so long as it is not used for storage of cars. In other words, the definition of landscaping contains a directive that elaborates and strengthens to intent of the zoning that parking makes the asphalted surface not landscaping. (I note that Ms. Heron Monk has considered this and Ms. Kamiel will not run afoul of either total landscaping or soft landscaping, no matter what the result) But this helps me understand the intent of the by-law and is additional wording in the bylaw to discourage this type of variance. Therefore, I find the zoning intent is also not met. The tests are cumulative; all four must be met and the onus is on Ms. Kamiel.

⁴ See for example the need to make better use of the transportation capacity we already have, p 2-4.

In conclusion, I find the intent of the Official Plan and zoning are not maintained and thus the statutory tests under s. 45(1) of the *Planning Act* are not met. I wish to thank Mr. Minnes and Ms. Heron-Monk for their meticulous and fair presentation.

DECISION AND ORDER

I make the requested order under s. 45(18.1.1) to dispense with further notice. I do not authorize the variance for front yard parking. The appeal is dismissed and the decision of the Committee of Adjustment is confirmed.

X 

Ted Yao
Panel Chair, Toronto Local Appeal Body