

INTERIM DECISION AND ORDER

Decision Issue Date Friday, October 22, 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): DANNY CITTER

Applicant(s): CONTEMPO STUDIO

Property Address/Description: 76 GLEN LONG AVENUE

Committee of Adjustment File

Number(s): 21 139146 NNY 08 MV

TLAB Case File Number(s): 21 166889 S45 08 TLAB

Hearing date: October 7, 2021

Deadline Date for Closing Submissions/Undertakings:

DECISION DELIVERED BY J. LEUNG

REGISTERED PARTIES AND PARTICIPANTS

Name	Role	Representative
CONTEMPO STUDIO	APPLICANT	
CARLA TEIXEIRA	OWNER	
DANNY CITTER	APPELLANT	MARTIN MAZIERSKI
SENO QUEIROGA	PARTY	CHRISTINA KAPELOS
JOSHUA MOSKOWITZ	PARTICIPANT	

INTRODUCTION

This is an Appeal from a decision of the North York Committee of Adjustment (COA) pertaining to a request to permit a series of eight Variances for 76 Glen Long Avenue.

The Variances, if allowed by the Toronto Local Appeal Body (TLAB), would permit the construction of a new dwelling.

This property is located in the Yorkdale-Glen Park neighbourhood in the Old City of North York district of the City of Toronto (City) which is situated north of Glengrove Avenue and bounded by Caledonia Road the west and Dufferin Street the east. The property is located on Glen Long Avenue south of Playfair Avenue and north of Glengrove Avenue

At the beginning of the Hearing, I informed all parties in attendance that for context I had performed a site visit of this subject property and reviewed the disclosure material that had been submitted. However, my findings and ruling will on be based on evidence presented during the Hearing.

BACKGROUND

The Variances that had been requested are outlined as follows:

1. Chapter 900.3.10(A), By-law No. 569-2013

Despite regulation 10.20.40.70 (3), the minimum side yard setback is 1.8m.
The proposed east side yard setback is 1.53m.

2. Chapter 900.3.10(A), By-law No. 569-2013

Despite regulation 10.20.40.70 (3), the minimum side yard setback is 1.8m.
The proposed west side yard setback is 1.52m.

3. Chapter 10.5.40.50(2), By-law No. 569-2013

The required minimum building setback for the zone is 1.8m.
The proposed front porch is 1.52m from west side lot line.

4. Chapter 10.5.40.50(2), By-law No. 569-2013

The required minimum building setback for the zone is 1.8m.
The proposed rear deck is 1.53 metres from the east side lot line.

5. Chapter 10.20.40.10.(4)(A), By-law No. 569-2013

The permitted maximum height is 7.2m.
The proposed height is 7.85m.

6. Chapter 10.20.40.20.(1), By-law No. 569-2013

In the RD zone with a minimum required lot frontage of 18.0m or less, the permitted maximum building length for a detached house is 17.0m.
The proposed building length is 19.51m.

7. Chapter 10.20.40.30.(1), By-law No. 569-2013

The permitted maximum building depth for a detached house is 19.0m.
The proposed building depth is 19.50m.

8. Chapter 10.20.30.40.(1)(A), By-law No. 569-2013

The permitted maximum lot coverage is 35% of the lot area.
The proposed lot coverage is 35.39% of the lot area.

These Variances were heard and approved at the May 27, 2021 North York COA meeting. Subsequently, an Appeal was filed with the TLAB on June 7, 2021 by Danny Citter and the TLAB scheduled a Hearing on October 7, 2021 for all relevant Parties to attend.

At the commencement of the Hearing, the Applicant's legal representative indicated a Minutes of Settlement had been executed, in principle, with the Appellant. As such, the Hearing was then converted, consent, to an expedited Settlement Hearing.

MATTERS IN ISSUE

The Applicant has engaged in a constructive dialogue with the Appellant to address issues as they relate to the subject proposal. These discussions have now resulted in a settlement proposal, in principle, being presented to the TLAB. With this, it is noted that there are no opposing Parties. While so, the *Planning Act* stipulates that once an Appeal is submitted to a Planning tribunal, that a *hearing de novo* must be held to consider all issues for this matter anew. Therefore, this Hearing is held to assess the Application, on its merits, and to determine if it meets the four statutory tests, as per s. 45(1) of the *Planning Act* and also if it meets the principals of good planning.

The subject property has a Residential Detached Zone designation and has similar residential uses adjacent to it. The Tribunal will need to undertake a comprehensive review and analysis of the proposal to determine if it constitutes good planning and will be an appropriate form for development for this area.

JURISDICTION

Provincial Policy – S. 3

A decision of the Toronto Local Appeal Body ('TLAB') must be consistent with the 2014 Provincial Policy Statement ('PPS') and conform to the Growth Plan of the Greater Golden Horseshoe for the subject area ('Growth Plan').

Variance – S. 45(1)

In considering the applications for variances from the Zoning By-laws, the TLAB Panel must be satisfied that the applications meet all of the four tests under s. 45(1) of the *Planning Act*. The tests are whether the variances:

- 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.

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. 1993, c. 26, s. 56; 1994, c. 23, s. 26 (7); 2017, c. 23, Sched. 5, s. 80.

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. 2017, c. 23, Sched. 5, s. 98 (5).

EVIDENCE

The Hearing commenced with Ms. Christina Kapelos, of Ritchie Ketcheson Hart & Biggart LLP, representing the Owner/Applicant, who stated that a Minutes of Settlement was recently executed with the Appellant to address issues which they had with the proposal. She noted that the settlement document was provided to the TLAB during the last few days and may not have been provided to me, the member, yet. I responded that I would contact the TLAB staff to obtain the settlement document so that I could review it. At this stage, I noted that we may look to convert this to a settlement Hearing, which was accepted by the Parties in attendance.

After the TLAB staff relayed the settlement document to me, which I was able to then review, I asked Ms. Kapelos to proceed with her opening remarks to the Tribunal. Ms. Kapelos stated that this Variance request was originally approved by COA, subject to a condition that it be brought substantially in conformity with the plans as submitted to the COA. Subsequently, an Appeal was filed by an adjacent neighbour Mr. Danny Citter.

The primary concerns related to the length and depth of the proposed dwelling and potential impact to the Appellant's adjacent property. The settlement discussions resulted in changes to the proposal to address these issues. The building length was shortened and the building footprint was shifted forward on the property. Due to this, two Variance requests, for lot coverage and building depth, have now been removed. Although the building length Variance has been reduced. However, a new Variance request for front yard setback is now required. Ms. Kapelos indicates that this is a minor change to the proposal and the building footprint, and its location on the property, does not substantively differ from the original proposal.

Ms. Kapelos further recommended that an Interim Decision be issued by the Member so that an updated Zoning Notice could be obtained from the City. This would ensure that Variance requests identified are accurate.

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With regards to the introduction of a new Variance, and the requirements of s. 45(18.1.1) of the *Planning Act*, relating to public notification due to changes to a proposal, Ms. Kapelos stated she would be making legal submissions on this later on in the Hearing.

Ms. Kapelos then called Jonathan Sasso, of Humphries Planning Group, to provide testimony to the TLAB. I asked if there were any questions or comments regarding this Expert Witness. Not receiving any from the Parties, I indicated that I had reviewed Mr. Sasso's curriculum vitae and would be able to qualify him to provide expert opinion evidence in the field of land use planning.

Mr. Sasso commenced by showing the revised site plan, contained as part of the Minutes of Settlement. The existing 1.5 storey dwelling on site will be demolished to facilitate for this new proposed dwelling to be constructed. In relation to the Variance requests, which had been outlined previously in this document, Variance NO. 6 is now being reduced from 19.51 to 19.34 m for the building length. A new Variance request for front yard setback of 7.41m whereas the Zoning By-law requires a minimum of 8.32m. Variance Nos. 7 and 8 relating to building depth and lot coverage were now being removed. These changes were done to reduce the encroachment of the dwelling into the rear portion of the property.

He further outlined that the proposal is consistent with the *Provincial Policy Statement (PPS)*, *Growth Plan for the Greater Golden Horseshoe* and meets the requirements under s. 45(1) of the *Planning Act*. Mr. Sasso also believes the proposal constitutes good planning.

As part of his initial work related to this proposal, he had conducted a site visit of this neighbourhood and had compiled a photo study of the dwellings in this area, which was presented at the Hearing (Exhibit #?). He opined that regeneration of the housing stock had been occurring in this established residential neighbourhood. There are a variety of housing types here, with the majority being two storey dwellings. There are different roof style and building materials which have been employed in the housing stock of this local area context as well.

Mr. Sasso cited the City Planning staff report which raised no concerns but did recommend a condition that the proposal be constructed in substantial conformity with the drawings which had been reviewed. The Variance Application was unanimously approved by the COA.

With regards to the *Official Plan (OP)*, it prescribes an in-fill type development should be compatible and 'fit' with the existing neighbourhood context. Mr. Sasso contends that the subject proposal will be able to conform with the neighbourhood attributes. He then described how the proposal is consistent with the tenets of *Official Plan Amendment 320 (OPA)*, which establishes provisions to assess in-fill type development in established residential neighbourhoods.

He contends that this proposed dwelling will be consistent with the prevailing lot fabric, as no new lot is being created. The building setbacks is also described as being similar to other adjacent dwellings. The landscape and open space area will be

generally maintained for this property. The subject property is not an environmentally sensitive land or within a Toronto and Region Conservation Authority (TRCA) regulated area. With regards to the Zoning By-law, Mr. Sasso describes the Variance requests as not being a significant departure from what the Zoning requirements permit. There will be sufficient spatial separation to the adjacent properties and will also ensure adequate access to the rear portion of the property is maintained.

Ms. Kapelos asked if this proposal will have massing or visual impact issues. Mr. Sasso responded that he does not believe the massing proposed here will create a new condition for the neighbourhood. In addition, a sun-shade study had been commissioned which demonstrated no adverse impact to sunlight for or for shadows on adjacent dwellings. He believes the front landscaped area of the subject property will be compatible for this local area context.

Mr. Sasso opines that this proposal is an acceptable form of development and will be consistent as it relates to this neighbourhood's character.

Mr. Mazierski asked for confirmation that the elevation drawings of this revised proposal would be subject to the recommended substantial conformity condition as well. Ms. Kapelos affirmed that these drawings as presented at the Hearing will be addressed in said condition.

I noted that Mr. Sasso's testimony did not provide more detailed analysis of the PPS and Growth Plan. Ms. Kapelos responded that it is addressed in Mr. Sasso's *Expert Witness Statement* but he didn't focus his testimony on these elements. Mr. Sasso affirmed that the proposal will be consistent with the PPS and conform to the Growth Plan. This form of development will be similar to what currently exists in this neighbourhood and there is sufficient infrastructure to support this proposed dwelling. It would also support provincial policies of encouraging a range of housing options relating to intensification targets.

I then indicated that there is an underground garage being proposed here. I asked if it is subject to a Variance request. Ms. Kapelos responded it does not.

Mr. Mazierski stated that the Participant Joshua Moskowitz is also represented by him. Mr. Mazierski indicated that Mr. Moskowitz is aware of the revised proposal and supports it.

Ms. Kapelos reiterated her recommendation that an Interim Decision be issued so that a Zoning Notice could be completed with the City within 30 days of issuance of the Interim Decision. After the Zoning Notice is provided to me, and I deem it satisfactory, then a Final Decision could be issued. I acknowledged her comment and that it forms part of my review of this Appeal matter.

Ms. Kapelos also stated her opinion that this revised proposal does not represent a significant alteration to the overall quantum of Variances and, as such, additional public notification would not be necessary as per s. 51(24) of the *Planning Act*.

Cross-examination and closing statements were not proffered by the Parties in attendance. As such, the Hearing was thus concluded.

ANALYSIS, FINDINGS, REASONS

The Hearing provided a more comprehensive appraisal of the settlement proposal which had been reached between the Appellant/Property-owner and a Party to this Appeal matter. It was noted that the Participant, while not in attendance at the Hearing, had indicated their support of this settlement proposal through Mr. Mazierski. Ms. Kapelos, who was authorized to represent the Applicant and Owner, further indicated that her clients acknowledge and accept this settlement proposal.

It is noted that the Minutes of Settlement contains a proposed condition requesting this proposal be constructed in substantial conformity to the plans/drawings which have been presented to the TLAB. This condition is similar to what had been proposed by City Planning staff when they had reviewed the original proposal. Normatively, this is a standard condition which is attached to Variance Applications.

Mr. Sasso's testimony focused on the revised proposal which is outlined in the Minutes of Settlement. His testimony was structured to argue that this proposal, now being proffered to the TLAB, meets the four tests for Variance, as per the *Planning Act*, and would constitute good planning and should thus be allowed by the Tribunal. He also supported the recommendations as provided by Ms. Kapelos that an Interim Decision be issued so that an updated Zoning Review could be prepared by City Building staff to ensure the Variance requests contained in the Minutes of Settlement are accurately identified.

It is noted that Mr. Sasso's testimony was uncontroverted and was accepted by the TLAB as such.

The revised Variance requests were assessed by Mr. Sasso and are as described here:

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SCHEDULE "A"	
List of Revised Variances	
1.	A minimum east side yard setback of 1.53m whereas 1.8m is required.
2.	A minimum west side yard setback of 1.52m whereas 1.8m is required.
3.	A minimum building setback for the proposed front porch of 1.52m whereas 1.8m is required.
4.	A minimum building setback for the proposed rear deck of 1.53m whereas 1.8m is required.
5.	A building height of 7.85m, whereas 7.2m is required.
6.	A maximum building length of 19.34m whereas 18m is required.
7.	A minimum front yard setback of 7.41m whereas 8.32m is required.

Figure 1: Schedule 'A': Lost of Revised Variances (extract from Minutes of Settlement, dated October 7, 2021

The revised proposal has now been reduced from eight to seven Variance requests. Two of the Variance requests, for building depth and lot coverage, have now been removed. A new Variance request, for front yard setback, has now been introduced. Mr. Sasso opined that the front yard setback Variance is not dis-similar to the front yard setback condition of other dwellings in this neighbourhood. He further indicated that he does not believe this Variance request is substantial in nature and that the overall intent of the *Zoning By-law* would continue to be upheld.

Mr. Sasso stated that the changes to the proposal were to reduce the impact of the dwelling in the rear portion of the property, which was the primary concern as raised by the Appellant as it related to this proposal. The quantum of Variances has now been reduced, even with the introduction of a new Variance pertaining to the front yard setback. It was noted by Mr. Sasso that City staff had raised no concerns with this proposal. In addition, it was further indicated that City staff were not in attendance at this Hearing, which could be attributed to them not objecting to the revised proposal as well. He further argues in support of the proposal by describing how it is appropriate, when assessed relating to related planning policies and legislation:

“c. The proposal respects and reinforces the prevailing heights, massing, scale, density and dwelling type of nearby residential properties in the study neighbourhood. Variances are proposed for zoning standards related to building height, length, depth, side yard setbacks, and lot coverage. Several similar minor variances and applications have been considered and approved within the Geographic Neighborhood and Immediate Context. The proposed variances are equal to or less than other built form examples and do not create a new undesirable standard from what currently exists and/or has been approved.”¹

Mr. Sasso’s testimony focused principally on how this proposal was consistent with other in-fill development which has occurred in this neighbourhood. Furthermore, it would be facilitating construction of a new dwelling which would not detract from the prevailing neighbourhood character, as is required to be assessed in accordance with the OP. His testimony then focused on the four tests for Variance, as per the Planning Act, where he opined that this proposal would meet these requirements as well. It is noted that Mr. Mazierski, the legal representative for the Appellant and the sole opposing Party in attendance, accepted the testimony of Mr. Sasso and elected not to proceed with cross-examination of the evidentiary material as presented to the TLAB.

In assessing the revised proposal, I note that overall the quantum of Variances was now reduced. However, it should be recognized that a new Variance is being introduced relating to the front yard setback condition. Here, I would accept the arguments as provided by Ms. Kapelos, which were also accepted by Mr. Mazierski, that this revised proposal constitutes a minor alteration and does not represent a

¹ Sasso, J. *Expert Witness Statement of Jonathan Sasso*. September 2021, pp. 12

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significant departure from the original proposal. Public notification on this revised proposal would not be necessary, from a public interest approach, and I find that it would not adversely impact the disposition of this Appeal matter.

With regards to the revised proposal and the Minutes of Settlement, I would state that the TLAB does have general practice direction to encourage a mediated settlement among parties in an Appeal. However, with situations where a settlement proposal is proffered to the Tribunal, the presiding Member must assess to the applicant and the Variances requested to determine whether they conform to all relevant planning policies and legislation.

It is further recognized that the City staff, who had not raised issues with the original proposal, also did not provided comments or concerns with the revised proposal. The City's general practice, which has been observed in other TLAB Appeal matters, is to have City Solicitor, and possibly a City Planner, attend a hearing to oppose a proposal as directed by City Council. Here, such direction has not been provided.

Here, I find that the uncontroverted testimony of Mr. Sasso to be cogent and compelling in explaining how this revised proposal would continue to meet the tenets of good planning, while also incorporating changes which would make it more compatible with the local area context. He had assessed all relevant planning policies and legislation in an appropriate manner and how they would be consistent with the Minutes of Settlement's which documented the revised proposal. Specifically, his testimony focusing on the four tests for Variance, as per the Planning Act, acted to demonstrate how this proposal would not detract from the prevailing development pattern occurring in this neighbourhood. As such, I find that accepting this Minutes of Settlement, its revised Variance requests, and proposed conditions to not conflict with the public interest.

Ms. Kapelo's contention that an Interim Decision be issued, so that a new Zoning Review can be completed within 30 days of the issuance of this Decision, is also accepted by this Tribunal. It will further ensure the public interest component is addressed by ensuring the Variance requests, as described in the settlement document, are accurate. Once City Building staff have been able to make such a determination through a Zoning Review, I will conduct an additional review and, if finding it satisfactory, will issue a Final Decision and Order.

The Tribunal would like to thank all the Parties to matter with their ability to engage in a constructive dialogue to resolve issues and to reach a joint resolution to this Appeal.

DECISION AND ORDER

1. The Appeal is allowed in part. The Decision of the Committee of Adjustment (COA) is set aside and the Appeal in respect of all the Variances is dismissed. The revised Variances, as identified in Appendix 1 and contained in the Minutes of Settlement, dated October 7, 2021, are approved. This approval is further subject to the following condition:
 - a) The Variances set out in Appendix 1 hereto are conditionally approved, subject to the following:
 - i) The Owner or Applicant shall have a period of thirty (30) days from date of the issuance of this Interim Decision and Order to submit a Zoning Review with the City's Building Department to review the plans/drawings relating to revisions to this proposal. Once the Zoning Review is completed, which would confirm the Variances as identified in Appendix 1, the TLAB may issue a final Decision and Order, with or without conditions.

If difficulties arise in the implementation of this decision, the TLAB may be spoken to.

X 

Justin Leung
Panel Chair, Toronto Local Appeal Body
Signed by: jleung7

Appendix 1

List of proposed variances

1. Chapter 900.3.10(A), By-law No. 569-2013

Despite regulation 10.20.40.70 (3), the minimum side yard setback is 1.8m.
The proposed east side yard setback is 1.53m.

2. Chapter 900.3.10(A), By-law No. 569-2013

Despite regulation 10.20.40.70 (3), the minimum side yard setback is 1.8m.
The proposed west side yard setback is 1.52m.

3. Chapter 10.5.40.50(2), By-law No. 569-2013

The required minimum building setback for the zone is 1.8m.
The proposed front porch is 1.52m from west side lot line.

4. Chapter 10.5.40.50(2), By-law No. 569-2013

The required minimum building setback for the zone is 1.8m.
The proposed rear deck is 1.53 metres from the east side lot line.

5. Chapter 10.20.40.10.(4)(A), By-law No. 569-2013

The permitted maximum height is 7.2m.
The proposed height is 7.85m.

6. Chapter 10.20.40.20.(1), By-law No. 569-2013

In the RD zone with a minimum required lot frontage of 18.0m or less, the permitted maximum building length for a detached house is 17.0m.
The proposed building length is 19.34m.

7. Chapter 10.20.40.70.(1), By-law No.569-2013

The required minimum front yard setback is 8.23m.
The proposed front yard setback is 7.41m.