

DECISION AND ORDER

Decision Issue Date **Thursday, October 28, 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): WEN LE

Applicant(s): PROJEKT STUDIO ARCHITECTS

Property Address/Description: 108 ALBERTUS AVE

Committee of Adjustment File

Number(s): 20 116500 NNY 08 MV (A0138/20NY)

TLAB Case File Number(s): 21 116616 S45 08 TLAB

Hearing date: June 7, 2021, August 11, 2021

Deadline Date for Closing Submissions/Undertakings: N/A

DECISION DELIVERED BY S. MAKUCH

REGISTERED PARTIES AND PARTICIPANTS

Applicant	PROJEKT STUDIO ARCHITECTS
Appellant	WEN LE
Party	CATHERINE MANOUKIAN
Party's Legal Rep.	DAVID BRONSKILL
Expert Witness	JANE MCFARLANE
Expert Witness	MICHAEL BARTON

INTRODUCTION

This is an appeal of a decision of the Committee of Adjustment approving eight variances for the construction of a three story addition largely to the rear of a detached dwelling in the Lytton Park Area, west of Yonge St and between Eglinton Ave. and Lawrence Ave. The variances permitted an increase in the height of the overall building by 0.86 m., and the exterior side wall by 1.96 m. As well, parking would be permitted in the front yard and an increase in the FSI of 0.2 and a reduction of an eaves set back from the west lot line of 0.15m. would be allowed. The variances are set out in detail in Appendix 1.

BACKGROUND

The variances sought were the result of consultations with City Planning Staff which produced a number of reductions or eliminations. Nevertheless, the adjacent neighbour, owner of 106 Albertus Ave., Wen Le, appealed the decision and was the only party in objection at the TLAB Hearing. On the appeal she represented herself without the assistance of legal counsel and brought one witness, a land use planner. There were, however, numerous objections at the Committee of Adjustment.

MATTERS IN ISSUE

There were three major areas in contention in this matter. They are as follows: (1) would the variances respect and reinforce the character of the neighbourhood, (2) were the variances cumulatively minor, and (3) were the variances desirable for the appropriate development of the property? The last two issues essentially related to whether the variances would produce an addition which would have an adverse impact on 106 Albertus Ave. Two other issues were also raised: (1) the conformity to provincial policies and (2) the appropriateness of certain zoning bylaw provisions. I ultimately found these two issues immaterial.

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 for 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 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.

EVIDENCE

The evidence was provided by two land use planners and the owner of 106 Albertus. The two land use planners were qualified to give expert opinion evidence on land use planning. As occurs in most cases, when such opinion evidence is given by planners retained by two opposing parties, the opinions were in conflict. Ms. McFarland who gave evidence for the owner/applicant had the opinion that the variances met the four tests in the *Planning Act* and the requirements of both the PPS and the Growth Plan for the reasons set out in her Witness Statement.

In particular, Ms. McFarland held that the variances respected and reinforced the character of the proximate and wider area. In her view, the proposed height was similar to the existing house at 108 Albertrus; the setback was minor and similar increases in FSI had been granted in the neighbourhood. She also opined that the depths of dwellings in the neighbourhood varied and that the increase in depth was not out of keeping of the depth of the dwelling to the west of 108 Albertus Ave.

She gave numerous examples of other approvals and in particular variances respecting FSI. It was clear that the FSI variance was reduced from 0.94 to 0.8 as a result of City Staff being concerned that a variance as high as 0.94 was not in keeping with other densities in the area. It was also clear that the reduction in FSI to 0.8 was the result of reducing the interior living space of the third floor addition and not the result of a reduction in the overall massing of the dwelling. The reduction was, therefore, technical, as it had no impact on reducing the appearance of the proposed building.

The existing dwelling was already over the permitted density of 0.6 as it was 0.74. and the variance would permit a density of 0.94 but for interior partitions on the third floor which reduced the density to 0.8.

Her evidence in referring to the plans for the building was that the proposed dwelling will have the appearance of a three story building in the rear with some incline on the third story. To lessen its impact, from the street it will maintain its current massing and thus fit in the neighbourhood. She believed, moreover, that it would not have a negative impact on the rear yard of 106 Albertus even though the extension would be a three story rear addition of 1.57 m. beyond the depth permitted and be significantly taller than what is permitted under the zoning by-laws.

The evidence of Mr. Barton the planner giving evidence in opposition to the variances, set out in his witness statement asserted that the proposed dwelling would not respect and reinforce the character of the neighbourhood. In his opinion the proposed dwelling would not respect and reinforce the character of the area because the addition would be too massive with a *de facto* density of 0.94. He noted the average depths of dwellings in the area was 13.5 m. The proposed addition would result in a deeper building and thus not fit the neighbourhood character. He also noted that a significant expansion could be achieved without the proposed variances. In his opinion, the bylaw was already too generous and permitted larger dwellings than it should, given current development in the area. He thus emphasized that there could be a significant expansion to the dwelling without the variances. He believed that some variances in the area should not have been granted as the bylaw was already permitting in excess of the character of the area.

He also noted that the proposed addition is largely to the rear of 108 Albertus Ave. It is there that the full three stories are visible and will have the impact of a tall wall beside the rear yard of 106 Albertus Ave. It is there, as well he noted, that the additional height will be seen and much of the additional density will be located. As a result the variances will have a negative impact on the rear yard of 106 Albertus Ave.

ANALYSIS, FINDINGS, REASONS

I do not agree with Mr. Barton's conclusion that the variances do not respect and reinforce the character of the neighbourhood. I find, based on Ms. McFarland's evidence and my own observations that the proposed dwelling would fit within the neighbourhood. The dwelling will not appear so massive from the street and thus would not appear out of character. Moreover, the rear walls of dwellings in the neighbourhood do not line up uniformly but are at different depths.

However, I find that the variances have a significant negative impact on the rear yard of 106 Albertus Ave. I am cognizant of the fact that in an urban environment such as Lytton Park, one must expect dwellings to be close to each other and side by side. But I also find it important to attempt to avoid negative impacts. In this case the density

of the proposed dwelling was found to be too high. The solution proposed by the Applicant was not to reduce that density in the rear where much of it was located; where it had maximum impact, and where it could have been reduced by shortening the depth or lessening the height. Rather the reductions were achieved by making a technical change to the interior floor plan which provided no relief from the excess density. While the height of the building over all, and of its side walls had maximum impact in the rear, and not on the public street or the space between the houses, no attempt was made to reduce the rear impact by having step backs in the rear or reducing the overall length of the dwelling.

I find, therefore, that the variances should not be granted because of the impact on the rear garden of 106 Albertus. The purpose of the uniform length provision in the zoning bylaw, I find is to ensure a pleasant experience of openness when one enters one's garden through a rear door and not the unpleasant experience of facing to one side or another a high overpowering wall which blocks one's view and impedes one outdoor experience. I state this, while recognizing that there is at common law or statutory law no right to a view, but and that there is in an urban area no guarantee of a view or privacy. But I find that it is important to recognizing that it can be the general intent of the zoning bylaws respecting depth and length to protect openness, views and vistas in rear yards. I find that is the intent of the depth provision and in this case the FSI provision of the bylaw. I therefore find that the variances respecting height should not be granted because of their rear yard impact.

Having found that the variances respecting the dwelling itself should not be approved, I find it premature to approve the front yard parking variances and find it unnecessary to comment on the PPS and Growth Plan.

DECISION AND ORDER

The appeal is allowed the variances are not approved and the decision of the Committee of Adjustment overturned.

X 

S. Makuch
Panel Chair, Toronto Local Appeal

Appendix 1

1. Chapter 900.2.10(949)(A), By-law 569-2013

The maximum building length is 14.0m.

The proposed building length is 15.57m.

2. Chapter 10.10.40.10.(1)(A), By-law 569-2013

The permitted maximum height of a building is 10.0m.

The proposed height of the building is 10.86m.

3. Chapter 10.10.40.10.(2)(B)(i), By-law 569-2013

The permitted maximum height of all side exterior main walls facing a side lot line is 7.5m.

The proposed height of the side exterior main walls facing a side lot line is 9.46m.

4. Chapter 10.10.40.40.(1)(A), By-law 569-2013

The permitted maximum floor space index is 0.6 times the area of the lot.

The proposed floor space index is **0.8 times** the area of the lot.

5. Chapter 10.5.40.60.(7), By-law 569-2013

Roof eaves may project a maximum of 0.9m provided that they are no closer than 0.30m to a lot line.

The proposed eaves are 0.15 m from the west lot line.

6. Chapter 10.5.80.10.(3), By-law 569-2013

A parking space may not be located in a front yard or a side yard abutting a street.

The proposed parking spot is located in a front yard.

7. Section 4(2), By-law 438-86

The maximum building height is 10.0m.

The proposed building height is 10.859m.

8. Section 400.6(3) Part IV 1(E), By-law 438-86

The by-law prohibits the parking of motor vehicles on the portion of the lot between the front lot line and the front wall of the building.

The proposed parking does not comply.