

DECISION AND ORDER

Decision Issue Date Thursday, October 14, 2021

PROCEEDINGS COMMENCED UNDER section 45(12), subsection 45(1) of the Planning Act, R.S.O. 1990, c. P.13, as amended

Appellant(s): FRANCO RECCHIA

Applicant(s): CORE ARCHITECTS INC

Property Address/Description: 322A - 324 QUEEN STREET
WEST

Committee of Adjustment File

Number(s): 19 239738 STE 10 MV

TLAB Case File Number(s): 20 185089 S45 10 TLAB

Hearing date: Friday, April 23, 2021 AND Thursday, September 30, 2021

Deadline Date for Closing Submissions/Undertakings:

DECISION DELIVERED BY Justin Leung

REGISTERED PARTIES AND PARTICIPANTS

Applicant	Core Architects Inc
Appellant	Franco Recchia
Appellant's Legal Rep.	Sam Spagnuolo
Party/Owner	1812148 Ontario Ltd
Party's Legal Rep.	David Bronskill

INTRODUCTION

This is an Appeal from a decision of the Toronto-East York Committee of Adjustment (COA) pertaining to a request to permit a series of seven Variances for 322A-324 Queen Street West.

The Variances, if allowed by the Toronto Local Appeal Body (TLAB), would permit the construction of three storey mixed-use building containing retail, office and restaurant uses; and to construct a rear two storey addition over the one-storey portion of the 2½-storey building (324 Queen Street West).

This property is located in the Kensington-Chinatown neighbourhood in the Old City of Toronto district of the City of Toronto (City) which is situated north of Phoebe Street and bounded by Spadina Avenue the west and Beverley Street the east. The property is located on Queen Street West south of Phoebe Street and north of Richmond Street West.

At the beginning of the Hearing, I informed all parties in attendance that I had performed a site visit of this subject property and the immediate neighbourhood and had reviewed all materials related to this Appeal.

BACKGROUND

The Variances that had been requested are outlined as follows:

1. Chapter 10.20.40.10.(2)(B)(ii), By-law No. 569-2013

The maximum permitted height of all side exterior main walls facing a side lot line is 7.0m.

The proposed height of the side exterior main walls facing a side lot line is 8.88m.

2. Chapter 10.20.40.40.(1), By-law No. 569-2013

The maximum permitted floor space index is 0.35 times the lot area.

The proposed floor space index is 0.60 times the lot area.

3. Chapter 10.5.50.10(1)(D), By-law No. 569-2013

The minimum required front yard soft landscaping is 75.00%.

The proposed front yard soft landscaping is 63%.

4. Chapter 10.20.40.70.(3)(D), By-law No. 569-2013

The minimum required side yard setback is 1.50m.

The proposed south side yard setback is 0.90m.

5. Section 4(2), By-law No. 438-86

The maximum permitted building height is 10.00m.

The proposed building height is 10.28m.

These Variances were heard and approved at the August 12, 2020 Toronto-East York COA meeting. Subsequently, an Appeal was filed on August 25, 2020 by Franco Recchia within the 20-day appeal period as outlined by the *Planning Act*. The TLAB received the Appeal and scheduled a Hearing on April 23, 2021 for all relevant Parties to attend.

At this Hearing, the Applicant's legal representative Mr. David Bronskill, of Goodmans LLP, indicated that settlement discussions were occurring with the Appellant. As such, they requested an adjournment of the Hearing to allow those discussions to continue. I granted this request and further instructed the Parties update the TLAB within two-week timeframe on how the discussions were progressing. As the two-week timeframe passed with no further update from the Parties, a teleconference was scheduled on June 21, 2021 so that the TLAB could be updated on the settlement discussions. At this teleconference meeting, the Parties were granted an additional two weeks to finalize the settlement proposal. Here, the Parties did not communicate to the Tribunal after the two-week timeframe. As no settlement proposal had been proffered to the TLAB, it was directed that a new Hearing date be scheduled for September 30, 2021 so that the merits of this Appeal could be heard and considered. At this second Hearing, it was noted that the Applicant had now retained a legal representative, Ms. Amber Stewart. They stated that they had a proposal to address issues as raised by their client. This was communicated to the Mr. Bronskill who agreed to a series of conditions. Further to this, no Witnesses or testimony was proffered to the TLAB. I stated that I would take the information provided here for further review and consideration.

MATTERS IN ISSUE

This Appeal matter was filed by the adjacent property-owner stemming from concerns about potential impact to windows located on the side facing their property's building. They stated there was insufficient time allotted for them to make a proper submission on these issues to the COA. This Appeal is an attempt to have their issues addressed by the TLAB. Mr. Bronskill indicated that the concerns presented to the Tribunal are not Planning related and, as such, are not within the purview of the TLAB. While so, they indicated that attempts have been made to reach a settlement with the Appellant. At the second Hearing, the Ms. Stewart stated that a settlement, in principle, had now been reached. The Tribunal will need to assess what has been proffered to determine if it is appropriate.

In addition, it is noted that 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 of 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.

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').

Minor 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

It is noted that the Hearings and teleconference meeting were held briefly, and as was stated previously, there was no Witnesses in attendance and no cross-examination was proffered. Formal opening and closing remarks were also not provided here.

On the first day of Hearings, the Mr. Bronskill stated that his client had been engaging in discussions with the Appellant to address issues relating to window placement and roof overhang between the subject property and the Appellant's property. He noted that some of the issues here are of legal and land title nature and, as such, do not believe it is within the purview of the TLAB to assess. Mr. Bronskill further indicated that they are attempting to draft a Minutes of Settlement and recommend the Hearing be adjourned so that they can work with the Appellant towards achieving this.

The Appellant did not have any further comments to provide in regards to this. I stated that I would look to adjourn the Hearing and requested the Parties herein to provide an update on the status of the potential settlement within two weeks of this Hearing date.

The two-week timeframe passed and no further updates were provided by the Parties to this Appeal matter. A teleconference meeting was then requested to be held

to obtain further information from the Parties. At this meeting, the Parties indicated the settlement discussions were ongoing and, as such, requested additional time from the Tribunal to allow that to occur. I responded that I would grant an additional two weeks' timeframe for these discussions to continue.

After this additional two weeks had passed, no further update was provided by the Parties. I then indicated that a new Hearing date should be scheduled so that the Appeal matter can be heard and considered on its merits. At this second Hearing, the Appellant stated they now had a legal representative Amber Stewart to assist them here. Ms. Stewart stated that she had a drafted a proposal for the Applicant which she believed would address her clients' issues and concerns.

Ms. Stewart proposed a condition be attached to the potential approval of this Appeal, that addresses the potential window placement on the western portion of the subject property. The condition proposed two elements by which to address potential encroachment and overlook issues. Mr. Bronskill stated that he had reviewed this condition and was willing to accept this on behalf of his client. He noted that City Heritage Preservation Services staff also had a condition which they had outlined in their staff report which the TLAB should also consider implementing, if they were willing to approve this settlement as proffered by the Parties involved in this Appeal.

ANALYSIS, FINDINGS, REASONS

The Appellant Mr. Recchia's concerns were expressed primarily with regards to west facing portion of the subject property. It is noted that the subject property and Mr. Recchia's adjacent property are located in the City's downtown core. As such, it is a dense, urban environment where buildings are located in close proximity to each other. Mr. Recchia had raised potential issues of this proposed building encroaching onto his property. Mr. Bronskill, at the first day of Hearings, stated that he did not believe the TLAB had the authority to assess such matters. It is noted that the TLAB's principal authority is derived from the *Planning Act*. Here, a Variance Application is assessed in accordance to the four tests for Variance, in the *Planning Act*. While the Tribunal can accept that the Appellant may have concerns relating to land surveying, the TLAB could be exceeding its mandate by addressing such matters. Furthermore, land surveying is usually assessed by a land surveyor, whereas the TLAB members are comprised of lawyers and planners.

I recognize that the TLAB has a practice direction to encourage mediation and settlement of issues between parties, as opposed to having a Member adjudicate on an Appeal matter. This Appeal has been subject to two scheduled Hearings and a teleconference meeting. While so, due to it only involving the participation of the Applicant and Appellant, and no other Witnesses being proffered, the disclosure material and testimony as presented has been of a concise form.

In reviewing the material submitted, and the discussion which was advanced at the Hearings, I would find that the original COA approval of these Variances to be appropriate and consistent with the four tests for Variance, as per the *Planning Act*. It is noted that there was no testimony proffered which acted to place the veracity of the Variances under further scrutiny or analysis. Mr. Bronskill proffered that the proposal constitutes good planning and is an appropriate form of development for this area, which was uncontroverted. The discussions which occurred were principally focused on addressing concerns that Mr. Recchia had about this proposal and potential impact to his property. I would find that the conditions provided by Ms. Stewart would act to amicably address issues raised by Mr. Recchia while also permitting Mr. Bronskill's clients proposed building to proceed. The Tribunal recognizes the erstwhile attempts made by the Parties to settle issues between them, with the Member acting in a mediator-type role.

As had previously indicated, I would find it consistent with planning policies and legislation to permit these Variance requests, with the proposed conditions proffered by the Applicant. In addition, I note that the condition as recommended by Heritage Preservation Services staff, which had been part of the original COA approval, should also be retained as part of the TLAB approval to ensure City related interests are addressed as well.

DECISION AND ORDER

The Appeal is allowed, in part, and the Variances in Appendix 1 are approved subject to the conditions therein.

Appendix 1

List of proposed variances

1. Chapter 10.20.40.10.(2)(B)(ii), By-law No. 569-2013

The maximum permitted height of all side exterior main walls facing a side lot line is 7.0m.

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The minimum required side yard setback is 1.50m.

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5. Section 4(2), By-law No. 438-86


The maximum permitted building height is 10.00m.

The proposed building height is 10.28m.

List of proposed conditions

1. Prior to the issuance of a building permit, the Owner shall provide confirmation that:
 - (a) west-facing windows on second floor of 322 Queen Street West have been closed in, or
 - (b) set back portion of east wall, for full height of that portion of 2nd floor wall, that is adjacent to west-facing windows on second floor of 322 Queen Street West, by minimum of 0.36m
2. Prior to issuance of building permit, building permit drawings, including plans, elevations and details shall be submitted to the satisfaction of Senior Manager, Urban Design/Heritage, City Planning Division and heritage permit shall be obtained under provision of Section 42 of the Ontario Heritage Act.

X



Justin Leung
Panel Chair, Toronto Local Appeal Body