

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): MICHAEL RICHARD ZURAWSKI

Applicant(s): CHRISTOPHER MARCHESE

Property Address/Description: 30 WENDOVER RD

Committee of Adjustment File

Number(s): 20 113269 WET 03 MV

TLAB Case File Number(s): 20 227733 S45 03 TLAB

Hearing date: July 15, 2021

DECISION DELIVERED BY STANLEY MAKUCH

APPEARANCES

Name	Role	Representative
Christopher Marchese	Applicant	
Michael Richard Zurawski	Owner/Appellant	Adam Giel
Katrin Mai Altosaar	Primary Owner/Party	Adam Giel
Nick Pileggi	Expert Witness	
Mr. Giel	Solicitor for the Owner/applicant	
Mr. Macos.	Solicitor for the Owner/applicant	
Joseph Sunday	Participant	
Donald Sexton	Participant	

INTRODUCTION

This is an appeal of a refusal, by the Committee of Adjustment, to allow the widening of a mutual driveway, beyond the 2.6 m bylaw maximum, to a width of 4.35 m. and to permit front yard parking in front of a detached dwelling in the Kingsway area, north of Bloor St. West, south of King George's Blvd and between Prince Edward Dr. and Royal York Rd.

BACKGROUND

By an order I made pursuant to a motion to amend the original variance application, the appeal now includes a variance to permit front yard parking as the bylaw prohibits parking in a space which does not lead to a parking space behind the front wall of a dwelling. The widened space is in front of the front wall of the dwelling and thus does not lead to a space behind the front wall of the dwelling.

MATTERS IN ISSUE

The major matter in issue was whether front yard parking should be permitted and in addition whether front yard parking respected and reinforced the character of the area. The issues of whether the variances meet the four tests of the *Planning Act* and Provincial requirements are also before me.

JURISDICTION

Provincial Policy – S. 3

A decision of the Toronto Local Appeal Body ('TLAB') must be consistent with the 2020 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 only expert planning evidence provided was by Mr. Pileggi who was qualified as land use planner before the OMB and LPAT. While Mr. Peliggi was undoubtedly qualified to give land use planning evidence, based on his planning experience, he had little to no experience in addressing planning matters in the areas designated Neighbourhood in the City of Toronto's Official Plan and thus with determining the character of Neighbourhoods.

His evidence was that the current owners of 30 Wendover had great difficulty moving their vehicle along the mutual driveway into and from the rear yard. The space for the driveway was between two houses and was so narrow that rearview mirrors on their vehicle had to be pulled in for the car to go down the driveway. He stated that the owners of 30 Wendover could not safely get their car out of the backyard and they had an infant child.

It was his opinion that if the variance were granted the residential character of the area would be maintained and that the parking pad created would fit in and be sensitive to the character of the Kingsway and thus meet the intent of the Official Plan which, he believed, is to respect and reinforce that character. In his further opinion, the general intent of the zoning bylaw would be maintained. That intent, in his opinion, was to ensure large areas of the front yard of dwellings would not become parking lots. There was to be a balance of landscaping, parking, storm water management drainage and infiltration. His evidence was that the limit on a 2.6 m wide driveway was to accomplish this. In his opinion allowing the 4.35 m proposed width was a balance between these factors and accomplish this intent. The variances, he further opined, were appropriate and minor since there were parking restrictions on the street and, therefore parking is intended to be on private property which this variance would accomplish. He also pointed out that there are a number of examples of widened driveways in the area including two examples on Wendover itself. His evidence was not based on relevant references to any planning reports, written rationales, or studies analyzing the intent or purpose of the relevant the zoning bylaw or Official plan provisions.

Mr. Pileggi's evidence was, however, reinforced by the evidence of, Mr. Zurawski the owner of 30 Wendover. He had grown up in the Kingsway. He confirmed the difficulty of moving the car down the driveway and backing it out. The driveway movement was so difficult he and his wife parked their car at his parents' house in the area. The current driveway was a mutual drive, and as such they could not park in the driveway and restrictions prevented street parking. He bought 30 Wendover in 2018 and the problem is acute as a result of their infant child, as only a subcompact car will fit down the driveway and a subcompact does not take a reverse infant car seat. His evidence was supported by Mr. Altosaar, the neighbour who owns of the mutual driveway.

Evidence in opposition was the evidence of two residents of the area, Mr. Sunday and Mr. Sexton whom I allowed to give evidence in order to hear all concerns. The former pointed out that the variances would essentially permit a front yard parking pad which historically not been permitted in the area. The latter stated that the intent of the bylaw was to allow parking on a legal driveway and the intention further was to prohibit front

yard parking. I appreciate their participation but do not rely on their evidence although it supports my own conclusions. I have visited the area myself and it certainly appeared to me to be of a character where front yard parking was not common.

ANALYSIS, FINDINGS, REASONS

I find from my visit to the area that front yard parking is not part of the character of the area. While there are some examples of such parking, they are not numerous. Mr. Pileggi gave examples of some but did not state how many examples occurred as a percentage of the total number of properties or driveways. Indeed, he did not count the total number of driveways or front yard parking spaces in the area although he was basing his conclusion that permitting front yard parking in this case would maintain the character of the area and would fit sensitively into its character.

My examination of the area does not support Mr. Pileggi's evidence. Historically, front yard parking has not been permitted in this area as is evident from the lack of many authorized examples. Indeed, such parking was permitted across the street from 30 Wendover only by accident. Moreover, while there are some examples of front yard parking in the area they are exceptions and do not represent its character but rather are anomalies unfitting of its character.

While I have a great deal of sympathy for Mr. Zurawski and his family, I am bound to apply the four tests of the *Planning Act*: none include hardship. One of the test is, however, whether the variance maintains the general intent of the Official Plan. The general intent of the Official Plan is to respect and reinforce the character of the area. I find that character to be one of an area that does not generally have front yard parking. The neighbourhood's character is one of driveways and lawns and not parking pads which this variance would create. Permitting front yard parking would, therefore, not respect and reinforce the character of the area,

A second test is whether the variance maintains the general intent of the zoning bylaw. I find it does not. There was no basis presented for Mr. Pileggi's conclusion that the intent of the bylaw is not to prohibit front yard parking, but rather to strike a balance among a number of competing factors. He had no written documentation, scanty numerical calculation and analysis, and no personal experience of his own upon which to base this opinion. I do not find his opinion compelling.

As a result of my site visit, and the lack of persuasive evidence to support the appeal I find the appeal should be dismissed and the variances denied. The other tests and the Provincial requirements therefore need not be considered.

DECISION AND ORDER

The appeal is dismissed and the variances are denied.

X 

S. Makuch

Panel Chair, Toronto Local Appeal