

DECISION AND ORDER

Decision Issue Date: Tuesday, August 24, 2021

PROCEEDINGS 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): WESLEY EVAN FRENCH

Applicant(s): MARIO SILVA

Property Address/Description: 22 B ENNERDALE RD

Committee of Adjustment File

Number(s): 19 260447 STE 09 MV

TLAB Case File Number(s): 20 173548 S45 09 TLAB

Hearing date: Wednesday April 28th, 2021 & June 11th, 2021

Deadline Date for Closing Submissions/Undertakings:

DECISION DELIVERED BY S. Makuch

REGISTERED PARTIES AND PARTICIPANTS

Applicant	Mario Silva
Owner	Jeffrey Vitorino
Appellant	Wesley Evan French
Appellant's Legal Rep.	Brian Illion
Party	Jeffrey Vitorino
Party's Legal Rep.	Sam Presvelos
Participant	TAE RYUCK
Participant	MARIO SILVA
Expert Witness	TAE RYUCK

INTRODUCTION

This is an appeal by a neighbouring property owner of the granting of a number of minor variances for the construction of a detached dwelling house at 22B Ennerdale Road, which is a substandard empty lot fronting on a street to the rear of the neighbour.

The variances requested are as follows:

1. Chapter 10.5.50.10.(1)(D), By-law 569-2013 A minimum of 75% (6.5 m²) of the required front yard landscaped open space shall be in the form of soft landscaping. In this case, 73% (6.3 m²) of the required front yard landscaped open space will be in the form of soft landscaping.

2. Chapter 10.5.50.10.(3)(B), By-law 569-2013 A minimum of 25% (0.4 m²) of the rear yard must be maintained as soft landscaping. In this case, 0% (0 m²) of the rear yard will be maintained as soft landscaping.

3. Chapter 10.80.30.10.(1)(C), By-law 569-2013 The minimum required lot area is 240 m². In this case, the lot area will be 50.4 m².

4. Chapter 10.80.40.40.(1)(A), By-law 569-2013 The maximum permitted floor space index is 0.8 times the area of the lot (40.3 m²). The new detached dwelling will have a floor space index equal to 2.08 times the area of the lot (105 m²).

5. Chapter 10.80.40.70.(1), By-law 569-2013 The minimum required front yard setback is 6 m. The new detached dwelling will be located 1.7 m from the front yard lot line.

6. Chapter 10.80.40.70.(2)(A), By-law 569-2013 The minimum required rear yard setback is 7.5 m. The new detached dwelling will be located 0.3 from the rear lot line.

7. Chapter 10.80.40.70.(3)(A), By-law 569-2013 The minimum side yard setback for a detached house is 1.2 m. The new detached dwelling will be located 0.3 m from the east lot line and 0.3 m to the west side lot line.

8. Chapter 200.50.10.1.(1), By-law 569-2013 A minimum of one parking space is required to be provided on site. In this case, zero on-site parking spaces will be provided.

9. Chapter 900.6.10.(252)(A), By-law 569-2013 The minimum required lot frontage for a detached house is 8 m. In this case, the lot frontage will be 4.6 m.

BACKGROUND

There is only one party in opposition to the granting of the variances, a neighbouring property owner, who was opposed to the variances and appealed the decision of the Committee of Adjustment because the proposed 3 story dwelling would be located beside his rear deck and would have a side yard setback of .3 metres beside the deck.

MATTERS IN ISSUE

The issues raised at the hearing were numerous and can be summarized follows:

- 1) Should any variances be granted for an undersized lot,
- 2) Did the proposed development respect and reinforce the character of the area.
- 3) Was there any negative impact from the development, and
- 4) Were the variances in law minor?

JURISDICTION

In making my decision I must consider the relevant provincial requirements and the 4 tests under section 45(1) of the *Planning Act*. They are as follows.

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) Planning Act

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 relevant evidence was presented by an architectural technologist who designed the dwelling, a land use planner retained by the owner/applicant and the neighbour who brought the appeal.

The City was not a party to the appeal but the report which was presented to the Committee of Adjustment by City Planning was also relevant. It stated:

“Community Planning considers the existing lot to be significantly undersized and not in keeping with the general intent of the Official Plan and the Zoning By-law. Community Planning would not support the creation of similar sized lots as they would not represent the prevailing size and configuration of lots in the area. However, given that the lot dimensions and configuration are existing, Community Planning does not object to the construction of a detached dwelling on this lot as permitted in the RM zone.”

This opinion was adopted by the planner for the applicant/owner in his evidence. He further stated that he could not support an application to create this lot but supported the variances since the lot existed. He further stated that the lot was significantly undersized and not in keeping with the Official Plan or zoning bylaw. It was obvious from his evidence that dwellings on lots of similar frontage were not common in the neighbourhood.

The neighbour gave evidence of the adverse impact the proposed dwelling would have on his rear deck. It was his evidence that a wall of the dwelling would be beside his deck and that it would impact on the wind, shadow, view and character of his deck which he stated was an extension of his house.

ANALYSIS, FINDINGS, REASONS

I find that the much of evidence in support of the variances was based on the existence of the undersized lot. It was the primary justification for the granting of the variances. I find this to be an improper basis for granting the variances. The small size of the lot makes it impossible for nine of the requirements for constructing a dwelling to be met. The small size in and of itself cannot be seen a positive reason for approving the variances. Indeed, logically, the small size leads to the conclusion that these numerous variances should not be granted unless there is some justification for doing so.

Based on the evidence I do not find any such justification. The dwelling would be on a lot with the smallest frontage in the neighbourhood and have no parking on site and would be deficient in landscaping and setbacks. It would also be excessive in size for the site. This does not respect and reinforce the character of this neighbourhood which is not undergoing redevelopment on lots which are significantly undersized and create such an anomaly. Moreover, I note that the granting of the variances would have a very negative impact on the neighbour's property. I find that the intent of the zoning bylaw is to prevent detached dwellings from being constructed immediately adjacent to rear yards. I can only sympathize with a property owner who finds an entirely new dwelling constructed adjacent to their rear deck with virtually no significant setback.

Therefore, I find the variances should not be granted as they cannot be justified on the basis of an undersized lot, do not respect and reinforce the character of the neighbourhood and have a negative impact on the neighbour's property. They therefore do not meet the four tests of the *Planning Act*.

The *Planning Act* requires that the variances maintain the general intent and purpose of the zoning bylaw and the Official Plan. The intent of the zoning bylaw to protect rear yards is not met. The general intent of the Official Plan to respect and reinforce the physical character of the neighbourhood is not met. Given the impact of the proposed dwelling on the neighbour's deck the development is not minor or appropriate or desirable.

DECISION AND ORDER

The appeal is allowed, the variances are not granted, and the decision of the Committee of Adjustment is over turned.

X 

S. Makuch
Panel Chair, Toronto Local Appeal