

DECISION AND ORDER

Decision Issue Date Tuesday, June 29, 2021, revised pursuant to Rule 30.1
Thursday, August 26, 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): MICHAEL GAUTHIER
Applicant(s): MICHAEL GAUTHIER

Property Address/Description: 52 WRIGHT AVE

Committee of Adjustment File 20 176354 STE 04 MV
Number(s):

TLAB Case File Number(s): 20 234673 S45 04 TLAB
Hearing date: Wednesday June 16, 2021

DECISION DELIVERED BY T. Yao

REGISTERED PARTIES AND PARTICIPANTS

Owner/Appellant	MICHAEL GAUTHIER
Appellant's Legal Rep	DAVID BRONSKILL
Party	CITY OF TORONTO
Party's Legal Rep	JASON DAVIDSON
Expert Witness	MARTIN RENDL

INTRODUCTION

Mr. Gauthier wishes to construct a rear and side addition to his house at 52 Wright Ave and needs the following variances to do so.

Table 1 Variances sought for 52 Wright			
		Required/Permitted	Proposed
Variances from 569-2013			
1	Parking Space	May not be located in front yard	Will be located in front yard;
2	Building length	17 m	19.91 m
3	Floor Space Index	0.69	0.78
4	Exterior stairs encroachment into side yard	Not closer than 0.6 m	0.19 m from the east side lot line.
5	Soft landscaping	75% of front yard	31.88%
6	Exterior stairs encroachment into front yard	Not closer than 0.6 m	0.51m
7	Front yard landscaping.	50%	24.93%
8	Exterior stairs front yard setback	0.6 m.	0.51 m
9	Parking space width is	2.9 m	2.56 m
11	Exterior stairs front yard setback	0.6 m	Zero

BACKGROUND

The proposed addition is shown below. The most contentious variance from the City's point of view is the front yard parking space. The City's planning report stated: "Staff are of the opinion that the parking should be provided at the rear of the house, with a greater landscaped area in the front.". On December 10, 2020, the Committee of Adjustment refused the variances. The owner appealed and so this matter comes to the TLAB.

Member's Site visit

As required by my conditions of employment I visited the site for the sole purpose of better assessing the evidence given at the hearing.

MATTERS IN ISSUE

Under s. 45(1) of the *Planning Act*, the variances must cumulatively and individually:

- maintain the general intent and purpose of the Official Plan;
- maintain the general intent and purpose of the Zoning By-laws;
- be desirable for the appropriate development or use of the land; and
- be minor.

EVIDENCE

The sole witness was Mr. Rendl, the owner's planner, whom I qualified as able to give opinion evidence in planning matters.

ANALYSIS, FINDINGS, REASONS

This is a settlement between the City of Toronto and Michael Gautier. I adopt the principles set out in *Stephen Alexander Cooper*,¹ which I applied in the case of *263 Gamble*. It sets out three principles:

- The tribunal retains overall independence;
- Settlements are to be encouraged;
- Since one of the parties is a public interest body, there should be some deference to the settlement.

I now carry out my statutory duty to independently assess the variances under the *Planning Act*.

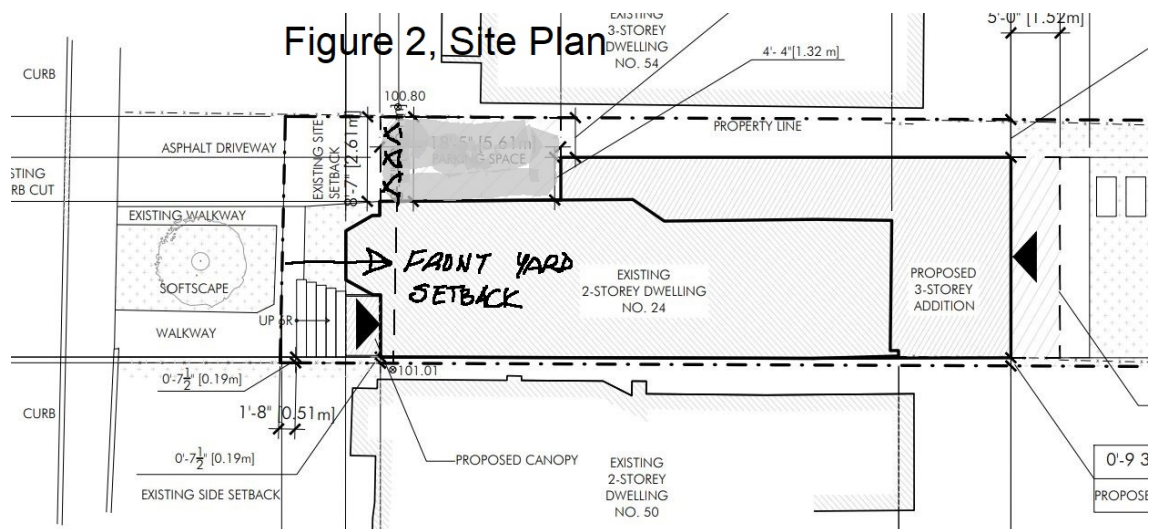
¹ *Law Society of Upper Canada v. Stephen Alexander Cooper*, 2009 ONLSAP 0007. I will quote from *263 Gamble*: ". . . Cooper . . . is not a planning case, but one from the appeal branch of the tribunal system that metes out penalties for lawyer and paralegal professional misconduct. While clearly not from a planning tribunal, I find the reasoning persuasive, since it deals how another tribunal should react to a settlement between two parties, one private and one public. Both the TLAB and the tribunal in the Cooper case have a duty to have regard for the public interest. . . The Appeal Tribunal also set out general principles . . . {and I will state} how they might apply to this case. The first principle, in my view, is that being faced with a settlement, the TLAB need not accept it. This is a conclusion from tribunal independence and the fundamental obligation of the TLAB to apply the statutory tests, which obligation is not displaced because of any agreement by the parties. The second principle is that the TLAB should be "encouraged to accept settlements" because the parties wish us to do so and because the Planning Act and other legislation call on us to do so. Indeed, the TLAB Rules were drafted to encourage mediations and settlements almost as a first priority. . . . The third principle is that there should be a high threshold before the TLAB refuses to accept a settlement. The Appeal Tribunal in Cooper suggested that rejection should be done only if the settlement is "truly unreasonable or unconscionable".

Mr. Rendl stated that the proposal maintained the streetscape, was a modest increase of FSI and that the front parking space was entirely on private property. The house has an existing driveway and curb cut which will continue to be used, and Mr. Rendl indicated, “so the variance is more technical than substantive”. The properties on the south side of Wright are serviced by a lane; few properties on the north have a driveway or are wide enough to create a new laneway to a rear garage, and few have sufficient distance between a front wall and front lot line to locate a parking space entirely on private property. He said:

Three quarters of the area between the front wall and the sidewalk is municipal boulevard. That is a typical pattern because at the time of construction of these houses people didn’t need parking. As an anomalous house with driveway to the rear, I do not see as setting a precedent.

Mr. Rendl concluded by summarizing the four tests and indicating conformity and consistency with higher level policies, to the extent that such policies would apply to this isolated lot within a large settlement area. I accepted his evidence and found the statutory tests were met. Mr. Bronskill offered to send me the proposed conditions for the variances and did so after the hearing concluded, on notice to the City, the only other attendee at the hearing.

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In Figure 2, I have marked the proposed parking space in gray and put “x”s where I think the proposed parking space would contravene the by-law, but for the variance. It appeared to me that this diagram was in possible conflict with condition 4. I sent both parties this proposed diagram and requested clarification. Mr. Bronskill replied, “The site plan shows the parking space behind the front wall of the existing building, in accordance with condition 4”. Following the *Cooper* case, I will authorize the

variances, as agreed between the parties and repeat that this is premised on the other party being a public interest body with notice of the proposed condition.

DECISION AND ORDER

I authorize the variances set out in Table 1 on the following conditions:

1. The proposed addition to the dwelling shall be constructed substantially in accordance with the plans prepared by Izen Architecture Inc. respecting 52 Wright Avenue, dated October 19, 2020 (the "Plans").
2. The driveway shown on drawing A1.0 of the Plans shall be constructed using permeable pavers.
3. The existing mature tree shown on drawing A1.0 of the Plans shall be maintained on site, to the satisfaction of Urban Forestry and in compliance with Municipal Code Chapter 813, as required.
4. The parking space shown on drawing A1.0 of the Plans shall be used for one vehicle only, which shall be parked entirely behind the original front main wall of the existing dwelling.



X

Ted Yao
Panel Chair, Toronto Local Appeal Body