

DECISION AND ORDER

Decision Issue Date Monday, February 07, 2022

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): STEPHEN KLUS

Applicant(s): DESIGN PLAN SERVICES

Property Address/Description: 416 OAKWOOD AVE

Committee of Adjustment File

Number(s): 21 145271 STE 12 MV (A0548/21TEY)

TLAB Case File Number(s): 21 209166 S45 12 TLAB

Hearing date: January 19, 2022

Deadline Date for Closing Submissions/Undertakings:

DECISION DELIVERED BY *Vice Chair Ana Bassios*

REGISTERED PARTIES AND PARTICIPANT

Applicant	DESIGN PLAN SERVICES
Appellant	STEPHEN KLUS
Party	JEREMIE BARCHECHATH
Owner / Party	1570654 ONTARIO INC
Party's Legal Rep	MARTIN MAZIERSKI

INTRODUCTION

This is an appeal by Stephen Klus (Appellant) of the Toronto and East York Panel of the Committee of Adjustment's (COA) approval of a parking variance for 416 Oakwood Ave, the subject property.

The subject property is located in the Oakwood neighbourhood of the former City of York. It is designated *Neighbourhoods* in the City Official Plan (OP) and zoned R2 under the former City of York Zoning By-law

In attendance at the Hearing were:

- Martin Mazierski, legal counsel for the Owner and Expert Witness Steven Qi (land use planning);
- Stephen Klus, Appellant, and
- Jeremie Barchechath, a Party.

BACKGROUND

A Motion to dismiss the Appeal had previously been filed and was not granted. The Decision and Order of the TLAB regarding the Motion advised all Parties that only evidence relating to the issue of parking and the parking variance would be accepted and that the other concerns that had been raised were not properly before the TLAB.

The newly constructed building on the subject property was built in accordance with approvals granted by a By-law Amendment and an associated site plan agreement. The Owner intends to change the previously approved uses and to replace the previously intended residential units on the second and third levels with offices and artists' studios. The change in the mix of uses does not require a variance from the By-law, however application of the in-force parking standards results in a parking requirement that cannot be accommodated on the property.

REQUESTED VARIANCE TO THE ZONING BY-LAWS:

Section 3.2.1C.1., By-law 1-83

A minimum of eight parking spaces are required to be provided. In this case, there will be two parking spaces provided.

MATTERS IN ISSUE

The matter in issue is one of parking. The concern of residents living on the adjacent local streets is that additional pressure will be put upon the already congested neighbourhood streets.

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

MR. QI – LAND USE PLANNING

Mr. Qi relied on his extensive Expert Witness Statement as the basis for his evidence.

A summary of evidence is presented here for the purpose of providing some context for the following sections of this Decision.

Context

Mr. Qi provided an application history for the property and described the surrounding context as follows:

- There are a mix of commercial, residential, and mixed-use buildings located on both sides of Oakwood Avenue.
- Immediately to the west of Oakwood Avenue and the subject property, is a neighbourhood of mostly single detached residential dwellings in a "Residential Multiple dwelling" zone.

- The mixed-use buildings located along Oakwood Ave are generally two to three storeys in height, with ground levels being occupied by retail, restaurants or commercial uses and residential uses above.
- Oakwood Ave is classified as a Minor Arterial and is served by bus service which connects to the Eglinton West subway station, Ossington station, the St.Clair streetcar line, as well as the future Eglinton Crosstown line.
- Onstreet parking is permitted on segments of Oakwood Ave, including the portion in front of the subject property.
- At 410 Oakwood Avenue, one property away from the subject property, there is a municipal “Green P” parking lot which provides 18 parking spaces.

Proposal and Variance

Mr. Qi outlined the change that is being proposed and the consequent requirement for a Variance to the parking standards as follows:

- The subject property is within Site and Area Specific Policy 317 which identifies the area as Oakwood Avenue Art District.
- The existing three-storey building was permitted for both commercial and residential uses by a Zoning Amendment, which resulted in Site Specific Amendment 434.
- Under that approval, eight residential units, a live-work (artist’s studio) unit and retail uses were permitted.
- A minimum of two parking spaces were to be provided on the site, and such parking spaces were to be used for the retail uses.
- No parking spaces were required for the residential uses that had been proposed.
- The intent is to change the previously approved mix of uses to four office spaces, five artists’ studios and one commercial retail unit.
- The change from residential units to offices and artists’ studios is not the subject of this COA application, it is only the variance to the parking standards that the change has precipitated that is before the TLAB.

It was Mr. Qi’s opinion that the requested variance meets the four tests under s.45(1) of the *Planning Act*.

MR. KLUS – APPELLANT

Mr. Klus's primary concern is the impact that the parking variance would have on the parking situation on the nearby residential streets, Hanson, Blandford and Rockvale Sts. He advised the following:

- In his opinion, people were more likely to park on neighbouring streets than pay for parking on Oakwood Ave.
- It is difficult for residents to find parking spots close to their homes and they have to circle the area to find parking when they come home. Parking is only permitted on one side of the street because the streets are narrow.
- Parking should be provided onsite for a multiple unit building.
- His intention is to deescalate a parking problem before it gets worse.

Mr. Klus's evidence in support of his opinion consisted of two photographs of his street where all the parking spots were occupied.

MR. BARCHECHATH – PARTY

Mr. Barchechath reiterated the parking challenges that residents experience on neighbourhood streets. He described problems with the current TTC service and said that a person needs to use a car to come to this neighbourhood. He questioned whether any effort had been made to find more parking on the site.

ANALYSIS, FINDINGS, REASONS

I accept Mr. Qi's evidence that the application is consistent with the PPS and conforms to the Growth Plan.

GENERAL INTENT AND PURPOSE OF THE OP

OP Policy 4.1.5 provides guidance on how a neighbourhood study area is to be defined. Mr. Qi's study area captured a range of properties facing onto Oakwood Ave, and for which he provided substantial quantitative and qualitative analysis.

I comment that it would have been more appropriate for Mr. Qi to define a study area with greater relevance to the foundation of the Appeal, which relates to parking challenges on neighbouring streets. It would have been helpful to provide analysis of the matter at issue, in addition to the broader contextual analysis that was provided. I note that the scoping of the single issue for this Hearing had already been reinforced in my earlier Motion decision.

Mr. Qi provided substantive photographic and analytic evidence illustrating the number of similar sized existing buildings within his study area that have similar or lesser parking provision than what is requested. A table of COA parking variance approvals was also provided, illustrating similar variances that have been granted within the study area. (Exhibit 1, Tabs 4-3 and 4-5).

Mr. Qi addressed the Official Plan policies which could apply to the application and concluded that the variance maintained the general intent and purpose of the OP. On the basis of his evidence, I concur with his conclusion.

GENERAL INTENT AND PURPOSE OF THE ZONING BY-LAW

Mr. Qi systematically reviewed the parking provision of similar buildings with similar uses within his study area and concluded that the proposal is consistent with the parking provision generally prevailing for similar examples.

The nub of the Appellant and Party's concerns are that people coming to the subject property will park on neighbouring streets and will add to parking pressure already being experienced. I understand and recognize this concern, but I am cognizant that this is an experience that is endemic across the City as density increases, especially adjacent to Avenues, Main Streets and Major Arterials.

Mr. Qi identified a range of public parking options that are available for the proposed offices and artists' studios. The previously approved residential units are being eliminated and therefore overnight parking is not anticipated. Parking is available on Oakwood Ave in front of the subject property and a municipal parking lot is located steps away from it. The bus service on Oakville Ave provides good connections to a number of higher order transit lines.

Given the context of the subject property, I find that the general intent and purpose of the Zoning By-law is maintained.

DESIRABLE

The parking variance will allow occupation of the existing building for uses that are consistent with the City's vision of an Arts District in this area. Mr. Qi's evidence was that no additional parking can fit onto the site without alteration or demolition of the existing building.

I find that approval of the variance is desirable for the use of the land.

MINOR

The Appellant and the Party have brought to my attention the problems that they experience with parking on the street where they live and it is their fear that approval of the requested parking variance, and others like it, will make their existing parking challenges worse. I recognize their concern and acknowledge that more activity and more people living and working in proximity to their homes has had an effect on their neighbourhood. This concern is not to be dismissed but placed alongside the City of Toronto's overriding policy direction that land and infrastructure are to be used more efficiently. An allied important direction of the City's policy framework is to shift transportation choices from auto to other forms, especially public transit, into which massive municipal investment has been applied.

It would have been helpful to me if any of the Parties, including the Applicant, had provided analysis of the parking activity on the neighbouring streets so that I could have had a more robust understanding of the potential impact that the parking variance might have.

The accepted test for "minor" is not that there be no impact, but rather that the imputed impact rises to the level of undue adverse impact of a planning nature. I do not find that I have been provided evidence to establish an undue adverse impact. I find the requested variance to be minor and that the amount of parking which is provided on the site is in the form and amount that is to be expected in the context.

The general concerns raised by the residents could potentially be addressed by means of an amended parking management approach on the local streets, but this is not a function which is within the scope and mandate of the TLAB.

DECISION AND ORDER

The Appeal is dismissed. The Committee of Adjustment decision of August 18, 2021 is final and binding, and the file of the Toronto Local Appeal Body is closed.



Ana Bassios
Panel Chair, Toronto Local Appeal Body