

# DECISION AND ORDER

**Decision Issue Date**      Thursday, February 24, 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): JOSHUA SMITH

Applicant(s): NICK SACCONI

Property Address/Description: File 72 DURANT AVE

Committee of Adjustment File Number(s): 21 109522 STE 14 MV (A0097/21TEY)

TLAB Case File Number(s): 21 220506 S45 14 TLAB

**Hearing date: Feb 17, 2022**

**DECISION DELIVERED BY TED YAO**

## REGISTERED PARTIES AND PARTICIPANTS

Name	Role	Representative
Nick Saccone	Applicant	
Katie and Joshua Smith	Owner/Appellant	Nathalie Ast, Daniel Artenosi
TJ Cieciora	Expert Witness	

## INTRODUCTION

The Smith family wishes to tear down their house at 72 Durant Ave and build a new house. In order to build the design and size of house they have chosen; they seek 13 variances. The present plans differ from those submitted to the Committee of Adjustment, changes are noted in Table 1.

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Normally a change made after the Committee of Adjustment decision requires the proponent to give further notice. Section 45(18.1) of the *Planning Act* is designed to take care of this eventuality by permitting the TLAB to dispense with further notice if the amendments are “minor”.<sup>1</sup> I make this finding to dispense with further notice, but defer discussion of the reasoning to the end of the decision.

<b>Table1. Variances sought for 72 Durant Ave</b>			
		Required	Proposed
<b>Variances from Zoning By-law 569-2013</b>			
1	Rear porch side yard setback	.9 m	.69 m
2	Front porch side yard setback	.9 m	.69 m
3	Front stair width	Max. 2.0 m	3.7 m
4	Roof eaves	Must be .3 m from side lot line	.28 m from north and south lot lines (moved closer .01 m)
5	Coverage	0.35 times the area of the lot	0.4374 times the area of the lot (reduced from .4425)
6	Building height	8.5 m	8.78 m ( <u>reduced from 10.57 m</u> )
7	Side main wall height	7 m	7.33 m (reduced from 8.74 m)
8	Height front door sill	1.2 m above est. grade	1.24 m (reduced from 1.62)
9	Floor space index	0.45 times the area of the lot	0.75 times the area of the lot ( <u>reduced from 1.03</u> )
10	Side yard setback	.9 m	.69 m for both side yards
11	Building length	17 m	19.07 m
12	Building depth	19 m	19.85 m

<sup>1</sup> 45(18.1) On an appeal, the Tribunal may make a decision on an application which has been amended from the original application if, before issuing its order, written notice is given to the persons and public bodies who received notice of the original application under subsection (5) and to other persons and agencies prescribed under that subsection.

**Exception**

45(18.1.1) The Tribunal is not required to give notice under subsection (18.1) if, in its opinion, the amendment to the original application is minor. (s. 45, *Planning Act*)

Table1. Variances sought for 72 Durant Ave			
Variances from Zoning By-law 6752 <sup>2</sup>			
13	Building height	8.5 m	8.78 m ( <u>reduced from 10.57 m</u> )

The Committee of Adjustment refused the application on Sept 15, 2021. Mr. Smith appealed and so the application came to the TLAB.

## MATTERS IN ISSUE

The Provincial Policy Statement and the Greater Golden Horseshoe Growth Plan must be considered, but they contain a high level of generality. I find they do not have an application to the physical dimensions of a single lot development in a settlement area; i.e., within urban boundaries and serviced by municipal systems.

The variances must comply with s. 45(1) of the *Planning Act* and 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.

The Official Plan of the City of Toronto must be considered; particularly, 4.1.5 Neighbourhoods Policy in which the physical form of the development must “fit in” physically with the surrounding neighbourhood.<sup>3</sup>

## Right to develop

The obligation is on the proponents (the Smith family) to demonstrate to the decision-maker that the tests are met on the balance of probabilities; there is no right to a variance.

## EVIDENCE

I heard from TJ Cieciora, whom I qualified to give opinion evidence in the area of land use planning. There were no other witnesses.

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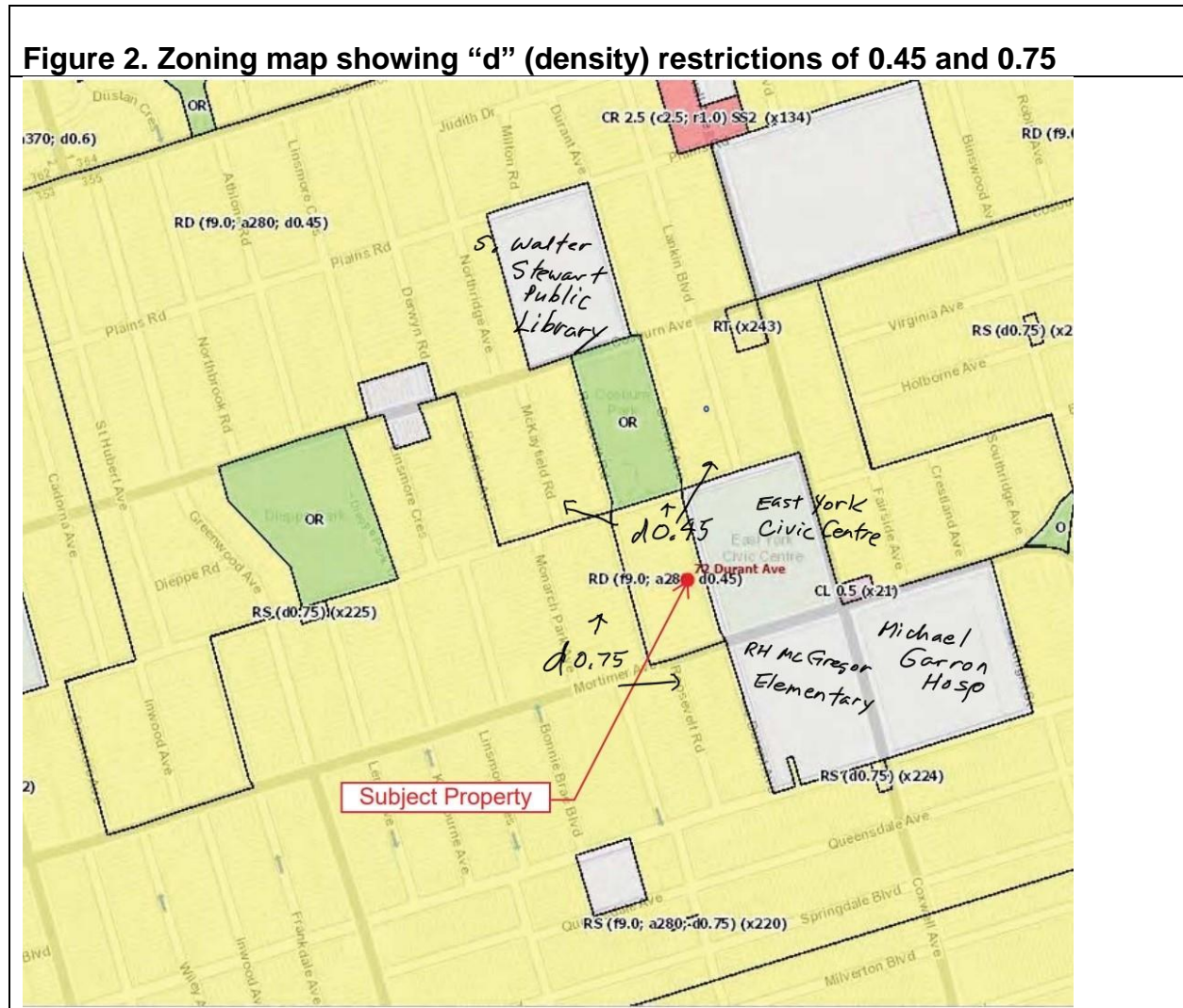
<sup>2</sup> Because appeals to By-law 569-2013 are still outstanding the examiner review plans under two sets of by-laws; this has resulted in a duplication of the height variance.

<sup>3</sup> Physical changes to our established *Neighbourhoods* must be sensitive, gradual and “fit” the existing physical character. (p4.4)

I visited the site and made a site visit for the sole purpose of better assessing the evidence given at the hearing.

## ANALYSIS, FINDINGS, REASONS

At the hearing before the Committee of Adjustment, no neighbours were in attendance, but there was a negative Community Planning report, signed by Dan Nicholson, manager for the City Community Planning Department. This report appears to be the reason for the refusal. Subsequently, Mr. Cieciura and the Smiths' architect revised the application; reducing both building height and floor space index. I give a comparison of elevations on page 7.



The Smiths' property is in an island of RD d0.45, whereas to the south and west are RS d0.75 zones. The latter zone permits a higher density as well as a wider range of housing types. After being retained, Mr. Cieciura recommended that the Smiths lower their proposed density from 1.03 to 0.75 to match what he found from his

research were appropriate densities. From his 70 Committee of Adjustment decisions, I list just the ones for Durant Ave:

**Figure 3. Photos of larger buildings in the RD 0.45 zone at the other end of Durant**

**117 Durant Avenue**  
Photo 51



**119 Durant Avenue**  
Photo 52



- 4 Durant Ave 0.8 x the area of the lot (122.81 m<sup>2</sup>)
- 64 Durant Ave 0.78 x the area of the lot (296.1 m<sup>2</sup>)
- 64 Durant Ave 0.74 x the area of the lot (280.74 m<sup>2</sup>)
- 66 Durant Ave 0.55 x the area of the lot (208.06 m<sup>2</sup>)
- 90 Durant Ave 0.50 x the area of the lot (198.0 m<sup>2</sup>).
- 117 Durant Ave 0.76 x the lot area (221.2 m<sup>2</sup>)
- 119 Durant Ave no density sought; i.e., density = 0.45
- 121 Durant Ave Refused 0.89 x the area of the lot (261.27 m<sup>2</sup>)
- 121 Durant Ave Refused n/a RD 0.815 x the area of the lot (239 m<sup>2</sup>)
- 127 Durant Ave 0.59 x the area of the lot (169.37 m<sup>2</sup>).
- 127 Durant Ave Refused n/a 0.78 x the area of the lot (227.45 m<sup>2</sup>).

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The proposed FSI is 0.75 or 284.22 m<sup>2</sup> and very close to the second 64 Durant decision. In my view this bears out Mr. Cieciora's argument that the Committee currently regards a density of 0.75 as appropriate for both zones.

I will now examine these one by one. Number 4 is a d0.75 and received 0.8. It is half a semi and the small gross floor area (122.81 m<sup>2</sup>) tells me this was a modest addition on an extremely small lot. The remaining even numbered properties on this block are all semis.

Moving up the street, there is a break at Mortimer between #s 56 and 58, and the density changes to 0.45. #64 received two approvals; both in the range of the subject. Numbers 66 and 90 Durant are in the lower range, consistent with the 0.45 but these were 2014 and 2010 decisions. I infer Mr. Cieciora's recommendation is based on more recent replacement homes.

At 92 there is another break at Memorial Park Ave, and the house numbers cross over to the other side as odd numbers. Number 117 was granted a density of 0.7; there is no record of a variance for #119. Photos (previous page) show these last homes are quite different in scale from the bungalows on the rest of Durant, and yet are still density 0.45.

Number 121 Durant had two refusals at the plus .80 range. Number 127 was refused at .78 and accepted at .59.

Given the history of this application, with changes made in consultation with the City and the planning evidence of Mr. Cieciora, I find that the proposal will "fit in" as required by the Official Plan. I further find that the other tests of maintaining the intent of the zoning by-laws, "minor" and "desirable" are also met.

### **Notice under s. 45(18.1)**

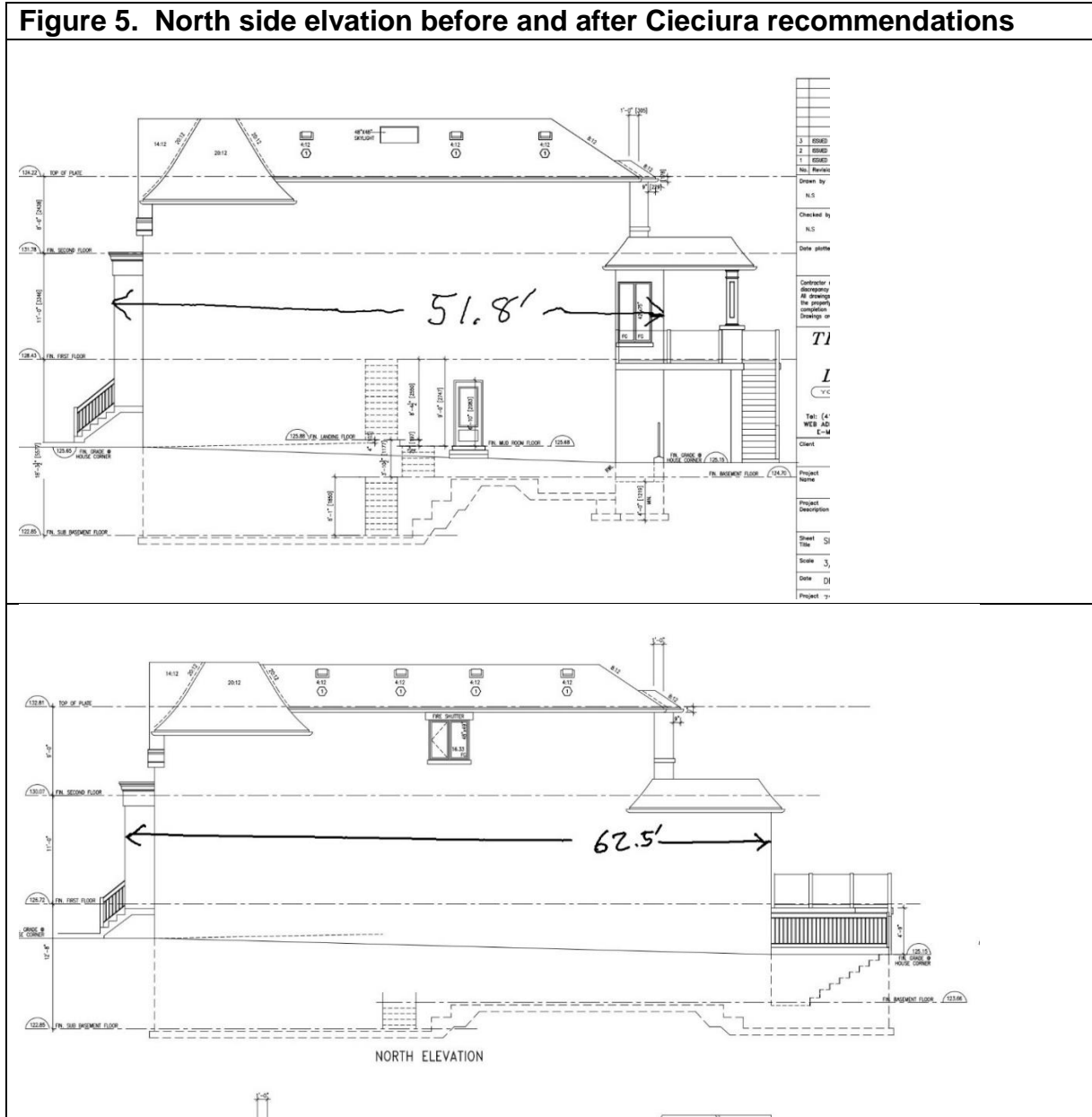
In this section I explain why I find the post Committee of Adjustment amendments are "minor". Although this is the same word used in granting the variance, in this context, the decision is whether to require the Smiths to advise their neighbours a second time to specify these changes. Since none of them attended the hearing in September 2021, it may be presumed that they would not have concerns if variances were decreased in size or eliminated. However, one variance has increased by a centimeter and two new ones have been added. So, they might have concerns.

In Figure 5, I show the prior and new north elevation. The interior has been reconfigured to remove a floor and change the front elevation from a two floor over garage to one storey over garage. The new first floor is more "sunk in" as may be seen from the number of steps for the rear deck to the ground. This design is more in keeping with the East York character of the neighbourhood. But this is at the expense of increasing the building length to non-compliant length (the permitted length being

17m (55.7 ft)). Mr. Cieciora said that Mr. Nicholson, the Community Planning person assigned to this file was “pleased” with the new plans. In my view, the test for minor in this section requires I not just consider whether the amendments are “downward” but in the total context —whether they make the project comply better with the Official Plan and zoning by-laws.

I find they do, and therefore no further notice is necessary.

**Figure 5. North side elevation before and after Cieciora recommendations**



**DECISION AND ORDER**

No further notice is required for the amendments to the original plans.

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

- That the construction is in substantial compliance with the plans filed with Tolu Alabi under Zoning Certificate (ZZC) Review No: 20 227269 ZZC 00 ZR Folder RSN: 4851676; the word “plans” in this condition includes only exterior elevations and site plans.
- Conditions 2 and 3 on the Urban Forestry letter of Sept 8, 2021, namely: 2. Submission of a complete application for a permit to injure or remove a privately owned tree(s), as per City of Toronto Municipal Code Chapter 813, Trees Article III Private Tree Protection. 3. Where there is no existing street tree, the owner shall provide payment in lieu of planting of one street tree on the City road allowance abutting any site<sup>4</sup> involved in the application. The current cash-in-lieu payment is \$583/tree.



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Ted Yao  
Panel Chair, Toronto Local Appeal Body

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<sup>4</sup> I have revised the Forestry condition 3. If this causes difficulty could the person involved please write to the TLAB at [tlab@toronto.ca](mailto:tlab@toronto.ca)