

# DECISION AND ORDER

**Decision Issue Date** Thursday, March 17, 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): AMELIA GEORGIANA MOCIORNITA

Applicant(s): INSPIRE HOMES INC

Property Address/Description: 195 ERSKINE AVE

Committee of Adjustment File

Number(s): 20 120942 NNY 15 MV

TLAB Case File Number(s): 20 174853 S45 15 TLAB

**Hearing date:** March 10, 2021

**DECISION DELIVERED BY SHAHEYNOOR TALUKDER**

## APPEARANCES

Name	Role	Representative
Inspire Homes Inc.	Applicant	
Amelia Georgiana Mociornita	Owner/Appellant	
Louis Orazem	Witness	

## INTRODUCTION

1. The Owner and Applicant, Amelia Georgiana Mociornita, applied to the Committee of Adjustment (Committee) for approval of variances. The variances would permit her to construct a second-floor rear addition and parking on the front yard of her property at 195 Erskine Avenue (subject property).

2. The Committee denied the Application for variances. The Applicant appealed only related to the rear second floor addition. She did not appeal the variances related to the front yard parking.
3. The only Party to this Hearing is the Applicant and the Hearing was unopposed.

## **MATTERS IN ISSUE**

4. The following variances were before the Committee:
  1. Chapter 10.5.50.10.(1)D), By-law No. 569-2013  
On a lot with a semi-detached house, a minimum of 75% of the required front yard landscaping must be soft landscaping.  
The proposed front yard soft landscaping area is 40.96%.
  2. Chapter 10.5.80.10.(3), By-law No. 569-2013  
A parking space may not be located in a front yard or a side yard abutting a street.  
The proposed parking spot is located in a front yard.
  3. Chapter 10.10.40.40.(1)A), By-law No. 569-2013  
The permitted maximum floor space index is 0.60 times the area of the lot.  
The proposed floor space index is 0.79 times the area of the lot.
  4. Chapter 200.5.1.10.(2)A)(ii), By-law No. 569-2013  
The minimum required parking space must have minimum length of 5.6m.  
The proposed parking space will have a length of 2.28m.
  5. Section 6(3) Part IV 1(E), By-law No. 438-86  
The by-law prohibits the parking of motor vehicles on the portion of the lot between the front lot line and the front wall of the building.  
The proposed parking does not comply.
5. As noted, the Applicant appealed the Committee's decision only with respect to Variance # 3, which is with respect to floor space index (FSI), as she has abandoned her plan to have front yard parking but is pursuing her plan for the rear addition.
6. The variances from the applicable zoning by-law must individually and cumulatively satisfy the four tests, which are that the variances must:
  - maintain the general intent and purpose of the OP;
  - 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.
7. I find that the variance for Floor Space Index (FSI) is related to the second-floor rear addition which is independent of the proposal for front yard parking. As such, I can consider the variance for FSI separately from the remaining four variances which are not part of the appeal.
  8. I must also consider other documents, such as the Provincial Policy Statement and the Greater Golden Horseshoe Growth Plan. These documents contain a high level of generality; for example, the Provincial Policy Statement discourages lot creation on prime agricultural land and prefers municipal water and sewage over private systems. In this case, I accept that there is consistency with and conformity to these policies.
  9. Therefore, the only issue before me is whether the variance for FSI meets the four tests for approval of the variance.

## **EVIDENCE**

10. The sole witness at the Hearing was Louis Orazem, President of Inspire Homes Inc., the architectural firm retained by the Applicant for design and construction of the rear addition on the second floor of the subject dwelling.
11. The Applicant did not file the site plan and elevation plans for the proposal with the TLAB. I requested these drawings from Mr. Orazem to be provided immediately after the Hearing. Mr. Orazem stated that the site plan and elevations were the same as those filed with the Committee and, therefore, did not file these documents with the TLAB.
12. The documents that were tendered as evidence were as follows (with the relevant exhibit numbers):
  1. Site Plans and Elevations
  2. Party Witness Statement of Mr. Orazem
  3. City of Toronto Staff Report dated July 1, 2020
13. I had requested the decision for 193 Erskine Avenue issued by the Committee from Mr. Orazem, to be filed as Exhibit 4, as he had discussed it at the Hearing. However, I have not received this decision and therefore this decision has not been included as an exhibit.

## **ANALYSIS, FINDINGS, REASONS**

14. For context, I visited the subject property, walked the area and familiarized myself with the surrounding neighbourhood. Despite this, my findings and ruling are based solely upon the evidence that was presented during the Hearing.

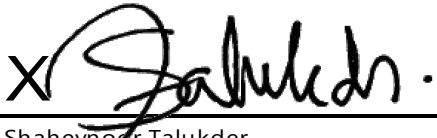
15. Based on my attendance at the subject site, I note that the subject property is located north of Eglinton Avenue East and immediately east of Mount Pleasant Road.
16. Mr. Orazem testified that the current building is a semi-detaching dwelling attached to 193 Erskine Ave. The Applicant proposes to remove the rear of the second storey and extend the dwelling by an additional 3.4 m in length and width. He submitted that this increase in space is modest for the size of the existing house.
17. Mr. Orazem reviewed past Committee decisions for FSI/GFA variances for the period of 2008 to 2020 within a 500 m radius of the subject property approved by the Committee. He limited his review to single family residential houses with similar zoning restrictions with a maximum FSI of 0.6 times the lot area. He found that 39 properties during the referenced period were granted an FSI variance. He noted that the median for the approved FSI was 0.77 (which he referred to as 77%) and the average being 0.781 (which he referred to as 78.1%). He noted that neighbouring property at 193 Erskine was also granted an FSI of 0.798 to build a second storey rear addition, similar to what is proposed for the subject property.
18. Mr. Orazem further noted that the City Planning staff report to the Committee dated July 2020 did not have any concern with the FSI variance and that there were no objections to the proposal of the rear addition on the second floor.
19. The main OP policy to review for FSI variance is OP 4.1.5, which requires a quantitative and qualitative analysis of whether the proposed development respects and reinforces the existing physical character of the geographic neighbourhood. In this matter, the relevant sub-section is the following:
  5. Development in established Neighbourhoods will respect and reinforce the existing physical character of each geographic neighbourhood, including in particular:
    - ...
    - c) prevailing heights, massing, scale, density and dwelling type of nearby residential properties;
    - ...

The physical character of the geographic neighbourhood includes both the physical characteristics of the entire geographic area in proximity to the proposed development (the broader context) and the physical characteristics of the properties that face the same street as the proposed development in the same block and the block opposite the proposed development (the immediate context). Proposed development within a *Neighbourhood* will be materially consistent with the prevailing physical character of properties in both the broader and immediate contexts.

20. The word “prevailing” requires some level of numerical analysis. Mr. Orazem’s analysis forms only a part. Mr. Orazem looked at the examples of FSI increase in the 500 m radius, which is only helpful if I can compare that with the FSI of all the properties in the 500 m radius. A detailed analysis of FSI under OP 4.1.5 requires an understanding of the neighbourhood’s physical characteristics associated with massing, scale and density. I am unable to approve a variance for FSI simply because there are examples of approval of this variance in the neighbourhood and in the absence of understanding what the prevailing FSI of the neighbourhood is and how such FSI is deployed within the broader and immediate context of the neighbourhood of the subject property.
21. Mr. Orazem, in his Witness Statement, did not discuss or explain how the proposal meets the general intent and purpose of the zoning by-law, whether the proposal is minor and whether the proposal is desirable for the appropriate development of the subject property. I asked Mr. Orazem about these tests at the Hearing and his response was as follows:
- a. The proposal meets with general intent and purpose of the zoning by-law as all the setbacks are within the zoning by-law requirements and the proposal is in keeping with development throughout the neighbourhood.
  - b. The variance is minor as the increase in gross floor area is modest when compared to many homes in the neighbourhood.
  - c. The proposal is an appropriate development for the subject property because it is a modest development of the building and is similar to the extension built by the neighbour at 193 Erskine Ave.
22. I am unconvinced by Mr. Orazem’s evidence and testimony. I find that the above statements are very general in nature and insufficient to allow me to determine how they satisfy the above-referenced three statutory tests in the *Planning Act*. In a Hearing, the Applicant must provide clear planning evidence to prove their case and to satisfy the TLAB that the four tests are met. Although it is not necessary or obligatory to call evidence from an expert witness, an Applicant must still provide a fulsome analysis of how the proposal and the requested variance(s) meets the four tests.
23. In this case, however, I find that such an analysis was not conducted nor provided.
24. Based on the foregoing, I find that the Applicant did not satisfy the statutory tests for the approval of the FSI variance. Therefore, the appeal is denied, and the Committee’s original decision is confirmed.

## DECISION AND ORDER

25. The appeal is denied, and the Committee of Adjustment's decision dated July 16, 2020 is affirmed.

A handwritten signature in black ink, appearing to read "S. Talukder", with a small "X" to its left. The signature is written over a horizontal line.

Shaheynoor Talukder  
Panel Chair, Toronto Local Appeal Body