

Toronto Local Appeal Body

40 Orchard View Blvd, Suite 211 Toronto, Ontario M4R 1B9 Telephone: 416-392-4697 Fax: 416-696-4307 Email: <u>tlab@toronto.ca</u> Website: <u>www.toronto.ca/tlab</u>

DECISION AND ORDER

Decision Issue Date Monday, April 11, 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): DUNCAN HARVIE

Applicant(s): MENGDI ZHEN

Property Address/Description: 72 CHESTER AVE

Committee of Adjustment File

Number(s): 21 128371 STE 14 MV (A0377/21TEY)

TLAB Case File Number(s): 21 208204 S45 14 TLAB

Hearing dates: Thursday, February 3rd, 2022.

Thursday March 3, 2022.

Deadline Date for Closing Submissions/Undertakings:

DECISION DELIVERED BY TLAB Panel Member and TLAB Vice-Chair, A. Bassios

REGISTERED PARTIES AND PARTICIPANT

AppellantDuncan HarvieAppellant's Legal Rep.Ian FlettAppellant's Legal Rep.Alan HeiseyApplicantMengdi ZhenPartyRolf StruthersPartyTommy HoffnerParty's Legal RepAmber Stewart

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Participant	Lola Bratty
Participant	Dimitrios Siomos
Expert Witness	Jonathan Benczkowski

INTRODUCTION

This is an Appeal of the Toronto and East York Panel of the City of Toronto (City) Committee of Adjustment's (COA) approval, with conditions, of an application for variances for the property known as 72 Chester Ave (subject property).

The subject property is located in the Danforth neighbourhood of the former City of Toronto. It is designated *Neighbourhoods* in the City Official Plan (OP) and zoned R (d0.6)(312) under Zoning By-law 569-2013.

The purpose of the application before the COA was to alter the 2½-storey detached house by constructing a front porch, a front basement walkout, a rear two-storey addition with a ground floor deck and a third storey addition with a rear deck. In addition, a secondary suite in the basement of the main dwelling and a two-storey ancillary building containing a second storey laneway suite were proposed, for a total of three dwelling units on the lot.

On the first scheduled day for the hearing of this matter, the TLAB was advised that settlement discussions were ongoing and an adjournment was requested with the consent of all Parties. The Hearing was adjourned for the day and a return date was scheduled by TLAB staff.

On the second scheduled day for the hearing of this matter, a settlement between the Parties was achieved. A revised list of variances and conditions, and a revised set of plans, were submitted. The request before the TLAB has eliminated two of the variances that were before the COA. Adjustments to the proposal include the reduction of roof slope at the rear of the dwelling, revision to the rear windows of the laneway suite and commitments for the protection of trees.

In attendance on Day 2 of the Hearing were:

- Amber Stewart, legal counsel for the Owner, and Expert Witness Jonathan Benczkowski (Land Use Planning);
- Alan Heisey, legal counsel for the Appellant, and Expert Witness Christian Chan (Land Use Planning).

BACKGROUND

Seven variances were requested.

1. Chapter 150.10.40.1(1)(B), By-law 569-2013

A pedestrian entrance leading exclusively to a secondary suite is not permitted in a front wall of a detached house or semi-detached house. The proposed pedestrian entrance leads exclusively to a secondary suite.

2. Chapter 150.10.40.1(2)(A), By-law 569-2013

An addition or exterior alteration to an existing building to accommodate a secondary suite is permitted if it does not alter or add to a front wall, or roof that faces a street.

In this case, exterior alteration to an existing front wall to accommodate a secondary suite is proposed.

3. Chapter 10.5.40.60.(7), By-law 569-2013

Roof eaves may project a maximum of 0.9 m provided that they are no closer than 0.3 m to a lot line.

The roof eaves will project 0.25 m and will be located 0.15 m from the north lot line.

4. Chapter 10.10.40.10.(1)(A), By-law 569-2013

The maximum permitted building height is 10 m. The altered detached dwelling will have a height of 10.31 m.

5. Chapter 10.10.40.10.(2)(B)(ii), By-law 569-2013

The maximum permitted height of all side exterior main walls facing a side lot line is 7 m.

The height of the side exterior main walls facing a side lot line will be 9.07 m.

6. Chapter 10.10.40.70.(4)(A)(i), By-law 569-2013

The minimum required side yard setback for a detached house is 0.45 m. In this case, the side yard setback will be 0.4 m.

7. Chapter 10.10.40.40.(2)(A), By-law 569-2013

Additions to the rear of a detached dwelling erected before October 15, 1953 are permitted provided the residential floor space index of the building, as enlarged, does not exceed 0.69 times the area of the lot (189.09 m2).

The altered detached dwelling will have a floor space index equal to 0.9 times the area of the lot (247.64 m2).

MATTERS IN ISSUE

This matter came before the TLAB as a settlement of the filed Appeal, with support from all Parties. The mandate of the TLAB in this situation is to be satisfied that the variances and conditions that were agreed to via the settlement meet the four tests of the *Planning Act.*

JURISDICTION

Provincial Policy – S. 3

A decision of the Toronto Local Appeal Body ('TLAB') must be consistent with the 2020 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. Benczkowski provided evidence in support of the requested variances, summarized as follows:

- The neighbourhood is comprised of a mix of semi-detached and detached twoand three-storey houses
- The neighbourhood is characterized by tight side yard setbacks creating a densely packed urban environment with roof eaves often of adjacent dwellings often touching.
- The proposed laneway suite does not require relief from any of the provisions of the Zoning By-law and may be built as-of-right.
- The laneway suite is compliant with setback and angular plane requirements, which are intended to limit privacy and overlook issues on adjacent properties.
- Healthy trees will be protected.
- The property is within a 2-minute walk from Chester subway station.
- No addition is proposed at the front of the existing house.

ANALYSIS, FINDINGS, REASONS

This is an uncontested Hearing for the purposes of approving a revised set of variances that have been agreed to by the Parties as part of a settlement agreement.

I note that as a settlement, this case has no precedential value since any findings of fact are for the limited purpose of ensuring that the settlement is not contrary to the *Planning Act*.

I accept Mr. Benczkowski's evidence that the proposal is consistent with the 2020 Provincial Policy Statement and conforms to the Growth Plan for the Greater Golden Horseshoe for the subject area.

General intent and purpose of the Official Plan

In his testimony, Mr. Benczkowski focused on the criteria contained in OP Policy 4.1.5 to substantiate his opinion that the proposal meets the first test of s.45(1). The proposal engages OP Policy 4.1.5 c), which warrants some brief attention in this Decision.

- 4.1.5 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;

HEIGHTS, MASSING, SCALE, AND DENSITY

Mr. Benczkowski provided data in Tab 9 of his Expert Witness Statement which reflects COA decisions for maximum height, maximum wall height and maximum floor space index variances in the neighbourhood.

On the basis of the evidence provided, I concur with Mr. Benczkowski's opinion that the proposal fits in with the prevailing heights and massing of dwellings on both the north and south side and with the neighbourhood in general. I accept his opinion that the proposed density is in keeping with the neighbourhood as a whole on the basis of his evidence that the floor space index is within the range of previous variance approvals in the neighbourhood.

I concur with Mr. Benczkowski that the proposal maintains the general intent and purpose of the Official Plan.

General intent and purpose of the Zoning By-law

VARIANCES 1 AND 2: PEDESTRIAN ENTRANCE AND ALTERATION TO AN EXISTING FRONT WALL.

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Mr. Benczkowski advised that the intent and purpose of these provisions in the By-law are to ensure the architectural character of the dwelling is maintained when a second unit is added.

The front entry for the proposed second suite is largely below grade and in my opinion will not cause a marked change to the character of the existing front wall of the house. I note that a substantial planter at the front entrance obscures the stairs down to the door of the second suite.



Figure 1: Front Elevation. Ex 5 Revised Plans

VARIANCE 3: ROOF EAVES

Mr. Benczkowski advised that the general intent and purpose of this provision is to ensure that eaves do not encroach or impact beyond the property line.

In his opinion, there is appropriate separation provided. The encroachment of the existing ground floor eaves will be remedied as part of the redevelopment.

On the above basis, I find that the variance regarding roof eaves maintains the general intent and purpose of the Zoning By-law.

VARIANCE 4: MAXIMUM BUILDING HEIGHT

The potential impact of the proposed height is mitigated by the setback of 2.91m from the second floor rear main wall. The data provided regarding previously granted height

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variances supports the conclusion that the proposal is within the prevailing heights for recent applications.

VARIANCE 5: MAXIMUM HEIGHT OF SIDE EXTERIOR MAIN WALLS

The taller wall heights that are proposed are somewhat characteristic of this neighbourhood which exhibits tight fabric and narrower lots. The record of approved variances for side exterior main walls supports the conclusion that the proposed side wall heights are consistent with heights that have previously been approved.

I find the proposed side exterior main wall heights to maintain the general intent and purpose of the Zoning By-law.

VARIANCE 6: MINIMUM SIDE YARD SETBACK

Mr. Benczkowski advised that, in his opinion, the intent of this provision in the By-law is to provide for separation between buildings and to facilitate access and maintenance.

I accept Mr. Benczkowski's opinion that a 5cm variance to the side yard setback maintains the general intent and purpose of the Zoning By-law.

VARIANCE 7: FLOOR SPACE INDEX

I note the previous variances that have been granted in the neighbourhood for floor space index. I concur with Mr. Benczkowski that the proposed floor space index is in keeping with the character of the neighbourhood and the proposed development is compatible with the existing context.

Desirable for the Development of the Land

The subject site has immediate access to a subway station and will provide two additional rental opportunities in the form of the second suite and the laneway suite while still fitting well into the existing character of the neighbourhood.

I find that the proposal is desirable for the development of the land.

Minor

The proposal will result in a built form that is compatible with the existing neighbourhood.

Potential shadowing to the rear is mitigated by the revised design and the resulting shadowing is in the nature of what is expected in an urban context.

Mr. Benczkowski advised that there would be no unacceptable impacts with respect to privacy. I note that there are no new windows proposed on the side walls of the house and the laneway suite complies with zoning requirements. In addition, to respond to concerns of neighbours across the laneway to the rear, the Owner has committed to

mitigation of outlook from the proposed windows via design changes and use of frosted glass.

Conclusion

I find that the proposal as revised meets the four tests as set out in s.45(1).

The revisions to the proposal since the COA approval have resulted in the elimination of two variances: a) for the area of soft landscaping between the main building and the front wall of the ancillary building (laneway suite); and b) for a front yard setback. I find these changes to the requested variances to be minor and that further notice under s.45(18.1.1) of the *Planning Act* can be waived.

DECISION AND ORDER

The Appeal is allowed, in part. The variances listed in Appendix A are authorized, subject to the conditions contained therein.

Albassion

A. Bassios Panel Chair, Toronto Local Appeal Body

APPENDIX A

APPROVED VARIANCES AND CONDITIONS OF VARIANCE APPROVAL:

VARIANCES:

1. Chapter 150.10.40.1(1)(B), By-law 569-2013

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The proposed pedestrian entrance leads exclusively to a secondary suite

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Additions to the rear of a detached dwelling erected before October 15, 1953, are permitted provided the residential floor space index of the building, as enlarged, does not exceed 0.69 times the area of the lot (189.09 m2).

The altered detached dwelling will have a floor space index equal to 0.9 times the area of the lot (247.64 m2).

CONDITIONS:

- 1. The proposed dwelling and accessory building shall be constructed substantially in accordance with the following plans and drawings prepared by Z Square Consulting Inc, dated November 11, 2021 and attached hereto.
 - Site Plan (A1.1)
 - East Elevation (A3.1)
 - West Elevation (A3.2)
 - North Elevation (A3.3)
 - South Elevation (A3.4)
 - Laneway Suite West Elevation (A3.5)
 - Laneway Suite East Elevation (A3.6)
 - Laneway Suite North Elevation (A3.7)
 - Laneway Suite South Elevation (A3.8)
- 2. The windows on the west elevation of the accessory building shall be substantially in accordance with the Proposed Laneway Suite West Elevation (A3.5). In particular, the second floor window on the southerly portion of the west wall shall be frosted, and the second floor window on the northerly portion of the west wall shall have a sill that is a minimum of 5'6" above the second floor, as shown on Drawing A3.5.
- 3. Prior to the issuance of a building permit, the applicant/owner shall submit a complete application for permit to injure or remove a City-owned tree(s) under Municipal Code Chapter 813, Trees Article II, Trees on City Streets, to the satisfaction of the Supervisor, Urban Forestry, Tree Protection and Plan Review, Toronto and East York District.
- 4. Prior to the issuance of a building permit, the applicant/owner shall submit a complete application for permit to injure or remove privately owned tree(s) under Municipal Code Chapter 813, Trees Article III, Private Tree Protection, to the satisfaction of the Supervisor, Urban Forestry, Tree Protection and Plan Review, Toronto and East York District.
- **5.** Prior to the issuance of a building permit the owner/applicant shall apply for and obtain a municipal number.

















