

INTERIM DECISION

Decision Issue Date Monday, September 13, 2021

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): APOSTOLOS PROKOS
Applicant(s): ALEX AKSELROD

Property Address/Description: 98 WINONA DR
Committee of Adjustment File
Number(s): 20 211095 STE 09 MV

TLAB Case File Number(s): 21 136134 S45 09 TLAB

Hearing date: August 26, 2021

DECISION DELIVERED BY TED YAO

REGISTERED PARTIES AND PARTICIPANTS

Name	Role	Representative
Alex Akselrod	Applicant	
Kinch McConnell	Owner/Party	David Neligan/John Pappas
Martin Rendl	Expert Witness	
Apostolos Prokos	Appellant	Helen Loggia
Assunta Mastropaolo	Party	Mena Vitti
Guiseppe Mastropaolo	Party	Mena Vitti

INTRODUCTION

Kinch McConnell wishes to expand his two unit house by adding a new third storey and also a rear addition. To do so, he needs the variances set out in Table 1.

Table1. Variances sought for 98 Winona			
		Required	Proposed
Variances from Zoning By-law 569-2013			
1	Driveway width	2.0 m	1.44 m
2	Floor space index	0.6 times the area of the lot (184 m ²)	0.75 times the area of the lot (230.01 m ²)
3	Front yard setback	6 m	0.3 m
4	North side yard setback	1.2 m	0.59 m

BACKGROUND

Since the post war period this midblock property was a convenience store. This use ceased in 2014. The new owner converted the ground floor to residential, forming a “duplex”, that is one unit above another. The City’s zoning examiner’s description of the work suggests it considers this to be a single detached building with a secondary suite.¹ This is a more modern interpretation than “duplex” as it takes into consideration the City’s recent policies favouring secondary suites as a modest form of intensification in view of Ontario’s current rental housing shortage.²

¹ To alter the existing two-storey detached dwelling by constructing a third storey, a rear third storey addition with a rear balcony, a rear second-storey addition with a rear balcony, a rear first-storey addition, a rear ground floor deck, a rear basement walkout, and adding a secondary suite.

² More Homes, More Choice: Ontario’s Housing Supply Action Plan, May 2019. “Ontario needs more housing, and we need it now. It’s time for our government to take action.”, Minister’s introduction.

In March, the Committee approved the variances and an appeal was launched by Apostolos Prokos, Ms. Loggia's father. The two persons who testified against the proposal are both children of the neighbouring owners.

This is the second application by Mr. McConnell. After acquiring the property in 2019, he was refused by Committee of Adjustment for a larger version of the same additions, but with an FSI of 0.88 and a depth variance (August 2020). Since that refusal, Mr. McConnell, reduced the size and reduced or eliminated the variances. In particular, the FSI was reduced from 0.88 to 0.75 and whether this was minor and desirable occupied the majority of Ms. Loggia and Ms. Vitti's comments. The other variances mostly reflect existing non-conforming physical dimensions owing to the building's former use. Mr. McConnell has made the shape of the rear addition profile into "step backs" with the largest step back on the third floor, thus introducing more light and air for the neighbouring rear yards.

A further circumstance is that there is a mutual drive between 96 and 98 Winona Drive, which accounts for the variance for driveway width. Only 1.44 m is owned by Mr. McConnell. The remainder is owned by Apostolos Prokos. However, Mr. McConnell's ownership is subject to rights of passage not only to Mr. Prokos but to other neighbours to the south. In effect the driveway functions as a public lane. Mr. McConnell intends to create two new parking spaces in the rear of 98 Winona.

MATTERS IN ISSUE

Higher level documents (the Provincial Policy Statement and the Greater Golden Horseshoe Growth Plan) must be considered, but they 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. I find these policies offer little guidance for a third storey and rear "bump-out", on one lot in an urban area, with one exception: this project will be purpose built rental housing, which is supported in both the higher level policies and the Official Plan.

In conjunction with these rental housing policies, 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.

Onus as to "right" to develop

The obligation is on the proponent (Mr. McConnell) 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 Martin Rendl, planner for Mr. McConnell, whom I qualified as able to give opinion evidence in the area of land use planning. It appears that the cost and preparation for the appeal was shared by four neighbours, although only two family representatives testified. Ms. Loggia testified for Apostolos Prokos, who lives at 96 Winona, and the sole named appellant. Ms. Vitti testified for her parents Assunta Mastropaolo and Guiseppe Mastropaolo, who live at 100 Winona. They represent the immediate owners of houses that are next door neighbours to Mr. McConnell; i.e., 96 and 100 Winona. They indicated Marianne Cottrell, the neighbour to Ms. Vitti had written a letter of objection but was unable to attend as she was required to work.

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.

ANALYSIS, FINDINGS, REASONS

Mr. Rendl, Mr. McConnell's planner, filed documentation on how the variances met the four tests, including an area map of what he considered the relevant neighbourhood for planning analysis.



Figure 2. Geographic Neighbourhood

This is an about 300-property area, generally north and west of the block containing McMurrich and Winona Drive schools, south of St Clair and north of Davenport (Please see Figure 2). There was no dispute as to the streets that should be included in the “neighbourhood”; indeed Ms. Loggia filed a Response to Mr. Rendl’s evidence, disputing Mr. Rendl’s planning conclusions, but she accepted his compilation of Committee of Adjustment decisions based on this geographic neighbourhood.

She accurately sets out the test In her Response:

Chapters 2 and 4 of the Toronto Official Plan, indicate that new development (i.e., additions and infill housing) in established neighbourhoods **must respect the existing physical character** of the buildings, streetscapes and open space patterns of these areas, reinforcing the stability of the neighbourhood. (my bold)

She goes on to argue:

The mass, depth, height and scale of the proposed renovation is not consistent with the built form and character of the neighbourhood and the aesthetics of the streetscape.

I disagree with this conclusion.

Figure 3 Streetscape (photos from Mr. Rendl)³



In Figure 3, I have stitched together two of Mr. Rendl's photographs. Both Ms. Loggia's parents (semi on left) and Ms. Vitti's (two storey building with car in front) own houses whose roofs are lower than the highest point of the present McConnell building.

However, it is much farther forward (one foot from the street line) than either of the two side buildings, so this photograph exaggerates its height because of perspective and the tendency of a photograph to "push away" objects that are farther from the lens. Mr. Rendl states:

The existing house is built very close to the front lot line, being setback 0.30 m from the front lot line. The two adjacent houses at 96 and 100 Winona Drive have front yard setbacks of 4.73 m and 6.76 m respectively. . . . The Subject Site's depth of 46.25 m is relatively deep for a lot. In comparison, 96 Winona Drive has a shorter lot depth of 35.36.

The architect's diagram (Figure 4) that puts all buildings on the same plane, shows the future McConnell house will be higher than their respective Loggia and Vitti houses.

The Official Plan states that that I am to compare both existing and planned contexts. In other words, the neighbours could build as of right 10 m high and to an FSI of 0.60 and generally they would need no permission to do so. Similarly, Mr. McConnell can build to 10 m to the highest point of his roof, notwithstanding that the two neighbours are not as high as his current building.

Figure 4. Front Élévation; source Cadaxxdesign

³ The photos are as filed. They appear to be slightly blurry.



The new roof will be 155.79-146.00 (there is a 0.01 rounding error) = 9.78 m above established grade. The TLAB only looks at variances and since there is no height variance, this impact is not examined under the *Planning Act*. This is the meaning of “as of right”. I find a roof height of 9.78 m maintains the intent and purpose of the Official Plan and zoning by-law since is permitted as of right.

his juxtaposition is common in this neighbourhood; Mr. Rendl pointed out that there are many examples of three storey buildings adjacent to two storey homes. (Please see Figure 5).

Figure 5. Rendl depiction of neighbourhood character



Photo 32: 130 Benson Avenue - 1.03 FSI

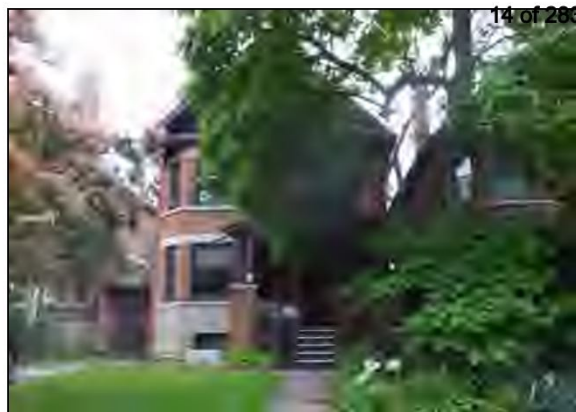


Photo 33: 29 Biggar Avenue - 0.72 FSI



Photo 34: 71 Grennsides Avenue - 0.77 FSI



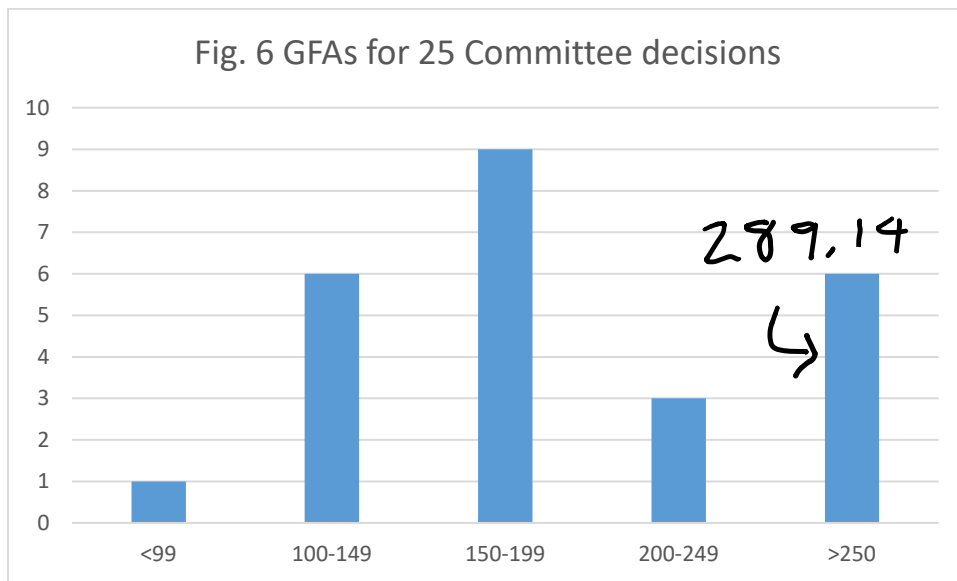
Photo 35: 86A & 86B Greensides Avenue - 1.03 FSI

FSI and GFA

FSI is the ratio of interior space (GFA or gross floor area) divided by lot area. Ms. Loggia calls GFA “total constructed area”. She asserts three propositions, as described below.

First, the new additions will double the current properties’ gross floor area or total constructed area. This is true. Second, she says that the new GFA of 289 m² will be among the largest in Mr. Rendl’s compilation of decisions⁴ and this is also true. I made a chart of her numbers and this chart shows this. Please see Figure 6.

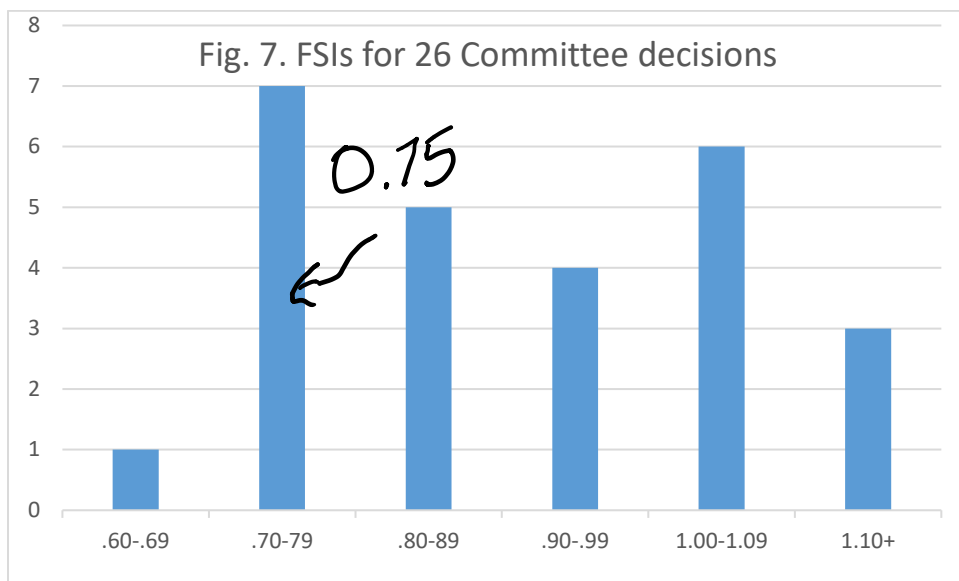
⁴ One of them has missing information, So Ms. Loggia dropped it for analysis for some purposes.



Her third assertion is that “The 0.75 FSI will be discernable from the street.” I think this is debatable. First, density is not always visible from the street; a house may extend very far to the back or be like other houses but have a shallow depth lot or may be a three storey house in a two storey neighbourhood.

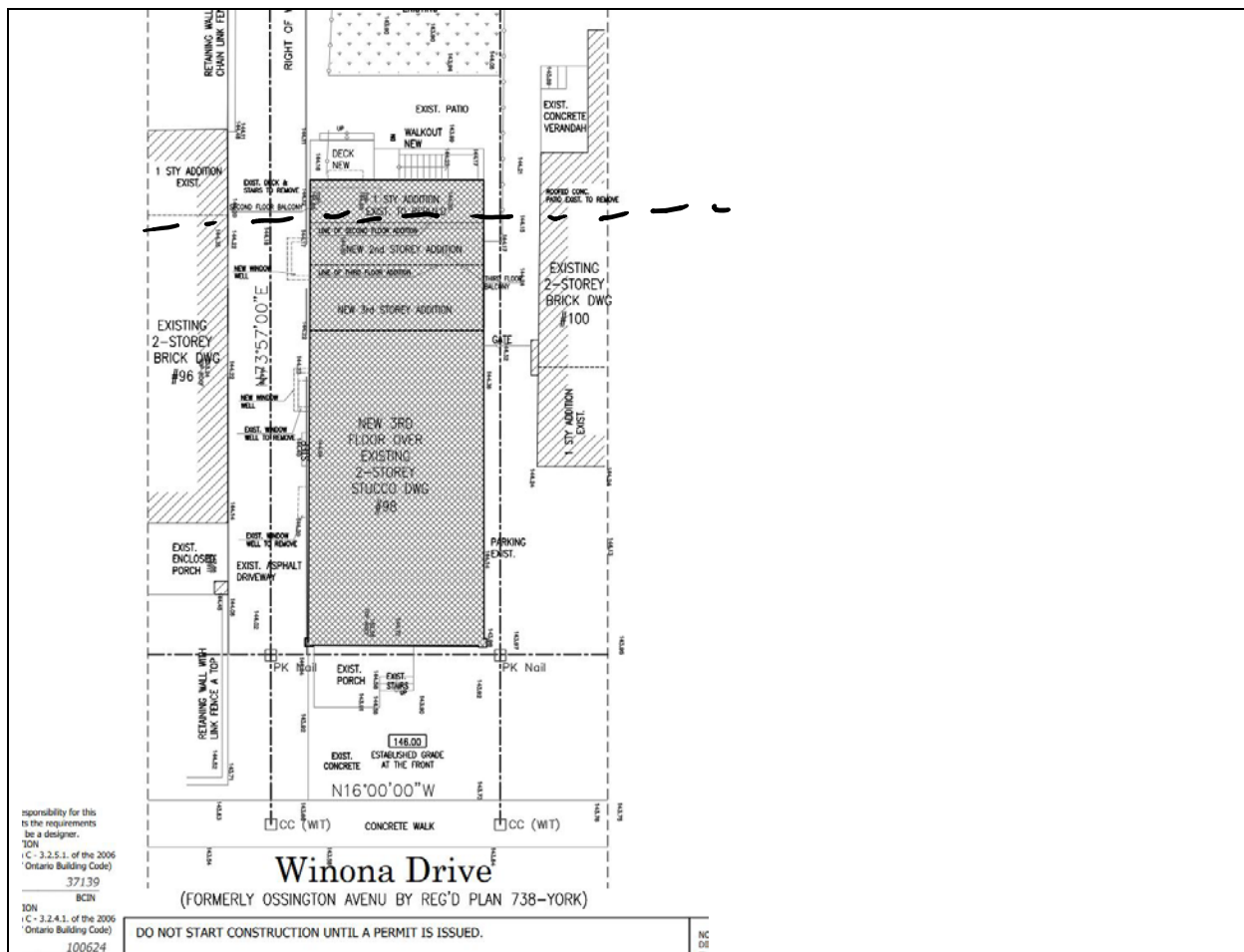
However, the Committee of Adjustment compares FSIs only for density and for the extrapolation Ms. Loggia suggests, the lot areas in the neighbourhood must be roughly equal and this is not demonstrated. For example, the smallest GFA in Mr. Rendl’s compilation is for 168-170 Tyrell, the two lots at the corner of Greensides and Tyrrell. This was created by severance in 2012, from a lot with a single original house which had a wide side yard on the Greensides boulevard. The severance created Part 1, a lot containing the original house with an FSI of 0.98 and a lot size of 167 m², while Part 2, (the old side yard) became a new lot with an FSI of 0.75 and lot area of 289 m². Mr. McConnell’s proposed GFA is 289.14 m² but his lot is about 3.3 times size of the smaller of the two Tyrell lots. In circumstances where there is a great variability in lot size, I find that an argument based on resulting GFAs is not supportable. This was Mr. Rendl’s position and I agree with Mr. Rendl.

Mr. Rendl said that the 0.75 FSI was in the lower range of what is granted and I find this is true.



Notwithstanding that the 0.75 FSI is in accordance with other Committee of Adjustment decision in Mr. Rendl's area, I have to look at its impact. Figure 8 (next page) shows that the rear yard is in line with the neighbours. The present situation with 98 Winona set more forward than its neighbours creates an advantageous situation for each of the adjoining rear yards and I find the impact of a rear wall in line typical of most rear yard situations and acceptable.

Figure 8. Rear yard relationship



Intensification and rental housing

The site is about a block and a half from St Clair, Davenport and Oakwood, all of which have bus or streetcar routes. Mr. Rendl discussed Growth Plan as well as the 2020 Provincial Policy Statement, and the Official Plan, which supports this type of development:

- integrates land use and transportation (2.2);
- creates private sector rental housing (3.2.1)
- creates a balance of land uses that reduces automobile dependency (4.5.2)
- limits shadow impacts (4.5.2)

Both opponents had concerns that Mr. McConnell would introduce two additional dwelling units, one family per floor. Mr. Rendl said this would create a zoning violation and he stressed that the plan examiner has categorized this use as single detached with a secondary unit.

The Official Plan states:

3.2.1 HOUSING

Adequate and affordable housing is a basic requirement for everyone. . . .The current production of ownership housing, especially condominium apartments, is in abundant supply.

What is needed is a healthier balance among high rise ownership housing and other forms of housing, including purpose-built rental housing, affordable rental housing and affordable low-rise ownership housing for larger households with children and multi-family households.

This statement refers to two issues: tenure, that is, rental versus ownership, and built form types. The Province specifically mentions “additional units”⁵ and purpose built low rise multiresidential with “additional units” is proposed here. The proposal conforms to Provincial policies with respect to housing choice, tenure and type. All development in Toronto is encouraged to locate in proximity to public transit, which includes bus and street cars.

Although this is likely not to be affordable, there is a possibility that the tenants can make sharing arrangements (e.g., a couple and a sibling, each with children) that make the rental more affordable. Rental that falls short of being affordable, such as mid-range rents are supported in the Official Plan.⁶

THE INTERIM DECISION

I find the variances individually and cumulatively maintain the intent of the Official Plan and zoning bylaw. They also meet the other tests of being minor and desirable for the appropriate development of the neighbourhood, which contains a number of other situations where properties with maximal development sit alongside many WW2 older buildings that have FSIs in the forties or smaller.

I am prepared to grant the variances. Before I do so I would like to see a landscaping plan for the front yard. I would request Mr. McConnell to prepare and

⁵ Clause 1.1.1 of the Provincial Policy Statement states: Liveable communities will be supported by: . . .accommodating an appropriate affordable and market-based range and mix of residential types (including single-detached, **additional residential units, multi-unit housing**, affordable housing and housing for older persons), . . . to meet long-term needs;

⁶ Policies 1. A full range of housing, in terms of form, tenure and affordability, across the City and within neighbourhoods, will be provided and maintained to meet the current and future needs of residents. A full range of housing includes: ownership and rental housing, affordable and **mid-range rental** and ownership housing, . . .(Building A Successful City Toronto 3-22 Housing, my bold)

circulate a landscaping plan. I would ask that Ms. Loggia and Ms. Vitti comment on it, if they wish. All this should be done by September 30, 2021. I will consider everything and give a written decision after that date.



Ted Yao
Panel Chair, Toronto Local Appeal Body