



Toronto Local Appeal Body
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DECISION and ORDER

Decision Issue Date Friday, June 10, 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): ROMAN TROANI
Applicant(s): CHRISTOPHER ZIANNIS

Property Address/Description: 213 INDIAN ROAD CRESCENT¹
Committee of Adjustment File
Number(s): 21 180553 STE 04 MV (A0890/21TEY)

TLAB Case File Number(s): 21 238979 S45 04 TLAB
Hearing date: June 2, 2022

DECISION DELIVERED BY TLAB Panel Member T. Yao

REGISTERED PARTIES AND PARTICIPANTS

Appellant	Roman Troiani
Applicant (for Michael Nguyen and Hang Truong)	Christopher Ziannis
Party	Michael Nguyen
Expert Witness	Tae Ryuck

DECISION DELIVERED BY TED YAO

INTRODUCTION

¹ The author and the TLAB are aware of the implications of the subject's street name. All TLAB business meetings begin with the Aboriginal Land Acknowledgement: We acknowledge the land we are meeting on is the traditional territory of many nations including the Mississaugas of the Credit, the Anishnabeg, the Chippewa, the Haudenosaunee and the Wendat peoples and is now home to many diverse First Nations, Inuit and Métis peoples. We also acknowledge that Toronto is covered by Treaty 13 with the Mississaugas of the Credit.

The Nguyen/Truong family wish to build a third floor addition at the rear of their semidetached house. In order to do so, they seek two variances as shown in Table 1.

Table1. Variances sought for 213 Indian Road Crescent			
		Required	Proposed
1	Floor space index	0.69 times the lot area	0.84 times the lot area
2	Rear main wall height	7.5 m	9.39

The Committee of Adjustment granted the application on Oct 28, 2021. Mr. Troiani, the owner of the other half of the semi, 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 (content of official plans, climate change, preservation of agricultural land etc.) and I did not consider it particularly helpful for this site-specific application within an urbanized built-up area.

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.²

Right to develop

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

² Physical changes to our established *Neighbourhoods* must be sensitive, gradual and “fit” the existing physical character. (p 4.4)

EVIDENCE

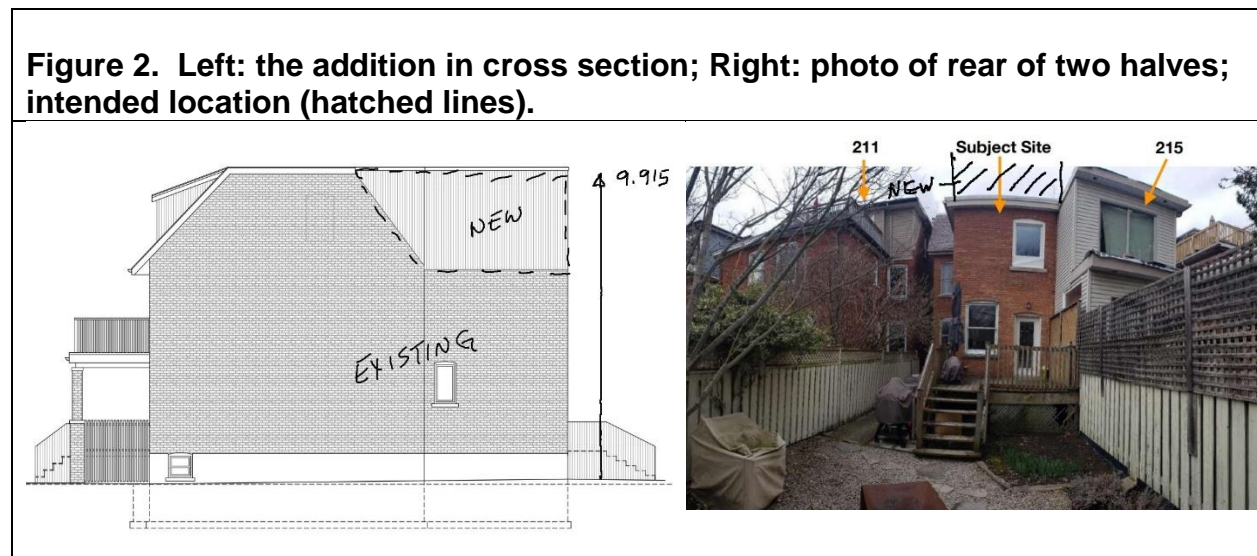
I heard from Mr. Ryuck, whom I qualified to give opinion evidence in the area of land use planning. Mr. Troiani testified on his own behalf.

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

ANALYSIS, FINDINGS, REASONS

Mr. Troiani **supports** the third floor addition but the support is tempered. He states, “even though the variance might be small numerically, it could have devastating consequences.”

The third floor addition will increase the living space from about 1600 sq ft to 1800, all on the existing foundations. A cross section of the new addition and a photo are shown in Figure 2, below. The photo shows the Nguyen/Truong house (brick), the central building, and the Troiani house to the right, the latter having its own addition, (gray siding).

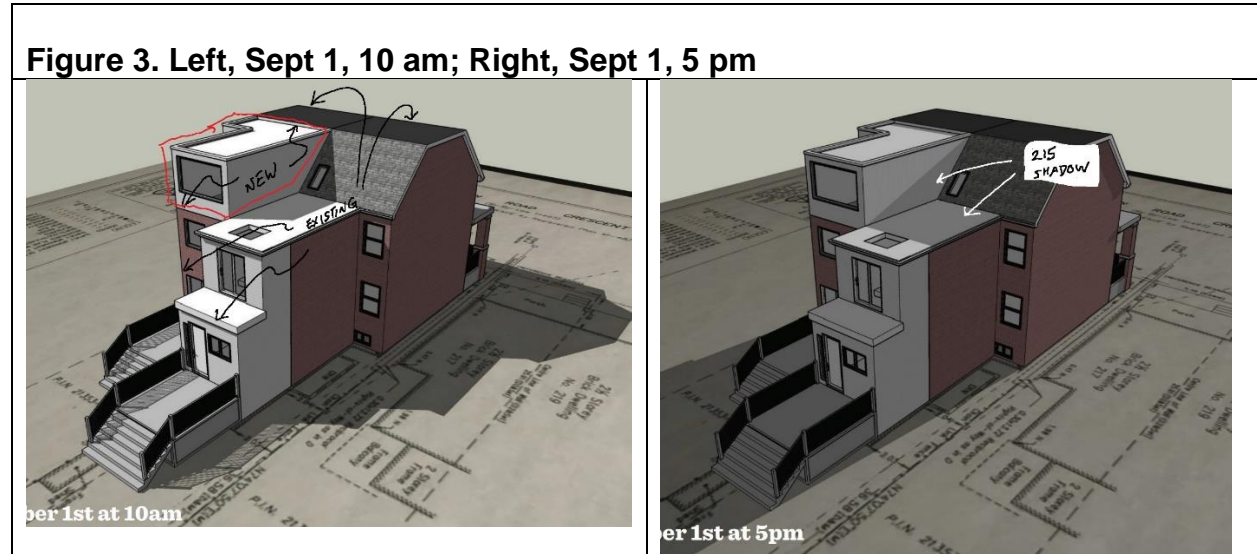


I find that the proposed addition will be less intrusive than the grey addition, built many years ago by Mr. Troiani’s mother before her death. According to Mr. Troiani, she built this addition in full consultation with neighbours, to accommodate living quarters better adapted for her health needs. While I accept that she was considerate of her neighbours’ wishes, both halves of the historical semi are at about 0.75 FSI. She would have required a variance, which Mr. Ryuck calculates at 0.868 and I accept this calculation and find that Mr. Troiani is thus opposing a lesser FSI than he currently enjoys. Assuming the 0.69 requirement was applicable at the time, she would have required a variance, which was permissible provided that she was able to satisfy the Committee of Adjustment as to the four tests. I find Mr. Troiani’s mother’s application

was an appropriate FSI, as is the 0.84 currently being sought. I shall now go on to elaborate my reasons in more detail.

Shadow study

Mr. Troiani's main evidence in opposition consists of a shadow study with times of May, September and December. I accept the shadow study as valid but the times are not standard. Usually, shadow studies are taken at equinoxes of shoulder months, as shadows will be everywhere in December and very limited in June. I have reproduced two of the September 1 studies, since it is closest to September 21.



The proposed addition will be no further back than the historical rear walls, while the maximum length to the present Troiani rear wall, according to Mr. Ryuck, is about the maximum building length of 17 m and thus goes about 4 m further back than number 213's rear wall and the proposed addition.

Mr. Troiani's concern is that one of his flat roof skylight (white) will be shadowed at some times and the other (sloped roof skylight) will be in shadow at all times. The addition is not entirely responsible; the right hand shadow study shows that at 5 pm, Sept 1, Mr. Troiani's own house will cast shadows on the sloped skylight.

So, there will be some shadowing, but this is not the determinative Official Plan test. The decision-maker must be of the opinion that the addition **will respect and reinforce** the existing physical character of the **general** neighbourhood.

Here the general character of this neighbourhood may be ascertained from Mr. Ryuck's evidence and maps; for example, Figure 4, showing nearby homes that exceed the current density provision of 0.69. This is a portion of Mr. Ryuck's broader neighbourhood, whose boundaries I accept.

Figure 4: Mr. Ryuck's map of > 0.69 FSIs homes



The entire east side of the block of Indian Road Crescent on which is situated the 213/ 215 semi is already over the density, as well as other blocks such as the west side south of the Indian Rd and Kenneth intersection. The density does respect and reinforce the general character of the neighbourhood.

Mr. Troiani concluded his case with a request for me to find “A different plan that would alleviate the shading (i.e., shadowing); that would be OK.” As set out previously, some shadowing is inevitable from a southern building on any northern building in Toronto. For example, the older Troiani addition extended back some 3 m, and from the shadow study cast shadows on the next neighbour to the north (see Sept 1, 10 am). I do not find that Mr. Troiani’s request is either reasonable or possible.

Main wall height

In Figure 2, I have marked the main wall height of 9.915 m, which is the same height as the existing flat roof. The maximum permissible main wall height of 7.5 m is intended to induce a pitched roof, which is, on the basis of Mr. Ryuck’s evidence, never sought for typical third floor additions in this neighbourhood. The flat roof height is still below the overall height limit of 10 m and so I find 9.915 overall height and main wall height to also respect and reinforce the general character of the area.

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In conclusion I find that the four tests have been met for both variances, and the variances are reasonable and appropriate.

DECISION AND ORDER

I authorize the variances set out in Table 1 on condition that the construction is in substantial compliance with the plans filed with the Buildings Department.



Ted Yao
Panel Chair, Toronto Local Appeal Body