

**Toronto Local Appeal Body** 

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# **DECISION AND ORDER**

Decision Issue Date Thursday, June 02, 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): GOJKO UZELAC

Applicant(s): PAVLO TOURKO

Property Address/Description: 217 HOWARD PARK AVENUE

Committee of Adjustment File

Number(s): 21 185306 STE 04 MV (A0937/21TEY)

TLAB Case File Number(s): 21 236397 S45 04 TLAB

Hearing date: April 25, 2022

Deadline Date for Closing Submissions/Undertakings: May 25, 2022.

**DECISION DELIVERED BY TLAB Panel Member A. Bassios** 

# **REGISTERED PARTIES AND PARTICIPANT**

Appellant	Gojko Uzelac
Appellant's Legal Rep	Martin Mazierski
Applicant	Pavlo Tourko
Participant	Vaidila Banelis
Expert Witness	Steven Qi

# INTRODUCTION

This is an Appeal of the Toronto and East York panel of the City of Toronto (City) Committee of Adjustment's (COA) refusal of an application for variances for the property known as 217 Howard Park Ave (subject property). The purpose of the application was to alter the existing three-storey detached dwelling by constructing a three-storey rear addition, a front porch addition, first, second and third storey rear balconies, second and third storey front balconies, third storey dormers and to enclose the existing second storey front balcony.

The subject property is located in the Parkdale-High Park area. It is designated *Neighbourhoods* in the City Official Plan (OP) and zoned R (d0.6)(x675) under Zoning By-law 569-2013, and R2 Z0.6 under the former City of Toronto Zoning By-law 438-86 (By-laws).

In attendance at the Hearing were:

- Martin Mazierski, legal counsel for the Owner/ Appellant, and Expert Witness Steven Qi (Land Use Planning); and
- Vaidila Banelis, Participant.

I was advised at the commencement of the Hearing that an agreement had been reached with Mr. Banelis, resulting in revisions to the proposal. Minutes of settlement and revised drawings were provided. Except for the requested floor space index, the requested variances have not changed as a result of the settlement with Mr. Banelis.

Mr. Mazierski requested that the TLAB approve the variances with a "placeholder" for floor space index pending a revised zoning notice that would confirm the exact change to this requested variance.

I advised Mr. Mazierski that I was not prepared to approve a blank variance to be filled in later following the approval. I agreed to proceed with the Hearing on the basis of the evidence prepared for the original floor space index variance request (0.88), bearing in mind that the actual revised request for floor space index will be some degree lower than originally described. Mr. Mazierski committed to providing a Zoning Notice from the City within one month of the Hearing to determine the exact floor space index variance that results from the revisions, which could thereafter be included in my Decision.

In this Decision, I have reflected the revised floor space index variance request (0.85) in accordance with the new Zoning Notice received following the Hearing.

# BACKGROUND

The Owner received approval from the COA on July 15, 2020, for variances to facilitate a rear two-storey and third storey addition.

Construction commenced, but following an Order to Comply under the Building Code, this further application has been made. Increases to the previously granted variances are requested: floor space index (from 0.75 to 0.85) and side exterior main walls facing a lot line (from 9.02 to 10.42) as well as additional variances.

# **REQUESTED VARIANCES**

### 1. Chapter 10.5.40.70.(1)(B), By-law 569-2013

The minimum required front yard setback is 4.5 m. The altered detached dwelling will be located 1.63 m from the front lot line.

# 2. Chapter 10.10.40.10.(1)(A), By-law 569-2013 and Section 4(2)(a), By-law 438-86

The maximum permitted building height is 10 m. The altered detached dwelling will have a height of 10.61 m.

# 3. 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 7.5 m.

The height of the side exterior main walls facing a side lot line will be 10.42 m.

### 4. Chapter 10.10.40.40.(1)(A), By-law 569-2013

The maximum permitted floor space index of a detached dwelling is 0.6 times the area of the lot (225.55  $m^2$ ).

The altered detached dwelling will have a floor space index equal to 0.85 times the area of the lot  $(319.33 \text{ m}^2)$ 

# MATTERS IN ISSUE

This appeal results from the COA's refusal of the requested variances. The Appellant's evidence was unopposed.

Despite the settlement agreement with Mr. Banelis, (a Participant in this matter), the fundamental matter at issue before the TLAB remains whether or not the requested variances satisfy the four statutory tests for approval of variances.

# 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

A summary of evidence is presented here for the purpose of providing some context for the following sections of this Decision. All of the evidence and testimony in this matter has been carefully reviewed and the omission of any point of evidence in this summary should not be interpreted to mean that it was not fully considered, but rather that the recitation of it is not material to the threads of reasoning that will be outlined in the *Analysis, Findings, Reasons* section below.

### Mr. Qi, Expert Witness (Land Use Planning)

Mr. Qi described the context for the proposal as follows:

- Howard Park Ave is classified as a collector road and there is a street car stop less than 100m from the subject property at Howard Park Ave and Parkside Dr.
- There is a wide range of housing in the neighbourhood, including semi-detached, triplexes, fourplexes, and apartment buildings.
- Most buildings in the neighbourhood are two to three storeys in height.
- Some lots on Howard Park Ave have irregular shapes due to the curvature of the road.
- Mr. Barelis lives on one side of the subject property in a two-storey detached house and there is a large three-storey residential building on the other side.

Mr. Qi disputed the description of the application as contained in the COA Decision. In his opinion, the Decision should only have noted the third storey addition and only one balcony on the third storey as the subject of the application, since the two storey addition and the balconies on the first and second storeys had been, he asserted, already approved as part of the previous (July 2020) application.

Mr. Qi described the proposal and its history as follows:

- The building is identified as a three storey detached dwelling, although it contains five rental units.
- The purpose of the renovation is to address outstanding major repairs to the existing building, and to add additional living space for the occupants of the building. No additional units are proposed.
- The current application before the TLAB reflects what had been the Owners' intention all along, which was to have a sloped peaked roof on the rear addition. They had misunderstood the proposal that had been put forward at the July 2020 COA meeting. This is the reason for the two sequential applications.
- The height of the rear addition will match the height of the existing structure.
- The existing second storey front balcony will be enclosed.
- The existing front porch is to be widened on the east side to accommodate access to the second entrance.



Figure 1: subject property and adjacents. , EX2, Tab 4-4, Photo 1

Mr. Qi described the revisions to the proposal that result from the settlement with Mr. Banelis, as follows:

- the depth of the interior living space within the rear 3rd storey addition has been reduced by 7'6", with the roof at the back of the rear 3rd storey addition now sloping down toward the back (south) of the property at a slope of 1:1;
- the protruding rear 3rd storey balcony has been eliminated and replaced by an inset rear 3rd storey balcony;
- the rear second storey balcony has been uncovered and now has no roof over it;

• the dormer on the east side of the rear 3rd storey addition has been reconfigured to better line up with the shallower rear 3rd storey addition.

### Mr. Banelis, Participant

Mr. Banelis supports the approval of the revised proposal. He provided additional context information as follows:

- The site is completely impermeable, there is no landscaping.
- The neighbouring building on the other side of the subject property is also a multiplex.

Mr. Banelis acknowledged that much of the building on the subject property is "grandfathered in".

Mr. Banelis requested that any approval be subject to a condition that construction be in accordance with the revised plans as reflected in the Minutes of Settlement that he signed.

# ANALYSIS, FINDINGS, REASONS

I accept Mr. Qi'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.

Mr. Qi established a neighbourhood study area as prescribed by OP Policy 4.1.5.

### Front Yard Setback

Mr. Qi advised that the front yard setback variance request was triggered by the proposal to enclose the existing second floor front balcony. As such, it was his opinion that the front yard setback reflects the existing condition on the subject property.

It was Mr. Qi's evidence that a (second) uncovered balcony at the front of the building, which is proposed next to the existing balcony which is to be enclosed, does not require a variance.



Figure 2: Proposed front elevation. EX2, Tab 4-7

The enclosure of the existing balcony represents a noticeable change from a simple platform with a railing to what amounts to a projection of the front main wall. Mr Qi downplayed the effect of this transformation of the balcony by saying that it "reflects the existing condition" with respect to the front lot line and front yard setback. In addition, a second, uncovered balcony is proposed, adding to the amplification of the façade.

In his witness statement, Mr. Qi stated that the front yard setback variance "is only for a pinch point, and the rest of the front yard setback of the dwelling will be larger than the requested front yard setback". I have included below an extract of the Site Plan to which I was referred. On the basis of the illustration, I do not consider the incursion into the front yard setback to be a "pinch point", as the entirety of the enclosed balcony, itself a substantial part of the width of the façade, is within the setback line as depicted.



I accept Mr. Qi's evidence that the angle of the curve where the subject property is located is more acute than most other conditions in the neighbourhood and that the positioning of the existing house on the subject property and the house at 219 Howard Park Ave have historically maintained a narrower front yard setback than most of the lots in the neighbourhood.

I give some weight to the fact that the porch and the simple balcony have existed, and have projected into the front yard to the same extent as is proposed for the enclosed balcony. This, coupled with the nature of Howard Hill Ave as a busy collector road with a streetcar line leads me to find that the front yard setback is acceptable and that the proposal respects the character of the neighbourhood and maintains the intent of the Zoning By-law. I find also that the front yard setback variance is desirable and minor.

### Maximum Building Height

Variances for height are requested from both the harmonized City of Toronto Zoning Bylaw and that of the former City of Toronto By-law.

The height variance is required for the third floor addition in the rear, which is now proposed to have a pitched roof and not a flat roof as was proposed in the application approved by the COA in July 2020. As the height of the roof for the proposed addition in the rear matches the height of the existing house, the proposed height for which the variance is sought will not be impactful to the streetscape and I find that the proposed height maintains the character of the neighbourhood. I accept Mr. Qi's evidence that numerous other variances have been granted for similar heights in the neighbourhood.

I find that the variance for maximum height meets the four statutory tests.

### Maximum Height of Side Exterior Walls

The regulation of main wall heights in this neighbourhood was introduced with the adoption of the harmonized City of Toronto By-law 569-2013. Much of this mature neighbourhood was built without specific limitations on exterior wall heights prior to this adoption. Mr. Qi's photographic evidence shows examples of older homes with taller main walls and dormers.

According to Mr. Qi's evidence, the variance is required for the east elevation of the proposal, where an additional dormer has been proposed. The combined width of the dormers proposed for the east wall of the building would total more than 40% of the total width of the side wall, which is the maximum allowed by the By-law. The west elevation adjacent to Mr. Banelis is compliant with this provision of the Zoning By-law.

Mr. Qi's table of COA Decisions shows a record of other examples that have been approved for taller or similar wall heights within his study area. In reference to OP Policy 4.1.5, I find that this physical characteristic of dormers and taller exterior wall height exists in the neighbourhood in substantial enough numbers, as described in Mr. Qi's evidence, and that this feature as proposed is compatible with the prevailing physical character of the neighbourhood.

I find that the requested variance for the height of side exterior walls meets the four statutory tests.

### Floor Space Index (FSI)

• Massing and Density

OP Policy 4.1.5 requires that development respect and reinforce the existing physical character of each geographic neighbourhood and lists criteria to guide consideration of this policy. Criterion c) addresses prevailing heights, massing, scale, density and dwelling type of nearby residential properties.

The Zoning By-law uses floor space index as an indicator of density on a site. While massing is an architectural term, FSI is a numerical indicator that is used in the By-law to represent density on a lot. (FSI is the ratio between the gross floor area (size of house) and the area of the lot).

Mr. Qi stated that the intent of the FSI provision in the By-law is in large part to regulate the amount of gross floor area which can be built on a property and he related the intent of the provision to massing and built form. He supported the proposed FSI partially on the basis that most of the "increased massing" will be underneath a sloped roof at the

rear of the property and that the "new dormer" will be on the east side of the property away from Mr. Banelis's property.

I do not accept that the massing of a third floor addition is mitigated by being covered with a sloped roof. Neither am I persuaded that the intent of the By-law in regulating overdevelopment is coloured by whether or not the addition faces onto the property of a Participant in these proceedings.

• FSI and overdevelopment

In his expert witness statement, Mr. Qi suggests that since the proposal meets the building length, depth and side and rear yard setbacks, "this means that additional gross floor area (GFA) can be located in the proposed location on the subject property at the rear, *which demonstrates that this proposal is not an overdevelopment of the subject property*" (my emphasis). I find this a problematic statement and take issue with this assertion.

The three-dimensional space defined by the maximum building length, maximum building depth, maximum height, and by the various setback requirements prescribed in the By-law – known as the building envelope – is not *cumulatively* "as of right". Full build out of the building envelope continues to be restricted by the imposition of a maximum FSI. An applicant may enjoy the full scope of each individual maximum or minimum provision in the By-law, but the full deployment of all of them simultaneously is not an entitlement, nor is it the standard for defining overdevelopment.

The FSI provision is not, in my opinion, subservient to the building envelope which is sketched out by the maximums and minimums of building height, length, depth and setback provisions. I also note in the context of this approach, that even if the proposal does meet the building length and some setback provisions, the proposal requires additional variances for front yard setback, overall height and exterior wall height.

• Prevailing density

Mr. Qi provided a list of examples in the neighbourhood where larger or similar FSI's have been approved. On examination of the table of decisions provided at Tab 4-2, I find that, as contemplated in OP Policy 4.1.5, there are sufficient examples in the evidence to show that FSI's similar or greater than the proposal exist in substantial numbers and therefore the proposal respects the prevailing density of the neighbourhood.

It is solely on the basis of the data provided in the decision table that I reach my decision that the FSI variance maintains the intent and purpose of the Official Plan. I give no weight to Mr. Qi's "guestimates" of FSI's on other, undocumented, neighbouring properties, arrived at by eyeballing aerial photographs.

I am mindful that this proposal is for an expansion of an existing building that contains five relatively affordable rental units on a collector road served by a streetcar line. A substantial structure exists adjacent to the subject property on the east. To the west,

the proposal has been revised to respect the context of Mr. Banelis's house. A sufficient rear yard setback has been protected.

Mr. Mazierski described the increase in FSI from 0.75 (approved in July 2020) to the current request for 0.85 FSI as "negligible". I do not agree. In my opinion, the successive additions and alterations that have been proposed for the subject property are close to the limit of what is an acceptable amount of density for the site.

Nonetheless, recognizing the immediate context and the broader neighbourhood, I find that there will be no undue adverse impacts from the proposed FSI, that it qualifies as minor, and otherwise meets the four tests of s. 45(1).

### CONCLUSION

I find that the requested variances individually and cumulatively meet the four tests of s. 45(1) of the *Planning Act.* 

I find that the reduction in the requested floor space index to be minor and that no further notice is required in accordance with s.45(18.1.1) of the *Planning Act*.

# **DECISION AND ORDER**

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

A. Bassios Panel Chair, Toronto Local Appeal Body

# APPENDIX A

# APPROVED VARIANCES AND CONDITIONS OF VARIANCE APPROVAL:

### VARIANCES:

### 1. Chapter 10.5.40.70.(1)(B), By-law 569-2013

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### 2. Chapter 10.10.40.10.(1)(A), By-law 569-2013 and Section 4(2)(a), By-law 438-86

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

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The height of the side exterior main walls facing a side lot line will be 10.42 m.

### 4. Chapter 10.10.40.40.(1)(A), By-law 569-2013

The maximum permitted floor space index of a detached dwelling is 0.6 times the area of the lot (225.55  $m^2$ ).

The altered detached dwelling will have a floor space index equal to 0.85 times the area of the lot (319.33 m<sup>2</sup>)

### **CONDITION:**

The proposal shall be constructed substantially in accordance with the following plans and drawings, as prepared by Pavlo Tourko, dated April 202022, and attached hereto.

- Site Plan and Cover Page (A-1)
- Basement Floor Plan (A-1)
- Ground Floor Plan (A-3)
- Second Floor Plan (A-4)
- Third Floor Plan (A-5)
- Roof Plan (A-5.1)
- Canopy Structural Plan (A-5.2)
- Front (North) Elevation (A-6)
- Side (East) Elevation (A-7)
- Percentage of Unprotected Openings or Glazed Areas (A 7.1)
- Back (South) Elevation (A-8)

- Side (West) Elevation (A-9)
- Section A (A10)
- Section B (A11)
- Details (A-12)
- General Notes (A-13)



of 29







of 29



















of 29





of 29

