

DECISION and ORDER

Decision Issue Date Wednesday, May 18, 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): TIAN LIN
Applicant(s): JING CHAO LIU

Property Address/Description: 193 WOODSWORTH RD

Committee of Adjustment File Number(s): 0654/21NY

TLAB Case File Number(s): 21 239773 S45 15 TLAB

Hearing date: April 27, 2022

DECISION DELIVERED BY TED YAO

REGISTERED PARTIES AND PARTICIPANTS

Name	Role	Representative
Tian Lin and Qiang Kang	Appellants	
Jing Chao Liu	owner (did not appear at hearing)	Martin Mazierski
Steven Qi	Expert Witness	

INTRODUCTION

Mr. Liu wishes to tear down his house at 193 Woodsworth Rd and build a larger one, larger than the old house and closer to his neighbour at 195 Woodsworth. In order to this, he seeks the variances in Table 1.

Table1. Variances sought for 193 Woodsworth Rd			
		Required	Proposed
Variances from Zoning By-law 569-2013 and North York zoning by-law 7625¹			
1	Coverage	0.30 times the area of the lot	0.32 times the area of the lot
2	East yard setbacks	1.8 m.	1.5 m
3	West side yard setback	1.8 m.	1.5 m
4	Building height	8.8 m	9.58 m
5	Finished first floor height	1.5m.	2 m

The Committee of Adjustment granted the variances on November 4, 2021 with one exception, refusing a coverage of 33.9% and “modifying” it to 32%. Mr. Lin, the neighbour, appealed and so the application came to the TLAB. Mr. Lin’s appeal starts the process afresh and Mr. Liu must now demonstrate all the variances meet the tests under the *Planning Act*, including the ones the Committee granted. Mr. Liu has agreed to stay at 32% coverage and has forgone the original request of 33.9%.

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 etc.). Since this hearing focusses on height, coverage and side yard setbacks, I found it was not necessary to consider whether these variances are “consistent with” and “conform with” those higher level and multi-municipal wide documents.

The variances must comply with s. 45(1) of the *Planning Act* and therefore 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.

¹ Because appeals against current zoning by-law 569-2013 are still outstanding, plan examiners review applications under two bylaws, resulting in additional or duplicate variances.

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 proponent, Mr. Liu 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 Mr. Qi, whom I qualified to give opinion evidence in the area of land use planning. Mr. Liu testified on his own behalf. I visited the site and made a site visit for the sole purpose of better assessing the evidence given at the hearing.

ANALYSIS, FINDINGS, REASONS

As set out above, Mr. Liu sought 33.9% coverage, which was reduced by the Committee so even if Mr. Lin had not appealed, Mr. Liu would have had to draw up new plans. During the interval between the appeal and the TLAB hearing, the parties discussed the outcome. Mr. Liu took the position that the Committee’s decision should be the final design. Mr. Lin suggests that the variances should be further reduced, saying, “Why make the present situation worse?”

The new plans were produced very recently and since there has been a change from the original application, I am also asked to make a special order waiving further notice³. I do so, because the changes are “downward” to reduce the variances and because Mr. Lin has had full notice and indeed urges me to make further downward changes, not being satisfied with the downward change already made.

² Physical changes to our established *Neighbourhoods* must be sensitive, gradual and “fit” the existing physical character. (p4.4)

³ See for example, *Bickham v. Hamilton (City)*, 2016 CanLII 72356 (ON LPAT); “The Board found that the second variance of the side yard would, escalate, rather than diminish, the potential impact of the sunroom addition, an outcome clearly at odds with the intent and purpose of s. 45(18.1.1) . .

Serpa v Toronto (City), 2017 CanLII 74744 (ON LPAT); This revision to the variances, pursuant to s. 45(18.1.1) of the Act was allowed because it involved a **reduction** of the requested variances”

Dong v. Toronto (City), 2016 CanLII 8496 (ON LPAT) “The Board finds that as the application as modified, represents a **betterment** in the relief being sought, pursuant to s. 45(18.1.1) of the Planning Act , no further notice is required.” The Board explained that not only is this common practice, but it is also something that is permitted by the Act.

His appeal letter states that the building is over-coverage, too high and will “block” sunlight in the rear yard during the afternoon.⁴

Figure 2. south side of Woodsworth. Subject 193 Woodsworth and other properties in adjoining blocks with >32% coverage



⁴ We object to the oversize of the resident dwelling and the exceeding building height. The new building not only oversize (33.9%), but also too high (notice that the roof top will be 4 feet more (sic.) higher, $9.58\text{m} + 4\text{ft} = 10.8\text{m}$, per the design drawings), that will have big impacts on the environments, and break the harmony of the community. This proposal is definitely not desirable for the appropriate development or use of the land. As neighborhood, the oversize and much too higher of the building **will block most the sunlight to our backyard**. Per the design, the setback of house extends 6 meters, compared with the existing house depth 10 meters, that is increased 60% in size. And the new height of 9.58m is more than 4m higher than the current house. **The sunshine to our backyard in afternoon will be totally blocked**. As we become older, we usually sit or walk at our backyard to enjoy sunshine. (Lin appeal, Nov. 16, 2021)
We demand that the new building designed by Ron Custom Homes should be modified to comply with the applicable Zoning By-law(s). The intention to violate the Zoning By-law(s) is not desirable, that we are strongly against.

Decision of Toronto Local Appeal Body Panel Member: T. YAO
TLAB Case File Number: 21 239773 S45 15 TLAB

I first deal with height, which is a variance from the former North York zoning by-law passed on June 25, 1952. There is no variance from the current 2013 by-law, which permits a height up to 10.0 and since the Liu design is 9.58 m. As explained in Footnote 1, the previous By-law 7625 must be considered until the time all appeals are dismissed against the 2013 by-law, even if no appeals were brought against this 10 m height, except for flat roofs, and Liu design is for a pointed roof. I consider the height variance more of a technicality.

I now turn to coverage. Mr. Lin said:

In the hearing, when committee asked for explanation on why the new house is designed so big, the designer said because the owner needs more rooms for the residents, father in-law, mother in-law, parents, and so on. That explanation is not true.

Whether the construction is for Mr. Liu's family, or to be built by a professional builder for sale, is not relevant. I am directed by the legislation to look at comparable properties to see if the building with extra coverage will "fit into" that study area. I find that it does. Mr. Liu did not attend at the TLAB hearing. If he did attend at the Committee of Adjustment and said something that is untrue, this is not something that I can address since Mr. Lin's appeal starts the process afresh and this is not an appeal on what happened at the Committee of Adjustment.

Mr. Qi wrote that, in the vicinity, there were 9 instances of **Committee decisions** greater than 32% as well as five properties for which he **estimated** from aerial surveys were also greater than 32% coverage.⁵ These estimated properties are shown in Figure 2, which is a portion of the interactive zoning schedule on which I copied the addresses from Mr. Qi's witness statement from footnote 5.

Turning to the minor test, I am to consider whether the variances are numerically small and whether they cause an undue adverse impact on Mr. Lin. "Undue", is a subjective measure; because a larger building would cause some impact, even if

⁵Paragraph 15.7.1.7. Other lot coverage variances approved in the neighbourhood study area include, but are not limited to:
162 Woodsworth Rd approved at 33.31% of the lot area; 170 Woodsworth Rd approved at 30.50% of the lot area; 23 Bannatyne Dr approved at 32.29% of the lot area;
93 Bannatyne Dr approved at 33.40% of the lot area; 30 Davean Dr approved at 35.70% of the lot area; 35 Davean Dr approved at 36.7% of the lot area; 1 Silvergrove Rd approved at 35.90% of the lot area.

Paragraph 15.7.1 8. These properties are along the stretch of Woodsworth Rd from Bannatyne Dr to the west to Northey Dr to the east, prior to the properties on the south side of Woodsworth Rd that become semi-detached dwellings. The properties that are higher than the proposal include the following: 169 Woodsworth Rd appears to have a lot coverage of 39.8%. 171 Woodsworth Rd appears to have a lot coverage of 35.7%. 179 Woodsworth Rd appears to have a lot coverage of 35.6%. 181 Woodsworth Rd appears to have a lot coverage of 40.0%. 185 Woodsworth Rd appears to have a lot coverage of 42.5%. (Qi Witness Statement)

Decision of Toronto Local Appeal Body Panel Member: T. YAO
TLAB Case File Number: 21 239773 S45 15 TLAB

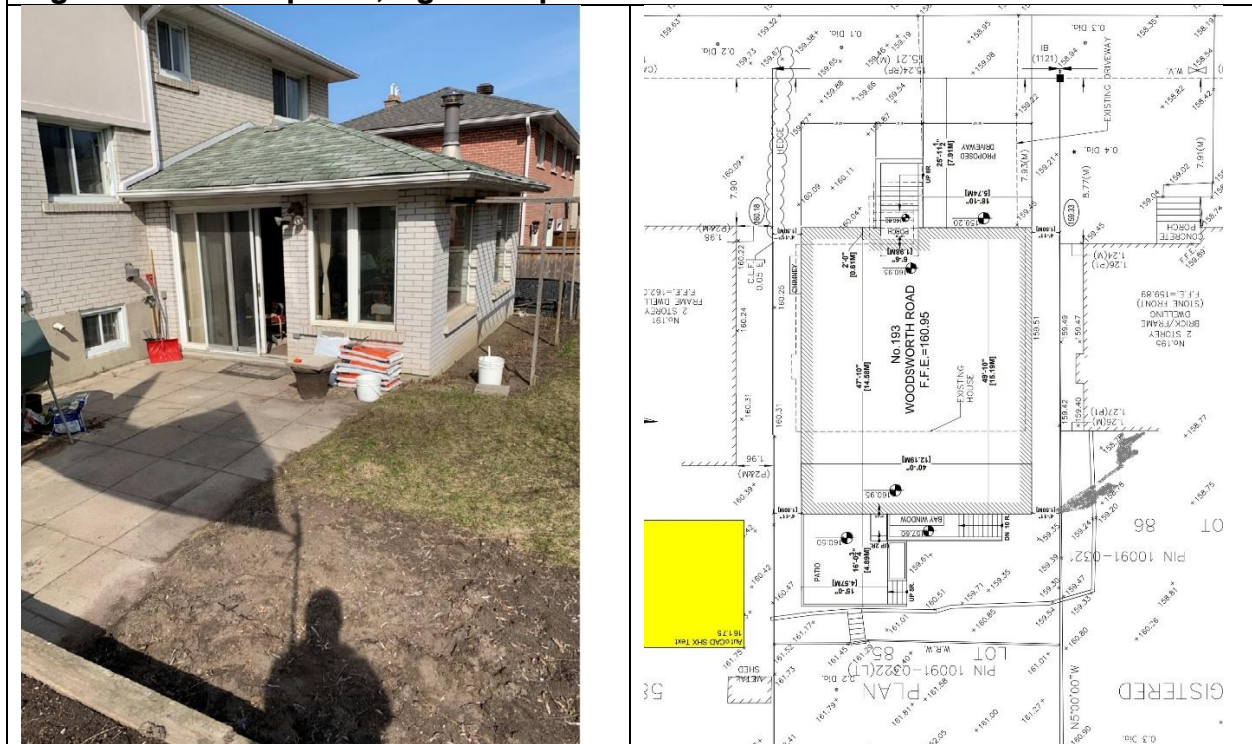
completely within the zoning standard. Mr. Lin stated that there was an adverse impact on his property in that his sunlight would be blocked. This would be especially true for the late afternoon, since he and his wife exercise in the rear yard after work.

Sunlight is important to all living creatures. At noon sunlight should be avoided, so 4 to 7 is the best time to do the exercises, but at 4 to 7 all the sunlight is blocked.

Figure 3 below shows a photo taken by Mr. Lin showing himself standing on the common property line holding a 4 m high pole with a flag. The time he said was about April 6, at 4 PM. The shadow from the flag falls on the patio near the south wall of the house between the Liu lot and a small one storey addition Mr. Lin built. The patio is where he and Ms. Kang exercise in the afternoon and evening.

I acknowledge that there may be shadowing on this patio at the times he specified. However, the Official Plan does not contemplate that neighbourhoods will be “frozen in time” and the proper comparison is that the variance will be compared as if both properties might be at full build out considering their legal permissions. The Liu residence is shorter than permitted: 15.19 m (17 m permitted), and less deep than permitted: 16 m (19 m is permitted). Mr. Lin, the appellant, can build to those lengths and depths without any additional permissions. There is no guarantee that reasonable changes will not occur and the Official Plan and zoning by-laws contemplate this. I find that the general intent of the length and depth permissions is maintained.

Figure 2. left Lin photo; right site plan with sketch of same shadow



I accept that the coverage variance of 32% “fits into” the neighbourhood and therefore the Official Plan intent is maintained, based on the evidence provided.

I now turn to the side yard setbacks.

Figure 4. Schematic showing present side yards (see boxes with arrows) and proposed setbacks below (measurements in metres)

191	→	←	193 Liu	→	←	195 Lin
	1.602	1.27		1.86	1.24	
		1.5 (new)		1.5 (new)		

The current dwelling has a wider side yard on Mr. Lin’s side than on the other side. Mr. Liu proposes to equalize the side yards by seeking two 1.5 m side yards (1.8 m required.) This seems reasonable to me and the changed standard from the zoning by-law of 1.5 m is only 0.3 m which is minor.

Mr. Lin was further concerned that bringing the wall of the proposed new house nearer to his would cause drainage problems. I asked Mr. Mazierski what the process would be when the Buildings Department considers the application under the building code and other applicable legislation and he was unsure. Since the two lots are sloped and proposed site plan does seem to contemplate continuation of a retaining wall, which shows some damage,. I am imposing conditions regarding lot grading, which are standard conditions the TLAB imposes to protect appropriate slope and drainage?

In conclusion, I find the variances meet the tests under the *Planning Act*. I note that Mr. Lin has taken the position that he would prefer the Liu house to be entirely within the zoning by-law. As set out previously, there is no “right” to variances but there is an established process if a person wishes to undertake it and this is the law laid out in the *Planning Act*.

Decision and Order

I make an order under s. 18.1.1 of the *Planning Act* dispensing with further notice because the change to the original plan is downward and minor.

I authorize the variances in Table 1 on the following conditions:

- 1 Construction shall be in substantial compliance with the plans on file at the Buildings Department and which are the subject of a plan examination by Richard McMann, April 21, 2022.

Decision of Toronto Local Appeal Body Panel Member: T. YAO
TLAB Case File Number: 21 239773 S45 15 TLAB

2. Prior to the issuance of a demolition and/or building permit, the owner shall submit a grading and drainage plan to the satisfaction of the City's Engineering and Construction Services Division.

3. Lot grading for the site shall be to the satisfaction of the City of Toronto Building Division.



X

Ted Yao
Panel Chair, Toronto Local Appeal Body