

DECISION AND ORDER

Decision Issue Date: Tuesday, July 26, 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): BLANCA CALABRETTA, DENNIS ROSSETTI

Applicant(s): IDIM ARCHITECTS INC

Property Address/Description: 106 GOVERNMENT RD

Committee of Adjustment File

Number(s): 21 232434 WET 03 MV (A0554/21EYK)

TLAB Case File Number(s): 22 109056 S45 03 TLAB

Hearing date: July 21, 2022

DECISION DELIVERED BY TLAB Panel Member G. Swinkin

REGISTERED PARTIES AND PARTICIPANTS

Applicant	IDIM ARCHITECTS INC
Appellant	BLANCA CALABRETTA
Appellant	DENNIS ROSSETTI
Party (TLAB)/Owner	PARMEET BHATIA
Party's Legal Rep.	RUSSELL CHEESEMAN
Party's Legal Rep.	STEPHANIE FLEMING
Participant	VITO CALABRETTA
Expert Witness	STEVEN QI

BACKGROUND

Parmeet Bhatia (the “Owner”) is the owner of property in the former City of Etobicoke municipally known as 106 Government Road (the “Property”). It is presently improved with a detached dwelling. The Owner wishes to upgrade the structure by constructing two-storey front and rear additions, a new front porch, a rear yard deck and a basement walk out.

The proposal requires variances from City of Toronto Zoning By-law 569-2013 and one variance from a provision of the Etobicoke Zoning Code that currently continues in effect (collectively referred to as the “Zoning By-laws”).

The Owner made application to the Toronto Committee of Adjustment (the “Committee”) to secure variance relief from the provisions where the proposal would not comply.

The specific relief sought from the Committee was enumerated as follows:

REQUESTED VARIANCE(S) TO THE ZONING BY-LAW:

1. Section 900.3.10.(35)(A), By-law 569-2013

The maximum permitted gross floor area of a detached dwelling, including an attached or detached is 150 m² plus 25% of the lot area (245.77 m²), up to a maximum floor space index of 0.5 (191.55 m²). The altered dwelling, including the attached garage, will have a floor space index of 0.56 (213.24 m²).

2. Section 10.5.40.70.(1)(B), By-law 569-2013

The minimum required front yard setback is 13.99 m.
The altered dwelling will be located 12 m from the front lot line.

3. Section 10.20.40.70.(3)(C), By-law 569-2013

The minimum required side yard setback is 1.2 m.
The proposed front addition will be located 0.54 m from the west side lot line.

4. Section 10.20.40.20.(1), By-law 569-2013

The maximum permitted building length is 17 m. The altered dwelling will have a length of 18 m.

5. Section 320-42.1.B.(2) Etobicoke Zoning Code

The maximum permitted soffit height is 6.5 m.
The altered dwelling will have a soffit height of 7 m.

6. Section 10.5.40.60.(1)(A)(i), By-law 569-2013

A platform without main walls, attached to or less than 0.3 m from a building with a floor no higher than the first floor of the building above established grade may encroach into

the required front yard setback 2.5 m if it is no closer to a side lot line than the required side yard setback. The proposed front porch (platform) will encroach 2.99 m into the required front yard setback and will be located 0.7 m closer to the west side lot line than the required setback.

7. Section 10.5.40.60.(7)(B), By-law 569-2013

Roof eaves may encroach a maximum of 0.9 m provided that they are no closer than 0.3 m to a lot line. The proposed eaves will be located 0.11 m from the west side lot line.

8. Section 10.5.80.10.(3), By-law 569-2013

A parking space may not be located in a front yard or a side yard abutting a street. The proposed parking space will be located in the front yard.

By way of relevant background, Mr. Qi advised that the Owner had been informed that City Planning Dept. staff had concerns with the proposed building length and were recommending to Committee that the variance for building length requested in the original application at 19.51 m be refused. In response to that comment, the Owner's agent was authorized to modify that request and reduce the requested length to 18 m as noted in variance 4 above. On the strength of that modification, the City Planning Dept. sent a subsequent memo to the Committee that they had no concerns with the modified application. Also, the City Transportation Services Dept. advised the Committee that they had no concerns with the application.

The Committee granted the relief requested as set forth in the modified application. That decision was appealed to the Toronto Local Appeal Body (the "Tribunal") by the abutting property owners, Blanca Calabretta, who resides at 104 Government Road (immediately to the east of the Property), and Dennis Rossetti, who resides at 108 Government Road (immediately to the west of the Property) (collectively referred to as the "Appellants" and individually by their names).

MATTERS IN ISSUE

The Appellants filed individual Notices of Appeal but there was much in common in their Notices.

The Appellants raised a concern about whether a proposed cold storage area in the basement continued to be part of the proposal. The Appellants were of the view that the front extension would put the dwelling too far beyond what they considered to be an appropriate building line for the street. The Appellants were concerned that aspects of the extensions would result in an invasion of their privacy, create an appearance of overcrowding and blockage of sunlight. Mr. Rossetti had concerns about whether the proximity of the eaves on the proposed dwelling and his own house might result in snow accumulation and bridging on the roofs.

With respect to the front yard parking space, the Appellants were of the view that this was not compatible with the character of the area. Ms. Calabretta additionally had concerns about maintenance of the grass strip that presently runs between the concrete tracks of the mutual driveway that their property shares with the Property. And she also had reservations as to removal of snow from the driveway given that the area proposed to be devoted to the front yard parking space would not be available for storage of snow.

JURISDICTION

Provincial Policy – S. 3

A decision of the Tribunal 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 Tribunal Panel must be satisfied that the applications meet all of the four tests under s. 45(1) of the *Planning 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

Counsel for the Owner called a consulting land use planner to provide evidence in support of the decision of the Committee and the variance relief which the Committee granted. Mr. Steven Qi is a Registered Professional Planner and was qualified by the Tribunal to provide opinion evidence on land use planning matters in the proceeding.

Mr. Qi was retained after the appeals were filed for the purpose of appearing at this hearing of the Tribunal. Mr. Qi had pre-filed a Witness Statement, which was taken in as Exhibit 1, and an extensive Document Disclosure, which was taken in as Exhibit 2.

The Property and the Proposal

Mr. Qi described the Property as being on the north side of Government Road lying between Prince Edward Drive N. and Royal York Road. It is generally rectangular in

shape, with a slightly wider frontage, the lot becoming narrower towards the rear of the Property; with 8.43m of frontage, and the width of the property at the rear lot line being 8.31m. The Property has a depth of approximately 45.81m, as depicted on the survey which was provided to him and filed in the proceeding. The fact that the side lot lines are not parallel was underlined by him as this came to bear upon the side yard relief that was required at the front of the house, given that the house is being oriented to the front lot line.

The proposal is to alter the existing 2-storey detached dwelling by constructing 2-storey front and rear additions, a new front porch, a rear yard deck and a basement walk out. A governing consideration in the design, as explained by Mr. Qi, is that the proposed front two storey addition will generally match the footprint of the existing front porch of the dwelling. In this way, the current excess of front yard setback will not be exacerbated and the relative relationships of the adjoining buildings will be maintained. The additions will be constructed to modern standards to meet the needs of a modern family/occupants while, in his opinion, observing the intent of the Official Plan by maintaining the style and built form within the area and neighbourhood.

He further suggested that there is no policy requirement that new construction mimic or be identical to existing buildings within the neighbourhood, and offered the view that having buildings that look too much alike detracts from the character and vibrancy of the neighbourhood. It was his opinion that the proposal will result in a compatible built form, which is a detached dwelling with additions and that this is a common characteristic of the neighbourhood and will fit harmoniously into the neighbourhood.

The Neighbourhood

Mr. Qi provided the Tribunal with an overview of the area and advised that the Property is within what is referred to as the Kingsway South neighbourhood.

The residential buildings in this neighbourhood consist of mostly single detached residential dwellings. The buildings appear to vary in height, but generally most buildings are 2-to-3 storeys in height. The dwellings in this neighbourhood generally have integral garages or detached garages at the rear accessed by a driveway on one side of the dwelling. Some dwellings have garages at the front accessed by a driveway and some dwellings have parking spaces located in the front yard of the property.

The neighbourhood is characterized by both narrow and wide lots with small side yard setback distances on one or both sides of a dwelling, the larger side yard width typically driven by a driveway on the side that provides access to the rear yard garages for some of the properties.

He described it as a pleasant and quiet urban neighbourhood of residential uses, which has a variety of housing styles.

The Zoning

The Property is currently zoned RD (f13.5; a510; d0.45) (x35) under City Zoning By-law 569-2013. This Residential Detached Zone label permits a single detached house, with

a minimum frontage of 13.5m, a minimum lot area of 510m², and a maximum floor space index ("FSI") of 0.45 times the lot area. HOWEVER, It is also subject to site-specific exception 35, which regulates maximum gross floor area on a lot. The maximum gross floor area, including the floor area of an attached or detached garage, is 150m², plus 25% of the lot area, up to a maximum floor space index of 0.5.

Provincial Planning Policy

Mr. Qi canvassed various policies in the PPS and the Growth Plan, which will not be detailed here as those policies are essentially more high level and not of immediate import to the application before the Tribunal. But Mr. Qi informed the Tribunal that, in his opinion, the proposal is consistent with the PPS and conforms with the Growth Plan. The Tribunal accepts that opinion.

City OP Policy

Again, Mr. Qi took the Tribunal to the key policies in the OP that bore upon this appeal.

Included in that review were the policies in Section 2.3 of the OP, which section is titled "Stable but not Static: Enhancing our Neighbourhoods and Green Spaces". Within that section, subsection 2.3.1 is the "Healthy Neighbourhoods" section. Mr. Qi advises that the neighbourhood has been undergoing renewal over time with the redevelopment of older dwellings modified/altered and/or replaced with new and more efficient dwellings.

Associated with this policy and to demonstrate the level of renewal and its dependence upon the variance of the type of zoning provisions which are at play in this appeal, Mr. Qi provided the following list of representative developments in the general vicinity of the Property:

- 108 Government Road, approved for a second storey addition to the front, east side and rear walls with a front yard setback of 12.1m, and a side yard setback of 0.55m, as well as a front yard parking space.
- 84 Dunedin Dr, approved for a two storey addition with an FSI of 0.67 times the lot area (214m²), a side yard setback of 0.62m, a roof eaves encroachment of 0.27m, and a front yard parking space.
- 91 Dunedin Dr, approved for a two storey addition, with an FSI of 0.61 times the lot area (261.65m²), side yard setbacks of 0.44m and 0.72m, a soffit height of 7.04m, and a roof eaves encroachment of 0.09m.
- 17 McClinchy Ave, approved for a two storey addition, with an FSI of 0.75 times the lot area (256.41m²), side yard setbacks of 1.03m and 0.89m, and a soffit height of 7.1m.
- 485 Prince Edward Dr N, approved for a two story addition, with an FSI of 0.61 times the lot area (284.5m²), side yard setbacks of 0.85m and 1.16m, and a soffit height of 7.12m.

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- 167 Kingsway, approved for a two-storey addition, with an FSI of 0.67 times the lot area (302.41m²), side yard setbacks of 0.63m and 0.76m, a soffit height of 6.95m, and a roof eaves encroachment of 0.08m on one side and 0.17m on the other side.

Policy 2.3.1.1 says that neighbourhoods are physically stable areas and development within neighbourhoods will be consistent with and respect and reinforce the existing physical character of buildings, streetscapes and open space patterns.

Mr. Qi asserts that the proposal for an addition to the existing dwelling on the existing lot respects and reinforces the existing physical character of the buildings, streetscapes, and does little to no change to the open space pattern in this area. There are other developments in the area that are 2 & 3 storeys in height, in the form of additions to the existing dwelling as he depicted in his photo study.

Section 3.1.2 is the “Built Form” section. This policy directs that “future development will be built on infill and redevelopment sites and will need to fit in, respecting and improving the character of the surrounding area.”

This policy section has a variety of clauses that delineate the elements that represent appropriate fit. Mr. Qi went through a detailed review of those elements and how the proposal in this instance was compliant with those elements.

The Property is designated “Neighbourhoods” as shown on Official Plan Map #14. When contemplating development within a Neighbourhood, Mr. Qi advises that one must consider the Policies under Section 4.1.5, which is the section dealing with “Development Criteria in Neighbourhoods”.

The policies of this Section direct new development to respect and reinforce the existing physical character of each geographic neighbourhood, including a list of characteristics found in sub-paragraphs a) through i). According to Mr. Qi, the intent of this policy was not to require proposed development to replicate the “majority” within the immediate context, but to ensure that proposed development will be in keeping with what already exists and will fit-in harmoniously. His view is that this harmonious integration is particularly important in proximity to the Property, to prevent reliance upon far-reaching examples to justify incompatible change to different pockets of the neighbourhood.

In keeping with the direction in Policy 4.1.5 of the OP, Mr. Qi identified a general neighbourhood and an immediate context relevant to the Property. His general neighbourhood is bounded by the south side of the properties on the south side of Dundas St. W to the north (north of which those properties are in a Mixed Use designation), Prince Edward Dr N. to the east, and The Kingsway to the west and south. These properties share a common zone category, are all detached dwellings and have common built form characteristics.

His evidence included a table which demonstrates that there are other alterations to existing dwellings or new developments approved with similar FSI and GFA in the Geographic Neighbourhood area, which include (but are not limited to):

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- 90 Government Road, approved for a GFA of 150m² plus 29% of the lot area (344.4 m²).
- 101 Government Road was severed into two lots, which were approved for GFA of 262.3m² and 251.7m².
- 124 Government Road, approved for a GFA of 150m² plus 26% of the lot area (322.69 m²).
- 138 Government Road, approved for a GFA of 150m² plus 36% of the lot area (371.4 m²).
- 18 Dunedin Dr, approved for an FSI of 0.61 times the lot area or a GFA of 150m² plus 27% of the lot area (271.29 m²).
- 76 Dunedin Dr, approved for an FSI of 0.65 times the lot area or a GFA of 150m² plus 30% (278.98 m²).
- 77 Dunedin Dr, approved for an FSI of 0.72 times the lot area or a GFA of 150m² plus 39.7% (334.7 m²).
- 84 Dunedin Dr, approved for an FSI of 0.67 times the lot area (214 m²).
- 91 Dunedin Dr, approved for an FSI of 0.61 times the lot area (261.65m²).
- 96 Dunedin Dr, approved for an FSI of 0.87 times the lot area or a GFA of 150m² plus 40% (278.2 m²).
- 17 McClinchy Ave, approved for an FSI of 0.75 times the lot area or a GFA of 150m² plus 31.02% (256.41 m²).
- 21 McClinchy Ave, approved for an FSI of 0.81 times the lot area or a GFA of 150m² plus 36.8% (274.5 m²).
- 480 Prince Edward Dr N, approved for an FIS 0.85 times the lot area or a GFA of 150m² plus 39% (276.63 m²).
- 499A & B Prince Edward Dr N, approved for an FSI of 0.78 times the lot area or a GFA of 150m² plus 26.6% (227.1 m²).
- 548 Prince Edward Dr N, approved for an FSI of 0.81 times the lot area or a GFA of 150m² plus 37% (270.8 m²).
- 131 Strath Ave, approved for an FSI of 0.81 times the lot area (277.84 m²)

From the gleaned data, Mr. Qi advises that the average approved FSI for the geographic area is 0.68, the largest being 0.86. Clearly, the requested FSI for the proposal here at 0.56 is well within the neighbourhood acceptable range.

Similar to the collection and assessment of data for FSI, Mr. Qi investigated variance relief sought and approved in the general neighbourhood for yard setbacks, building length, eave encroachment in side yards and front yard parking. In each of these instances, the relief sought in this application falls well within the limits of relief for those regulated matters granted throughout the area.

On the matter of approval of a front yard parking space, as is readily apparent from the photographic evidence in the record, the data from the City discloses that this is also a dispensation common in the neighbourhood. In fact, the property to the immediate west, 108 Government Road, owned by the Appellant Rossetti, apparently at the instance of a prior owner, was the beneficiary of variance relief in 2009 permitting parking of a vehicle on the front yard driveway. This decision also permitted a west side yard setback of 0.5m and a front yard setback of 12.1m as against a required front yard setback of 13.9m. This granted relief is strikingly similar to what is being sought by the Owner here.

With this extensive evidentiary background in place, Mr. Qi concluded that the requested variances are in keeping with the intent and purpose of both the OP and the Zoning By-laws. In his opinion there will be no unacceptable adverse impact on the adjoining properties or the neighbourhood at large. This also took him to the conclusion that the requested variances are minor and desirable for the appropriate development and use of the Property.

The Appellants cross-examined Mr. Qi and proffered their concerns to the Tribunal.

Mr. Rossetti had a concern that no shadow study was prepared and he had apprehensions about potential invasion of privacy on his property.

Ms. Calabretta seemed to believe that because the driveway serving the Property was a mutual driveway with her property, there not being many mutual driveways in the neighbourhood, that it attracted different considerations. For example, the creation of a front yard parking space would affect the available area for snow storage.

Both Appellants took the position that a front yard parking space was not in character with the neighbourhood. And both expressed apprehensions about the possibility of drainage issues arising out of the more extensive building envelope even though they produced no evidence to ground such an apprehension other than prior storm events where some drainage issues presented.

The Tribunal does not accept that front yard parking is not characteristic in this neighbourhood. And the Tribunal does not, from the evidence, have any basis to conclude that there will be any material impact on the properties of the Appellants arising out of the proposal.

ANALYSIS, FINDINGS, REASONS

As noted immediately above, it is clear that front yard parking is a common feature in this neighbourhood. Although it may be possible to continue with a parking space in the rear yard, as is the current situation, it is obvious that with the lengthening of the dwelling, the achievement of a more useable amenity space in the rear yard is served by relocating this parking space to the front yard. It does not appear to the Tribunal that this will create any functional issues. In fact, the City's Transportation Services Division specifically cleared the front yard parking from an operational perspective.

The increase in GFA, and resultant FSI, is modest on the basis of the floor areas approved for the area. The associated variance for length is also very modest.

The Tribunal is satisfied that the resultant yards will not be inconsistent with the spacing and massing of dwellings in the vicinity.

The front yard setback relief essentially regularizes the physical circumstance now found based upon the footprint of the front porch and will maintain the relationship with the adjoining properties.

Based upon the evidence canvassed above, the Tribunal accepts the opinion evidence of Mr. Qi that the variance relief granted by the Committee does meet the general purpose and intent of the OP and Zoning By-laws, is minor and is desirable for the development and use of the Property.

DECISION AND ORDER

The Tribunal dismisses the appeals by Blanca Calabretta and Dennis Rossetti against the approval decision of the Committee relating to 106 Government Road under Committee File A0554/21EYK.



X

G. Swinkin
Panel Chair, Toronto Local Appeal Body