

DECISION AND ORDER

Decision Issue Date: Friday, October 21, 2022

PROCEEDINGS COMMENCED UNDER section 45(12), subsection 45(1) of the Planning Act, R.S.O. 1990, c. P.13, as amended

Appellant(s): LAURA BOUJOFF

Applicant(s): OPTIONS ARCHITECTS INC

Subject(s): 45(1)

Property Address/Description: 172 ALBERTUS AVE
Committee of Adjustment File

Number(s): 21 236076 NNY 08 MV (A0870/21NY)

TLAB Case File Number(s): 22 134213 S45 08 TLAB

Hearing date: October 20, 2022

DECISION DELIVERED BY TLAB Panel Member G. Swinkin

REGISTERED PARTIES AND PARTICIPANTS

Owner	JOANA KYRIAKOU
Owner / Party (TLAB)	GIAMPIERO DEPASQUALE
Appellant	LAURA BOUJOFF
Owner's Legal Rep	ANDY MARGARITIS
Applicant	OPTIONS ARCHITECTS INC
Expert Witness	STEVEN QI

INTRODUCTION AND CONTEXT

Joana Kyriakou and Giampiero Depasquale (the “Owners”) are the owners of 172 Albertus Avenue (the “Property”). The Property is located on the north side of Albertus Ave, between Rosewell Ave and Duplex Ave. and is generally located south of Glencairn Ave, north of Eglinton Ave W, west of Yonge St, and east of Avenue Rd., which neighbourhood is referred to as “Lawrence Park South” within the City.

The Property is currently improved with a two-storey detached residential dwelling with a detached garage located in the rear yard. There is an existing front yard parking pad located in front of the current dwelling, which is proposed to be maintained through the new building proposal. The Property is rectangular in shape, with a frontage of 7.62 metres and a depth of 40.87 metres. The Owners’ planning consultant advises that this should be considered to be generous in comparison to a typical lot in the City.

The Owners wish to demolish the current dwelling and replace it with a new larger dwelling. For this purpose, they made application to the Committee of Adjustment (the “Committee”) for variance relief from certain provisions of the Zoning By-law. That applicaiton contained a request for relief from six provisions of the Zoning By-law.

The Committee considered the written submissions which it received and the oral submissions made to it and approved the application, which they made subject to conditions requiring satisfaction of requirements of the Urban Forestry Division and to the installation of a privacy screen along the west side of the proposed rear deck.

That decision of the Committee was appealed by Laura Boujoff (the “Appellant”), the next door neighbour residing at 176 Albertus Avenue.

Between the time of that appeal and the commencement of this hearing before the Toronto Local Appeal Body (the “Tribunal”), the Owners and the Appellant have had discussions about the building proposal and have come to terms on a revised proposal. The effect of the revisions to the building proposal is that four of the original requests for variance relief have been eliminated, two have been modified by reduction in the request and one new request has been identified.

On the strength of the resolution of these issues, the Parties have come before the Tribunal in this hearing on a consent basis seeking the endorsement of the Tribunal to the revised building proposal and the associated modified variance relief.

THE LEGISLATIVE AND POLICY FRAMEWORK

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 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.

SUMMARY OF EVIDENCE

The Tribunal received evidence from Steven Qi, the Owners' planning consultant, who was qualified to offer opinion evidence on land use planning matters in the proceeding. The Tribunal considered his filed Expert Witness Statement and his oral testimony.

Put summarily, the three variances being sought at this stage are to permit the Floor Space Index ("FSI") to be 0.69 whereas the Zoning By-law only permits an FSI of 0.60, to allow the length of the building to be 17 metres whereas the Zoning By-law only permits a length of 14 metres, and to allow the front yard parking space to have a length of 4.71 metres whereas the Zoning By-law requires a minimum length of 5.6 metres.

Mr. Qi secured Committee data regarding variance decisions in the area and other property data and put together an analysis of this information against the applicable planning policy and regulations relating to the application and formed an opinion regarding the matter of satisfaction of the four tests of Section 45(1) of the *Planning Act*.

Mr. Qi, in his evidence, canvassed the various relevant provisions of the City Official Plan ("OP") with particular reference to the Built Form and Neighbourhoods policies.

Policy 4.1.5 of the OP contains the development criteria applicable to lands designated Neighbourhoods. This policy directs consideration to prevailing

characteristics of various matters in order to ensure the reinforcement and respect for the character of the area.

In this regard, with reference to the request for an increase in permitted FSI, Mr. Qi advised that the proposed height, massing, scale, density and dwelling type of the proposed new dwelling are similar to those immediately abutting it and in the surrounding area, as the proposal is for a single detached residential dwelling located within a neighbourhood consisting of single detached residential dwellings.

He says that particularly as perceived from the street, the proposed dwelling will be of similar height (given its compliance with the Zoning By-law) and massing as other dwellings in the neighbourhood.

Although the scale and dwelling types are consistent throughout the neighbourhood Study Area, he is of the view that it can be characterized as a mix of different architectural styles and a combination of new and old dwellings co-existing in harmony in one neighbourhood.

The proposed dwelling is two storeys in height. He advises that based on his site visit, the prevailing building height in the neighbourhood Study Area is generally 2 to 3 storeys, and the proposal is materially consistent with this prevailing character. He particularly notes that the Appellant's home at 176 Albertus Avenue is three storeys in height.

The proposed dwelling will have a slightly larger FSI than the Zoning By-law maximum. Specifically, the proposed FSI is 0.69 times the area of the lot (214.15m²), and the permitted FSI is 0.6 times the area of the lot (186.85m²). The difference is only 0.09 times the area of the lot, which is 27.3m² and will be spread over two floors. Therefore, the increase in overall massing will only be 13.65m² per floor.

His review of recent minor variance applications in the Geographic Neighbourhood demonstrates that many have requested, and been granted, similar or larger FSI permission. These approvals range on Albertus Avenue from 0.65 to 0.87 with many just under or over 0.70.

Based upon the data secured by Mr. Qi, out of 115 lots in the immediate and adjacent context (properties on Albertus Ave.), 92 lots contain a building with a length greater than 14m, which is approximately 80% of the total. Out of the 92 lots, there are 32 lots with a building length that is equal to or larger than 17m.

The parking space request for relief arises due to the elimination of the initially proposed integral garage as part of the revision of the building proposal. This results in the required parking space being provided on the front yard parking pad, whose length falls short of the required 5.6 metres.

Taking all of the noted variances into account, having addressed the relevant policies of the OP, Mr. Qi opines that each of the variances are in keeping with the general intent and purpose of the OP.

Mr. Qi was also of the opinion that the requested revised variances were in keeping with the general intent and purpose of the Zoning By-law, were desirable for the appropriate development and use of the Property and were minor within the meaning of Section 45(1) of the *Planning Act*.

Finally, Mr. Qi confirmed that in his opinion, the requested revised variances were consistent with the policies of the PPS and conform with the provisions of the Growth Plan.

ISSUES AND ANALYSIS

On the strength of the evidence of Mr. Qi, the Tribunal is satisfied that the variance relief as revised is appropriate for approval and meets the necessary tests. The Tribunal will also accept the request of counsel for the Owners that the requested relief be modified to accord with the settlement with the Appellant. In accordance with Section 45(18.1.1) of the *Planning Act*, the revisions will be authorized by the Tribunal without further notice.

CONCLUSION

In order to implement the settlement, the Tribunal will allow the Appellant's appeal for the purpose of recognizing the elimination of four of the original heads of relief, modifying the extent of the two heads retained and adding the head dealing with the length of the parking space.

Also, the Committee had imposed a blanket condition dealing with the requests of the Urban Forestry Division, which the Tribunal will particularize in the form of two standard conditions which were requested by that Division. The Committee also imposed a condition requiring the installation of a privacy screen on the rear deck. Based on submissions by counsel, and as acknowledged by the Appellant in the hearing, as that requirement was premised on the height of the deck being greater than now proposed, the rationale for that feature disappears, and the Tribunal will therefore not continue that condition.

DECISION AND ORDER

The Tribunal ORDERS THAT the Appellant's appeal is allowed and the following modified variances, and only the noted variances, are approved, subject to the conditions noted below:

172 Albertus Ave

TLAB File #: 22 134213 S45 08 TLAB

List of Final Requested Variances and Conditions

Requested Variances to The Zoning By-law:

- 1. Chapter 10.10.40.40.(1), By-law no. 569-2013**
The permitted maximum floor space index is 0.60 times the area of the lot.
The proposed floor space index is 0.69 times the area of the lot.
- 2. Chapter 200.5.1.10.(2), By-law no. 569-2013**
The minimum required parking space must have minimum length of 5.6 metres.
The proposed parking space will have a length of 4.71 metres.
- 3. Chapter 900.2.10 (949), Exception R 949, By-law no. 569-2013**
The maximum building length is 14.0m.
The proposed building length is 17.00m.

Conditions of Approval:

1. Submission of a complete application for a permit to injure or remove a privately owned tree(s), as per City of Toronto Municipal Code Chapter 813, Trees Article III Private Tree Protection.
2. Where there is no existing street tree, the owner shall provide payment in lieu of planting of one street tree on the City road allowance abutting each of the sites involved in the application. The current cash-in-lieu payment is \$583/tree.

X



G. Swinkin
Panel Chair, Toronto Local Appeal Body