

DECISION AND ORDER

Decision Issue Date Wednesday, November 30, 2022

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

Appellant(s): DAVID CURRIE

Applicant(s): SOL-ARCH

Subject(s): 45(1)

Property Address/Description: 25 WILLIAM ST

Committee of Adjustment File

Number(s): 20 208907 WET 05 MV (A0406/20EYK)

TLAB Case File Number(s): 21 250878 S45 05 TLAB

Hearing date: June 22, 2022, October 14, 2022, October 17, 2022

DECISION DELIVERED BY TLAB Panel Member S. Makuch

REGISTERED PARTIES AND PARTICIPANTS

Appellant	David Currie
Appellant's Legal Rep	Raj Kehar
Applicant	SOL-ARCH
Party (TLAB) / Owners	Nelson Da Silva, Kathy Da Silva
Party's Legal Rep.	Andy Margaritis
Expert Witness	Michael Barton
Expert Witness	Jonathan Benczkowski

INTRODUCTION AND CONTEXT

This is an appeal by non-adjacent neighbours of a decision of the Committee of Adjustment approving two variances to permit the construction of a two story detached dwelling with an integral garage in the Weston area, north of Lawrence Ave and west of Jane St. The area is one in which construction of new dwellings is not common and which has a diversity of built form and lot sizes. The variances changed between the Committee of Adjustment hearing and the TLAB hearing. As a result, the variances being sought at the TLAB are as follows: (1) an increase in the fsi from .4 to .76 and (2) a side yard setback reduction from 1.2 m. to 0.91 m from the west side lot line. Only the first variance which relates to fsi was in issue at the hearing.

THE LEGISLATIVE AND POLICY FRAMEWORK

The decision in this matter is governed by two legislative provisions.

Provincial Policy

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'), s. 3 the *Planning Act*.

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 *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.

A variance must meet all four tests of section 45(1). In this case the only significant concern was whether the variance respecting fsi met the tests of maintaining the general intent and purpose of the Official Plan. If this test were met, since the Official Plan implements Provincial Policy, the variance could be held to meet provincial requirements. There was no substantive challenge as to whether the variance was minor as there was no negative physical impact resulting from the variance. Moreover although the variance would permit an fsi of almost twice that permitted, such a large numerical increase in itself, in my opinion, does not result in a failure to meet the minor test. There must be some resulting negative physical impact to demonstrate that the

variance is not minor. I also note, that if a variance does not meet the tests relating to the Official Plan, it is unlikely to be desirable for the appropriate use of the land and would not meet the zoning bylaw test as the bylaw's purpose is to implement the Official Plan.

As a result the hearing largely focused on whether the variance respecting fsi maintained and respected the Official Plan. After considerable deliberation, I find that it does not.

SUMMARY OF EVIDENCE

There was a great deal of excellent evidence presented by two qualified land use planners. This is set out in the witness statements filed. Reaching a decision in this case was difficult.

The evidence in favour of the variance was based on findings that the neighbourhood was one with a mixture of lot and house sizes. It demonstrated that there were some homes in the broader area with densities that were indeed higher than that proposed. It was the opinion of Mr. Benczkowski that the proposed dwelling would respect and reinforce the physical character of the area which was the general intent and purpose of the Official Plan. In brief, a house with a density as large as the fsi variance, would fit in the area, as the area had a mix of houses including some of a large size. In his opinion, the variance would not result in an overdevelopment as no other variances were being requested, except for the west side yard and there was no real objection to that variance.

In contrast was the evidence of Mr. Barton. His evidence demonstrated that there had been few if any new houses built in the area and no planning approvals to permit a fsi of greater than .67. He noted that of the approvals, the median was .54 and the average was .57. He pointed out that the the dwelling at 27 William St. right next door had an fsi of .67 and that a variance of .65 had been denied for 5 Wadsworth Blvd., a house close by on a street immediately to the rear. His evidence was focussed on the lack of information to demonstrate that an fsi of .76 would respect or reinforce the character of the area. Mr. Barton's suggested that that applicant must demonstrate that dwellings with an fsi the same as or very similar to .76 exist in the immediate neighbourhood in order for the variance to be granted.

ISSUES AND ANALYSIS

1. Mr. Benczkowski evidence was forceful and I do not agree with Mr. Barton that an applicant must demonstrate the existence of similar densities in the neighbourhood. Nevertheless, after careful consideration I find the variance respecting fsi should be denied. As a result I also do not approve the side yard variance. The test as to whether to grant the variance is whether the variance maintains the general intent and purpose of the Official plan not its specific conformity with specific policies. The applicant is required to demonstrate that the

variance will result in a dwelling which “fits” in the neighbourhood, a dwelling which respects and reinforces the character of the neighbourhood. Of relevance is OP Policy 4.1.5 which sets criteria for how the “fit” of a proposal is to be assessed. OP Policy 4.1.5 c) requires that the development must respect and reinforce *prevailing heights, massing, scale, density and dwelling type of nearby residential properties*.

I have visited the neighbourhood, as I told the parties, and found it has indeed a mixture of lot and house sizes, as Mr. Benczkowski stated. Moreover, on the evidence presented I found no houses that have the appearance of overcrowding the lot on which they are situated or appearing too large for the lot they are on. Fsi is a regulation which is to prevent a dwelling that appears to be too large for the lot it is on. It regulates the size or massing of the dwelling in proportion to the lot size. The house at 27 William next door, has a density of .67. It does not appear to be too large for its lot. However, if it were significantly larger it would appear so. The applicant’s proposed house will have an fsi that is significantly larger, .76, and an integral garage as well. The garage is not included in the fsi but adds to the massing of the building. Taking the higher fsi and the increase in massing from the integral garage into account I find the variance would result in a dwelling which appears too large for its lot and thus would be out of keeping with the character of the neighbourhood.

I realize that the only other variance being sought is the west side yard lot line, but the fsi variance is a separate requirement designed to ensure proper proportionality between building size and lot size. The various other regulations such as height, setbacks and length are not for that purpose. the purpose of the the regulation is to ensure that the mass of a building does not appear too large for its lot and is not out of keeping with the size of other buildings in the neighbourhood. I am also aware that integral garages are permitted in this area and that they are not included in the fsi. There is nothing to prevent me, however, from including its existence in the overall massing or appearance, of a building with an fsi of .76.

CONCLUSION

As a result of the above analysis I conclude the fsi variance does not meet the general intent of the Official Plan or the zoning bylaw which is to implement the Official Plan and therefore should not be granted as it would result in a building which appears too large for its lot and thus be out of character with other dwellings in this neighbourhood. Moreover, it would not, therefore, respect and reinforce the physical character of the area. I find this is in keeping with the TLAB decision respecting 5 Wadsworth Blvd. In the absence of approving the fsi variance there is no need to approve the side yard variance as the design includes the fsi variance.

DECISION AND ORDER

The appeal is allowed and the variances are denied.

X 

S. Makuch

Panel Chair, Toronto Local Appeal