

Minor Variance: City of Toronto and TLAB's differences.

I suggest that the City Legal and Planning staff and TLAB representatives try to resolve the issue of size as a test for minor variances. Another item could be whether it is relevant to admit evidence on Provincial Policies for simple severances/minor variances.

The Issue

The City interprets size to be a part of the definition of "Minor" as well as impact. TLAB appear to be of the view that size does not matter and that "Minor" refers only to impact and that a numerical increase is not relevant. On the TLAB decision on 10 Robin Hood Drive page 12 the decision states "The neighbours raise concerns about the variances for gfa, lot coverage and building length and depth. These variances to accommodate the two-car garage seemingly cannot be termed minor in numerical sense."

Minor Variance Background

For many years the De Gasperis Divisional Court decision was seen to be the last word on minor stating that both size and impact had to be considered separately. A good example of this type of decision is 364 Lake Promenade PL 110395. Then an OMB decision failed to address minor in the "North Barrie" case and was challenged in Divisional Court. The ruling was that although minor in size should be considered it did not have to be spelled out in the decision. Removing the required loading bay can be seen as minor in scope and did not have to be addressed in the decision. Such items as eliminating an eaves setback would fall into the same category. **However I suggest it is different when discussing density.**

Density Variances

Double density approvals are now common in Long Branch. This has increased over time from 5 years ago from about 25% particularly for soldier houses (3 storeys on narrow lots). Applications are being received in excess of double. Density approvals that appear major are avoiding the more comprehensive review and more thorough community participation. In my view this increases confrontation and reduces consensus making.

Scope of Double Density

Doubling density for soldier houses involves perhaps 1000 square feet of additional building. 50% might be 500 square feet. I believe all agree law is based on dictionary definitions. Minor means small, adjustment suggest

small change and even variance means deviation rather than substantial change.

Numeric Increase

At some point numerically an increase in density becomes major and the matter should be dealt with as a zoning change. The decision makers have discretion within the frame of the law.

Minor Variance Definitions

The question that most perplexes residents is how a 50% or 100% increase in gfa is seen as minor. This is especially so when the City's current definition in the recent Blue Brochure is "The change must be minor in both size and impact" and adds "Whenever your project or development largely complies with the rules in the Zoning By-law but does not quite, you need to apply for a minor variance. Example: The maximum permitted height for this building is 10m. The altered building is proposed to have a height of 10.5 m." Residents believe size is related to numbers and I tend to agree with them. Oakville and Peterborough use "small" in their definition although most municipalities either do not define minor variance or do not use small in a definition

CONCLUSION

On the surface we have the City saying categorically that both size and impact are necessary tests for "Minor" and an at arms length body of the City seemingly saying only impact is the measure. It also seems that the City should adopt a definition of minor (preferably with a numeric cap on density) under the Planning Act.

ADDENDUM

Another somewhat related issue is the at neighbourhood scale with severances cum variances such as the soldier houses we have in Long Branch. These are not of Provincial interest. This is especially so since "Neighbourhoods" in the Official Plan are not intended for density increases and that density should be directed away from neighbourhoods. As referenced in 30 36th Street OMB decision PL160520 the City Planning Department are of this opinion. TLAB in particular is concerned about timely processing and limiting the discussion of Provincial policies (as the OMB hearing officer did in the 168 Lake Promenade) would save significant time.

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