



REPORT FOR ACTION WITH CONFIDENTIAL ATTACHMENT

Appeals of City-wide Zoning By-law 569-2013 - Request for Direction

Date: June 18, 2019
To: Planning and Housing Committee
From: City Solicitor
Wards: All

REASON FOR CONFIDENTIAL INFORMATION

This report is about litigation or potential litigation that affects the City or one of its agencies or corporations.

This report contains advice or communications that are subject to solicitor-client privilege.

SUMMARY

On March 1, 2018, the Ontario Municipal Board (OMB), predecessor of the Local Planning Appeal Tribunal (LPAT) issued its Decision and Order on the Phase 2 Hearing of the appeals of By-law 569-2013 concerning the regulations of the Chapter 10 Residential Zone Category. The OMB ordered the City to review certain regulations in Chapter 10 mainly relating to height with some specifically for lots with frontages of 12 metres or less.

The continuation of the Phase 2 Hearing has been scheduled by the LPAT for October 16-18, 2019 to consider the results of the City's review and the City Solicitor is seeking direction from City Council.

RECOMMENDATIONS

The City Solicitor recommends that:

1. City Council adopt the recommendations in Confidential Attachment 1 of this report.
2. City Council authorize the public release of the confidential recommendations in Confidential Attachment 1 and Appendix A to Confidential Attachment 1, if they are adopted by City Council.

3. City Council direct that all other information in Confidential Attachment 1 is to remain confidential in its entirety, as it contains advice which is subject to solicitor-client privilege.

FINANCIAL IMPACT

The recommendations in this report have no financial impact.

DECISION HISTORY

The City-wide Zoning By-law was approved by City Council at its meeting on April 3 and 4, 2013 and enacted on May 9, 2013. The Council decision of Item 2013.PG21.1 - Final Report on the City-wide Zoning By-law can be found at this link:

<http://app.toronto.ca/tmmis/viewAgendaItemHistory.do?item=2013.PG21.1>

A total of 323 were appeals filed under Subsection 34(19) of the Planning Act from various appellants. Approximately 201 of these appeals have been settled or withdrawn. The majority of the remaining appeals are site specific. There are 45 appeals that have City-wide objections to regulations in By-law 569-2013 with many concerning specific uses or issues.

On May 3, 2016, City Council authorized the City Solicitor to proceed with settlements of By-law 569-2013 by way of motion if the settlement results in changes that in the opinion of the City Solicitor, in consultation with the Chief Planner and Executive Director, City Planning, are minor and substantially in accordance with Council's approved intent in By-law 569-2013. The Council decision of Item 2016.PG11.2 - Directions Report with Respect to By-law 569-2013 and Settlements can be found at this link:

<http://app.toronto.ca/tmmis/viewAgendaItemHistory.do?item=2016.PG11.2>

The most current Office Consolidation of the Chapters 1-800 of By-law 569-2013 (January 1, 2019) can be found at this link:

<https://www.toronto.ca/wp-content/uploads/2018/07/97ec-City-Planning-Zoning-Zoning-By-law-Part-1.pdf>

COMMENTS

The Phase 2 Hearing of the appeals of regulations of Chapter 10 Residential Zone Category of By-law 569-2013 was heard by the Ontario Municipal Board (the OMB), predecessor to the Local Planning Appeal Tribunal (the "Tribunal"), on June 26 to July 7, 2017.

In addition to the City, the Parties participating in the Phase 2 Hearing can be categorized into two groups. Three Parties represented the Architects & Developer perspective: the Conservatory Group and related companies and persons, the Ontario Association of Architects and Stan Makow (Architect). The other Parties represented Residents and Ratepayers: the Confederation of Resident and Ratepayer Associations

in Toronto (CORRA), the Swansea Area Ratepayers' Group (SARG) and the Teddington Park Residents Association Inc. (TPRA).

The hearing was chaired by Vice-Chair C. Conti who issued his Decision and Order on March 1, 2018. The decision can be found at this link:

<http://www.omb.gov.on.ca/e-decisions/pl130592-Mar-01-2018.pdf>

The OMB Decision and Order mainly agreed with the evidence and opinion of the City's witnesses. The OMB approved most of the regulations in Chapter 10 as appropriate and in compliance with the Official Plan, including regulations for maximum building length and depth, gross floor area, setbacks and separations, platforms (decks and balconies) and ancillary buildings. However, the OMB expressed concern about some regulations mainly relating to height and ordered the City to review certain regulations, some in relation to all residential lots and some in relation to lots with frontages of 12 metres or less. Nevertheless, the Decision states that a revision proposed for the narrower lots does not have to be restricted to only those lots if it is determined to be appropriate for broader applicability.

The regulations ordered to be reviewed are as follows:

1. Regulation 10.5.40.10 (1) for determining the height of buildings for all lots;
2. Regulations 10.10.40.10 (1), 10.20.40.10 (1), 10.40.40.10 (1), 10.80.40.10 (1) maximum height for all lots;
3. Regulations 10.10.40.10 (2), 10.20.40.10 (2), 10.40.40.10 (2), 10.80.40.10 (2) maximum height of specified pairs of main walls for all lots;
4. Regulation 10.20.40.10 (4) restrictions for a detached house with a flat or shallow roof;
5. Regulations 10.10.40.10 (6), 10.20.40.10 (6), 10.40.40.10 (4), 10.80.40.10 (4) height of the first floor above established grade;
6. Regulations 10.10.40.10 (5), 10.20.40.10 (7), 10.40.40.10 (5), 10.80.40.10 (5) width of dormers;
7. Regulations 10.5.80.1 (1), 10.5.80.10 (1), 10.5.80.10 (3) parking provisions;
8. The definitions of first floor and basement for all lots.

Many of these regulations and the reasons for their review are interrelated. For the purposes of the review, this list of regulations has been consolidated into the following six issues:

Issue 1 – Maximum Height

Issue 2 – Maximum Main Wall Height

Issue 3 – Flat Roof Houses

Issue 4 – Width of Dormers

Issue 5 – Height of the First Floor and Definitions of Basement & First Floor

Issue 6 – Location of the Required Parking Space Overview of the OMB Decision and Order

Issue 1 - Maximum Height

The OMB Decision agreed with the City that it is preferable for the By-law to provide a single method for determining the height of buildings within the Residential Zone Category and that using the highest point of the building as the point to which height is measured is more reliable than attempting to measure to the mid-point. However, the OMB expressed concern that the changes to the way height is measured will only permit "buildings that will generally be approximately 1 metre to 1.5 metres shorter" in areas where the By-law changed the point of measurement on roofs.¹ It questioned whether houses constructed according to the height provisions of the By-law would reinforce the existing character of areas built to the standards of the former general zoning by-laws "of the Cities of Toronto, York and possibly North York in terms of height", as required by Official Plan policy 4.1.5.² The OMB ordered the City to review "the maximum height provision for all lots where the height limits have not been changed to compensate for the reduction in height due to the roof point of measurement."³

Issue 2 - Maximum Main Wall Height

The OMB Decision accepted in principle the regulations controlling the maximum height of specified pairs of main walls "to ensure that roofs of residential dwellings have appropriate slopes".⁴ However, the OMB noted that the ordered review of Maximum Heights in certain parts of the City may require revision to ensure that appropriate slopes are maintained and the numerical values identified for portions of the main walls may require review for lots with frontages of 12 metres or less.⁵ The Order included these regulations in the review for all residential lots.

Issue 3 - Flat Roof Houses

The OMB Decision recognized that while flat-roofed houses were not a predominant built-form in most areas of the City, they can be compatible with two-storey pitched roof dwellings, even when above the 7.2 metre height limit in the By-law. The Decision also agreed that restricting the height of flat-roofed dwellings assists in addressing potential privacy issues pursuant to Official Plan policy 3.1.3 (d). However, concern was expressed that the restrictions "make it difficult to construct a typical house on lots of 12 metres or less frontage". The City was ordered to review the regulations for detached houses with a flat or shallow-roof for narrow lots.

Issue 4 – Width of Dormers

The OMB Decision recognized that the By-law limit on the size of dormers to 40 percent of the width of the side, front or rear main walls may place some restriction on the way that houses are designed. However, this restriction was not considered to be in conflict

1 OMB Decision, paragraph 72

2 OMB Decision, paragraph 73

3 OMB Decision, paragraph 203

4 OMB Decision, paragraph 83

5 OMB Decision, paragraph 84

with the Official Plan because "roof dormers will still be allowed and they can continue to form part of the physical character of neighbourhoods".⁶ As the regulations related to the width of dormers may be affected by the review of provisions related to lots with 12 metres or less frontage, the OMB included these regulations with those that require further review for lots with narrower frontages.

Issue 5 – Height of the First Floor and Definitions of Basement & First Floor

During the Phase 2 Hearing, the City proposed an amendment with the consent of all the Parties to the regulation that limited the maximum permitted height of the first floor to 1.2 metres above established grade. In recognition that this regulation could create confusion in the case of split-level houses, the height limit was revised to apply to the lowest point of the main pedestrian entrance.⁷ Nevertheless, the OMB withheld approval of the revised regulation and included it in the list of regulations to be reviewed for narrow lots.⁸

As the definitions in the By-law of first floor and basement are related to building height, the OMB determined they should be included in the review of all residential lots.

Issue 6 – Location of the Required Parking Space

Regulation 10.5.80.10 (3) says a parking space may not be in the front yard or a side yard abutting a street, but provides an exception for a parking space in the front yard permitted by the City of Toronto under the authority of the City of Toronto Act, 2006.

The OMB Decision agreed with concerns of the Architect & Developer Parties that By-law provisions for the location of parking spaces behind the front walls of houses could contribute to creating difficulties in constructing two-storey dwellings of an acceptable size without needing variances on lots with frontages of 12 metres or less.⁹ The OMB Decision concluded that certain parking regulations be included in the review for lots with narrower frontages.

CONTACT

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SIGNATURE

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City Solicitor

6 OMB Decision, paragraph 88

7 OMB Decision, paragraph 103

8 OMB Decision, paragraph 107

9 OMB Decision, paragraphs 110 and 111

ATTACHMENTS

Confidential Attachment 1 - Confidential Information
Appendix A to Confidential Attachment 1 - Confidential Information