



**STAFF REPORT**  
Committee of Adjustment  
Application

<b>Date:</b>	Tuesday June 7, 2011
<b>To:</b>	<b>Chair and Committee Members of the Committee of Adjustment North York District</b>
<b>From:</b>	Allen Appleby, Director, Community Planning, North York District
<b>Wards:</b>	Ward 25 (Don Valley West)
<b>Reference:</b>	File No. A0542/10NY Address: 238 ST. LEONARD'S AVENUE Application to be heard: Wednesday, June 15, 2011

**RECOMMENDATION**

Staff recommend that the Committee refuse Variances No. 6 and No. 8, pertaining to the elevation of the entrance to the proposed garage.

**APPLICATION**

This is an application to permit the construction of a new two-storey dwelling on the above noted property. The existing dwelling would be demolished.

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

North York Zoning By-law No. 7625

1. Existing lot frontage and width of 13.9m  
WHEREAS a minimum lot frontage and width of 18m is required;
2. Existing lot area of 615m<sup>2</sup>  
WHEREAS a minimum lot area of 690m<sup>2</sup> is required;
3. East side yard setback of 1.2m to the proposed dwelling  
WHEREAS a minimum setback of 1.8m is required;
4. West side yard setback of 1.2m to the proposed dwelling  
WHEREAS a minimum setback of 1.8m is required;
5. Proposed length of dwelling of 18.9m  
WHEREAS a maximum length of dwelling of 16.8m is permitted;

6. The elevation of the floor of the entrance of the garage to be located below the established grade (centre line of the road) on a lot having a frontage of 13.9m  
WHEREAS the elevation of the floor of the entrance of the garage shall be located at or above the established grade (centre line of the road) on lots having a frontage greater than 13.7m;
7. Finished first floor elevation of 2m  
WHEREAS a maximum finished first floor elevation of 1.5m is permitted;

City of Toronto Zoning By-law No. 1198-2009

8. The proposed opening to an area that may be used for parking of a vehicle to be located lower than the elevation of the street  
WHEREAS the elevation of the lowest point of an opening to an area that may be used for parking or storage of a vehicle located inside or abutting the dwelling shall be higher than the elevation of the street the lot abuts measured at its centre line directly across from the driveway leading to the parking space

## **COMMENTS**

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The Committee of Adjustment approved an application for minor variance at this address on September 30, 2009, however the Ontario Municipal Board overturned this decision on March 22, 2010. A new owner and applicant have since submitted a similar application, whereby a two-storey dwelling with an integral below-grade garage is proposed.

North York Zoning By-law No. 7625 restricts the construction of below-grade garages to lots with a frontage of 13.7 metres or less. The subject property maintains a lot frontage of 13.9 metres. On December 4, 2009, subsequent to the approval of the initial application made at this address, City Council enacted a Zoning By-law amendment known as City of Toronto Zoning By-law No. 1198-2009. The intent of this amendment was to restrict the elevation of the lowest point of an opening to an area that may be used for parking or storage of a vehicle located inside or abutting a dwelling, to be higher than the elevation of the street. One of the reasons for the enactment of this amendment to Zoning By-law No. 7625 was to address issues regarding grade-related basement flooding.

As stated above, the approval of an application similar to this at the same address was appealed to the Ontario Municipal Board, whereby all variances were refused, excluding those related to existing conditions. One of the reasons for the refusal of this below-grade garage was the potential for flooding as a result of the inability to create a storm sewer connection, as storm sewers do not exist on this street. The second concern was that of safety with respect to pedestrian movement, given the absence of sidewalks in the neighbourhood.

This property is not, and has never been, permitted to accommodate a below-grade garage. The Toronto Water Division has confirmed information brought forth at the Ontario Municipal Board hearing on March 22, 2010, regarding the absence of storm sewers on St. Leonard's Avenue. As such, staff are of the opinion that the approval of such a proposal

would not be in keeping with the intent of the Zoning By-law, and thus, recommend that Variances No. 6 and No. 8, regarding the construction of a below-grade garage, be refused.

Respectfully submitted,

**CONTACT**

Michelle Corcoran, Assistant Planner

Tel: 416 395-7130

Fax: 416-395-7155

E-mail: mcorcor@toronto.ca

**SIGNATURE**

Allen Appleby  
Director, Community Planning, North York District  
A0542/10NY

Wednesday, September 30, 2009

**NOTICE OF DECISION  
MINOR VARIANCE/PERMISSION  
(Section 45 of the Planning Act)**

File Number:	A0330/09NY	Zoning	R3 - Single Family Detached Dwelling Zone (WAIVER)
Owner(s):	HOSSEIN AMINI	Ward:	Don Valley West (25)
Agent:	HOSSEIN AMINI		
Property Address:	238 ST LEONARDS AVE	Community:	North York
Legal Description:	PLAN 1534 PT LOTS 520 TO 522		

Notice was given and a Public Hearing was held on Wednesday, September 30, 2009, as required by the Planning Act.

**PURPOSE OF THE APPLICATION:**

This is an application to permit the construction of a new two storey dwelling on the above noted property. the existing dwelling would be demolished.

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

1. Existing lot frontage and width of 13.9m  
WHEREAS a minimum lot frontage and width of 18m is required;
2. Existing lot area of 615m<sup>2</sup>  
WHEREAS a minimum lot area of 690m<sup>2</sup> is required;
3. East side yard setback of 1.2m to the proposed dwelling  
WHEREAS a minimum setback of 1.8m is required;
4. West side yard setback of 1.2m to the proposed dwelling  
WHEREAS a minimum setback of 1.8m is required;
5. Proposed length of dwelling of 18.89m including a one storey rear extension  
WHEREAS a maximum length of dwelling of 16.8m is permitted;
6. The elevation of the floor of the entrance of the garage to be located below the established grade (centre line of the road) on a lot having a frontage of 13.9m  
WHEREAS the elevation of the floor of the entrance of the garage shall be located at or above the established grade (centre line of the road) on lots having a frontage greater than 13.7m;
7. Finished first floor elevation of 2.3m  
WHEREAS a maximum finished first floor elevation of 2m is permitted;

8. Proposed building height of 9.1m  
WHEREAS a maximum building height of 8.38m is permitted; and
9. Proposed front yard soft landscaping of 50.38% (33.07m<sup>2</sup>) and front yard hard landscaping of 49.2% (32.05m<sup>2</sup>)  
WHEREAS the by-law requires a minimum front yard soft landscaping of 75% (48.84m<sup>2</sup>) and a maximum front yard had landscaping of 25% (16.28m<sup>2</sup>).

**IT WAS THE DECISION OF THE COMMITTEE OF ADJUSTMENT THAT:**

**The Minor Variance Application is Approved on Condition**

It is the decision of the Committee of Adjustment to authorize this variance application for the following reasons:

- The general intent and purpose of the Official Plan is maintained.
- The general intent and purpose of the Zoning By-law is maintained.
- The variance(s) is considered desirable for the appropriate development of the land.
- In the opinion of the Committee, the variance(s) is minor.

This decision is subject to the following condition(s):

1. The owner shall satisfy the City of Toronto Municipal Code Chapter 813, Article II, with respect to City owned trees, to the satisfaction of the Urban Forestry Division.
2. The owner shall satisfy the City of Toronto Municipal Code Chapter 813, Article III, with respect to privately owned trees, to the satisfaction of the Urban Forestry Division.
3. The owner shall submit a Tree Security Deposit (in the form of a certified cheque or letter of credit only) and sign a Tree Preservation Agreement to the satisfaction of the Urban Forestry Division.
4. The reverse sloped driveway to be constructed to the satisfaction of and in accordance with the plans submitted to and approved by the Toronto Water Division.



ISSUE DATE:

**March 22, 2010**



Ontario

Ontario Municipal Board  
Commission des affaires municipales de l'Ontario

PL090993

IN THE MATTER OF subsection 45(12) of the *Planning Act*, R.S.O. 1990, c. P.13, as amended

Appellant:	Lawrence Park Ratepayers Association Inc.
Applicant:	Hossein Amini
Subject:	Minor Variance
Variance from By-law No.:	7625
Property Address/Description:	238 St. Leonard's Avenue
Municipality:	City of Toronto
OMB Case No.:	PL090993
OMB File No.:	PL090993
Municipal No.:	A0330/09NY

**APPEARANCES:**

**Parties**

**Counsel**

Lawrence Park Ratepayers Association Inc.	V. Lovekin
Hossein Amini	D. Bronskill

**DECISION DELIVERED BY SUSAN de AVELLAR SCHILLER AND ORDER OF THE BOARD**

Hossein Amini wishes to demolish the existing house at 238 St. Leonard's Avenue in the City of Toronto and build a new house on the site. His plans for the new house involve a garage that is below grade, an elevated first floor, and certain other features that require variances from the zoning by-law. Mr. Amini applied for the necessary variances, which included variances to recognize existing conditions. The City of Toronto Committee of Adjustment authorized the variances, subject to certain conditions. The Lawrence Park Ratepayers Association Inc. [LPRA] has appealed that decision to this Board.

At the outset of the hearing, the Board was advised that Mr. Amini wished to amend his application in two respects:

1. he was no longer seeking an increase in height beyond what is permitted in the by-law; and
2. he was continuing to seek a variance to permit the elevation of the finished first floor to be 2.3 metres but the initial advice that the by-law permitted the finished first floor to be 2.0 metres proved to be incorrect. The by-law requirement in this case is a maximum permitted elevation of the finished first floor of 1.5 metres.

The LPRA was aware of the discrepancy regarding the elevation of the finished first floor and had drawn the 1.5 metre maximum to the attention of the Committee of Adjustment. While the result is that the amended application is for a variance that is greater than that initially sought, the Board is satisfied that all those in attendance at this hearing were aware of the difference. Having regard to section 45(18.1.1) the Board finds that the amendments to the original application are minor in that one variance is no longer being sought at all and, for the other, all interested parties were already aware of the difference. The Board finds that no further notice of this application is required.

The application, as amended, seeks the following variances:

1. lot frontage and width of 13.9m, where the by-law requires 18m;
2. lot area of 615m<sup>2</sup>, where the by-law requires 690m<sup>2</sup>;
3. east side yard setback of 1.2 metres where the by-law requires 1.8m;
4. west side yard setback of 1.2m, where the by-law requires 1.8m;
5. length of dwelling of 18.89m, where the by-law maximum is 16.8m;
6. elevation of the floor of the entrance of the garage to be located below the established grade at the centre line of the road on a lot having a frontage of 13.9m where the by-law requires the elevation for the floor of the



entrance of the garage to be located at or above the established grade at the centre line of the road on lots having a frontage greater than 13.7m;

7. finished first floor elevation of 2.3m, where the by-law maximum is 1.5m;
8. front yard soft landscaping of 50.38% (33.07m<sup>2</sup>) and front yard hard landscaping of 49.2% (32.05m<sup>2</sup>), where the by-law requires front yard soft landscaping of 75% (48.84m<sup>2</sup>) and a maximum front yard hard landscaping of 25% (16.28m<sup>2</sup>).

The Board heard from Mr. Michael Goldberg, a full member of the Canadian Institute of Planners and Registered Professional Planner in Ontario, qualified to give the Board expert opinion evidence on land use planning matters. The Board also heard from Mr. Heimut Hock, the President of LPRA, and the following participants: Mr. John Ebbs, the neighbour to the immediate east of the subject site; Mr. Frederik Von Ompteda, a neighbour across the street from the subject site; and Mr. Graham Parkinson, a second neighbour across the street from the subject site.

Variances 1 and 2 reflect the dimensions of this existing lot. The frontage dimension of 13.9m arises because there is a slight curve to St. Leonard's Avenue at this point. The width of the lot at the rear lot line is 13.7m. The site is in an area designated and zoned for residential use. The neighbourhood is well-established; the lot, and house now on it, have been there for decades. The Board finds that variances 1 and 2, dealing with lot frontage and width and lot area, maintain the general intent and purpose of the Official Plan and the zoning by-law, are desirable for the appropriate use of the land, and are minor.

Variances 1 and 2 are authorized.

The Board now turns to an analysis of the remaining variances.

Variance #6 deals with a proposed double car garage that is to be built below grade. This section of St. Leonard's Avenue is within the former City of North York. St. Leonard's is an east-west street and its grade drops away to the east along this stretch. The street is characterized by several very large, mature trees and houses that are a mix of styles, types and sizes. Several of the lots have had the older houses torn down

and replaced with larger homes, often with driveways to garage entrances that are below grade.

Demolition of the existing house and development of a new house with a double car below grade garage is proposed for the subject site. The zoning by-law permits below grade garages in cases where the lot frontage is 13.7m or less. The frontage on the subject site is 13.9m, due to the curve of the street and the standard measurement being the running feet around the curve. As noted above, the rear width of the lot is 13.7m. The difference of 0.2m is nearly indistinguishable visually, especially with the slight curve of the street as it goes along the front of the subject site.

The fact that several other homes have been demolished and replaced with newer homes that have below grade garages is not the issue here. Nor is the issue the fact that the difference between 13.9m and 13.7m is visually indistinguishable on this site. Those opposing this variance raise two key concerns: an inappropriate pedestrian realm and flooding in the area.

There are no sidewalks along this section of St. Leonard's Avenue. Pedestrians share the road with vehicles. The residents testified that homeowners with below grade garages tended to park on the crest of their driveways, on what is part of the City's road right-of-way, if they did not go all the way down to enter the garage. Cars leaving these properties, whether from the crest of the driveway or the below grade garages, back out on to the street. The neighbours expressed concern for pedestrians and cyclists on what they felt is a busy street with difficult sight lines for egress from sites with below grade garages.

Neither party called a traffic or safety expert in this matter. In considering the question of an appropriate pedestrian realm, the Board acknowledges that this is a well established residential neighbourhood where pedestrians utilize the street in lieu of a sidewalk. Cities are made up of many neighbourhoods, and not all neighbourhoods are the same. Differences may be in what is permitted to be developed, but they may also be in matters of physical character such as a street characterized by mature trees but lacking a sidewalk. The fact that there is no sidewalk does not mean that the pedestrian realm is either undesirable or unsafe. But it does mean that additional care should be taken when considering development to ensure that the existing condition does not

become either undesirable or unsafe. The Board is not satisfied that a patchwork of below grade driveways creates an appropriate pedestrian realm, particularly in areas with no sidewalk.

Both parties acknowledge that flooding in this area of the former City of North York is a serious problem. There is no storm sewer along this part of St. Leonard's yet one of the requirements of a driveway to a below grade garage is that there be a storm sewer connection to manage the water collected from the driveway as it runs down to the garage entrance. Since there is no storm sewer at this location, no connection is possible. Alternate arrangements to manage the water from the driveway would need to be arranged. The Committee of Adjustment attached a condition to its approval that the driveway

...be constructed to the satisfaction of and in accordance with the plans submitted to and approved by the Toronto Water Division...

The evidence before the Board is that the resulting arrangement would likely be a pump at the bottom of the driveway that would take the water back up to discharge into a swale at the side of the road and then follow gravity in a runoff to the east.

Mr. Hock and the area residents all opposed the below grade garage entrance. They expressed concern that the condition imposed by the Committee of Adjustment was not sufficient to deal with the significant flooding problem in the area, and that a further below grade garage simply served to exacerbate the problem.

The intent and purpose of this section of the by-law is to control storm water runoff and prevent flooding. With no storm sewer for direct connection, the proposed alternative merely redirects water to a swale in an area where the City has already identified flooding as a problem. Even with the condition attached, the Board finds that the result does not maintain the general intent and purpose of the zoning by-law.

Variance #6 is not authorized.

Variance #7 deals with the elevation of the finished first floor. The evidence before the Board is that this variance is a function of the clearance height necessary to accommodate a below grade garage. In addition, Mr. Goldberg testified that the finished

first floor heights vary in the neighbourhood. He cited in particular the finished first floor height of the neighbour to the immediate west and suggested the difference is minor since the elevation along this section of St. Leonard's falls away to the east.

The proposed increased finished first floor height on the subject site has a much greater impact on the neighbour to the immediate east as a result of that same change in elevation. Additionally, the neighbour to the east is in an older house, roughly equivalent in age to the house proposed to be demolished on the subject site. The relationship of heights between these two houses is compatible and complementary. The proposed change produces a relationship that is neither compatible nor complementary.

The intent and purpose of controlling the finished first floor height is to maintain the streetscape and reinforce the visual character of the area. In doing so, it also emphasizes the importance of the relationship between houses – a relationship that is particularly important to consider when the proposal is to demolish and build anew in a neighbourhood that is already established. The Board finds that the requested variance does not maintain the general intent and purpose of the zoning by-law, and is not minor.

Variance #7 is not authorized.

Variance #8 deals with hard and soft landscaping in the front yard. The zoning by-law is clear that the front yard should have no more than 25% hard landscaping and 75% soft landscaping. The evidence before the Board is that hard landscaping is a non-porous surface; soft landscaping is usually plant material and permits ground water infiltration rather than the runoff that results from hard landscaping. The Board was advised that the calculation of hard and soft landscaping occurs net of any driveway surface. In this case, the proposed driveway is a double width, leading directly from the street to a double car garage that is below grade. As a result, a large portion of the front yard is already taken up with the hard surface of the proposed driveway. The remainder of the front yard then accommodates steps to access the raised first floor entry, made necessary by the height of the proposed below grade garage, with some soft landscaping to complete the front yard.

The need for this variance is driven first by the proponent's intention to build a double wide driveway for direct access to his double car below grade garage. The need

for steps and the particular ratio of hard and soft landscaping for the remainder of the front yard is partly a function of the raised elevation of the finished first floor, required by the height needed for the proposed below grade garage, and partly a function of design preference. Since the requirement for soft landscaping speaks in part to the desirability of groundwater infiltration, and since this is an area with a known and severe flooding problem, the Board is not persuaded that the proposed variance is desirable for the appropriate development or use of the land, nor is it minor.

Variance #8 is not authorized.

Variances #3, #4, and #5 are all related to the particular design of the proposed house. Since the Board has not authorized the variances for the below grade garage, height of the finished first floor, or ratio of the hard and soft landscaping for the yard, any new house to be built on the site would require considerable redesign. The particular design reasons for these variances may, or may not, apply in any redesign. Since the justification for these variances is rooted in the particular design proposed, the Board is unable to make a reasonable assessment of the desirability or impact of these variances that may, or may not, result from a different design. Given these circumstances, variances #3, #4, and #5 are not authorized.

The appeal is allowed in part.

Variances #1 and #2 are authorized.

Variances #3, #4, #5, #6, #7 and #8 are not authorized.

So Orders the Board.

"Susan de Avellar Schiller"

SUSAN de AVELLAR SCHILLER  
MEMBER