
AIRD & BERLIS LLP

Barristers and Solicitors

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PG21.1.204

March 5, 2013

Matter No. 104414

BY EMAIL

Chairman and Members,
Planning and Growth Management Committee
City of Toronto
City Hall, 100 Queen Street West
10th Floor, West Tower
Toronto, Ontario, M5H 2N2

Attention: Frances Pritchard, Manager

Dear Sirs/Mesdames:

**Re: Planning and Growth Management Committee - March 6, 2013
Final Report on the City-Wide Zoning By-law ("Draft By-law")
Statutory Public Meeting
Agenda Item PG21.1**

We act on behalf Jack Eisenberger, agent for the owner of 97 Hillmount Avenue, in the City of Toronto ("the property").

As background, in 2009, Mr. Eisenberger appealed By-law 1196-2009, one of a series of by-laws passed by the City of Toronto restricting below grade garages, to the Ontario Municipal Board (the "Board"). Based on conceptual drawings for the redevelopment and expert evidence, the Board exempted the property from the application of By-law 1196-2009 on the basis that the redevelopment of 97 Hillmount Avenue proceed substantially in accordance with the plans considered by the Board. We understand that the Clerk reflected this decision of the Board in the version of the by-law maintained by the Clerk's Department.

In March, 2012, the owner submitted an application for minor variances to permit the development of the property in accordance with the drawings filed with the Ontario Municipal Board and including a below grade garage as permitted by the Board's Order. On June 6, 2012, the Committee of Adjustment granted the requested variances and no appeals were filed. The Committee's Decision is now final. A copy of the Board's Decision and Order and the Committee's Decision are attached for your convenience.

We have reviewed the proposed Draft By-law and note that the Draft By-law does not bring forward the exemption that permits a below grade garage on the property or to permit the redevelopment of the property in accordance with the minor variances granted. In light

March 5, 2013

Page 2

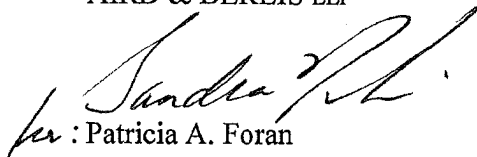
of the foregoing, we are writing to request that the property either be exempted from the Draft By-law or that specific exceptions be added to allow the property to be developed in accordance with the recent approvals noted above.

We also request to be provided notification of any further public meetings or any consideration by any Committee of Council or City Council and notice of passing of any City-Wide Zoning By-law.

Should you require any further information, please do not hesitate to contact the undersigned. Thank you.

Yours truly,

AIRD & BERLIS LLP


for : Patricia A. Foran

PAF/SM

Encl.

cc. client

14203885.1

NOV 08 2011

ISSUE DATE:

November 3, 2011



Ontario

Ontario Municipal Board
Commission des affaires municipales de l'Ontario

PL100076

IN THE MATTER OF subsection 34(19) of the *Planning Act*, R.S.O. 1990, c. P. 13, as amended

Appellant: Hossein Amini
Appellant: Michael and Vittoria Di Trani
Appellant: Taylor Brooke St. Leonards Ltd.
Appellant: John Di Trani and others
Subject: By-law No. 1196-2009
Municipality: City of Toronto
OMB Case No.: PL100076
OMB File No.: PL100076

IN THE MATTER OF subsection 34(19) of the *Planning Act*, R.S.O. 1990, c. P. 13, as amended

Appellants: Jack Eisenberger
Subject: By-law No. 1197-2009
Municipality: City of Toronto
OMB Case No.: PL100076
OMB File No.: PL100077

IN THE MATTER OF subsection 34(19) of the *Planning Act*, R.S.O. 1990, c. P. 13, as amended

Appellants: Jack Eisenberger
Subject: By-law No. 1198-2009
Municipality: City of Toronto
OMB Case No.: PL100076
OMB File No.: PL100078

IN THE MATTER OF subsection 34(19) of the *Planning Act*, R.S.O. 1990, c. P. 13, as amended

Appellants: Jack Eisenberger
Subject: By-law No. 1199-2009
Municipality: City of Toronto
OMB Case No.: PL100076
OMB File No.: PL100079

IN THE MATTER OF subsection 34(19) of the *Planning Act*, R.S.O. 1990, c. P. 13, as amended

Appellants: Jack Eisenberger
Subject: By-law No. 1200-2009
Municipality: City of Toronto
OMB Case No.: PL100076
OMB File No.: PL100080

APPEARANCES:

Parties

City of Toronto

Jack Eisenberger

Counsel

R. Robinson

P. Foran

**MEMORANDUM OF ORAL DECISION DELIVERED BY M. C. DENHEZ ON
OCTOBER 28, 2011 AND ORDER OF THE BOARD**

This is the final settlement in this dispute. The dispute began with many appellants challenging five By-laws of the City of Toronto (the City). These by-laws required parking areas or garages in new developments to be located at or above street level, i.e. to prohibit below-grade garages.

The numerous appeals involved many owners and many properties. One by one, however, appellants reached settlements with the City, and/or withdrew. The last outstanding appeal was by Mr. Jack Eisenberger (the Appellant), against By-law 1196-2009. He also narrowed his appeal to the following four properties: 80, 95, 97 and 99 Hillmount Avenue.

At the last Pre-hearing Conference, Decision issued on March 29, 2011, the remaining Appellant and the City jointly agreed on a methodology to negotiate issues on those final outstanding properties. In the following months, they reached consensus.

First, the Appellant would withdraw his appeal of By-law 1196-2009 as it related to 80, 95 and 99 Hillmount Avenue, such withdrawal being without prejudice to any future applications or appeals respecting redevelopment of these properties.

Second, the remaining dispute with By-law 1196-2009, concerning 97 Hillmount Avenue, was resolved differently. The Appellant produced conceptual drawings for the redevelopment of 97 Hillmount Avenue, and presented them to the City. Although the drawings included a below-grade garage, the Parties were satisfied with the design, and agreed that it was in keeping with other redevelopments in this neighbourhood. In particular, the City agreed that the Applicant's proposal for 97 Hillmount Avenue was

consistent with principles of good planning, so long as it proceeded substantially in accordance with those drawings.

In support, the Parties drew the Board's attention to the expert opinion of the Appellant's Planner, Mr. Michael Goldberg. It was his sworn testimony that with the above proviso of compliance with the drawings, "amending By-law 1196-2009 to provide an exception for 97 Hillmount Avenue is appropriate, and conforms with the Official Plan, and represents good planning".

The Board has carefully considered the undisputed evidence, as well as the submissions of Counsel. On that basis, the Board is satisfied that the agreed arrangement complies with statutory requirements and constitutes good planning.

Accordingly, the Board notes the withdrawal, without prejudice, of the appeal of Mr. Jack Eisenberger against By-law 1196-2009, as it pertains to 80, 95 and 99 Hillmount Avenue. As for his appeal pertaining to 97 Hillmount Avenue, the Board disposes of the matter as follows.

THE BOARD ORDERS that the appeal of Mr. Jack Eisenberger against By-law No. 1196-2009 is allowed in part:

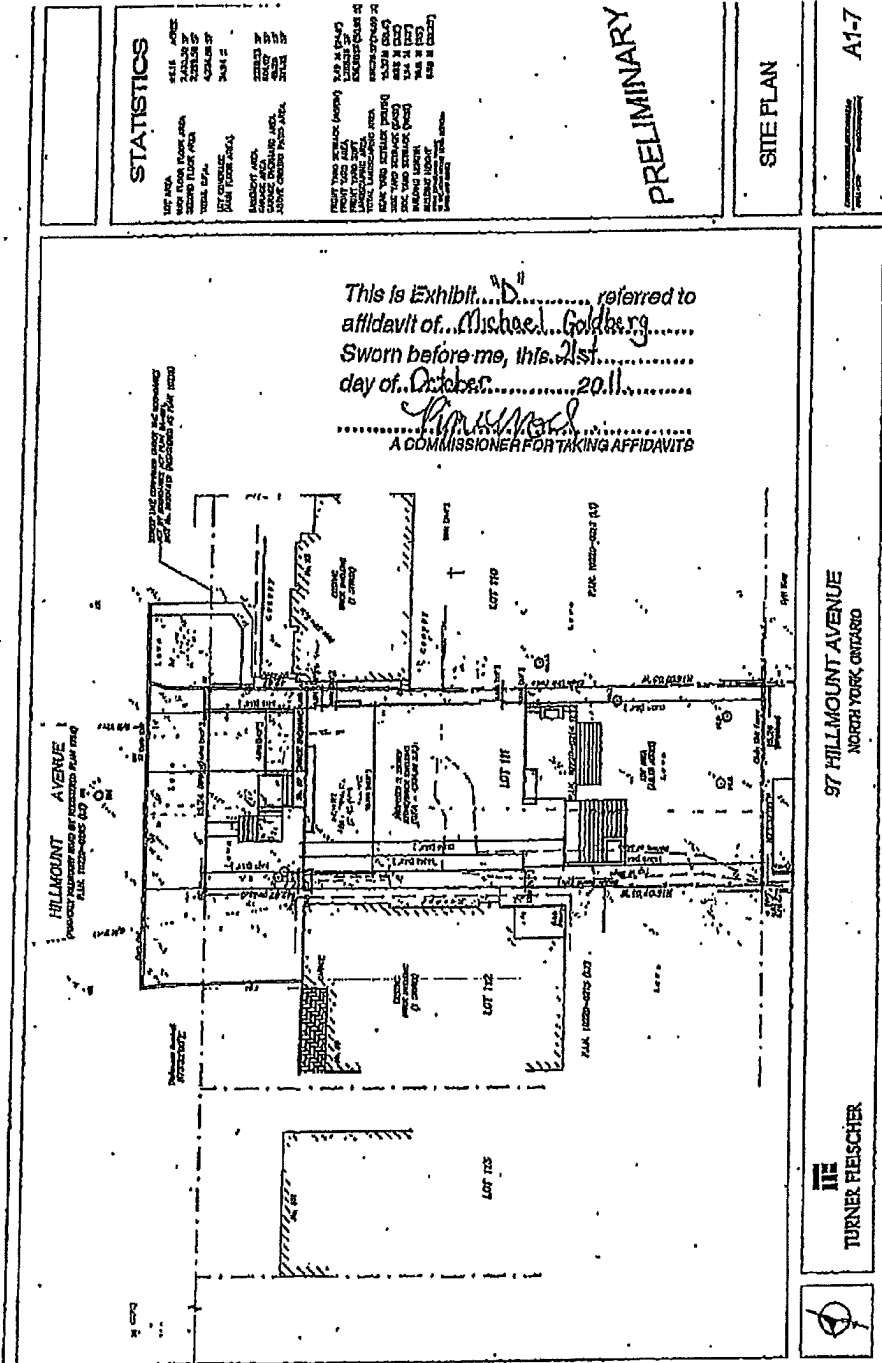
1. The City is directed to amend By-law 1196-2009 so as to exempt 97 Hillmount Avenue from the application of the By-law;
2. That exemption from the application of By-law 1196-2009 is granted on the basis that the redevelopment of 97 Hillmount Avenue proceed substantially in accordance with the plans appended to this Order as Attachment 1.

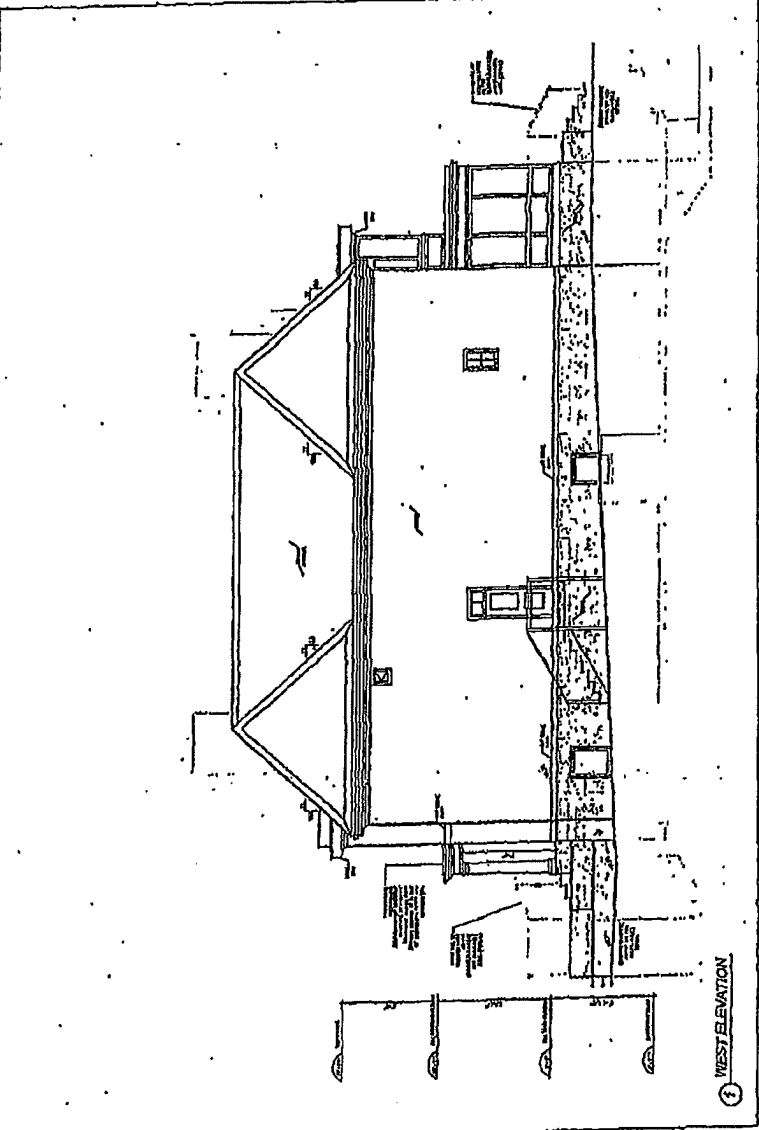
It is so Ordered.

"M. C. Denhez"

M. C. DENHEZ
MEMBER

ATTACHMENT 1



	<p>PRELIMINARY</p>	<p>EXTERIOR ELEVATIONS</p>	<p>A2-4.3</p>
		<p>97 HILLMOUNT AVENUE NORTH YORK, ONTARIO</p> <p>TF TURNER FELSCHER</p>	

	<p style="text-align: center; transform: rotate(90deg);">PRELIMINARY</p>	<p style="text-align: center;">EXTERIOR ELEVATIONS</p>	<p style="text-align: center;">A2-4.1</p>
		<p style="text-align: center;">TURNER FLEISCHER</p> <p style="text-align: center;">97 HILLMOUNT AVENUE NORTH YORK, ONTARIO</p>	

	<p>PRELIMINARY</p>	<p>EXTERIOR ELEVATIONS</p>	<p>A2-4.2</p>
	<p>① SOUTH ELEVATION (REAR)</p> <p>② NORTH ELEVATION (FRONT)</p>	<p>TF TURNER FLEISCHER</p> <p>97 HILL MOUNT AVENUE NORTH YORK, ONTARIO</p>	



City Planning Division
 Gregg Lintern, MCIP, RPP
 Acting Chief Planner and Executive Director

North York Civic Centre
 5100 Yonge Street
 Toronto, Ontario
 M2N 5V7
 Phone: (416)395-7100
 Fax: (416)395-7200

Wednesday, June 6, 2012

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

File Number:	A185/12NY	Zoning:	R4 - Waiver -
Owner(s):	2150609 ONTARIO INC	Ward:	Eglinton-Lawrence (15)
Agent:	AIRD & BERLIS LLP		
Property Address:	97 HILLMOUNT AVE	Community:	North York
Legal Description:	PLAN 1766 LOT 111		

Notice was given and a Public Hearing was held on Wednesday, June 6, 2012, as required by the Planning Act.

PURPOSE OF THE APPLICATION:

This is an application to permit the construction of a two storey dwelling. The existing dwelling would be demolished.

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

1. Proposed front yard soft landscaping of 72%
 WHEREAS a minimum of 75% is required;
2. Proposed west side yard setback of 1.3m
 WHEREAS a minimum of .8m is required;
3. Proposed east side yard setback of 1.15m
 WHEREAS a minimum of 1.8m is required;
4. Proposed lot coverage of 43.72% (282.8m²)
 WHEREAS a maximum of 35% (226.4m²) is permitted;
5. Proposed building length of 19.82m
 WHEREAS a maximum of 16.8m is permitted;
6. Proposed building height of 9.98m
 WHEREAS a maximum of 8.8m is permitted; and
7. Proposed finished first floor height of 2.1m
 WHEREAS a maximum of 1.5m is permitted.

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 **APPROVE** the following variances:

1. Proposed front yard soft landscaping of 72%
WHEREAS a minimum of 75% is required;
4. Proposed lot coverage of 43.72% (282.8m²)
WHEREAS a maximum of 35% (226.4m²) is permitted;
5. Proposed building length of 19.82m
WHEREAS a maximum of 16.8m is permitted;
7. Proposed finished first floor height of 2.1m
WHEREAS a maximum of 1.5m is permitted.

It is the decision of the Committee of Adjustment to **MODIFY AND APPROVE** the following variances:

2. Proposed west side yard setback of 1.5m
WHEREAS a minimum of .8m is required;
3. Proposed east side yard setback of 1.5m
WHEREAS a minimum of 1.8m is required;
6. Proposed building height of 9.5m
WHEREAS a maximum of 8.8m is permitted;

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):

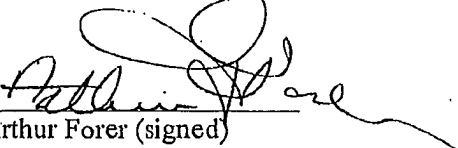
1. The owner shall satisfy the City of Toronto Municipal Code Chapter 813, Article III, with respect to privately owned trees, to the satisfaction of the Urban Forestry Division.
2. Where no street tree exists, the owner shall provide payment in an amount to cover the cost of planting a street tree abutting the site to the satisfaction of the General Manager of Parks, Forestry and Recreation.

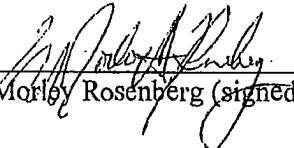
SIGNATURE PAGE

File Number:	A185/12NY	Zoning	R4 - Waiver -
Owner:	2150609 ONTARIO INC	Ward:	Eglinton-Lawrence (15)
Agent:	AIRD & BERLIS LLP	Community:	North York
Property Address:	97 HILLMOUNT AVE		
Legal Description:	PLAN 1766 LOT 111		


Richard Ross (signed)


Isaac Lallouz (signed)


Arthur Forer (signed)


Morley Rosenberg (signed)

DATE DECISION MAILED ON: Thursday, June 14, 2012

LAST DATE OF APPEAL TO THE ONTARIO MUNICIPAL BOARD: Tuesday, June 26, 2012

CERTIFIED TRUE COPY

Denise Rundle (signed)
Manager & Deputy Secretary Treasurer
North York Panel

To appeal this decision to the Ontario Municipal Board, send a completed OMB Appellant Form (A1) to the Manager & Deputy Secretary-Treasurer, Committee of Adjustment. You must pay a filing fee of \$125.00, by certified cheque or money order, in Canadian funds, payable to the Minister of Finance. An additional reduced fee of \$25.00 is required for each connected appeal filed by the same appellant. To obtain a copy of Appellant Form (A1) and other information about the appeal process please visit the Ontario Municipal Board web site at www.omb.gov.on.ca.