

## DECISION AND ORDER

**Decision Issue Date**      Tuesday, November 14, 2017

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

Appellant(s): MINH HUU TUONG NGUYEN

Applicant: MINH HUU TUONG NGUYEN

Property Address/Description: 311 SHAW ST

Committee of Adjustment Case File Number: 17 120903 STE 19 MV

TLAB Case File Number: 17 200921 S45 19 TLAB

**Hearing date:**      Thursday, November 02, 2017

**DECISION DELIVERED BY L. McPherson**

### INTRODUCTION

This is an appeal to the Toronto Local Appeal Body (the "TLAB") by the owner ("Applicant") of the decision of the Committee of Adjustment ("Committee") for the City of Toronto ("City") to refuse minor variances related to the construction of a new rear detached garage with roof top patio at 311 Shaw Street ("the subject property").

The subject property is located on the east side of Shaw Street, north of Dundas Street West and east of Ossington Avenue. The subject site designated *Neighbourhoods* in the City of Toronto Official Plan ("the Official Plan") and is zoned R (d0.6) (x949) under Zoning By-law No. 569-2013 ("new City By-law") and R2 Z0.6 under Zoning Bylaw No. 438-86 ("former Toronto By-law").

### BACKGROUND

There were a total of 9 variances before the Committee to permit the construction of rear one-storey detached garage with a roof top patio accessed by a lane. The garage

was classified as a two-storey structure and was substantially larger than the By-law standard.

The Committee of Adjustment refused the applications on June 28, 2017.

Further to TLAB Rule 11, the Applicant filed Form 3, Applicant's Disclosure, which included intended revisions to the plans and application that was made to the Committee of Adjustment. The Applicant decided to abandon the idea of a roof top patio as Planning staff did not support this aspect of the application. The height and size of the garage were reduced.

The revisions would have the effect of eliminating 6 of the variances and reducing one of the variances. These changes will be discussed further in the decision.

## **MATTERS IN ISSUE**

### **Minor 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 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.

The TLAB will be considering these “four tests” based on the revised plans and variances disclosed as part of this proceeding.

## **EVIDENCE**

The TLAB heard from the Applicant's architect, Mr. Renny Cannon, who was the also the Applicant's Representative. No one else attended the Hearing.

Mr. Cannon reviewed the revised plans (Exhibit # 1) and the accompanying Zoning Notice from the Toronto Building Department (Exhibit # 2). He described the changes to the garage and indicated that the original Zoning Notice included 2 variances (one to each By-law) that were incorrect and no longer needed. As a result of a reduced height and area and the incorrect variances being removed, the proposal now requires 3 variances as follows:

1. **Chapter 10.5.60.20. (3)(C)(iii), By-law 569-2013**

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The minimum required side yard setback for an ancillary building or structure located in the rear yard and 1.8 m or more from the residential building on the lot is 0.3 m.

The detached garage will be located 0.00 m from the north side lot line, and 0.00 m from the side lot line.

**2. Chapter 10.5.60.50. (2)(B), By-law 569-2013**

The maximum permitted total floor area of all ancillary buildings or structures on the lot is 40.0 m<sup>2</sup>.

The rear-detached garage will have a floor area of 48.0 m<sup>2</sup>

**3. Section 6(3) Pat II 7(1), By-law 438-86**

The minimum required setback of an accessory structure to all lot lines is 3.0 m.

The rear detached garage will be located 1.05 m from the east rear lot line, 0.00 m from the north side lot line and 0.00 m from the south side lot line.

I accept that these revisions are minor, were appropriately disclosed in the exchanges required by the TLAB Rules, and no further notice or consideration is required under s. 45 (18.1) of the Planning Act.

Mr. Cannon used photos of the area to demonstrate that the majority of garages in the area have a 0.0 m setback to the lot line. The garage to the south of the subject property is built to the lot line. He reviewed the pattern of garages along Shaw Street and within a block of Shaw Street which revealed a consistent pattern of garages that are 1.0 m from the rear lane and 0.0 m from the property line. He explained that having small setbacks between the garages provided the opportunity for people to access the backyards from the lane. Also the small size of the setback requirement (0.3m) does not provide any meaningful landscaping opportunities. As a result, garages in the area are generally built to the lot line. He noted that the requirement to be located 3.0 m from the lot lines in the former Toronto By-law has not been carried forward in the new City By-law. Most of the garages in the area are built to the side lot lines and approximately 1 m from the lane.

With respect to the size of the garage, he indicated that the proposed size 48 m<sup>2</sup> was the result of using typical dimensions for the width and length of a garage. As shown in the photos, many of the garages in the area exceed this amount. The previous garages, built in the 1940's, were generally used for storage and not for the parking of cars.

His opinion was that the garages maintained the intent and purpose of the Official Plan by providing for a built form which respects and reinforces the existing physical character of the neighbourhood. The garage is typical in size, height and setbacks to the other garages in the area. With respect to Zoning, the reduced variances provide for a stable built form and limit the impact on adjacent residential properties. The issue of overlook and privacy no longer exists and the reduced height will lessen the shadow

impact on the property to the north. His opinion is the revised variances are desirable for the appropriate development of the land and are minor.

## **ANALYSIS, FINDINGS, REASONS**

Mr. Cannon indicated that the original proposal was intended to accommodate a green roof, something he thought would be desirable. Once he and his client realized City planning concerns, he redesigned the garage to be characteristic of the majority of the garages on the street and in the area.

The zero side lot line condition is a typical condition along the street and within the area. The 8.0 m<sup>2</sup> increase in the size of the garage is modest and accommodates typical garage dimensions and the garage will be smaller than many on the street and within the area. The reduction in setback from the lane follows the existing pattern of garages in the area, some of which are closer than 1.0 m and none of which are 3.0 m. The concerns of Planning staff have been addressed and no one from the neighbourhood appeared at the Hearing.

The TLAB is satisfied the revised variances meet the criteria set out in Section 45(1) of the Planning Act. The general purpose and intent of the Official Plan and Zoning By-laws is maintained. The proposed garage will have the same built form, height and setback conditions as the majority of garages along the street and within the area and respect and reinforce the existing physical character. The proposal results in an appropriate and desirable development for subject property and the variances are considered minor in the context.

## **DECISION AND ORDER**

The TLAB orders that the appeal is allowed and the following variances authorized:

**1. Chapter 10.5.60.20. (3)(C)(iii), By-law 569-2013**

The minimum required side yard setback for an ancillary building or structure located in the rear yard and 1.8 m or more from the residential building on the lot is 0.3 m.

The detached garage will be located 0.00 m from the north side lot line, and 0.00 m from the side lot line.

**2. Chapter 10.5.60.50. (2)(B), By-law 569-2013**

The maximum permitted total floor area of all ancillary buildings or structures on the lot is 40.0 m<sup>2</sup>.

The rear detached garage will have a floor area of 48.0 m<sup>2</sup>

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X 

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L. McPherson

Chair, Toronto Local Appeal Body