

# DECISION AND ORDER

**Decision Issue Date**      Thursday, December 28, 2017

PROCEEDING COMMENCED UNDER subsection 45(12), subsection 45(1) of the Planning Act, R.S.O. 1990, c. P.13, as amended

Appellant(s): NATASHA MODENA

Applicant: IDA EVANGELISTA

Property Address/Description: 28 URBANDALE AVE

Committee of Adjustment Case File Number: 17 158231 NNY 24 MV

TLAB Case File Number: **17 207460 S45 24 TLAB**

**Hearing date:**      Thursday, December 14, 2017

**DECISION DELIVERED BY T. Yao**

## INTRODUCTION

Ms. Modena wishes to demolish her older home with a side driveway and replace it with a newer design with integral double car garage. To do so, she seeks eleven variances, set out in Tables 1 and 2. This decision authorizes these variances.

## BACKGROUND

The variances sought are:

<b>Table 1. Variances required under Zoning By-law No. 569-2013 and forming part of this decision</b>			
		<b>Required</b>	<b>Proposed</b>

**Decision of Toronto Local Appeal Body Panel Member: T. Yao**  
**TLAB Case File Number: 17 207460 S45 24 TLAB**

1.	Foyer shape	10 m <sup>2</sup> first floor within 4 m of front wall	7.22 m <sup>2</sup> first floor within 7.84 m of front wall
2.	Width of front stairs under certain conditions	2.0 m	2.91 m
3.	Minimum front yard landscaping (Deficiency being caused by driveway hard surface)	50% of front yard	56% of front yard
4.	Lot coverage	30%	31.7 %
5.	minimum east side yard setback	1.8 m	1.5 m
6.	minimum west side yard setback	1.8 m	1.5 m

<b>Table 1. Variances required under Zoning By-law No. 7625</b>			
<b>and forming part of this decision</b>			
		Required	Proposed
7.	Lot coverage	30%	31.7 %
8.	Maximum building height	8.8 m	9.35 m
9.	Minimum front yard landscaping	50% of front yard	56% of front yard
10.	minimum east side yard setback	1.8 m	1.5 m
11.	minimum west side yard setback	1.8 m	1.5 m

At the Committee of Adjustment, (July 20, 2017), all the variances were approved, except for the side yard setbacks, (variances 5, 6, 10 and 11), which were refused. Ms. Modena appealed.

**MATTERS IN ISSUE**

Once there is an appeal, the entire application starts afresh, and Ms. Modena must satisfy the four tests under s. 45(1) of the *Planning Act* for all required variances, namely that each variance is minor, desirable for the appropriate development of the land and maintains the general intent and purpose of the official plan and zoning by-laws. The obligations created by relevant provincial policies are not in dispute in this case.

## **EVIDENCE**

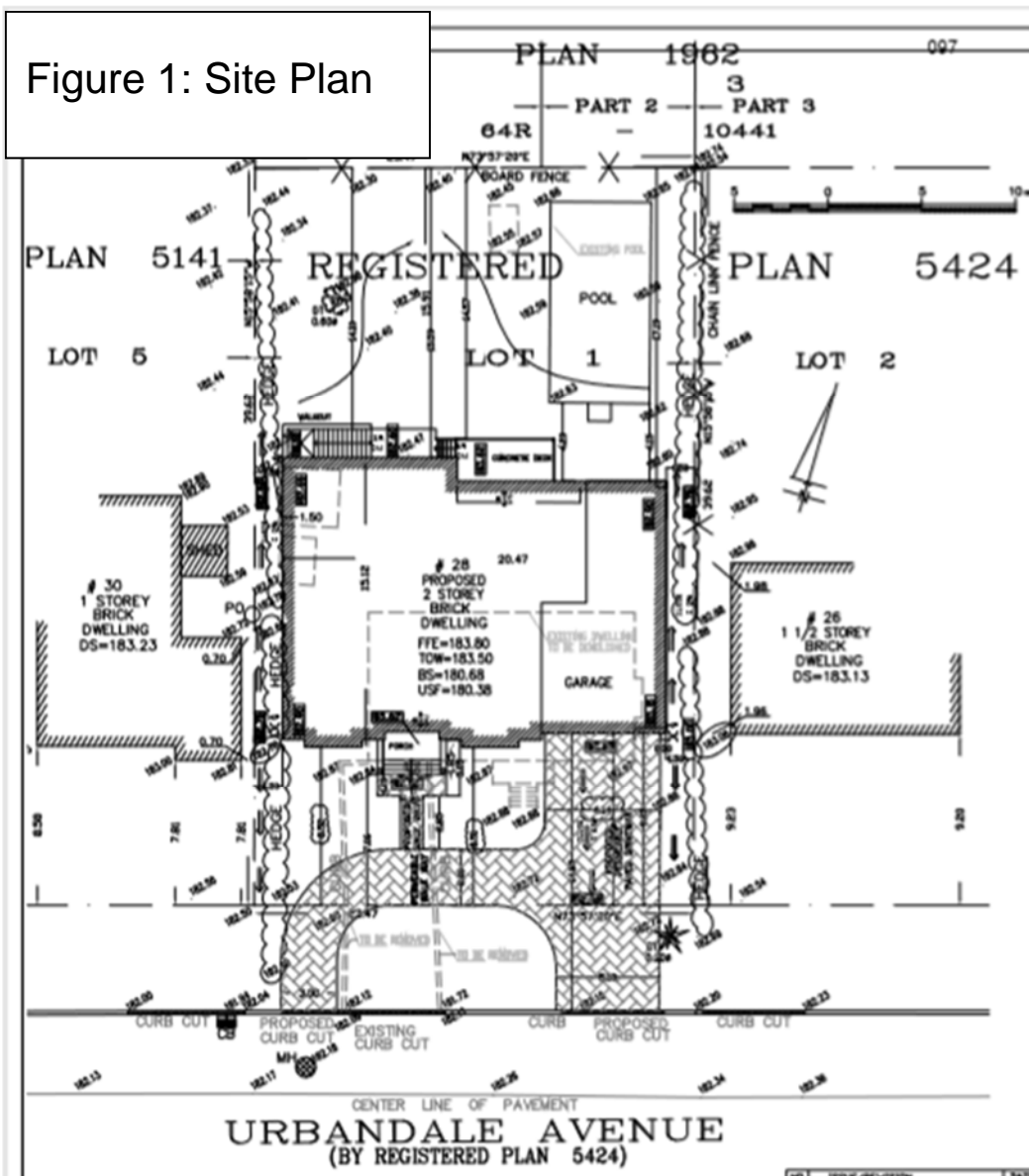
The only witness was Mr. Romano, whom I qualified as entitled to give opinion evidence in the area of land use planning. Mr. Romano has some 28 years' experience, and has testified in over 400 hearings.

## **ANALYSIS, FINDINGS, REASONS**

I find this to be a modest intensification; one indication of this being that Ms. Modena has chosen to build "tight" (Mr. Roman's word) to the side yard lot lines, not extending far back into the lot, as do most new houses in the neighbourhood. It may be seen in the site plan (Figure 10 that the depth of her proposed house of number 28 is roughly the same as for the two adjacent houses, 30 and 26, even though the latter are older homes with a floor plate that is shorter front to back by modern standards. This has resulted in rear yard setbacks that far exceed the requirements and therefore makes a positive addition to the neighbourhood.

### **Height (North York by-law only)**

A City Planning Report (July 10, 2017) recommended that the height be lowered, to which Ms. Modena agreed, lowering the height to 9.35 m. This still required a variance under the superseded North York By-law, which imposed a maximum height of 8.8 m (9.35 m sought), but Mr. Romano gave evidence that this was caused by a "dip" of .69 m in the crown of the road in front of 28 Urbandale. Without the dip, the proposed building height would have complied with the North York by-law. In any case, since the height concessions were made at the request of the City, I am prepared to find that this variance meets the four tests.



### Side yard setbacks and lot coverage

I have already mentioned how the proposal achieves compliance with the City of Toronto Official Plan, policy 4.1.5.g in respect of rear yards and landscaping. The other physical characteristics are the side yards, which was the only aspect of this application not to be granted by the Committee of Adjustment. I find three reasons why the side yards maintain the intent and purpose of the official plan. First, Mr. Romano's "Minor Variance Decision Summary Sampling [since 2008 of 90 files]" constitutes a review of the characteristic variances granted to properties within a 500 m radius. It shows typical side yard setback variances similar to what Ms. Modena seeks. Indeed, the OMB granted Ms. Modena or a previous owner of 28 Urbandale minor variances of 1.52 m, east and west in 2014. (This OMB decision was never acted on.)

Since there was no opposing party, I asked Mr. Romano if he “cherry picked” in choosing the properties to summarize; his answer was that he tried to pick nearby streets that were representative of development activity, and once picked all the data on that street were presented, which answer shows that the data is representative. My second reason is rejection of the longer front-to-back shape, consistent with the two abutting houses, already explained. My third reason is that “tight” side yards are already a feature of the neighbourhood; the western neighbour’s house (30 Urbandale) has an east side yard setback of .7 m<sup>1</sup> (1.8 required). This is an existing condition, but it shows that in those pre-zoning days (1950), the “prevailing patterns” of side yards had some degree of variety.

I am omitting Mr. Romano’s extensive evidence on architectural design and articulation of the elevations, which explain the need for lot coverage. I find that the proposed side yard setbacks and the coverage variance maintain the intent of the Official Plan and satisfy the remaining three tests.



### Landscaping

The section in the Official Plan headed “Development Criteria” states “new development shall respect and reinforce the general physical patterns in a Neighbourhood” (p 4-3) and I find that this proposal does so, even though a variance is

<sup>1</sup> The east side neighbour has a side yard setback of 1.96 m (1.8 m required).

needed for front yard landscaping. I asked Mr. Romano why Ms. Modena did not build within the by-law requirements. He replied that this was an extremely wide lot, with dimensions roughly 23 x 40 m. (roughly 77 ft. frontage) and that the circular driveway pattern is only permitted on lots wider than 18 m (60 ft.). He went on to say that it was a common pattern for new driveways and thus was “sensitive” and “fitted in” with the existing physical character of the neighbourhood (Official Plan, 4-3). Ms. Modena’s driveway design (for the house with the pool in the aerial photo), has the minimum possible width and contrasts with 29 Urbandale, immediately across the street. The latter property has an extremely large driveway width and serves a three-car garage. Mr. Romano estimated its front yard landscaping at less than 40%. (Figure 2).

The City has recommended, and Ms. Modena has agreed, to install permeable pavers instead of hard asphalt which is the building material used across the street. This will then permit inflow of precipitation into the ground, similar to older homes with less hard surfaced area. This is in furtherance of the Official Plan policy in 4.1.5.g, “Development will respect and reinforce the physical character of the neighbourhood, including in particular, ... the prevailing patterns of rear and side yard setbacks, and landscaped open space”. I find the landscaping variance meets the four tests.

### **Porch steps and foyer size**

Mr. Romano’s evidence was:

It’s got this central hall, some symmetry on either side of the front entrance way, and this front entrance way has got this pronounced porch, veranda, . . .in order to maintain that majestic front entry typology, there is a stair width variance of 2.9 m instead of 2 m.

The front foyer needs a variance, a merely technical one I find, because the foyer is long and hall-like rather than short and wide. This turns out to be a matter of internal layout and is not noticeable from the outside.

### **Conclusion**

I find the four tests are met, both individually and collectively and will grant the variances on condition.

### **DECISION AND ORDER**

I authorize the variances set out as ‘Proposed’ in Tables 1 and 2, above, on condition that construction is substantially in accordance with the plans filed and identified as pages 88 to 105 In Exhibit 2, Mr. Romano’s Book of Documents, Volume 1. Further, that the proposed driveway be constructed of a permeable surface to ensure the rainwater and snowmelt can be properly managed on site.

X

*Ted Yao*

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Ted Yao  
Panel Chair, Toronto Local Appeal Body  
Signed by: Ted Yao