

DECISION AND ORDER

Decision Issue Date Monday, January 22, 2018

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

Appellant(s): PAUL GALLOP

Applicant: KEITH O'BRIEN

Property Address/Description: 403 THE KINGSWAY

Committee of Adjustment Case File Number: 17 162521 WET 04 MV (A0447/17EYK)

TLAB Case File Number: 17 216892 S45 04 TLAB

Hearing date: Wednesday, January 10, 2018

DECISION DELIVERED BY T. YAO

INTRODUCTION

Mr. Gallop proposes to transform his 1950 one and a half storey dwelling by greatly enlarging the second storey, and enlarging and turning the garage 90° and adding two small one-story additions. He needs 11 variances. The variances are granted.

BACKGROUND

This is an architect designed major renovation to an older one and a half storey house. The key issue arises from the fact that it is a corner lot and the zoning by-law is designed for a typical, mid-block lot.

Mr. Gallop's house is at the northeast corner of the intersection of The Kingsway and Hartfield Road. It is the southernmost lot of a two-lot "block" on the east side of The Kingsway. The abutting house is no. 405 The Kingsway, owned by the Gornik family. As a corner lot, no. 403 faces The Kingsway, a busy street with residences set well back from the travelled portion of the road, with flankage on Hartfield Road.

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Across the street are a block of five houses; the second one from the southern end is no 352 The Kingsway; owned by Donald Kason, who elected to be a party but did not attend the hearing on January 10, 2018. The southwest corner is a parking lot of Humber Valley Village Junior Middle School. To the east is no. 60 Hartfield Road, owned by the Hasan family. Both the Gorniks¹ and Hasans wrote letters to the Committee of Adjustment in support of these variances, but did not participate in this hearing.

The boulevard (between The Kingsway and sidewalk) is unusually wide — about 15 feet and contains many mature City owned trees.

The existing building has the appearance of a bungalow, although there is a small second storey area consisting of one bedroom and bath. This is to be enlarged to three bedrooms. On the first floor, there will be new construction in three areas:

A great room off the kitchen (northernmost grey square)

A study (the central grey square) toward The Kingsway

A new three car garage toward Hartfield road (southernmost grey rectangle protruding toward Hartfield Road).

Mr. O' Brien's intent was to lower each of these three extremities to give the house an “arc shape” with a more human scale and much less weight than the number of variances would suggest. He indicated that the proposed structure is "diminutive" compared to both abutting properties: 405 The Kingsway and 60 Hartfield.

¹ In May 2017, the Committee of Adjustment approved a consent and variances for the Gorniks, which approval was appealed by the Humber Valley Village Residents' Association and others. Mr. Gallop wrote a letter in support of Mr. Gornik. The case is currently before the TLAB.

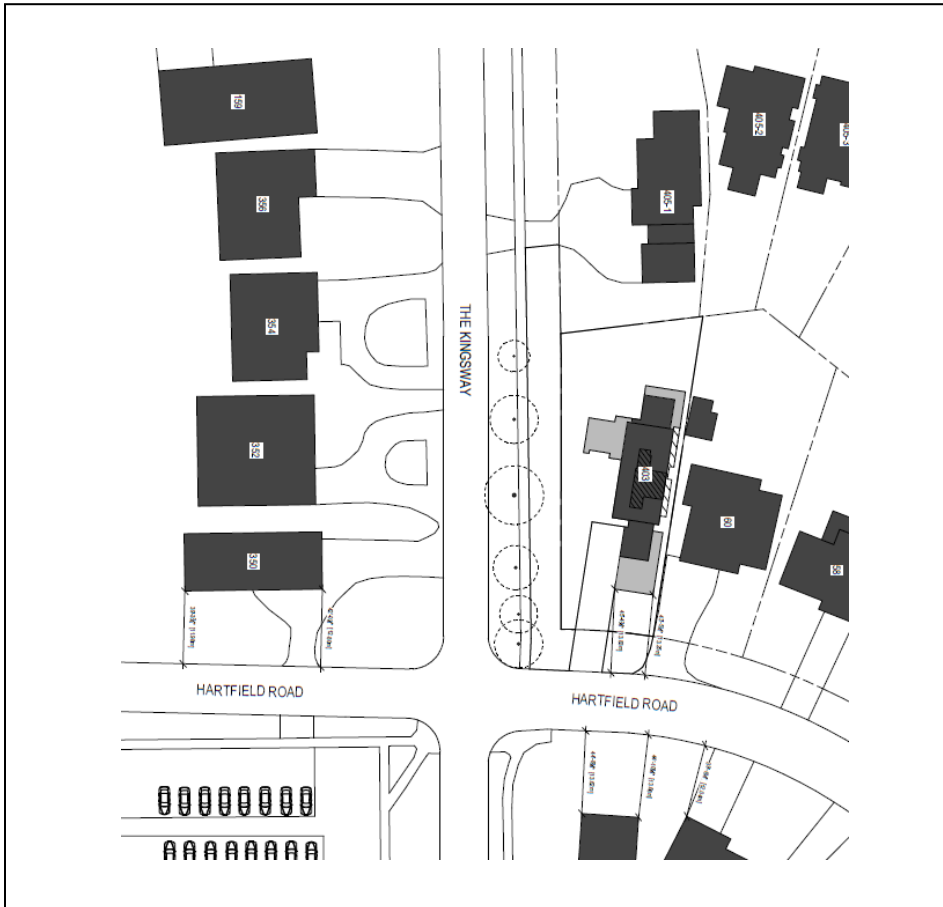


Figure 1 403 The Kingsway. Existing buildings in dark grey. Proposed new construction in lighter grey.

MATTERS IN ISSUE

In considering the applications for variances from the Zoning By-laws, the TLAB Panel must be satisfied that the applications conform to the Growth Plan and are consistent with the Provincial Policy Statements as well as that they meet all 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.

EVIDENCE

The sole witness was Keith O'Brien, Mr. Gallop's architect. He has a Master's degree in Architecture and a building Code Identification Number (a license qualifying him to design houses in the Province of Ontario). He has designed hundreds of homes in Toronto and been to the Committee of Adjustment at least fifty times. I qualified him as able to give opinion evidence in the area of land use planning.

ANALYSIS, FINDINGS, REASONS

The Official Plan

The July 25, 2017 Community Planning Report (Etobicoke York District) states that physical changes to established Neighbourhoods must be sensitive, gradual and generally "fit" the existing character. Policy 4.1.5 of the Official plan establishes that development will respect and reinforce the existing physical character of the neighbourhood, particularly the . . . massing and scale of nearby residential properties. Thus, the central issue in this hearing is how well the proposal respects and reinforces the physical character of the area, the larger context and, more specifically, the two abutting properties.

Gross Floor Area

Mr. Gallop seeks an increase in floor space index to 103.39% (where 100% = maximum allowable). In Mr. O'Brien's analysis of the community study data² the average FSI variance granted by the Committee of Adjustment is 119.54 %. Mr. Kason (page 2) sought and obtained an increase in floor space index in 2008 to 120.45%³. I find the 103.39% sought by Mr. Gallop to be minor.

Front, Side and Rear yard setbacks

Mr. O'Brien stated that these variances are "largely a function of the peculiarity of a corner lot" and the zoning by-law definition of front lot line, which is the shortest side abutting a street; namely the Hartfield Road face. Mr. O'Brien's evidence, which I accept, is that many of these variances would not be needed if the property were in a mid-block location.

The rear yard setback involves the interface to the Gornik property to the north, where 12.65 m (41 feet 6 inches) is required and Mr. Gallop's design only provides 10.24 m. (33 feet 7 inches). The variance is sought in the vacant area between 403 and 405 and the portion of 405 that would be affected, if there is any impact at all, would be no. 405's three car garage. The impact is modest.

The same is true of the east side yard variance that interfaces the Hasan property. Here 1.2 m is required, and .93 m provided, and this reflects the existing setback. The difference is about 10 inches and the portions of 60 Hartfield that would be "affected" are a sunken driveway leading to a below grade garage and a pool structure that is almost on the lot line. The vistas for 60 Hartfield are oriented towards

² Zoning Precedent Study Recent Committee of Adjustment Decisions within vicinity of Subject Property

³ This property is presently owned by Don Kason, who filed an intention to be a party but did not appear at the hearing. Mr. Kason is the only neighbor to object to the proposal.

the most spacious part of their lot, to the north and north east. The reason for the variance is that Mr. Gallop wishes to build upwards in line with the existing first storey, which is only .93 m from the Gallop/Hasan lot line. To set the new portion back 10 more inches would be a costly and needless expense.

The front yard setback variance deals with the orientation of the garage vis à vis Hartfield Road. The plan examiner has stipulated the requirement is 13.24 m (43.5 feet) required and only 6.86 m (22.5 feet) is to be provided. Section 10.5.40.70.91) (A) of By-law 569-2013 states that where you have a mid-block property, you take the average of the two abutting lots. For a corner lot you would take the distance from the abutting property, in this case 60 Hartfield. The setbacks are measured to the road right of way; the proposed new garage will in fact be 44.5 feet from the travelled portion of Hartfield Road itself, again a disadvantage imposed on a corner lot. I find that this distance meets the intent and purpose of the zoning by-law and is desirable for the appropriate development of the property, but for a fuller analysis of how I reach this conclusion I need to consider two other variances connected to the garage, in the next section.

Maximum Permitted Driveway Width and 3 car Garage

A three-car garage is only permitted on a lot with a frontage of 27 m; the Hartfield Road frontage is 17.18 m. If The Kingsway were the frontage, the lot would have 53.39 m (175 feet), almost twice the minimum. Mr. O'Brien said a 3-car garage was chosen to "match" the Gornik residence, which also has this feature, and to allow cars to be stored inside, instead of on the parking pad facing The Kingsway. In this way the streetscape does not have the appearance of a parking lot.

The City's Transportation Services Division was circulated in connection with the July 2017 Committee of Adjustment hearing and commented:

We have no objections to the proposed driveway width given that it is consistent with the width of the proposed garage.

We have no objections to the proposed 3 car garage given that it will be located entirely within private property.

The driveway design contains a large parking pad in front of the three-car garage that will allow cars to enter from Hartfield, go into a garage, back up out of the garage, make a three-point turn, and then leave the property in a forward motion. This will allow safe movements into and out of an access point very close to the busy Kingsway/Hartfield intersection. I find this is desirable for the appropriate development of the land.

This is perhaps the place to deal with a second application to the Committee of Adjustment in December 2017, and in which this exact proposal, but with the three-car garage shortened by five feet, was approved by the Committee. I mention this because

some neighbours may be puzzled by why they received a second notice from the Committee after the refusal in July 27, 2017.

Mr. O'Brien explained that he attempted to explain the project to the City Planner who had written an unfavorable report. Mr. O'Brien asked the Planner to rethink the report and was advised that a subsisting application was needed for him to comment officially and suggested the garage be shortened. Mr. O'Brien did so, and submitted a second application, largely similar to the July 2017 application, which the Committee approved in December 2017. In view of this favourable decision, the only real consequence of this TLAB hearing (January 2018) is whether Mr. Gallop can obtain authorization for an extra five feet of garage, which he still desires. In hindsight, given the enormous workload on the Planning Department and the Committee, it might have been a better course to have sought further dialogue by requesting a deferral of the July 2017 Committee of Adjustment hearing. I may have some of these details wrong, as none of these documents were filed as exhibits.

At any rate I heard a great deal of evidence on the garage with the extra five feet over what the Committee heard and indeed had no evidence on the lopped off garage version. Exercising my independent judgement, and having regard for the orientation of a broad shallow lot towards The Kingsway, I am satisfied that the larger garage is minor and meets the other tests.

Length and Depth of Building

Length of the dwelling is a way of regulating density. It works well when a building is on a lot which shortest side is the street side and the lot is long and narrow. The difference between "length" and "depth" is that the "length" is the distance between two front and rear walls and the "depth" is measured from the rear wall to the front yard setback. Both variances are made necessary because Hartfield Road is the default frontage. If The Kingsway were the frontage the "length" of building would be 25 feet (7.7 m) whereas the maximum is 17 m. The need for this variance is again a function of the corner lot status, and under these circumstances, I find both variances to be minor.

Height of Building and Parapet

II



The above cross section drawing shows the relationship between 403 The Kingsway and 60 Hartfield. Despite the need for a variance from a maximum permitted height of a flat roof of 6.5 m, the top of the Gallop roof is at the same level as the eaves of the Hasan house. Similarly, the parapet wall is a performance standard hidden from the passer-by, and will not create a perception of height and mass. This is in keeping with Mr. O'Brien's overall design objective of a humane, ground-oriented building.

The platform

This variance (No. 9) is caused by a doorway leading to the flat roof of the front study. A second-floor platform is only permitted to be 4 m², whereas Mr. Gallop wishes 22.63 m². The platform is not intended for outdoor living activities, such as dining or recreation. It faces The Kingsway and is about 45 feet from the road and obscured by City trees, which will not be disturbed. Given the distances and likelihood it will not overlook neighbours, this variance is minor.

This is perhaps the point to mention that a mature honey locust will be removed during the construction of the study. The City's Forestry Department has asked for a condition to be imposed to replace this tree; Mr. Gallop has already entered into the necessary paperwork.

Conclusion

I find the four tests, individually and cumulatively have been met and the project will enhance the physical character of the neighbourhood. For brevity and readability, I have not repeated that all four tests are met for the separate variance, but highlighted one of the tests to serve as a proxy statement for the four tests applied together. I find there is nothing in the applications that raises any issue with the Growth Plan or the Provincial Policy Statements. Accordingly, Mr. Gallop's appeal of the decision of the Committee of Adjustment of July 27, 2017 is allowed.

DECISION AND ORDER

I authorize the following variances in Table 1, subject to the following conditions:

Table 1. Variances required under Zoning By-law No. 569-2013 and forming part of this decision			
		Required/Permitted	Proposed
1.	Gross floor area	35.11% ⁴	35.96%
2.	Minimum front yard setback	13.24 m	6.86 m
3.	Minimum north side yard setback	1.2 m	.93 m
4.	Minimum rear yard setback	12.65 m	10.24 m
5.	Maximum permitted dwelling length	17 m	33.85 m
6.	Maximum permitted dwelling depth	19 m	27.58 m
7	Maximum permitted flat roof height	6.5 m	8.01 m
8	Maximum permitted height of parapet	.3 m	1.14 m
9	Maximum permitted area for second floor platform	4 m ²	22.63 m ²
10	Maximum permitted driveway width	6 m	6.17 m
11		A three-car garage is only permitted on a lot with a frontage of 27 m or greater	Lot frontage is 17.18 m

Planning Conditions

1. All construction shall be in substantial compliance with plans dated May 17th, 2017 and signed “Keith O’Brien”, presented to Committee of Adjustment during a public hearing on July 27th, 2017, and presented to Toronto Local Appeal Body and made

⁴ The plan examiner has expressed this as *required*: 165 m² + 25% of the lot area (407.75 m²) and *proposed*: 165 m² + 25% of the lot area (421.57 m²). S. 900.3.10(28). At the hearing Mr. O’Brien expressed this as 103% of the permitted but I get something more like 102%.

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Exhibit 1 during that hearing on Jan 10th, 2018. "Substantial Compliance" may include, at Mr. Gallop's option, the following deviations from those plans:

- a. The roof and ceiling height behind the parapet wall may be raised to eliminate the need for variance 8; and
- b. With respect to variance 11, instead of three individual car doors into the garage addition, the owner may substitute a single-car door and a two-car door.

Transportation Services Conditions

2. The site plan must include the following notations:
 - a. "All existing redundant curb cuts that are no longer required will be restored to the satisfaction of the City of Toronto at no cost to the municipality";
 - b. "All proposed new curb cuts shall comply with all applicable City of Toronto Design Standards and requirements. and must be constructed at no cost to the municipality";
 - c. "The applicant must submit a Municipal Road Damage Deposit (MRDD) for the proposed new driveway and sidewalk/curb construction within the municipal boulevard." The applicant must contact Ms. Joanne Vecchiarelli of the Right-of-Way Management Section at 416-338-1045 in order to obtain all requirements related to the MRDD; and
 - d. "The applicant must obtain all required permits from the Right-of-Way Management Section of Transportation Services".

Forestry Condition

3. The applicant shall submit an application for a permit to injure or remove trees to Urban Forestry, as per City of Toronto Municipal Code Chapter 813, Article III.

X

Ted Yao

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