

DECISION AND ORDER

Decision Issue Date Monday, March 12, 2018

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

Appellant(s): GRACE HO

Applicant: PASSIVE HOUSE43 ARCHITECTURE

Property Address/Description: 46 BALLYRONAN RD

Committee of Adjustment Case File Number: 17 199965 NNY 25 MV

TLAB Case File Number: **17 254996 S45 25 TLAB**

Hearing date: **Tuesday, February 20, 2018**

DECISION DELIVERED BY L. McPherson

INTRODUCTION

This Hearing is in the matter of an appeal to the Toronto Local Appeal Body (the “TLAB”) by Ms. Grace Ho of the decision of the Committee of Adjustment (“Committee”) for the City of Toronto (“City”) to approve minor variances to construct a new 2-storey detached dwelling at 46 Ballyronan Drive (“the subject property”).

The subject property is located on the southeast of York Mills Road and Leslie Street. The subject property is designated Neighbourhoods in the City of Toronto Official Plan (“Official Plan”) and zoned RD (f9.0; a 275) under Zoning By-law No. 569-2013 (“new City By-law”) and R4 under North York Zoning Bylaw No. 7625 (“former By-law 7625”).

On October 12, 2017 the Committee approved minor variances, with conditions, to permit a new 2-storey dwelling on the subject property. The Appellant is a neighbour who owns and resides at 44 Ballyronan Road (“the Appellant”).

BACKGROUND

On February 1, 2017, the Owner filed a Notice of Motion requesting that the currently scheduled Hearing date of April 3, 2018 be moved to the Motion Hearing date of February 20, 2018. In the alternative, if the hearing could not be moved to February 20, 2018, that the Hearing be scheduled for the next available date. The grounds for the Motion as outlined by the moving Party can be summarized as follows:

- An appeal was submitted on October 30, 2017 by the Appellant.
- Due to an incomplete form filed by the Appellant, TLAB issued a Notice of Proposed Dismissal.
- The Appellant did not respond to the Dismissal and did not correct the error in the form.
- TLAB made a decision to schedule a hearing for April 3, 2018 - over 5 months since the appeal was submitted.
- The TLAB rules are designed to ensure a fair, timely and expeditious disclosure of relevant information based on mutual exchange.
- A wait of this length creates significant delays to the project and translates into incremental costs.
- Further to TLAB rule 2.2, the Applicant requests an earlier hearing date.

RULING ON THE MOTION

Under Rule 2.10, the TLAB may grant all necessary exceptions to the Rules, or grant other relief as it considers appropriate, to enable it to effectively and completely adjudicate matters in a just, expeditious and cost-effective manner. In addition, under Rule 4.4, the TLAB may extend or reduce the time limits provided by the Rules.

The TLAB staff advised the Parties that the Motion would be heard in person and that the Parties should come prepared to proceed with the case, depending on the outcome of the Motion Hearing.

The Applicant reiterated their desire to proceed with the Appeal Hearing given the time lapse since the Committee decision.

The Appellant did not wish to proceed with the appeal hearing at this time and indicated that she would like further time to research passive houses (a type of energy efficient dwelling proposed by the Applicant).

I have read the file material and considered the submissions of the Parties. The Appellant has demonstrated a lack of compliance with the Rules over the course of the various matters dealing with this Appeal. I understand that there may have been computer issues and a lack of understanding of the TLAB process and Rules. The

Appellant did not respond to the Notice of Motion. The Notice of Motion indicated that, as a Party, the Appellant may make their views known by filing a response at least 7 days before the date of the Motion Hearing.

Further, the Notice of Hearing for the April 3, 2018 clearly stated the filing dates for any documents. Document disclosure was due January 22, 2018 and Witness Statements were due February 5, 2018. No filings were made by the Appellant. The last day for a Notice of Motion was the date of the Appeal Hearing. As a result, there was no further opportunity for the Appellant to file documents related to any further research related to passive houses or to bring a Motion for relief from the Rules, without formal leave. Further, the basis for the Appeal indicated a fire safety apprehension with the proposed canopy and a privacy concern related to the proposed windows on the west façade. As will be discussed further, these specific concerns do not relate directly to the variances before the TLAB.

The TLAB must consider the relief requested in the context of the appeal, and then the application itself based on the four tests of the Planning Act, as outlined below, and not on merely the desire of an Applicant to achieve a certain type of dwelling, regardless of the merits. I am satisfied that there would be no new relevant or essential information available to the TLAB by the scheduled Hearing date of April 3, 2018.

There were no other Parties or Participants identified.

The TLAB is committed to timely disposition of Appeals. The Motion was granted and the Motion Hearing was converted to the Appeal Hearing. The Hearing date of April 3, 2018 is released.

MATTERS IN ISSUE

The key issue raised by the Appellant is the extent of the proposed canopy along the west side of the proposed house, adjacent to their property (Variance 4). In addition, the Appellant was concerned with privacy resulting from the windows on the west façade. The proposed variances are as follows:

1. Chapter 10.5.40.10. (5), By-law 569-2013. A minimum of 10.00 m² of the first floor must be within 4.00 m of the front main wall.

The proposal has 6.50 m² proposed within 7.50 m of the front wall.

2. Chapter 10.5.40.60. (3), By-Law 569-2013. 3) (A)(ii) Exterior stairs providing pedestrian access to a building or structure may encroach into a required building setback if the stairs are no wider than 2.00 m.

The proposed stairs are 3.10 m wide.

3. Chapter 10.20.40.10. (2)(A), By-law 569-2013. The permitted maximum height of the exterior portion of the main walls for a detached house is 7.50 m for no less than 60.00% of the total width of all front main walls and all rear main walls.

The proposed height for all front main walls that are under 7.50 m is 41.00% of the total width of all front main walls. Therefore, the proposed height for all main front walls allowed to be above 7.5m exceeds the allowable by 19.00% of the total width of all front main walls.

4. Section 6(9)(j), By-law 7625. The maximum permitted area of a canopy in a side yard is 2.30 m².

The proposed west side yard canopy is 18.13 m².

5. Chapter 13.2.5A, By-law 7625. The maximum permitted building length is 16.80 m.

The proposed building length is 17.118 m.

JURISDICTION

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.

Applicable provincial policy is also a relevant consideration.

EVIDENCE

The TLAB heard from Mr. Craig England, the principal and owner of Passive House 43 Architecture, the designer of the proposed dwelling. Mr. England elected to be a Party in the hearing and submitted an extensive number of documents and responded to the Notice of Motion (Exhibit 3), with a detailed description of the project and responses to the issues raised by the Appellant in the Notice of Appeal. Mr. England did not file a Witness Statement based on a misunderstanding that he could not be a Representative and a Witness (he was not requesting to be recognized as an expert witness). The TLAB requested, and Mr. England agreed, that he be a Witness based on his many

filings. His disclosures and the response to the Motion had the character of a Witness Statement. This provided the Appellant with an opportunity to cross-examine Mr. England to receive answers to their questions and assist the TLAB in understanding the issues.

Mr. England indicated that the proposed dwelling is targeting Passive House Institute Certification (an energy efficient standard) which is why certain elements of the dwelling, including the side canopy, are proposed. He described the proposed dwelling as a modest sized 2-storey house of approximately 2,400 square feet, which is smaller than current development trends in the area.

Mr. England explained the variances (Exhibits 1 and 4). The front main wall variance (Variance 1) is a result of the grade which results in the mud room from the garage being considered as the first floor. There is a foyer at the front door within 4.0 m of the front wall but it is not considered the front main wall.

The front porch stairs are proposed to be 3.10 m wide while the By-law permits a maximum width of 2.0 m (Variance 2). Mr. England suggested that this provision was to ensure that the stairs do not dominate the frontage of the house. In this case, the lot width is over 17 m where the minimum lot width in the By-laws is 9.0 m. In his opinion, proportionally, the stairs will not dominate the streetscape.

There is a triangular architectural feature on the front façade which results in less than 60% of the front wall being a maximum of height of 7.5 m (Variance 3). This condition is only on the front main wall and accommodates the architectural design of the building. The feature is setback 2 m from the front face of the wall and contains no windows facing the street.

The proposed building length is 17.118 m. The maximum building length under the former By-law is 16.8 m (Variance 5). Mr. England explained that building length under the former By-law includes the roof eaves. At the rear of the building there is an eaves overhang for sun/shade which was included in the measurement of the total length. The length of the dwelling itself is 13.65 m.

Mr. England referred to the concerns of the Appellant related to the size of the canopy in the west side yard (Variance 4). The Appellant's house is adjacent to the west property line of the subject property. The canopy would be adjacent to their house. In addition, the Appellant indicated that privacy is concern, specifically the windows on the west facing wall. Mr. England noted that canopy provision is only under the former By-law and is no longer regulated under the new City By-law which he opined was a result of the City recognizing its purpose: the merit of canopies for energy efficiency.

He suggested that the appeal did not indicate a land use planning concern with the canopy, but noted a concern regarding the potential spread of fire to the Appellant's home. He provided the relevant section of the Ontario Building Code (included in his Response to Motion) to address this issue noting compliance.

Mr. England indicated that the sunshade proposed along the western and rear yards of the dwelling is critical to achieving the Passive House standard. He noted that the sunshade structure is not a solid element but a louver type structure (Exhibit 2). The canopy is 0.9 m from the west lot line and increases to 2.71 m as the lot splays.

With respect to the concern regarding privacy, Mr. England advised that strong consideration was given to the design of the west façade as he is aware the Official Plan states that development will maintain adequate light and privacy for residents in Neighbourhoods. He explained that the majority of the windows are non-viewing windows that are for daylight and cross –ventilation as they are at a height above the finished floor that makes a direct line of sight into the neighbours' yard impossible without the aid of a stool. At the Committee meeting, the Applicant agreed to a condition that two of the windows located on the western facade would be frosted. The proposed windows meet the Ontario Building Code and the Zoning By-laws. There is no side yard setback variance required so the dwelling is not closer to the lot line than permitted.

In summary, it was Mr. England's opinion that the variances are minor in nature, met the intent and purpose of the Official Plan and Zoning By-laws and are and desirable for the subject property.

In response to a question by the Panel, Mr. England indicated that the canopy could be reduced by up to one foot in width along the west side and meet the required targets for a passive house certification.

Mrs. Ho and her husband reiterated their concern regarding the size of the canopy and privacy issues related to the windows on the west side. They do not feel that the extent of the canopy is required to meet the passive house requirements. They noted that there are no other houses in the area with a sunshade structure or with such a large canopy area. They suggested the use of window blinds or window coverings together with a smaller canopy that meets the by-law provision. In their opinion, the existing vegetation, fence and location of their house would further block sun glare. They are concerned with the visual impact on their property based on the width of the canopy and its proximity to their side yard. They are also concerned with the extent of the windows on the west face of the building and indicated that other houses on the street do not have windows to that extent.

ANALYSIS, FINDINGS, REASONS

The TLAB has considered the evidence of the Applicant and the Appellant. It is important to reiterate that the while the desire to have a Passive House certification is commendable and, as noted by Mr. England, would implement a number of municipal and provincial policy initiatives aimed at energy conservation, this Panel must make the determination of the merits of the proposed variances based on the four tests of the Planning Act, including provincial policy.

The variance at issue relates to the size of the canopy in the west side yard. I have considered the other variances and agree with Mr. England that they meet the four tests of the Planning Act. The dwelling has been sensitively designed to address the impacts on adjacent properties and the streetscape. The intent and purpose of the Official Plan and Zoning By-law is maintained, the variances are desirable for appropriate for the development of the subject property and are considered minor in this context. I have had regard for the decision of the Committee and independently satisfied myself that these variances, individually and cumulatively, are appropriate in the circumstances and within the scope of the relevant statutory considerations.

With regard to the concerns of the Appellant regarding privacy related to the windows on the west façade, I note that no variances are required for the windows. There are no variances requested for height or side yard setbacks which could result in the windows being closer or higher than otherwise permitted and therefore having a potential impact on the adjacent property. As a result, there is no variance before me related to windows on the west façade. I will maintain the condition imposed by the Committee regarding the frosting of two windows.

With respect to the size of the side yard canopy under the former By-law, while the new By-law does not continue to contain such a provision, I understand the Appellant's concerns that an increase in the area of the canopy in the side yard from 2.3 m² to 18.13 m² is significant. Mr. England indicated that the width of the canopy could be reduced from 4 feet (1.21 m) to 3 feet (0.914 m) which would reduce the proposed area from 18.13 m² to 13.38 m². This would move the structure one foot further from the Appellant's side yard. I consider this a minor change to the proposed canopy that would reduce the impact on the neighbour's property. In this context, I consider it appropriate to reduce the canopy accordingly.

I am satisfied that the requested variances, as amended below, together with the conditions, 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. In addition, I am satisfied that the variances are minor, desirable and are supportive of and consistent with the Provincial Policy Statement and conform to the Growth Plan.

DECISION AND ORDER

The appeal is allowed in part and the following variances are approved:

1. Chapter 10.5.40.10. (5), By-law 569-2013. A minimum of 10.00 m² of the first floor must be within 4.00 m of the front main wall.

The proposal has 6.50 m² proposed within 7.50 m of the front wall.

**Decision of Toronto Local Appeal Body Panel Member: L. McPherson
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2. Chapter 10.5.40.60. (3), By-Law 569-2013. 3) (A)(ii) Exterior stairs providing pedestrian access to a building or structure may encroach into a required building setback if the stairs are no wider than 2.00 m.

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4. Section 6(9)(j), By-law 7625. The maximum permitted area of a canopy in a side yard is 2.30m².

The proposed west side yard canopy is 13.38m².

5. Chapter 13.2.5A, By-law 7625. The maximum permitted building length is 16.80 m.

The proposed building length is 17.118 m.

Conditions:

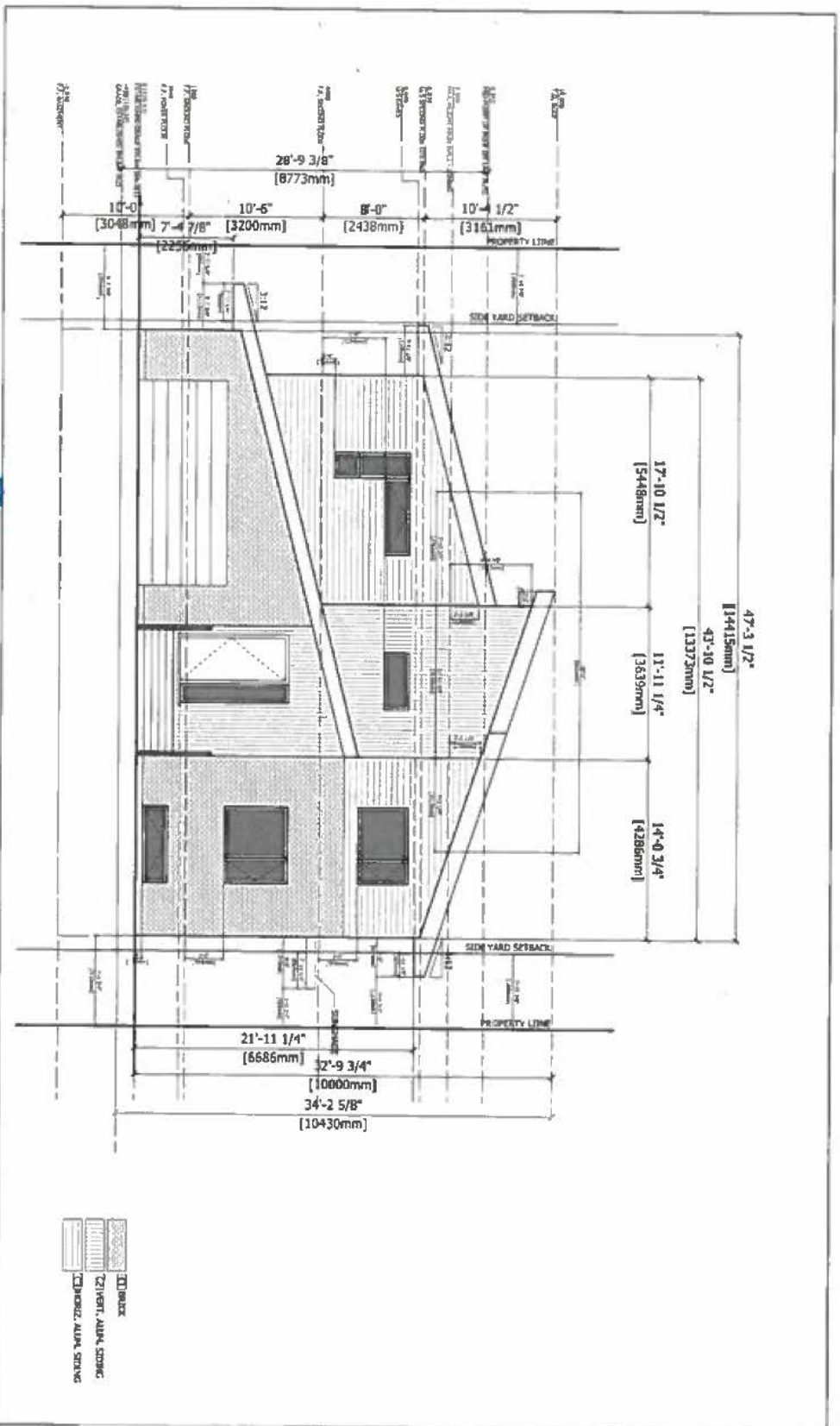
- 1) The proposal be developed substantially in accordance with the front elevation submitted to the Committee of Adjustment, attached, date stamped received by the City of Toronto Planning Division, October 3, 2017. Any other variance(s) that may appear on these plans but are not listed in the written decision are NOT authorized.
- 2) The proposal be developed substantially in accordance with the west elevation submitted to the Committee of Adjustment, attached, signed and dated October 12, 2017 with the exception that the canopy structure in the west side yard shall not exceed a width of 0.9144 m. Any other variance(s) that may appear on these plans but are not listed in the written decision are NOT authorized.

X 

Laurie McPherson
Panel Chair, Toronto Local Appeal Body

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FRONT ELEVATION (NORTH)



RECEIVED

OCT 03 2017

Toronto City Planning
North York District

DRAWING SHOULD NOT BE SCALED

The Designer does not accept any responsibility for the use of this drawing for any purpose other than that intended. The Designer does not accept any responsibility for the use of this drawing for any purpose other than that intended. The Designer does not accept any responsibility for the use of this drawing for any purpose other than that intended.

General Notes

PH43
passive house 43 Architecture
2 EAST BEAVER CREEK DRIVE, SUITE 201, SCARBOROUGH, ONTARIO M1S 1T7
416-291-1111 | www.ph43.com



DATE	1.11.00
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BALLYRONAN PH

10 DONMILL, DON MILLS
48 BALLYRONAN ROAD

FRONT ELEVATION

A6

