

DECISION AND ORDER

Decision Issue Date **Thursday, March 8, 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): RICARDO DA SILVA

Applicant: ESCALA DESIGNS INC

Property Address/Description: 609 MCROBERTS AVE

Committee of Adjustment Case File Number: 17 211522 WET 17 MV

TLAB Case File Number: **17 239899 S45 17 TLAB**

Hearing date: **Friday, March 02, 2018**

DECISION DELIVERED BY S. Makuch

APPEARANCES

Name	Role	Representative
Escala Designs Inc	Applicant	
Ricardo Da Silva	Owner/Appellant	Amber Stewart
Jonathan Benczkowski	Expert Witness	
Jean Milligan	Participant	Timothy Eaton

INTRODUCTION

This is an appeal from a refusal of the Committee of Adjustment of minor variances to legalize and maintain the following: a second floor enlargement with a covered rear deck, a front porch enlargement with a new canopy, a rear basement entrance and a new rear gazebo. Thus the variances sought were for existing construction.

The variances sought, were as follows:

1. Section 10.5.60.70.(1), By-law 569-2013

The maximum permitted lot coverage of ancillary buildings is 10% of the lot area (49.42 m²). The proposed ancillary buildings will have a lot coverage of 23.3% of the lot area (115 m²).

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

The maximum permitted gross floor area of all ancillary buildings on a lot is 40 m².

A previous Committee of Adjustment application (A404/12EYK) approved an ancillary building (detached garage) with a gross floor area of 63.07 m².

The proposed ancillary buildings will have a gross floor area of 86 m².

3. Section 10.5.40.60.(7), By-law 569-2013

The minimum required side yard setback for eaves is 0.3 m.

The eaves of the altered dwelling will be located 0 m from the north side lot line.

4. Section 10.80.40.20.(1), By-law 569-2013

The maximum permitted building length is 17 m.

A previous Committee of Adjustment application (A220/14EYK) approved a building length of 18.32 m. The altered dwelling will have a length of 21.36 m.

5. Section 10.80.40.30.(1), By-law 569-2013

The maximum permitted building depth is 19 m. The altered dwelling will have a depth is 20.62 m.

6. Section 10.5.50.10.(3)(A), By-law 569-2013

A minimum of 50% of the rear yard shall be maintained as soft landscaping (117.5 m²). A total of 0% of the rear yard will be maintained as soft landscaping (0 m²).

BACKGROUND

The only expert evidence before the TLAB was that of Jonathan Benczkowski, a professional planner, registered in Ontario who has been qualified to give expert opinion evidence numerous times before the Ontario Municipal Board. The only evidence in opposition was that of Jean Milligan, a participant and neighbour to the north. The City did not appear although the ward councillor sent a letter in opposition, outlining a history of the applicant constructing without a permit and failing to conform with the zoning bylaw and variances previously granted.

MATTERS IN ISSUE

The matters in issues relate to the impact of the development of 609 McRoberts Ave. on the owners at 611 McRoberts Ave. immediately to the north, and whether the variances represented good planning and meet the four test of the Planning Act. Of particular concern were: the height of an existing garage; the use of a gazebo for television watching; and drainage into the driveway of 611 McRoberts Ave which caused some ice formation. Compliance with provincial plans and policy was not in issue. The history of construction and past compliance with the zoning bylaw and variances, while not in issue in determining if the variances were acceptable under s. 45 of the Planning Act, were relevant to the extent that counsel sought to amend the application so as to reduce certain variances and to have conditions imposed which would remove certain construction (a portion of a gazebo) and impose certain landscape requirements (increase the landscape open space). Variances 4 and 5 were not in issue at all and related to the enclosure over a walkout from the dwelling unit and a small roof over a stair case.

JURISDICTION

The TLAB is exercising jurisdiction under s.45 of The Planning Act which provides the following;

s. 45. (1) The committee of adjustment, upon the application of the owner of any land, building or structure affected by any by-law that is passed under section 34 or 38, or a predecessor of such sections, or any person authorized in writing by the owner, may, despite any other Act, authorize such minor variance from the provisions of the by-law, in respect of the land, building or structure or the use thereof, as in its opinion is desirable for the appropriate development or use of the land, building or structure, if in the opinion of the committee the general intent and purpose of the by-law and of the official plan, if any, are maintained. It further states in subsection (9) that: "Any authority or permission granted by the committee under subsections (1)... may be for such time and subject to such terms and conditions as the committee considers advisable and are set out in the decision".

EVIDENCE

The evidence of Jonathan Benczkowski was that variances 1, 2, 3 and 6 should be varied by removing a portion of a gazebo in the rear yard with the resulting decrease in gross floor area and lot coverage; and an increase in soft landscaping. He also noted a reduction in the north side yard setback. He furthermore gave evidence that there should be conditions imposed to ensure that the reductions in the variances were carried out. The list of revised variances and conditions are found as Revised List of Variances, March 2, 2018 in the Supporting Documents (Ex. 5) to this file, and are reproduced below.

Jean Milligan was accepting of the reduced variances, although she had some disagreement with the planner's evidence as it related to windows in the garage at 609 McRoberts Ave., and side yard setbacks on comparable properties. She questioned, given the Applicant's history, whether the alterations in the landscaping and gazebo would be implemented. She was also concerned about the height of the existing garage. Her concerns regarding the impact of the variances could be seen in photos in the Applicant's Document Book 3, February 26, 2018, Supporting Documentation, Ex. 1c, pages 163 and 164,

ANALYSIS, FINDINGS, REASONS

It appears to the TLAB based on the evidence of the planner and Ms. Milligan that the variances as reduced, if fully enforced, will be an improvement to the property. While they do not address the ice formation on the driveway at 111 McRoberts Ave., it is not clear that ice is a significant problem. There will, nevertheless, be a significant reduction in the gazebo and more open space will be present. Once the variances, as amended, are implemented, then in the opinion of TLAB, they will meet the four test of s. 45 of the Planning Act and represent good planning as the planner opined. TLAB considers it advisable as well to address the permitted height of the ancillary building at the rear of the lot (existing garage) as the building is very visible from the rear deck of 111 McRoberts Ave.

As a result the TLAB concludes that the appeal should be allowed in part, and the variances as varied and set out in Ex.5 allowed subject to conditions which ensure that the alterations to the site are carried out with certainty. The TLAB considers such conditions advisable given the Applicant's conduct in the past.

DECISION AND ORDER

The TLAB allows the appeal in part, grants the variances set out in Ex. 5, as follows:

1. Section 10.5.60.70.(1), By-law 569-2013

The maximum permitted lot coverage of ancillary buildings is 10% of the lot area (49.42 m²). The proposed ancillary buildings will have a lot coverage of 18% of the lot area (89.91 m²).

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

The maximum permitted gross floor area of all ancillary buildings on a lot is 40 m². A previous Committee of Adjustment application (A404/12EYK) approved an ancillary building (detached garage) with a gross floor area of 63.07 m².

All the proposed ancillary buildings will have a total gross floor area of 86 m².

3. Section 10.5.40.60.(7), By-law 569-2013

The minimum required side yard setback for eaves is 0.3 m.

The eaves of the altered dwelling will be located 0.2 m from the north side lot line.

4. Section 10.80.40.20.(1), By-law 569-2013

The maximum permitted building length is 17 m. A previous Committee of Adjustment application (A220/14EYK) approved a building length of 18.32 m.

The altered dwelling will have a length of 21.4 m.

5. Section 10.80.40.30.(1), By-law 569-2013

The maximum permitted building depth is 19 m. The altered dwelling will have a depth is 20.62 m.

6. Section 10.5.50.10.(3)(A), By-law 569-2013

A minimum of 50% of the rear yard shall be maintained as soft landscaping (117.5 m²).

A total of 34% of the rear yard will be maintained as soft landscaping (80 m²).


The above variances are subject to the following conditions:

1. The existing development shall be modified so that it shall be reconstructed and maintained substantially in accordance with the site plan filed at page 172 of the Applicant's Document Book, Volume 3, Supporting Documents, Ex.1c. (Attachment 1 to this decision.) by the dates established in Condition 2 and 3 hereof. Any other variances that may appear on these plans but are not listed in this written decision are NOT authorized.
2. The gazebo shall be reduced in area, and a portion of the rear paved area shall be removed and replaced with soft landscaping, all as shown on the above Site Plan, on or before June 30, 2018, failing which, all the variances shall no longer be authorized.

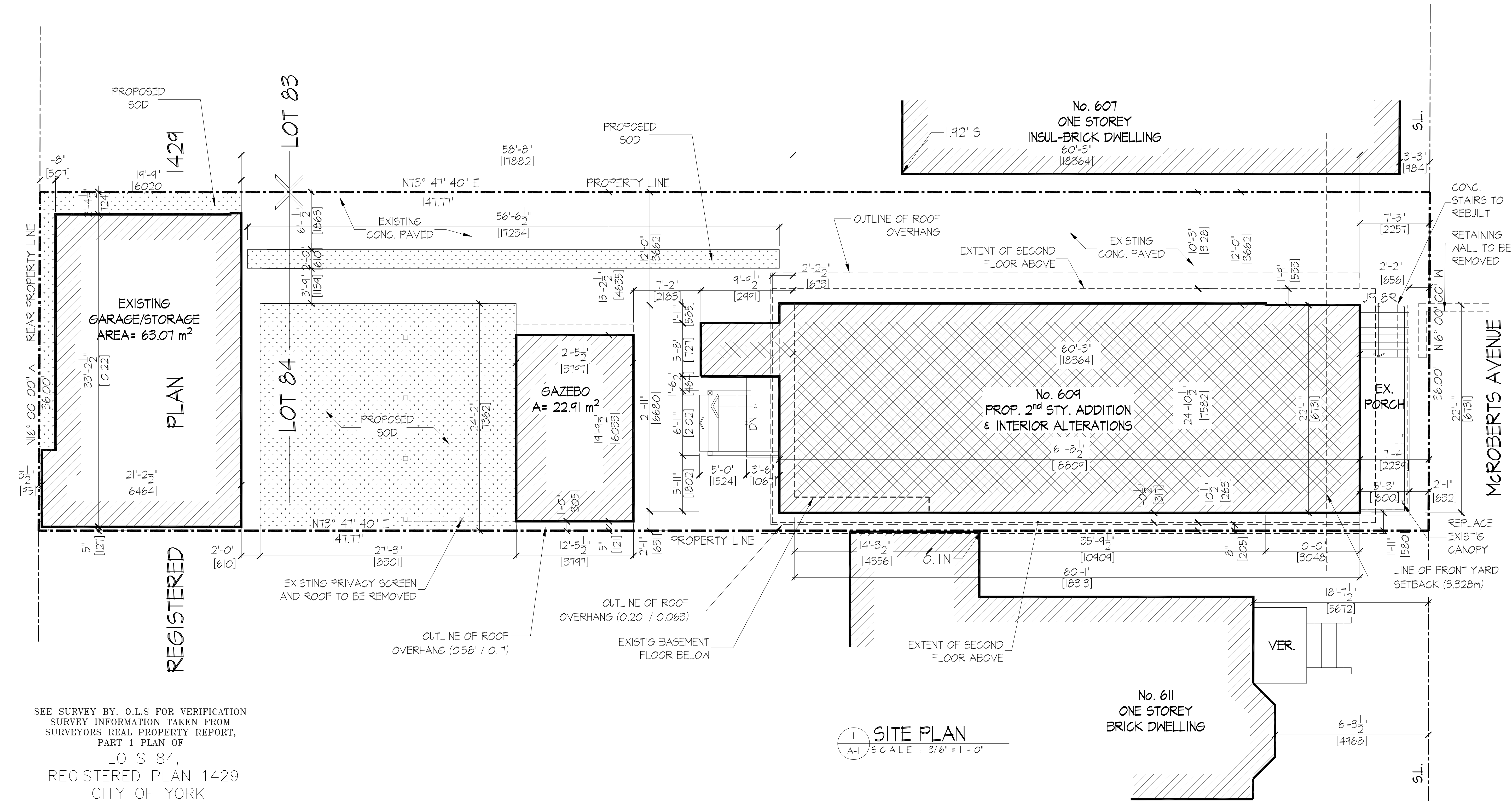
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3. The rear detached garage shall be no higher than 4.42 metres in height, within 8 months of issue date of this Decision,, failing which, all the variances in this matter shall no longer be authorized.
4. The owner shall comply with the City of Toronto Municipal Code, Chapter 813, Article II (City-owned trees) and Article III (Privately-owned trees).

This member shall remain seized of this matter and may be spoken to respecting the variances and conditions.

X 

S. Makuch
Panel Chair, Toronto Local Appeal



LOT AREA = 494.21 m² (5319.68 SQ. FT.)

SITE STATISTICS	EXISTING		PROPOSED		NEW TOTAL	
	ft ²	m ²	ft ²	m ²	ft ²	m ²
FIRST FLR. AREA	1318.49	122.49	100.19	9.31	1418.68	131.80
SECOND FLR. AREA	1269.13	117.91	325.98	30.28	1595.11	148.19
GROSS FLR. AREA	2586.98	235.69	426.17	39.59	3013.79	279.99

MAX. G.F.A. PERMITTED (80%) = 395.37 m²

PROPOSED G.F.A. (56.65%) = 279.99 m²

REAR YARD AREA = 263.14 m² (2832.45 SQ. FT.)

SOFT LANDSCAPED AREA PROVIDED = 81.36 m² (875.75 SQ. FT.)(30.92%)

DO NOT SCALE DRAWINGS DIMENSIONS TO TAKE PRECEDENT OVER SCALE.

ALL WORK TO CONFORM WITH ALL COVERING CODES AND BY-LAWS. ALL DRAWINGS AND RELATED DOCUMENTS ARE INSTRUMENTS OF SERVICE AND SHALL REMAIN THE PROPERTY OF ESCALA DESIGNS INC. ; THIS REPRODUCTION SHALL NOT BE DISCLOSED, USED OR REPRODUCED EXCEPT IN CONNECTION WITH SUCH USE OR WITH PRIOR WRITTEN CONSENT

CONTRACTOR(S) SHALL CHECK AND VERIFY ALL DIMENSIONS ON THE JOB SITE AND REPORT ANY OMISSIONS OR DISCREPANCIES TO ESCALA DESIGNS INC. PRIOR TO COMMENCEMENT OF CONSTRUCTION.

I review and take responsibility for the design work on behalf of a firm registered under subsection 3.2.4. of Division C. of the Building Code, I am qualified, and the firm is registered in the appropriate class/category.

QUALIFICATION INFORMATION

Required unless design is exempt under 3.2.4.1.(3) of the building code

NELSON ESPINOLA 25561

NAME SIGNATURE BCN

Required unless design is exempt under 3.2.4.1.(3) of the building code

ESCALA DESIGNS INC. 30719

FIRM NAME BCN

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6.			
5.			
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1.	REVISED REAR LANDSCAPED AREAS	FEB. 2018	N.E.
No.	Revision	Date	By

Project :
**PROP. 2nd STOREY ADDIT'N
& INTERIOR ALTERATIONS AT
609 McROBERTS AVENUE
CITY OF TORONTO**

Drawing Title:
SITE PLAN

Drawn by: LM Checked by: N.E.
Date: JUNE, 2017 Scale : A.S.

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Project No. Drawing No.

2012-25

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