

# DECISION AND ORDER

**Decision Issue Date**      Wednesday, March 28, 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): MARGOT JEAN DOROTHY WOLF

Applicant: CHARLES AND BUNKER ARCHITECT INC

Property Address/Description: 11 ST LEONARDS AVE

Committee of Adjustment Case File Number: 17 238886 NNY 25 MV (A0865/17NY)

TLAB Case File Number: **17 272025 S45 25 TLAB**

**Hearing date:**      Friday, March 09, 2018

**DECISION DELIVERED BY D. LOMBARDI**

## APPEARANCES

Margot Wolf (Appellant)

John Wolf (Appellant's Spouse)

## INTRODUCTION

This Hearing is in the matter of an appeal to the Toronto Local Appeal Body (the "TLAB") by the Appellant (Margot Wolf) of the decision of the Committee of Adjustment (the 'Committee') for the City of Toronto (the "City") to approve a minor variance to construct a two-storey addition at the rear of the existing dwelling and a second floor addition above the garage at 11 St. Leonard's avenue ("the subject property").

The subject property is located on the south side of St. Leonard's Avenue, southwest of Lawrence Avenue East and Mount Pleasant Road. The property is zoned RD (f5.0; d0.35)(x1432) in the harmonized City of Toronto Zoning by-law 569-2013 (the 'new Zoning By-law'), and R1 under the former Toronto Zoning By-law No. 438-86 (the 'existing By-law').

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On November 21, 2017, the Committee considered the written submissions relating to Committee of Adjustment application (File No. A0865/17NY) and oral submissions relating to the application made at the hearing. In doing so, it rendered a decision and approved the minor variances, with conditions, to permit the construction of a two-storey addition at the rear of the existing dwelling and a second floor addition over the garage on the subject property.

The Committee's decision was subject to the following condition(s):

1. Any addition above the existing one-storey garage have an east side yard setback of at least 1.2m;
2. The proposal be developed substantially in accordance with the site plan and new basement plan submitted to the Committee of Adjustment date stamped received by the City Planning on November 13, 2017.
3. The requirements of the Parks and Recreation, Urban Forestry Division:
  - a. Submission of a complete application for permit to injure or remove privately owned trees.

## **BACKGROUND**

On December 5, 2017, the Appellant, who is also the owner of the subject property, appealed the November 21, 2017 Committee of Adjustment decision to the Toronto Local Appeal Body, and the TLAB issued Notice of Hearing (Form 2) setting a Hearing Date of May 3, 2018 pursuant to Rule 10.1. Subsequently, on February 22, 2018, the Appellant filed a Notice of Motion (Form 7) requesting the following relief:

1. An order that the Appeal be heard at the return of the motion; and,
2. An order that the Appeal of the Decision of the Committee of Adjustment, File Number - A0865-17NY, on the minor variance be allowed as follows
  - a. Any addition above the existing one-storey garage may have an east side yard setback of 0 meters.

The grounds for the Motion as outlined by the Moving Party can be summarized as follows:

- An appeal was submitted on December 5, 2017 by the Appellant;
- By the time an Appeal Order is issued and a building permit is obtained by the Appellant, it will be late June or July 2018;
- The Appellant's general contractor plans to commence construction on this project as close to the end of March 2018 as possible;
- A delay in the Appeal (and, in turn, a building permit) would create significant delays in the construction schedules of the project, and may result in the general contractor's sub-trades being unavailable as planned since any delay could result in the trades accepting other work assignments;
- The subject appeal is in respect of a single variance, which is unopposed, except in respect of the initial City of Toronto Planning Staff opinion presented at the Committee of Adjustment Hearing in November 2017;

- No neighbour has objected in this process to the relief being sought through the TLAB appeal, and those parties/neighbours that would be most impacted by the proposed addition support the plans; and,
- Further to the TLAB Rule 2.2, the Appellant is requesting that this Appeal be heard at the return of the Motion.

I heard evidence from the Appellant and her husband, John Wolf. Pursuant to the standing direction of Council to the TLAB, I advised that I had visited the subject property and surrounding streets.

## **RULING ON THE MOTION**

Under Rules 2.2 and 2.10, the TLAB may liberally interpret the Rules and 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.

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

I have read the file material and considered the submissions of the Appellant and the Applicant, who is the Appellant's architect (Charles Bunker). The list of documentary evidence submitted by the Appellant in support of the Motion included:

- The application to the Committee of Adjustment (File No. A0865/17NY);
- Notice of Appeal (Form 1);
- Affidavit of Charles Bunker, the Appellant's architect (Form 10); and,
- A memorandum in support of the proposed addition from Jonathan and Tara Turnbull, the neighbours immediately to the east of the subject property (residing at 9 St. Leonard's Avenue).

There were no other Parties or Participants identified as part of this Notice of Motion or the Appeal in opposition. Further, the Notice of Hearing for the May 3, 2018 proceeding clearly states the filing dates for any documents as follows:

- **Document Disclosure** was **Due** no later than January 30, 2018; and,
- **Intentions to be Party or a Participant** were **Due** no later than February 5, 2018.

No filings were made in this regard.

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 merely on the Appellant's desire to expedite a decision based on the vagaries of their contractor's anticipated construction schedule and the availability of sub-contractors to undertake the proposed work.

I am satisfied that there would be no new relevant or essential information available to the TLAB by the scheduled Hearing date of May 3, 2018, that would further impact this case. As the TLAB is committed to the timely disposition of Appeals, the Motion was granted and the Motion Hearing was converted to the Appeal Hearing. The Hearing date of May 3, 2018 is released.

## **MATTERS IN ISSUE**

The key issue raised by the Appellant and her husband, John Wolf, is the required setback along the east property line and the proposed plans to construct a second-storey addition above the existing garage maintaining 0 m east side yard setback. The proposed variance is as follows:

### **1. Chapter 10.20.40.70.(3), By-law No. 569-2013**

The minimum required side yard setback is 1.5m.  
The proposed east side yard setback is 0m.

### **2. Section 6(3) Part II 3.B(II), By-law 438-86**

The minimum required side lot line setback for the portion of the building not exceeding 17.0m in depth, where the side wall contains openings is 0.9m.  
The proposed east side lot line setback is 0m.

Under S. 45(18) of the Planning Act, on an appeal, all the variances originally applied must be considered in a 'de novo' setting. Consequently, the obligation rests with the applicant to address all variances, individually and collectively, and the obligation of the TLAB is to make findings on all.

## **JURISDICTION**

### **Provincial Policy – S. 3**

A decision of the Toronto Local Appeal Body ("TLAB") must be consistent with the 2014 Provincial Policy Statement ("PPS") and conform to the Growth Plan of the Greater Golden Horseshoe for the subject area ("Growth Plan").

### **Minor Variance – S. 45(1)**

In considering the application 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 and use of the land; and,
- are minor.

## **EVIDENCE**

The TLAB heard from Margot Wolf, the Appellant, and her husband, John Wolf, the owners of 11 St. Leonard's Avenue. Mr. and Mrs. Wolf submitted a number of documents as part of the Notice of Motion filing, and additional documentation was submitted at the commencement of the Motion Hearing (Exhibit 1). The submitted documentation provided a detailed description of the project and the reasons why the family is undertaking to build the proposed second-storey addition above the existing garage.

Mr. Wolf explained in very detailed terms that he has been a long time resident of North York, and that the family has lived at the subject address since 2011. As active members and volunteers in the community, the Wolfs have enjoyed living in this neighbourhood and wish to continue to live in their home with their children until such time as health prohibits this.

Mr. Wolf outlined that a major impetus and goal for undertaking the proposed renovations of the family home and constructing the second-storey addition is to provide a long-term living space for their disabled adult son, who is profoundly disabled and has significant mobility issues. The new living space above the existing garage would provide in perpetuity, a semi-autonomous living arrangement for their disabled son that will provide him with some degree of independence, while still allowing him to be readily integrated as part of the family unit.

Mr. Wolf referred to the new second-storey floor plan (Exhibit 2) in describing the layout of the interior of the proposed addition. He explained that the components of the internal space would include a bedroom, bathroom, storage area and family room that are intended to allow his disabled son to live as part of the family, but in a separate unit. This space would be accessed through an integrated, internal staircase connected to the main house that would allow a direct entry point from the main family kitchen, as well as ingress and egress to the rear yard and the front of the property through the existing garage.

The Appellant's lot is an irregular shape with five property lines. Mr. Wolf noted that the design of the proposed addition is predicated on, and results from this oddly shaped lot configuration, and that with the exception of the variance under this appeal, the Committee implicitly recognized the complexity of the shape of the lot by granting all of the other variances requested by the Appellant.

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In his Affidavit submitted as part of the Notice of Motion (Form 10), point #7, the Appellant's architect, Charles Bunker, states that the building plans have been carefully designed to preserve and enhance the existing "garden suburb" nature of this neighbourhood (Lawrence Park area), and the east side yard setback of 0 meters is true to the original design for this property and the original design of the neighbourhood.

He further states in his Affidavit that the addition has been designed to be architecturally consistent with the existing house and garage structure and proportional in design in both architectural and historic terms in order to seamlessly fit in with the built form characteristics of the Lawrence Park neighbourhood.

In documentation submitted by the Appellant \*Exhibit 1), Mr. Bunker is described as being a local resident, and a member of both the local historical designation association and the local ratepayer's association. He is recognized as an architect that specializes in renovations intended to be consistent with and to perpetuate the valued garden suburb style development that is unique to this community.

Mr. Wolf highlighted the fact that the existing garage is well set back from the street, and also that there is a significant set back from the front of the house. The garage sits on the eastern property line on the subject lot, with a 0 meters setback that was original to the home when it was built over 100 years ago.

The Appellant wishes to build the second-story addition above the existing garage based on the proposed plans with a 0 meters setback since, in their opinion, an addition that introduces a 1.2m for the length of the building would create an addition that would be too narrow and result in a virtually unusable living space from a design perspective. The case for this setback was supported by the Appellant's architect, in his February 21, 2018 Affidavit, in which he argued for the continuation of the 0 meters setback above the existing garage.

Mr. Wolf stated that he and the Appellant have personally spoken with each of the abutting neighbours in the five contiguous properties as well as many of the neighbours in the surrounding community about the proposed addition (21 neighbours in total). He stated that they have received positive feedback and overall support for their plans. It is this Panel Member's opinion that in the absence of Parties or Participants at this Notice of Motion proceeding in opposition to the proposed addition, Mr. Wolf's statement is factual and acceptable.

More importantly, he noted that he and his wife have had extensive dialogue with the neighbours immediately to the east, Tara and Jonathon Turnbull (reside at 15 St. Leonard's Avenue), who would be most impacted by the renovations and the proposed addition. Those neighbours have indicated no objections to the Appellant's plans, as noted in their letter presented to the Committee of Adjustment November 21, 2017 hearing (Exhibit 3).

In summary, Mr. Wolf reiterated the following points in support of the relief sought in order to construct the project, including the proposed second-storey addition that maintains a 0 meters east side yard setback:

- The Appellant and her husband are restoring and maintaining an older home rather than demolishing a historically significant home, introducing a design that is intended to be proportional both in architectural and historical terms;
- The existing home and garage are set well back from the street and front yard setback are maintained in order to continue the harmonious streetscape that will be enhanced by the proposed improvements to the front façade of the structure;
- The proposed second-storey addition is to be constructed above the garage, which is an existing structure originally built at a 0m side yard setback;
- The proposed addition and renovations to the home are being undertaken with the goal of respecting and reinforcing the existing character of the neighbourhood, and are not being opposed by any of the neighbours; and,
- The proposed addition is designed to provide a long-term living space for their disabled adult son.

## **ANALYSIS, FINDINGS, REASONS**

The TLAB has considered all of the evidence of the Appellant and her husband. It is important to reiterate that the Appellant's rationale that requiring the proposed addition above the existing one-storey garage to have an east side yard setback of at least 1.2m would render the interior space virtually unusable is valid given the alignment of the east property line. Also valid is the argument that the addition would not be proportional or consistent with the existing structure if the required setback is enforced. However, this Panel must make a determination on all of the proposed variance based on the four tests of the Planning Act, including provincial policy.

The issue that the TLAB must consider is whether denying the variance relief sought would create undue hardship for the Appellant. The Appellant has argued that the proposed renovations and second-storey addition would allow improvements to their home to meet the changing needs of their family with respect to their disabled son. The TLAB must also consider whether variance requested is in keeping with the Zoning By-law.

The Courts have confirmed that a minor variance is not a "special privilege" that requires the applicant to justify the relief sought on the basis of need or hardship. However, the Court has concluded that jurisdiction to grant minor variances is permissive and confers a residual discretion as to whether or not to grant the requested relief even when the four tests are satisfied.

With regard to the particular variance in question, the addition has been sensitively designed to address the impacts on the adjacent property as well as the streetscape.

Further, the addition is true to the original design of the existing dwelling and is consistent and proportional in architectural terms.

I am satisfied that that conclusion is equally applicable to all the variances sought. In this regard, I have considered the decision of the Committee, which was supportive of the remaining variances, as I am obliged to do and generally concur with its disposition.

The proposed addition also respects and reinforces the existing physical character of the neighbourhood consistent with Section 4.1- Neighbourhoods, Policy 4.1.5 of the City's Official Plan. With respect to the east side yard setback, the setback provisions are devised, in part, to ensure a consistent built form. As such, I am of the opinion that the east side yard setback of 0 meters is in keeping with the intent of the Zoning By-law.

Based on these findings, it is my opinion that the intent and purpose of the Official Plan and Zoning By-law is maintained, the variances are desirable and appropriate for the development of the subject property, and are considered minor in nature. I have had regard for the decision of the Committee and independently satisfied myself that the particular variance at issue is appropriate in the circumstances and within the scope of the relevant statutory considerations.

I am satisfied that the requested variance, together with the conditions, meets the criteria set out in Section 45(1) of the Planning. The general purpose and intent of the Official Plan and Zoning By-law is maintained, the variances are minor and desirable, and are consistent with the Provincial Policy Statement (PPS) and conform to the Growth Plan.

## **DECISION AND ORDER**

The appeal is allowed and the following variance is approved:

1. Chapter 10.20.40.70.(3), By-law No. 569-2013  
The minimum required side yard setback is 1.5m.

The proposed east side yard setback is 0m.

2. Section 6(3) Part 6 II 3.B(II), By-law No. 438-86  
The minimum required side lot line setback for that portion of the building not exceeding 17.0m in depth, where the side wall contains openings is 0.9m.

The proposed east side lot line setback is 0m.



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3. Apart from the foregoing, the variances in Attachment 1 are approved.

**Conditions:**

1. The proposal be developed substantially in accordance with the site plan and new basement plan submitted to the Committee of Adjustment, attached, date stamped received by the Toronto City Planning, North York District, November 13, 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 new north elevation submitted to the Committee of Adjustment, attached. *Any other variance(s) that may appear on these plans but are not listed in the written decision are NOT authorized.*
3. The requirements of the Parks and recreation, Urban Forestry Division:
  - a. Submission of a complete application for permit to injure or remove privately owned trees.



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D. Lombardi  
Panel Chair, Toronto Local Appeal Body

## Attachment 1

### **REQUESTED VARIANCE(S) TO THE ZONING BY-LAW:**

**1. Chapter 10.20.40.20.(1), By-law No. 569-2013**

The maximum permitted building length is 17.0m.

The proposed building length is 18.44m.

**2. Chapter 10.20.40.70.(2), By-law No. 569-2013**

The minimum required rear yard setback is 7.76m.

The proposed rear yard setback is 5.55m.

**3. Chapter 10.5.40.60.(1), By-law No. 569-2013**

A platform without main wall, attached to or less than 0.3m from a building, with a floor no higher than the first floor of the building above established grade may encroach into the required rear yard setback 2.5m.

The proposed platform encroaches 3.05m into the required rear yard setback.

**4. Chapter 10.5.40.60.(2)(b)(i), By-law No. 569-2013**

A canopy, awning or similar structure not covering a platform may encroach in a front yard or rear yard: 2.5m, if it is no closer to a side lot line than the minimum required side yard setback.

The proposed canopy encroaches 3m into the required rear yard setback.

**5. Chapter 10.20.40.40.(1), By-law No. 569-2013**

The maximum permitted Floor Space Index is 0.35 times the area of the lot

The proposed Floor Space Index is **0.70** times the area of the lot.

**6. Chapter 10.20.40.10.(1), By-law No. 569-2013**

The maximum permitted building height is 10m.

The proposed building height is 11.08m.

**7. Chapter 10.20.40.70.(3), By-law No. 569-2013**

The minimum required side yard setback is 1.5m.

The proposed east side yard setback is 0m.

**8. Section 6(3) Part II 4, By-law No. 438-86**

The minimum required rear yard setback is 7.5m.

The proposed rear yard setback is 5.5m.

**9. Section 6(3), By-law No. 438-86**

A rear canopy that covers a platform not more than 1.2m above adjacent grade attached to the rear wall cannot project more than 2.5m from the wall to which it is attached.

The proposed rear canopy projects 3.05m.

**10. Section 6(3) Part I 1, By-law No. 438-86**

The maximum permitted Gross Floor Area is 0.35 times the area of the lot.

The proposed Gross Floor Area is **0.70** times the area of the lot.

**11. Section 6(3) Part II 3.B(II), By-law No. 438-86**

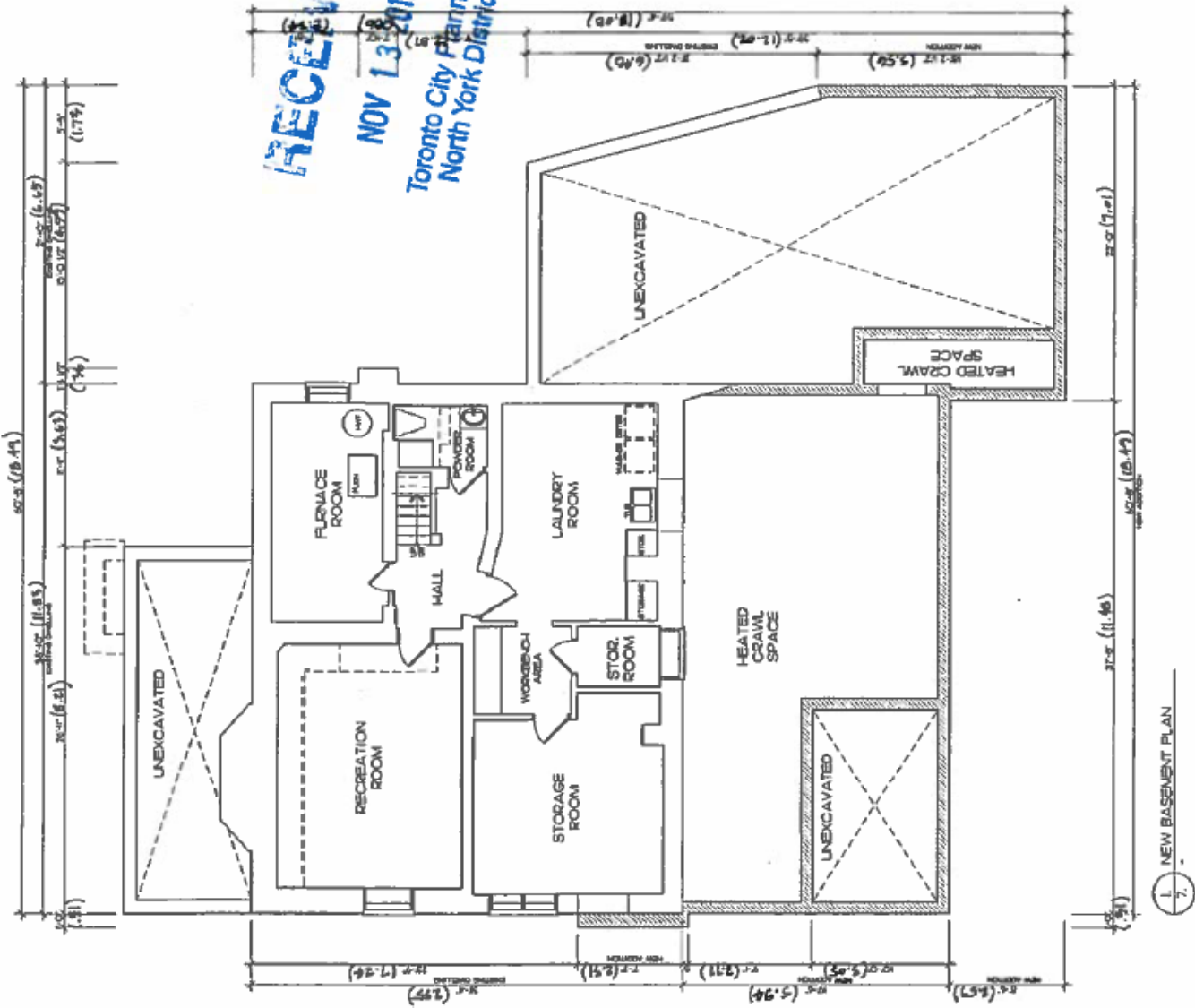
The minimum required side lot line setback for that portion of the building not exceeding 17.0m in depth, where the side wall contains openings is 0.9m.

The proposed east side lot line setback is 0m.

**12. Section 6(3) Part II 3.B(II), By-law No. 438-86**

The minimum required side lot line setback for that portion of the building exceeding 17.0m in depth is 7.5m.

The proposed east side lot line setback is 1.2m.



**RECEIVED**

NOV 13 2017

Toronto City Planning  
North York District

11 ST. LEONARDS AVENUE  
TORONTO, ONTARIO.

1. NEW BASEMENT PLAN



I. NEW NORTH ELEVATION  
 II. -

11 ST. LEONARDS AVENUE  
 TORONTO, ONTARIO.