

# DECISION AND ORDER

**Decision Issue Date**      Tuesday, March 27, 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): MANDEEP SINGH, MARCEL TILLIE

Applicant: ALEX BOROS

Property Address/Description: 6 LORRAINE GDNS

Committee of Adjustment Case File Number: 17 110212 WET 03 MV

TLAB Case File Number: **17 248302 S45 03 TLAB**

**Hearing date:**      **Wednesday, February 28, 2018**

**DECISION DELIVERED BY L. McPherson**

## APPEARANCES

Name	Role	Representative
Alex Boros	Applicant	
Amandeep Kaur Sohota	Owner	
Mandeep Singh	Primary Owner/Appellant	Daniel Artenosi
Marcel Tillie	Appellant	
Franco Romano	Expert Witness	

## INTRODUCTION

On September 28, 2017, the Committee of Adjustment (“Committee”) for the City of Toronto (“City”) approved certain minor variances with conditions and refused certain minor variances to recognize (legalize) and maintain the existing detached garage and the existing second storey rear platform.

The Applicant and a neighbour appealed the Committee decision.

## BACKGROUND

The subject property is located in the former City of Etobicoke, north of Burnhamthorpe Road and east of Martin Grove Road. It is currently occupied by a 2- storey detached dwelling with an attached and detached garage.

The subject property is designated *Neighbourhoods* in the City of Toronto Official Plan (“the Official Plan”) and is zoned RD under Zoning By-law No. 569-2013 (“new City By-law”) and R2 under former Etobicoke Zoning Code (“former Zoning Code”).

The application had been deferred once by the Committee at the request of the Applicant. Prior to the Committee hearing, Planning staff requested that the Applicant reduce the second storey platform to an area of 10 m<sup>2</sup>. The Applicant revised the plans and staff indicated no further concerns with the application. The proposed variances are listed below:

### **1. Section 10.20.40.70. (5)(A), By-law 569-2013**

The minimum required side yard setback is 7.5 m, where the depth of the building is greater than 17 m.

The excavated portion of the basement in the existing dwelling is located 3.05 m from the south side lot line, where the depth of the building is greater than 17 m.

### **2. Section 10.20.40.50. (1)(B), By-law 569-2013**

The maximum permitted area of a platform at or above the second storey is 4 m<sup>2</sup>.

The existing rear second storey platform has an area of 10 m<sup>2</sup>.

### **3. Section 10.5.60.50. (2)(A), By-law 569-2013**

The maximum permitted total floor area of an ancillary structure is 60 m<sup>2</sup>.

The existing detached garage has a floor area of 77.8 m<sup>2</sup>.

### **4. Section 10.5.60.20. (3)(A), By-law 569-2013**

The minimum required side yard setback for an ancillary building or structure located in a side yard is 3 m.

The existing detached garage is located 0.6 m from the north side lot line.

### **5. Section 320-43.D, former Zoning Code**

The maximum permitted height of an accessory structure is 2.5 m  
The existing detached garage has a height of 4 m.

**6. Section 10.5.50.10. (1)(C), By-law 569-2013 & Section 320-24.9(iii), former Zoning Code**

A minimum of 60% of the front yard shall be maintained as landscaping (287.5 m<sup>2</sup>).  
A total of 58.6% of the front yard is being maintained as landscaping (281 m<sup>2</sup>).

The Committee approved variances 1,2,5 & 6 subject to the following conditions:

1. The applicant shall remove the existing railing installed along the outside perimeter of the second floor roof shown on Drawing Numbers A4, A7, A8 & A9, dated June 5, 2017.
2. The applicant shall install 1.5 m high privacy screening along the two sides of the 10 m<sup>2</sup> roof deck shown on Drawing A4, dated June 5, 2017.

The Committee refused variances 3 and 4.

The City issued a building permit for the original drawings in August, 2015. There were no variances associated with the Building Permit. It is noted that there have been a number of zoning reviews for the proposed development including two reviews subsequent to the Committee decision, each with different variances identified. The most recent was issued in February, 2018 (Exhibit 2) and largely identifies the same variances that were considered by the Committee. The February zoning review made a change to Variance 1 by adding “the open verandah” before the “excavated basement”. As a result, the Applicant has requested that Variance 1 read:

**1. Section 10.20.40.70. (5)(A), By-law 569-2013**

The minimum required side yard setback is 7.5 m, where the depth of the building is greater than 17 m.

The open verandah and excavated portion of the basement in the existing dwelling are located 3.05 m from the south side lot line, where the depth of the building is greater than 17 m.

(Emphasis added)

I accept that this revision is minor. The plans have not changed. The revision relates to how the By-law has been interpreted. No further notice or consideration is required under s. 45 (18.1.1) of the Planning Act.

## **MATTERS IN ISSUE**

The matter at issue is whether the revised variances meet the applicable tests under Section 45(1) of the Planning Act and provincial policy. The key issue of the Appellant relates to the size and location of the detached garage.

## **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 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.

## **EVIDENCE**

The TLAB heard from the Applicant's professional land use planner, Franco Romano. Mr. Romano was qualified to provide land use planning opinion evidence (Exhibit 4– Expert's Witness Statement). He described the subject property and the area.

The subject property forms part of a detached residential neighbourhood that consists of generously sized lots that are varied in terms of lot configuration, site design and architecture (Exhibit 3 – Consolidated Document Book). Building setbacks and positions are not uniform. Side yard setbacks are compact and generally reflect the zoning standard. Landscaped open space is in the front and rear yard with the rear yard also providing amenity space.

Parking and access arrangements are diverse with both singular and circular driveways. Parking is provided in the front, rear and side yards, both open and within structures. Garages take a variety of forms including detached, attached and integral. Mr. Romano indicated that parking for 3 vehicles is common in the area. A gradual transition is being experienced in the neighbourhood as regeneration is occurring in the form of replacement buildings and building improvements. The new dwellings are generally larger than those replaced and occupy more of the lot.

The proposal is to legalize and maintain the existing detached garage and the second storey rear platform attached to the dwelling.

Mr. Romano explained the variances. In the zoning review associated with the Committee application, only 2 variances were identified; the size of the detached garage size and the size of the second floor platform.

The location of the garage has not changed since the original building permit. Mr. Romano explained that the garage was originally considered to be in the rear yard and the zoning review for the Committee application did not identify a side yard variance requirement. A later zoning review considered the garage to be in the side yard which precipitated the need for a side yard setback variance under the new City By-law. The proposed setback is 0.6 m whereas 3.0 m is required (Variance 4). The proposed setback is compliant with the former Zoning Code based on the zoning examiners interpretation of the side yard and rear yard. Mr. Romano explained that the purpose of the side yard setback is to allow for access and maintenance. The detached garage is located beyond the main wall of the main dwelling and is subordinate to it, maintaining a low-rise profile. In his opinion, the intent and purpose of the Zoning By-law is maintained with the 0.3 m side yard setback. The roof eaves do not require a side yard setback variance.

A height variance for the garage was not originally identified. The detached garage has a height of 4 m whereas the maximum height is 2.5 m in the former Zoning Code (Variance 5). Mr. Romano noted the exception that any accessory structure with a pitched roof may have a maximum height of 3.7 m as long as the supporting walls are 2.5 m. The style of roof of the constructed garage is different than the original drawings and is no longer considered a pitched roof by the zoning examiner. Mr. Romano explained that the proposal maintains a sloped roof and in his opinion, is not dissimilar to what is permitted as of right in the former Zoning Code. No height variance is required under the new City By-law.

The detached garage has an area of 77.8 m<sup>2</sup> whereas the maximum total floor area of an ancillary structure is 60 m<sup>2</sup> (Variance 3). Mr. Romano explained that the area restriction applies to lots with a lot frontage of 12 m or more. The subject site has a lot frontage of 30.48 m, substantially in excess of 12 m. The proposed floor area includes a storage facility at the rear of the garage which is separated by an internal wall. Mr. Romano explained that the detached garage occupies only 4.2% of the lot coverage while the By-law permits a maximum coverage of 10% for ancillary buildings. The lot area is 1,862 m<sup>2</sup>. An additional ancillary building(s) could have been constructed for storage; however, the Applicant preferred to consolidate the storage and garage functions in one building. In Mr. Romano's opinion, the larger building is proportionate to the lot frontage and still subordinate in terms of lot coverage.

The second storey platform is located within the rear central portion of the dwelling and is accessed from the second storey bedroom. Planning staff recommended the platform be restricted to 10 m<sup>2</sup> and the plans were changed to reflect this recommendation prior to the Committee meeting (Variance 2). Mr. Romano indicated that there would be a railing around the deck to prevent access to the roof portion. The roof portion will not be used for outdoor amenity as a deck. The roof plans indicate the

details of the roof (Exhibit 3 – pg.268). The Committee imposed a condition that a privacy screen be installed along the two sides of the railing which the Applicant agrees to. Mr. Romano indicated the deck is a secondary outdoor area and would not be used for entertaining. He advised that the proposed railing around the perimeter of the roof is part of the architectural expression of the dwelling and in his view does not cause a land use planning concern. In Mr. Romano's opinion, the railing should be retained. He indicated that it has no function other than decorative and is a common element of a flat roof.

The south side yard variance is required because the excavated portion of the basement in the existing dwelling is located 3.05 m from the south side lot line beyond a building depth of 17 m whereas the required side yard setback is 7.5 m where the depth of the building is greater than 17 m (Variance 1). Mr. Romano indicated that the intent and purpose of the provision is to provide appropriate spatial separation from the lot line. The zoning examiner identified the excavated portion of the basement as part of the structure. In this location the structure is an open verandah as identified by the zoning examiner. In Mr. Romano's opinion, the setback is appropriate. The verandah is low scale and uninhabitable.

In terms of the front yard landscaping variance, the zoning examiner identified a variance requirement as 58.6% of the front yard is landscaped whereas the By-law requires 60% (Variance 6). There is no front yard setback required. In Mr. Romano's opinion, the difference is negligible and imperceptible.

In Mr. Romano's opinion, there are no implications with respect to provincial policy and the proposal is consistent with and conforms to the Provincial Policy Statement and the Growth Plan.

In terms of the Official Plan, the subject property is designated Neighbourhoods. Mr. Romano advised that the Official Plan contains policies that recognize that change within Neighbourhoods will occur over time and that such change should respect and reinforce the existing physical character of the neighbourhood (S. 2.3.1). He explained that the policies do not require replication of the existing the physical character but provide that new development should fit the general physical patterns (S 4.1).

Chapter 4 contains the land use designation policies. Neighbourhoods are generally made up of low-rise residential buildings. The development criteria reinforce the general theme of the Official Plan of maintaining the stability of neighbourhoods. Physical change must be sensitive, gradual and generally fit the existing physical character. New development is to reflect and reinforce the general physical patterns in the neighbourhood. Section 4.1.5 sets out the elements that a proposal should consider. In his opinion, all of the elements are being implemented appropriately by the proposal as summarized below.

- a) patterns of streets, blocks and lanes, parks and public building sites – no impact

- b) size and configuration of lots – no impact, lots in the area are large and varied.
- c) heights, massing, scale and dwelling type of nearby residential properties- the proposal is for a 2 –storey dwelling. Accessory structures are varied but low rise and 1 storey and their mass and scale are oriented toward the lot line.
- d) prevailing building type(s) – the prevailing building type is single detached as proposed.
- e) setbacks of buildings from the street or streets – no front yard setback required.
- f) prevailing patterns of rear and side yard setbacks and landscaped open space- the prevailing patterns of rear yard setbacks is larger than the Zoning By-law minimum and the rear yards contain landscaped open space for outdoor amenity and are interspersed with accessory buildings. The side yard setbacks in the area are modest for garages and larger for dwellings.
- g) n/a
- h) n/a

In addition, the Policy states, “No changes will be made through...minor variance, ... that are out of keeping with the physical character of the neighbourhood.” - In Mr. Romano’s opinion, the setbacks and other features proposed are in keeping with the physical character of the neighbourhood.

Section 4.1.8 of the Official Plan indicates that the Zoning by-law will set out the performance standards in order that development in order to evaluate compatibility. In Mr. Romano’s opinion, the proposal results in a compatible site development within the subject property’s context. The position of the accessory structure is compatible with the neighbourhood’s varied context in terms of siting.

Mr. Romano indicated that the proposal would satisfy the Built Form policies of the Official Plan to ensure a good fit within the Neighbourhood (S. 3.1.2). In his opinion, the location, organization and fit of the development is consistent with the built form policies. There are no servicing issues. With respect to impact, Mr. Romano advised that the wording of the Official Plan recognizes that there will be some impact and the issue is whether adequate light and privacy is maintained. In Mr. Romano’s opinion, the proposal generates no unacceptable impacts such as privacy, overlook or shadow

In summary, it is his opinion that the proposed variances, individually and cumulatively, maintain the intent and purpose of the Official Plan.

With regard to the Zoning By-laws, in Mr. Romano’s opinion, the proposed variances, individually and cumulatively, meet the general intent and purpose of the Zoning By-laws. The proposal reflects an orderly and appropriate site development within the subject property’s context.

In terms of the test for minor, it was Mr. Romano's opinion that the proposal creates no undue adverse impact including shadowing, privacy and overlook. The design and built form is reasonable and proportionate to the lot. It was his opinion that the order of magnitude of the minor variances is reasonable in the context. Further, the proposal maintains a compatible built form that can be accommodated within the subject property with similar and characteristics to other developments in the area.

In Mr. Romano's opinion, the proposal represents an appropriate, reasonable and compatible site development within the diverse neighbourhood. It contributes to the varied nature of the area and incorporates features that are complementary and compatible. The single, consolidated accessory structure is an appropriate solution to accommodate parking and storage.

In summary, it was Mr. Romano's opinion that the proposal satisfies all four tests for a minor variance, and represents good planning.

Mr. Tillie, the other Appellant, is the owner and resident of 8 Lorraine Gardens, the house to the north of the subject property. Mr. Tillie did not disclose any documents and did not file a Witness Statement. He provided the TLAB with his concerns as expressed at the Committee meeting. He described the area as characterized by open, large lots with many trees with a "country like" feel. He has seen over time the original bungalows replaced with larger structures but not as large as the proposed development. He agrees with the Committee decision to refuse the size and location variances for the detached garage. His appeal is related to the height variance which the Committee approved. He provided his opinion that the reason the variances were not identified earlier in the process was that the actual development did not reflect the building permit plans. He was concerned that the Applicant did not follow due process.

He is concerned with the height, size and proximity of the detached garage and the detrimental impact it has on the enjoyment of his property. He advised that the size of the structure exceeded the By-law by approximately 30%, the height exceeded the By-law by approximately 60%, and the setback exceeded the By-law by approximately 80%. His Appeal letter stated that the variances could not be considered minor because of their magnitude and detrimental impact on his property. He advised that the garage blocked the morning sun, the southerly breezes and the open views. He considers the reduced setback to be more characteristic of the downtown and not Lorraine Gardens. He is in support of the condition to remove the railing from the second level deck to be a reasonable condition to prevent future use of the roof as an amenity space. He noted that there were 18 letters of opposition to the proposal. He referenced the Councillor's letter which raised concerns related to the process followed by the Applicant. He considers the 0.6 m setback for the garage to be a dangerous precedent for the area.



## ANALYSIS, FINDINGS, REASONS

The TLAB has considered the evidence provided on behalf of the Applicant's professional planner and the submissions made by the Appellant. The varying and inconsistent zoning reviews has led to some confusion by all parties and to some degree contributed to the concern of the community that due process was not followed. It is important to note that the TLAB considers the proposed variances based on the four tests of the Planning Act and provincial policy. While the actions of the Applicant and the series of zoning reviews are relevant to a certain extent in terms explaining the context, they are not significant factors in this decision. Similarly, while the development has been constructed and the variances are "after the fact", the TLAB's consideration of the variances is premised on the assumption that the development has not proceeded.

The main issue in this matter is the location, size and height of the proposed garage.

I accept the evidence of Mr. Romano, City Planning and the Committee that the remaining variances meet the four tests. The south side yard variance relates to a verandah which is at a depth greater than 17 m because of the inclusion of the basement foundation in the determination of depth. It is non-habitable, low scale and open sided space. The second floor platform is a reasonable size and configuration and located within the rear central portion of the dwelling. The privacy screens imposed by the Committee will address privacy and overlook concerns. The front yard landscaping variance is minor, negligible and imperceptible.

With respect to the height of the garage, I agree with Mr. Romano that the height variance is only required under the former Zoning Code and is based on an interpretation of a pitched roof. Under the current City By-law, no variance is required. The intent and purpose of the Zoning By-law is maintained.

With respect to the size of the garage, I agree with Mr. Romano that a number of accessory buildings could be constructed on the subject property. The proposed garage has a coverage of only 4.2 % while a coverage of 10% for accessory structures is permitted. I agree that there is a relationship between the size of the detached garage and the size of the property and a larger lot can proportionally support a larger accessory structure.

With regard to the north side yard setback, this variance is somewhat related to the interpretation of the By-law. Under the former Zoning Code, a variance was not identified. As noted, a variance for a garage in this location was not initially identified (albeit of a different size and design) and a building permit was issued. The November, 2017 zoning notice was issued after the Committee hearing and decision; it did not identify a variance for the north side yard setback for the detached garage or the south side yard setback. The February 2018 zoning notice, issued just prior to the TLAB hearing, identified the need for the variances.

I accept the evidence of Mr. Romano that the proposed north side yard setback meets the four tests. The side yard provides for access and maintenance. It does not contain habitable space which addresses privacy concerns. While the Appellant was concerned with the impact on shadowing and breezes, no evidence was provided as to demonstrate the impact on sunlight. Similarly, the open views would continue to be affected if a series of accessory buildings were to be constructed as of right in the rear yard.

With respect to the conditions imposed by the Committee, I agree that the condition to install privacy screens on the second level platform will assist with privacy and overlook concerns. The railing along the outside perimeter of the second floor roof is for decorative purposes. The plans clearly indicate that the remainder of the roof area is not intended for amenity area. The variance would only permit a 10 m<sup>2</sup> outdoor platform. If the owner proceeded to utilize the roof for amenity area they would be in contravention of the zoning by-law and the appropriate recourse could be taken by the neighbours. The planning concern related to the size and function of the platform has been addressed by limiting its size. I agree with Mr. Romano that the condition imposed by the Committee to remove the railing is not related to land use planning.

The TLAB is satisfied that the variances 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. The proposal results in an appropriate and desirable development for subject property and the variances are considered minor in the context. The TLAB is satisfied that the variances are consistent with the Provincial Policy Statement and conform to the Growth Plan.

The approval is subject to the condition below imposed by the Committee.

## **DECISION AND ORDER**

The following minor variances applicable to the new City By-law and the former Zoning Code are authorized:

### **1. Section 10.20.40.70. (5)(A), By-law 569-2013**

The minimum required side yard setback is 7.5 m, where the depth of the building is greater than 17 m.

The open verandah and excavated portion of the basement in the existing dwelling are located 3.05 m from the south side lot line, where the depth of the building is greater than 17 m.

### **2. Section 10.20.40.50. (1)(B), By-law 569-2013**

The maximum permitted area of a platform at or above the second storey is 4 m<sup>2</sup>.

The existing rear second storey platform has an area of 10 m<sup>2</sup>.

**3. Section 10.5.60.50. (2)(A), By-law 569-2013**

The maximum permitted total floor area of an ancillary structure is 60 m<sup>2</sup>.  
The existing detached garage has a floor area of 77.8 m<sup>2</sup>.

**4. Section 10.5.60.20. (3)(A), By-law 569-2013**

The minimum required side yard setback for an ancillary building or structure located in a side yard is 3 m.

The existing detached garage is located 0.6 m from the north side lot line.

**5. Section 320-43.D.**

The maximum permitted height of an accessory structure is 2.5 m

The existing detached garage has a height of 4 m.

**6. Section 10.5.50.10. (1)(C), By-law 569-2013 & Section 320-24.9(iii)**

A minimum of 60% of the front yard shall be maintained as landscaping (287.5 m<sup>2</sup>).

A total of 58.6% of the front yard is being maintained as landscaping (281 m<sup>2</sup>).

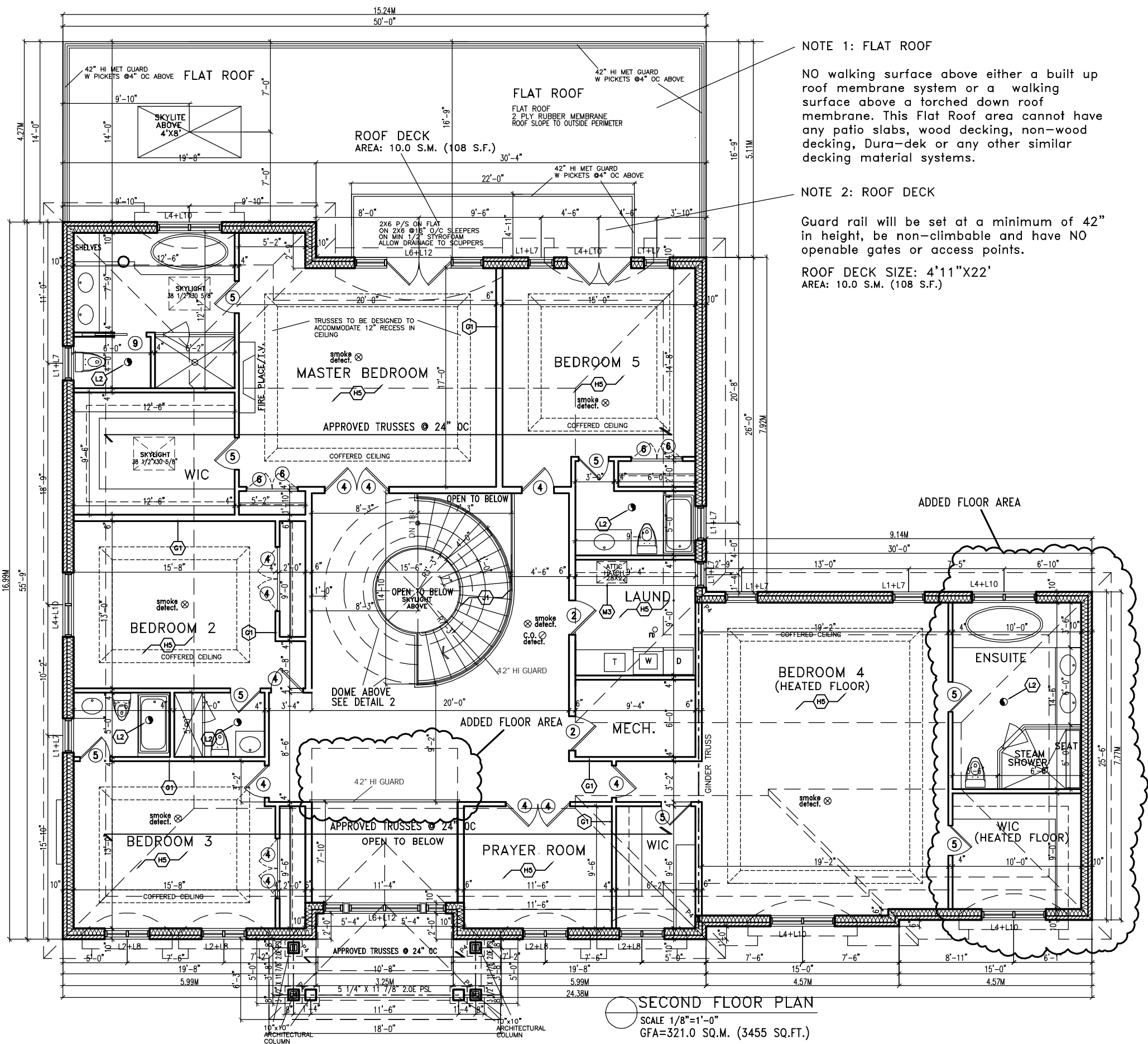
Condition:

1) The applicant shall install 1.5m high privacy screening along the two sides of the 10m<sup>2</sup> roof deck shown on Drawing A4, dated June 5, 2017, attached to this decision.

**X** 

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Laurie McPherson  
Panel Chair, Toronto Local Appeal Body



NOTE 1: FLAT ROOF  
 NO walking surface above either a built up roof membrane system or a walking surface above a torched down roof membrane. This Flat Roof area cannot have any patio slabs, wood decking, non-wood decking, Dura-dek or any other similar decking material systems.

NOTE 2: ROOF DECK  
 Guard rail will be set at a minimum of 42" in height, be non-climbable and have NO openable gates or access points.  
 ROOF DECK SIZE: 4'11"X22'  
 AREA: 10.0 S.M. (108 S.F.)

SECOND FLOOR PLAN  
 SCALE 1/8"=1'-0"  
 GFA=321.0 SQ.M. (3455 SQ.F.T.)

REVISED: JUN 05, 2017

ALL WORK SHALL BE CARRIED OUT IN ACCORDANCE WITH THE NATIONAL BUILDING CODES HAVING JURISDICTION OVER THIS SITE LOCATION. ALL DIMENSIONS AND INFORMATION SHALL BE CHECKED AND VERIFIED BY THE DESIGNER PRIOR TO THE DESIGN BY PHONE AND SUBSEQUENT WRITTEN COMMUNICATION PRIOR TO THIS DRAWING BEING ISSUED. THE DESIGN AND CONTRACT DOCUMENTS ARE THE COPYRIGHT PROPERTY OF THE DESIGNER AND SHALL NOT BE REPRODUCED, ALTERED, OR REUSED WITHOUT THE DESIGNER'S WRITTEN AUTHORITY.

NO	REVISIONS	DATE

The undersigned has reviewed and takes responsibility for this design, and has the qualifications and meets the requirements set out in the Ontario Building Code to be a designer.

**QUALIFICATION INFORMATION**  
 Required unless design is exempt under 217.3.1 of the building code

**REGISTERED INFORMATION**  
 Required unless design is exempt under 217.4.1 of the building code

**Alex Boros**  
 NAME: Alex Boros  
 SIGNATURE: [Signature]  
 BCIN/CCIN: 24385

**Alexander Boros Planning and Design Associates**  
 FIRM NAME: Alexander Boros Planning and Design Associates  
 BCIN/CCIN: 32413

**ALEXANDER BOROS**  
 PLANNING AND DESIGN  
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DRAWING TITLE: AS BUILT HOUSE AT 6 LORRAINE GUNS TORONTO, ONTARIO	DRAWING NO: 44
SCALE: N.T.S.	DATE: JUN 05, 2017
CHECKED: A.B.	DATE: JUN 05, 2017
DRAWN: J.A.	DATE: JUN 05, 2017