

DECISION AND ORDER

Decision Issue Date Thursday, April 12, 2018

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

Appellant(s): HELEN GIONTSIS

Applicant: BRANDON KASHIN

Counsel or Agent: AMBER STEWART

Property Address/Description: 5 PINE CRES

Committee of Adjustment Case File Number: 17 107743 STE 32 MV

TLAB Case File Number: 17 183067 S45 32 TLAB

Mediation date: Monday, March 05, 2018

DECISION DELIVERED BY T. Yao

This is a decision and order that gives effect to a partly mediated settlement reached at a telephone conference call on March 9, 2018. By "partly", I mean the TLAB assisted but the result has been achieved by the persons listed below as persons involved.

BACKGROUND

I reproduce portions of my Decision of January 25, 2018:

The Committee of Adjustment refused to grant Ms. Giontsis [thirteen] minor variances for 5 Pine Cres. She appealed to the TLAB.

The property at 5 Pine Crescent is a ravine lot, wherein the lands below top-of-bank at the rear of the premises are subject to Toronto and Region Conservation Authority comment. The top-of-bank is used to measure lot area, and it and the floor space index (FSI) depend on the demarcation of the top-of-bank line.

The persons involved are:

Helen Giontsis and Brian Cormier (5 Pine Cres);

Theodore Cieciora, Ms. Giontsis's planner, whom I qualified to opinion evidence;

Amber Stewart, Ms. Giontsis's lawyer;

Neriene and Alnoor Aziz (7 Pine Cres);

Graham Fisher, the Aziz's geotechnical engineer;

Francis Lapointe, architect, and the Azizes's authorized representative;

Don Bundock, (18 Pine Cres);

Jeremy Williams (3 Pine Cres); and

Brock Grant (253 Glen Manor Drive East).

A mediation commenced Thursday, January 25, 2018 and continued Tuesday February 27, 2018 and March 9, 2018 culminating in written Minutes of Settlement.

MATTERS IN ISSUE

In considering the applications for variances from the Zoning By-laws, the TLAB Panel must be satisfied that the variances conform to the Growth Plan and are consistent with the Provincial Policy Statements. The TLAB must also be satisfied that they meet all the four tests under s. 45(1) of the *Planning 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.

ANALYSIS, FINDINGS, REASONS

Rule 19.4 states:

19.4 Where no Person at the Hearing opposes the proposed settlement or where the Local Appeal Body rejects an objection the Local Appeal Body may issue an order giving effect to the settlement and any necessary amendments.

Since this decision "gives effect" to a settlement, it has no precedential value for another lot owner; and the variances authorized here should not be considered "typical",

unless the factual context, including the settlement, are also present in the other application.

I heard sufficient evidence from Mr. Cieciora, to satisfy me that all the statutory tests under the *Planning Act*. have been met.

Part of the Minutes of Settlement require me to insert language here that further limits any precedent value of this decision.

This is an unusual site; the long term stable top of slope is roughly two thirds distant from the front lot line. The total area of the lot is 530.63 sq m. The table land is 305.6 sq m and the area below stable top of slope is 225.03 sq m. The zoning by-law calculates Floor Space Index (a measure of interior space) based only on table lands and so 5 Pine Crescent is considered to have only 305.6 sq m of area for FSI calculation purposes.

A lot of the same size (i.e., in the 305 sq m range), and consisting of only table lands, should not be able to take advantage of this decision and seek an FSI of .91 times the area of the lot.

The lot also has a pool and deck area. Mr. Cieciora said that the way he generally evaluates a situation like this is to recognize that if such pool and deck were to be built today, it would not be permitted, but since it has existed like this for four decades it should be maintained but not expanded. Part of the discussion with Toronto Region Conservation Authority was that it would permit the new house at 5 Pine Crescent to be in line with the rear face of 7 Pine Crescent. This is another factor in making this decision of limited precedential value.

Certain variances have been amended from the original application. I find these are minor and do not require further notice¹.

The Minutes of Settlement are attached, minus the signature pages (for protection against identity theft). The Parties asked me to make the Minutes public and part of the decision to explain the result and to assist in the enforceability of the provisions. I explained that this is a private contract, although it has a public result, that is, an Order authorizing these variances. Should a person wish to enforce a provision after issuance of this Decision, he or she should seek legal advice. However, if there is anything in the wording of this decision which is unclear or erroneous, I ask the parties to please speak to me.

I wish to thank all persons concerned for their hard work in achieving a settlement. The TLAB process favours this result.

¹ S. 45(18.1.1) The Municipal Board is not required to give notice under subsection (18.1) if, in its opinion, the amendment to the original application is minor. 1996, c. 4, s. 25 (1).

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The variances in the “Final List of Revised Variances” below are authorized. These authorizations are conditional on the “Conditions of Approval”, which follow the list of variances.

Final List of Revised Variances

Note: For the purpose of this list, consistent with the zoning review provided by the City of Toronto, the lot lines are identified as follows: north lot line is between 5 Pine Crescent and 7 Pine Crescent, east lot line is the rear property line, south lot line is between 5 Pine Crescent and 3 Pine Crescent, and west lot line is the front property line.

Variances to By-law 569-2013

1. Chapter 10.5.40.60.(3)(A)(i) – Exterior stair encroachment into front yard

Exterior stairs providing pedestrian access to a building or structure may encroach into a required building setback if the stairs are no longer than 1.5 horizontal units for each 1.0 vertical unit above grade at the point where the stairs meet the building or structure.

In this case, the front stair structure, including landings, has a length equal to 3.44 horizontal units for each 1.0 vertical unit.

2. Chapter 10.5.40.60.(3)(A)(ii) – Front exterior stair width

Exterior stairs providing pedestrian access to a building or structure may encroach into a required building setback if the stairs are no wider than 2.0 m.

In this case, the front stair structure, including landings, will be 3.38 m wide.

3. Chapter 10.5.40.60.(3)(A)(iii) – Front exterior stair setback

Exterior stairs providing pedestrian access to a building or structure may encroach into a required building setback if the stairs are no closer to a lot line than 0.6 m.

The front stair structure, including landings, will be 0.0 m from the front lot line.

4. Chapter 10.5.40.70.(1) – Front yard setback

The minimum required front yard setback is 6.30 m.

The new dwelling will be located 6.015 m to the front lot line.

5. Chapter 10.20.40.40.(1)(A) – Floor space index

The maximum permitted floor space index is 0.35 times the area of the portion of the lot located above the top-of-bank (106.96 m²).

The new dwelling will have a floor space index equal to 0.91 times the area of the portion of the lot located above the top-of-bank (275.84 m²).

6. Chapter 10.20.40.70.(3)(C) – Side yard setback

The minimum required side yard setback is 1.2 m.

The north side yard setback will be 0.91 m.

7. Chapter 5.10.40.70.(6) – Setback to the stable top-of-bank

If the Toronto and Region Conservation Authority determines that a shoreline hazard limit or a stable top-of-bank crosses a lot, a building or structure on that lot must be set back a minimum of 10 m from that shoreline hazard limit or stable top-of-bank.

In this case, the principal building is setback 4.113m from the stable top-of-bank on the same lot.

8. Chapter 5.10.40.80.(1) – Setback to the stable top-of-bank not on the lot

On lands under the jurisdiction of the Toronto and Region Conservation Authority, a building or structure on a lot must be no closer than 10 m from a shoreline hazard limit or a stable top-of-bank not on that lot.

In this case, the principal building will be setback 4.18 m, measured to the window projection, from the stable top-of-bank [that is] not on the same lot.

9. Chapter 10.5.40.10.(5) – First floor area

A minimum of 10.0 m² of the first floor must be within 4.0 m of the front main wall.

A total of 1.67 m² of the first floor is within 0.912 m of the front main wall.

Variances to By-law 438-86

10. Section 6(3) Part I 1 – Gross floor area

The maximum permitted gross floor area is 0.35 times the area of the lot (185.72 m²)
The new dwelling will have a gross floor area equal to 0.52 times the area of the lot (275.84 m²).

11. Section 6(3) Part II 2(II) – Front yard setback

The minimum required front lot line setback is 6.30 m.

The new dwelling will be located 6.015m m to the front lot line measured at the front one storey portion.

12. Section 6(3) Part II 8 (D) – Projection of uncovered platforms

The maximum permitted projection of an uncovered platform into the required setbacks from the front or rear wall is 2.5 m.

In this case, the front uncovered platform (front stair structure including landings) will project 4.33 m from the front wall.

13. Section 6(3) Part II 8 D(I) – Height of uncovered platform

The maximum permitted height of an uncovered platform which projects into the required setbacks is 1.2 m above grade.

The front uncovered platform (front stair structure including landings) will have a maximum height of 2.1 m above grade.

Conditions of Approval

The following are the conditions of approval for these variances.

1 The proposed dwelling shall be constructed substantially in accordance with the Site Plan and Elevations prepared by Richard Ziegler Architect Inc. and dated February 15, 2018. For greater certainty:

- a) As shown on the Site Plan, the front yard will be sloped to the sidewalk, with no retaining wall on the front lot line, adjacent and parallel to the sidewalk. If the rear of the stone wall in the front of 7 Pine is exposed, soft landscaping will be planted in front of it for screening.
- b) As shown on the plans, a row of cedar trees will be planted in the rear yard, adjacent to 3 Pine and 7 Pine, in a dense pattern with a minimum height of 5' high.

For greater certainty, this condition does not prevent any revisions required to satisfy the conditions of approval.

2 The Owners [of 5 Pine Crescent] shall request their Ontario Land Surveyor to survey the height of the existing chimney at 3 Pine Crescent to confirm its actual height and location. If the surveyed dimensions confirms that the existing chimney at 3 Pine will not be in compliance with the regulations of the Ontario Building Code (“OBC”) as a result of the construction proposed at 5 Pine Crescent, then the Owners shall revise their drawings to ensure that the existing chimney at 3 Pine complies with the OBC requirements in s. 9.21.4.4.(1)(b).

3 The Owners will retain a structural engineer to provide a report that considers the existing and proposed construction, including:

- a) Any excavation and construction adjacent to Mr. Williams’ garage at 3 Pine;
- b) The existing stone retaining wall at the rear of the properties between 5 Pine and 7 Pine, and any excavation or construction proposed adjacent to the retaining wall;
- c) The timber retaining wall around the pool and deck; and

the Owners shall submit the report to the Building Department as part of the application for a building permit. The Owners’ solicitor shall also confirm that a copy of the report has been provided to the owners of 3 Pine and 7 Pine, respectively.

4 The Owners shall comply with the City of Toronto Municipal Code Chapter 813, Article II (City-owned trees) and Article III (Privately-owned trees).

5 The Owners shall submit a complete application for a permit to injure or remove privately-owned trees as per City of Toronto Municipal Code Chapter 658. Any proposed earthwork within the required tree protection zone of the oak tree in the rear of 7 Pine Crescent, adjacent to 5 Pine Crescent, shall form part of this permit application to ensure that any injury to the roots of the oak tree is minor and in accordance with any permits issued by the Toronto and Region Conservation Authority and/or Urban Forestry, Ravine and Natural Features Protection.

6 After construction of the new dwelling, the Owners shall reinstall the pavers between the two dwellings at 5 Pine and 7 Pine.

7 The Owners will engage an Ontario Land Surveyor to update the topographic survey to confirm and accurately depict the location of existing retaining walls (including those supporting the swimming pool decks and at the rear of the property) and other structures on the property, and will include geodetic elevations of the top and bottom of the retaining walls, and the architectural building permit plans will be revised to show the

accurate existing locations of these structures. The updated topographic survey will be submitted with the building permit application.

X

Ted Yao

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

Minutes of Settlement, which form part of this Decision

MINUTES OF SETTLEMENT dated March 9, 2018

B E T W E E N:

BRIAN CORMIER and HELEN GIONTSIS (“the Owners”)

- and -

**JEREMY WILLIAMS, ALNOOR AZIZ, NEVINE AZIZ,
DON BUNDOCK, and BROCK GRANT**

WHEREAS Helen Giontsis and Brian Cormier (together, referred to as “the Owners”) are the Owners of 5 Pine Crescent (“5 Pine”);

AND WHEREAS 5 Pine is the subject property in this minor variance appeal before the Toronto Local Appeal Body (“TLAB”) bearing file No. 17 83067 S45 32;

AND WHEREAS a mediation of this matter was held on January 25, 2018, with the Owners and the other parties and participants to the proceeding, being:

Jeremy Williams, an owner of 3 Pine Crescent (“3 Pine”);
Alnoor Aziz and Nevine Aziz, the owners of 7 Pine Crescent (“7 Pine”);

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Don Bundock, the owner of 18 Pine Crescent; and
Brock Grant and Elsie Grant, the owners of 253 Glen Manor Drive
East (collectively, “the Parties”);

AND WHEREAS the Owners have continued discussions with the Parties and the Parties have all agreed to resolve their concerns with this proposal based on the following terms:

1. Revised plans have been prepared dated February 15, 2018, which respond to a number of the concerns that were raised by the parties and participants. A copy of the revised plans is attached as **Schedule 1**. These revised plans will be submitted to the TLAB for approval at the settlement hearing on March 9, 2018. The changes to the plans are described in more detail below, together with additional comments and commitments of the Owners, including the following:

- a. The overall height of the dwelling has been lowered by 0.3 m, so that the proposed height is 9.7m.
 - i.* The chimney height has also been lowered. On the front elevation, the distance to the chimney at 3 Pine has been identified, in order to confirm that the distance is compliant with Ontario Building Code (“OBC”) requirements. This distance has been estimated based on photographs showing the existing chimney at 3 Pine. Based on this estimate, and it appears that the existing chimney at 3 Pine complies with the applicable regulations of the OBC notwithstanding the proposed construction at 5 Pine. For greater certainty, the Owners agree to have their Ontario Land Surveyor survey the height of the existing chimney at 3 Pine to confirm the actual height and location. If the surveyed dimensions confirms that the existing chimney at 3 Pine will not be in compliance with the regulations of the OBC as a result of the construction proposed at 5 Pine Crescent, then the Owners will revise their drawings to ensure that the existing chimney at 3 Pine complies with the OBC requirements in s. 9.21.4.4.(1)(b).
- b. The dwelling footprint has shifted to the east by 0.3 m.
 - i.* This change will have the effect of eliminating the proposed variance for side yard setback on the west side, adjacent to 3 Pine.
 - ii.* However, we will require the addition of a variance for an east side yard setback of 0.9 m, adjacent to 7 Pine. Mr. Aziz and Ms. Aziz, and the other Parties, confirm that they consent to the addition of this variance before the TLAB.
- c. The length of the dwelling has been reduced by 0.338 m, so that the overall length is now 13.535 m (excluding the bay window projection).
 - i.* This change will result in the reduction in magnitude of the front yard setback variance, as the front yard setback is increased to 6.015 m (west side)

and 6.137 m (east side).

ii. This change will also result in the reduction in magnitude of the FSI variances. As determined by the zoning examiner, the proposed FSI based on table land area (By-law 569- 2013) is 0.91 x, and based on the entire lot area (By-law 438-86) is 0.52 x.

iii. Through their lawyer, the Owners will advise the TLAB at the hearing on March 9, 2018, about the rationale for the increased FSI proposed. Specifically, they will advise that the existing site conditions, including the presence of the ravine (and the fact that the FSI is only calculated based on the table land portion of the lot area), the proximity of the existing dwelling to the ravine, and the presence of the existing pool, retaining wall and deck in the ravine, are all factors that contribute to the justification of the proposed FSI. They will further emphasize the importance of these considerations and ask the TLAB to reference these factors in the Decision.

- d. The retaining wall has been removed from the front yard, adjacent to the sidewalk. As shown on the Site Plan, the front yard will now be sloped to the sidewalk. For greater certainty, there is no proposal or agreement to remove the stone wall in the front yard of 7 Pine. If any portion of the rear of the stone wall in the front of 7 Pine is exposed, soft landscaping will be planted in front of it for screening.
- e. Landscaping has been added to the rear yard, adjacent to both 7 Pine and 3 Pine. As shown on the plans, a row of cedar trees will be planted and maintained indefinitely. The cedar trees to be planted in a dense pattern with a minimum height of 5' high, to act as an acoustical buffer between the adjoining neighbours.

2. The revised plans have been submitted for a zoning review and the variances identified by the zoning examiner will be submitted to the TLAB for approval, except that the zoning notice contains typos in the front yard setback variances, which have been corrected to identify 6.015 m as shown on the plans. The revised zoning notice is attached hereto as **Schedule 2**.

3. The Owners will retain a structural engineer to provide a report that considers the existing and proposed construction, including:

- a. Any excavation and construction adjacent to Mr. Williams' garage at 3 Pine;
- b. The existing stone retaining wall at the rear of the properties between 5 Pine and 7 Pine, and any excavation or construction proposed adjacent to the retaining wall, provided that the Owners and Mr. Aziz and Ms. Aziz are in agreement with leaving the existing stone retaining wall in place, and

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reinforcing it with terraced armour stone, if the engineer determines that this course of action is appropriate; and

- c. The timber retaining wall around the swimming pool and deck.

The Owners agree to provide a digital copy of the report to Mr. Williams and Mr. Aziz within 7 days after it is received.

4. The Owners agree, at minimum, to install any shoring if and as required by the structural engineer adjacent to the existing dwellings at 3 Pine and 7 Pine. In order to assist the structural engineer, the owners of 7 Pine will provide a copy of their building permit drawings to the structural engineer so that he can take the theoretical foundation depths at 7 Pine into consideration with respect to any proposed shoring.

5. The Owners agree that any proposed earthwork within the required tree protection zone of the oak tree at 7 Pine shall be reviewed and approved by the Toronto and Region Conservation Authority ("TRCA") and the City's Urban Forestry, Ravine and Natural Features Protection Department ("RNFP") to ensure that any injury to the roots of the oak tree is minor and in accordance with any permits issued by the TRCA and/or RNFP. The Owners agree to provide a copy of their arborist report to Mr. Aziz within 7 days after it is received. If a site review of the oak tree is held with the TRCA and/or RNFP, the Owners agree to advise Mr. Aziz of the scheduled date and time shortly after it is confirmed.

6. The Owners agree to reinstate the pavers between the two dwellings at 5 Pine and 7 Pine to the existing condition and with a consistent appearance after construction of the dwelling.

7. The Owners will ask their geotechnical engineer to review the existing culvert at the rear of 5 Pine, and to make recommendations regarding any required changes to the culvert (including removal of the retaining 6x6 timbers, and/or removal of the cover over the culvert, and/or regrading of the culvert). The proposed solution must allow for their continuous flow of water through the ravine without interruption and the proposed solution will be maintained indefinitely.

8. The Owners will engage an Ontario Land Surveyor to update the topographic survey to confirm and accurately depict the location of existing retaining walls (including those supporting the swimming pool decks and at the rear of the property) and other structures on the property, and will include geodetic elevations of the top and bottom of the retaining walls, and the architectural building permit plans will be revised to show the accurate existing locations of these structures. The updated topographic survey will be submitted with the building permit application.

9. The Owners agree to submit the reports and recommendations of their structural engineer and their geotechnical engineer to the TRCA as part of a permit application, so as to ensure that the pool retaining wall and the culvert are evaluated as part of that application process. For greater certainty, all parties acknowledge that any work carried

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out in the regulated area is subject to TRCA approval, including the implementation of any engineering recommendations. The Owners agree to inform Mr. Aziz and Mr. Williams and provide copies to Mr. Aziz and Mr. Williams of any permits or decisions by the TRCA and/or the City's Urban Forestry, Ravine and Natural Features Department, within 7 days after they receive those permits or decisions.

10. Subject to the cooperation of the owners of 3 Pine and 7 Pine, the Owners will retain an engineer to complete a pre-construction survey of the existing dwellings at 3 Pine and 7 Pine, so as to document the existing condition of the dwellings, in order to avoid any damage during construction to the adjacent dwellings and structures. Digital copies of the reports and photographs will be provided to the owners of 3 Pine and 7 Pine, respectively, within 7 days after they are received.

11. In the future, if the pool and retaining wall supporting the pool are substantially reconstructed or replaced, the Owners agree to reduce by 20% the area of structures encroaching below the long term stable top of slope line identified on 5 Pine. For greater certainty, this will not be required in the event of ongoing repairs or maintenance to the pool and retaining wall supporting the pool.

12. The above settlement is conditional upon all of the Parties reaching agreement, which will be presented to the TLAB for approval on March 9, 2018. The revised plans and variances will not be submitted unless a comprehensive resolution is achieved.

13. No Party will ask the TLAB for an Order for costs (legal and/or consulting) in connection with the appeal to the TLAB for minor variances for 5 Pine.

14. The Owners do not currently intend to sell the Subject Property prior to construction. However, if they do, they agree to inform prospective buyers of these Minutes of Settlement and the TLAB's Decision, and to make reasonable efforts to have the prospective purchaser agree to assume the obligations contained in these Minutes of Settlement.

15. These Minutes of Settlement can be signed electronically and in counterparts, and a complete set shall constitute a fully executed copy.

The Parties hereby agree to the above-noted covenants as of the date signed below.

DATED as of March 9, 2018.

Witness:

_____ Helen Giontsis

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Witness: Brian Cormier

Witness: Don Bundock

Witness: Alnoor Aziz

Witness: Nevine Aziz