

DECISION AND ORDER

Decision Issue Date Wednesday, May 09, 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): JOHN KARBI

Applicant: JOHN KARBI

Property Address/Description: 50 MARMION AVE

Committee of Adjustment Case File Number: 17 255185 NNY 16 MV (A0949/17NY)

TLAB Case File Number: **17 278247 S45 16 TLAB**

Motion Hearing date: Wednesday, May 02, 2018

Appearances

Name	Role	Representative
John Karbi	Appellant	C. Tanzola
Siamak Shidrang	Participant	

DECISION DELIVERED BY T. YAO

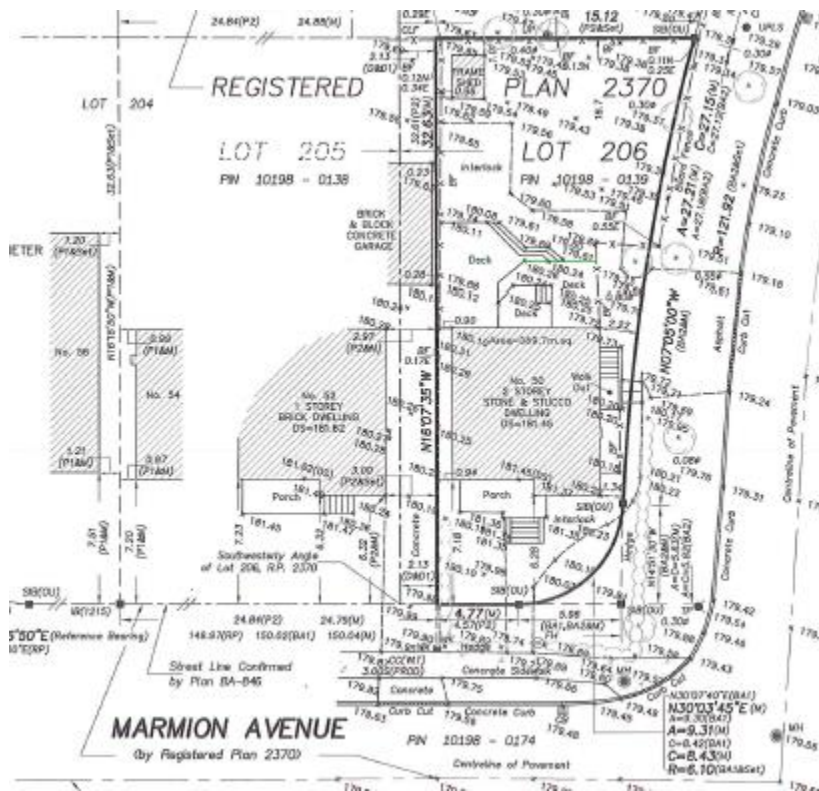
INTRODUCTION

The Karbi family¹ wishes to demolish the existing two storey house and replace it with a new two storey house. The application, involving 11 variances, was refused by the Committee in December 2017 and the Karbis appealed to the TLAB.

¹Diana Ilic-Karbi is John Karbi's spouse but for brevity I will just use "Karbi" to describe both persons.

BACKGROUND

Marmion Street is an east-west street located northeast of Bathurst/Lawrence intersection. No. 50 Marmion is on the northwest corner of the intersection of Marmion Avenue and Falkirk Street. Because Falkirk bends at this intersection, the lot has two sources of irregularity: it is a corner lot, with land being taken away because of the rounding of the corner, and because of the curve of Falkirk, the rear lot line is about 15 m whereas the frontage is roughly 5 m. The site plan and shape of the lot are depicted below.²



One basic problem confronting the Karbis was whether to locate the garage within the residential dwelling or in a separate detached structure. Both would require a minor variance application; an integral garage would push up the first floor, creating the need for a height and other variances; the detached garage creates lot coverage overage, plus setback issues. They chose the second solution, reasoning that this permits them to keep landscaping in the curve around the front/side yard, and a sympathetic relation between the living room windows and the street. In my opinion, this was the better choice both for their personal wishes and the shape and location of a typical lot with access to the Falkirk Street flankage.

² All diagrams and tables form part of this decision.

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An earlier version of their replacement house and garage was presented to the Committee of Adjustment on December 7, 2018. It contained seemingly dramatic variances for building length (25.83 m proposed vs 15.3 m permitted under the North York by-law) and lot coverage of 51% (maximum of 30% under 569-2013). Nonetheless, the City Planning Department wrote a favorable report:

“Although the resulting variances appear numerically large, they are supportable.”

The Karbis then made small modifications to the first plan: by articulating the rear wall of the main building, and slightly increasing the distance between the house and garage; the building length was decreased from 25.83 m to 17.39 m (15.3 m permitted) and the lot coverage decreased from 51% to 46.5% (30% permitted). This 46.5% consists of 37% for the house and 9.5% for the garage structure.

The variances being sought are contained in the Table 1. There are two zoning by-laws and many variances are sought under both. This gives the impression that the Karbis seek more variances than they really are. Because By-law 569 has been appealed and the final wording cannot be determined until the conclusion of that hearing, the Buildings Department must perform two examinations.

Table 1 Variances sought for 50 Marmion Avenue			
Under by-law 569-2013			
		Permitted/Required	Proposed
1	First floor within 4 m of main front wall	Minimum of 10 m ²	5 m ² (increase from 4.86 m ²)
2	Front yard setback	Minimum of 6.32 m	5.58 m (decrease from 5.65 m)
3	Building length	Maximum of 17 m	17.39 m (decrease from 25.83 m)
4	West side yard setback	Minimum of 1.2 m	.91 m
5	Lot coverage	30%	37% for main building, 9.5% for garage; Total 46.5%
6	Ancillary building setback from Falkirk Street	6.0 m	1.5 m
Under by-law 7265			

7	First floor height	1.2 m	1.24 m
8	West sideyard setback	1.2 m	.91 m (same as existing)
9	Max. building length	15.3 m	17.39 m
10	Building Height	8.8 m	8.85 m
11	First floor finish height	1.5 m	1.75 m

MATTERS IN ISSUE

A decision of the Toronto Local Appeal Body must be consistent with the 2014 Provincial Policy Statement and conform to the Growth Plan of the Greater Golden Horseshoe for the subject area. I considered that neither of these documents was applicable to this application. The TLAB Panel must also be satisfied that the applications 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.

EVIDENCE

I heard evidence from Mr. Adam Layton, whom I qualified as able to give opinion evidence in land use planning. He testified that the variances should be granted. Ms. Kaho Hayashi, a Forestry Ecologist and Certified Arborist was present to testify to the Urban Forestry conditions, but as those conditions were standard and not contested by the Karbis, I indicated it was not necessary to call her. Mr. Siamak Shidrang, the immediate neighbour at 52 Marmion Avenue, testified in opposition to the Karbis.

ANALYSIS, FINDINGS, REASONS

Although the Karbis did not mention this in their evidence, it is entirely understandable if they had speculated that great expense of an appeal could have been avoided if the Committee had accepted the insight of the City Planning report. I find that the variances they seek are within the purpose of the zoning by-law and because the zoning by-law cannot foresee every situation, it is the task of the Committee and the TLAB to interpret it to ascertain its intent with respect an irregular shaped corner lot. I find these variances are not overdevelopment and indeed the proposal is sensitively planned and respects the relationship of this lot to both Marmion Avenue and Falkirk Street. This is easy to say in hindsight because, along with having made the small architectural modifications, the Karbis, through their planner Mr. Layton, gave a

thoroughly researched and insightful presentation, with hundreds of pages of documentation that were not available to the Committee. For brevity (this hearing of this appeal took over six hours) I will not repeat much of this evidence, except to indicate here that it was helpful in reaching the main conclusions.

Variance 1, first floor area

This first issue deals with a matter that is in the process of being resolved by the Local Planning Appeal Tribunal (formerly OMB) with respect to By-law 569-2013. Currently the Mr. Conti of the Tribunal has commented on this issue at paragraph 104 of PL130592 (March 2018) as follows:

[104] The City also recommended that regulation 10.5.40.10 (5) which required a minimum of 10 sq m of the first floor to be within 4 m of the front main wall to be deleted. Mr. D'Abramo [the City's witness] indicated that there was difficulty in interpreting this regulation.

The final decision is being held pending further study on other issues, but the result will be that 569-2013 will no longer contain this provision and, in the future, the plan examiner will not ascertain if first floor areas meet this standard. A variance is needed in the meanwhile. I find that in the light of the City's position, the variance sought meets the intent of the zoning by-law.

Front yard setback

Section 4.1.5 (e) of the Official Plan makes specific reference to the setbacks of buildings from streets.³ The front yards across the street are shown below:



The Karbis seek a setback of 5.65 m whereas the houses directly opposite have variances of 4.6 and 4.5 m respectively, less than what the Karbis seek. Moreover, 50 Marmion is subject to a curving front lot line whereas No. 51 is rectangular.

Other corner lots in the study area have the following front yard setbacks

	setback	Remarks
570 Melrose	7.0 m	rectangular
571 Melrose	5.3 m	rectangular
72 Marmion	6.6 m	rectangular

³ Neighbourhoods will respect and reinforce the existing physical character of the neighbourhood, including in particular:

- a. Patterns of streets, block and lanes, parks and public building sites;
- b. Size and configuration of lots;
- ...
- e. Setbacks of buildings from the street or streets;

538 Melrose	7.3 m	curved, much larger lot
545 Melrose	5.0 m	Curved, larger lot
51 Marmion	4.5 m	rectangular
50 Marmion	5.58 m/	Subject property
73 Marmion	6.2 m	rectangular

I find from this table there is substantial variability in front yard setbacks, even for corner lots. I find as well that none of the other corner lots suffers from the twin disabilities of being both undersized with curve “subtracting”; the other curved lots have convex shapes, so that the curve “adds” to the basic lot shape.

The test under the *Planning Act* asks me to look at the intent of the zoning by-law. This is to provide for a pleasing regularity of front yard setbacks and an adequate space for this public realm. A corner lot is less a part of this row. Moreover No. 50 is located across the street from Ledbury Park, Ledbury Park Elementary and Middle School and Ledbury Swimming Pool, with expansive grounds, so this intersection functions as a “gateway” to institutional uses (note the cross walk in the aerial photo above). Its physical context is different from corner lots more distant from Falkirk Street. In conclusion, I find that this front setback variance is minor (an underage of .22 m or only 0.72 feet less than the existing front yard setback for the house to be demolished) and meets the intent of the zoning by-law.

Building Length, setbacks and lot coverage



Photo 23: 78 Marmion Avenue - corner lot, variances required

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An integral garage with Marmion Street access is not possible or is “inadvisable” in the opinion of Mr. Layton. On the previous page is a photo of a recently constructed house at **78 Marmion**, in the same northwest corner orientation as No. 50 Marmion.

No. 78 Marmion is not out of place with respect to its neighbour at 80 Marmion (seen partly as the house to the left). It illustrates an “alternative reality” if the Karbis had elected to solve the parking space requirements by opting for an integral garage.

Table 2 Variances granted for 78 Marmion Avenue A0216/16NY (granted by the Committee of Adjustment)			
Under 569-2013			
		Permitted/Required	Proposed
1	First Floor Area within 4.0m of the main front wall	10.00 sq m	5.09 sq m
2	Flanking street access	Yes	No
3	Max. Lot Coverage	30.00%	37.70%
4	Max. Number of Storeys	2 storeys	3 storeys
5	Max. Building Height	7.20 m	8.72 m
6	Max. Finished First Floor Height	1.20 m	1.27 m
7	Min. Side Yard Setback	1.20 m	0.90 m
Under 7625			
8	Min. Lot Area	371.00 sq m	370.01 sq m
9	Min. Lot Frontage	12.00 m	11.34 m
10	Min. Side Yard Setback	1.20 m	0.90 m
11	Max. Lot Coverage	30.00%	36.90%
12	Max. Building Height	8.00 m	9.43 m
13	Max. Number of Storeys	2 storeys	3 storeys
14	Min. Lot Width	12.00 m	11.35 m
15	Max. Projection of Rear Deck	2.10 m	2.77 m
16	Max. Height of Rear Deck	1.00 m	2.31 m
17	Max. Width of Rear Deck	50% of the width	91.80% of the width

A few highlights are:

- No. 50 requires 11 variances whereas No. 78 required 17;
- The lot coverage for the house for both 50 and 78 exclusive of garage are virtually identical;
- Lot coverage variances were also granted in this range to both houses abutting No. 78, (80 and 76 Marmion) so this is typical;
- The integral garage solution creates new variances, namely “access to the flanking street” and for “three storeys” instead of two.

In short, I find this application is within the range of variances granted recently for this area of Toronto.

Building height

The variance under the former by-law is superseded by the 10 m height permission under the more recent City-wide bylaw.

The evidence of Mr. Shidrang

Mr. Shidrang also prepared for this case, even citing the case of *Vincent v. Degasperis*, 2005 CanLII 24263 (ON SCDC). He therefore correctly stated the appropriate statutory tests. He seemed to believe that his function was to supply the law, and he did set out his position in writing as being based on loss of green space, loss of openness, loss of privacy, sightlines and neighbouring back yards. He did not allude to any of these issues in his oral testimony and when Mr. Tanzola sought to clarify his position he said:

Just for the record, however it impacts your decision, I've made my presentation; they made their presentation; I'm not going to answer any more questions.

As a result, I was unable to rely on his testimony.

Conclusion

I find that the variances sought by the Karbis meet the statutory tests. The variances are appropriate and will cause no discernable impact on the neighbourhood and for the most part are necessitated by the unique shape and constraints of the lot.

DECISION AND ORDER

The variances in Table 1 for 50 Marmion Avenue are authorized on the following conditions:

Adherence to Plans:

1. The proposal be developed substantially in accordance with the Site Plan Drawing No. SD1 (Revision 4- MVA-Jan 23, 2018) submitted to the Toronto Local Appeal Body in Exhibit No. 7 (Latest Revised Plans). (page 2 out of 11)

Urban Forestry

2. Submission of a complete application for a permit to injure or destroy a City-owned tree(s). A *Contractor's Agreement to Perform Work on City-owned Trees* will be required prior to the removal/injure of the subject tree(s). Form located at www.toronto.ca/trees/pdfs/contractor_services_agreement_information.pdf.

Submission of a tree protection guarantee security deposit to guarantee the protection of City-owned trees according to the *Tree Protection Policy and Specifications for Construction Near Trees* or as otherwise approved by Urban

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Forestry. Accepted methods of payment include debit or card, certified cheque or money order payable to the *Treasurer of the City of Toronto*, or Letter of Credit.

3. Submission of a complete application for permit to injure or remove privately owned trees.
4. Where there are no existing street trees, the owner shall provide payment in lieu of planting one street tree on the City road allowance abutting each of the sites involved in the application. The current cost of planting a tree is \$583.

X

Ted Yao

Ted Yao
Panel Chair, Toronto Local Appeal Body
Signed by: Ted Yao