

DECISION AND ORDER

Decision Issue Date Monday, May 07, 2018

PROCEEDING COMMENCED UNDER section 45(12), subsection 45(2)(b) of the Planning Act, R.S.O. 1990, c. P.13, as amended (the "Act")

Appellant(s): MAHDI TAEBI

Applicant: ADSTRUCT LTD

Property Address/Description: 248 SUTHERLAND DR

Committee of Adjustment Case File Number: 17 150211 NNY 26 MV

TLAB Case File Number: **17 266944 S45 26 TLAB**

Hearing date: Tuesday, May 01, 2018

DECISION DELIVERED BY T. Yao

APPEARANCES¹

Name	Role	Representative
Mahdi Taebi	Appellant	Amber Stewart (lawyer)
City of Toronto	Party	Sarah Rogers (lawyer)
Leaside Property Owners Association Inc.	Participant	Geoff Kettel (officer and representative)
Jason August	Participant	

INTRODUCTION

Mahdi Taebi wishes to demolish an existing two storey house and construct a new two storey house with an integral garage.

BACKGROUND

¹ At the May 2018 hearing, all participants except Mr. August and Mr. Kettel either failed to attend or left early.

This property is one of only two “original” homes on this block; the rest having been demolished and replaced with larger homes in a style different from the prevailing vernacular from the original Leaside community homes.

The August 2017 application

This application first came before the Committee of Adjustment in August 2017. Instead of being examined by the City’s plan examiner for necessary minor variances from the two zoning by-laws, Mr. Taebi’s architect, Farhad Vatandoost, performed a “waiver”, that is, his own self-assessment. This waiver indicated the building needed four variances, including a building height (distance between established grade to topmost part of the roof) variance of 9.63 m (8.5 permitted). There was no mention of a main wall building height (a “main wall” is an exterior, loadbearing wall). Nonetheless this lack was identified as a concern by the local Councillor Jon Burnside in a letter dated July 18, 2017:

The proposed main wall height of 8.90m and FSI of 0.70 seem more than minor in nature and would have adverse impact on the streetscape of the neighbourhood. I suggest that the Committee consider a reduced variance for the main wall height and the FSI.

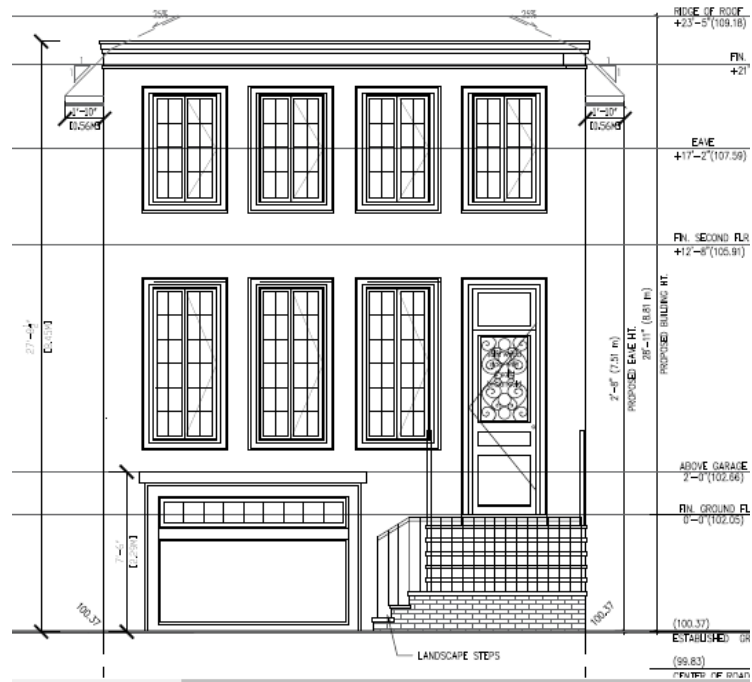
In regards to the building height, the proposed building height is 9.63m under By-law No. 1916 but there is no requested variance under By-law No. 569-2013. From the information City staff provided my office, it is my understanding that the building height under By-law No. 569-2013 could not be determined during the zoning review because the established grade was not provided. Based on the drawings, it seems that the applicant needs building height variance under both by-laws. It is critical that the Committee ensure that there was no building height variance missed under By-law No. 569-2013 and that the height be reduced to be more in keeping with the neighbourhood.

Councillor Burnside’s letter is helpful for two reasons. First, he warned the Committee that the variances sought were excessive and his judgement will be shown to be prescient. Second, he warned of technical issues, that the main exterior wall height was not identified and there was information that was incomplete with respect to established grade.

The November 2017 application

The Committee deferred the July application. Mr. Taebi returned to the Committee on November 8, 2017, again supported by a new waiver from Mr. Vatandoost. The FSI had dropped from .7 to .66; main wall height was now flagged at 8.45 (7 m permitted) and the building height was reduced to 8.81 m.

Figure 1. First Front Elevation



The November application was supported by a letter from the City Planning Department which read:

The application requests a variance to permit a *side exterior main wall height* of 8.45 metres whereas the maximum permitted side exterior main wall height under By-law 569-2013 is 7 metres. The increase in side exterior main wall height is due to the proposed windows in the roofline as shown in the left elevation. To ensure the increased side exterior main wall height remains as proposed in the drawings submitted, staff recommend that any approval by the Committee include a condition that the application be developed substantially in accordance with the *left and right elevations* submitted to the Committee of Adjustment . . . (my italics).

Figure 1² above shows the front elevation submitted to the Committee in November. The second waiver with the revised numbers identified four variances would be needed, including main building wall of 8.45 m (7 m permitted), but the Committee found seven variances were needed. The Committee refused the application and Mr. Taebi appealed and so this matter came before the TLAB.

² All figures, photographs and tables form part of this decision.

Councillor Burnside’s second intervention

Sometime between November and April 2018 there were discussions between Mr. Taebi and Councillor Jon Burnside. My understanding is that Mr. Burnside requested that the main wall height be reduced to below 8 m (max of 7 m). Mr. Taebi acquiesced. No plans were drawn based on this understanding, although the number 7.9 m was mentioned. Mr. Taebi further reduced the main wall height to 7.52 m and this was the project that was proposed at the TLAB hearing

I understand that the proposal before me has had a formal plan examination and is not being put forward on the basis of a waiver. The following shows the variances sought in this third iteration, with nos. 1, 2, and 6 being less than proposed in November 2017.

Table 1 Variances sought			
		required/ permitted	proposed
Under By-law 569-2013			
1	Main wall height	7 m	7.52 m (8.45 m under initial proposal)
2	Pedestrian entrance height above established grade	1.2 m	1.37 (1.49 m under initial proposal)
3	Max. floor Space index	.60 times lot area	.66 times lot area
4	Max. building height (Section 900.6.10(263) Exception RM 263)	8.5 m	8.81 m
Under By-law 1916			
5	Max. building height (Section 6.4.3).	8.5 m	8.81 m
6	Garage floor elevation	100.56	100.37 m (i.e. the floor is .19 m or 7.5 in below what is permitted)
Conditions of Approval 1. The proposed dwelling shall be built substantially in accordance with the Site Plan and Elevations filed as Exhibit 3. 2. The owner shall comply with the City of Toronto Municipal Code Chapter 813, Article II (City-owned trees) and Article III (Private trees) to the satisfaction of the Director of Urban Forestry.			

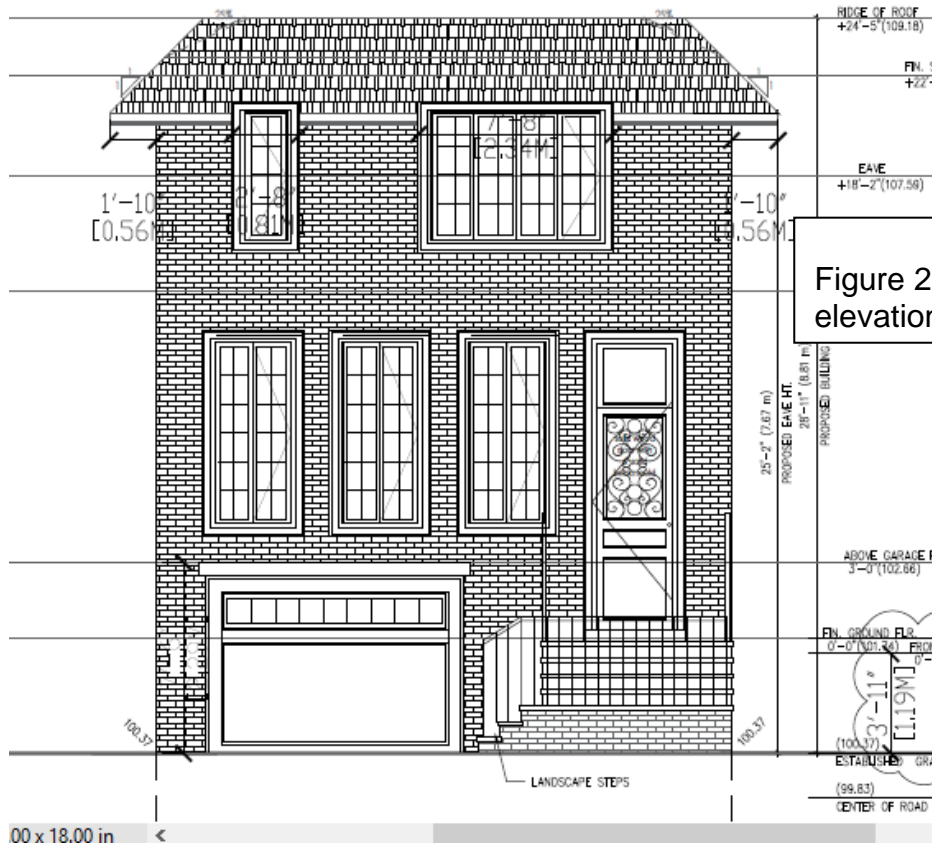


Figure 2. Second front elevation

The first TLAB hearing

This hearing was set for April 24, 2018 and at the request of Mr. Robert McMurchy (244 Sutherland), adjourned to May 1, 2018. Mr. McMurchy said that he received revised plans only the night before (April 23, 2018) and although it contained only three last-minute modifications, he wished time to review them. Ms. Stewart's position in opposition to Mr. McMurchy's request was:

We were aware that this modern façade was of concern to the residents, and so the changes are threefold. First, we've eliminated this modern façade portion at the front, so we've reduced the main wall height and now what is perceivable from the street, is really the pitched roof design. So that has amounted to a decrease in the main wall height on all four sides of the building to being 7.52 meters, so it is a reduction in the original main wall height that was proposed. The second change is that we have brought the front door height closer to grade. We've lowered the front porch so that it is 1.37 meters above grade as opposed to the 1.68 that we had on these disclosure plans. The third change is that we have articulated these façade materials with brick. Those are the only changes to the plans.

Since the plans were presented to Messrs. McMurchy³ and Kettel only the day before the April 24, 2018 hearing, and since they requested an adjournment to study them, I infer that the front elevation at least, (Figure 2) was drawn within a day of the expected hearing.

Matters in issue

In considering the applications for variances from the Zoning By-laws, the TLAB Panel must be satisfied that the applications meet all 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

The second TLAB Hearing – the City’s position

After completion of Mr. Taebi’s case, Ms. Rogers advised me that the City would not be calling any witnesses. She stated for the record:

The City was instructed to oppose this application on narrow grounds, I was to oppose if the applicant did not reduce the main wall height below 8 meters, and the Councillor just wanted confirmation of the variances wanted through PPR [i.e., the formal zoning examination by the City], so because my instructions were that narrow, and the applicant satisfied them, I am not opposing this application. However, *my position on this is conditional on the applicant agreeing to have the variances tied to the elevations as Ms. Stewart and I discussed*, I would have no objection, provided if we include language that would allow for the curved driveway, to allow for the full tree protection zone. So again, if the TLAB were inclined to approve it, I would ask that the variances be granted . . .subject to the conditions we mentioned. However, if the TLAB or the residents are concerned about guaranteeing permeable pavers, . . .I would take no position on that.

³ Mr. McMurchy did not attend the resumption of the TLAB hearing for which he requested the adjournment.

The City is not advancing a position, even as far as pavers are concerned. It does not oppose Mr. Taebi; Ms. Rogers appeared at the hearing to ensure that the concession made to Councillor Burnside was not withdrawn. This degree of consensus is different from the City supporting a settlement. There are no minutes of settlement and no admission by the City that the proposal conforms to the intent of the Official Plan. I find there is no settlement in this case.

The intent of the zoning by-law

There were two further improvements brought forward by Mr. Taebi's team: the driveway would be modified so as not to injure a mature City owned silver linden tree and the driveway surface would be permeable. I accept these as appropriate improvements to the application and find, along with the other reductions, above noted, that no further Notice is required and the resulting variances can be considered in accord with section 45 (18.1.1) of the *Planning Act*.

I now turn to the evidence of Mr. Taebi's planner, Jim Kotsopoulos, whom I qualified to give opinion evidence in land use planning. He began by explaining the choice of integral garage, rather than detached garage at the rear. Mr. Kotsopoulos said a rear garage was not possible because of the presence of three mature trees in the rear yard. He further stated that the integral garage solution was "fifty-fifty", that is, this was a design choice that is very common on this block, although both sides of Sutherland Drive are serviced by rear lanes. This choice is supported by the Official Plan.⁴

He then turned to the Community Study, generally south of Parkhurst, between Hanna and Laird and more or less north of Hanna. He stated that out of perhaps 200 – 250 properties, he selected 84 relevant decisions that showed:

FSI variances of .66 (.60 permitted)

Building height variance of 8.89 m (8.5 permitted)

Main wall variances height variances between 7.1 to 8.67 m (7 m permitted).

The transcript shows the following discussion:

"Ms. Stewart: Can you comment on the range of FSI?"

⁴ [New development] will . . . support streets, parks and open spaces . . .

d) preserving existing mature trees wherever possible and incorporating them into landscaping designs. (3.1.2 Built form)

2. New development will locate and organize vehicle parking, . . . to minimize their impact on the property . . . by:

c) integrating services . . . within buildings where possible;

Mr. Kotsopoulos: The range is from. . . obviously, they all exceed the .6, the majority of them would be in the .68, .67, you can see numbers there, some of them, the lowest one above the .6 would be .63, .64; again, the majority of them would be in the higher sixes. Six seven, six eight, six nine, six seven and there are some of them, Mr. Chair, not that many, some would go over .7, in terms of the FSI specifically. Similarly, Ms. Stewart, then I looked at the building height as well and again, the majority would be anywhere between 8.5 which is the maximum, to 8.9, the range seemed to be all within 8.8, 8.7, 8.9, and there would obviously be some above, even 9 meters.

Ms. Stewart: I see one here at the bottom of this page.

Mr. Kotsopoulos: Yes, 9.15. [This is for 59 Hanna Road.] But the majority, Ms. Stewart, would be in the 8.7, 8.8, 8.9 range.

Ms. Stewart: And can you confirm there would also have been variances for the main wall height?

Mr. Kotsopoulos: Yes. It varies, but obviously they do exceed the maximum.

Comparing these numbers to the Councillor's discussions, there is no record of what was discussed with respect to FSI or building height. It may be inferred that the Councillor was familiar with the same ranges as later found by Mr. Kotsopoulos in his review of the 84 relevant decisions of the Committee of Adjustment. Significantly, the Councillor negotiated a reduction in main wall building height to a number above the maximum — "but below 8 m", (where 7 m is permitted), also displaying an insight into typical increases granted by the Committee.

Leaside Property Owners position

Mr. Kettel wrote:

. . .the combined variances, if allowed would create a building with a mass much greater than the surrounding houses which would not be in keeping with the character of the neighbourhood. It would dwarf the two storey dwelling abutting on the south side, and with its proposed near flat roof would appear as a box towering over the houses in the block. This type of redevelopment would be contrary to the *Leaside Residential Character Preservation Guidelines* which is meant to guide redevelopment to be in conformity with the established community character.

I reject the conclusion that the proposal creates "a mass much greater than the surrounding houses" or the expression "towering over the houses in the block". However, in the next section, I accept the *Character Preservation Guidelines* are not

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respected and that in the form of the front elevation proposed, the project does not meet the Official Plan.

Below are three photographs showing the houses east and west of the subject, with FSI and building heights listed below, where we have some evidence from either Committee of Adjustment decisions or from letters of objection. The relevant statistics are below the photograph.

Figure 3. 240 and 242 Sutherland; portion of 244 Sutherland



	240 (August)	242	244 (McMurchy)
	Replacement	Replacement	Replacement
FSI	unknown	.695 (2015 C of A)	unknown
building height	unknown	8.89 m (2015 C of A)	unknown

Figure 4. 246, 248 and 250 Sutherland



	246 (Poole)	248 (Taebi)	250 (Lau)
		Proposed replacement	Replacement
FSI	unknown	.695	Letter says .60
building height	unknown	8.81 m	7.45 m (within by-law)

Figure 5. 250, 252 and 254 Sutherland



	252	254
	Replacement	Replacement
FSI	Unknown but lot coverage of 41% (2011 C of A)	.638 (2015 C of A)
building height	unknown	8.8 m (2015 C of A)

It should be relatively easy to assess whether the requested variances “respect and reinforce the existing physical character of the neighbourhood” since this is the second last house on the block to be demolished. However, it is not. This is because the City keeps Committee of Adjustment decisions in its community studies for only ten years. Thus, 240 Sutherland (August), probably was redeveloped more than ten years ago and we do not know if it received variances or not.

Comparison of the interrelationship between 240 and 242 is also complicated by the fact that:

240 is a corner lot so we have a side-elevation to front-elevation condition, and

240 “enjoys” a below grade garage, built as of right at the time prior to Mr. August’s ownership, but now frowned upon.

It may be seen that 254 is slightly higher than 252. No. 242 also is higher than either of its neighbours. The higher building height in both cases results from an integral garage. The City has chosen to limit the below grade garage solution chosen by the architect for 240 Sutherland.

Mr. Kettel said that the FSI of .66 was “much greater than surrounding properties. I don’t find this. We have 242 Sutherland at .695, higher than Mr. Taebi’s .66. We have 254 Sutherland at only .638, slightly lower. I cannot tell the difference without looking at interior plans. The Official Plan says: “respect and reinforce the physical pattern of the neighbourhood”, which is now a series of replacement houses in the .6 to 695 FSI range, or as Mr. Kotsopoulos said, “Six seven, six eight, six nine, six seven”.

I would therefore be prepared to find that the variances are minor, desirable for the appropriate development of the land and meet the intent and purpose of the zoning by-law if the new front façade could also meet the Official Plan policies.

The Official Plan speaks to the facade

The Official Plan has many statements that would support a critical design analysis of some of the elements of the new external front façade.

[The vision is a city with] beautiful architecture and excellent urban design that astonish and inspire.

Great cities are built one building at a time, with each new building making a contribution to the overall urban design of the City.

Toronto’s streets, [i.e. Sutherland Drive] . . . are defined by the façades of many buildings.

Exterior Design – Character, Scale and Appearance

The façade is the exterior parts of a building visible to the public, and its exterior design contributes to a more beautiful and engaging Toronto. The exterior design of a façade is the form, scale, proportion, pattern and materials of building elements including its doors, roofs, windows and decorative elements, such as cornices and belt-course. The harmonious relationship of a new façade to its context can be achieved with contemporary expression provided that the existing context, proportions, are used. A new façade need not be a simple replication of adjacent building facades.

3. New development will be massed and its exterior façade will be designed to fit harmoniously into its existing . . . context, and will limit its impact on neighbouring streets, parks, open spaces and properties by:

. . .

b) incorporating exterior design elements, their form, scale, proportion, pattern and materials, and their sustainable design, to influence the character, scale and appearance of the development;

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

*c) heights, **massing, scale** and dwelling type of nearby residential properties (my bold)*

Mr. Kettel submitted a 2003 document: *Residential Character Preservation Guidelines for House Renovations, Additions & In-Fill Development in the Community of Leaside*, developed by the City of Toronto Urban Development Services, City Planning Division in consultation with the Leaside Character Preservation Advisory Committee. In Part 3, “Mass and Scale”, it states:

Design the front wall of house and roof mass as a composition of architectural elements incorporating, projections, dormers, gables and subordinate wall plane (sic.).

I find the proposed front elevation has no dormers, gables or subordinate wall planes and does not evoke the character of Leaside. It is a generic mansard roof.

Mr. Jason August stated that this was his third Leaside residence, but he is still a young man. To me as the hearings officer, there is something architecturally special about Leaside and I believe that it is worth spending extra effort to realize this.

There is no “right” to a minor variance. It is a privilege. If Mr. Taebi feels aggrieved because he is now being asked to make a fourth concession, then he can always build within the existing by-law which permits any roof he pleases with main wall heights of 7 m, and top of roof 8.5 m.

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Accordingly, I am asking Mr. Taebi's team to revisit this elevation to see if there is an "excellent urban design" possible, and, in making a new design, they may assume the variances are acceptable with conditions. I should also add that I would be open to further or other variances if necessary and if justifiable under *the Planning Act* and if, as I indicated orally to Ms. Stewart, only if they are necessary for this new excellent design. I hope this will not be necessary and the new design will take advantage of these variances already discussed, in an *understated* way. The evidence at this hearing was a preference for a less "top-heavy design", one that does not seek to make a commanding presence, and 273 Sutherland Drive was an example of a negative design. I am optimistic that the new design will have substantial buy-in from Councillor Burnside, the City, Mr. August and Mr. Kettel, which would assist me in determining if the Official Plan's intent and purpose is achieved. If the new design does not meet the fourth test, I have no choice but to reject the application.

DECISION AND ORDER

This hearing is adjourned sine die. A telephone conference will be held at 9 AM on June 14, 2018 to finalize the Order. There will be a fresh Notice to all parties and participants.

X

Ted Yao

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