

# DECISION AND ORDER

**Decision Issue Date: Monday, May 14, 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): ANTHONY O'DONOHUE

Applicant: PAUL DA CUNHA ARCHITECT

Property Address/Description: 740 AVENUE RD

Committee of Adjustment Case File Number: 17 184860 STE 22 MV (A0699/17TEY)

TLAB Case File Number: **17 262185 S45 22 TLAB**

**Hearing date:** Wednesday, May 02, 2018

**DECISION DELIVERED BY S. MAKUCH**

## PARTIES AND PARTICIPANTS

<b>Name</b>	<b>Role</b>
Anthony O'Donohue	Appellant
Brian Grys.	Participant
D. Hanna	Party
N. Siomra	Party

## REPRESENTATIVES

Daniel Artenosi	Counsel for Owner
Franco Romano	Expert Witness for Owner

## **INTRODUCTION**

This is an appeal to the Toronto Local Appeal Body ('TLAB') of a decision of the Committee of Adjustment approving seven variances to Bylaw 569 - 2013 and five variances to Bylaw 438 - 86. The variances are to permit the construction of two dwelling units in the basement the existing fourplex at 740 Avenue Rd. The variances are set out in Attachment 1 to this decision. Some work has already been undertaken on the property. That work is related to the entrance to the existing building and possible entrances to the proposed dwelling units.

## **BACKGROUND**

The variances sought will not result in any increase in the size of the existing building. Two variances are with respect to an increase in the floor space index (FSI) or gross floor area (GFA). Those increases are entirely the result of the conversion of the existing basement. The remaining variances relate to: the reconstruction of an existing canopy, porch, and stairs at the front of the building; the existing location of the building on the site; and parking. They would not be necessary except for the conversion of the basement. No concerns were raised by City staff.

The parties in opposition all own properties on the opposite side of Avenue Rd. Their locations can be seen on Exhibit 3. They all have been owners for a lengthy period of time and are legitimately concerned about understanding the character, nature and impact of development on the street.

## **MATTERS IN ISSUE**

There are numerous matters in issue. Ms. Hanna raised five issues: aesthetics, parking, precedent, process, and school overcrowding. Mr. Siomra's issue was parking and Mr. O'Donohue's issues related to drainage, tree destruction, lack of information from the City, and illegal construction.

## **JURISDICTION**

TLAB has jurisdiction under s.45 (1) of the Planning Act to approve the minor variances which have been appealed. That section states:

s. 45. (1) The committee of adjustment, upon the application of the owner of any land, building or structure affected by any by-law that is passed under section 34 or 38, or a predecessor of such sections, or any person authorized in writing by the owner, may, despite any other Act, authorize such minor variance from the provisions of the by-law, in respect of the land, building or structure or the use thereof, as in its opinion is desirable for the appropriate development or use of the land, building or structure, if in the opinion of the committee the general intent and purpose of the by-law and of the official plan, if any, are maintained.

Moreover, subsection 9 provides that:

Any authority or permission granted by the committee under subsections (1), (2) and (3) may be for such time and subject to such terms and conditions as the committee considers advisable and as are set out in the decision.

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').

## **EVIDENCE**

The evidence of Mr. Romano, a planner qualified to give expert opinion evidence, was largely uncontradicted and clear. The variances met the four tests of the Planning Act under s. 45, were consistent with the Provincial Policy Statement and conformed with the Growth Plan. Of particular interest was his evidence that none of the variances, except those related to FSI (GFA) and parking would be necessary, if the basement were not being converted into two dwelling units. The front porch and steps and garage were being reconstructed. The major change to the appearance of building was the addition of two doors beneath the front porch for access to the two new units.

The evidence of Ms. Hanna was helpful. She pointed out that the stair access to the main floor entrances was altered as the grade fronting on Avenue Rd. and Killarney Rd. was eliminated. In her view, this made the building look too tall, similar to a three story building. She was also concerned that the increase in FSI and GFA was not minor and would set a precedent for the neighbourhood. She believed that work had been undertaken without a building permit, out of compliance with the zoning bylaws, and that the variances were being sought because the work, which had been undertaken, was contrary to the bylaw. Her concern in this respect was for a failure to follow the proper process to obtain variances, in advance of construction. In addition, she was concerned that the new units would cause over-crowding in local schools. Finally, her opinion was that the variances in density were simply not minor since they were numerically large.

Mr. Siomra's evidence was that of a person who walks the street daily with his dog, and is very observant of what occurs on the property in question. He noted in particular that the existing two car garage with access to Avenue Rd. had a post for support in its entrance way, which made the entrances too narrow for any car to enter. Thus there were in effect currently only two parking spaces for the four existing units as there was also a second two car garage above the garage fronting on Avenue Rd. The second garage had access from Killarney Rd. In his opinion this resulted in a car constantly being parked in the Avenue Road garage entrance with a portion of the car protruding into the public thoroughfare.

Mr. O'Donohue's evidence focused his concerns on: the destruction of a birch tree, the lack of building permits for construction, and drainage. It was clear from Mr. O'Donohue's photographic evidence that a birch tree had been destroyed, and that construction had occurred prior to the application for the variances.

In reply, Mr. Romano pointed out that the buildings to the south and north of 740 Avenue Rd. had garages at grade and were three stories high. He also gave evidence that the building to the south had a FSI of 1.8. Finally, he noted that his client was willing to have a condition placed upon the approval of the variances requiring tree planting to the satisfaction of the Urban Forestry division of the City.

Mr. Grys also gave evidence in reply. He stated that necessary building permits had been obtained for the construction already undertaken and that all of the variances being sought were result of the conversion of the basement to two dwelling units. He noted that the work being undertaken will result in improved drainage through soft development techniques such as interlocking stones, and that the garage is to be reconstructed so as to remove the post currently in the entrance of the garage fronting on Avenue Rd. No building permit was required for the change in the grade.

## **ANALYSIS, FINDINGS, REASONS**

In my opinion there is no doubt that the appeal should be dismissed and the variances should be approved. First, they, individually and cumulatively, meet the four tests. The building with two basement units is clearly not out of keeping with the physical character of the neighbourhood, given the buildings to the north and south of it and the apartment building down the street. The building, as a result, will not set a precedent in either height or density. Moreover, variances which are large numeric increases are not per se “not minor”. While the appearance of the building will change, it is not necessary for me to comment on the aesthetics of those changes, when they result from a change in grade which is as of right and no height variance is sought.

Finally, there is no increase in the size, massing or form of the building. The variances, thus, are in keeping with the general intent of the official plan and the zoning bylaws, the latter of which are to implement that intent.

Secondly, with respect to the Provincial Policy Statement and Growth Plan, the additional density and addition of two units is consistent with and in conformity with them.

Concerns regarding drainage are to be addressed through soft development techniques. Concerns regarding tree destruction can be addressed through the suggested condition. In my view, in the absence of obtaining any evidence from the School Board of overcrowding there is no need to address that issue. The evidence that all necessary permits had been obtained to date for work undertaken removes any concern regarding illegal construction so that issue need not be addressed further.

The only remaining issue is that of parking. All parties agreed that if access to the garage fronting on Avenue Rd is improved through the removal of a post then parking will be no worse than now. Access, which heretofore was impossible for two cars, will be made possible. In addition it is noted that there is public transit in close proximity to the site. As a result parking concerns are adequately addressed provided that a condition - that the particular post be removed is imposed

## DECISION AND ORDER

All the variances in Attachment 1 are approved subject to the following conditions:

- 1) That all construction will be substantially in accordance the plans by Paul Dacunha Architect Inc., for 740 Avenue Rd., dated June 20, 2017, on file with the TLAB;
- 2) That a tree or trees be planted on site as directed by the Urban Forestry Division of the City; and
- 3) That the there be no support post or other impediment to vehicle entry into the garage fronting on Avenue Rd.

The TLAB so orders.

X 

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S. Makuch  
Panel Chair, Toronto Local Appeal

## Attachment 1

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

- 1. Chapter 10.10.40.40.(1)(A), By-law 569-2013**  
The maximum permitted floor space index is 1.0 times the area of the lot (468.74 m<sup>2</sup>).  
The altered apartment building will have a floor space index equal to 1.5 times the area of the lot (703.4 m<sup>2</sup>).
- 2. Chapter 10.10.40.70.(3)(B)(iv), By-law 569-2013**  
The minimum required side yard setback is 1.2 m.  
The altered apartment building will be located between 0.10 m and 0.13 m from the east side lot line, measured to the basement entrance enclosure.
- 3. Chapter 10.5.40.60.(2)(B)(ii), By-law 569-2013**  
A canopy, awning or similar structure may encroach in a side yard 1.5 m if it is no closer to a side lot line than 0.3 m.  
The verandah canopy will be located 0.0 m from the east side lot line.
- 4. Chapter 10.5.40.60.(3)(A)(iii), By-law 569-2013**  
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 verandah stairs will be located 0.0 m from the east side lot line.
- 5. Chapter 10.5.50.10.(4)(A), By-law 569-2013**  
A minimum of 50% (234.4 m<sup>2</sup>) of the lot area must be maintained as landscaping.  
In this case, 23.2% (108.8 m<sup>2</sup>) of the lot area will be maintained as landscaping.
- 6. Chapter 10.5.50.10.(4)(B), By-law 569-2013**  
A minimum of 50% (117.2 m<sup>2</sup>) of the required landscaping must be provided as soft landscaping.  
In this case, 41.6% (97.55m<sup>2</sup>) of the required landscaping will be provided as soft landscaping.
- 7. Chapter 200.5.10.1.(1), By-law 569-2013**  
A minimum of two additional parking spaces are required to be provided for the two additional dwelling units.  
In this case, the four existing parking spaces will be maintained and no additional parking spaces will be provided.

## Attachment 1

**1. Section 6(3) Part I 1, By-law 438-86**

The maximum permitted gross floor area is 1.0 times the area of the lot (468.74 m<sup>2</sup>).

The altered apartment building will have a gross floor area equal to 1.61 times the area of the lot (754.4 m<sup>2</sup>).

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

The minimum required setback from a flanking street is 2.92 m.

The altered apartment building will be located between 0.10 m and 0.13 m from the east flanking street, Avenue Road, measured to the basement entrance enclosure.

The altered apartment building will be located 0.0 m from the east flanking street, Avenue Road, measured to the verandah canopy.

**3. Section 6(3) Part II 4, By-law 438-86**

The minimum required rear yard setback is 7.5 m.

The altered apartment building will be located 0.0 m from the north rear lot line.

**4. Section 6(3) Part II 5(I), By-law 438-86**

The maximum permitted depth is 14.0 m.

The altered apartment building will have a depth of 26.1 m.

**5. Section 4(4)(b), By-law 438-86**

A minimum of two additional parking spaces are required to be provided for the two additional dwelling units.

In this case, the four existing parking spaces will be maintained and no additional parking spaces will be provided.