

# DECISION AND ORDER

**Decision Issue Date**      Wednesday, June 06, 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): BRUNO DELGADO

Applicant: CUNHA DESIGN CONSULTANTS LTD

Property Address/Description: 11 ACADEMY RD

Committee of Adjustment Case File Number: 17 237037 WET 11 MV

TLAB Case File Number: **17 279460 S45 11 TLAB**

**Hearing date:**      Friday, June 01, 2018

**DECISION DELIVERED BY L. MCPHERSON**

## APPEARANCES

<b>Name</b>	<b>Role</b>	<b>Representative</b>
Christina Kapelos	Appellant's Legal Rep	
Franco Romano	Expert Witness	

## INTRODUCTION

This is an appeal to the Toronto Local Appeal Body (the TLAB) by the Applicant of the decision of the Committee of Adjustment (Committee) for the City of Toronto (City) to refuse minor variances to legalize and maintain the existing ancillary structure (pool house) at 11 Academy Road (the subject site).

The subject property is located on the east side of Academy Road, east of Weston Road and south of the Highway 401. The subject property is designated Neighbourhoods in the City of Toronto Official Plan (Official Plan) and zoned RD under Zoning By-law No. 569-2013 (new City By-law) and R4 under former City of North York By-law 7625 (former By-law).

## BACKGROUND

On December 7, 2018, the Committee refused the following variances:

**1. Section 10.5.60.70.(1), By-law 569-2013 and Section 13.2.4, By-law 7625**

The maximum permitted lot coverage for an ancillary building is 30% of the lot area. The proposed rear ancillary structure (pool house) will cover 30.77% of the lot area.

**2. Section 10.5.60.20.(3)(B), By-law 569-2013**

The minimum required side yard setback for an ancillary building or structure, located in a rear yard and is less than 1.8 m from the residential building on the lot, is 1.8 m.

**Section 13.2.3(b), By-law 7625**

The minimum required side yard setback is 1.8 m.

**Section 10.5.60.20.(3)(B), By-law 569-2013 and Section 13.2.3(b), By-law 7625**

The proposed ancillary building (pool house) will be located 0.69 m from the north side lot line.

**3. Section 13.2.3.c, By-law 7625**

The minimum required rear yard setback is 9.5 m.

The proposed ancillary building (pool house) will be located 0 m from the rear lot line.

**4. Section 10.5.60.30.(1), By-law 569-2013**

The minimum required setback for an ancillary building or structure from a residential building on the same lot is 1.8 m.

The proposed ancillary building (pool house) will be located 1.37 m from the residential building on the same lot.

**5. Section 13.2.5A, By-law 7625**

The maximum permitted building length is 16.8 m.

The new building length will be 30.53 m.

**6. Section 10.5.60.60.(1), By-law 569-2013**

The eaves of a roof on an ancillary building may encroach into a building setback a maximum of 0.3 m, if the eaves are no closer to a lot line than 0.15 m.

The eaves of the proposed ancillary building (pool house) will encroach 0.24 m into a required building setback, and will be located 0.06 m from the north side lot line.

**MATTERS IN ISSUE**

This matter involves the recognition of 'as built' facilities. Despite this, the TLAB approach is to regard the requested variances as if facilitating new construction. There were no parties or participants in opposition.

**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**

Mr. Franco Romano was qualified to give expert planning opinion (Exhibit 1 -Expert Witness Statement, Exhibit 2, Document Book). He described the subject site and surrounding area.

The subject site is located within a low-rise residential neighbourhood consisting of detached and semi-detached dwellings. The lot fabric is generally rectangular and varied in size with a range of lot frontages from 5.0m to 26.2m and lot areas from 435.5m<sup>2</sup> to 1,215.1m<sup>2</sup>.

Mr. Romano delineated a study area for the neighbourhood is generally from Pellatt

Avenue to Gary Drive, and Wendell Avenue to Langside Avenue.

He noted that lots are developed with main buildings that occupy lots either at the front of the lot, the central portion of the lot or practically the entire lot save for some modest yard setbacks (but setbacks are not necessarily provided for all yards). Ancillary features either form part of the main building (such as an attached garage, carport or shed) or are detached and varied in position. In some instances they are close to or removed from the main building as well as being sited a modest distance away from the main building but with tight to no side and/or rear yards (Exhibit 2 – Visuals). The ancillary structures are generally subordinate to the main dwelling. The neighbourhood is stable and is experiencing reinvestment and regeneration in the form of new lots, replacement dwellings, building additions and site improvements. The decision summary table demonstrates that the regeneration and reinvestment is often associated with minor variances.

The proposal is to legalize and maintain the existing ancillary structure (pool house) located within the rear yard of the subject site. As illustrated on the site plan drawing, the pool house is attached to a corner shed, and consequently it has been interpreted for zoning purposes as one ancillary structure. As the pool house is located 1.37m instead of 1.8m from the dwelling, both the pool house and the corner shed have been identified as forming part of the dwelling resulting in a 30.53m building length.

Mr. Romano explained the variances.

1. Lot Coverage: The proposed lot coverage for all buildings and structures is 30.77% whereas a maximum of 30% is permitted. Mr. Romano noted an error in the decision, which inadvertently stated that the total lot coverage permission of 30% is for ancillary structures/buildings whereas the provision applies to all structures. This is a drafting error and I agree with Mr. Romano that it is minor that no further notice is required pursuant to subsections 45(18.1) and (18.1.1) of the Planning Act.

The ancillary structures combined result in a coverage of 5.6%, which is less than the 10% permitted for an individual ancillary structure. Accordingly, in Mr. Romano's opinion, the ancillary structure proposal maintains a subordinate position, size and function on the subject site. He describes the lot coverage difference of 0.77% as incremental, negligible. The proposal results in an adequate amount of the site to remain unenclosed by structures for landscape and open amenity space purposes.

2. Side Yard Setback: The pool house has a north side yard setback of 0.69m (widening to 0.72m) whereas a minimum 1.8m side yard setback is required. This is the result of the side yard setback for the main dwelling being applied because the pool house is considered to form part of the dwelling as noted above. Otherwise, the general north side yard setback requirement for an ancillary structure would be 0.3 m.

Mr. Romano explained that the ancillary structure setback is intended to accommodate a lot line separation from the neighbouring property. In some instances, no setback may

be adequate: for example, when a low-rise ancillary structure acts in a similar manner as a privacy fence. Otherwise, an adequate distance for access may be suitable. In this case, the proposed north side yard setback variance request of 0.69m achieves the intent of the zoning by-law.

3. Rear Yard Setback (North York Zoning By-law 7625 only): The minimum required rear yard setback for a dwelling is 9.5m. The rear yard setback requirement for an ancillary structure is 0.22m in the new City By-law and 0.3m in the former By-law. The pool house is being interpreted to be 0m from the east rear property line because it is attached to the existing shed which has a 0m setback.

The ancillary structure setback is intended to accommodate a lot line separation from the neighbouring property. In Mr. Romano's opinion, the proposed rear yard setback variance request of 0m achieves the intent of the zoning by-law. This 0m applies to the small west portion of the shed that meets the privacy fence height along the rear lot line.

Otherwise, the dwelling itself maintains a rear yard setback of 12.5m and greater. This maintains the intent of the dwelling rear yard setback requirement to ensure that there is sufficient space in the rear to accommodate amenity and accessory features.

4. Distance Between Ancillary Structure and Residential Building (Zoning By-law 569-2013 only): A minimum distance of 1.37m is proposed whereas 1.8m is required between the ancillary structure and the dwelling. Mr. Romano advised that the intent of this provision is to ensure that there is adequate space between the dwelling and any ancillary structure for access and maintenance as well as to ensure that the ancillary structure maintains a subordinate function. The requested variance applies to a small portion of the ancillary structure which still allows for sufficient distance separation as well as ensuring the accessory function of the ancillary structure.

5. Building Length (North York Zoning By-law 7625 only): The building length of 30.53m is measured from the front wall of the dwelling to the rear of the shed attached to the pool house. This reflects the technical calculation based on the undersized distance between the dwelling and the pool house.

The intent of the building length provision is to ensure that the dwelling is oriented towards the front of the property and to minimize the extent to which main buildings are built into the rear yard. In Mr. Romano's opinion, the dwelling is oriented towards the front of the lot and does not occupy the rear yard. The ancillary structure is subordinate and sited in such a manner as is to be reasonably anticipated by the zoning by-law to occupy the rear yard.

6. Eaves Setback of Ancillary Structure (Zoning By-law 569-2013 only): The ancillary structure eaves is located 0.06m from the north side lot line instead of a minimum 0.15m. The eaves encroachment component of this performance standard complies (0.24m versus permitted 0.3m).

**Decision of Toronto Local Appeal Body Panel Member:  
TLAB Case File Number:**

The intent of the eaves setback provision is to ensure that the eaves does not encroach onto the property line. In Mr. Romano's opinion, the setback that is provided represents an appropriate separation from the property line.

Mr. Romano noted that Planning staff provided no review or analysis of the requested variances or the subject site's context.

In Mr. Romano's opinion, the proposal is consistent with the 2014 Provincial Policy Statement and conforms to the 2017 Growth Plan. The proposal generates no specific implications for any policy matter of Provincial interest.

With respect to the Official Plan, it is Mr. Romano's opinion that the proposal maintains the general intent and purpose of the Toronto Official Plan. The Subject Site has a Neighbourhoods designation. 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.

The Neighbourhoods policies do not require replication of existing physical character, but instead provide that new development should fit the general physical patterns. In his opinion, the proposed ancillary structure position, height, scale and massing reflects a low-rise nature that fits in well with the surroundings. The Official Plan places an emphasis on new development respecting and reinforcing the physical characteristics of buildings, streetscapes and open space patterns in the neighbourhood. In his opinion, the proposed ancillary structure variances contribute appropriately to the mixed nature and character of ancillary structures and site development in the neighbourhood and proposal addresses the built form policies and generates no unacceptable impacts such as privacy, overlook or shadow.

In Mr. Romano's opinion, the proposed variances, individually and cumulatively, meet the general intent and purpose of Zoning By-laws 569-2013 and 7625. The proposal fits in with the varied and eclectic nature of structure placement and design of other residential properties within the neighbourhood. He noted that it is quite common to find buildings and structures built close to property lines and extending deep into the rear yard, including accessory and main buildings that extend up to the side and/or rear lot lines. In his opinion, the proposal reflects a reasonable and appropriate site development condition.

In terms of the test for minor, it is Mr. Romano's opinion that the proposal creates no unacceptable adverse impact including those with respect to shadowing, privacy or overlook. The structure maintains a subordinate, low-rise function. In his opinion, the order of magnitude of the minor variances is reasonable in this context, maintains a compatible detached residential land use that can be suitably accommodated on a site within a physical context that exhibits similar and complementary characteristics. The accompanying decision summary table demonstrates that the proposed variances are in keeping with the varied nature of recent minor variance approvals in the neighbourhood.

In summary, it is Mr. Romano's opinion that the proposal will result in a site development that is reflective of the neighbourhood's physical context in a manner with no unacceptable adverse impact. Further, that the proposal satisfies the 4 tests for a minor variance, represents good planning and should be approved.

## **ANALYSIS, FINDINGS, REASONS**

The TLAB accepts the uncontradicted evidence of the Applicant's professional land use planner. I am satisfied that the requested 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 accessory structure has been designed to respect and reinforce the existing and planned context of the area in terms of location, size and height. The coverage variance is negligible and the accessory structure is well below the 10% maximum. The variances for the side yard and rear yard setback and building length are largely the result of the accessory structure and existing shed being considered part of the main dwelling because of the distance between structures. The setback to the main dwelling of 1.37 m is only for a small portion of the ancillary structure and the majority of the main dwelling is not affected. This setback is considered adequate in this local circumstance. The side yard of the structure has been designed to have regard for the adjacent dwellings and minimize impact. The eaves variance provides adequate separation to the adjacent lot.

The Planning staff report did not include an analysis of the site or the area. Based on the evidence which included a detailed analysis, the TLAB agrees that the variances meet the four tests of the Planning Act. 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.

## **DECISION AND ORDER**

The appeal is allowed and the variances to Zoning By-laws 438-86 and 7625 as proposed and listed below are authorized.

### **1. Section 10.5.60.70. (1), By-law 569-2013 and Section 13.2.4, By-law 7625**

The maximum permitted lot coverage for all buildings and structures is 30% of the lot area.

The proposed coverage will be 30.77% of the lot area.

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a rear yard and is less than 1.8 m from the residential building on the lot, is 1.8 m.

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X 

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Laurie McPherson

Panel Chair, Toronto Local Appeal Body