

# DECISION AND ORDER

**Decision Issue Date**      Monday, June 25, 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): AMIR KHASHAYAR

Applicant: MANARCH DESIGN

Property Address/Description: 40 ST IVES CRES

Committee of Adjustment Case File Number: 17 261453 NNY 25 MV

TLAB Case File Number: **18 111683 S45 25 TLAB**

**Hearing date:**      Monday, June 18, 2018

**DECISION DELIVERED BY T. YAO**

## APPEARANCES

Name	Role	Representative
Shima Kassirian Medical Professional Corporation	Owner	
Amir Khashayar	Appellant	John Alati
Cheryl Lewis	Party (42 St Ives Cr)	
Martin Rendl	Expert Witness	

## INTRODUCTION

Kassirian Medical (the Owner) wishes to demolish the existing house at 40 St Ives Crescent, and replace it with a new one. Since this is a settlement and because I am of the opinion that the tests are met, I am granting the variances.

**EVIDENCE**

I heard from the owner’s witness, Martin Rendl, whom I qualified as an expert planner.

**BACKGROUND**

The owner applied the Committee of Adjustment for 14 variances on January 11, 2018 and was refused. After appealing, the owner revised the plans to seek only five variances:

<b>Table 1<sup>1</sup>. Variances sought for 40 St Ives Crescent</b>			
From Toronto-wide By-law 569-2013			
		Required/permitted	Proposed
1	Minimum east and west Side yard setbacks	1.5 m	1.22 m
2	Building height	7.2 m	7.86 m
3	Floor space index	.35 times lot area	.5664 times lot area (formerly .5843)
4	Building length	17 m	18.75 m
From (former City of Toronto) By-law 438-86			
5	No below grade garage		Below grade garage

Both the east (10 St Ives) and west (42 St Ives) neighbours signed Minutes of Settlement on April 23, 2018. The Minutes contain the revised drawings which are tied to the condition that the owners must build according to the plans, but they are not attached for reasons of brevity. The Minutes concern such matters as plantings, storm drainage and construction damage. There is nothing that offends public policy and the City has not appeared nor taken any position. Since the Minutes also contain the construction drawings and site plan, the owner wished me to include the whole package (24 pages) as an attachment to allow the Buildings Department to double check. It seems to me the same result can be accomplished by referring to the zoning certificate

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<sup>1</sup> This Table and diagram form part of this decision.

number. If any of this causes difficulty could Mr. Alati please email me, care of the TLAB, with copies to the signers of the Minutes.

## **MATTERS IN ISSUE**

Mr. Rendl stated that as far as such documents were applicable, the proposal is consistent with the 2014 Provincial Policy Statement and conforms to the 2017 Growth Plan of the Greater Golden Horseshoe. The TLAB Panel must also be satisfied that the application meets 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.

## **Analysis, findings, reasons**

Because this is a settlement, I will not review all the evidence. I should comment that settlement of the kind reached here is one of the purposes of the *Planning Act*<sup>2</sup> and a matter of provincial interest<sup>3</sup>.

## **Setbacks**

Setbacks are required, among other reasons, for access to the rear. The owner will provide 1.22 m to either side. The existing building at 42 St Ives appears to have less than the by-law requirement of 1.5 m. From Ms. Lewis's evidence (42 St Ives) that the owner of 40 St Ives has been "reasonable throughout", I find the very slightly reduced variances minor and do not cause an adverse impact on neighbouring properties.

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<sup>2</sup> 1.1 The purposes of this Act are, (e) to encourage co-operation and co-ordination among various interests;

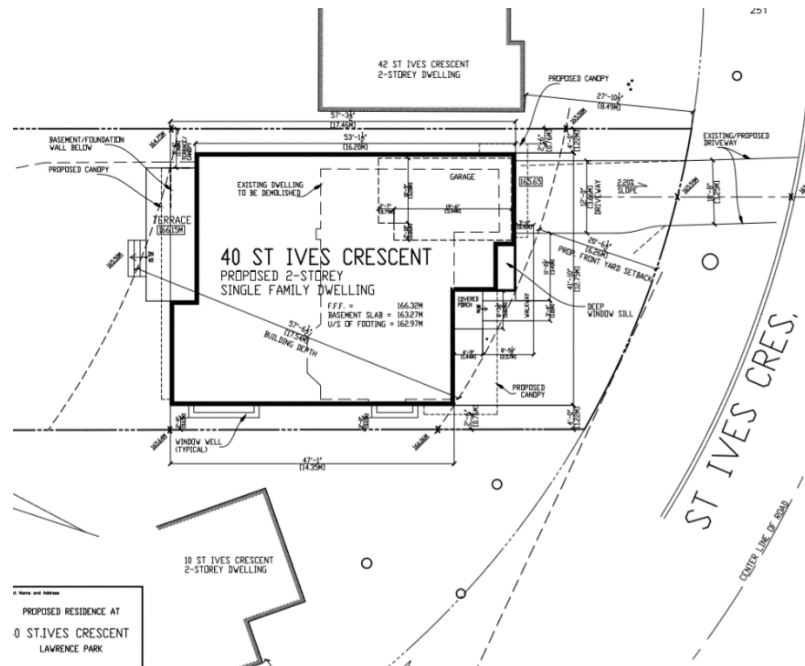
<sup>3</sup> 2. The Minister, . . . and the Tribunal, in carrying out their responsibilities under this Act, shall have regard to, among other matters, matters of provincial interest such as, . . . (n) the resolution of planning conflicts involving public and private interests;

## Building length

In the diagram below, north is towards the 4 o'clock position and St Ives curves down and to the 6 o'clock.. To respond to the curved street, the architect has designed a building a little like the yellow shape in the game of "Tetris", with the upper part closer to St Ives than the lower part. The upper building length is 16.2 m (53 feet 1 inch) and the lower is 14.35 m (47 feet 1 inch). Each of these would result in a length **under** the by-law limit of 17 m. The reader may also notice a diagonal line; this is where the 17.46 m building length was measured, since the measurement must be at right angles to the tangent of the curve of St Ives. These two factors caused the need for the building length variance, and in my view, the variance is desirable for the appropriate development of the land: to maintain a consistent front yard to the curvature of the street and "fit into" the neighbourhood.

## Building Height

A flat roof is limited to 7.2 m whereas the highest portion of the roof (near the back) will be 7.86 m. Mr. Rendl explained the intent of the zoning is to prevent a third storey and there is no attempt to create third storey living space in this proposal. As a result, the height variance has no impact.



## Floor Space Index

The owner seeks a floor space index of .57. Mr. Rendl said that the .35 limit for Lawrence Park was artificially low, (as for Rosedale, Forest Hill and other similar neighbourhoods), to ensure there was a forum for neighbours to give input if they wished, when physical change occurs. Accordingly, he compiled previous floor space index decisions for St Ives (4 Committee decisions), Wanless Crescent (1), Buckingham (4), Cheltenham (2), St Leonard's (2), and for Dawlish (7). This is only a partial list. The owners are not at the top nor at the bottom of FSI; for example, the four St Ives variances (with the sought-for in bold) are: 0.545, 0.**5664**, 0.585, 0.588 and 0.637.

### **Below grade garage**

The owner does **not** seek what most people think of as a below grade garage, which Mr. Rendl rightly criticized as causing drainage into the garage, safety issues when the motorist backs up out of the sloping driveway and creating a "pit" and other unattractive views in the streetscape. The by-law prohibits an "integral garage" if the floor level of the garage is located below grade and the garage faces the street. The front lawn of 40 St Ives slopes from left to right (i.e. the lawn is higher than the floor level of the garage) and this triggers the need for the variance. The driveway nonetheless slopes down to the St Ives road surface at a 2.2% grade. This variance is caused by the way the by-law is worded and the topography of the site, but I find that the intent and purpose of the zoning by-law, a positive driveway grade, is maintained.

### **Conclusion**

Each of the variances maintains the intent of the Official Plan and zoning by-law and is aimed at an orderly design within this neighbourhood. The fact that the owner settled with the neighbours, one of whom attended the hearing to support the settlement, is an indication that it has no unacceptable adverse impact. I also find the variances are minor and in some cases are only "technical", for reasons related to the inability of the wording of the by-law to capture every circumstance of lot shape and topography. Therefore, I find the variances, individually and cumulatively, meet the statutory tests.

### **DECISION AND ORDER**

I authorize the variances set out in Table 1 on condition that the owner construct in substantial compliance with the plans under zoning certificate 17 261459 ZC 00 ZR Folder RSN 4279649 which are the same plans contained in the Minutes of Settlement.

X *Ted Yao*

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