

DECISION AND ORDER

Decision Issue Date Tuesday, August 21, 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): ISSER DUBINSKY

Applicant: DREW LASZLO ARCHITECT

Property Address/Description: 82 HILLHURST BLVD

Committee of Adjustment Case File Number: 17 276860 NNY 16 MV (A1118/17NY)

TLAB Case File Number: 18 132768 S45 16 TLAB

Hearing date: Friday July 13, 2018 and Friday, July 20, 2018,

DECISION DELIVERED BY S. Makuch

APPEARANCES

Name

	Role
Xiaoxia Wang	
Drew Laszlo Architect	Owner
Isser Dubinsky	Applicant/Party
Terry Mills	Appellant
Tae Ryuck	Expert Witness
Freida Ross	Expert Witness
Antoinette Wertman	Participant
Robin Bruce Campbell	Participant
Mary Campbell	Participant
	Participant
	Representative
	Marc Kemerer
	Brad Teichman
Elizabeth Berger	Participant

INTRODUCTION

This is an appeal of an application for variances to permit the construction of a new two storey single detached dwelling. The Committee of Adjustment modified and approved the application. It was appealed by a next door neighbour who was supported by a number of neighbours as participants.

BACKGROUND

I heard extensive evidence from the participants, the appellant and planners for both the appellant and the applicant. The hearing was adjourned because of the need for more time taken to hear all the evidence. After the adjournment the appellant presented a Revised Proposal and site plan, which he stated he could support and which is found in Exhibit 10. The applicant also presented a further revised application and site plan, Exhibit 11.

MATTERS IN ISSUE

Initially, the character of the neighbourhood and whether the proposed dwelling respected and conformed with the physical character of the neighbourhood was the major issue. However, it became clear, after the two different site plans were put into evidence, that issues respecting the size and depth of the proposed dwelling were most important and, indeed, at the heart of the dispute. This is clearly set out in Exhibit 10. The parties both agreed that the two different plans were not offers of settlement but rather proposals. The plan in Exhibit 10 marked as “Current Offer” was the further “Revised proposal of the Applicant”. The plan in Exhibit 10, labelled “Counter Offer” and “Revised proposal of the Appellant” and also Exhibit 11 are the revised proposal of the applicant. .

The differences between the two plans is the FSI (or GFA) of the proposed dwelling and the depth of the dwelling. The applicant’s revised plan has an FSI of .579 and the appellant’s plan has an an FSI of .536. The applicant originally sought an FSI of .622 which had been reduced to .525 by the Committee of Adjustment. The difference in depths is as follows. The applicant’s plan has a dwelling with a depth of less than 17m which protrudes approximately 6m beyond the rear wall of the appellant’s house and the appellant’s plan has the rear wall of the proposed dwelling even with the appellant’s house. The applicant’s plan has a greater west side yard setback towards the rear of the proposed dwelling, and in particular, an increased side yard setback from the appellant’s rear yard beyond the rear wall of his house. Neither plan has a rear second story deck.

Variances are required to permit an FSI and GFA of .579 under Bylaws 569-2013 and 438-86, respectively, for the applicant’s plan and of .536 for the appellant’s plan, as both bylaws have density limits of .35x. Both plans also require a variance for a side yard setback. By-law 569-2013 requires a 1.5m setback. Both plans have an east side yard setback of 1.22m. As a result, the issues are (a) whether the proposal respects and reinforces the physical character of the neighbourhood and (b) which of the two plans, (if either?) should be approved given the necessary variances.

JURISDICTION

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’).

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

I heard evidence from the participants and appellant as well as the planner for the appellant and the applicant.

There is no doubt that the residents who have lived in the neighbourhood for many years feel deeply about their community and do not want it to change with the construction of a house they perceive to be too large, different as a result of an double integral garage and encroaching on views in their backyards. Their evidence was that the proposed dwelling is not in keeping with the physical character of their neighbourhood. While I empathize with them, they did not present any evidence that the Official Plan should freeze development, nor any evidence that City council has adopted any policy or bylaw against integral garages. In addition, they brought no evidence that the bylaw which determines rear yard setbacks and thus protects rear yard views would be breached. Indeed, the evidence was that rear yard setback would be met and, indeed, it is more than double what is required in the bylaw. Moreover, the evidence was that the size of the building would not be noticeable from the street because only one side yard variance is required. It is .28m or 11 inches. There are no other variances required and thus the evidence must focus on the amount of additional density or FSI which should be permitted, and where it should be placed; i.e., which plan should be approved.

As Appendix A to Mr. Ryuck's witness statement points out almost all properties in the neighbourhood exceed the .35 GFA limit. The average approvals of GFA variances in the neighbourhood for new house is .61 which clearly indicates that a GFA of .579, as proposed by the applicant has been found to be in keeping with the character of the neighbourhood. The east side yard setback variance is where the side yard of the existing house is located. The setback adjacent to the appellant's property is greater than that required by the bylaw. In brief, the proposal is a two story house, with the same set back from the street as other homes, with a large rear yard, and with a height in conformity with the bylaw and not out of keeping with other dwellings on the street. Therefore in terms of heights, massing, scale, building types and patterns of rear and side yards on the street and existing on the site, the proposed dwellings is similar to the physical character of the neighbourhood. .

This leaves the issue of the evidence respecting the two plans as they relate to the adjacent rear yards. It was clear to me at the hearing that, as between the appellant and the applicant the issue was whether the rear of the proposed building should extend beyond the rear of the applicant's house. Although the bylaw permits the length, the question is: should the excess density or FSI be permitted in that location. It will result in a two story wall for approximately two metres beyond the rear of the appellant's rear wall beside his patio. That extension will be set back from the appellant's property by approximately 3 metres or 10 feet. A distance double that required by By-law 569-2013. The extension does not create a significant increase in shadow on the appellant's property as shown in the shadow studies and there is no overlook as there are no windows.

ANALYSIS, FINDINGS, REASONS

On the basis of the evidence, as I have outlined above, I find that the variances as revised and requested by the applicant, meet the four tests of the Planning Act. The proposed building is similar to others in the neighbourhood and thus meets the general intent of the Official Plan, which is to respect and reinforce the physical character of the neighbourhood. The revised appellant's application meets the Official Plan's built form policies as well. It meets the general intent the zoning bylaw in implementing the policies of the Official Plan as set out above. There have been variances granted in excess of those sought in this application with respect to FSI and GFA . A new up to date dwelling with an integral garage is in keeping with the intent of the zoning bylaw and is appropriate for the site as it requires only three variances; only one of which is visible from the street and it is only an eleven inches.

The impact, moreover, is minimal. There will be a wall approximately 6 feet in depth, approximately 10 feet back from the appellant's patio, and screened at grade by an existing fence. Such a situation is not uncommon in an urban environment. The wall can be camouflaged with ivy growing on it. There are no windows in the wall to overlook the patio and privacy on the patio will not be affected. There is no significant shadowing from the wall as shown in the shadow studies as the wall is to the east of the patio. I further accept the evidence that the variances will result in a dwelling which is consistent with the PPS and conforms to the Growth Plan. Based on the Applicant's revised plan as set out in Exhibit 11 the three variances should be approved, subject to certain conditions.

DECISION AND ORDER

The following variances are approved:

CHAPTER 10 .20.40.40.(1), BY-LAW 569-2013

The permitted maximum floor space index is 0.35 times the area of the lot.

The proposed floor space index of the lot is 0.579.

SECTION 6(3) PART 1 1, BYLAW438-86

The maximum permitted gross floor area is 0.35 times the area of the lot.

The proposed residential gross floor area is 0.579.

CHAPTER 10.20.40.70.(3), BYLAW 569-2013

The required minimum side yard setback is 1.5m.

The proposed east side yard setback is 1.22m.

**Decision of Toronto Local Appeal Body Panel Member: S. Makuch
TLAB Case File Number: 18 132768 S45 16 TLAB**

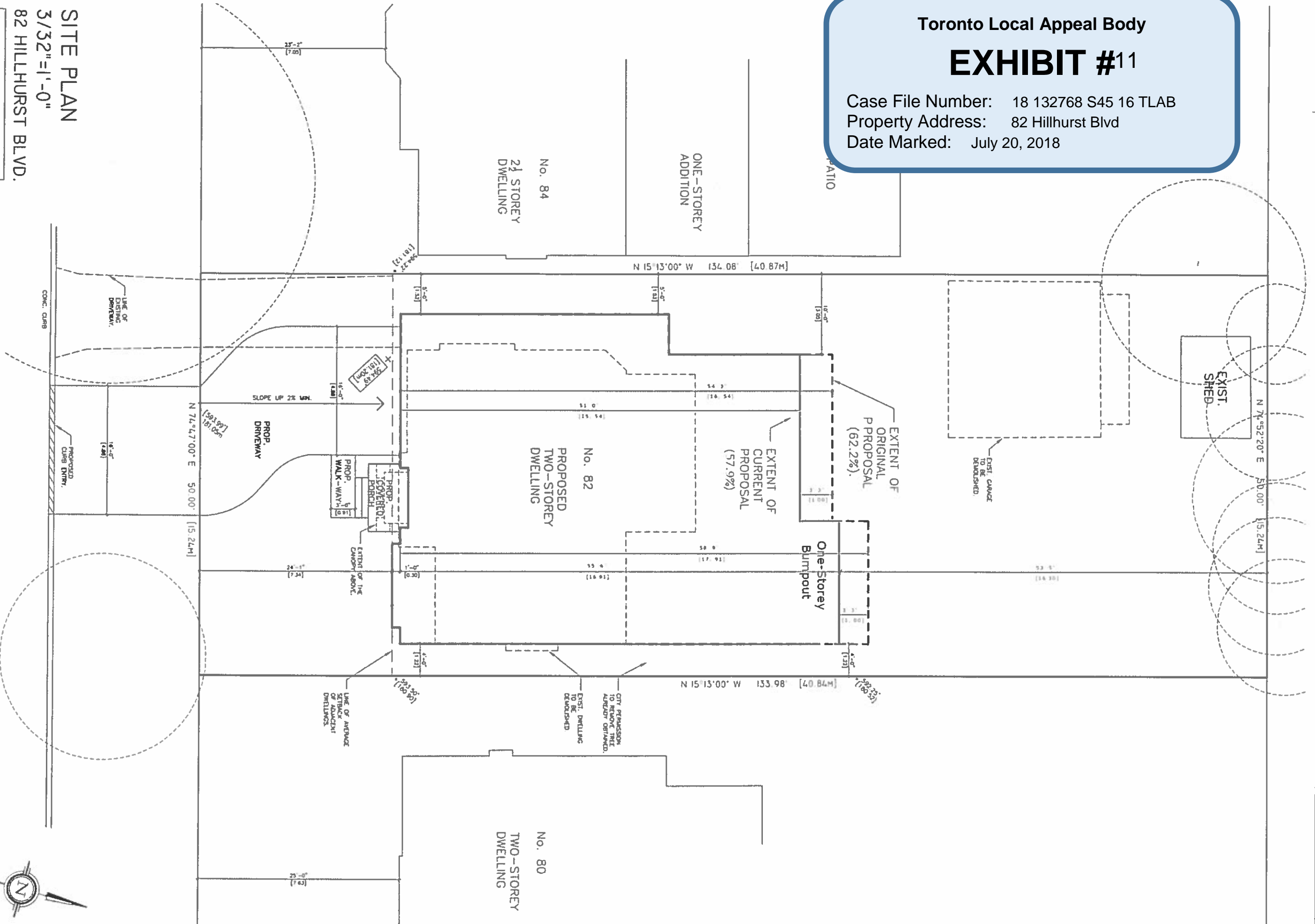
The above three variances are approved on condition that the dwelling is constructed substantially in accordance with the plan attached in Appendix 1 on condition that the applicant plant and maintain ivy along the western wall facing the patio of 84 Hillhurst Blvd.

X 

S. Makuch

Panel Chair, Toronto Local Appeal

Toronto Local Appeal Body
EXHIBIT #11
 Case File Number: 18 132768 S45 16 TLAB
 Property Address: 82 Hillhurst Blvd
 Date Marked: July 20, 2018



11 20

SITE PLAN
 3/32" = 1'-0"
 82 HILLHURST BLVD.

DREW LASZLO ARCHITECT
 416 781 5100

SURVEY INFORMATION PROVIDED BY:
 PEARSON & PEARSON SURVEYING LTD. 2017
 ONTARIO LAND SURVEYORS

HILLHURST BOULEVARD



RECEIVED July 26, 2018
By Toronto Local Appeal Body



FRONT ELEVATION
3/16"=1'-0"
82 HILLHURST BLVD.

DREW LASZLO ARCHITECT
416 781 5800

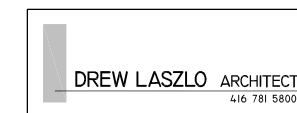


REAR ELEVATION
 3/16"=1'-0"
 82 HILLHURST BLVD.

DREW LASZLO ARCHITECT
 416 781 5800



SIDE (EAST) ELEVATION
 3/16"=1'-0"
 82 HILLHURST BLVD.





SIDE (WEST) ELEVATION
 3/16"=1'-0"
 82 HILLHURST BLVD.

