

# DECISION AND ORDER

**Decision Issue Date** Thursday, August 30, 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): BORIS NIKIC

Applicant: PETER HIGGINS

Property Address/Description: 252 GLEN MANOR DR W

Committee of Adjustment Case File Number: 17 256393 STE 32 MV

TLAB Case File Number: **18 148830 S45 32 TLAB**

**Hearing date:** Wednesday, August 15, 2018

**DECISION DELIVERED BY L. MCPHERSON**

## APPEARANCES

Name	Role	Representative
Peter Higgins	Applicant/Appellant's Rep	
Boris Nikic	Appellant/Owner	

## INTRODUCTION

This is an appeal to the Toronto Local Appeal Body ( TLAB) by the Applicant from the decision of the Committee of Adjustment (Committee) for the City of Toronto (City) to refuse minor variances to alter the existing two-storey detached dwelling by constructing a new front below-grade integral garage and front porch and by converting the rear garage to a shed at 252 Glen Manor Drive West subject site).

The subject site is located on the west side of Glen Manor Drive West, north of Williamson Road. The property is designated Neighbourhoods in the City of Toronto Official Plan (Official Plan) and zoned RD (d0.35) under Zoning By-law No. 569-2013 (new City By-law) and R1 Z0.35 H10 under former City of Toronto By-law 438-86

(former By-law).

## **BACKGROUND**

On April 11, 2018, the Committee refused the following variances:

1. Section 10.20.40.40(1), By-law 569-2013 - The permitted maximum floor space index is 0.35 times the area of the lot: 134.56 square metres.

The proposed floor space index is 0.45 times the area of the lot: 174.91 square metres.

2. Section 6(3) Part I (1), By-law 438-86 - The by-law limits the residential gross floor area in an area zoned R1 Z0.35 to 0.35 times the area of the lot: 134.56 square metres.

The proposed residential gross floor area of the building (174.91 square metres) exceeds the maximum permitted by approximately 40.35 square metres.

3. Section 6(3) Part II 7(I), By-law 438-86 - The by-law requires an accessory structure (excluding a garden or storage shed less than 9.0 square metres in floor area, or private garage) to have a minimum lot line setback of 3.0 metres from all lot lines.

The proposed lot line setback is 0m from the north, 0.66m from the south and 0.6m from the west side.

4. Section 6(3) Part IV 3(II), By-law 438-86 -The by-law does not permit an integral garage in a building where the floor level of the garage is located below grade and the vehicle access to the garage is located in a wall facing the front lot line.

The proposed integral garage is below grade.

The application would require curb cutting along Glen Manor Drive West and the relocation of an existing curb cut for pedestrian crossover where the proposed driveway would be. The City Transportation Services staff recommended to the Committee that should the application be approved, a Functional Road Plan be submitted by a qualified Traffic Consultant to the satisfaction of the General Manager of Transportation Services; that the owner close the vehicular access to the existing garage off the public lane and the costs be the responsibility of the owner. Planning staff recommended to the Committee that should the application be approved, a condition be imposed requirement the driveway to be constructed with a minimum 2% positive slope and permanent pavers. Since the hearing, the owner provided the Functional Road Plan to the City Transportation Services Department and in a letter dated August 13, 2018 (Exhibit 7), City staff advised that there is no objection to the Functional Plan and recommended conditions should the TLAB approve the application.

It is noted that the variances for fsi (Variances 1 and 2) and setback for an accessory structure (Variance 3) are reflecting the as-of-right condition. As the garage is built into the slope, it is considered below grade and as such, does not contribute to gross floor area, as defined. The remaining variance (4) to permit a below grade garage is only to the former By-law.

## **MATTERS IN ISSUE**

The issue is whether or not to permit the below grade garage as the other variances recognize the as-built condition. 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. Peter Higgins, the architect and Applicant for the application provided evidence to the Panel (not as a professional architect). He described the subject site and surrounding area (Exhibit 1).

The subject site is located within a low-rise residential neighbourhood. A lane runs from Southwood Drive providing access to five rear garages. The garage on the subject site is undersized. The lane is narrow and the garages are in close proximity to each other in certain instances and are located generally on the lot line. Mr. Higgins described the lane as difficult to access. The proposal is to convert the existing rear garage to a shed and create a new garage in the front of the house accessed by Glen Manor Drive West to provide the owners with safe, at-grade access to the house. Many of the garages in the neighbourhood are accessed from the street (Exhibit 4). The subject site slopes upwards towards the house, and the proposed garage would be built into the slope (Exhibit 3). As a result, the garage would be considered below grade from a zoning by-law perspective even though it would be at street level and maintain a positive slope.

The Applicant retained Trans-Plan Transportation Engineering to prepare a Functional Design Study dated June 25, 2018. The Study was circulated and accepted by City staff (Exhibit 3).

In summary, it is Mr. Higgins's opinion that the proposal will result in a new garage for the owners which addresses safety and accessibility concerns and is reflective of the other garage relationships in the neighbourhood. The Functional Design Plan demonstrates that there will not be unacceptable adverse impacts on the street as a result.

## **ANALYSIS, FINDINGS, REASONS**

The only variance related to the proposal is the permission for a garage that would be categorized as below grade because of the slope of the subject site. The TLAB accepts the evidence of Mr. Higgins that the access to the garage is appropriate, based on the correspondence from City staff accepting the Functional Design, subject to conditions. The other variances recognize the as-built condition of the existing dwelling. 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 is maintained as the proposed garage represents a common occurrence in the neighbourhood. The garage maintains a positive slope with the street and, as a result, the intent and purpose of the Zoning By-laws is maintained. The proposal results in an appropriate and desirable development for subject site 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 569-2013 and 438-86 listed below are authorized, subject to the conditions listed below.

1. Section 10.20.40.40(1), By-law 569-2013 - The permitted maximum floor space index is 0.35 times the area of the lot: 134.56 square metres.  
The proposed floor space index is 0.45 times the area of the lot: 174.91 square metres.
2. Section 6(3) Part I (1), By-law 438-86 - The by-law limits the residential gross floor area in an area zoned R1 Z0.35 to 0.35 times the area of the lot: 134.56 square metres.  
The proposed residential gross floor area of the building (174.91 square metres) exceeds the maximum permitted by approximately 40.35 square metres.
3. Section 6(3) Part II 7(I), By-law 438-86 - The by-law requires an accessory structure

**Decision of Toronto Local Appeal Body Panel Member: L. McPherson**  
**TLAB Case File Number: 18 148830 S45 32 TLAB**

(excluding a garden or storage shed less than 9.0 square metres in floor area, or private garage) to have a minimum lot line setback of 3.0 metres from all lot lines.  
The proposed lot line setback is 0m from the north, 0.66m from the south and 0.6m from the west side.

4. Section 6(3) Part IV 3(II), By-law 438-86 -The by-law does not permit an integral garage in a building where the floor level of the garage is located below grade and the vehicle access to the garage is located in a wall facing the front lot line.  
The proposed integral garage is below grade.

Conditions to Approval

1. The driveway shall be constructed with a minimum 2% positive slope and permeable pavers.
2. Construct all road improvements as shown on the Functional Plan dated June 22, 2018, prepared by Trans-plan Transportation Engineering, to the satisfaction of the General Manager of Transportation Services.
3. Remove the obsolete vehicular access to the existing garage located in the public lane at the rear of the property.
4. Pay for all costs associated with Items 2 and 3 above.
5. Submit, prior to the issuance of a building permit, an application to Right of Way Management for the proposed work within the public rights-of-way (Contact 416.392-7877 for further information).

X 

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Laurie McPherson  
Panel Chair, Toronto Local Appeal Body