

## DECISION AND ORDER

**Decision Issue Date**      Tuesday, September 04, 2018

PROCEEDING COMMENCED UNDER Section 53, subsection 53(19), and Section 45(12), subsection 45(1) of the Planning Act, R.S.O. 1990, c. P.13, as amended (the "Act")

Appellant(s): STUART ARTHUR MORRIS

Applicant: SPRAGGE & COMPANY ARCHITECTS LTD

Property Address/Description: 21 LYNNGROVE AVE

Committee of Adjustment Case File: 17 278589 WET 05 MV

TLAB Case File Number: **18 135617 S45 05 TLAB**

**Hearing date:**      Friday, August 31, 2018

**DECISION DELIVERED BY T. Yao**

### APPEARANCES

<b>Name</b>	<b>Role</b>	<b>Representative</b>
Mary Christine Morris, Stuart Arthur Morris	Owners	Tom Spragge
Nigel Howard Ayers	Participant	
Gillian Clarke	Participant	

### INTRODUCTION

The Morrises, avid gardeners, wish to demolish an existing garage and replace it with a more substantial brick building. How this building should be characterized and how it is to be used is the sole substantive issue in this hearing.

<b>Table 1. Variances from By-law 569-2013 for 21 Lynngrove Ave</b>			
		Required	Proposed
1	Living accommodation in s. 10.5.60.1. (2)	Ancillary building may not be used for living accommodation	According to Mr. Lin, the building <b>is being used</b> for living accommodation
2	Maximum gross floor area	257.85 m <sup>2</sup>	262.55 m <sup>2</sup>
3	Maximum height, ancillary building	4 m	4.49 m
4	Maximum wall height, ancillary building	2.5 m	2.88 m

## **BACKGROUND**

The Morrises' application (December 2017) for minor variances seems to have got off on the wrong foot because the new structure was labelled a "coach house" and reason for the variance being that "The owner requires additional living space for their family". The zoning plan examiner, Chen Lin, specified a variance would be needed to relieve against possible use for living accommodation<sup>1</sup>. The variances are set out in Table 1 above.

On February 28, 2018, Trista James of the City Planning Department expressed concern that the premises could be used for living accommodation:

Detached garages are a common feature for the neighbourhood when it comes to the provision of parking. While there may be instances where these garages are being used as storage space rather than for parking, the proposal to demolish the garage at 21 Lynngrove Avenue and construct an ancillary building with habitable space (a coach

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<sup>1</sup>Mr. Lin wrote: "An ancillary building may not be used for living accommodation. The proposed ancillary building **is being used** for living accommodation. [10.5.60.1. (2)] Living Accommodation in Ancillary Buildings". (my bold)

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house) in the rear yard would be an anomaly within the area and could have the potential impact of destabilizing the neighbourhood.

On March 1, 2018, Mr. Spragge, the architect, wrote:

The description “coach house” is somewhat misleading, and we are resubmitting the drawings now titled “3-season Recreational Ancillary Building”. Our intention is that this cabana-like ancillary structure is a summer entertainment area with some use in the late spring and early autumn. We have deleted the proposed bar sink to avoid having any plumbing at all. There will be no sanitary or cooking facilities, so it would not be livable accommodation.

On March 8, 2018, the Committee of Adjustment granted the four variances, subject to three conditions, including Condition 3: “No habitable space will be permitted in the ancillary building”. The Morrises were of the view that Condition 3 nullified Variance #1 and thus they were in a “logical impossibility” and were concerned that they might not obtain a building permit. For greater certainty, they appealed, bringing this matter to the TLAB.

## **EVIDENCE**

I heard from Tom Spragge, the Morrises’ architect, whom I qualified as able to give opinion evidence on architecture and Committee of Adjustment applications. This hearing is unopposed; neighbours Gillian Clarke and Nigel Ayers appeared at the hearing, only to observe and to protect their interests. I thank them for taking part; it is always useful to have community input into public decisions.

Mr. Spragge supplied Diagram 1 below of the proposed “cabana” structure.

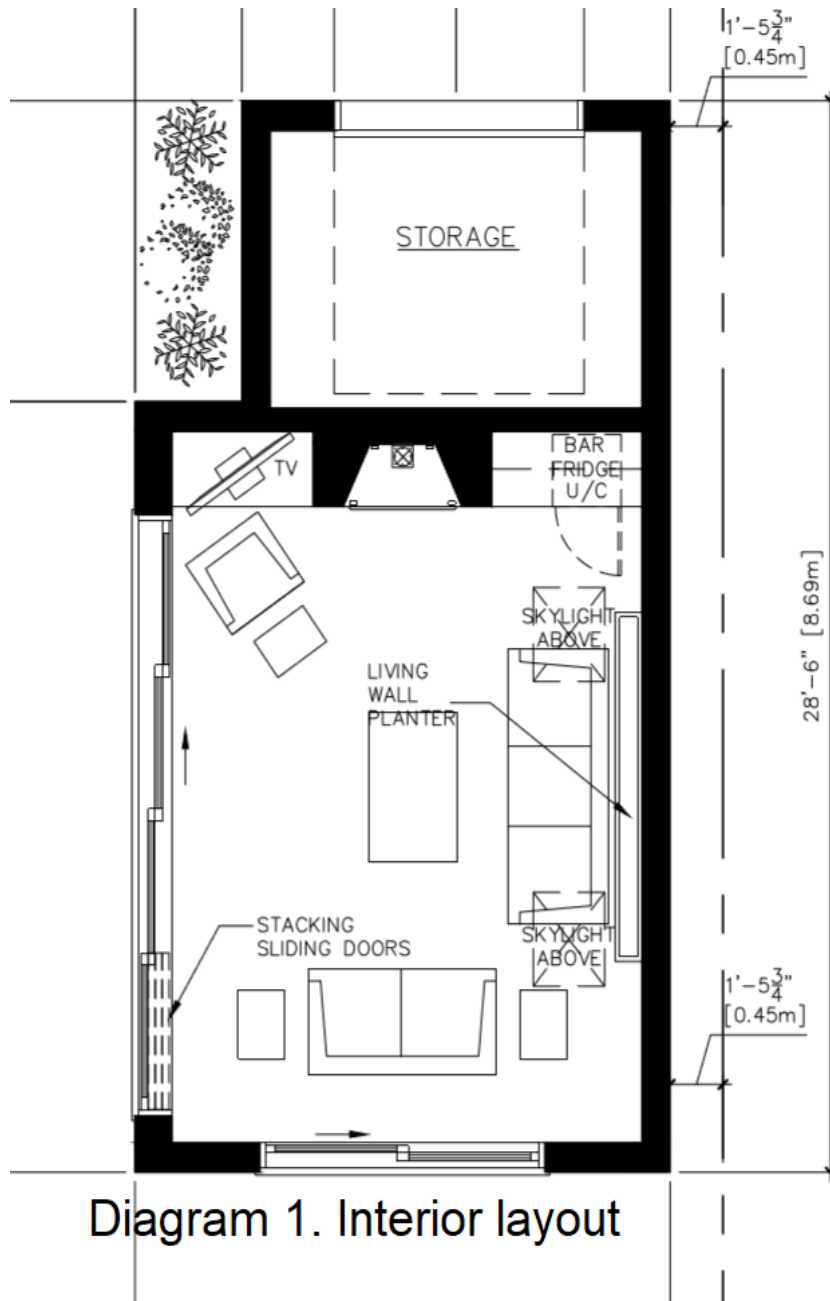
## **MATTERS IN ISSUE**

The 2014 Provincial Policy Statement and the 2017 Growth Plan of the Greater Golden Horseshoe are not in issue for this small ancillary structure. However, I must also be satisfied that the application meets all the four tests under s. 45(1) of the *Planning 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**

The relevant sections of the zoning by-law are:



**10.5.60.1 GENERAL**

(2) Living Accommodation in Ancillary Buildings

An ancillary building in the Residential Zone category may not be used for living accommodation.

(3) Food or Sanitary Facilities in Ancillary Buildings

An ancillary building in the Residential Zone category may have:

- (A) food preparation facilities and sanitary facilities if the ancillary building is for indoor amenity space required by this By-law; or

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(B) either food preparation facilities or sanitary facilities, but not both, if the ancillary building is used for any purpose other than an indoor amenity space required by this By-law.

My view is that, while the two sections are aimed at the same thing, (2) is more for enforcement, but (3) is more useful for building permit issuing purposes. “Living accommodation” is more vague than “sanitary facilities”. The plans show a “living wall” of plants, a television, and a few sofas and a coffee table, plus storage, but furniture can change at any time. I would nonetheless describe the use as not being for living accommodation, but more of a “garden casita”. If this were the Muskokas, it would be a “bunkie”. Mr. Spragge said if it were called a “cabana”, he would not have needed variance #1 at all. Mr. Ayers and Ms. Clarke do not object to this type of structure.

The Morrisises deleted the sink but with reflection they now would like to have a facility to wash their hands after gardening. Under the *Planning Act*, the application needs to be recirculated unless I make a finding under Section 45(18.1.1)<sup>2</sup> that the modifications are minor, and I make the finding that the addition of a sink is minor.

Under the *Building Code Act*, Mr. Lin is the final authority for specification of the variances needed for zoning compliance, so these are a “given”. In the Order below, I reproduce the conditions imposed by the Committee of Adjustment word for word but with the changes sought by the Morrisises in *strikeout* and *italics*. I will now briefly set out my reasons for the remainder of the variances, which are not disputed. The height variances are minor; only small portion of the peaked roof is above the 4 m limit. The gross floor area exedence is about 1% of the lot area, which is minor. I find the variances with the revised conditions meet the tests set out in the *Planning Act*.

## **ORDER**

I authorize the variances set out in Table 1, subject to the following conditions:

- 4- The ancillary building shall be constructed substantially in accordance with the plans submitted and held on file by the Committee of Adjustment office

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### <sup>2</sup> *Amended application*

(18.1) On an appeal, the Tribunal may make a decision on an application which has been amended from the original application if, before issuing its order, written notice is given to the persons and public bodies who received notice of the original application under subsection (5) and to other persons and agencies prescribed under that subsection. 1993, c. 26, s. 56; 1994, c. 23, s. 26 (7); 2017, c. 23, Sched. 5, s. 80.

### *Exception*

(18.1.1) The Tribunal is not required to give notice under subsection (18.1) if, in its opinion, the amendment to the original application is minor. 2017, c. 23, Sched. 5, s. 98 (5).

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date stamped March 2, 2018 *except for the plumbing in Condition 2. Any other variances that may appear on these plans but are not listed in the written decision are not permitted.*

- ~~2. No plumbing shall be permitted to or within the ancillary building.~~
- ~~3. No habitable space shall be permitted within the ancillary building.~~

2 Notwithstanding Variance 1 that the ancillary building “is being used for living accommodation”, it may not have:

(a) food preparation facilities, except a barbecue or similar; and

(b) sanitary facilities, except a bar sink, with hot and cold running water and drain.

X



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