

DECISION AND ORDER

Decision Issue Date Tuesday, October 09, 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): KRISHAN CHAHAL

Applicant: TONY HENRIQUES

Property Address/Description: 74 HUMEWOOD DR

Committee of Adjustment Case File Number: 17 256702 STE 21 MV

TLAB Case File Number: **18 173791 S45 21 TLAB**

Hearing date: Thursday, October 04, 2018

DECISION DELIVERED BY Ian James LORD

APPEARANCES

Name	Role	Representative
Tony Henriques	Applicant	
Nutan Chahal	Owner	
Krishan Chahal	Appellant	Martin Mazierski
Susan Middleton	Participant	
David Hughes	Participant	

INTRODUCTION

This is an appeal from the Toronto and East York District panel of the City of Toronto (City) Committee of Adjustment (COA) refusing minor variances to by-laws 569-2013 (new zoning) and 1-83 (existing zoning) in respect of 74 Humewood Drive (subject property.)

**Decision of Toronto Local Appeal Body Panel Member: I. Lord
TLAB Case File Number: 17 235736 S45 16 TLAB**

The requested variances are identified on **Appendix 1** hereto, and relate to floor space index (FSI), reduced rear yard soft landscaping and side lot line setbacks.

The Applicant/Appellants appeal was opposed by two Participants, David Hughes and Susan Middleton, both of whom attended the Hearing and provided evidence in respect of their views.

BACKGROUND

The subject property is an existing single detached dwelling on the west side of Humewood Drive, north of St. Clair Avenue and west of Vaughan Road. The area is predominantly a neighbourhood of single detached dwellings with interspersed duplex, semi and occasional apartment form dwellings in a compact, substantial, attractive and well treed neighbourhood. The Applicant proposed a third floor partial addition and a rear two storey enlargement of the existing dwelling, inclusive of a substantial renovation.

A number of revisions were made prior to the COA decision in response to expressed neighbourhood concerns. Ultimately, the plans before the COA incorporating these revisions were ultimately the plans on appeal to the TLAB. A single revision was made to the variances at the request of the Applicant/Appellant to recognize a subsequent zoning examination as to the calculation of rear yard soft landscaping.

As a consequence, and as illustrated on **Appendix 1**, the soft landscaping variance from a by-law standard under the new zoning was altered from the required 50% from 46.8% refused by the COA to 44% as presented to the TLAB.

At the outset, I was requested to consider this aspect minor and not requiring additional notice, as potentially contemplated by section 45 (18.1.1) of the *Planning Act*. As there had been no change to the site plan from what was before the COA and the calculation was a performance measure correction by the Plans Examiner, I agreed to its consideration without further notice.

I advised I had reviewed the filed materials, attended at the site and toured the neighbourhood but that matters for evidence remained required to be brought to my attention.

MATTERS IN ISSUE

The Applicant /Appellant defended the variances sought through the evidence of a qualified professional land use planner, Mr. Cieciora. The Participants attending were responsible witnesses who acknowledged the contribution of the owner applicant to respond to neighbourhood values. However, concerns remained expressed for:

- a. The reduction in rear yard soft landscaping experienced as a diminution of landscaped open space and a possible negative contributor to increased storm water runoff and possible grading issues.

**Decision of Toronto Local Appeal Body Panel Member: I. Lord
TLAB Case File Number: 17 235736 S45 16 TLAB**

- b. The increased building envelop size, emblematic of the fsi increase giving rise to perceptions of adverse massing, shadowing and privacy concerns.
- c. The side lot line reductions, especially on the north lot line, causing a proximity of building massing adjacent 4-6 residential lots whose rear lot lines abutted the subject property.

The City took no interest in the application or appeal. There were no City staff comments in respect of any matter occasioned by the requested variances, save and except for a parallel application for a front yard parking pad.

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

As indicated, the Applicant/Appellant called Mr. T.J. Cieciora who provided a fulsome description of area 'character' within the Neighbourhoods definition in the City Official Plan. In drawing a Study area delineated in his Witness Statement, Exhibit 2, he described the variety of dwelling types, lot pattern and layout of streets within a five-minute, 400 m walkable radii area - by eliminating unrepresentative uses and frontages on major arterials, St. Clair Avenue and Vaughan Road.

There was no challenge to this description, its analogy to the proposal for the subject property or his statistical analysis that the record of variance approvals, in relation to the **Appendix 1** variances sought: they are in the range and consistent with approvals granted. Mr. Cieciora noted the deficiencies of sole reliance on the statistical information researched from City COA files and declined to centre his description confined entirely to their assessment. He noted that there were no unusual topographic or vegetative features attendant the subject property, that the form, massing, distribution of FSI and that existing setback incursions pre-dated the applicable zoning.

Decision of Toronto Local Appeal Body Panel Member: I. Lord
TLAB Case File Number: 17 235736 S45 16 TLAB

He noted that the lots fronting on Humewood, including the subject property were somewhat shorter than lots on the north side of Wellwood to the south. Further, that both lot patterns were significantly shorter than the lots fronting on Maplewood Avenue, the rear lot lines of which for some six properties touched or abutted the subject property.

In evidence and in Exhibit 2, Mr. Cieciora provided uncontested opinion evidence that the variances in **Appendix 1**, were consistent with Provincial Policy and conformed to the Growth Plan. His opinion, with extensive reference to the Official Plan, concluded the project constituted reinvestment in the community consistent with projects and variances identified over a 10 year period for the Study Area. As such, he was firmly of the opinion that the proposal and associated variances would 'fit' within neighbourhood character, represented the same 'form' of housing, detached 2-3 storey dwellings, and would respect and reinforce the built form character of the neighbourhood. He reviewed each of the compatibility criteria and section 4.1.5 of the Official Plan and concluded each was met, exceeded in principle, or did not apply.

With respect to the zoning by-law revisions sought, he concluded that the intent and purpose of the zoning regulations were met and not being infringed by the variances sought. He noted no relief was being requested for:

- a. building height
- b. building length
- c. building depth
- d. rear yard setback
- e. third storey platform 10' x 4', within the envelope of the second storey roof
- f. lot frontage, or
- g. uses.

He felt the renovation and expansion was entirely consistent with current trends for larger, more flexible residences and that, in this instance, the relief sought did not overpower the lot or create any undue adverse impacts.

With respect to anticipated residents' concerns, he noted that the increase in fsi (from permitted .8 x to requested .98 x lot area) was within area norms. He said it was partially the derivative of the lot size of the subject property. In his opinion, it was being deployed in a strategic manner of a partial third storey space addition and a rear, flat roofed addition of two storeys, replacing in part an existing rear addition of one storey.

He advised that the consequent footprint, although an extension more into the rear of the lot, caused no adverse shadow impacts, albeit a modest reduction in maintained soft landscaping, given the presence of a rear yard garage structure, existing paving and an anticipated continued rear deck at or near grade.

He noted that the rear, two storey addition was proposed continuing existing side yard setbacks without variation. In this regard, he saw no benefit in an additional north side yard setback of some 9 cm, as it would not aid passage or alter minimal shadow increases. He

Decision of Toronto Local Appeal Body Panel Member: I. Lord
TLAB Case File Number: 17 235736 S45 16 TLAB

described the adjacent properties on Maplewood Drive to have their rear walls some 50 feet distant from the common lot line.

Similarly, he foresaw that no benefit was attributable to meeting the zoning south side yard setback requirements as the existing building and a right-of-way of mutual benefit in the lot to the south were fixed. No improvement would be achieved and no benefit accrue given these conditions.

He expected the somewhat reduced rear yard landscaping was in part occasioned by the shorter Humewood Drive lot patterns, but that in any event the reduction was insignificant and the large, mature rear yard tree was unaffected by the project improvements proposed.

He acknowledged advice received that the front yard parking pad applied for in a parallel application had been approved subject to rear yard improvements in replacement interlocking surface materials that would permit the infiltration of ground water. He saw this as a partial response to concerns for drainage and storm water run-off, but acknowledged it did not affect the calculation of soft landscaping.

In summary, Mr. Cieciora presented his professional opinion in support of recommending approval of the **Appendix 1** variances subject to a condition that construction be substantially in accordance with the plans filed and found in Exhibits 1 and 2 to the Hearing, modified to reflect that the third floor deck platform be as shown on the third floor, floor plan, Drawing 5.

For the reasons described, particularly the absence of adverse impacts and the reinvestment that the project demonstrated in the community, he felt the variances were appropriate, desirable and minor in the context of the four tests and provincial policy considerations of the PPS and Growth Plan.

Mr. Cieciora was not recalled to respond to the concerns expressed by the two participants.

Mr. David Hughes, resident at 139 Maplewood Drive (second door west of Humewood Avenue on the south-side of this east-west street), abuts the subject property on a portion of its north lot line.

He expressed his appreciation for the concessions made by the owner and Applicant and professed no issues with privacy incursion from the third floor deck, given its limited size, or the setback extension, reflecting existing conditions.

He expressed concern for the reduced soft rear yard landscaping, expecting enhanced drainage issues.

Mr. Hughes also raised several rhetorical questions as to why the zoning performance standards needed to be varied. The project's design itself was not questioned and the Hearing was convened to advance the merits of the variances sought. The questions raised, while legitimate, were the subject matter of the evidence and at the late stage of a Hearing inquiry need to be addressed more by evidence than to ask 'why', or for an explanation of the provincial and municipal land use planning decision making process.

**Decision of Toronto Local Appeal Body Panel Member: I. Lord
TLAB Case File Number: 17 235736 S45 16 TLAB**

Ms. Susan Middleton of 151 Maplewood Drive also spoke to issues of drainage, erratic weather patterns experienced with attendant flooding concerns from higher properties, the shorter lot depth and possible adverse rear yard impacts of the Maplewood properties from reduced soft landscaping. More particularly, her estimate of the ultimate location of the rear extension and lower deck suggested blockage of light and views for neighbours properties included possible privacy infringements, although her property (seven doors west of Humewood Drive) did not abut the lot lines of the subject property. She was of the opinion that the two storey rear extension would have adverse impact on the rear yards of Maplewood properties. She noted, with several photographs, trees located along the adjacent property lines and the presence of their garage structures, almost abutting the subject property.

None of the variances were said to be direct contributors to adverse impact on rear yard amenity space or represented direct impacts or that these improvements were demonstrably adversely affected. However, the proximity of new construction was said to be of concern for fire, proximity and safety reasons. She would have preferred the additional 9 cm separation distance to the lot line be maintained.

ANALYSIS, FINDINGS, REASONS

I am satisfied, due to the limited nature of the variances being sought, that the application and appeal represent a normal redevelopment project in the City and neighbourhood, consistent with modern trends. In number, scale and impact, the application variances are modest.

I accept the evidence of the witness Cieciora that the policy and statutory tests are met and not infringed. While I recognize that increasing the building footprint can lead to storm water management issues, none were proven and the buildings Department of the City have carriage and responsibility, as part of the building permit issuance process, for site conditions, site grading and storm water management on any redevelopment that is conducted.

No City staff demonstrated any concerns with the application – a consistency noted with the evidence of Mr. Cieciora.

I accept that the well intentioned concerns of the Participants might have been further alleviated had the owner or his/her advisors been more community proactive, but this did not occur. Nonetheless, those concerns were admitted to have been somewhat ameliorated by the owner's revisions, the conditions of the front yard parking pad permission said to now be in hand, and the device of making adherence to certain of the drawings conditional on permit issuance.

I am left with the opinion that three story residences are present in the neighbourhood, that no variance of a substantive nature adversely effects the 'fit' and consistency of character of the proposal, or that the two-storey rear addition is inconsistent with the community.

I am content that the limitation on platform size reflected in the third floor plan adequately confines that amenity feature to a location and use that will cause no adverse privacy or overlook concern on the neighbours of the subject property.

**Decision of Toronto Local Appeal Body Panel Member: I. Lord
TLAB Case File Number: 17 235736 S45 16 TLAB**

The fact that the side yard variances reflect extensions of existing conditions also mitigates in favour of their approval. No benefit accrues to their rejection. I am not convinced of any undue adverse impact is occasioned by this continued proximity.

I accept Mr. Cieciora's opinion that the distribution of fsi creates a massing and built form that preserves sun-shadow conditions and is not excessive either for the subject property or in light of COA approvals in the neighbourhood.

I appreciate the helpfulness of the several cases provided by Mr. Mazierski related to the intent and impact of setbacks, the role of fsi in some instances, the relevance of the test of as-of-right conditions, and the approach to protecting light, view and privacy. While I have not made express reference to these authorities, I have intended a consistency with their application.

DECISION AND ORDER

The appeal from the decision of the Committee of Adjustment is allowed, the decision is set aside and the variances identified in **Attachment 1** are approved.

This approval is subject to the condition that construction proceed substantially in accordance with the site plan, floor plans and elevations (excepting the rear (east facing) elevation and perspective, Drawing 6 insofar as it depicts the width of the third floor platform railings) all as prepared by TH Design Inc., and dated April 23, 2018. Any balcony off the third floor on the roof of the second floor shall be as shown on the third floor floorplan, Drawing 5, limited to the dimensions thereon. Railings around the platform space are recessed from roof edges in the manner shown and access to the balance of the second storey roof shall be limited to and for maintenance purposes only.

Attachment 1

REQUESTED VARIANCE(S) TO THE

ZONING BY-LAW:

1. CHAPTER 10.80.40.40 (L)(A), BY-LAW

569-2013

The maximum permitted floor space index for a detached dwelling is 0.8 times the area of the lot

(192.04 m²).

In this case, the altered two-storey detached dwelling will have a floor space index equal to 0.97 times the area of the lot (232.34 m²).

2. CHAPTER 10.5.50.10 (3)(A), BR-LAW 569-2013

A minimum of 50 % (42.65 m) of the rear yard must be maintained as soft landscaping.
In this case, 44 % (37.53 m²) of the rear yard will be maintained as soft landscaping.

1. SECTION 8 3(A), BY-LAW 1-83

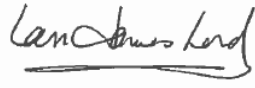
The maximum permitted floor space index for a detached dwelling is 0.8 times the area of the lot (192.04 m²).

In this case, the altered two-storey detached dwelling will have a floor space index equal to 0.97 times the area of the lot (232.34 m²).

2. SECTION 8 3(A), BY-LAW 1-83

The minimum required side yard setback is 1.2 m on one side and 0.5 m on the other side.

In this case, the altered two-storey detached dwelling will be located 0.41 m from the north side lot line and 1.04 m from the south side lot line.

X 

Ian Lord
Panel Chair, Toronto Local Appeal Body
Signed by: ilord