

DECISION AND ORDER

Decision Issue Date: Monday, November 19, 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): FARID MEKHAEL

Applicant: CHRISTOPHER WALKER

Property Address/Description: 311 HILLSDALE AVE E

Committee of Adjustment Case File Number: 18 103497 STE 22 MV

TLAB Case File Number: **18 195325 S45 22 TLAB**

Hearing date: Friday, November 02, 2018

DECISION DELIVERED BY Stanley Makuch

APPEARANCES

| Name | Role | Representative |
|--------------------|----------------|----------------|
| Christopher Walker | Applicant | |
| Randa Mekhael | Owner | |
| Farid Mekhael | Appellant | |
| Tae Ryuck | Expert Witness | |

INTRODUCTION

This is an appeal from a decision of the Committee of Adjustment refusing 15 variances to permit the construction of a new detached dwelling partially on the existing foundation of a dwelling to be demolished. The existing foundation is proposed to be used in order to reduce construction costs.

BACKGROUND

Planning staff met with the neighbours and reviewed the proposed plans. Staff objected to only one variance: the one related to height and stated in its report to the Committee of Adjustment:

“The proposed first floor height of 1.66m and rear deck height of 1.5m whereas 1.2m is permitted. The variances do not meet the intent of the first floor provision and the increased height of the rear deck creates potential privacy and overlook issues. As such, the proposed does not respect and reinforce the existing physical character of the area.”

Not only were no other objections raised by staff but no neighbours objected to the variances.

MATTERS IN ISSUE

At the hearing no one appeared except the planner for the Applicant, Tye Ryuck and thus no issues were raised.

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

The only evidence presented was that of Mr. Ryuck. He is a planner qualified to give opinion land use planning evidence. His evidence was obviously in favour of the application and was persuasive. That evidence was based on his filed witness statement. It demonstrates that the proposed dwelling will respect and reinforce the physical character of the neighbourhood and meets the requirements of the Provincial Policy Statement and the Growth Plan.

It contradicted the conclusion of planning staff presented at the Committee of Adjustment and clearly indicated that the height of the first floor and rear deck did not create potential privacy concerns as there is a parking lot abutting of the property to the west and no objection from the property owner to the east. Moreover the raised first floor is not uncommon in the neighbourhood.

ANALYSIS, FINDINGS, REASONS

Based on the uncontradicted, unchallenged, unopposed and persuasive oral and written evidence of Mr. Ryuck I conclude that the variances individually and collectively meet the requirements of the Planning Act, the Provincial Policy Statement and the Growth Plan.

DECISION AND ORDER

The appeal is allowed and the variances in Appendix 1 are approved subject to the Conditions in Appendix 2.

X 

S. Makuch

Panel Chair, Toronto Local Appeal

APPENDIX 1

1. Chapter 900.2.10.(930)(D)(i) & (ii), By-law 569-2013 as amended by By-law 1426-2017 A platform without main walls, attached to or less than 0.3 m from the rear main wall of a building, with a height greater than 12 m above established grade is permitted a maximum area of 4.0 m² and a minimum side yard setback of 1.8 m.

The rear deck with a height of 1.50 m above established grade will have an area of 16.45 m² and will be located 0.41 m from the east side lot line.

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2. Chapter 10.5.40.60.(1)(A) By-law 569-2013 The level of the floor of a platform located at or below the level of the first storey may be no higher than 1.2 metres above the ground at any point below the platform, except where the platform is attached to or within 0.3 m of a rear main wall, any part of the platform floor located

2.5 m or less from the rear main wall may be no higher than the level of the floor from which it gains access.

The rear deck will be 1.5 m above the ground at any point below the platform, and projects 3.59 metres from the rear main wall to which it is attached.

3. Chapter 200.5.10.1 .(1), By-law 569-2013 A minimum of one parking space is required to be provided. In this case, zero required parking spaces will be provided.

4. Chapter 10.10.40.10.(1)(A), By-law 569-2013 The maximum permitted building height is 9.0 m.

The new detached dwelling will have a height of 9.61 m. 5. Chapter 10.1 0.40.1 0.(2)(B)(ii), By-law 569-2013 The maximum permitted height of all side exterior main walls facing a side lot line is 7.0 m.

The height of the side exterior main walls facing a side lot line will be

7.60m on the east side and 9.29 m on the west side.

6. Chapter 10.1 0.40.1 0.(6), By-law 569-2013 The maximum permitted height of the first floor above established grade is 1.2 m.

The first floor of the new detached dwelling will have a height of 1.66 m above established grade.

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7. Chapter 10.1 0.40.30.(1)(A), By-law 569-2013 The maximum permitted depth of a detached dwelling is 17.0 m. The new detached dwelling will have a depth of 17.68 m.

8. Chapter 10.10.40.40.(1)(A), By-law 569-2013 The maximum permitted floor space index of a detached dwelling is 0.6 times the area of the lot (195.10 m²).

The new detached dwelling will have a floor space index equal to 0.65 times the area of the lot (212.90 m²).

9. Chapter 10.10.40.70.(3)(A)(i), By-law 569-2013 The minimum required side yard setback is 0.9 m.

The new detached dwelling will be located 0.41 m from the east side lot line and 0.46 m from the west side lot line.

10. Chapter 10.5.40.60.(7), By-law 569-2013 Roof eaves may project a maximum of 0.9 m provided that they are no closer than 0.30 m to a lot line.

The roof eaves will be located 0.18 m from the east side lot line.

11. Chapter 10.5.50.10.(1)(D), By-law 569-2013 A minimum of 75% (15.66 m²) of the required front yard landscaped open space shall be in the form of soft landscaping.

In this case, 67.0% (14.0 m²) of the required front yard landscaped open space will be in the form of soft landscaping.

12. Chapter 1 0.5.60.20.(2)(C), By-law 569-2013 The minimum required rear yard setback for an ancillary building or structure is 0.3 m.

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The rear accessory structure will be located 0.10 m from the rear lot line.

13. Chapter 10.5.60.20.(3)(C)(iii), By-law 569-2013 The minimum required side yard setback for an ancillary building or structure located in the rear yard and 1.8 m or more from the residential building on the lot is 0.3 m.

The rear accessory structure will be located 0.1 m from the east and west side lot lines.

14. Chapter 10.5.60.60.(1), By-law 569-2013 The permitted maximum projection of the roof eaves of an ancillary building into the minimum building setback is 0.3 m if the eaves are no closer to a lot line than 0.15m.

The eaves of the rear accessory structure will be located 0.0 m from the east and west side lot lines, and 0.0 m from the south rear lot line.

15. Chapter 10.5.80.10.(3), By-law 569-2013 A parking space may not be located in a front yard or a side yard abutting a street.

A parking space will be located in the front yard abutting a street.

1. Section 6(3) Part IV 1(E), By-law 438-86 A motor vehicle parking space is not permitted to be located between the front wall of the building and the front lot line.

The parking space will be located between the front wall of the building and the front lot line.

2. Section 4(4)(b), By-law 438-86 A minimum of one parking space is required to be provided. In this case, zero required parking spaces will be provided.

Appendix 2

1. Submission of a complete application for permit to injure or remove privately owned trees under Municipal Chapter 813 Article III, Private trees.

2. Construction is to be substantially in accordance with plans A1, A5, A6, A7, A8, and A9 on file with the Committee of Adjustment for 311 Hillside Ave. by Christopher Walker, Architect, dated May 16, 2018.