

DECISION AND ORDER

Decision Issue Date Monday, February 25, 2019

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): STEPHANIE DOWNES

Applicant: DAVID LANG

Property Address/Description: 508 OLD ORCHARD GRV

Committee of Adjustment Case File Number: 17 270053 NNY 16 MV

TLAB Case File Number: **18 227299 S45 16 TLAB**

Hearing date: Thursday, February 21, 2019

DECISION DELIVERED BY Ian James Lord

APPEARANCES

Name	Role	Representative
David Lang	Applicant	
Stephanie Downes	Appellant	Raj Kehar/Kim Mullin
Sean Galbraith	Expert Witness	

INTRODUCTION

This is an appeal from a decision of the North York Panel of the City of Toronto (City) Committee of Adjustment (COA) refusing variances to permit the construction of a two storey dwelling with an integral garage at 508 Old Orchard Grove (subject property).

The subject property is located on the northwest corner of Old Orchard Grove and Clyde Avenue, north of Lawrence Avenue and mid-neighbourhood, between Avenue Road on the east and Bathurst Street to the west. It is currently improved with a modest bungalow of original construction and a detached rear garage, in poor condition.

Ms. Mullin appeared on behalf of and with her client, Ms. Downes. No other Parties or persons were present apart from the Applicant/Appellant's consultant planners.

BACKGROUND

In light of the absence of any person to express City or neighbour concerns, I asked Ms. Mullin if she could concentrate the evidence on the variances for which approval is sought. The file record shows considerable evolution in the built form and the history of that evolution appeared not in issue, given the lack of attendances.

Ms. Mullin tendered Sean Galbraith, a Registered Professional Planner, to speak to the variances. Mr. Galbraith had prepared an exceedingly detailed and informative Witness Statement with appendices, entered as Exhibit 1. I qualified him to give expert opinion evidence. He also provided an extensive Visual Document Book, entered as Exhibit 2.

I advised that I had attended the site and read portions of the pre-filed evidence. Both Ms. Mullin and I had been with the firm of Weir Foulds LLP earlier in our careers; I retired from it over five years ago; she recently had joined her current firm, Wood Bull.

Mr. Galbraith advised that he had been retained in September 2018 and had not participated in the COA deliberations. The COA had had before it, eight (8) variances requested; five (5) were sought on appeal.

MATTERS IN ISSUE

The major issue on the appeal was whether the five variances sought, individually and collectively, met the policy considerations and four statutory tests below recited. A minor issue was the planner's recommendation that one of the variances, related to roof projection and eaves on a portion of the east side, should, for clarity, incorporate recognition for eve troughs. He was of the opinion the revision was minor.

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. Galbraith provided all the evidence at the Hearing. I found his evidence, demeanor and competence to be precise, thorough, well researched, appropriate and comprehensive. He proved to be fully alert to the issues, the neighbourhood, the assessment criteria and requisite research. His Witness Statement and Visual Document Book exemplified detailed and balanced research. Noting the 'Neighbourhoods' designation and policy framework, he demonstrated, neighbourhood familiarity and nuanced details of the considerations of the variance types sought. He related these all in respect of corner lots in a larger Study Area and a more proximate Immediate Study Area (ISA), the latter principally east and west along Old Orchard Grove, both as set out in Exhibit 1.

He described the Ledbury Park Neighbourhood and his boundaries as a cohesive residential community within the Neighbourhoods Official Plan (OP) designation. The subject property was described as central to a well-established community comprised of RD zone categories with some differences in regulations.

Air photography in Exhibit 2 established the subject property was late to the regeneration and redevelopment of this prestigious and stable single detached residential character. Transition housing to 2 and 2 1/2 storey residences comprises the majority of the neighbourhood, consisting of landscaped front yards and integral garages.

The subject property seeks to emulate the transition.

A Chart in Exhibit 1 detailed the revisions to the variances before the COA. Other tables in Exhibit 1 and, as well, the visual evidence Exhibit 2, all detail the extent, location and project influence of area variances and their graphical impact of the proposal depicted on the subject property.

It is noteworthy that the subject property lot has a narrower frontage at 10.86 m from the by-law standard of 12 m. In part, this occasioned some of the relief sought. Being on a corner lot, a number of examples of corner lot redevelopment with similar variance requests provided examples of 'fit' and applications of the variance tests. They, too, evidence the character of the advanced transition stage: larger houses; reduced

setbacks; front and rear wall alignments to adjacent properties; and with garage access via integral garages on the flanking street, all as proposed.

Because the evidence was uncontested and is aptly canvassed in Exhibit 1, and although the oral evidence canvassed all four tests collectively and individually in great detail, I provide only a summary, by variance.

Mr. Galbraith's evidence was in respect of the site plan and elevations dated November 13, 2018 as they apply to By-law 569-2013. The former North York By-law has been superseded in all material respects related to the appeal.

The requested variances are set out on **Attachment 1** hereto.

The planner also identified requested conditions of approval, should such be granted; these are set out in **Attachment 2** hereto.

The variances, their description and import, follow.

ANALYSIS, FINDINGS, REASONS

Variance 1 relates to the proposed east side yard setback adjacent to and abutting the street, Clyde Avenue. The By-law requirement of 3.0 m is proposed to be reduced to 0.45 m.

Mr. Galbraith noted the lot frontage is 1.32 m below standard, which is a significant component of this variance request, abutting a public thoroughfare and which does not have a sidewalk.

An existing fence already occupies space to within 0.3 m of the road allowance. The proposal marginally enhances an existing condition. No vehicle will transgress or overlap a pedestrian route. There will continue to be a 6.09 m space between the proposed building and the travelled portion of the right-of-way. Parking is interior to an integral garage.

Mr. Galbraith indicated similar relief treatment of 7 or 8 other corner properties, the existence of which confirms a respect and reinforcement for the physical character of the neighbourhood. I accept his evidence on the point that the permission enhances the ability to provide space for a consistent building size and presentation. I find the requested variance to meet the four tests, including being an enhancement that is minor and desirable.

Variance 2 relates to building length. The by-law maximum of 17 m is proposed to be exceeded by 0.22 m across about half of the building's north and east rear wall.

The planner, by site elevations and site plan references, noted that the portion of the north and west main rear wall is recessed above grade avoiding the appearance of

any extension northward. The proposed building maintains the general north wall alignment. I accept his evidence on the point that the permission presents a space separation and minimal rear yard reduction that again enhances the ability to provide space for a consistent building size and presentation. I find the requested building length variance to meet the four tests, is common in the larger neighbourhood (65 of 68 instances approved) including being an enhancement that is minor and desirable.

Variance 3 requests a reduction to the interior (west) side yard. The by-law requires 1.2 m and permission to build to 0.77 m is sought. Noting that there was no opposition and that the existing condition is construction to 0.59 m, Mr. Galbraith described it as a modest improvement in setback (18 cm) with functional adequacy. He said reduced interior side yards were fairly frequent in his summary tables of variance relief and the proposal is 'somewhat' larger (5 cm) than the average of comparable variances that have been approved.

I accept his evidence on the point that the permission presents a space separation and minor side yard reduction that again enhances the ability to provide space for a consistent building size and presentation. I find the requested variance to meet the four tests, is common in the larger neighbourhood (42 variances ranging from 1.08 to 0 m), including being an enhancement, and that it is appropriate and desirable.

Variance 4 relates to coverage. The by-law sets a maximum permitted coverage at 30% whereas the request has been modified to 38.5%. Mr. Galbraith described this to be the most requested variance type in the larger neighbourhood, citing 168 approvals over the last 10 years. The proposal respects front and rear main wall alignments, and a two storey replication of area housing of a size, scale and massing consistent with nearby redevelopment properties.

The planner said by appearance and zoning variances, the increase was modest and in keeping with the regenerated built form now almost entirely characteristic within the neighbourhood, large and ISA. He said the lot was not being overdeveloped and the removal of the existing street fencing and the dilapidated garage would constitute an enhancement.

I accept his evidence on the point that the permission presents a building elevation and site plan that respects and reinforces existing built form and, again, enhances the ability to provide space for a consistent building size and presentation. I find the requested variance to meet the four tests and is appropriate for the ISA and the larger neighbourhood.

Finally, Variance 5 relates to extending the roof projection to include eaves troughs. This request is detailed in the Witness Statement, Exhibit 1, beginning at paragraph 12.9 'Roof Eaves Encroachment'. Described as a 'precaution' to ensure that constructed eaves troughs not transgress the zoning permission, relief was sought by extending the permission of the projection, including eaves to within 0.16 m (required is 0.30 m, by-law standard) from the flanking street, applicable to roughly the north one-half of the building on the subject property.

Mr. Galbraith described the requested increase as minor and an improvement (15 cm) on the existing condition; further, that the eaves are raised several metres above grade and there will be no impact on the flanking street.

I accept his evidence on the point that the permission presents a reasonable safeguard and maintains storm water run-off to fall on the subject property, should it surcharge the eaves. I find the requested variance to meet the four tests, is somewhat of a rare projection issue but evidences no element of undue adverse impact to the boulevard, the street or the neighbourhood.

I agree this extended variance is minor and no further Notice is required under section 45 (18.1.1) of the *Planning Act*.

I accept that the variances sought, individually and cumulatively, meet the intent and purposes of OP policy and zoning permission. They maintain or enhance their purpose on the subject property within relevant ranges all the while being quantitatively and qualitatively minor and desirable.

Urban Forestry is content that standard conditions of approval can properly address the retention, protection or replacement of street and private trees. Neither the Planning nor Transportation Services Departments of the City offered any concerns.

I agree with Ms. Mullin's submissions that all relevant tests, including OPA 320 are passed on the evidence; that there will be no impact or privacy concerns and that the reinvestment contemplated by the plans in the community is desirable and does not constitute over-development.

DECISION AND ORDER

The appeal herein is allowed; the variances identified in **Attachment 1** are approved, subject to the Conditions identified in **Attachment 2**.

Attachment1. Requested Variances

Revised Variance List

1. The required minimum side yard setback is 3.0 metres for a corner lot where the required lot frontage is 12.0 metres or more and adjacent to a lot fronting of the street abutting the side lot line of the subject property.
The Proposed east side yard setback is 0.45 metres. [10.20.40.70.(6) Minimum Side Yard Abutting a Street for Specified Corner Lots]
2. In the RD zone with a minimum required lot frontage of 18.0 metres or less, the permitted maximum building length for a detached house is 17.0 metres. The proposed building length is 17.22 metres. [10.20.40.20.(1) Maximum Building Length if Required Lot Frontage is in Specified Range]

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3. The required minimum side yard setback is 1.2 metres where the required minimum lot frontage is 12.0 metres to less than 15.0 metres.
The proposed west side yard setback is 0.77 metres. [10.20.40.70.(3) Minimum Side Yard Setback]
4. The permitted maximum lot coverage is 30 percent of the lot area.
The proposed lot coverage is 38.5 percent of the lot area. [10.20.30.40.(1) Maximum Lot Coverage]
5. Roof eaves may project a maximum of 0.9 metres provided that they are no closer than 0.30 metres to a lot line. The proposed eaves and eavestrough project a combined total of 0.43 metres and are 0.016 metres from the East lot line. [10.5.40.60.(7) Roof Projections]

Attachment 2. Required Conditions

- a) Prior to the issuance of a building permit, the applicant/owner shall submit a complete application for permit to injure or remove privately owned trees under Municipal Chapter 813 Article III, Private Trees, to the satisfaction of the Supervisor, Urban Forestry, Tree Protection and Plan Review, North York District;
- b) Prior to the issuance of a building permit, the applicant/owner shall submit a complete application for permit to injure or remove City owned trees under Municipal Chapter 813 Article II, Private Trees, to the satisfaction of the Supervisor, Urban Forestry, Tree Protection and Plan Review, North District; and
- c) The proposed development shall be constructed substantially in accordance with the site, exterior foundation walls, elevations and roof plan dated November 13, 2018, prepared by David Lang and found in the Appellant's Visual Document Book, Exhibit 2, at Tab 7.

X 

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