

DECISION AND ORDER

Decision Issue Date Monday, March 25, 2019

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): DANIEL GORDON

Applicant: FERNANDO LIMA

Property Address/Description: 132 BARKER AVE

Committee of Adjustment Case File: 18 148588 STE 31 MV

TLAB Case File Number: 18 243216 S45 31 TLAB

Hearing date: Friday, March 01, 2019

DECISION DELIVERED BY G. BURTON

APPEARANCES

NAME	ROLE	REPRESENTATIVE
FERNANDO LIMA	APPLICANT	
DANIEL GORDON	APPELLANT/OWNER	ROWAN HENRY
LAURA KAVANAGH	PRIMARY OWNER	JONATHAN MCKIE

INTRODUCTION AND BACKGROUND

This was an appeal to the Toronto Local Appeal Body (TLAB) by the owner of 132 Barker Avenue in the Woodbine and Lumsden area of the former East York. On September 26, 2018, the Committee of Adjustment (COA) refused an application for a single variance from the By-law's requirement for the amount of soft landscaping in the subject rear yard. This would be from City of Toronto By-law 569-2013 (New By-law), which requires that 50% of the rear yard (48.7 sq. m.) be soft landscaping, while 17.6% (17.1 sq. m) was requested. The purpose of the application to the COA was expressed to be to "legalize and maintain the rear yard area containing interlocking". No other

party participated in the hearing, although the neighbours at 132A to the east submitted a comment to the COA.

MATTERS IN ISSUE

Do alleged water issues on the neighbouring parcel prevent the approval of the requested variance?

JURISDICTION

For variance appeals, the TLAB must ensure that each of the variances sought meets the tests in subsection 45(1) of the Act. This involves a reconsideration of the variances considered by the Committee in the physical and planning context. The subsection requires a conclusion that each of the variances, individually and cumulatively:

- maintains the general intent and purpose of the official plan;
- maintains the general intent and purpose of the zoning by-law;
- is desirable for the appropriate development or use of the land, building or structure; and
- is minor.

These are usually expressed as the “four tests”, and all must be satisfied for each variance.

In addition, TLAB must have regard to matters of provincial interest as set out in section 2 of the Act, and the variances must be consistent with provincial policy statements and conform with provincial plans (s. 3 of the Act). A decision of the TLAB must therefore be consistent with the 2014 Provincial Policy Statement (PPS) and conform to (or not conflict with) any provincial plan such as the Growth Plan for the Greater Golden Horseshoe (Growth Plan or GP) for the subject area.

Under s. 2.1(1) of the Act, TLAB is also to have regard for the earlier Committee decision and the materials that were before that body.

EVIDENCE

Expert evidence for the property owners was tendered by Mr. Jonathan McKie, a professional landscape architect, and so qualified by the TLAB. He outlined the present state and the planned design for the rear yard of the subject property.

There was an error, Mr. McKie testified, in the City’s computation of the variance required. In the rear yard of the subject property, square footage of the existing shared driveway and two parking spaces (one in the “shed” and one in the driveway in front of

it), all of which are permitted, was not taken into account in computing the amount of soft landscaping required.

As he stated in Exhibit 1, his Statement, it is the total area, in this case the rear yard, **less** the permitted driveway and parking area, that should be utilized in determining the square footage required for soft landscaping. "There is a permitted shared driveway leading to the rear yard which cannot be included [in] landscape calculations, leaving a total rear yard area of 1048 square feet. The existing shed, which is a converted garage sitting on the existing garage pad, is 100 square feet, and the existing paved driveway is 260 square feet. A portion of the existing wood deck is built over the existing paved driveway, and not within the landscaped area, in such a way that a car could maneuver past it into the permitted garage if converted back to be used as a parking garage. The remaining area is 688 square feet and 50% (344 square feet) is required for soft landscaping."

Mr. McKie totaled the existing soft landscaping in the rear yard, estimated the deficiency and concluded that the deficiency in soft landscaping would be only 13.6%, rather than the 32.4% difference in the final application. He did not request that the Zoning Examiner confirm his reassessment of the percentage figure required for the variance.

He then countered the neighbours' objections to this variance. Stephanie Lim and Wing Kim Wayne Chan reside next door at 132A Barker Ave. (wrongly marked as 134 in the Site Plan included in the file.) They expressed the following concerns to the COA prior to its hearing:

1. Possible increased surface runoff and flood risk for their home if there is less soft landscaping at the rear of the subject property, because of the possible reduction in water absorption there. Their driveway at 132A slopes toward their home (that is, they have a reverse slope driveway.)
2. There should be a method to handle the "increased amount of water that flows onto the street and past our driveway beside the storm drain". They suggested a storm drain in front of the subject home.
3. They foresee a negative precedent leading to more widespread storm water damage, should this variance be approved.

Mr. McKie pointed out that the rear deck at 132 was built over the existing driveway asphalt, and that it retains a slope away from the neighbours' home. He believes that drainage from the subject back yard toward their dwelling is highly unlikely in any event. He testified that the issues raised by the neighbours are mostly of their own making. As seen in the picture on p. 3 of Ex. 1, their home has a reverse slope driveway at the east of their property, an already-sloping retaining wall at the west side of the driveway (about the middle of the property), and one or two drainage pipes running along their west property line (or close to it) that may be broken. Mr. McKie surmised that their segmented concrete wall is now leaning because of water seeping into it, but that this is from the neighbours' own property. Below grade garages are no longer permitted because of backup issues.

He closely examined the space between the two dwellings. This consists of a shared gravel-covered draining area, with an unobstructed path toward the subject property's front yard landscaping. Water from here drains through the front soft landscaping on the subject property, toward the roadway. This would not be transmitted toward the neighbours' land.

From his examination he surmises that any water entering the neighbours' property or dwelling comes from their own downspout at the west side, the broken segments of downspout extensions on the front of the property, or from their front walkway. This walkway has sunk down toward the east, over their reverse driveway. In his opinion the solution would be to re-level the walkway, repair the gravity or retaining wall between it and the driveway, and to extend it further to the south. There should also be a storm drain at the front to channel the flow to the street. At present there is no soft landscaping at all in the front of the property to absorb any runoff. The subject parcel at 132 contains soft landscaping in the front, with the exception of a 5 ft. by 5 ft. concrete porch landing, and the asphalt driveway.

He disagreed with the neighbours' argument that there would be surface runoff from the rear of the subject property that might affect their driveway. The existing unit paving in the rear of the subject property is permeable, and now intercepts a portion of any runoff. The general overland flow at present is about 1.5% to the **west**, which is over the paved driveway shared with the property at 130 to the west. It then flows to the roadway. Thus there is very little likelihood that water from the rear would ever reach the property at 132A to the east. In his opinion the changes to the rear yard of the subject property have actually improved the drainage situation, given the permeable surfaces there.

Mr. McKie had offered two potential solutions to the neighbours' perception of possible flooding from the rear of 132. The one acceptable to the owner and to the TLAB is to direct the rainwater from the existing pipe at the **northeast** corner of the subject property, via an extension pipe under the existing deck, and toward the driveway shared with 130 to the west. This would reduce some of the rainwater entering the drainage area between the two houses.

ANALYSIS, FINDINGS, REASONS

I determined at the hearing that I would approve the variance requested, for the reasons that would follow in a written decision. I explained that I had no power to do other than suggest changes to the neighbours at 132A, I could not order them to make improvements. I do not believe, based on the professional evidence received, that their water issues are caused by any action or plans made by the appellant owners at 132 Barker. I accept Mr. McKie's expert opinion that the water issues on the neighbours' property are not caused by water draining from the subject property. He conducted extensive testing to verify this conclusion.

He affirmed that an extension of the northeast drainpipe at the rear of 132 could be directed toward the mutual driveway, to add to the assurance that none of the rainwater from the rear could reach the neighbours' land.

DECISION AND ORDER

The appeal is allowed. The following variance is approved, subject to the conditions below:

Chapter 10.5.50.10(3)(A), By-law 569-2013

A minimum of 50% (48.7 m²) of the rear yard must be maintained as soft landscaping. In this case, 17.6% (17.1 m²) of the rear yard will be maintained as soft landscaping

Conditions:

1. The downspout at the northeast corner of the existing dwelling shall be diverted and conducted toward the common driveway to the west of the property.
2. The rear yard shall be constructed substantially in accordance with the Site Plan submitted to the Committee of Adjustment on April 25, 2018 and attached as Attachment 1 to this decision. Any other variances that may appear on this plan that are not listed in this decision are not authorized.

ATTACHMENT 1- Site Plan







X 

G. Burton

Panel Chair, Toronto Local Appeal Body

Attachment 1

SITE PLAN LEGEND

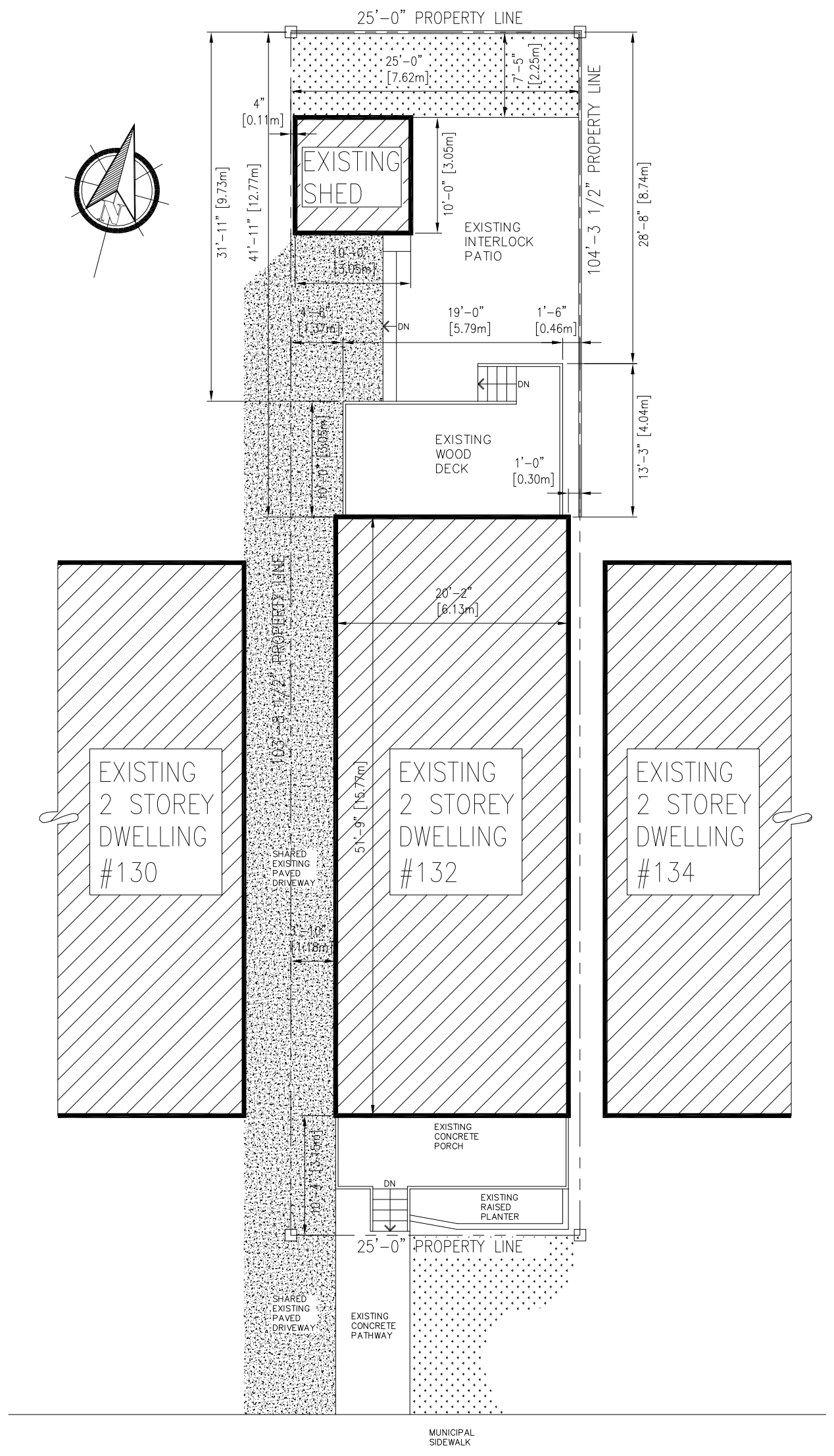
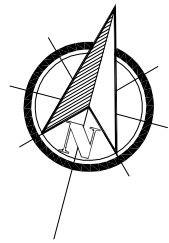
SYMBOL	DESCRIPTION
	DENOTES GRASS AREA SOFT LANDSCAPING
	DENOTES EXISTING BUILDING FOOTPRINT (HARD)
	DENOTES ASPHALT PAVING (HARD)
	DENOTES INTERLOCKING STONE PAVING (HARD)
	DENOTES PROPERTY LINE
	WOODEN FENCE

REAR YARD SOFT LANDSCAPE CALCULATIONS

EXISTING REAR YARD	1048 SQ.FT. [97.35]
REQUIRED MIN. SOFT LANDSCAPE AREA (50%)	524 SQ.FT. [48.7]
* PROPOSED SOFT LANDSCAPE AREA (17.6%)	184 SQ.FT. [17.1]
EXISTING SHED (HARD)	100 SQ.FT. [9.3]
EXISTING PAVED DRIVEWAY (HARD)	160 SQ.FT. [14.9]
EXISTING WOOD DECK AND STAIR (HARD)	214 SQ.FT. [19.9]
EXISTING INTERLOCK PATIO (HARD)	360 SQ.FT. [33.4]
* REAR YARD SOFT LANDSCAPE VARIANCE IS BEING REQUESTED	

SCOPE OF WORK

LEGALIZE AN ALREADY INSTALLED PAVEMENT IN THE BACKYARD WHICH REDUCED THE AMOUNT OF SOFT LANDSCAPE REQUIRED. THIS HAS BEEN NOTED BY THE BUILDING INSPECTOR.



132 BARKER AVENUE

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DATE				PROJECT NUMBER		DRAWING NUMBER							
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