

## DECISION AND ORDER

**Decision Issue Date:** Wednesday, April 17, 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): BYUNG SOON KWON

Applicant: ASEN VITKO ARCHITECT

Property Address/Description: 227 OAKWOOD AVE

Committee of Adjustment Case File Number: 18 199749 WET 17 MV

TLAB Case File Number: **18 236358 S45 17 TLAB**

**Hearing date:** Tuesday, February 19, 2019

**DECISION DELIVERED BY STANLEY MAKUCH**

### APPEARANCES

Name	Role	Representative
Asen Vitko Architect	Applicant/Appellant's Legal Rep	
Byung Soon Kwon	Owner/Appellant	
Sung Hee Lee	Party	
Maria Scolaro	Party	Marshall Reinhart
John Brady	Participant	

## **INTRODUCTION**

This is an appeal from a decision refusing the following variances to legalize and maintain the existing rear attached garage:

**1. Section 10.80.40.70.(3)(A), By-law 569-2013**

The minimum required side yard setback is 1.2 m.

The altered dwelling will be located 0 m from the north and south side lot lines.

**2. Section 10.80.40.70.(2)(B), By-law 569-2013**

The minimum required rear yard setback is 8.05 m.

The altered dwelling will be located 0 m from the rear yard lot line.

**3. Section 10.80.40.30.(1), By-law 569-2013**

The maximum permitted dwelling depth is 19 m.

The altered dwelling will have a depth of 29.41 m.

**4. Section 10.80.40.20.(1), By-law 569-2013**

The maximum permitted dwelling length is 17 m.

The altered dwelling will have a length of 28.58 m.

**5. Section 10.5.40.60.(7), By-law 569-2013**

The minimum required lot line setback for an eaves overhang is 0.3 m.

The eaves overhang of the altered dwelling will be located 0 m from the north, east, and south lot lines.

**6. Section 10.5.50.10.(3)(A), By-law 569-2013**

A minimum of 50% of the rear yard shall be maintained as soft landscaping. A total of 0% of the rear yard will be maintained as soft landscaping (0 m<sup>2</sup>).

**7. Section 3.6.1.(b), By-law 1-83**

To retain and use the attached garage as a non-conforming converted dwelling.

## **BACKGROUND**

The appeal is brought by the neighbouring property owner at 225 Oakwood Ave. because of moisture in the garage on that property.

## **MATTERS IN ISSUE**

The only matter in issue was whether recent repairs to the garage at 227 Oakwood Ave. caused the moisture to accumulate in the neighbouring garage.

## **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 uncontradicted evidence at the hearing was that the garage was a legal nonconforming use which was damaged by a falling tree branch in 2015. It was then repaired without a permit. In the reconstruction, the roof was raised 14 inches at its highest point to improve drainage and ensure drainage was only onto 227 Oakwood.

The only person to give evidence in opposition was the son-in-law of the owner of 225 Oakwood. His evidence was that moisture has accumulated in the garage at 225 Oakwood since the repairs have been completed, although the two garages do not abut one another.

There was also a letter to the Committee of Adjustment from Mr. Brady that the garage cast an additional shadow on his property to the north because it was much higher than it was before the repair.

There was also a report from City Planning staff to the Committee of Adjustment (Committee) recommending against approval of the application. Staff also stated that should the Committee choose to approve the application, it recommended that the following conditions be imposed: 1. The applicant shall submit a landscape plan to the satisfaction of the Director of Community Planning, Etobicoke York District; and 2. The requested dwelling depth, length and rear yard setback shall be attributed to the one-storey rear attached garage, as shown on the plans submitted and held on file by the Committee of Adjustment, date stamped July 25, 2018.

## **ANALYSIS, FINDINGS, REASONS**


I accept the evidence that the garage was damaged and reconstructed and that the two garages do not abut. I further find, in spite of the cross examination by Mr. Reinhardt and the evidence of Mr. Di Roma, that there was no demonstration that the repairs caused moisture to accumulate in the garage at 225 Oakwood Ave. I also find

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that the Planning staff gave no concrete reasons for recommending against the approval. I do, however, accept their recommended conditions to ensure that the landscaping on the site is improved and that the setbacks and heights are appropriate. I find that the latter condition should address the concerns in Mr. Brady's letter. Moreover, on the basis of the evidence of Mr. Vitko, an architect appearing on behalf of the applicant, and my visit to the site, I find that the variances, cumulatively and individually, meet the four tests in the Planning Act and conform with relevant provincial policy and should be approved.

**DECISION AND ORDER**

The appeal is allowed, the decision of the Committee set aside, and the variances set out in Appendix 1 are approved subject to the conditions in Appendix 2.

X 

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S. Makuch

Panel Chair, Toronto Local Appeal

## APPENDIX 1

1. **Section 10.80.40.70.(3)(A), By-law 569-2013** The minimum required side yard setback is 1.2 m.  
The altered dwelling will be located 0 m from the north and south side lot lines.
2. **Section 10.80.40.70.(2)(B), By-law 569-2013** The minimum required rear yard setback is 8.05 m.  
The altered dwelling will be located 0 m from the rear yard lot line.
3. **Section 10.80.40.30.(1), By-law 569-2013** The maximum permitted dwelling depth is 19 m.  
The altered dwelling will have a depth of 29.41 m.
4. **Section 10.80.40.20.(1), By-law 569-2013** The maximum permitted dwelling length is 17 m.  
The altered dwelling will have a length of 28.58 m.
5. **Section 10.5.40.60.(7), By-law 569-2013**  
The minimum required lot line setback for an eaves overhang is 0.3 m.  
The eaves overhang of the altered dwelling will be located 0 m from the north, east, and south lot lines.
6. **Section 10.5.50.10.(3)(A), By-law 569-2013**  
A minimum of 50% of the rear yard shall be maintained as soft landscaping. A total of 0% of the rear yard will be maintained as soft landscaping (0 m<sup>2</sup>).
7. **Section 3.6.1.(b), By-law 1-83**  
To retain and use the attached garage as a non-conforming converted dwelling.

## **APPENDIX 2**

1 The applicant shall submit a landscape plan to the satisfaction of the Director of Community Planning, Etobicoke York District; and (is there a date by which this should occur?)

2. The requested dwelling depth, length and rear yard setback shall be attributed to the one-storey rear attached garage, as shown on the plans submitted and held on file by the Committee of Adjustment, date stamped July 25, 2018.