

DECISION AND ORDER

Decision Issue Date Monday, May 13, 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): ROMAN LICHAK

Applicant: HANNA DE LARZAC

Property Address/Description: 10 HILLAVON DR

Committee of Adjustment Case File Number: 18 248074 WET 03 MV

TLAB Case File Number: 18 267041 S45 02 TLAB

Hearing date: Thursday, May 09, 2019

DECISION DELIVERED BY TED YAO

APPEARANCES

Name	Role	Representative
Roman Lichak, Iryna Rohozhynska	Owners/Appellants	Matthew Di Vona
Jane McFarlane	Expert Witness	

INTRODUCTION

Roman Lichak and Iryna Rohozhynska (the "owners") seek to demolish an existing bungalow and replace it with a two storey home with a slightly smaller ground floor footprint. Their application was refused by the Committee of Adjustment on November 22, 2018; they appealed and so this matter comes before the TLAB.

BACKGROUND

The owners need the variances as set out in Table 1:

Table 1 Variances requested for 10 Hillavon Drive			
By-law 569-2013¹			
		By-law Standard	Proposed
1	Lot coverage	33%	33.85%
2	Maximum floor space index	0.45 times the area of the lot	0.67 times the area of the lot
3	Front yard setback	9.48 m	9.3 m
4	Side yard setback	1.2 m	0.91 m to west side lot line
5	Exterior main wall height	7.0 m	7.5 m
6	Maximum soffit height	6.5 m	7.5 m
7	Elevation of floor of garage	Must slope up from 140.18 m	Proposed elevation is lower (139.86 m)

MATTERS IN ISSUE

I must be satisfied that the application meets the four tests under s. 45(1) of the *Planning Act*, that is, 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.

This is a hearing in which neither the City of Toronto nor any other interested persons attended. Nonetheless I must exercise my independent judgement as to the statutory tests. I found that the planner retained by the owners, Ms. McFarlane, prepared her case as if there would be opposition, integrating facts, policy and opinion in a thorough and careful fashion.

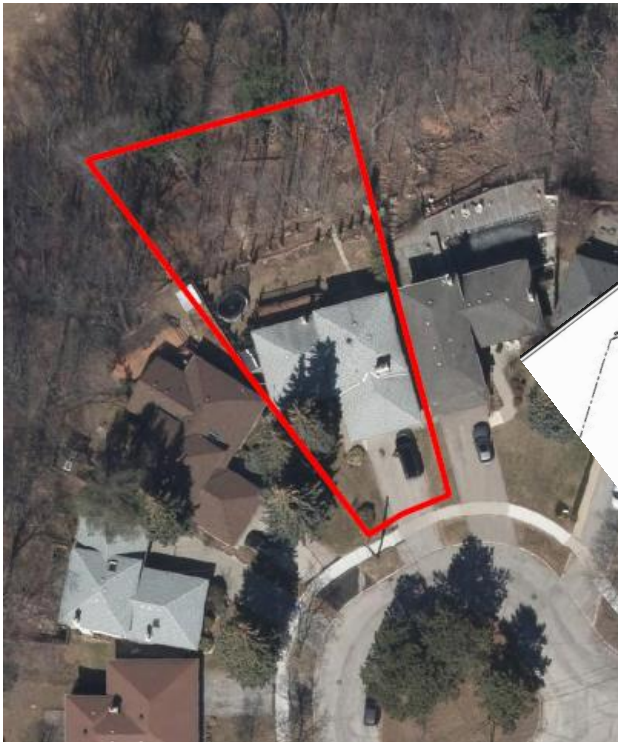
EVIDENCE

Ms. McFarlane was the only witness. I qualified her as able to give opinion evidence in the area of land use planning.

¹ The present City-wide zoning by-law was adopted in 2013 and because appeals are still being resolved, the City's zoning examiners require two sets of zoning compliance (testing for any variances from 2013 zoning by-law and any previous zoning by-laws). All the variances except number 6 are from the new City-wide by-law. Variance #6 is from the former City of Etobicoke Code 320, adopted April 20, 1959.

ANALYSIS, FINDINGS, REASONS

Issues relating to the Toronto and Region Conservation Authority



This is a challenging site because it backs onto a steeply wooded area under the jurisdiction of the Toronto and Region Conservation Authority (“TRCA”). Please see the aerial photo (above left) contrasted with the site plan (above right). On the latter, TRCA planner Anna Lim has hand written, “Stable top of slope for zoning review 08/24/18 Anna Lim”. The reason is that the plans examiner can only use “top-of-slope” lands as lot area for purposes of calculating coverage and Floor Space Index². The owners have requested variances for an increase in **coverage** from 33% to 33.85 % and an increase in **Floor Space Index** from 0.45 to 0.67. Ms. McFarlane says that if

² 5.10.40.40 Floor Area

(1) Floor Area Calculation Restriction Below a Shoreline Hazard Limit or Stable Top-of-Bank On lands under the jurisdiction of the Toronto and Region Conservation Authority pursuant to the Conservation Authorities Act, R.S.O 1990 c. C.27, as amended, other than in the Open Space Zone category, if the Toronto and Region Conservation Authority determines that a shoreline hazard limit or a stable top-of-bank crosses a lot, the portion of the lot below that shoreline hazard limit or stable top-of-bank is not included in the calculation of the floor space index for that lot.

below top-of-slope lands were included, the figures would not need a variance (18% and .37 respectively).

This sounds as if Ms. McFarlane is saying that if you ignore section 5.10.40.40 (instructing the zoning examiner to consider only the table lands), the owners would not need a variance, which may seem counter to the intent of the Zoning By-law. But her analysis went farther. She pointed out that the **coverage** variance (33.85% vs 33%) is very small numerically. The **Floor Space Index** variance (0.67 vs. 0.45) may be compared with the lots at 48 and 50 Ravenscrest, just around the corner, where the Committee of Adjustment has also authorized FSIs in the 0.67 range and which are on flat sites (i.e. the entire site could be used for FSI calculations). In numerical terms, the owners seek variances that are reasonable and minor and their design has deferred to the constraints of the site.

The owners have pulled back from the existing house in every direction, north, south, east and west. This has resulted in an easing of tight side yard-to-side yard distances for the neighbours (8 and 12 Hillavon) and a more desirable use of the lot than the former bungalow. The resulting massing is similar to numerous other two storey dwellings in the study area³.

TRCA planner Ms. Lim required a geotechnical study to establish the stable top-of-slope and after the study was reviewed by TRCA geotechnical experts, she wrote to the Committee of Adjustment:

TRCA staff reviewed the requested variances and they have no impact on TRCA's policies and programs. Given the above, we have **no objections** to approving Minor Variance Application No. A0780/18EYK. The TRCA permit is still required.

The site plan shows accessory buildings (pool and deck) about 7 m from the stable top-of-slope. Normally the TRCA requires 10 m for all new development. I understand this will be considered in the permit process, which is separate from the variance process and can consider development which has existed for many years prior to the application for a TRCA permit. The variances sought are for the **house**, not the accessory structures, and I have no jurisdiction nor can I comment on matters outside the variances.

Accordingly, I find that the coverage and Floor Space Index variances maintain the intent of the zoning bylaw.

The driveway slopes

The owners request a variance because the driveway elevation at the garage door is 139.98 m (see number in heavy rectangle at the top of diagram, below left)

³ For example, 4, 6, 8 Hillavon and 5 and 7 are older two stories and 11 Hillavon and 2 Hillavon are newer 2 storey.

whereas the curb cut is 140.18 m (please see "bubble" around "BC140.18" in the diagram below left). These numbers indicate elevation above sea level, so the garage is .2 m (six and a half inches) below the curb.

Ms. McFarlane's evidence was:

This is such a unique lot, with the two slope changes, and that high point, plus the municipal boulevard, it complicates the system so much. I've explained the below grade garage before, with a municipal boulevard [in previous hearings]. And it was challenging when you are a flat lot . . . and I went through this numerous times with staff, with the architects, with Mr. De Vona [the owners' lawyer] to make sure I had it straight in my mind [because] I have to sit up here and swear that what I am saying is true, when I have to speak to this variance, I believe it does meet the intent of the by-law.

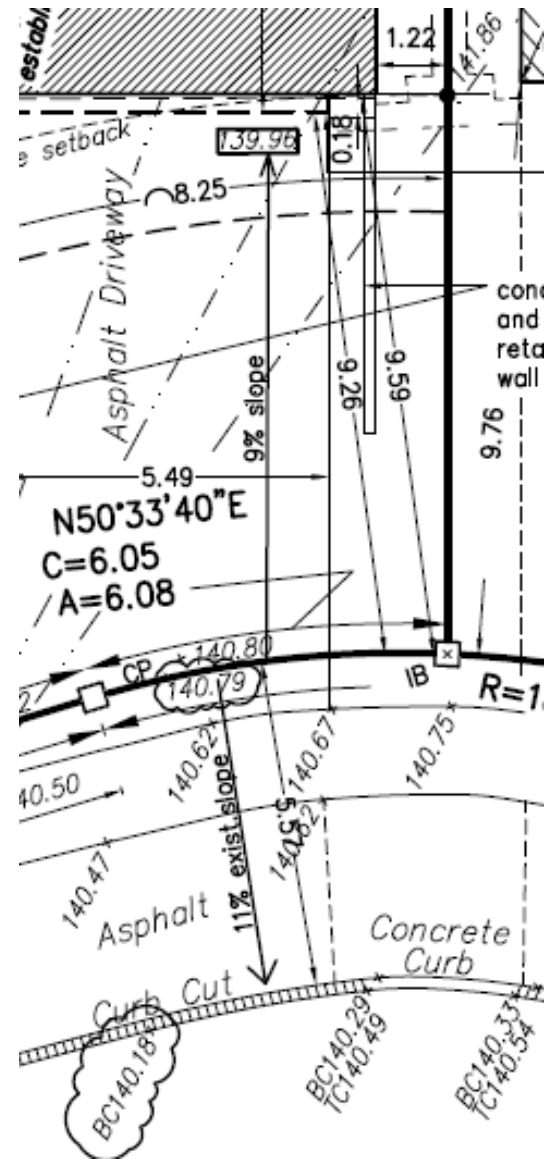
On the basis of her testimony, I find the following. The Committee of Adjustment had before it the comment of Nissrine Bouslama, Traffic Planning /R-O-W Management, asking for a positive slope of a minimum 2% from the **roadway** to the garage. The "roadway" is where the curb is. The plans examiner, Bitu Majoubi, wrote:

The elevation of the lowest point of vehicle entrance in a main wall of the building must be higher than the elevation of the centerline of the driveway at the point where it intersects a **lot line abutting a street** (140.18 m above sea level). (my bold)

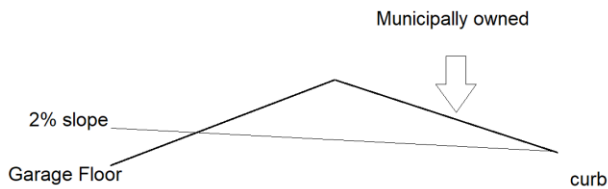
At the request of Ms. Bouslama, Hanna De Larzac (the architect) submitted revised plans (November 2018) in which she left the elevations of the garage floor and curb **unchanged**, but **added information**, indicating slopes. The revised drawing (right) shows that the highest point on the lot is roughly at the legal boundary between privately owned and municipally owned land, that is, two thirds down the driveway. From that, it points it slopes down in two directions; namely 9% towards the garage and 11% towards the curb.

What the written words in the correspondence and By-law do not make clear is that Transportation/ R-O-W Management's main concern is the 11% slope, to ensure proper drainage in the public realm.

The general situation in Toronto is that the front property line falls somewhere between a garage door and the curb. The homeowner



has no authority to change grades or drainage of municipally owned land, which in this case is the highest point of the lot. While the owners could raise the level of the garage floor to obey the 2% "slope" requirement (see light line left in the sketch I made from



Schematic cross section (not to scale)

Ms. McFarlane's explanation), this would be an entirely imaginary line; since the owner cannot regrade municipally owned lands. All the owners could do is reduce somewhat the 9% slope on their own lands to a redrawn design with a raised garage floor. This would create height problems for the rest of the house.

Accordingly, I find that Variance #7, in which the owners ask to be relieved from the 2% positive slope, meets the intent of the Zoning By-law, because the general intent of the zoning is to maintain engineered flows on the City owned lands and direct the flows to the proper catch basins.

The Official Plan test

The variances must maintain the intent and purpose of the Official Plan. The plan has two major policies

1. the development must respect and reinforce the existing pattern of streetscapes and open spaces (footnotes ⁴ and ⁵); and
2. the development must fit into the existing and planned context⁶

Ms. McFarlane said the ratio of original and redeveloped properties is about equal; that is, the existing pattern of streetscapes is composed partly of housings like the owners' present home and the home they seek to build. Other granted minor variances of similar magnitude, except for Variance #5, exterior main wall height. Height variances,

⁴ *Neighbourhoods and Apartment Neighbourhoods* are considered to be physically stable areas. Development within *Neighbourhoods* and *Apartment Neighbourhoods* will be consistent with this objective and will respect and reinforce the existing physical character of buildings, streetscapes and open space patterns in these areas. (Chapter 2.3.1 Healthy Neighbourhoods).

⁵ Development in established *Neighbourhoods* will respect and reinforce the existing physical character of the neighbourhood, including in particular: . . . heights, massing, scale and dwelling type of nearby residential properties; . . . prevailing patterns of rear and side yard setbacks and landscaped open space; (Chapter 4.1 *Neighbourhoods*).

⁶New development will be located and organized to fit with its existing and/or planned context. (Chapter 3.2.1 *Built Form*).

including main wall would be imperceptible on Hillavon, which is a sloping street, and houses with equal building heights will appear to be higher as one ascends toward Ravenscrest. The main wall could be reduced, but at the cost of sacrificing usability of the second-floor interior space.

Houses with these variances or similar ones form the streetscape and so the chosen design respects and reinforces this physical pattern as well as “fitting in” physically to the neighbourhood. The TRCA “no objection” letter is indicative that the pattern of open spaces is respected. The owners will not touch the land below top of slope. There is one large privately owned tree that will be removed in the front yard; Urban Forestry has indicated a permit must be obtained, following the Tree By-law protocol.

As a result, I find that the intent of the Official Plan is maintained.

Other statutory tests.

By focusing on the variances, some of which are greater than what have been previously granted, Ms. McFarlane said one loses sight of those variances that are **not** being requested. For example, although there are setback variances, there is no accompanying hard or soft landscaping variance application. Although there are exterior main wall and soffit height variances, the architect has made the maximum building height a given and not attempted to solve problems by resorting to a higher building height than is permitted. There is a front yard setback deficiency of about 0.18 m, but this only affects the eastern 1 metre of the front façade; the remaining façade is well outside the setback line, which curves in convex fashion to match the curbed knoll feature in the centre of the street. She said:

The variances result in a design which is appropriate for the neighbourhood as well as just the property. It is compatible with the newer dwellings in the neighbourhood and will be compatible with the original dwellings. . . It's my opinion that the proposed variances fulfil all four tests under the *Planning Act*, . . . we have gone through the complexities due to the slope and the municipal boulevard.

What Ms. McFarlane is saying is that this is a reasonable proposal that maximizes the use of a challenging site, to produce a livable design that is contextually appropriate and desirable for the appropriate development of the land. I concur with her in finding that all the statutory tests are met.

DECISION AND ORDER

I authorize the variances set out in Table 1 on condition that the owners build in substantial compliance with the plans filed with the Buildings Department and appropriate permits are obtained under the Tree By-law.

X

Ted Yao

Ted Yao
Panel Chair, Toronto Local Appeal Body
Signed by: Ted Yao