

DECISION AND ORDER

Decision Issue Date Friday, May 24, 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): ALTONA DEVELOPMENTS INC

Applicant: ALTONA DEVELOPMENTS INC

Property Address/Description: 15 NORCAP AVE

Committee of Adjustment Case File: 18 243019 ESC 99 MV

TLAB Case File Number: 18 272567 S45 22 TLAB

Hearing date: Wednesday, May 08, 2019

DECISION DELIVERED BY DINO LOMBARDI

APPEARANCES

Name	Role	Representative
Justin Mariyanayagam	Owner	
Belix Kulendra	Owner	
Altona Developments Inc.	Appellant	Matthew Di Vona
Andrew Everton	Expert Witness	
Julia Pierdon	Expert Witness	
Jean Key	Participant	
Claudia Heffron	Participant	

INTRODUCTION

This is an appeal from a decision of the Scarborough Panel of the City of Toronto (City) Committee of Adjustment (COA) approving a single variance to 15 Norcap Avenue (subject property).

The subject property is situated in the L'Amoreaux Neighbourhood of Toronto, southwest of the intersection of Finch Avenue and Kennedy Road. More specifically, the property is located on the south side of Norcap Avenue, east of its terminus at Castle Hill Drive and west of its intersection with Grove Hill Drive.

The subject property is currently occupied by a single detached dwelling with an integral two-door garage. It is designated *Neighbourhoods* in the City's Official Plan (OP) and zoned S-1-28-29-42-48-82-260 (with some site-specific exceptions) by the former Scarborough Zoning By-law 12466 (former By-law) and Residential RD (x1120) by the harmonized Zoning By-law 569-2013 (new By-law).

BACKGROUND

Mr. Justin Mariyanayagam, the owner of the subject property, and Altona Developments Inc., the owner's agent and the Appellant in this matter, were refused by the COA for a minor variance to permit the construction of a new 427.3m² two-storey residential dwelling on the subject property (whereas the Zoning By-law permitted a maximum of 279m² in December 2018).

The owner and his agent subsequently revised the development proposal and submitted a new application to the COA requesting relief from the former By-law to permit a dwelling with a Gross Floor Area (GFA) of 337.7m² and an east side yard setback of 1.2m. That application was approved on February 20, 2014, on the conditions that the dwelling be constructed in accordance with the site plan that was attached to the decision and the provision of a detailed Arborist Report/Tree Inventory. That COA decision is attached as **Attachment 1** to this decision.

The owner proceeded to construct the new dwelling with additional floor area that exceeded the maximum floor area approved by the COA in its 2014 decision. The additional floor area was created by extending the second floor into the open two-storey family room inside the house, and by extending the second floor over the garage at the front of the dwelling.

This additional floor area was identified by the City during a building inspection. As a result, two Orders to Comply (Not to Plans) were issued, both in 2015. To date, neither of these Orders has been resolved by the owner.

In order to address the inconsistencies between the permitted GFA and the as-built GFA, the owner submitted a Minor Variance Application to the COA for the following variance to address the increased floor area:

By-law No. 12466:

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- 1) The proposed floor area is 380m², whereas the maximum permitted floor area is 279m². (In 2014, the Committee of Adjustment approved a variance to permit a floor area of 337.7m² – File A313/13SC).

That application was refused by the COA on December 13, 2018 and the owner appealed the decision to the Toronto Local Appeal Body (TLAB) which set a Hearing date for May 8, 2019.

On May 7, 2019, one day before the scheduled Hearing, the Appellant filed a Disclosure Form 3 that included an updated list of the requested variances (Exhibit 9) along with a new Zoning Review Waiver which reflects the current relief being sought. The Appellant is now seeking two variances from the former By-law: the first effectively reducing the GFA for the as-built dwelling; and a second, companion variance that clarifies the resulting FSI under the former By-law as noted below:

1. By-law No. 12466

To permit the proposed 350.3m² floor area, whereas the Zoning By-law permits the maximum 279m² floor area.

2. By-law 569-2013

To permit the proposed FSI of 0.51 times the area of the lot, whereas the Zoning By-law permits the maximum FSI of 0.4 times the area of the lot.

Mr. Matthew Di Vona, the Appellant's solicitor, advised the Panel that the owner had originally sought a GFA of 380m² before the COA, which represented an additional 43m² to that which had been approved by the Committee in 2014. In explaining the discrepancy, he advised that the City's Building Department had recommended to the owner that he err on the side of caution and incorporate the larger 380m² GFA number to allow for a margin of error in the absence of an accurate as-built calculation.

However, Mr. Di Vona informed the Panel that the Appellant had conducted an as-built survey of the existing dwelling and concluded that the variance of 380m² that was sought before the COA in 2018 was incorrect and did not reflect the as-built condition. Instead, only 12.6m² of floor area was actually added when the dwelling was constructed.

In addition to the revised list of variances, the Appellant has also submitted corrected and updated as-built drawings (Exhibit 7) on May 7, 2019 that reflect the revised GFA being requested. Mr. Di Vona advised the Panel that there were very minor revisions made to the drawings to correct a notation in the data shown on the drawings, an error that was caught late in the process.

In addressing the late filing of the drawings, he submitted that the architect had been out of the country and only recently was able to make the necessary corrections. Mr. Di Vona suggested that the corrections were not substantive, the tardiness in filing the drawings was not done in 'bad faith' (his words), and the Appellant did not want the TLAB to potentially append incorrect drawings to a decision. He also suggested that the alternative to late filing of the revised variances and drawings would have been to either seek an adjournment or, failing that, move forward to seek approval from the TLAB for a far greater GFA than is actually built.

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Ms. Jean Key (resident at 25 Colinayre Crescent) and Ms. Claudia Heffron (resident at 12 Norcap Avenue), filed Participant Statements and were in attendance at the Hearing. The only other Participant, Philip Leung (resident at 7 Norcap Avenue) who sought Participant status and filed a Statement was unable to attend the Hearing. Ms. Key advised the Panel that she had been asked to speak on behalf of the other Participants in order to avoid repetition and to expedite the matter.

The City was not a Party at this Hearing nor were there any other Parties or Participants.

With respect to the issue of the revised variances and the late filing of documents, Ms. Key noted that the Participants spent countless hours on their Participant's Statements on the basis that the Appellant was requesting a GFA of 380m². She expressed frustration with the actions of the Appellant in waiting to the last minute to file these revisions and she submitted that the Participants felt "ambushed" (her word) by this tactic. She suggested that had the Participants been made aware that the Appellant was seeking an as-built GFA variance of 350m², a reduction of 30m² from the original variance, this process may have been avoidable.

In response, Mr. Di Vona confirmed that the late filings had not been circulated to the Participants in this matter but had been filed with the TLAB as required pursuant to the TLAB's Rules of Practice and Procedure (Rules). He noted that the Rules require document disclosure to the TLAB and other Parties only and that Participants are not afforded the same rights and privileges as Parties under the Rules.

Nevertheless, he asserted that the revised documents were uploaded to the TLAB website prior to the Hearing, no one contacted him regarding the revised filings, and he suggested that there is no prejudice to the late filings since the primary variance being sought represents a smaller GFA than previously requested.

In addressing the matter of late filings, I advised Mr. Di Vona that the TLAB discourages this practice and is loath to allow 'trial by ambush'. In this instance, I understand the frustration felt by the Participants and the amount of time and effort devoted to preparing for the Hearing only to arrive and find revised materials. However, in his opening statement, Mr. Di Vona indicated that the Appellant was requesting a significantly reduced GFA variance (approximately 29.7m² less) from that originally proposed.

To compound matters, the drawings required revisions due to an error caught late in the process which was further complicated by the architect's unavailability to correct the drawings in a timely fashion.

The TLAB is committed to fixed and definite hearing dates and to secure the just, most expeditious and cost-effective determination of every proceeding on its merits, pursuant to Rules 2.1 and 2.2, respectively. Given that the variance being sought for GFA had been reduced and the revisions to the site plan drawings were minor and technical in nature, I determined that the most appropriate course of action in this matter was to proceed and complete the Hearing on the day scheduled.

In listening to both sides, it became apparent, as expressed by Ms. Key, that the Participants were more upset with having to readjust their Statements based on the revised and reduced GFA number rather than with the fact that the as-built floor space is now lower.

Although I consider the filings as technically 'late', I do not consider them to be 'new filings' as they are simply correcting information that was inaccurate or not necessarily exact. As such, I concluded that the GFA variance was indeed a reduction and the two requested variances did not warrant further notice pursuant to s. 45(18.1.1) of the *Planning Act*, and I so find.

On the basis of this finding, I advised that the Hearing would proceed, and I would hear from the Appellant and the Participants, through their spokesperson, Ms. Key.

MATTERS IN ISSUE

As indicated, there are two variances sought by the Appellant, and the variance related to the permitted maximum GFA has been reduced to reflect an additional 12.6m² of GFA from the COA decision approved in 2014.

The matter at issue is whether the requested variances meet the applicable tests under Section 45(1) of the Planning Act (Act) and provincial policy. The TLAB is to consider the variances from the perspective that the additional floor space has not yet been built.

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 2017 Growth Plan for 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

Ms. Julia Pierdon was the only witness tendered by the Appellant. She is a Senior Planner with Weston Consulting and a Registered Professional Planner (RPP), and I qualified her to give opinion evidence in the area of land use planning. She filed an Expert's Witness Statement (Exhibit 1) and corresponding Acknowledgement of Expert's Duty (Form 6).

Prior to proceeding with her testimony, Ms. Pierdon advised the Panel that the original Witness Statement filed with the TLAB was prepared and authored by Andrew Everton, a planner at her firm who had previously been retained by the Appellant. She advised that, unfortunately, Mr. Everton had very recently left the firm and she had been assigned to the file. She confirmed that she was familiar with the application and was able to adopt and concur with Mr. Everton's Witness Statement.

Overview and Study Area

Ms. Pierdon commenced her testimony by briefly reviewing the subject property and its immediate context (Exhibit 2 – Survey Plan and Exhibit 3 – Aerial Photo). In this regard, she introduced a Photo Book (Exhibit 4), attached as Attachment 4 to her Witness Statement, to show the subject property and other properties on Norcap Avenue and the surrounding streets.

At this juncture, I advised that I had visited the subject property and the surroundings and had familiarized myself with the pre-filed materials.

She noted that the L'Amoreaux neighbourhood was first established in the late 1950's and originally consisted predominately of 1 to 1 ½ storey single detached homes, noting that some are still in existence. The neighbourhood is experiencing gradual regeneration in the form of new, larger dwellings and additions and upgrades to existing dwellings which are larger in size in both massing and height with a varied architectural style. These newer, executive-style houses are located adjacent to the original older dwellings suggesting a prevailing pattern of massing and scale in the area, particularly north and west of the subject property (Exhibit 4 - Photos 10-18).

In identifying the physical characteristics of the neighbourhood, she employed a 'generous' Study Area (Exhibit 5 – Study Area Map) bounded by Finch Avenue East to the north, Kennedy Road to the east, Birchmount Road to the west, and Huntingwood Drive to the south. She further narrowed that neighbourhood to a more focused area bounded by Castle Hill Drive, Norcap, Kennedy and Finch, in order to capture all properties subject to the same zoning performance standards as the subject property.

She highlighted the architectural style of the homes in this neighbourhood by way of several photographs of properties on Norcap Avenue and the streets proximate to the subject property to illustrate built form. She submitted that the area is a fairly compact urban residential neighbourhood with dwellings located close together with tight side yard setbacks and many dwellings in the immediate area having more minimal side yard setbacks than the historic norm. Her evidence demonstrated that newer homes in the

area are significantly larger and taller than the original dwellings and incorporate more contemporary design and exterior building elements.

She reviewed a total 83 recent COA decisions (Exhibit 6) within a 1,000 metre radius (radius not explained) of the subject property including 44 decisions within her study area. Twenty-six (26) were, in her opinion, of relevance to the variance application for the subject property; she highlighted the following addresses (variances that are greater than the requested variances are bolded):

- *8 Norcap Ave.* (directly across the street – Photo 4) – a 2013 COA approval for a GFA of 341m² and an FSI of 0.49 times the area of the lot.
- *21 Norcap Ave.* (existing dwelling located three properties immediately east of the subject property – Photo 16) – a 2015 COA approval for a GFA of **385m²** and an FSI of **0.54**;
- *1 Lovering Rd.* (north of the subject property – Photo 14) – COA approval for a GFA of **468m²** and an FSI of **0.54**;
- *2 Lovering Rd.* (north of the subject property – Photo 15) – a 2016 COA approval for a GFA of **371m²** and an FSI of **0.527**;
- *5 Lovering Rd.* (north of the subject property – Photo 19) - a 2015 COA approval for a GFA of 400m² and an FSI of **0.55**;
- *67 Castle Hill Dr.* (west of Norcap – Photos 45-47) – a 2007 COA approval for a GFA of **359m²** and an FSI of 0.48;
- *91 Castle Hill Dr.* – a COA approval for **360m²**; and
- *98 Castle Hill Dr.* – a COA approval for a GFA of **391m²** and an FSI of **0.53**.

In summarizing her review of the COA decisions, she submitted that all the properties she analyzed are in close proximity to the subject property and are indicative of the regeneration and development occurring within the neighbourhood and the alternative development standards to which relief is commonly sought. With respect to 8 and 21 Norcap Avenue specifically, she noted that those dwellings have incorporated floor space on the second level above the garage.

The Proposed Development

Ms. Pierdon reviewed the proposal and the as-built condition as contained in submitted drawings (Exhibit 7), and noted that development consist of the following features:

- A new building footprint that reflects:
 - Front yard setback of 9.34m;
 - East and West side yard setbacks of 1.2m;
 - Rear yard setback of 14.57m; and
 - Building length of 14.2m.
- A building height of 8.92m;
- A total GFA of 350.30 m²; and
- A lot coverage of 28.29%

The Statutory Tests

Prior to addressing the four statutory tests required under the Planning Act, Ms. Pierdon opined that the proposal and variance application is consistent with the provincial policy as found in the Provincial Policy Statement and the Growth Plan. She submitted that the proposal permits a redevelopment within the existing built-up area which is compatible with adjacent land uses and built form and that utilizes existing infrastructure and services, and that the built form is an appropriate type and scale within the perspective of the surrounding neighbourhood context.

With respect to the City Official Plan, she opined that the OP recognizes that change within neighbourhoods will occur over time and that change should fit the general physical character, and respect and reinforce the existing physical characteristics. Referencing the policies found in Section 4.1 of the OP, and specifically Policies 4.1.5, she opined that the proposed new dwelling incorporates and considers the existing and planned built form context of the surrounding area and streetscape characteristics and meets the criteria for new development within the *Neighbourhoods* designation.

She reviewed the proposal considering Official Plan Amendment 320 (OPA 320), which updated the City's *Neighbourhoods* policies of the OP (Exhibit 8 – Applicant's Combined Document Book). Although she noted that the subject variance application pre-dates the approval of OPA 320 (the Local Planning Appeal Tribunal issued an Order bringing the amended OPA 320 into effect save and except for site-specific appeals on December 7, 2018), she applied the policies of OPA 320 to the proposed variance application with particular consideration to Policy 4.1.5.

Policy 4.1.5 states that the geographic neighbourhood to which the "*Neighbourhoods*" policies apply is delineated considering the context in proximity to a proposed development. The policy also states that the physical character of this delineated geographic neighbourhood includes the physical characteristics of the entire geographic area in proximity to the proposed development, and the physical characteristics of the properties that face the same street and are located on the same block as the proposed development. While "prevailing" means "the most frequently occurring." Policy 4.1.5 recognizes that geographic neighbourhoods contain a mix of physical characteristics.

She opined that the proposed development conforms to the revised OP policies contained within OPA 320 and respects and reinforces the physical characteristics of the geographic neighbourhood. She submitted that this is evident based on the COA approvals in the area which, she opined, suggest that the neighbourhood is in flux and larger built forms containing tighter side yard setbacks are common in the surrounding area.

With respect to maintaining the general intent and purpose of the Zoning By-law, she opined that proposed variance application would bring the existing two-storey single detached dwelling into conformity with a built form that is consistent with the existing and planned dwellings on the street and in the surrounding neighbourhood. She submitted that the constructed GFA of 350.3m² is consistent with this built form and the variance constitutes a minor increase of 12.6m² above the approved gross floor density.

She highlighted that fact that this additional density was constructed mainly internal to the structure and made no revision to the building footprint of the existing dwelling.

She noted that recent COA approvals have been for GFA values greater than the maximum of 279m² permitted by the By-law. Of the 26 variance applications highlighted in the COA Decision table, 17 were approved and 8 properties received permissions for a GFA greater than that being requested by the Appellant. Ms. Pierdon opined that these approvals indicate a trend in allowing larger massing permissions in the immediate and broader neighbourhood.

As to the last two tests, whether the proposal is desirable for the appropriate use of the land and whether it is minor, Ms. Pierdon opined that the proposed variances will bring into conformity a building consisting of a built form that is clearly established in the area. She suggested that the requested GFA variance is within the range of those that have been approved for density both in the immediate area and the broader neighbourhood, over the past ten years. She opined that there are no unacceptable adverse impacts of a planning nature on the adjacent properties or the surrounding area and, from a numeric standpoint, the variances sought are not significant departures from the zoning regulations.

She opined that the proposal meets the four tests for a minor variance and represents good planning and supports the approval of the variance application.

Ms. Key addressed the TLAB on behalf of the Participants and to deliver an oral statement. She was hesitant to do so as she repeated her frustration and her sense of feeling “ambushed” (her word) by the Appellant’s late filings and the revisions to the request GFA variance. She argued that the Appellant had constructed a dwelling that was not in accordance with the approved site plan and ignored two Orders to Comply that were issued by the City, and “that this was a premeditated and willful action on their part;” *nota bene*, she was referring to the owner, the builder and the architect in this case. (Exhibit 10, para. 15)

As previously articulated, she stated that if the Participants in this matter had been made aware of the reduction in the requested GFA variance to now 350.3m², this matter may have possibly been resolved without a hearing. She further noted that this entire process, including the Appellant’s attempt to obtain approvals to construct the subject dwelling (from the original COA application in 2013) has taken six years and she feels the approvals process is inefficient and has not been undertaken in a timely manner.

She was hesitant to read from her prepared Participants Statement (Exhibit 10) but following a brief caucus with Ms. Heffron, the other Participant in attendance, reluctantly agreed to summarize the Participants’ concerns with the application. She submitted that in spite of the reduction in the overall GFA floor space variance being sought, the Participants continue to be furious with the Appellant and find it “utterly preposterous (her words)” that the extension of the second storey front elevation forward by 2.36m would be deemed generally constructed in accordance and be consistent with the design intended in the condition imposed by the COA.

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Referring to the 'Square Footage Comparison of Rebuilt Homes on Norcap Ave.' chart attached to her Statement (Exhibit 10), she suggested that the subject dwelling has "a significantly larger square footage than other homes that have been rebuilt between 1990 and 2018." (Exhibit 10, para. 28) For comparison purposes, she highlighted 1 Norcap Avenue where, in 2017, the COA refused a variance for 347.24m² for that property.

Ms. Key stated that the trend for larger GFA's is having a negative impact on the neighbourhood resulting in variances for building length and width which, in turn, create encroachments on side yard setbacks. She concluded by suggesting that zoning by-laws need to be respected to ensure appropriate development and the TLAB should not allow applicants to "build outside of permissions and then ask for forgiveness after the fact."

On cross-examination, Mr. Di Vona referred Ms. Key to the 2014 COA decision which approved the construction of the subject dwelling with a GFA of 337.7m² and an east side yard setback of 1.2m. He specifically highlighted the site plan drawing that was attached to that decision and which is tied to Condition #2. He noted that the as-built construction of the subject dwelling matches the building footprint in the approved site plan.

With respect to the chart in Ms. Key's Statement (Exhibit 10 – Exhibit 1), he noted that she failed to include floor space data for 21 Norcap Avenue. He submitted that Ms. Pierdon's prior *viva voce* testimony and evidence confirmed that the COA approved a GFA of 385m² and that dwelling has now been constructed.

In closing arguments, and on questions from the Panel, Mr. Di Vona addressed the issue of the two Orders to Comply currently pending against the owner of the subject property. He acknowledged that he is counsel for the Appellant in those matters and they are being dealt with in a separate process.

As to the application before the TLAB, he provided case law for guidance in the form of a decision from the former Ontario Municipal Board (OMB). The decision, *Mazzawi v. Toronto (City)* [CarswellOnt 7707 (OMB)] (PL131366) May 30, 2014 re 129 Baldwin Street, involves a similar application to that before the TLAB for the subject property. He highlighted paragraphs 15 and 16 in that decision, dealing with as-built situations.

He noted that at paragraph 15, the Board Member wrote:

"The fact that the additions were constructed without a building permit is not one upon which the board can base a decision. In *Turner v. Vaughan (City) Committee of Adjustment* [1994] O.M.B.D. 2036, Members Yao and Fish made a statement that stood the test of time:

"When structures are built without a permit, the Board must not make a decision based solely on the fact that the construction is illegal. On the other hand, it should not be motivated by its wish to spare the owners the expense of removing the structure. Our approach must be to pretend that the structure is not there,

and to imagine what would be the planning consequences if the Turners were proposing to build these structures for the first time.”

Further, at paragraph 16 in that decision, the Member wrote:

“There is a feeling on the part of those opposed that the Board should deal harshly with such applications. Or, to use a very morally sounding phrase, such applications have not come to the Board with clean hands. However, as vexing as these applications appear to be, the Board considers them without the input of emotion. It takes into account the facts pertaining to the applications, the arguments for and against, the applicable statutes and planning documents and arrives at a decision as if the works were not there.”

ANALYSIS, FINDINGS, REASONS

Let me first further address the issue of late filings and revisions to materials submitted by the Appellant literally the day before the scheduled Hearing that has angered the Participants in this matter, and, understandably so.

The TLAB has been very clear that it does not condone the late presentation of exhibits and documents upon which reliance is intended to be placed arriving at the 11th hour, or later. This is, as I indicated at the commencement of this proceeding, an element of ‘trial by ambush’, a practice eschewed by the TLAB Rules.

In this case, Mr. Di Vona asserted that the revised variances and drawings were submitted to clarify matters and were tendered without prejudice to the Participants. As Mr. Di Vona stated, the variances and as-built drawings correct a deficiency and error that, if not revised, would have sought a GFA variance that is far greater than actuality, further compounding the opposition to this development from the abutting neighbours. He characterized the situation as a “catch-22” for the Appellant – don’t file the revised materials and request an adjournment of the scheduled Hearing or file late with accurate documents hopefully assisting the Participants in understanding that the requested GFA variance has been reduced significantly.

He suggested that in his view what is vexing for the Participants is that, as Ms. Key stated, they believe that the late filings were done intentionally and in ‘bad faith’. He reiterated that there is no evidence that the Appellant has not come before the TLAB with ‘clean hands’, (his words) so to speak. Nevertheless, he submitted that from a planning perspective this is an irrelevant consideration and that what is important is the test of Section 45(1) of the *Planning Act* and the expert planning opinion evidence provided by Ms. Pierdon.

I certainly appreciate the frustration expressed by the Participant in feeling a sense of being “ambushed” and that they would have expected the attendance by the owner and /or the Appellant at the Hearing in order to address questions regarding the context of the oversight in constructing the dwelling. I, too, would have anticipated their attendance to answer clarifying questions to assist the Panel in this matter. However, I must agree with Mr. Di Vona and the sentiment expressed in *Mazzawi* by Board

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Member Sutherland who wrote that “as vexing as these applications appear to be, the Board considers them without the input of emotion.”

As to the February 24, 2014 COA decision that approved the variance to permit the 337m² of GFA on the subject property, I agree with Mr. Di Vona that that decision was deficient in the sense that it would have been more prudent to attached as part of Condition #2 a set of elevation drawings in addition to the Site Plan. In that way, it would have been incumbent on the owner to construct the subject dwelling substantially in accordance with those drawings. While I can't agree with Mr. Di Vona's respectful submission that “it was entirely reasonable to build over the garage,” I do agree that the application before the TLAB is essentially approval for an additional 12.6m² and that there is no change to the building footprint as constructed. I acknowledge that the 2014 COA decision approved a GFA of 337.3m² as of right and that that decision was not appealed by any of the residents; ergo, that decisions stands.

The TLAB must deal with the planning issues before it, namely whether the requested variances meet the four tests of the *Act*.

I find from the uncontroverted expert opinion evidence that the subject property's planned context supports the proposed variance application and the development represents good planning. Further, I agree with Ms. Pierdon that the proposal will result in the redevelopment of the property that is sympathetic and sensitive to the immediate context and it contemplates a dwelling that respects and reinforces the existing physical context of the neighbourhood. I find from the evidence that there are numerous examples of area character that demonstrate large homes next to smaller, older homes, some with second floors extending above and over the front garage in the immediate context, on proximate streets and in the broader neighbourhood as a whole. This was visually evident when I visited the neighbourhood and was aptly supported through the photographic evidence provided by Ms. Pierdon.

I concur with Ms. Pierdon's opinion that the requested variances seek relief from the former and new Zoning By-laws for a GFA of 350.3m² and an FSI of 0.51, respectively, and that these are consistent with the proposed and approved dwellings in the surrounding area and replicate the greater massing permissions granted in the neighbourhood. In fact, it was clear from her evidence that there have been several previous and more recent COA approvals for properties on Norcap Avenue and nearby streets that have permitted far larger GFAs and FSIs (e.g., Caste Hill Drive, Lovering Road, and Partridge Road).

I agree with her that there are no unacceptable adverse impacts of a planning nature created on the adjacent properties or the surrounding area. While the proposed dwelling is larger than the existing permission, the proposed built form is reasonable and is consistent with the redevelopment occurring in the neighbourhood.

I find that there is consensus from all in attendance that there is no provincial policy issue, as confirmed by Ms. Key in her testimony. The additional massing sought to the subject dwelling is properly supported in the gradual renovation of this City Neighbourhood and conforms.

I accept that the intent of the zoning by-law is maintained, in part by the recognition that the additional floor area of 12.6m² was constructed mainly internally to the structure and the Appellant made no revisions to the building footprint of the single detached dwelling. The proposal reflects a site development that is orderly, reasonable and appropriate within the physical context of the subject property and the surrounding area, and constitutes a development that fits well within the existing streetscape and neighbourhood.

I agree with Ms. Pierdon that the measure of 'desirability' is not the owner/Appellants own aspirations, but rather must be inclusive of and hinged to other considerations relevant to the public interest. In this regard, I find the dwelling to be desirable and to support reinvestment in the housing infrastructure of the community, as proposed by the Appellant.

Consequently, I am content that all relevant land use planning considerations have been canvassed and met by the Appellant and that the requested variances individually, and, in their totality, meet the statutory tests under the Planning Act.

DECISION AND ORDER

The appeal is allowed, and I authorize the variances set out below; the December 13, 2018 Committee of Adjustment decision is set aside.

1. By-law No. 12466

To permit the proposed 350.3m² floor area, whereas the Zoning By-law permits the maximum 279m² floor area.

2. By-law 569-2013

To permit the proposed FSI of 0.51 times the area of the lot, whereas the Zoning By-law permits the maximum FSI of 0.4.

Attachment

X 

Dino Lombardi
Panel Chair, Toronto Local Appeal Body

Thursday, February 20, 2014

NOTICE OF DECISION
MINOR VARIANCE/PERMISSION
(Section 45 of the Planning Act)

File Number:	A313/13SC	Zoning	RD - Residential Detached/ S- Single Family Residential [ZZC]
Owner(s):	JUSTIN KULENDRA MARIYANAYAGAM BELIX SUGUNA JUSTIN KULENDRA	Ward:	Scarborough-Agincourt (39)
Agent:	ALTONA DEVELOPMENTS INC		
Property Address:	15 NORCAP AVE	Community:	L'Amoreaux Community
Legal Description:	PLAN 4827 LOT 38		

Notice was given and a Public Hearing was held on Thursday, February 20, 2014, as required by the Planning Act.

PURPOSE OF THE APPLICATION:

The applicant is seeking relief from the provisions of the Zoning By-law to construct a new two storey single family dwelling. The existing dwelling and the garage in the rear yard will be demolished.

REQUESTED VARIANCE(S) TO THE ZONING BY-LAW:

By-law No. 12466

1. To permit the proposed 337.7 square metres floor area, whereas the Zoning By-law permits maximum 279 square metres floor area.
2. To permit the proposed east side yard setback of 1.2 metres, whereas the Zoning By-law requires a minimum side yard setback of 1.8 metres.

IT WAS THE DECISION OF THE COMMITTEE OF ADJUSTMENT THAT:

The Minor Variance Application is Approved on Condition

It is the decision of the Committee of Adjustment to authorize this variance application for the following reasons:

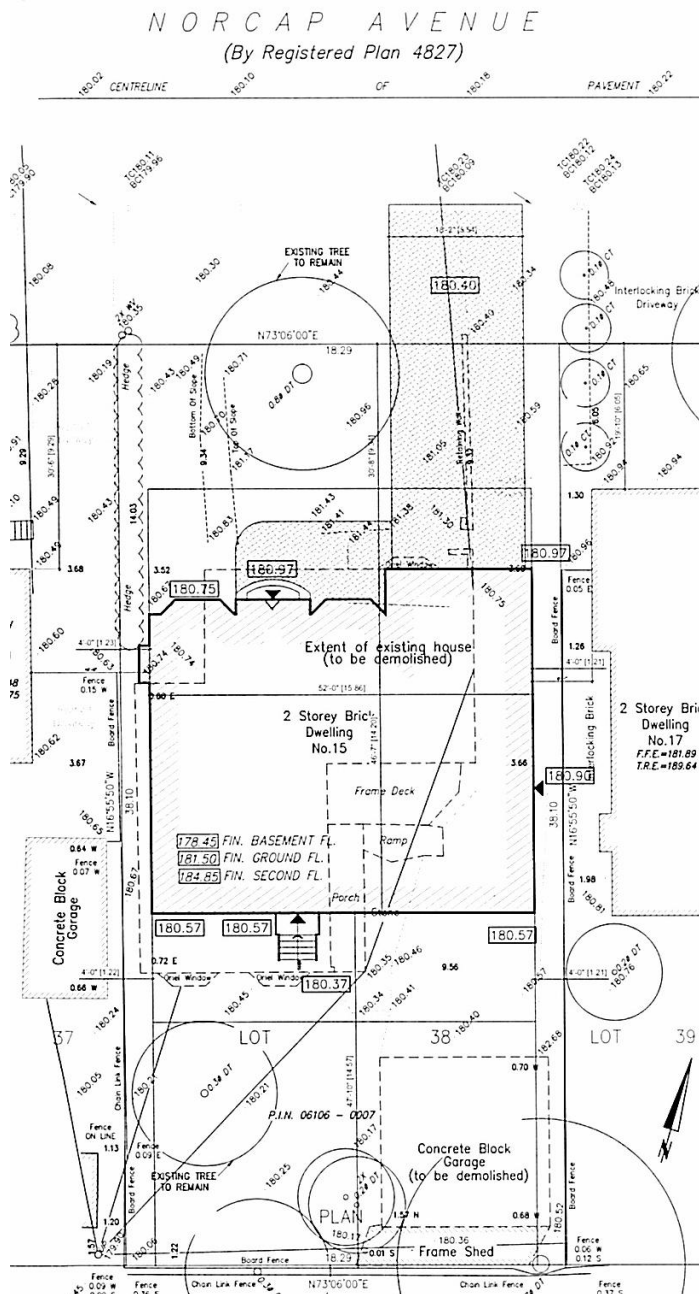
- The general intent and purpose of the Official Plan is maintained.
- The general intent and purpose of the Zoning By-law is maintained.
- The variances are considered desirable for the appropriate development of the land.

- In the opinion of the Committee, the variances are minor.

This Approval is Conditional on the Following:

1. The owner shall submit a detailed Arborist Report or a Tree Inventory for City-owned trees of all sizes and privately-owned trees having 30 cm in diameter or greater located on and within 6 metres of the property. A Tree Protection Security for City-owned trees and/or application for a tree injury/removal may be required for affected trees, as identified on the Tree Inventory or as determined by Urban Forestry staff, in accordance to the City of Toronto Municipal Code, Chapter 813, Article II, Trees on City Streets, and Article III, Private Tree Protection.
2. The Owner shall build in accordance with the attached Site Plan.

Site Plan



SIGNATURE PAGE

File Number:	A313/13SC	Zoning	RD - Residential Detached/ S- Single Family Residential [ZZC]
Owner:	JUSTIN KULENDRA MARIYANAYAGAM BELIX SUGUNA JUSTIN KULENDRA	Ward:	Scarborough-Agincourt (39)
Agent:	ALTONA DEVELOPMENTS INC		
Property Address:	15 NORCAP AVE	Community:	L'Amoreaux Community
Legal Description:	PLAN 4827 LOT 38		

Rolf Rogde (signed)

S Gopikrishna (signed)

Sean Karmali (signed)

DATE DECISION MAILED ON: Tuesday, February 25, 2014

LAST DATE OF APPEAL TO THE ONTARIO MUNICIPAL BOARD: Wednesday, March 12, 2014

CERTIFIED TRUE COPY

Denise Rundle
Manager & Deputy Secretary Treasurer
Scarborough Panel

To appeal this decision to the Ontario Municipal Board, send a completed OMB Appellant Form (A1) to the Manager & Deputy Secretary-Treasurer, Committee of Adjustment. You must pay a filing fee of \$125.00, by certified cheque or money order, in Canadian funds, payable to the Minister of Finance. An additional reduced fee of \$25.00 is required for each connected appeal filed by the same appellant. To obtain a copy of Appellant Form (A1) and other information about the appeal process please visit the Ontario Municipal Board web site at www.omb.gov.on.ca.