

DECISION AND ORDER

Decision Issue Date Tuesday, May 07, 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): JOAQUIM RIBEIRO

Applicant: AMBIENT DESIGNS LTD

Property Address/Description: 42 GLEN LONG AVE

Committee of Adjustment Case File Number: 18 213036 NNY 15 MV

TLAB Case File Number: 18 267092 S45 08 TLAB

Hearing date: Thursday, May 02, 2019

DECISION DELIVERED BY TED YAO

APPEARANCES

	Role	Representative
Marilia Ribeiro, Joaquim Ribeiro	Owners	Russell Cheeseman
T.J. Cieciora	Expert Witness	

INTRODUCTION

Marilia and Joachim Ribeiro (the "owners") built an addition to their garage at the rear of their house at 42 Glen Long Ave without benefit of a building permit. The addition is not to be used to store a vehicle; if permitted, it will be used for other storage purposes. They received a stop work order and applied to the Committee of Adjustment for the variances set out in Table 1. The Committee denied their application in November 2018. The owners appealed and so this matter comes before the TLAB.

Table 1. Variances sought for 42 Glen Long Ave			
From City wide Zoning By-law 569-2013			
		Required	Proposed
1	Rear yard soft landscaping	50%	23.6% (roughly 30% pre-existing)
2	Height	4.0 m	4.5 m
3	Total area of ancillary buildings.	60 m ²	96.7 m ² (existing garage = 45.5 m ² , plus addition = 51.2 m ²)
4	Aggregate coverage ancillary buildings.	10% lot area	14.4 % (each accessory building is about 7%)
5	Maximum coverage	35% of the lot area	48.8% of the lot area (41.1% pre-existing)

All variances are from the present City-wide Zoning By-law (adopted in 2013). If the application had been made prior to 2013, Mr. Cieciora, the appellants' planner, said that no variances would have been needed at all.

MATTERS IN ISSUE

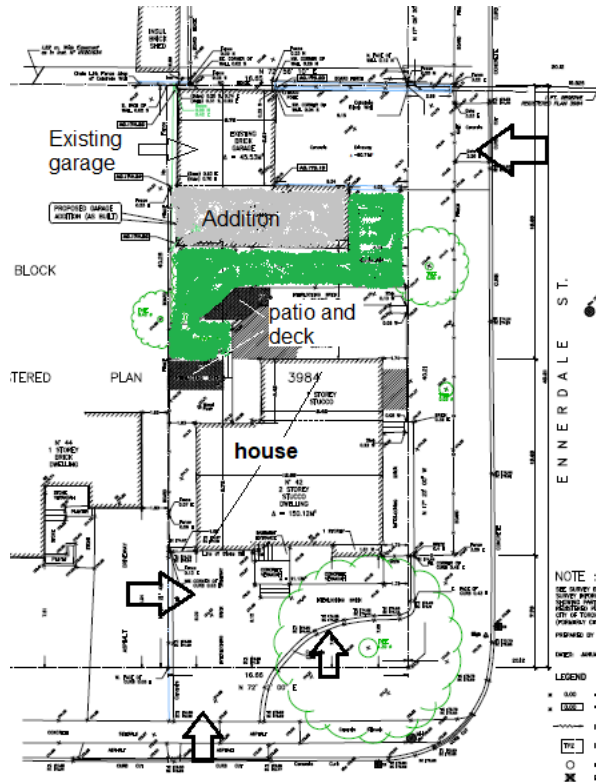
In a building without a permit situation, my approach is to treat the illegal construction as immaterial for planning purposes. Owners are neither penalized nor given extra latitude. The variances are considered as if the proposal had not been already built. Therefore, the variances must meet all the four tests under s. 45(1) of the *Planning Act*, that is, whether they:

- 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. Cieciora and Mr. Cheeseman were the only persons to attend the hearing. I qualified Mr. Cieciora as able to opinion evidence in the area of land use planning.

ANALYSIS, FINDINGS, REASONS



At no stage of the proceedings has there been any participation by neighbours or the City of Toronto except for a negative report filed at the Committee of Adjustment by the Community Planning Department. I consider those comments to have been answered in Mr. Cieciora's evidence. The diagram left shows the rear yard with:

Grey shade (added by me) = the garage addition

Darker shade (added by me) = soft landscaping (about 1000 sq. ft.)

Black shade – (in the original) patio and deck. The deck is wood on raised wooden posts.

Heavy arrows indicating permeable paving.

There is a privately-owned tree in the southeast corner of the lot.

Part of the challenge for any planner in this appeal is to get good information on accessory buildings, particularly when the restrictions came into place only in 2013, presumably creating some legal non-conforming structures with excess coverage.

Mr. Cieciora relied primarily on aerial photos and a list of 18 Committee of Adjustment decisions from which he was able estimate lot coverages (Variance #5). The range of estimated coverages is 35% to 40% (maximum of 35% is permitted), although there are three higher ones at 40%, 44% and 50%. The sought-for coverage of 48.8% of lot area seems high in light of these numbers.

However, this number must be considered against some other facts that suggest the development and the existing dwelling live "lightly" on the land. For example, the rear house addition and the garage addition are both one storey whereas most of the redevelopment in this neighbourhood is two-storey. The garage addition does not have an excavated foundation; it rests on the ground and nearby trees have been preserved. This has left undisturbed soil for tree roots. Finally, Mr. Cieciora advised me that when the Ribeiro family moved into 42 Glen Long sixteen years ago, they removed a front yard asphalt parking pad and driveway and replaced them with a permeable paver

surface. All these factors are relevant to the Official Plan and desirability tests, and whether the impact is minor.

The Official Plan and higher-level documents

Mr. Cieciora said that the higher-level documents were not necessarily applicable to this case, but insofar as they were, the variance was consistent with the 2014 Provincial Policy Statement and was not in conflict with the Growth Plan for the Greater Golden Horseshoe, 2017. I agree they are not applicable.

The purpose of soft landscaping and open space on the lot is for storm water infiltration and amenity space. The replacement of asphalt with pavers has increased natural infiltration for 42 Glen Long as well as contributing to the preservation of the urban forest. This is relevant to Official Plan policy 1(d) of Chapter 3.4 Natural Environment.

The following other Official Plan policies are also respected or have some positive bearing on the development:

Policy 5 of Chapter 3.4 Neighbourhoods “respect and reinforce the . . . f) prevailing patterns of rear and side yard setbacks and landscaped open space;”. The aerial photos display many rear yard accessory buildings and hardscaping, and Mr. Cieciora mentioned 1135, 1145 and 1151 Glencairn.

Policy 3 of Chapter 3.1 Built Form: minimize impact of vehicle access (by not having a garage door to the addition).

Policy 3(b) of Chapter 3.1 Built Form: similar materials in the new addition.

Policy 3(d) of Chapter 3.1 Built Form: providing for adequate light and privacy .

I find that the intent of the Official Plan is maintained.

The zoning intent, minor and desirable for the appropriate development of the land

The lands are zoned RD with a minimum frontage of 15 m and minimum lot area of 550 m² and subject to a restriction regarding airport noise. These restrictions are not applicable to the garage addition. Mr. Cieciora placed emphasis on the context of the addition, behind a fence along the flankage. The owners and their rear neighbours on Playfair share a rear lot line and maintain together a continuous wood fence along the

east flankages of their respective properties. This fence is along Ennerdale, a unique street with no street addresses, only the flankages of houses with Playfair or Glen Long addresses. Because of this, no neighbours are directly affected and Mr. Cieciora felt the variances were supportable and maintained the intent of the Zoning By-law, which is written primarily for interior lots.

At its south end, Ennerdale terminates in a park, opposite their house at 42 Glen Long, and thus the accessory uses are desirable for the appropriate development of the land. The addition is away from the park, behind a fence.

The height variance is created because the existing garage is itself 4.5 m in height and the addition will maintain the same roofline. This seems reasonable and minor.

Some variance would have been required under Variances 1 and 5, (Rear yard soft landscaping, Maximum lot coverage), since the "as built" condition before the addition was already in excess of the zoning requirements.

I agree with Mr. Cieciora that the evidence demonstrates that variances maintain the intent of the zoning by-law and meet the other statutory tests under the *Planning Act*.

DECISION AND ORDER

I authorize the variances set out in Table 1 on condition that the construction is in accordance with the plans filed with the Buildings Department.

X



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