

DECISION AND ORDER

Decision Issue Date Monday, July 22, 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): BBA DESIGN STUDIO

Applicant: BBA DESIGN STUDIO

Property Address/Description: 52 ORFUS RD

Committee of Adjustment Case File: 19 104552 NNY 08 MV

TLAB Case File Number: 19 131552 S45 08 TLAB

Hearing date: Tuesday, July 16, 2019

DECISION DELIVERED BY TED YAO

APPEARANCES

Name	Role	Representative
2569447 Ontario Ltd.	Owner	Bamdad Baghdadi
Michael Manett	Planner, expert witness	

INTRODUCTION

This is an unopposed appeal by the owner OF 52 Orfus against a favorable decision by the Committee of Adjustment granting it five variances. The appeal is not about the variances, which reflect existing conditions; nor is it about the requirement for conditions. The conditions deal with extensive and costly outdoor improvements, at the owner's expense, which the owner is largely willing to do. The dispute is about whether the outdoor improvements should include a 2.1 m wide sidewalk, which will add \$70,000 to the cost and make the project uneconomic. 2569447 Ontario Ltd. accepts that the Director of Community Planning should continue to have overall discretion as to the outdoor improvements on City lands. It has been in communication with Community Planning staff as recently as July 10, 2019, a week ago. Since the City is aware of this hearing and did not attend, I am allowing 2569447 Ontario Ltd.'s appeal.

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2569447 Ontario Ltd. owns an industrial-commercial building at the corner lot of Paul David (the north south street) and Orfus Rd (east west). It wishes to make internal renovations to accommodate additional commercial tenants and create a restaurant with outdoor patio. The outdoor improvements include:

- Removal of the large loading docks on the west face (right side) and grassing in the entire west side yard, including lands that are part of the Paul David right of way and belong to the City;
- Garbage clean up on the east side between the hedge and wall (black shadow left of building);
- Removal of the “boardwalk” at the front (top of photo; cannot be seen from this distance);
- 22 space parking lot at back (bottom of photo behind temporary fencing)



The Committee of Adjustment decision was given on March 7, 2019, granting the variances to setbacks, parking spaces and so on, subject to the following conditions:

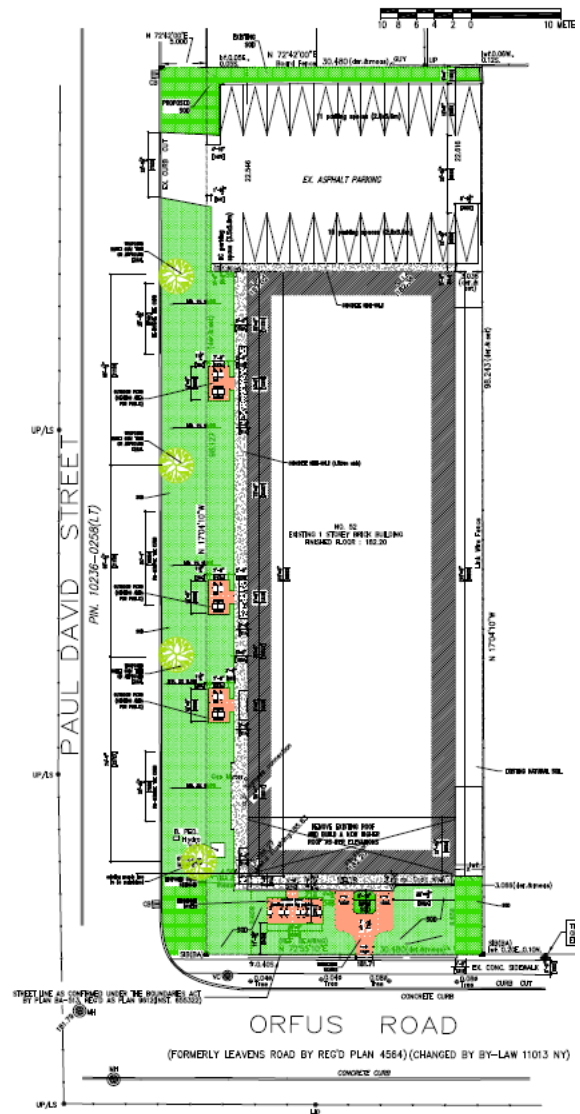
- 1) A landscape plan illustrating soft landscaping be submitted by December 31, 2019, to the satisfaction of the Director of Community Planning, North York District.
- 2) The applicant to satisfy the requirements of the Transportation Services Division:
 - i) to satisfy the public realm developed by Transportation Services and Urban Design in City Planning, including but not limited to;

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- a) the installation of a new curb bump-out at the northeast corner of Paul David Street/Orfus Road; and
- b) **the installation of new landscaping in the public right-of-way and on public property**, as directed by Urban Design and Transportation Services. (My bold)

2569447 Ontario Ltd. intends to commence with its indoor renovations; get the Director of Community Planning's approval of the site plan by December 2018 and proceed to outdoor work for the 2020 construction season.

The conditions require a landscape plan to be negotiated with Urban Design, who asked for a 2.1 m sidewalk on the east side of Paul David Street (abutting the owner's property) as well as a bump-out (a traffic calming road improvement). Consultation with the Bentworth Avenue community (north of Orfus) has led to the abandonment of the bump-out.



2569447 Ontario Ltd. wants clarification that “the installation of new landscaping as directed by Urban Design” does not include any sidewalk or bump-out. It proposes the following as conditions of approval:

1. A landscape plan, to the satisfaction of the Director of Community Planning, based upon the Site Plan dated July 15, 2019, part of which is reproduced below and is part of Exhibit 1 filed at the TLAB hearing “52 Orfus Road”. The Landscape Plan illustrates the replacement of most of the existing paved area on the subject lands, along the western side of the existing building on the Paul David Street flankage, with soft landscaping in the form of sod, to improve water penetration on the site and reduce surface water runoff;
2. Additional soft landscaping along the public boulevards of Orfus Road and Paul David Street to include sod and native trees with a minimum spacing of 8-10 metres between trees; and

Note:

Further details related to the final building elements will be addressed through the Building Permit application process.¹

ANALYSIS, FINDINGS, REASONS

In my view, Mr. Manett, 2569447 Ontario Ltd.'s planner, whom I qualified as able to give opinion evidence in the area of land use planning, has adequately shown that the proposed new conditions should be substituted for the Committee of Adjustment's conditions. For example, Urban Design referred to the City's Accessibility Guidelines as justification for the 2.1 m wide sidewalk. However, s. 1.1.7 of the Guidelines states:

1.1.7 Paths, Sidewalks and Walkways

POLICY:

All entrance paths/sidewalks in a public right of way and/or walkways for pedestrians and persons using mobility aids must be of firm, level, and non-slip materials and are recommended to be a minimum of 1675 mm wide to allow two wheelchairs or scooters to pass one another. In no case should sidewalks be less than 1525 mm wide where two-way traffic is expected.

There is an existing 1.5 m sidewalk on the west side of Paul David. This sidewalk is not heavily used and is in good condition. Although Urban Design has not made this request, reconstruction of this sidewalk to a 1.575 m width to add just .025 m (one inch) would be impractical. 2569447 Ontario Ltd.'s main tenant sells discounted and remaindered clothing, a low profit margin business, and Urban Design's sidewalk would make the project uneconomic, as well as conflicting with "tree-friendly" policies in s. 3.4.1.(d) of the Official Plan:

To support strong communities, a competitive economy and a high quality of life, public and private city-building activities and changes to the built environment, . . . will be environmentally friendly, based on:

. . .

- d) preserving and enhancing the urban forest by:
 - i. providing suitable growing environments for trees;
 - ii. increasing tree canopy coverage and diversity, especially of long-lived native and large shade trees; and . . .

As set out previously I allow the appeal because it represents good planning and is supportive of an environmentally friendly change to the built environment and because

¹ I have converted Mr. Manett's third condition to a "Note" since I do not see how one can ascertain it is cleared prior to the issuance of a building permit.

there is no evidence provided to me to support the original condition that was imposed by the Committee of Adjustment.

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I authorize the variances in Table 1 subject to the conditions set out on page 3 of this decision.

Table 1.			
Variations sought for 52 Orfus Rd from North York Zoning By-law No. 7625			
		Required	Proposed
1	Front yard set back	9 m	8.656 m.
2	West side yard setback	7.5 m	4.560 m.
3	Number of parking spaces	65	22
4	Columns and pilasters front yard encroachment	no more than 0.5 m.	1.25 m
5	Eaves and cornices side yard encroachment	no more than 0.5 m.	3.779 m

X



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