

# DECISION AND ORDER

**Decision Issue Date**      Wednesday, August 28, 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): ACADIA DESIGN CONSULTANTS

Applicant: ACADIA DESIGN CONSULTANTS

Property Address/Description: 187 HONITON ST

Committee of Adjustment Case File: 19 112391 NNY 06 MV

**TLAB Case File Number: 19 143618 S45 06 TLAB**

**Hearing date:**      Monday, August 26, 2019

**DECISION DELIVERED BY S. GOPIKRISHNA**

## APPEARANCES

Name	Role	Representative
Ioulia Gomziakova	Owner/Participant	Jennifer Chau
Grigori Gomziakov	Primary Owner/Participant	Elham Gharagozloo
Acadia Design Consultants	Appellant	
Maxim Merchasin	Party	

## INTRODUCTION AND BACKGROUND

Ioulia Gomziakova and Grigori Gomziakov are the owners of 187 Honiton St., located in Ward 6 of the City of Toronto. They applied to the Committee of Adjustment (COA) to request for approval of variances, which would enable them to construct a new detached dwelling. The COA heard the application on April 4, 2019, and refused the application in its entirety. On April 10, 2019, the Appellants appealed the COA decision to the Toronto Local Appeal Body (TLAB), which scheduled a hearing on August 26, 2019.

## **MATTERS IN ISSUE**

Under By-law No. 569-2013, this property is zoned RD (f15.0; a550) (x5). All the variances stated below request relief from By-Law 569-2013.

1. Despite regulation 10.20.40.70 (3), the minimum side yard setback is 1.8 metres. The proposed south side yard setback is 1 metres [900.3.10(5)- Exceptions for RD Zone]

4. In the RD zone with a minimum required lot frontage of 18.0 metres or less, the permitted maximum building length for a detached house is 17.0 metres. The proposed building length is 18.96 metres. [10.20.40.20(1)-Maximum Building Length if Required Lot Frontage is in Specified Range [10.20.40.20.(1) Maximum Building Length if Required Lot Frontage is in Specified Range]

5. The required minimum front yard setback is 9.14 metres. The proposed front yard setback is 7.9 metres. [10.20.40.70.(1) Minimum Front Yard Setback]

6. The required minimum rear yard setback is 8.3 metres. The proposed rear yard setback is 6.4 metres. [10.20.40.70.(2) Minimum Rear Yard Setback]

7. A) The permitted maximum lot coverage is 30 percent of the lot area. The proposed lot coverage is 33.7 percent of the lot area. [10.20.30.40.(1) Maximum Lot Coverage] excavated side yard porch is included in coverage since it is not a permitted encroachment.

8. The maximum permitted area of each platform at, or above the second storey is 4 sq. m. The proposed area of the north side yard platform at, or above the second storey is 4.6 m<sup>2</sup>.

By way of editorial comment, the variances are not numbered consecutively. The numbering is borrowed from the original application made to the COA. Some of the variances which appeared in the COA application, were voluntarily excluded by the Appellants, in the proceeding before the TLAB. They have been excluded from the recitation in this Section, and result in the non-sequential numbering of the remaining variances, as seen above.

## **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 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**

At the Hearing held on August 26, 2019, the Appellants were represented by Ms. Jennifer Chau, and Ms. Elham Gharagozloo, both of whom are designers. There were no Parties, nor Participants in opposition to the Appeal.

Ms. Chau stated that the Appellants had withdrawn a number of variances from the original application, as submitted to the COA, and recited the variances that were part of the Appeal before the TLAB. By way of editorial comment, these variances appear in the ***“Matters in Issue”*** Section. Ms. Chau briefly explained the reason why each variance was being requested- it emerged that the Appellants wanted to add a two car garage to their house, “which was common in the community”. The objective of adding a garage at the side of the house, facing Overbrook Place, resulted in the requests for many of the variances, including increases to the length of the house, and reductions in the size of the side yard. Ms. Chau also stated that the Appellants wanted to reduce the size of the platforms on the 2<sup>nd</sup> floor from 10.2 sq. m, as listed in the COA decision, to 4.6 sq. m. By way of editorial comment, I note that Variance No. 8, respecting the platform size variance, was specifically brought up during the Hearing, but was not included in the list of variances subsequently submitted by the Appellants to the TLAB.

After Ms. Chau explained the why the Appellants had requested for variances before the TLAB, I asked her if she had specific information about how the proposal corresponded to the tests under Section 45(1). In response, Ms. Chau recited the tests under Section 45(1), and asserted that the proposal complied with all four components of the test stated in Section 45(1). She added that the main objection stated by the City’s Planning department, about the original application before the COA, was about the “excessive height” of the building, and reiterated that the revised proposal, drawings, and elevations satisfied all 4 components of Section 45.1, “because the height had been reduced to comply with the By-Law.” I asked Ms. Chau if she could draw my attention to pertinent policies in the OP, and the proposal’s relationship to these policies, to which her answer was “ not really.”

When I asked Ms. Chau about how the proposal satisfied the intent and purpose of the Zoning By-law, she repeated the answer about the proposal complying with the Zoning By-law, as a result of the height of the proposed building being reduced, to comply what is allowed under By-Law 569-2013. When I asked a very specific question about the proposal’s satisfying the expected performance standards under the Zoning By-Law, Ms. Chau acknowledged the existence of performance standards, and said that “for

example”, the purpose of the side yard setback, was to allow adequate place for “cleaning the side yards and maintenance between buildings”, and repeated that the proposal satisfied the pertinent performance standards. When asked how the proposal satisfied the test of minor, Ms. Chau stated that there were no privacy concerns resulting from the variances, and drew my attention to two “letters of support” submitted by the neighbours, residing at 185 and 181 Honington Ave.

I then asked Ms. Chau if she could recommend any conditions to be imposed, if the proposal were approved, to which she said that it would be appropriate to ask the Appellants to build in compliance with the submitted plans, and elevations.

When asked if she had anything more to add by way of evidence, Ms. Chau said that she said that she had nothing more to add. I thanked Ms. Chau, for answering questions, and asked her to submit the revised list of variances, in writing to the TLAB.

On the afternoon of August 26, 2019, I received an email from the TLAB, with the updated list of variances. By way of editorial comment, the list submitted to me in the afternoon listed five variances, while the evidence in the morning discussed six variances. The written submission excluded Variance No 8 , which addressed the size of the platform, above the second storey. However, my Decision assumes that the TLAB has to address the variance respecting platform size, and has included the same in the decision making process.

## **ANALYSIS, FINDINGS, REASONS**

The Appellants began the Hearing by excluding various variances, thereby reducing the number of variances to be ruled on by the TLAB to six, from the twelve variances in front of the COA. While I would have preferred that the TLAB be alerted to this change, when the original submissions were made, I allowed the Hearing to proceed because there were there no other Parties involved in the Appeal, nor were the Appellants introducing new variances, precluding the need for new notice under Section 45.18.1(1) of the Planning Act.

I would like to appreciate the thoughtfulness of the Appellants in excluding such variances, where the Planning department had expressed concerns in its report to the COA. However, removing these variances, does not result in the demonstration of the compliance between the proposal, and the four components of the test listed in Section 45.1. Appellants must remember that the the onus is on them to demonstrate the compatibility between their proposal and the four tests listed in Section 45.1, in a clear, and comprehensible fashion. The Appellants did not bring forward any such information, as can be ascertained from reading the “Evidence” Section

Notwithstanding my repeated attempts to elicit specific responses from the Appellants about how their proposal related to the Official Plan, and the Zoning By-Law, I could not obtain pertinent explanations, about which policies in the OP were relevant, and why. The performance standards of the Zoning By-Law, were acknowledged broadly, but the actual details of the performance standard governing each of the listed

variances were not stated, and more importantly, no explanation proffered about how the proposal satisfied the relevant performance standards.

Given the above discussion, I find that the Appellants failed to demonstrate that the proposal complied with the tests respecting the Official Plan, and the Zoning By-Law.

Arguably the most germane evidence provided by the Appellant was how the proposal satisfied the test of “minor” because it did not result in any privacy concerns for the neighbours. However, since the test of minor, is not restricted solely to privacy impacts of an adversarial nature, I conclude that there is insufficient evidence to demonstrate that the proposal satisfies the test of being minor.

The Appellants asserted, without any support, that the proposal satisfied the test of appropriate development. Given the lack of specific evidence, and discussion on this matter, I conclude that the proposal does not meet the test of appropriate development.


Based on the above discussion, it can be seen that there were little, or no evidence to demonstrate compliance between the proposal, and tests of meeting the intention, and purpose of the Zoning By-Law, as well as the Official Plan, in addition to the test of appropriate development. There was insufficient evidence, to demonstrate compliance with the test of being minor. Consequently, I find that the proposal does not satisfy at least three of the four tests, listed under Section 45.1. of the Planning Act, and should therefore be refused.

The Appeal respecting 187 Honiton Street is consequently refused, and the decision of the COA respecting the same property, dated April 4, 2019, is confirmed.

## **DECISION AND ORDER**

1. The Appeal respecting 187 Honiton Street is refused, and the decision of the COA respecting the same property, dated April 4, 2019 is confirmed.

So orders the Toronto Local Appeal Body.

X 

S. Gopikrishna  
Panel Chair, Toronto Local Appeal Body