

Toronto Local Appeal Body

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DECISION AND ORDER

Decision Issue Date Tuesday, August 20, 2019

PROCEEDING COMMENCED UNDER Section 53, subsection 53(19), and Section 45(12), subsection 45(1) of the Planning Act, R.S.O. 1990, c. P.13, as amended (the "Act")

Appellant(s): MUKUNTH RAJADURAI

Applicant: MUKUNTH RAJADURAI

Property Address/Description: 3 GORDON AVE

Committee of Adjustment Case File: 17 171769 ESC 40 MV

TLAB Case File Number: 19 127082 S45 22 TLAB

Hearing date: Monday, July 22, 2019

DECISION DELIVERED BY S. TALUKDER

APPEARANCES

NAME	ROLE	REPRESENTATIVE
MUKUNTH RAJADURAI	APPELLANT/OWNER/APPLICANT	MATTHEW DI VONA
MATTHEW DI VONA	APPELLANT'S LEGAL REP.	
JULIEN PIERDON	EXPERT WITNESS	

INTRODUCTION

 This is an appeal by the Applicant, Mukunth Rajadurai. The appeal is of the Committee of Adjustment's (COA) decision with respect to the application for variances for the Applicant's property located at 3 Gordon Avenue (Subject Property). The COA refused the application for minor variances in its decision dated February 28, 2019 (2019 COA Decision).

- 2. There are no other parties in this matter.
- 3. The Subject Property is in the Agincourt neighbourhood in Scarborough. It is located at the southeast of the intersection of Kennedy Road and Sheppard Avenue East.
- 4. At the hearing, I informed those present that I had visited the site of the Subject Property and walked around the neighbourhood to familiarize myself with the area.

BACKGROUND

- 5. The Applicant had previously filed applications for consent and minor variances at the COA with respect to the Subject Property in 2014.
- 6. In its decision dated May 13, 2014, the COA approved the severance of property at 1 Gordon Avenue into 1 Gordon Avenue and the Subject Property. The COA also approved the following variances subject to the following conditions for the Subject Property (File no. A046/14SC, referred to in this decision at "2014 COA Decision"):

By-law No. 569-2013

1. To permit the proposed building length of 24.13 metres measured from the front wall to the rear wall, whereas the Zoning By-law permits maximum building length of 17 metres.

2. To permit the proposed building depth of 25.71 metres measured from the front yard setback requirement on a lot to the rear wall, whereas the Zoning Bylaw permits maximum building length of 19 metres.

By-law No. 12360

3. To permit the proposed floor area of 384.28 square metres or 0.464 times the lot area, whereas the Zoning Bylaw permits maximum 331.1 square metres floor area or 0.4 times the lot area.

4. To permit the proposed garage dimensions of 9.17 metres, whereas the Zoning By-law permits maximum dimension of 7.6 metres.

This Approval is Conditional on the Following:

1. The owner shall submit a detailed Arborist Report or a Tree Inventory for Cityowned 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.

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2. Where there are no existing street trees, the owner shall submit a payment in lieu of planting one street tree on the City road allowance abutting each of the sites involved in the application or elsewhere in the community if there is no space. The current cost of planting a tree is \$583.00, subject to changes.

3. The Owner shall build in accordance with the attached South Elevation to ensure only maximum two single car garage doors are permitted and Floor Plans to ensure those floor areas labeled "open" remain open and unused as living space.

- 7. Site plans prepared by K-SON, Design & Management Services Inc, with revisions dated April 24, 2014 were submitted to the COA as part of the approval process. The site plans are attached to this decision as Attachment 1.
- 8. At the hearing, the Applicant's witness, Ms. Julien Pierdon, informed the TLAB that the Applicant had already built a dwelling on the Subject Property. However, he did not comply with Variance # 3 and Condition # 3. As a result of this non-compliance, the Applicant is required to seek all the variances that were subject of the 2014 COA Decision in addition to a new variance related to building height.

MATTERS IN ISSUE

9. The variances that were subject of the 2019 COA Decision and that are now before me are the following:

By-law No. 569-2013

1. To permit the proposed building length of 24.08 metres measured from the front wall to the rear wall;

whereas the Zoning By-law permits maximum building length of 17 metres.

2. To permit the proposed building depth of 25.65 metres measured from the front yard setback requirement on a lot to the rear wall; whereas the Zoning By-law permits maximum building depth of 19 metres.

3. To permit the proposed floor space index of 0.527 times the area of the lot; whereas the Zoning By-law permits maximum floor space index of 0.4 times the area of the lot.

4. To permit the proposed 9.47 metres building height; whereas the Zoning By-law permits maximum 9 metres building height.

By-law No. 12360

5. To permit the proposed 9.14 metres wide garage; whereas the Zoning By-law permits maximum 7.6 metres wide garage.

6. To permit the proposed 9.62 metres building height (including the skylight);

whereas the Zoning By-law permits maximum 9 metres building height.

- 10. Ms. Pierdon confirmed that the Applicant complied with Variances # 1, 2 and 4 as required by the 2014 COA Decision. These variances are the same as Variances 1, 2 and 5 of the 2019 COA Decision. A review of the 2014 COA Decision and the 2019 COA Decision confirms Ms. Pierdon's assertion. The Applicant was permitted to have a building length of 24.13 m in the 2014 COA Decision and the current building length is 24.08 m. The current depth of the building is 25.65 m while the maximum permitted building depth under 2014 COA Decision is 25.71 m. The current width of the built garage is 9.14 m whereas the Applicant was allowed a maximum width of 9.17 m in the 2014 COA Decision.
- 11. The Applicant relied on the 2014 COA Decision to build his dwelling and garage to the specifications allowed in that decision. He complied with the variances related to building length, building depth, and garage dimensions. It is not necessary to review whether these variances satisfy the statutory criteria under the *Planning Act* (Act). Rather, these variances are before the TLAB for administrative reasons. The Applicant did not comply with the variance with respect to floor area and FSI, and Condition # 3. As a result, all non-compliance with the zoning by-laws are noted again, presumably as all the requirements of the 2014 COA Decision were not complied with.
- 12. This leaves the following variances for review by the TLAB:

By-law No. 569-2013

3. To permit the proposed floor space index of 0.527 times the area of the lot; whereas the Zoning By-law permits maximum floor space index of 0.4 times the area of the lot.

4. To permit the proposed 9.47 metres building height; whereas the Zoning By-law permits maximum 9 metres building height.

By-law No. 12360

6. To permit the proposed 9.62 metres building height (including the skylight); whereas the Zoning By-law permits maximum 9 metres building height.

JURISDICTION

Provincial Policy – S. 3

13. A decision of the TLAB must be consistent with the 2014 Provincial Policy Statement (PPS) and conform to the Growth Plan of the Greater Golden Horseshoe for the subject area (Growth Plan).

Minor Variance - S. 45(1)

- 14. 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

- 15. The Applicant called Ms. Pierdon, who is a Registered Professional Planner. She was qualified to give professional land use planning opinion evidence. Ms. Pierdon provided the sole source of viva voce evidence. There was no contrary evidence presented.
- 16. Ms. Pierdon testified that the Subject Property is located in the Agincourt neighbourhood and is southeast of the intersection at Kennedy Road and Sheppard Avenue East. The lands immediately surrounding the Subject Property is composed of a small residential enclave that is separated from the greater Agincourt neighbourhood (located to the north) by commercial and institutional buildings along the Sheppard Avenue East. She referred to the neighbourhood immediate to the Subject Property, which forms an enclave as Study Area A. Study Area A is bound by: the rear property line of the commercial and institutional buildings fronting on Sheppard Avenue East and West Holland Creek to the north, Collingwood Park to the east, the rear property line of the commercial buildings fronting on Kennedy Road to the west, and the rear property line of the dwellings fronting onto Collingwood Street to the south.
- 17. As Study Area A encompasses a small number of properties, Ms. Pierdon also considered another neighbouring area, which is she referred to as Study Area B. This area is a larger residential neighbourhood located west of Study Area A. Ms. Pierdon also considered a tertiary study area, which she referred to as Study Area C, which is east of Study Area A. Though Study Area A and Study Area C are physically separated by Collingwood Park and the GO Rail Line, Ms. Pierdon stated she considered Study Area C because it is comparable and similar to Study Area A, as it is also a small enclave of residential land uses buffered by commercial and institutional land uses, etc.
- 18. Ms. Pierdon provided a detailed description of these study areas in her written witness statement. I have reviewed her witness statement and refer to these descriptions, as they are relevant to FSI and building height.
- 19. Ms. Pierdon testified that the Applicant constructed a dwelling with 405.81 m² of gross floor area (GFA) instead of the permitted 384.28 m² (as per the 2014 COA

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Decision). As such, the floor space index (FSI) increased to 0.527 instead of the permitted 0.464 (as per the 2014 COA Decision). The additional floor space is constructed above the two-car garage, which breached Condition # 3 of the 2014 COA Decision which required the floor areas labelled "open" in the site plan to be unused space. Therefore, the GFA increase is internal within the "open" space. The exterior design of the dwelling which is already constructed is identical to the proposed approved building permit plans which were approved by the 2014 COA Decision.

- 20. Ms. Pierdon testified that along with the OP and OPA 320, the Subject Property is under the Agincourt Secondary Plan. She opined that the proposed dwelling on the Subject Property conforms with both these plans. Specifically, the proposed dwelling is lower than the adjacent dwelling located on 1 Gordon Drive. In addition, the additional FSI is internal to the dwelling and does not impact the scale or massing of the building and therefore would have no impact on the surrounding area. The proposed FSI is comparable to the FSI of that of the dwelling on 1 Gordon Avenue, which is at FSI of 0.45.
- 21. Ms. Pierdon further testified that the requested variances comply with the general intent and purpose of the zoning by-laws. The general intent and purpose of the performance standard of maximum floor area is to ensure appropriate built form and massing standards and to eliminate adverse impacts on adjacent dwellings. In this case, the excess floor area of 75.01 m² is internal and above the garage. This proposed FSI is consistent with the range of approved FSI in Study Area B. Ms. Pierdon identified 56 Jade Street, 121 Earlton Road and 8 Lamont Avenue to be with approved FSI of 0.49, 0.45 and 0.582 respectively. She opined that the proposed density is consistent with the development pressures experienced in the area surrounding the Subject Property, where older smaller houses are being replaced by larger dwellings.
- 22. With respect to the building height variance, Ms. Pierdon testified that the additional height of 9.62 m is required because the Applicant constructed a skylight on the roof. This skylight is set back from the limit of the roof and from the front lot line, and is marginally visible from the street. The increase in height is limited to this skylight and therefore the impact on height is negligible. She noted that the dwelling on 1 Gordon Avenue was approved for 9.8 m. The house on the Subject Property is lower than the house on 1 Gordon Avenue.
- 23. Ms. Pierdon noted that the approval of the requested variances will permit the construction of a building that is desirable and appropriate within the context of the neighbourhood where the Subject Property is located. This development represents the gradual upgrade and replenishment of older houses into larger dwellings over time in the neighbourhood. In addition, the FSI and height request specific to the skylight are minor and without any adverse impact in terms of increase in massing or overlook concerns, as the skylight is barely visible from the street.

ANALYSIS, FINDINGS, REASONS

- 24. I have accepted Ms. Pierdon's testimony subject to the following qualification: the use and discussion of Study Area C is not relevant as it is not comparable to Study Area A. The Subject Property and its neighbourhood as defined by Study Area A is separated physically by a park and a train line from Study Area C. The development in Study Area C cannot be applicable to Study Area A. Study Area A and B are sufficient to understand the context and the development for the Subject Property.
- 25. There are no policy concerns pursuant to the PPS and Growth Plan with respect to this matter.
- 26. I agree with Ms. Pierdon's uncontradicted testimony that the variances related to density and building height are minor and satisfy the four tests. The FSI increase from what was permitted in the 2014 COA Decision is internal to the dwelling and the specifications were approved by the 2014 COA Decision. The increase in building height from the specifications permitted by the zoning by-laws is limited to the skylight and not the whole building. The skylight is not fully visible from the street and poses no adverse impact to the neighbours. The approval of the building height variance should be limited to the skylight only.

DECISION AND ORDER

- 27. The appeal is allowed and the variances are approved. They are subject to the following conditions:
 - a. The proposed dwelling shall be constructed substantially in accordance with the Site Plan and Elevations prepared by K-SON, Design & Management Services Inc, with revision dated April 24, 2014, and attached to this decision as Attachment 1.
 - b. Variances 4 and 6 for building height are permitted only with respect to the skylight and not for the reminder of the building.

Lahleds.

Shaheynoor Talukder Panel Chair, Toronto Local Appeal Body Signed by: Shaheynoor Talukder

ZONING DATA MATRIX

ZONING	PROPOSED	BY-LAW S-4-32-43-53-63-88-98	BY-LAW 569 -2013 RD
LOT AREA	8910.00 SQF (827.00 m2)	7500.00 SQF (696.77 m2)	7491.68 SQF (696.00 m2)
FRONTAGE	55' (16.76m)	50' (15.24m)	49'-3" (15.00m)
FRONT YARD SETBACK	34'-8"(10.58m)	29'-6"(9.0m)	24'-7"(7.5m) Exception RD 929
SIDE YARD SETBACK NORTH SIDE SOUTH SIDE	4'-0" (1.2m) 3'-0" (0.9m)	4'-0" (1.2m) 4'-0" (1.2m)	3'-0" (0.9m) 3'-0" (0.9m) Exception RD 929
REAR SIDE SETBACK	48'-3" (14.71m)	25'-0" (7.5m)	25'-0" (7.5m)
BUILDING DEPTH	84'-2" (25.65m) A046 / 14 SC		62'-4" (19.0m)
BUILDING LENGTH	79'-0" (24.08m) A046 / 14 SC		55'-9" (17.0m)
HEIGHT ESTABLISHED GRADE)	9.70m -29'-6" (9:0m) -	29'-6" (9.0m)	29'-6" (9.0m)
GROUND FLOOR AREA	2177.25 SQF (202.27 M ²)		
SECOND FLOOR AREA	- 1476.89 SQF - (137.21-M²)		
	191.09SqM		
LOT COVERAGE	31.20 %	33.0%	33.0 %
TOTAL BUILDING AREA	405.81SqM 3654.14-SQF- _(339.48 M ²) - 	827.00m ² * 0.4 = = 330.80 m ² (3560.70 SQF)	



FRONT YARD AREA = 3004.78 SQF

DRIVE WAY AREA = 1144.72 SQF = <u>38.10%</u> OF FRONT YARD AREA

LANDSAPED AREA (GREEN AREA + WALK WAY + STAIRS)= 1860.06 SQF = <u>61.90%</u> OF FRONT YARD AREA >60% BY-LAW (7.4A -c)- OK

HARD LANDSCAPED AREA = WALK WAY + STAIRS = 42.00 SQF = 2.27% OF LANDSCAPE AREA

SOFT LANDSCAPED AREA = LANDSCAPE AREA -HARD LANDSCAPED AREA= 1818.06 SQF = <u>97.74%</u> OF LANDSCAPE AREA >75% BY-LAW (7.4B) - OK

FRONTYARD LANDSCAPE CALCULATION SCALE : 3/32" = 1'-0"



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NOV 10/ 2014

3 GORDON AVENUE SCARBOROUGH, ONTARIO DRAWING TITLE BASEMENT FLOOR PLAN

> NOT VALID UNLESS SIGNED BY THE ENGINEER

SCALE

as shown

DWG. NO. A-2

PROJECT

CHECKED: H.R.

DRAWN: E.C.

PROJECT NO.



NOTES: 1- J* J* DEEP I-JOIST REFER TO JOIST LAYOUT BY OTHERS. 2- LVL1: 1% X11% DEEP IP LVL 2850 Fb-2.0E 3-BBD: BEAM BY OTHERS,REFER TO TRUSS LAYOUT BY OTHERS.

46'-0" י 1'-11'י 44'-0" 21'-4" 4'-6" 7'-9" 4'-6" 5'-11" DOUBLE HEIGHT WALL: FULL HEIGHT 3-12"X52" LP LVL 2950 Fb 2.0E @16" 0.C. L2 1.2 5--2 *> BELIEVE WIL OPEN BELOW STUD WALL +2" PLYWOOD BOTH SIDES 8'-5" BOTH SIDES W/ DOUBLE PLATE ON TOP, TIED TO ALL ROOF TRUSS BOTTOM CHORDS W/ HURRICANE TIES H2.5A OR SIMILAR FROM SIMPSON STRONG TIE COUPDAY W/ MICTURO ANT N @16° 0.0 ୗଞ୍ଚଯ 惫 ×-<u>BBO (2-LVL)</u> × - CAN -÷. COMPANY W/ MATCHING SCREWS. É. CAN DUBLE HEIGHT POST C5*: FULL HEIGHT W/ DOUBLE PLATE ON TOP, TIED TO ALL ROOF TRUSS BOTTOM CHORDS W/ HURRICANE TIES H2.5A OR SIMILAR FROM SIMPSON STRONG TIE Ó 43 16" 0.0 CANL OFFEN TO ABOUT DEN / LIBRARY $\begin{array}{c} \underline{\mathsf{GARAGE}} & \mathsf{NOTES};\\ 4^{*} & \mathsf{CONC}, & \mathsf{FLOOR} & \mathsf{SLAB} & \mathsf{ON} & \mathsf{GRADE} \\ \mathsf{REINF}, & W & \mathsf{Scbuck} & \mathsf{WWM} & \mathsf{COVER} & 1 - \frac{1}{2}^{*} \\ \mathsf{GRANULAR} & \mathsf{BASE} & 32 & \mathsf{MPA} & \mathsf{G} & 28 \\ \mathsf{DAYS} & \mathsf{WITH} & \mathsf{S-S} & \mathsf{X} & \mathsf{AR} & \mathsf{ENTRANNENT} \\ \mathsf{SLOPED} & \mathsf{TO} & \mathsf{DRAIN} & \mathsf{TO} & \mathsf{THE} & \mathsf{OUTSIDE} \end{array}$ 00 3'-6' ITCHE 6" BE -8-2R+1168.55 COMPANY W/ MATCHING SCREWS. * *-0" * GAS PROOF CEILING AND WALLS R 32 INSUL. IN THE CEILING & AROUND THE DUCTS. R24 IN THI ADJOINING THE LIVING AREA SPAN w/cl 168.10 8'-7° 14'-10" FOYER 1 J* @16 O.C. 1" G.B. DRY WALL TAPED, SANDED & PAINTED EARING V PANTRY \$ DOORS BETWEEN THE GARAGE & DOVELLING MUST BE EXTERIOR TYPE. TIGHT FITTING, WEATHERSTRIPPED & PROVIDED WITH A SELF CLOSING DEVICE & A DEADBOLT LOCK. CL. 3'-4" 3'-7" + 2'-0* + DASHED LINE:-EXTENT OF ROOF ABOVE L 3 /* X5% EXTENT OF P 167.58 COBBIDOBE 30'-0" • 016" O.C. 9 J* @16" O.C. EXTENT OF FLOOR ABOVE СО 168.55 5'-6" 8'-0* 3'-0" 8'-0" 5'-10" 14'-3" 11'-8" 14'-10" 3-UU1 BEARING WALK (BR1) 20 BBO (2-LVL) 31701 L 5"x5"%音" @ ARCH___ 168.10 L 5"X5"X指" @ ARC . +1-11*) × 5 PG 3-LVL1 8'-5" 1'-11" EXTENT OF METAL RAILING -9-14'-3" • 12'-3" 3.11 -9--1 250) 1 1 OFFICI TO BROWN Ø POST_C5*: ARE_FULL_HIGHT CONTINUES, NO_CUTC 3-10 3-1 1 7'-0" 168.25 1 2-4 ŗ DINING ROOM LIVING ROOM SLOPE 8'-11 , 1 , 8, 1 , 1 о Н -0-11 8-11 90 FAMILY ROOM 00 STO 9 ī GARA ZERO CLEARANCI DIRECT VENT GA FIRE PLACE AS MANUFACTURER INSTRUCTIONS 1 **.** 14'-5" 4'-4 5'-5* 12'-3" 14'-10" 3-10 POWDER RM J 1 Ð 6 [î] 7/1 111 in 6) N - 6-0.1 0. à 6'-1" 2'-0* 6'-8 3'-6" 10'-11" 3'-6" 2'-0" 7'-4" +2'-0" 2'-6" 31'-8' DOUBLE HEIGHT WALL: 15'-8" 30'-0" 49'-0" 79'-0"

GROUND FLOOR PLAN SCALE : 3/16"=1'-0"



NOTES: 1- J* IS 11 \int_0^{∞} DEEP I-JOIST REFER TO JOIST LAYOUT BY OTHERS. 2- LVL1: $1\frac{3}{4} \times 11\frac{3}{6}$ DEEP LP LVL 2550 Fb-2.0E 3-BBO: BEAM BY OTHERS, REFER TO TRUSS LAYOUT BY OTHERS.



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K-SON

Design & Management Services Inc. Unit 8-128 Willowddw Avenue, Toronto, Ortario, M2N 4Y2 TEL: 416-586-6000 E4M81: find/skson-engineera.com

WEB: www.kson-en

PRO IECT

CHECKED: H.R.

DRAWN: E.C.

PROJECT NO.



PROJECT 3 GORDON AVENUE SCARBOROUGH, ONTARIO DRAWING TITLE GROUND FLOOR PLAN

> NOT VALID UNLESS SIGNED BY THE ENGINEER

SCALE

as shown

DWG. NO. A-3



A-4

PROJECT NO.

DWG. NO.





