

DECISION AND ORDER

Decision Issue Date Tuesday, August 6, 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): City of Toronto (Jason Davidson)

Applicant: Makow Associates Architect Inc

Property Address/Description: 122 Elmwood Ave

Committee of Adjustment Case File: 18 250972 NNY 23 MV (A0760/18NY)

TLAB Case File Number: 18 271409 S45 18 TLAB

Hearing date: Thursday, May 30, 2019

DECISION DELIVERED BY S. Makuch

REGISTERED PARTIES AND PARTICIPANTS

Applicant	Makow Associates Architect Inc
Owner	Koon Kou So
Appellant	City of Toronto
Appellant's Legal Rep.	Jason Davidson
Party	Irene So
Party's Legal Rep.	David Bronskill
Expert Witness	Michael Goldberg
Expert Witness	Ameena Khan

INTRODUCTION

This is an appeal by the City from a decision of the Committee of Adjustment, approving seven variances to By-law 569-2013 and one variance to By-law 7625. Those variances related to side yard setbacks, lot coverage, building length, width of the front steps, and building height.

BACKGROUND

At the hearing the City restricted the appeal to three issues: lot coverage, side yard setbacks and building height, and then in argument the City did not object to the height variance. The fundamental and real focus of this appeal was, the variance respecting the permitted lot coverage.

MATTERS IN ISSUE

The matter in issue respecting lot coverage was as follows. The owner/applicant sought to maintain the lot coverage of 33 % granted by the Committee and the City's position was that the lot cover should be no higher than 32%. The by-law permitted a coverage of 30%. There were no substantive issues respecting the relevant Provincial Policies and Plans or the other variances. It was clear that there were no issues respecting shadow, privacy overlook, landscaping and location on the lot.

JURISDICTION

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').

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

There was compelling evidence that the variances met all relevant Provincial standards and that the variances, other than lot coverage, met the four test of the

Planning Act set out below. The side yard set back and height variances, it was admitted on cross examination, were not really discernable.

There was evidence from both parties related to the granting of a variance greater than 30%. It was the City's evidence that the by-law had been amended to 30% from 35% to limit the variances being granted and thus the size of houses. Moreover it was the City's evidence that that a variance of 33%, although it might not be discernable, could have a significant planning impact in setting a precedent. The City's major concern, therefore, was the impact the variance would have on future applications and the setting of a precedent in that it exceeded previous variances granted, up to 32%. From the City Planner's point of view there would be planning impacts beyond the public perception that this density would create from a street view .

The planner for the applicant on the other hand gave evidence that this application fit within the range of approvals given for lot coverage in this area. In his opinion, although the densities fit within a numerical approval analysis, the matter of lot coverage should be seen, not from a numbers point of view, but from a qualitative perspective. In his opinion the lot coverage fit within the general physical pattern of the neighbourhood. This proposed development he stated would be compatible the neighbourhood and respected and reinforced its character which is eclectic and has both larger and smaller homes.

ANALYSIS, FINDINGS, REASONS

I find that the the purpose of the four tests is not to set a numerical standard, in spite of the numerical analysis undertaken by the parties. Whether a variance is minor does not depend on a precise numbers, particularly numbers which focus on a difference of .01. Applying the four test it is clear that the general intent of the official plan is to apply a quantitative test of whether a building will fit, be compatible, respect and reinforce the character of a neighbourhood. These criteria are not quantitative. They are not numbers. I also find the criteria relate to the current physical character of the neighbourhood and not to whether a precedent is set.

With respect to the the zoning by-law, the general intent is to implement the official plan. The proposed variance does that in that it provides for a building which respects and reinforces physical character of the neighbourhood.

As a result of the above, based on the evidence presented in the applicant/owner's planner's witness statement, I find the lot coverage variance is appropriate and desirable for the use of the land and is minor. Moreover, I find that with the other variances, all the variances set out in Appendix 1 individually and cumulatively meet all four tests of the Planning Act.

DECISION AND ORDER

The appeal is dismissed and the variances set out in Appendix 1 are granted subject to the condition that the building be constructed substantially in accordance with the elevation and site plans attached in Appendix 2.

X 

S. Makuch

Panel Chair, Toronto Local Appeal

APPENDIX 1

City of Toronto Zoning By-law 569-2013

1. **Chapter 900.3.10 (5) (A), By-law 569-2013**
The minimum required side yard setback is 1.8m.
WHEREAS the proposed east side yard setback is 1.22m
2. **Chapter 900.3.10 (5)(A), By-law 569-2013**
The minimum required side yard setback is 1.8m.
WHEREAS the proposed west side yard setback is 1.22m for the front 6.80 m portion of the dwelling and rear covered terrace and rear canopy only.
3. **Chapter 10.20.30.40 (1)(A), By-law 569-2013**
The minimum permitted lot coverage is 30% of the lot area.
WHEREAS the proposed lot coverage is 34% of the lot area.
4. **Chapter 10.20.40.20 (1), By-law 569-2013**
The maximum permitted building length is 17.0m.
WHEREAS the proposed building length is 19.2m.
5. **Chapter 10.20.40.30 (1), By-law 569-2013**
The maximum permitted building depth is 19.0m.
WHEREAS the proposed building depth is 19.2m.
6. **Chapter 10.5.40.60 (3), By-law 569-2013**
Exterior stairs are permitted to encroach into a required minimum building setback if they are no wider than 2.0m.
WHEREAS the proposed width of the front steps is 2.33m.
7. **Chapter 10.20.40.10 (4), By-law 569-2013**
The maximum permitted building height is 10.0m.
WHEREAS the proposed building height is 10.3m.
8. **Chapter 10.5.40.60 (1)(C), By-law 569-2013**
In a rear yard, a platform with a floor no higher than the first storey of the building above

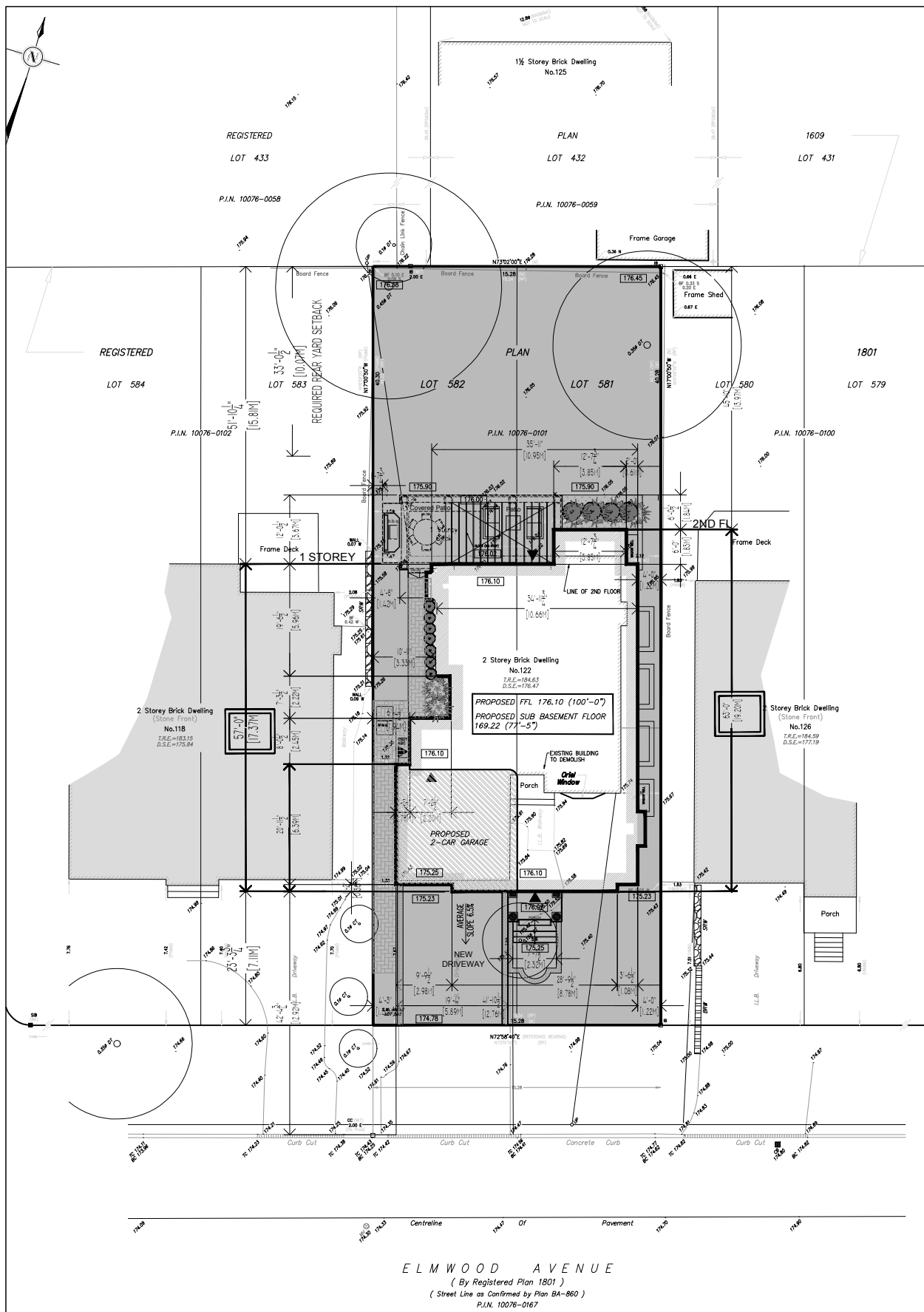
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established grade may encroach into the required rear yard setback the lesser of 2.5m or 50% of the required rear yard setback, if it is no closer to a side lot line than the greater of 0.3m WHEREAS the proposed rear yard platform on grade, which is 0.45m from the side lot line, projects 3.67m from the wall which it abuts.

Former City of North York By-law 7625

9. **Section 13.2.6 (ii), By-law 7625**
The maximum permitted building height is 8.8m.
WHEREAS the proposed building height is 9.5m.

APPENDIX 2



MAKOW ASSOCIATES
ARCHITECT INC.

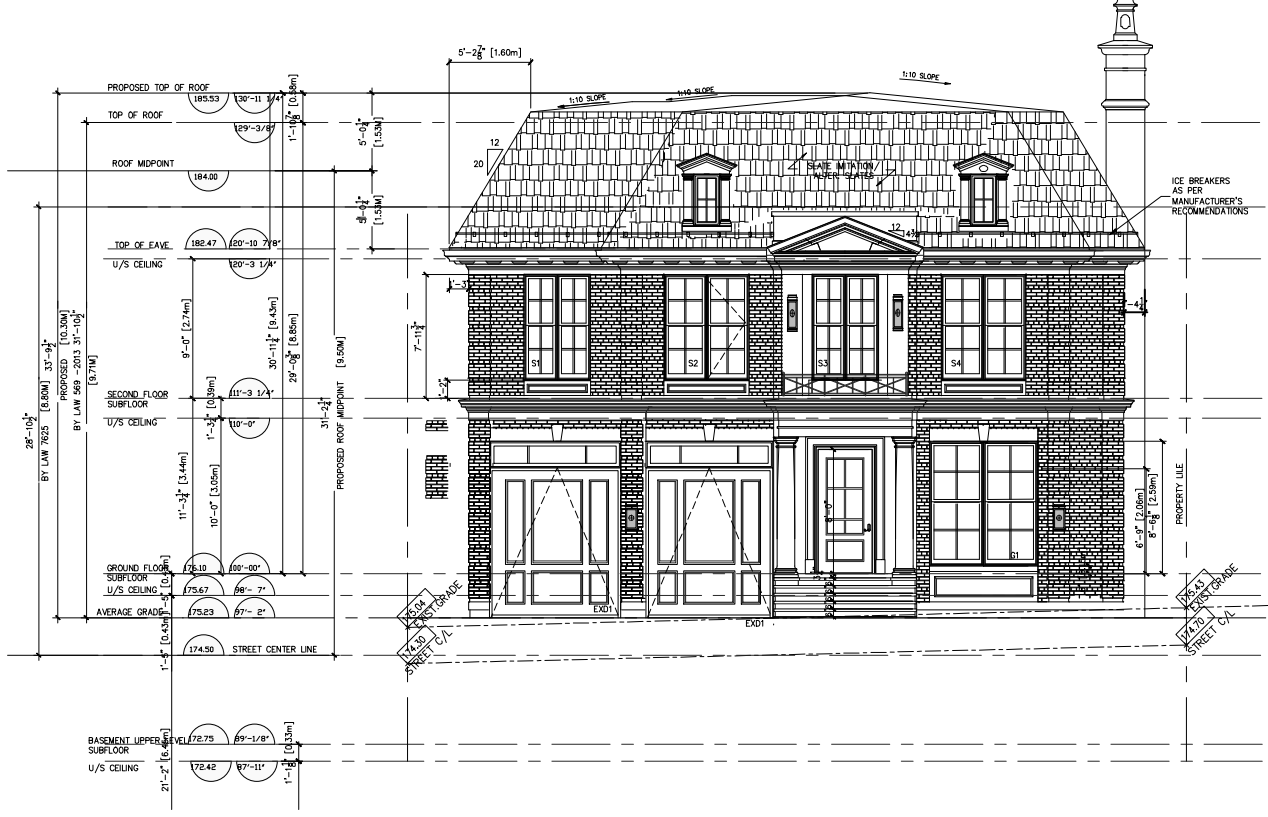
3 Bridgman Avenue, Suite 201, Toronto, Ontario Canada M5R 3V4

PRIVATE RESIDENCE

122 ELMWOOD AVENUE
TORONTO, ON

SCHEMATIC DESIGN
SITE PLAN

MAY 7th, 2019
SCALE: 1/16" = 1'-0"



SCHEMATIC DESIGN
FRONT ELEVATION
May 7th, 2019
SCALE: 1:100

PRIVATE RESIDENCE
122 ELMWOOD AVENUE
TORONTO, ON

MAKOW ASSOCIATES
ARCHITECT INC.

3 Bridgman Avenue, Suite 201, Toronto, Ontario Canada M5R 3V4



May 7th, 2019
SCALE: 1:100

3 Bridgman Avenue, Suite 201, Toronto, Ontario Canada M5R 3V4