

DECISION AND ORDER

Decision Issue Date Monday, September 09, 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): NIKOLAI MIKITIUK

Applicant: NIKOLAI MIKITIUK

Property Address/Description: 78 STEPHEN DR

Committee of Adjustment Case File: 19 119907 WET 03 MV

TLAB Case File Number: 19 146994 S45 03 TLAB

Hearing date: Wednesday, September 04, 2019

DECISION DELIVERED BY GILLIAN BURTON

APPEARANCES

Name	Role	Representative
Nikolai Mikitiuk	Appellant/Applicant/Owner	John Nunziata
Pavlo Tourko	Expert Witness	

INTRODUCTION AND BACKGROUND

This was an appeal to the Toronto Local Appeal Body (TLAB) from an April 11, 2019 decision of the Committee of Adjustment (COA) in Etobicoke which refused nine variances for 78 Stephen Drive. In the Notice of Decision, the variances were expressed to be: "To construct a one-storey rear addition, and a second storey cantilevered addition along the north side".

However, the "proposed" construction had been almost all completed by a previous owner. When applying for a building permit, the present owners Mr. Nikolai Mikitiuk and Ms. Pivonya Mykytyuk were informed on December 14, 2018, that many variances from

the City-wide Zoning By-law No. 569-2013 were required to authorize the previous construction and any new that was proposed.

The City-Wide Zoning By-law 569-2013 zones this property RD (f12.0; a510; d0.45). Although the Etobicoke Zoning By-law was cited by the Zoning Examiner, no variances are required under it. The purpose as stated by the Zoning Examiner was: "The review is done for addition to existing detached dwelling, indroding (sic) 3 units and rear deck and shed."

MATTERS IN ISSUE

Do the variances meet the four tests under subsection 45(1) of the Act, and other provisions, given that the construction has taken place, and in light of the adverse comments of the neighbour at 80 Stephen Dr. at the COA hearing?

JURISDICTION

For variance appeals, the TLAB must ensure that each of the variances sought meets the tests in subsection 45(1) of the Act. This involves a reconsideration of the variances considered by the COA in the physical and planning context. The subsection requires a conclusion that each of the variances, individually and cumulatively:

- maintains the general intent and purpose of the official plan;
- maintains the general intent and purpose of the zoning by-law;
- is desirable for the appropriate development or use of the land, building or structure; and
- is minor.

These are usually expressed as the "four tests", and all must be satisfied for each variance.

In addition, TLAB must have regard to matters of provincial interest as set out in section 2 of the Act, and the variances must be consistent with provincial policy statements and conform with provincial plans (s. 3 of the Act). A decision of the TLAB must therefore be consistent with the 2014 Provincial Policy Statement (PPS) and conform to (or not conflict with) any provincial plan such as the Growth Plan for the Greater Golden Horseshoe (Growth Plan) for the subject area. Under s. 2.1(1) of the Act, TLAB is also to have regard for the earlier Committee decision and the materials that were before that body.

EVIDENCE

Professional evidence for the owners was provided by Mr. Pavlo Tourko, an experienced licensed architect who prepared the "proposed" plans. He explained that

most of the construction had been completed by the previous owner under a building permit. However, there had been portions built beyond the permit. The present owners' application for a building permit had been, he stated, basically to document the existing conditions of the rear of the property. There was one small new exception at the rear, where it was proposed to enclose a small porch.

A neighbour, Ms. Mariya Koval, at 80 Stephen Drive had written to the COA to object, and her daughter appeared at the COA hearing. Neither of them sought status in the TLAB Hearing, and did not make further submissions. In sum, Ms. Koval had objected to the size of the garage door and addition of a shed on the side of the garage; drainage of stormwater onto her property from the shed next to it; no views because of a canopy and possibly a walkout second storey deck; and erection of a fence along the mutual property line with an extension on top of it.

Mr. Tourko testified that he had spoken to Ms. Koval outside the COA hearing. She had applied for some variances about two years ago, and he presumes, was possibly refused some of them. He stated that any drainage issue would be resolved at the time of applying for a building permit.

There were two letters of support from the owners of 1 and 5 Cloverhill Rd., just next to and around the corner for the subject property.

There were no reasons given by the COA for its refusal, as is usual.

Mr. Nunziata explained that the (lawful) fence was erected to prevent parking encroachments.

He placed emphasis on the positive report obtained from City Planning Staff on April 2, 2019. The variances were discussed there in detail, and the conclusion was in favour of them. Staff also recommended two conditions: that construction be in accordance with the proposed site plan, and that Variance 3 for the north side yard setback apply only to the existing shed. The comments were:

“The applicant requests a decreased north side yard setback of 0.35 metres as measured under Zoning By-Law No, 569-2013 whereas the minimum required side yard setback is 1.2 metres (Variance No. 3). The applicant also requests an increased building length of 19.67 metres (Variance No. 8). The maximum permitted building length under Zoning By-Law No. 569-2013 is 17.0 metres. The decreased north side yard setback is due in part, to an existing shed which is 0.88 metres wide and 3.86 metres long. The increased building length is due, in part, to a proposed canopy which extends 1 .37 metres beyond the existing dwelling and is 3.66 metres wide. In order to ensure that the proposal is constructed as shown, and that the proposed north side yard setback and increased building length only apply to portions of the dwelling, Planning staff recommend that the conditions listed in the Recommendations section of this report be imposed.”

The variances now sought are:

1. Section 10.20.30.40.(1)(A), By-law 569-2013

The maximum permitted coverage is 33% of the lot area (171.32 m²).
The altered dwelling will cover 33.3% of the lot area (172.75 m²).

2. Section 10.20.40.40.(1)(A), By-law 569-2013

The maximum permitted floor space index is 0.45 times the area of the lot (233.62 m²).
The altered dwelling will have a floor space index equal to 0.46 times the area of the lot (239.3 m²).

3. Section 10.20.40.70.(3)(C), By-law 569-2013

The minimum required side yard setback is 1.2 m.
The altered dwelling will be located 0.35 m from the north side lot line.

4. Section 10.5.40.50.(3), By-law 569-2013

A platform without main walls attached to or within 0.3 m of a building must comply with the minimum required building side yard setback which is 1.2 m.
The proposed rear yard platform will be located 0.71 m from the south side lot line.

5. Section 10.5.40.60.(2)(B)(ii), By-law 569-2013

A canopy, awning or similar structure that is not covering a platform may encroach into a required minimum building setback, in a side yard, a maximum of 1.5 m, if it is no closer to the side lot line than 0.3 m.
The proposed rear canopy will encroach 1 m into the south side yard setback and will be located 0.20 m from the south side lot line.

6. Section 10.5.40.60.(7)(B), By-law 569-2013

The eaves of a roof may encroach into a required minimum building setback a maximum of 0.9 m, if they are no closer to a lot line than 0.3 m.
The eaves overhang of the altered dwelling will encroach 0.93 m into the north side yard setback and will be located 0.27 m from the north side lot line.

7. Section 10.20.40.30.(1), By-law 569-2013

The maximum permitted building depth is 19 m.
The altered dwelling will have a depth of 19.68 m.

8. Section 10.20.40.20.(1), By-law 569-2013

The maximum permitted building length is 17 m.
The altered dwelling will have a length of 19.67 m.

9. Section 10.5.50.10.(3)(A), By-law 569-2013

A minimum of 50% of the rear yard shall be maintained as landscaping.
A total of 27% of the rear yard will be maintained as landscaping.

ANALYSIS, FINDINGS, REASONS

I have studied the requested variances carefully, in the context of the Planning Staff report. The Zoning Examiner's reference to the addition of units was incorrect.

I am satisfied that in the context of this application, the variances sought are appropriate, and that they meet the four tests above. The professional evidence of the City Planning staff, as well as Mr. Tourko's, is convincing on this issue. There are no

adverse impacts of a planning nature on the immediate neighbour or the neighbourhood. The variances are numerically insignificant. The additions are in keeping with the existing pattern of development, and other approvals nearby.

In my view, the provincial plans are not engaged in this application, other than to say that the housing supply is enhanced by the existing number of units here. The additional accoutrements to the rear will assist with meeting the provincial housing availability and affordability goals.

Ms. Koval was notified of the TLAB Hearing and therefore had the opportunity to appear and/or to make written submissions, and did not do so. I have considered her objections as is required under the Act, and am satisfied that there is no planning merit to them. Mr. Nunziata also affirmed that she had no difficulty with opening her car door, as alleged.

DECISION AND ORDER

The appeal is allowed, and the variances in Appendix 1 are approved, on the following conditions:

1. The proposal shall be constructed substantially in accordance with the site plan prepared by Pavlo Tourko, dated October 20, 2018, Number A-1, attached as Attachment 2, to the satisfaction of the Director, Community Planning, Etobicoke York District. Any variances that may appear on this plan but are not listed in this decision are NOT authorized.
2. That Variance No. 3 for the proposed north side yard setback only applies to the existing shed.

ATTACHMENT 1 - VARIANCES

1. Section 10.20.30.40.(1)(A), By-law 569-2013

The maximum permitted coverage is 33% of the lot area (171.32 m²).

The altered dwelling will cover 33.3% of the lot area (172.75 m²).

2. Section 10.20.40.40.(1)(A), By-law 569-2013

The maximum permitted floor space index is 0.45 times the area of the lot (233.62 m²).

The altered dwelling will have a floor space index equal to 0.46 times the area of the lot (239.3 m²).

3. Section 10.20.40.70.(3)(C), By-law 569-2013

The minimum required side yard setback is 1.2 m.

The altered dwelling will be located 0.35 m from the north side lot line.

4. Section 10.5.40.50.(3), By-law 569-2013

A platform without main walls attached to or within 0.3 m of a building must comply with the minimum required building side yard setback which is 1.2 m.

The proposed rear yard platform will be located 0.71 m from the south side lot line.

5. Section 10.5.40.60.(2)(B)(ii), By-law 569-2013

A canopy, awning or similar structure that is not covering a platform may encroach into a required minimum building setback, in a side yard, a maximum of 1.5 m, if it is no closer to the side lot line than 0.3 m.

The proposed rear canopy will encroach 1 m into the south side yard setback and will be located 0.20 m from the south side lot line.

6. Section 10.5.40.60.(7)(B), By-law 569-2013

The eaves of a roof may encroach into a required minimum building setback a maximum of 0.9 m, if they are no closer to a lot line than 0.3 m.

The eaves overhang of the altered dwelling will encroach 0.93 m into the north side yard setback and will be located 0.27 m from the north side lot line.

7. Section 10.20.40.30.(1), By-law 569-2013

The maximum permitted building depth is 19 m.

The altered dwelling will have a depth of 19.68 m.

8. Section 10.20.40.20.(1), By-law 569-2013

The maximum permitted building length is 17 m.

The altered dwelling will have a length of 19.67 m.

9. Section 10.5.50.10.(3)(A), By-law 569-2013

A minimum of 50% of the rear yard shall be maintained as landscaping.

A total of 27% of the rear yard will be maintained as landscaping.

ATTACHMENT 2 – SITE PLAN

X 

G. Burton

Panel Chair, Toronto Local Appeal Body

INDEX SHEET:

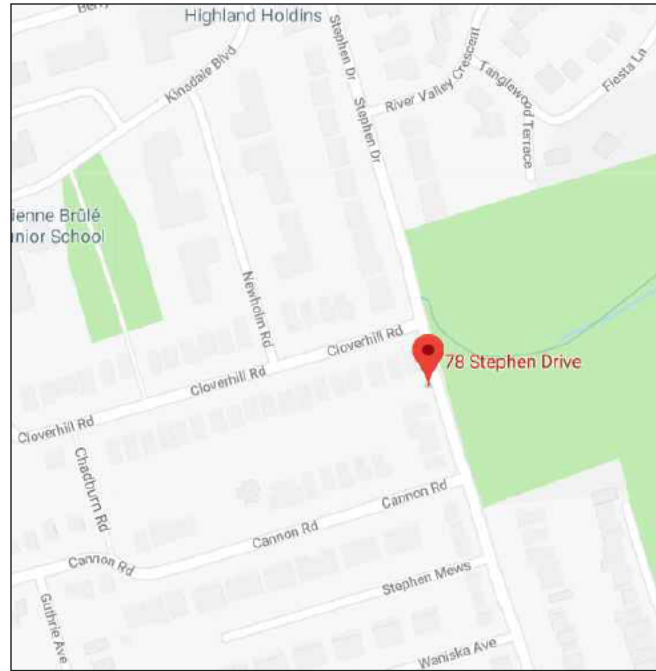
- A-1 COVER PAGE & SITE PLAN
- A-2 BASEMENT FLOOR PLAN
- A-3 GROUND FLOOR PLAN
- A-4 SECOND FLOOR PLAN
- A-5 FRONT ELEVATION
- A-6 SIDE ELEVATION
- A-7 BACK ELEVATION
- A-8 SIDE ELEVATION
- A-8.1 SIDE GARAGE ELEVATION
- A-8.2 FRONT GARAGE ELEVATION
- A-9 SECTION A-A
- A-10 WALL SECTION DETAIL

SCOPE OF WORK:

ADDITION IN REAR PORCH
DECK AND CANOPIES IN BACKYARD
TWO SHEDS

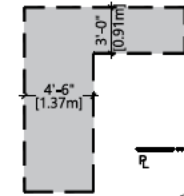
Subject to Revision Permit No: O4 172869 BLD 00 5R
OG 159086 BLD 00 5R

78 Stephen Drive, Etobicoke, ON M8Y 3M8
Key Plan:



LEGEND :

- EXISTING BUILDING
- PROPOSED ADDITION
- PROPOSED DECK & SHEDS
- SOFT LANDSCAPING
- PROPOSED CANOPY



PROPERTY LINE

MAIN ENTRANCES
UNIT 1 & 2

SURVEY INFORMATION:

SURVEY INFORMATION TAKEN FROM:
SPEIGHT VAN NOSTRAND, WARD & ANDERSON
ONTARIO LAND SURVEYORS
LOT NUMBER: 20 & 21
REGISTERED PLAN 961 YORK
CITY OF ETOBICOKE

EXISTING 2 STOREY
SOLID MASONRY DWELLING

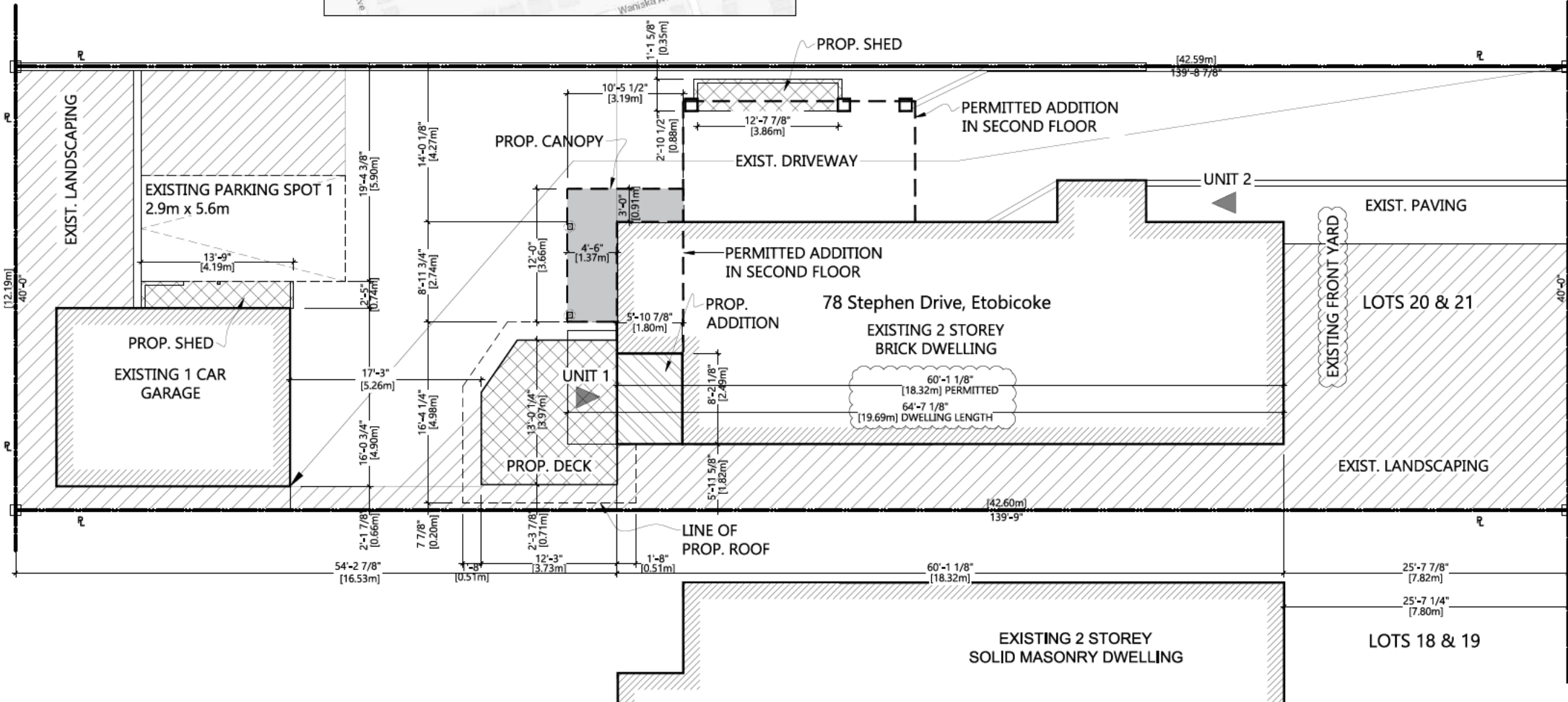
No. 80
LOTS 22 & 23
25'-7 7/8"
[7.82m]

ZONING REQUIREMENTS
ZONING CATEGORY - Residential Zones, RD
BUILDING AND SITE STATISTICS Lots 20, 21, REGISTERED PLAN 961 YORK

	sq/m	sq/ft
LOT AREA	519.3	5590
Rear Area	100%	201.6 / 2170
SOFT LANDSCAPE	28%	56.3 / 606
Proposed Shed	2%	3.1 / 33
Proposed Deck	7%	14.1 / 152
Garage	16%	31.4 / 338
Driveway and Parking Spots	48%	96.7 / 1041

GROSS FLOOR AREA			
	% OF LOT	sq/m	sq/ft
Ground Floor	21	110.1	1184.7
Addition in Ground Floor	1	4.5	48.3
Second Floor	24	124.7	1342.5
Total	46.1	239.3	2575.6
Max. Allowed	45.0	233.7	2515.4

LOT COVERAGE			
	% OF LOT	sq/m	sq/ft
Ground Floor	22	114.55	1233
Second Floor Projection	4	21.18	228
Garage	6	31.43	338
Proposed Canopy	1	6.67	72
Proposed Sheds	1	5.54	60
Proposed Deck & Canopy Above	4	20.86	225
Total	38.6	200.2	2155
Max. Allowed	33.0	171.4	1844.6



Approx. Centreline of Street



CONTRACTOR IS TO CHECK AND VERIFY ALL DIMENSIONS AND CONDITIONS TO THE OWNER BEFORE PROCEEDING WITH THE WORK. DRAWINGS ARE NOT TO BE SCALED. CONTRACT DOCUMENTS REMAIN THE PROPERTY OF THE OWNER AND SHALL BE RETURNED UPON COMPLETION OF THE PROJECT.

Project Name:
Residence
78 Stephen Dr.

Location:
78 Stephen Drive,
Etobicoke, ON



Scale :
1:150

Date :
Sep, 2018

Revision: 1

Date :
Oct, 20, 2018

Drawing Title :
COVER PAGE AND SITE PLAN

Project No.
St - 78

Drawing No.
A - 1