

# DECISION AND ORDER

**Decision Issue Date** Wednesday, October 8, 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): AMIR VALI

Applicant: GLENN RUBINOFF

Property Address/Description: 521 HILLSDALE AVE E

Committee of Adjustment Case File: 18 155619 STE 22 MV (A0476/18TEY)

**TLAB Case File Number: 19 120855 S45 15 TLAB**

**Hearing date:** Friday, July 05, 2019

**DECISION DELIVERED BY S. MAKUCH**

## APPEARANCES

NAME	ROLE	REPRESENTATIVE
Glenn Rubinoff	Applicant	
Ramak Rouhifar	Owner	
Amir Vali	Appellant/Primary Owner	Jennifer Meader
Al Kivi (SERRA)	Party	
David Riley	Expert Witness	

## **INTRODUCTION**

This is an appeal of a decision refusing minor variances to permit the construction of a two- story dwelling with an integral garage.

## **BACKGROUND**

The minor variances in this case relate to the integral garage, front yard landscaping, fsi, height, and depth. The major issue is whether the variance to permit the integral garage should be permitted.

## **MATTERS IN ISSUE**

The major issue before me was whether the minor variance to permit the integral garage should be granted. This issue was addressed by two witnesses: Mr. Riley, a qualified land use planner and Mr. Kivi, who, although he did not have education as a land use planner and could not be qualified as a professional land use planner, clearly had sufficient experience and knowledge in dealing with land use planning matters to be qualified to give opinion evidence in land use planning.

There is no provision in any Official Plan specifically regarding integral garages; however, the Planning Report (Davisville Village Zoning Study, September 25, 2017, filed April 5, 2019) recommending the zoning prohibition of integral garages in the Davisville Village, where the property in question is situated, states on page 3:

“While the 'no integral garage' provision will apply to all Neighbourhood properties in Davisville Village, integral garages comprise part of the prevailing character for some streets within the study area. In these instances, applicants can seek a minor variance to allow an integral garage which may be supportable provided the proposed building and landscaping are well-designed and all other variances are acceptable.”

This in my view, this statement clearly expresses the general intent and purpose of the zoning prohibition of integral garages. The matter in issue respecting the integral garage, therefore, is whether Hillside Ave. East is a street of which “integral garages comprise part of the prevailing character” and if so, “provided the proposed building and landscaping well-designed and all the other variances acceptable”.

## **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 addition, 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**

Mr. Riley gave clear evidence that the variances respected and reinforced the physical character of the area and thus met the general intent and purpose of the Official Plan. Mr. Kivi disagreed with him. Similarly, the evidence of Mr. Riley supported a finding that the variances were minor and appropriate for the development of the land while Mr. Kivi's evidence was to the contrary.

Mr. Riley, however, did not give persuasive evidence that integral garages were part of the prevailing character of Hillsdale Ave East, while Mr. Kivi's evidence was that such garages were not. The evidence of both witnesses is set out in detail in their filed witness statements.

Mr. Riley gave evidence that the variances met the requirements of Provincial Policies and Plans. This was not significantly in dispute.

## **ANALYSIS FINDINGS REASONS**

Based on the evidence of Mr. Riley, a site visit and a review of other decisions respecting variance applications in the area I find that the variances meet the general intent and purpose of the Official Plan. However, I find, based on Mr. Kivi's evidence, my site visit, and the Planning Report recommending the prohibition of integral garages in the zoning bylaw that the variance to permit an integral garage should not be granted.

Many of the decisions and some of the evidence presented in this case suggested that OPA 320 is relevant to my decision. This, it would appear, is because it, like the Planning Report, refers to the term "prevailing character.. In my view, although OPA 320 does apply in this case because it came into force before the hearing commenced, I do not have to address it, as the variance fails on the prohibition of integral garages in the zoning bylaw.

Based on the Planning Report recommending the prohibition, integral garages should only be permitted on streets where "integral garages comprise part of the prevailing character" of the street. The general intent and purpose of the prohibiting bylaw is to prevent integral garages unless they are already part of the prevailing character of the street. Mr. Kivi's evidence was that integral garages were not part of the prevailing character of Hillsdale Ave. I concur. Based on this finding, the variance to permit an integral garage should not be allowed even though the remaining variances would result

in a well landscaped and designed building. The planning report clearly indicates that it is only “in these instances”, i.e. instances where integral garages are already part of the prevailing character of the street, that integral garages should be permitted. Its purpose is to otherwise prohibit such garages. I find based on the evidence of Mr. Kivi and my site visit that such garages are not part of the prevailing character.

## **DECISION AND ORDER**

The appeal is dismissed, and the decision of the Committee of Adjustment affirmed.

**X** 

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S. Makuch

Panel Chair, Toronto Local Appeal