

# DECISION AND ORDER

**Decision Issue Date** Monday, October 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): INES FERRI

Applicant: AJT DESIGN

Property Address/Description: 362 RUSTIC RD

Committee of Adjustment Case File: 18 262105 WET 12 MV

**TLAB Case File Number: 19 114668 S45 05 TLAB**

**Hearing date:** Thursday, September 05, 2019

**DECISION DELIVERED BY D. LOMBARDI**

## APPEARANCES

Name	Role	Representative
CAROLINA FIORINO	Owner/Party	ALISSA WINICKI
EDDIE RIBIERO	Owner	
AJT DESIGN	Applicant	
INES FERRI	Appellant	FRANK DI GIORGIO
DIANA FERRI	Party	
DINO FERRI	Party	
CHRISTIAN CHAN	Expert Witness	

## INTRODUCTION

This is an appeal from the decision of the Etobicoke York District Panel of the City of Toronto (City) Committee of adjustment (COA) approving two variances, with conditions, to permit the construction of a new detached garage in the rear yard, and to convert the existing attached garage to habitable space at 362 Rustic Road (subject property).

The subject property is located on the north-east corner of the intersection of Rustic Road and Blue Springs Road in the Ward 5, York South-Weston neighbourhood known as 'Maple Leaf'. The subject property is a corner lot and is currently improved with a modest one storey bungalow with an integral below-grade garage, accessed with a reverse slope driveway. The dwelling has its main entrance on Blue Springs Road, whereas the frontage of the subject property is on Rustic Road.

The subject property is designated "*Neighbourhoods*" in the City Official Plan (OP) and is zoned residential 'R4' in the former North York Zoning By-law (former By-law) 7625 and 'RD' (f15.0; a550)(x5) with a lot coverage maximum of 30% in the new, harmonized By-law 569-2013 (new By-law).

## BACKGROUND

In 2018, the Owners of the subject property, Carolina Fiorino and Eddie Ribiero, submitted an application to the COA seeking four variances from the new Zoning By-law to permit the construction of a new 'attached' garage on the north side of the existing dwelling thereby converting the existing integral below-grade garage to habitable space. The requested variances sought relief from the By-law to permit an increase in the maximum permitted lot coverage, dwelling length and depth, and a reduction in the rear yard setback.

The Committee refused the application on November 8, 2018 and the Owners subsequently filed a new application with the COA which is the subject of this appeal. That application included the following two variances:

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

The maximum permitted lot coverage is 30% of the lot area (139.26 m<sup>2</sup>).

The altered dwelling and new detached garage will cover 38.22% of the lot area.

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

A minimum of 50% of the rear yard shall be maintained as soft landscaping (58.49 m<sup>2</sup>).

A total of 41.66% of the rear yard will be maintained as soft landscaping (48.74 m<sup>2</sup>).

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The principal difference between the two applications was not insignificant; in the proposal (subject Application) before this Tribunal, the Owners are proposing to construct a detached garage to be situated in the rear yard of the subject property which requires two variances whereas the initial application before the COA proposed an integral garage attached to the north end of the existing dwelling. Both applications propose to eliminate and grade the existing reverse slope driveway and replace it with soft landscaping.

On January 24, 2019, the COA approved the variance above recited. The remediation of the reverse slope driveway is reflected in the following condition imposed by the Committee:

*The existing driveway (leading to the attached garage to be converted into habitable space) shall be restored with soft landscaping.*

Subsequent to the approval by the COA on January 24, 2019 of the subject Application, Ms. Ines Ferri, the owner of 5 Blue Springs Road, and the property abutting the rear of the subject property to the north, filed a Notice of Appeal (Form 1) with the Toronto Local Appeal Body (TLAB) appealing the decision of the COA. The Appellant's grounds for appeal can be summarized as follows:

- The proposed development is not appropriate for the site and represents a level of intensification of the subject property that is unacceptable;
- The variances are not 'minor' and will result in negative adverse impacts on the Appellant's property;
- The proposed detached garage will be too close to her side yard and to her home; and
- The grade of the subject property is higher than her property and she is concerned about groundwater run-off from the reduced landscaping in the rear yard.

The TLAB set a Hearing date of June 19, 2019 to hear the appeal. Prior to the Hearing, several persons filed the appropriate forms declaring party status. These included Dino Ferri, the Appellant's son, and his wife, Diana Ferri, and Andrew Trotter, AJT Design, the Applicant's agent.

For context, I note that prior to the requisite March 28, 2019 deadline for disclosure in the Notice of Hearing, Dino and Diana Ferri submitted numerous emails to the TLAB on behalf of the Appellant related to the appeal grounds identified in the Appellant's Notice of Appeal form. In essence, the Appellant asserted certain 'irregularities' (her words) surrounding the subject application suggesting that the Zoning Examiner had overlooked a number of violations of the new Zoning By-law.

Furthermore, she submitted in her Notice of Appeal (Form 1) that these violations were not before the COA in the form of variances and that the Committee's decision "*may have been altered if the information was before them.*"

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In correspondence from the Appellant's representative, Frank Di Giorgio, filed with the TLAB, he asserted that *"the subject property is characterized by an undersized reverse corner lot and a non-complying building that includes an integral legal non-conforming garage and driveway. In accordance with Section 45(2)(a) of the Planning Act, the applicant is entitled to an extension of the existing building to achieve the stated objective of improving any unsafe and/or non-conforming conditions."*

He further submitted that *"the proposed approach is consistent with both Sections 5.0.40.1(2) of the By-law 569-2019 as well as Section 10.10.80.1 that outlines the City's goal to support the removal of reverse slope driveways found mostly in R zones but rarely in RD zones."*

He concluded that *"this approach rightfully returns the application to a previous position of dealing with a refusal decision for an addition to the existing building made by the Committee of Adjustment on November 8, 2018. Additionally, this approach eliminates discussion on any apparent missing variances that are relevant to the subject appeal and require specific approval under Section 45(1) of the Planning Act."*

Mr. Di Giorgio, on behalf of the Appellant, requested direction from the TLAB in this regard, and on June 5, 2019, the TLAB Chair Lord replied to both the Appellant and the Applicant with the following two possible options for consideration, "having the parties meet to explore a possible compromise solution; or, support the Appellant's request for an adjournment of the Hearing to allow "the proper processing of your application under the Planning Act"."

The Applicant did not wish to adjourn the matter and so the Hearing proceeded as scheduled.

Hearing Day 1 commenced on June 19, 2019, and the attendees included the Appellant, Ines Ferri, and her son and daughter-in-law, both Parties to the proceeding, and their representative, Frank Di Giorgio. The Applicant, AJT Design (Andrew Trotter), and the Owners of the subject property were represented by counsel, Alissa Winicki.

There were no other attendees at the Hearing.

It became apparent at the outset of the Hearing that there was significant history between the Parties in attendance and antagonism was apparent. Communication between Ms. Fiorino and Ms. Ferri and her family, while somewhat intermittent, had nevertheless become acrimonious. To quote George Bernard Shaw *"the biggest problem in communications is the illusion that it has taken place."* I find this quote quite apropos for the circumstances.

As an attempted at refocusing the proceedings I suggested that Mediation, pursuant to the TLAB Rules, might help foster positive dialogue between the two Parties and possibly assist in resolving some or all the issues. Ultimately, the Parties concurred and agreed to temporarily adjourn the Hearing in order to participate in a non-binding Mediation session with the presiding Member facilitating discussions.

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Unfortunately, after a lengthy Mediation session that lasted much of the remainder of the day, the Parties conceded that the issues were too great to overcome in Mediation and requested the scheduled Hearing recommence. Since the Mediation had consumed much of the day scheduled for the Hearing, the matter was adjourned on the consent of the Parties and a second Hearing date (September 5, 2019) was secured to continue the proceedings.

However, prior to adjourning Hearing, Mr. Di Giorgio reiterated his client's position that the subject application was being processed incorrectly and that the TLAB should consent to varying the Tribunal's procedures to enable processing the application in accordance with either Section 45(2) a or 45(3) of the *Planning Act* (Act).

In my response, I directed Mr. Di Giorgio to file a formal Notice of Motion (Form 7) in this regard and advised that I would deal with the request as a Written Motion (pursuant to TLAB Direction No. 2). A deadline date of June 28, 2019 was set for filing and, in turn, the due date for a Notice of Response to Motion was set for July 16, 2019.

On June 27, 2019, the Appellant, through her representative Mr. Di Giorgio, filed the above reference Notice of Motion, along with the requisite Affidavit and accompanying addenda, with the following relief requested:

1. To vary TLAB procedures to enable expediting the building permit issuance process by processing the application in a more appropriate and expeditious manner in accordance with either:

- (i) Sec 45 (2)a of the Planning Act, or
- (ii) Sec 45 (3) of the Planning Act.

3. The request for relief also includes that TLAB deny the two identified variances under Sec 45(1) of the Planning Act to replace a presumably attached garage with a larger detached garage.

4. That any incremental development on the property be approved by TLAB subject to conditions that include an attached garage with a total coverage of 35.84% on the property and that the attached garage have the following setbacks that relate to the main building:

- a) A west side yard setback of 6.25m
- b) An east side yard setback of 2m
- c) A rear yard setback of 3.6m

In response, the Owners served on the Parties a number of documents with the TLAB on July 12, 2019 including: a Notice of Response to Motion (Form 8), accompanied by an Affidavit (Form 10) and supporting documentation in the form of a Schedule A outlining in detail the response to the Motion.

Additionally, the Applicant also filed a Notice of Motion (Form 7) for a written Hearing requesting the following relief:

1. An Order dismissing the appeal in this matter with costs, pursuant to subsection 45(17) and (17.2) of the Planning Act, R.S.O. 1990, c. P. 13, as amended (hereinafter the "Planning Act");
2. An Order dismissing the appeal in this matter with costs, pursuant to Rule 9.1 (a) to (e) of the TLAB's Rules;
3. In the event the relief sought in paragraphs 1 and 2 above is not granted, an Order granting an exception to Rules 16.2 and 16.5 of the TLAB's Rules to extend time to deliver Document Disclosure and an Expert Witness Statement at the earliest dates permitted by the TLAB pursuant to Rules 2.10 of the TLAB Rules; and
4. Such further and other orders as TLAB deems just.

On August 9, 2019, the presiding Member issued the following Decision and Order:

- The Appellant's Motion to vary the TLAB procedures to enable processing the application in accordance with either s. 45(2)(a) or s. 45(3) of the Planning Act is denied
- The Applicant's Motion is allowed, in part; the request to dismiss the appeal without a hearing is denied and the Day 2 Hearing scheduled for September 5, 2019 is confirmed.
- The Applicant's request for relief for an extension to deliver Document Disclosure and an Expert Witness Statement is granted; those documents are to be submitted to the TLAB by no later than August 23, 2019 with any replies by August 30, 2019, served on all Parties and the TLAB.

## **MATTERS IN ISSUE**

The major issue on the appeal was whether the two variances sought, individually and collectively, met the policy considerations and four statutory tests below recited.

## **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**

### *Hearing Day 2*

The hearing of this matter recommenced on September 5, 2019, with the Parties, above recited, again in attendance.

At the outset of Hearing, I felt it necessary to address several matters contained in a document (undated but received by the TLAB on August 22, 2019) submitted by the Appellant's representative, Frank Di Giorgio, filed in response to my August 9<sup>th</sup> Decision and Order.

In that document, which consisted of nine broad bullet points, Mr. Di Giorgio stated that *"As the authorized representative of the appellant on the subject file, I am compelled to respond to the order issued by the TLAB on Friday, August 9, 2019, and provide additional planning evidence."*

I admonished Mr. Di Giorgio for attempting to do so as the Decision and Order was very clear. However, in view of his submission I felt it appropriate and necessary to respond to several assertions that I found unwarranted.

### Point 1

He stated that *"The appellant remains adamant that she is entitled to rely on the integrity of a planning approval process that is consistent with the Planning Act and promotes fairness, transparency and respect for due process."*

I responded that while I am disappointed that the Appellant may feel this way I am comfortable that I have maintained and protected the integrity of the planning process within the proceedings and the Decision and Order in question and have attempted at all times to promote fairness, transparency and respect for due process. I reiterated that although much of Hearing Day 1 was consumed by an unsuccessful mediation session, a second day was scheduled so that the matter could be fully adjudicated, and all the Parties could be heard.

### Point 6

Mr. Di Giorgio intimates that the Appellant is requesting *"a proper planning process that ensures full disclosure, adherence to due process and protection against dubious planning tactics...."*

I, again, reiterated that I believe that I have provided an opportunity for full disclosure and I am confident that all the Parties have had an opportunity to avail themselves of due process given that the TLAB has convened a second Hearing day for this matter.

Point 9

“The Appellant respectfully requests that the Chair (the presiding Member) use the discretionary powers of the TLAB to allow the subject appeal and set aside the COA decision in accordance with s. 45(18) of the *Planning Act*.”

I reminded the Appellant that a Decision and Order addressing this request had been issued and I am not prepared to re-litigate the matter. That Order was not issued so that additional debate could occur as to the varying of the TLAB’s powers to set aside the COA decision but, rather, was meant in part to allow additional documents to be filed in order to properly adjudicate the matter before the TLAB – that is, the appeal of the two variances before it.

I concluded my opening remarks by noting that pursuant to the TLAB Rules I have a duty to hear from all Parties in attendance but asked that testimony not be repetitive but rather be informative. Considering the palpable tensions observed during the first day of the Hearing, I found it necessary to remind the Parties to be respectful to each other and behave in a courteous and civil manner during the proceedings.

*Expert Witness Evidence*

The Applicant’s solicitor called, Andrew Trotter of AJT Design, to give evidence. Mr. Trotter is an architectural technologist who was not presented as an expert witness but rather as the Owner’s architectural designer who prepared the site plan drawings. He provided a brief overview of the evolution of the proposal’s design reviewing both the initial application (Exhibit 1) presented to the COA in November 2018 that was ultimately refused, as well as the most recent Site Plan (Exhibit 2) approved as part of the COA decision on January 24, 2019 and now before the TLAB.

In explaining the project, he emphasized that the Owners of the subject property have for years experienced garage/basement flooding due to the reverse slope driveway leading to the existing below grade garage. This situation, in addition to the difficulty in parking vehicles on the slope during winter months, contributed to the Owners seeking a redesign solution that addressed the driveway situation and the garage, but also would allow them to enjoy their rear yard.

He noted that the original design proposed a garage attached to the north end of the existing dwelling situated within the rear yard which required five variances including for an increase in building length and depth. He submitted that the increased building length was the main reason the application was refused by the COA.

Following new direction from the Owners the proposal was subsequently redesigned to reflect what is before the TLAB. Mr. Trotter asserted that the two



variances triggered by the revised application were confirmed by the City Zoning Examiner on multiple occasions (documentation filed with the TLAB) and he was assured by City staff that no other variances were required.

He noted that the Appellant was the only person in attendance at the COA hearing in opposition to the subject proposal.

On cross-examination of Mr. Trotter, Mr. Di Giorgio generally question the accuracy of some of the data contained on the revised Site Plan drawings (Exhibit 2), and specifically the front yard setback of the Appellant's garage. Mr. Di Giorgio referred to the Appellant's survey, of which a copy was not tendered, which he suggested indicates this setback to be 6.94 m whereas the Site Plan indicates a setback of 5.87 m. In response, Mr. Trotter stated that the setback measurements were scaled using the architectural design program he employs and reflect an approximation that he believes to be realistic.

Mr. Di Giorgio cited what he felt to be several other inaccuracies in the Site Plan, Exhibit 1, including: a slight discrepancy in the proposed lot coverage figure; the wrong address of the Appellant's property; and minor differences in the dimensions of the proposed garage due to varied wall thickness.

Carolina Fiorino, the owner of the subject property, was called as the next witness and read from her Witness Statement (Exhibit 3). Ms. Fiorino and her partner have lived at 362 Rustic Road for 10 years and she asserted that the proposal is intended to create a safer living environment for her family and one that is more practical for their needs. She confirmed that the reverse slope driveway has contributed to garage and basement flooding in her home and, specifically in the winter months, creates a slippery and dangerous incline. She requested that the TLAB approve the variances in order to facilitate the construction of the proposed garage and driveway.

#### *Testimony of Christian Chan*

Mr. Chan is a land use planner and the Principal of C2Planning, a planning consultancy in Toronto. He is a Candidate Member of the Ontario Professional Planners Institute and a Provisional Member of the Canadian Institute of Planners and has appeared before various Tribunals to provide planning opinion and evidence.

He filed a Curriculum Vitae, an Acknowledgement of Expert's Duty, and a Witness Statement with the TLAB (Exhibit 4) and he was qualified to provide expert opinion in the area of land use planning.

He was the only expert witness to appear. I found his evidence, demeanor and competence detailed, thorough, well researched, apt and comprehensive. His Witness Statement (EWS) and visual evidence exemplified detailed and balanced research for such a modest development proposal.

He provided a brief overview of the subject property, the neighbourhood context and the variances being requested. He described the built form typology of the

neighbourhood generally as characterized by low density one and two-storey detached homes (Ex. 4, Tab 12). He highlighted the immediate area context noting that to the east of the subject property is a one storey detached dwelling (364 Rustic Road), to the north a one storey detached dwelling (5 Blue Springs Road – the Appellant’s home), to the south, Rustic Road and one and two storey residential homes, and to the west and across Blue Springs Rd., a row of two storey semi-detached dwellings (Ex. 4, Tab 11). He identified both a local and geographical neighbourhood indicating the latter to be an area with a radius of 500 m around the subject property.

In describing the immediate context of the subject property he explained that the intersection of Rustic Road and Blue Springs Road, immediately adjacent and south-west of the subject property is not signalized and noted that Rustic Road is classified as a Collector Road in the City Transportation Services Road Classification System, and there is no parking on the street.

The subject property is a corner lot and part of a series of three lots, that frame the corner, the others being 364 Rustic Road and 5 Blue Springs Road. It has a lot area of 464.21 m<sup>2</sup>, a frontage of 15.24 m on Rustic Road and a lot depth of 30.48 m. Mr. Chan asserted that the subject property is ‘substandard or undersized’ (his words) in comparison to the surrounding properties in the local neighbourhood for lots similarly zoned and does not meet the minimum lot area required by the Zoning By-law (550m<sup>2</sup>).

He highlighted a chart analyzing lot sizes for properties within a 60 m radius (Ex. 4, p. 47) and specifically referenced the properties at #'s 355, 357, 359, and 364 Rustic Road and #'s 5 (the Appellant’s property), 17, and 19 Blue Springs Road as the other undersized lot on the same local block.

Employing his photographic evidence (Photos 1 – 6, Exhibit 4) he illustrated several conditions unique to the site, highlighting the following:

- the existing dwelling is centered and oriented more to the rear of the lot than the typical front yard setback for homes on Rustic Road thereby creating a reduced rear yard area when compared to the surrounding properties where dwellings are oriented more to the front lot line;
- the rear yard of the subject property is smaller in comparison to the other properties in the immediate neighbourhood that meet or exceed the minimum lot area standard;
- the main access to the home is on Blue Springs Road, as is the current vehicular access to the existing garage and there is no access on Rustic Road, the legal frontage; and
- the subject property has the only existing reverse slope driveway and integral garage on either Rustic Road or Blue Springs Road.

He referenced the remaining photographic evidence to illustrate the neighbourhood context as well as twelve examples of corner lots with existing detached garages (Exhibit 7, Tab 22), which had been identified by Ms. Gisone/Ferri in an email filed with The TLAB dated March 28, 2019. He noted that the garage footprints for those

garages ranged from a low of 30 m<sup>2</sup> to a high of 90 m<sup>2</sup>, and of the twelve examples he submitted that eight were not zoning compliant.

Mr. Chan then provided planning opinion advice in respect of each of the variances in the sequence presented in the COA's decision of January 24, 2019 (attached as **Attachment 1** hereto). As there was no contrary planning advice and limited questioning of the witness, apart from clarification requested by the Appellant's representative, it is necessary to only briefly allude to the principle opinions:

#### *Provincial Policy*

He reviewed the application in light of provincial policies and asserted that the proposal falls under the definition of 'development in both the PPS and the Growth Plan. While he submitted that there are no provincial plans that have any specific overlay to the subject property or neighbourhood, he opined that the proposal (to construct a detached garage as an ancillary structure) is consistent with the PPS as there are no identified policies specific to the proposed development. The variances do not propose an increase in residential units or density.

With respect to the Growth Plan, he opined that there are no specific policies that apply to the construction of an ancillary structure and therefore, generally speaking, the proposal conforms.

#### *Variance Tests in S.45(1) of the Planning Act*

Variance 1 (Lot Coverage) - The Application proposes a new detached garage with a coverage of 38.22% of the lot area, an increase of approximately 8.22% from the maximum permitted lot coverage of 30%. More specifically, the Owners are proposing to maintain and expand the internal living space within the current built form of the existing single storey detached home, which Mr. Chan submitted is the prevailing building type in the local neighbourhood.

Additionally, he submitted that the proposal will result in the construction of a new detached private garage in a neighbourhood that has had recently approved and built homes that contain integral, attached and detached garages.

He also noted that the proposed garage will be appropriately sited on the property to be in-line and with the same setback with the front main wall of the attached garage of the adjacent house at 5 Blue Springs Rd. (the Appellant's dwelling) in order to maintain a consistent street wall.

He reviewed various policies in the City OP including 2.3.1.1, 4.1.1 and 4.1.5., as they relate to the proposed development. He asserted that the policies in the OP provide that development in *Neighbourhoods* will respect and reinforce the existing physical character of buildings, streetscapes and open space patterns, and recognize that *Neighbourhoods* are stable but not static. Policy 4.1.1 provides that *Neighbourhoods* are comprised of, among other residential building types, single

detached homes and Policy 4.1.5 provides direction as to the physical form of development in established *Neighbourhoods*.

He submitted that the built form changes proposed by the Owners will result in bringing into compliance a site characteristic, namely converting the below grade integral garage and replacing the parking requirement on the site with a rear detached garage, which is a permitted ancillary structure. He suggested that the physical character of the existing house will be 'reasonably' (his word) altered in that the space currently used for a vehicle will convert into habitable living space for the family.

Mr. Chan submitted that the existing residential dwelling on the subject property is part of the existing physical character of the neighbourhood and the proposed ancillary detached garage will also form part of the fabric of the existing physical character of the neighbourhood which contains detached garages.

Furthermore, he opined that proposed garage is consistent with the various types of detached garages of the nearby residential properties. He, again, referenced his analysis chart of COA decisions respecting lot coverage in the local neighbourhood (Exhibit 4, Tab 21) which he asserted indicates that the lot coverage requested in the subject Application falls within the range of approved lot coverages between 32% and 44%. He specifically noted the nearby property at 21 Blue Springs Road, a new home with an integral garage which was approved in 2017 for 40% lot coverage (245.21 m<sup>2</sup>).

He then addressed Policy 4.8, which states that Zoning By-laws will contain numerical site standards for matters such as building type and height, density, parking and building setbacks from front lot lines, among others, that ensure that new development will be compatible with the physical character of established residential *Neighbourhoods*. As well, the purpose and intent of zoning by-laws is to regulate the use of land and the massing, scale, height and location of buildings, among other matters.

He opined that for the reasons noted above, the proposal meets the policies of the OP as the proposed garage is compatible with the physical character of the established residential neighbourhood as well as the performance standards contained in the implementing Zoning By-law.

With respect to the variance tests of desirability and minor, he opined that the proposal is desirable as it continues reinvestment into a neighbourhood that is experiencing redevelopment in the form of new, larger homes, and the modernization and enlargement of existing houses through additions and expansions. Mr. Chan further opined that the proposal is also will not destabilize the neighbourhood as it proposes a comparable rear detached garage with other two car garages (integral, attached and detached) that currently exist in the immediate area.

As to whether the requested variance is minor, he submitted that the test for minor is not one of a numerical or quantitative comparison of 'no impact' but an analysis of impact that rises to the level of being an unacceptable adverse impact of a planning nature. He opined that the variance for an increase in lot coverage as a result of the

proposed construction of a detached garage in the rear yard deals with the existing condition of an undersized lot and that even if proposed on a lot with the minimum lot area requirement as required under the Zoning By-law, the variance relief requested would not have been required.

Comparatively speaking, he asserted that outside of the nine undersized lots listed in his lot coverage chart at paragraph 72 in his EWS (Exhibit 4) the majority of the lots in the local neighbourhood have lot areas of at least 680 m<sup>2</sup>. If the proposed development were located on any one of those properties, he submitted that the resulting lot coverage would be approximately 26% and would not require a variance.

In his opinion, Variance 1 will result in only minor impacts on the abutting neighbour, not create any undue adverse impact on the streetscape of Blue Springs Road or Rustic Road, and the proposed lot coverage is within the range of the existing and COA-approved lot coverages in the neighbourhood.

Variance 2 (Rear Yard Soft Landscaping) - The proposed detached ancillary building (garage) in the rear yard and corresponding new 6 m wide interlocking stone driveway on Blue Spring Road trigger the required variance. The Applicant is requesting a reduction of the minimum amount of rear yard soft landscaping to be maintained in order to permit the construction of the proposed garage within the rear yard; the required minimum soft landscaping in the rear yard is 50% whereas the Application will result in a total of 41.66%.

Mr. Chan noted that the rear yard of the subject property is smaller in comparison to properties in the neighbourhood that meet or exceed the minimum lot area standard of 550 m<sup>2</sup> (aerial photo in Exhibit 4, p. 97) He defined the rear yard for the subject property as *“the area on the lot between the rear (north) lot line and the extension of the line at the rear main walls of the building to the side lot line.”* (Exhibit 4, para. 75)

He opined that the requested relief for rear yard soft landscaping is appropriate for the dimensions of the proposed detached garage, which will contain two parking spaces that will comply with the parking space dimensions as set out in Chapter 200.5.1.10(2) of new Zoning By-law. The proposal will also remove the existing reverse slope driveway and replace it with an at-grade soft landscaped area, which he suggested is a more desirable condition and outcome.

Furthermore, he emphasized that the retaining wall edges of the existing sloped driveway are crumbling and removing them, along with the current driveway and incorporating soft landscaping, will improve existing site conditions.

He, again, asserted that the variance for the reduction in the soft landscaping in the rear yard would otherwise not be required if the subject property was larger in area and the existing dwelling was situated towards the front of the property.

With respect to the issue of adverse impacts, Mr. Chan also addressed the location of the proposed garage in the rear yard and its setback from 5 Blues Springs Road, the Appellant property to the north. Referencing the Site Plan drawings (Exhibit

2) he submitted that the proposed north side yard setback is 0.30 m which is permitted for an ancillary use on a corner lot (Chapter 10.5.60.20.2(c) of By-law 569-2013); no variance is required.

He then addressed the built form of the proposed garage referencing the north elevation drawing found in Exhibit 4 (Tab 4, p. 180). He noted that although the height of the roof at its peak is 4 m, the north elevation main wall height to the soffit is actually 2.5 m. No height variance is required. The structure will have a brick exterior with a garage door on the west elevation, an entrance door on the east elevation, and a small window on the south (rear) elevation.

Mr. Chan also confirmed the existence of fencing along the north property line between the subject property and the Appellant's property. He confirmed that there is a 1.8 m high wood fence with lattice extending from the rear of 5 Blue Springs along the joint property line to approximately the south main wall of the Appellant's home. An attached, shorter chain link fence extends west to the front property line.

On a question from Ms. Winicki related to fencing and the height of the proposed garage specifically as it would impact the Appellant's property, Mr. Chan submitted that since the Appellant had expressed a concern related to the proximity of the proposed garage to her home and the height of the garage, additional height could be added to the fence by either the Owners or the Appellant, pursuant to Chapter 447 (Exhibit 6, Toronto Municipal Code – Chapter 447 (fencing)).

Referencing Chapter 447-1.2 (1b) (Exhibit 6, p. 447-3), he confirmed that the maximum height of a fence along a side or rear is 2 m. This additional fence height could be introduced, he submitted, to mitigate and reduce the impact of the proposed garage on the Appellant's property.

Mr. Chan submitted that based on his evidence, the requested variances, individually and cumulatively satisfy the four tests as set out in Section 45(1) of the *Planning Act*, and that the condition imposed by the COA in its decision of January 24, 2019, is appropriate and acceptable to the Owners.

He asked that the COA decision be confirmed and the two variances be approved subject to the condition included by the Committee.

Finally, he requested for the record that paragraph 99 on p. 22 of his EWS be struck from the document as it was 'misstated' and was included in error. The subject paragraph states the following:

*"It is my opinion that the TLAB should approve the requested variances and request for legal non-conforming status."*

At this juncture in the Hearing I asked Ms. Winicki if the Owners would be willing to consider potential redesign options for the proposed garage. I suggested possible design improvements such as the introducing of both a sloped garage roofline as well

as a varied articulation of the north elevation facing the Appellant's home with opaque fenestration to improve the visual impact of the garage wall.

I suggested that if agreeable, such improvements could be viewed as a further attempt by the Owners to measurably reduce potential impacts on the abutting property previously identified by Ms. Ferri.

Ms. Winicki confirmed that the Owners were indeed willing to consider such revisions in the hopes of addressing some of Mr. Ferri's concerns subject to design input from Mr. Trotter. However, Mr. Trotter had apparently earlier excused himself from the Hearing to attend to another matter following his testimony and was not available to immediately respond to the design suggestions.

On cross-examination, Mr. Di Giorgio asked a number of clarifying questions intended to review expressed by the witness regarding the proposal's compliance with the applicable Zoning By-laws and conformity with relevant OP policies.

Mr. Di Giorgio spent significant time addressing the relevance of performance standards in By-law 7625 even though there were no variances identified by the City Zoning Examiner or sought by the Applicant from this statute. He challenged Mr. Chan's statement that the existing dwelling on the subject property is, as asserted by the witness, *"centrally located on the site and setback from the front lot line resulting a smaller rear yard."*

Both Mr. Di Giorgio and the witness agreed that the proposed detached garage is considered a new structure on the property, but they disagreed as to the interpretation of whether it is considered an 'ancillary' use or a separate 'land use'. Mr. Di Giorgio highlighted Chapter 5.10.1.10(2) of By-law 569-2013 (Multiple Uses on a Lot) under General Regulations applying to all zones. This section states that:

"If a **lot** is used for more than one permitted use, the regulations which apply to each permitted use on the **lot** are applied as if each permitted use exists and operates independently of the other.'

He asserted that this would trigger different performance standards and result in the garage being considered a 'legal non-conforming' use. Mr. Chan disagreed that these sections are applicable to the proposal and subject to s.45(2) a)ii) of the *Planning Act*. He reiterated that the proposal is intended to remove the reverse slope driveway and below grade garage thereby bringing the new garage in compliance with By-law 569-2013.

Mr. Di Giorgio continued to assert that the City Zoning Examiner missed variances related to the former Zoning By-law and introduced an excerpt from the By-law 7625. I allowed Mr. Di Giorgio the latitude to refer to the extract but cautioned him to explain the relevance of the document to the variances before the TLAB. I also noted my displeasure that it had not been disclosed at the commencement of the Hearing and that it was being offered in isolation of the comprehensive Zoning By-law document.

He asserted that under By-law 7625 a rectangular corner lot the narrower dimension is considered to be the lot frontage. Additionally, the By-law directs that when an additional detached building is introduced on that lot, that building's lot frontage is determined to be the street the detached structure faces. He did, however, acknowledge that the new harmonized By-law allows owners to select the front lot line on their properties.

In submitting the relevance of his references to By-law 7625, he asserted that the examples of other corner lots in the neighbourhood with existing detached garages highlighted by the Appellant in the chart in Exhibit 7 were all assessed under the former By-law. He argued that none of those corner lot properties illustrated a detached garage abutting a front yard or the front main wall of a neighbouring residential dwelling similar to what is being proposed.

Mr. Chan disagreed, noting several examples in his visual evidence (Exhibit 7).

Mr. Di Giorgio then referenced OP Policies 3.1.2 (Built Form) and 4.1.5 (Development Criteria in Neighbourhoods) highlighted by the witness in his evidence. With respect to 3.1.2, he submitted that 'a large detached garage juxtaposed so close to the front yard and main wall of the Appellant's home' does not fit harmoniously with the existing and planned context of the neighbourhood. It suggested that the proposed garage would result in a 'large font wall' that would impact the streetscape of the Blue Springs Road.

With respect to 4.1.5 he questioned whether the proposed development fit the existing physical character of the street and whether it respects and reinforces the general physical patterns of the neighbourhood.

Finally, Mr. Di Giorgio submitted that the Appellant's views from, and her enjoyment of her property would be adversely impacted if the proposed garage is built and located as close to her side lot line as indicated. He asserted that zoning by-laws are in place to prevent such situations.

In response, Mr. Chan referred to the direction in OP Policy 4.1.8 that zoning by-laws contain numerical site standards for, among other matters, 'building setbacks from lot lines' to ensure that new development is compatible with the physical character of established neighbourhoods. He noted that with respect to the subject property, the numerical standard in By-law 569-2013 for the rear yard setback for an ancillary structure is 30 cm and therefore the proposal complies.

Examination-in-chief and cross-examination of the witness consumed much of Hearing Day 2 with completion of the examination of Mr. Chan at the end of the day. The Applicant's solicitor, Ms. Winicki, advised that as a result of additional costs for representation because of cost obligations the Owners were opposed to a third full Hearing Day in this matter given that attendance from their solicitor and designer would be required.



She asked whether the TLAB would be open to considering alternate arrangements to accommodate the remainder of the proceedings including hearing the evidence of Ms. Ines Ferri and Diana Ferri as well as closing arguments by the Parties.

After hearing from the Appellant, I concluded that the most appropriate and reasonable approach in order to accommodate the needs of both the Appellant and the Applicant would be to conduct a Teleconference call with all the Parties present. On consent from the Parties I directed that TLAB staff to canvas the Parties for their availability to participate in a Teleconference call and to identify possible dates as early as possible following the conclusion of Hearing Day 2 (September 5, 2019).

This direction was formally communicated in an email dated September 6, 2019 forwarded by TLAB staff with the following direction:

- if a date and time cannot be agreed upon with the Parties the TLAB will set a date and time and will issue a Notice of teleconference with details. The Teleconference call will last no more than two (2) hours in total;
- the call will commence with hearing the evidence of Ines Ferri (Appellant) and Diana Ferri (Party);
- Andrew Trotter (AJT Design) is required to participate in the call along with the owners;
- The Parties providing evidence will disclose to the TLAB and the other Parties the documents they will be relying on (if not previously disclosed). Documents to be disclosed are to be identified at least two (2) days before the scheduled call for the benefit of the other Parties and the presiding Member; and
- Once the Teleconference call has concluded the Parties will have seven (7) days to file with the TLAB and the other Parties closing arguments in written form, to be no longer than a maximum of four (4) pages in length. Reply argument will be due five (5) days after the submission of closing arguments.

A Teleconference date was set for September 18, 2019.

#### *Teleconference*

The Hearing recommenced on September 18, 2019, in the form of a teleconference call attended by all Parties listed under 'Appearances' at the beginning of this Decision.

Ms. Ines Ferri was affirmed and read from a prepared statement (Exhibit 8) which she asserted she had composed. She briefly described the historical relationship she had cultivated with the owners of the subject property suggesting that she had assisted Ms. Fiorino (and her partner) by providing parking spots on her property for the Owners' vehicles and that she understands their need to improve the driveway/garage situation.

However, the Appellant stated that she had not been consulted by the owners regarding the subject proposal and posited that prior consultation may have resulted in a mutually agreeable outcome suitable for both Parties.

The Appellant submitted that her property is a 'key lot' (Exhibit 8, para. 4), originally part of three lots including the subject lot. She noted that her south side yard lot line abuts the rear yards of 362 and 364 Rustic Road.

Much of her testimony centered on the original application that was before the COA in November 2018 that proposed construction of an attached garage on the subject property, which the Committee refused. She inferred that the COA had advised the Owners that "*it would be best that they build a garage designed smaller and attached to the home*" although no evidence was offered to support this statement.

She also expended considerable effort asserting that the designer, Mr. Trotter, had provided misleading information both in the application and the drawings before the COA and this Tribunal, highlighting discrepancies relative to lot coverage (38.22% versus 38.55%), the front yard setback for her dwelling, and the wall thickness dimensions of the proposed garage, in addition to minor address errors on the site plan.

She asserted that her primary objection to the subject Application is that the proposed detached garage represents 'overbuilding' of the property, and it is too close and will encroach on her home. She argued that the resulting structure will reduce the enjoyment of her property creating significant adverse impacts related to shadows and blocking views to the street.

The Appellant also asserted that the proposed 0.30m setback of the garage from her side lot line would result in significant snow and ground water runoff onto her property in addition to the possibility of dangerous carbon monoxide fumes from vehicles parked either in the driveway or the garage in close proximity to the habitable living area of her home.

In concluding her testimony, Ms. Ferri posited that the variances requested, and the proposal are not minor, the proposed detached garage does not fit the character of the neighbourhood, and she "*does not want to live in the shadow of my neighbours (sic) intrusive garage.*" (Exhibit 8, para. 16)

On cross-examination by Ms. Winicki, the Appellant acknowledged numerous points: that the retaining walls of existing reverse slope driveway are crumbling and that the Owners are not able to park their vehicles; there is restricted on-street parking on Blue Springs Road; and that in fact snow and water runoff on the subject property impacts the Owners as it drains down the driveway and currently floods the Applicant's basement.

Ms. Ferri acknowledged that although there were examples of detached garages on corner lots in the neighbourhood none were similar to the proposed development.

With respect to the issue of water runoff from the subject property the Appellant argued that the subject property is significantly higher in grade to her property. Ms. Winicki asserted that the grade differential is marginal and characterized the Appellant's depiction of this possible impact as 'speculation' since she had provided no drainage report or evidence from an expert witness in this regard.

With respect to the Appellant's assertion that if the Owners` had been more forthcoming in discussing the proposal with her prior to the COA, a mutually agreeable solution could have been reached, she reminded Ms. Ferri that the presiding Member had conducted a mediation session that consumed almost a full-day without a settlement or even a narrowing of the outstanding issues. Ms. Ferri acknowledged this fact but steadfastly asserted that they were neighbours and friends and that "neighbours help each other."

I next affirmed Diana Gisone/Ferri, a Party to this proceeding and Appellant's daughter-in-law. She filed numerous documents (Exhibits 9, 10 and 11) prior to the Teleconference including an extensive photo book and a petition signed by 10 residents opposing the proposal.

She proceeded to review various photographs of properties within what she termed 'her neighbourhood' showing examples of detached garages, some on corner lots, in the rear or flanking yards, specifically highlighting were 38 (photo 1, p. 8&9), 55 (photo 6, p. 17&18), and 61 Grovedale Ave. (photo 2, p. 10&11), 51 Gracefield (photo 5, p. 15), and 540 Rustic Road (photo 7, p. 21&22). She addressed each example by examining the location of the garage on the site, existing side yard setbacks and the proximity of the garages relative to abutting dwellings, and the extent of existing soft landscaping particularly in the rear yards.

She summarized her evidence by addressing the two variances being requested and submitted that with respect to the relief sought for a reduction in rear yard soft landscaping her photographs illustrate 10-12 properties where a detached garage is included and no variances are required for soft landscaping.

She also referenced the properties identified by Mr. Chan in his chart for COA lot coverage decisions. She submitted that the average coverage approved was 34.24% on properties that are larger in area than the subject property and that the COA had refused two applications for a lot area coverage exceeding 30%.

She concluded by positing that zoning by-laws are intended to assure compatible built form and that the Owners are attempting to be manipulated by the By-law thereby resulting in her words an "*eye sore that does not fit the property or the neighbourhood.*"

On cross-examination by Ms. Winicki, Ms. Gisone/Ferri acknowledged that her photographic evidence contained many examples of properties in a much wider neighbourhood (radius of 1,000 m) than that employed by Mr. Chan (500 m radius). Ms. Winicki highlighted 93 Gracefield, 481 Maple Leaf Ave. and 55 Grovedale where side yard setbacks were non-compliant with the By-law and lot area coverage exceeded that proposed by the Applicant (e.g., 51 Gracefield – lot coverage of 39%/55 Grovedale – lot coverage of 55%).

Finally, with respect to the petition filed by the witness, Ms. Winicki noted that the introductory text of the petition provided neither a description nor the dimensions of the proposed detached garage and failed to indicate where on the subject property the

garage would be located. She challenged the validity of the opposition expressed in that document.

Ms. Gisone/Ferri submitted that the signatories to the petition were shown a copy of the site plan.

I concluded the Teleconference call following Ms. Gisone/Ferri's cross-examination and reminded the Parties of my direction in my September 6<sup>th</sup> email that written closing arguments, no longer than four pages in length, would be due by September 25, 2019 and that reply argument would be due by September 30, 2019.

## **ANALYSIS, FINDINGS, REASONS**

From the outset of this proceeding, which took place over the span of three non-consecutive days, it was apparent that the Hearing was going to be a rather contentious and combative event. As previously noted, an extensive, non-binding Mediation session involving the Parties at the beginning of Hearing Day 1 proved to be unsuccessful not as a result of a lack of effort but rather because of the on-going and increasing animosity between the two principal Parties, the Owners of the subject property and the Appellant.

The Appellant's continued and unwavering insistence, mostly arising from direction from her authorized representative, that the zoning relief requested by the Applicant requires both a zoning amendment and Official Plan amendment. That direction included that the proposal involves a legal non-conforming use that is more appropriately reviewed in accordance with s. 45(2) and (3) of the *Act*, despite a Decision and Order in this regard. The 'coaching' of a witness is problematic and if it occurred would not be permitted of a legal representative.

This is underlined in the Applicant's written argument in which Ms. Winicki asserts that *"the hearing was also unduly lengthened by red herrings continuously and incessantly put forward on behalf of the Appellant with respect to sections 45(2) and (3) of the Planning Act."*

In my mind, the matter before the TLAB seems uncomplicated and not unprecedented; an application for relief from Zoning By-law 569-2013 for lot coverage and soft landscaping to permit the construction of a detached garage in the rear yard. The perspectives offered by the Owners of the subject property and the abutting neighbour, the Appellant, are well-defined.

The Owners have asserted that the current reverse-slope integral garage is both impractical and unsafe; the retaining walls are falling apart, and the garage often floods from rainwater and melting snow and is often rendered useless for parking. Below grade garages for low-rise residential developments are now expressly prohibited through OP policies and Zoning By-law regulations.

The Owners contend that the two requested variances flow from the undersized lot area of the subject property as well as the orientation of the existing home towards the front lot line, thereby creating a comparatively smaller yard than other lots in the neighbourhood.

The Appellant asserts that the proposed detached two-car garage is too large and intrusive, is not compatible with and negatively impacts her property and nearby properties and is not in keeping with the character of the neighbourhood. She also submits that the proposed garage occupies and eliminates too much green space in the rear yard of the subject property.

I deal with each of the variances, which are set out in **Attachment 1** hereto, individually and their description and import, follow.

Variance 1 relates to lot area coverage for the altered dwelling and the new detached garage. The By-law requirement of a maximum coverage allowance of 30% of the area of the lot is proposed to be increased to 38.22%, an increase of 8.22% in lot coverage resulting from the proposed detached garage.

Both the Applicant and the Appellant provided property examples within what they termed the 'local neighbourhood' to reflect area character. I prefer Mr. Chan's study area of a 500m radius surrounding the subject property as representative of an appropriate study area for analysis, evaluation and opinion of the four-part test for variances in a low-density suburban neighbourhood. I prefer this study area to the implied neighbourhood study area as asserted by the Appellant which included a 1,000 m radius and, in some cases, expanded beyond that threshold to include lots outside this 1km radius.

I accept Mr. Chan's evidence that his analysis of the COA decisions respecting lot coverage in the local neighbourhood illustrates that the lot coverage requested in the subject Application falls within the range of approved lot coverages. These approvals range from 32% to 44% times the area of the lot in the neighbourhood and include the property at 21 Blue Springs Road, a new home with integral garage nearby and just north of the subject property, that received approved in 2017 for a lot coverage of 40%.

I accept that the proposal maintains and expands the living space within the current built form of the existing single storey detached dwelling which is the prevailing building typology in the local neighbourhood. Additionally, I agree that the proposed development for the construction of a new ancillary detached private two-car garage will fit appropriately within the existing physical character of the neighbourhood which has recently realized approvals for new and redeveloped homes that contain integral, attached and detached garages.

I also accept that the Owners have appropriately positioned the garage in-line and with a similar setback to the front main wall of the Appellant's home at 5 Blue Springs in order to maintain a consistent front street wall.

Furthermore, the Owners have agreed to incorporate a sloped or 'hip' roof and a false window/fenestration treatment on the north elevation abutting the Appellant's home in order to minimize visual impacts of the massing, scale and setback of the garage relative to the dwelling on 5 Blue Springs. The site plan drawings have been revised accordingly to reflect these revisions and the drawings have been resubmitted to the TLAB.

These design options, which were initially identified by the presiding Member and agreed to by the Owners, were offered to possibly mitigate impacts raised by the Appellant in her testimony arising from the proposed development.

I note that although Ms. Ferri was neither enthusiastic about these design improvements nor willing to consider their effectiveness in mitigating impacts on her property, I believe they will assist somewhat in improving the overall mass of the proposed roofline by reducing the overall height of the north wall of the garage.

Variance 2 relates to the reduction of the minimum amount of soft landscaping in the rear yard due to the location of the new detached garage in the rear yard of the subject property. The By-law minimum of 50% is proposed to be reduced to 41.66% of the rear yard.

The Applicant submits that the subject property is an undersized lot, that the rear yard area is smaller in comparison to other lots in the neighbourhood that meet or exceed the minimum lot area standard. Further, that the siting of the existing home creates a reduced rear yard. The Appellant argues that the placement of the proposed garage in the rear yard resulting in the approval of a significant variance in rear yard soft landscaping is neither appropriate nor desirable.

While I am cognizant of the Appellant's concern that the garage will be too close to her home, I note that no variances are required for side yard setbacks to accommodate this proposal. I disagree with her assertion that the proposal does not respect the intent and purpose of the Official Plan. The planning controls in place enable a property owner to select the front lot line that is consistent with having the main dwelling wall and a detached ancillary building front on the same street and face the same direction.

I accept Mr. Chan's evidence that the requested relief for a reduction in rear yard soft landscaping is appropriate for the required dimensions of the detached ancillary garage which will contain parking spots that comply with parking space dimensions as set out in Chapter 200.5.1.10(2) in By-law 569-2013. I agree that the requested variance results from the existing condition of an undersized lot.

The Appellant has not contradicted the fact that the subject property is characterized as an undersized lot given that it has an area of 464.21m<sup>2</sup>, whereas the average lot size in the local neighbourhood is 550m<sup>2</sup>. I accept Mr. Chan's evidence in his EWS that of the 58 COA decisions analyzed none required variances for reductions of less than 50% rear yard landscaping because the majority of the lots are larger than the minimum lot area standard for an RD zone.

I agree that removing the existing reverse slope driveway in the side yard and the crumbling retaining walls with grading and the conversion of the area to soft landscaping will enhance the landscaped open space and is a more desirable addition to the street's public realm. The Owners have also agreed to add a condition requiring the proposed driveway leading to the new garage to be constructed with permeable interlocking pavers which adds to the visual enhancement of the side yard landscaping and surface water infiltration.

I disagree with the Appellant's assertion that the requested variance for the reduction in rear yard soft landscaping is 'sizable' (her words) and that approving the variance would set an unacceptable precedent. I find that the two variances will not result in any undue adverse impacts on the Appellant's property and the impact concerns asserted are not made out to the standard warranting refusal.

I agree that the proposal will not destabilize the neighbourhood as it will result in the construction of a detached garage that is comparable to two-car garages (integral, attached, detached) that currently exist in the immediate neighbourhood.

More importantly, the revision to the slope of the garage roof proposed by the Applicant and now incorporated into revised site plan drawings results in a reduction in the numerical value of the two variances being sought. The 'hip' or slope in the proposed roof not only decreases the massing of the roof structure on the north elevation facing the Appellant's property and home but also results in a slight reduction in the overall building footprint of the garage (37.38m<sup>2</sup>). As a result, the Owners now require a lot coverage variance of 38.05% as opposed to the previous 38.22%.

This reduction in overall garage footprint slightly increases the setback from the north property line shared with the Appellant's property from 0.30 m to 0.50 m . Although this may be considered by the Appellant as somewhat numerically insignificant, it nevertheless contributes to the setting of the garage farther away from Ms. Ferri's home.

Additionally, the amount of rear yard soft landscaping to be provided on the subject property has been slightly increased and the variance now required is 42.5% whereas the Applicant was previously proposing a total of 41.66% rear yard soft landscaping.

I consider these to be minor revisions to the proposal and reductions in the variances requested arrived at as part of discussions during the proceedings. I find them to be positive improvements to the overall development that address some of the issues raised by the Appellant; therefore, I find that the Application can be modified without circulating for further notice, as set out in subsection 45(18.1.1.) of the *Planning Act*.

Furthermore, with respect to the issue raised by the Appellant regarding a possible increase in ground water runoff toward her property as a result of the proposed detached garage I agree with the Applicant that Ms. Ferri submitted no geotechnical or hydrological evidence or a drainage report from a qualified engineer to support her content, nor did she call an expert witness.

The evidence presented by the Applicant indicates that a difference in grade of 1.5 m does exist on the subject property between the front yard at Rustic Road and the existing reverse slope driveway where the water accumulates. While not irrelevant, I agree with the Applicant that Ms. Ferris' concerns with respect to groundwater run-off are speculative at best. I concur that there is sufficient soft landscaping to attempt to attenuate run-off but more importantly there is reliance on the building permit process to police discharge of surface water. I accept this circumstance.

I accept that the variances sought, individually and cumulatively, meet the intent and purpose of OP policy and zoning permission, and maintain or enhance their purpose on the subject property within relevant ranges all while being quantitatively and qualitatively minor and desirable.

I agree with Ms. Winicki's submissions that all relevant tests are passed on the evidence; that there will be no adverse impacts and that the reinvestment contemplated by the plans in the neighbourhood is desirable and does not constitute over-development. She requested that the appeal be dismissed 'with costs' and the COA's decision from January 24, 2019 be upheld, subject to any conditions TLAB wishes imposed with approval of the variances.

With respect to the request for an award of costs in this matter, the Applicant is directed to Motion requirements of the TLAB respecting the awarding of costs pursuant to Rule 28 of the TLAB's Rules.

## **DECISION AND ORDER**

The appeal is dismissed; the Committee of Adjustment decision is **modified**, and the TLAB authorizes the following variances, subject to the conditions below:

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

The maximum permitted lot coverage is 30% of the lot area (139.26 m<sup>2</sup>).

The altered dwelling and new detached garage will cover **38.05% (175.48 m<sup>2</sup>)**.

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

A minimum of 50% of the rear yard shall be maintained as soft landscaping (58.49 m<sup>2</sup>).

A total of **42.5%** of the rear yard will be maintained as soft landscaping (**49.74 m<sup>2</sup>**).

## **CONDITIONS OF APPROVAL**

- A. The proposed development shall be constructed substantially in accordance with site, elevation and roof plan drawings prepared by AJT Design, dated January 21, 2019, identified as drawing #'s AS (SITE Plan), A1 (Garage Foundation), A2 (Level 1), A3 (South Elevation), A4 (North Elevation), A5 (West Elevation), A6 (East Elevation), and A8 (Roof), set out in **Attachment 2**, attached. Any other



**Decision of Toronto Local Appeal Body Panel Member: D. LOMBARDI  
TLAB Case File Number: 19 114668 S45 05 TLAB**

variances that may appear on these plans but are not listed in this written decision are **NOT** authorized.

- B. The existing reverse-slope driveway (leading to the attached garage to be converted into habitable space) shall be removed and restored with soft landscaping prior to the occupancy of the new garage for its intended purposes.
- C. The proposed driveway leading to the new detached garage shall be constructed of permeable interlocking pavers.

**X** 

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Dino Lombardi  
Panel Chair, Toronto Local Appeal Body

Thursday, January 24, 2019

**NOTICE OF DECISION  
MINOR VARIANCE/PERMISSION  
(Section 45 of the Planning Act)**

**File Number:** A0877/18EYK  
**Property Address:** 362 RUSTIC RD  
Legal Description: PLAN 3470 PT LOT 46  
Agent: AJT DESIGN  
Owner(s): CAROLINA FLORINO  
Zoning: RD & R4  
Ward: York South-Weston (05)  
Community:  
Heritage: Not Applicable

Notice was given and a Public Hearing was held on Thursday, January 24, 2019, as required by the Planning Act.

**PURPOSE OF THE APPLICATION:**

To construct a new detached garage in the rear yard and to convert the existing attached garage to habitable space.

**REQUESTED VARIANCE(S) TO THE ZONING BY-LAW:**

1. **Section 10.20.30.40.(1)(A), By-law 569-2013**  
The maximum permitted lot coverage is 30% of the lot area (139.26 m<sup>2</sup>).  
The altered dwelling and new detached garage will cover 38.22% of the lot area (177.44 m<sup>2</sup>).
2. **Section 10.5.50.10.(3)(A), By-law 569-2013**  
A minimum of 50% of the rear yard shall be maintained as soft landscaping (58.49 m<sup>2</sup>).  
A total of 41.66% of the rear yard will be maintained as soft landscaping (48.74 m<sup>2</sup>).

The Committee of Adjustment considered the written submissions relating to the application made to the Committee before its decision and oral submissions relating to the application made at the hearing. In so doing, **IT WAS THE DECISION OF THE COMMITTEE OF ADJUSTMENT THAT:**

## **The Minor Variance Application is Approved on Condition**

It is the decision of the Committee of Adjustment to authorize this variance application for the following reasons:

- The general intent and purpose of the Official Plan is maintained.
- The general intent and purpose of the Zoning By-law is maintained.
- The variance(s) is considered desirable for the appropriate development of the land.
- In the opinion of the Committee, the variance(s) is minor.

This decision is subject to the following condition(s):

The existing driveway (leading to the attached garage to be converted into habitable space) shall be restored with soft landscaping.

## SIGNATURE PAGE

**File Number:** A0877/18EYK  
**Property Address:** 362 RUSTIC RD  
Legal Description: PLAN 3470 PT LOT 46  
Agent: AJT DESIGN  
Owner(s): CAROLINA FLORINO  
Zoning: RD & R4  
Ward: York South-Weston (05)  
Community:  
Heritage: Not Applicable

Allan Smithies (signed)  
(signed)

Dominic Gulli (signed)

Douglas Colbourne

Denise Graham (signed)

DATE DECISION MAILED ON: Friday, February 1, 2019

LAST DATE OF APPEAL: Wednesday, February 13, 2019

CERTIFIED TRUE COPY

Barbara Bartosik  
Manager & Deputy Secretary Treasurer  
Etobicoke York Panel

### Appeal Information

All appeals must be filed with the Deputy Secretary-Treasurer, Committee of Adjustment by the last date of appeal as shown on the signature page.

Your appeal to the Toronto Local Appeal Body (TLAB) should be submitted in accordance with the instructions below unless there is a related appeal\* to the Local Planning Appeal Tribunal (LPAT) for the same matter.

**TORONTO LOCAL APPEAL BODY (TLAB) APPEAL INSTRUCTIONS**

To appeal this decision to the TLAB you need the following:

- a completed TLAB Notice of Appeal (Form 1) in **digital format** on a CD/DVD or USB;
- \$300 for each appeal filed regardless if related and submitted by the same appellant;
- Fees are payable to the **City of Toronto** by cash, certified cheque or money order (Canadian funds).

To obtain a copy of the Notice of Appeal Form (Form 1) and other information about the appeal process please visit the TLAB web site at [www.toronto.ca/tlab](http://www.toronto.ca/tlab).

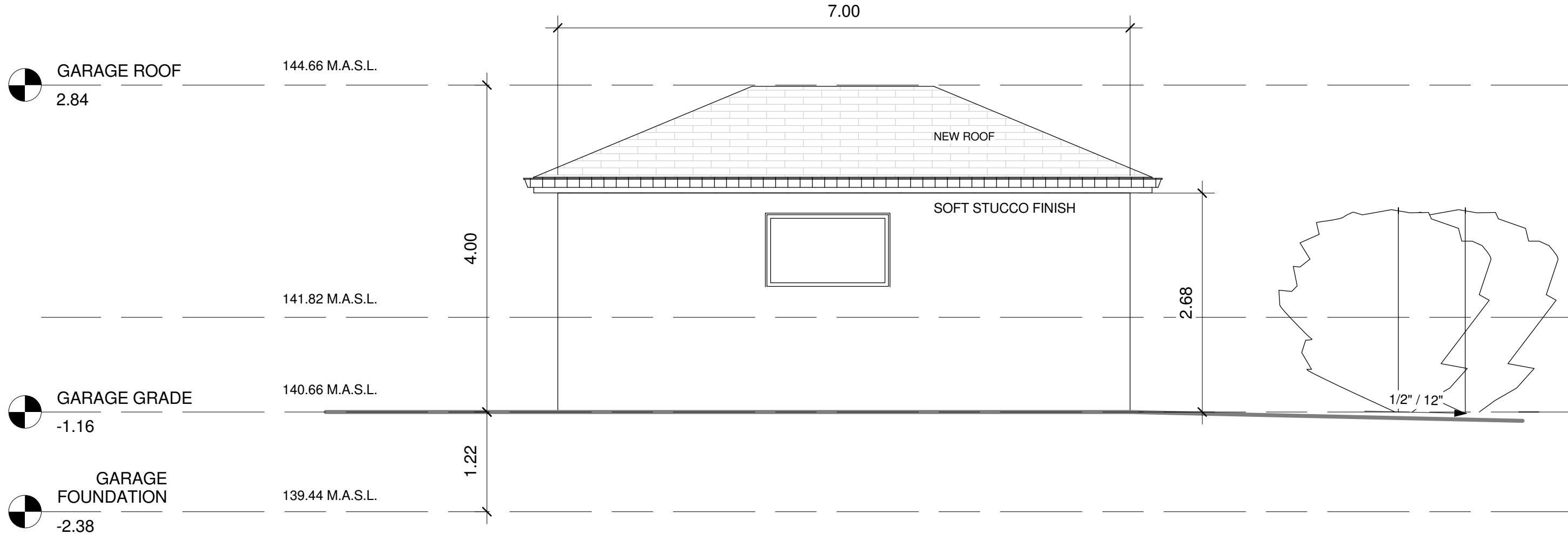
**LOCAL PLANNING APPEAL TRIBUNAL (LPAT) INSTRUCTIONS**

To appeal this decision to the LPAT you need the following:

- a completed LPAT Appellant Form (A1) in **paper format**;
- \$300.00 with an additional reduced fee of \$25.00 for each connected appeal filed by the same appellant
- Fees are payable to the Minister of Finance by certified cheque or money order (Canadian funds).

To obtain a copy of Appellant Form (A1) and other information about the appeal process please visit the Environmental & Lands Tribunals Ontario (ELTO) website at <http://elto.gov.on.ca/tribunals/lpat/forms/>.

\*A **related appeal** is another planning application appeal affecting the same property. To learn if there is a related appeal, search community planning applications status in the Application Information Centre and contact the assigned planner if necessary. If there is a related appeal, your appeal to the **Local Planning Appeal Tribunal (LPAT)** should be submitted in accordance with the instructions above.




**GARAGE ROOF** 144.66 M.A.S.L.  
 2.84


**GARAGE GRADE** 141.82 M.A.S.L.  
 -1.16


**GARAGE FOUNDATION** 140.66 M.A.S.L.  
 -2.38


**1 NORTH**  
 1 : 50

AJTDESIGN.CA  
 81 ST CLARENS AVE  
 TORONTO ON  
 M6K 2S6  
 416 573 7625

obcpermits@gmail.com

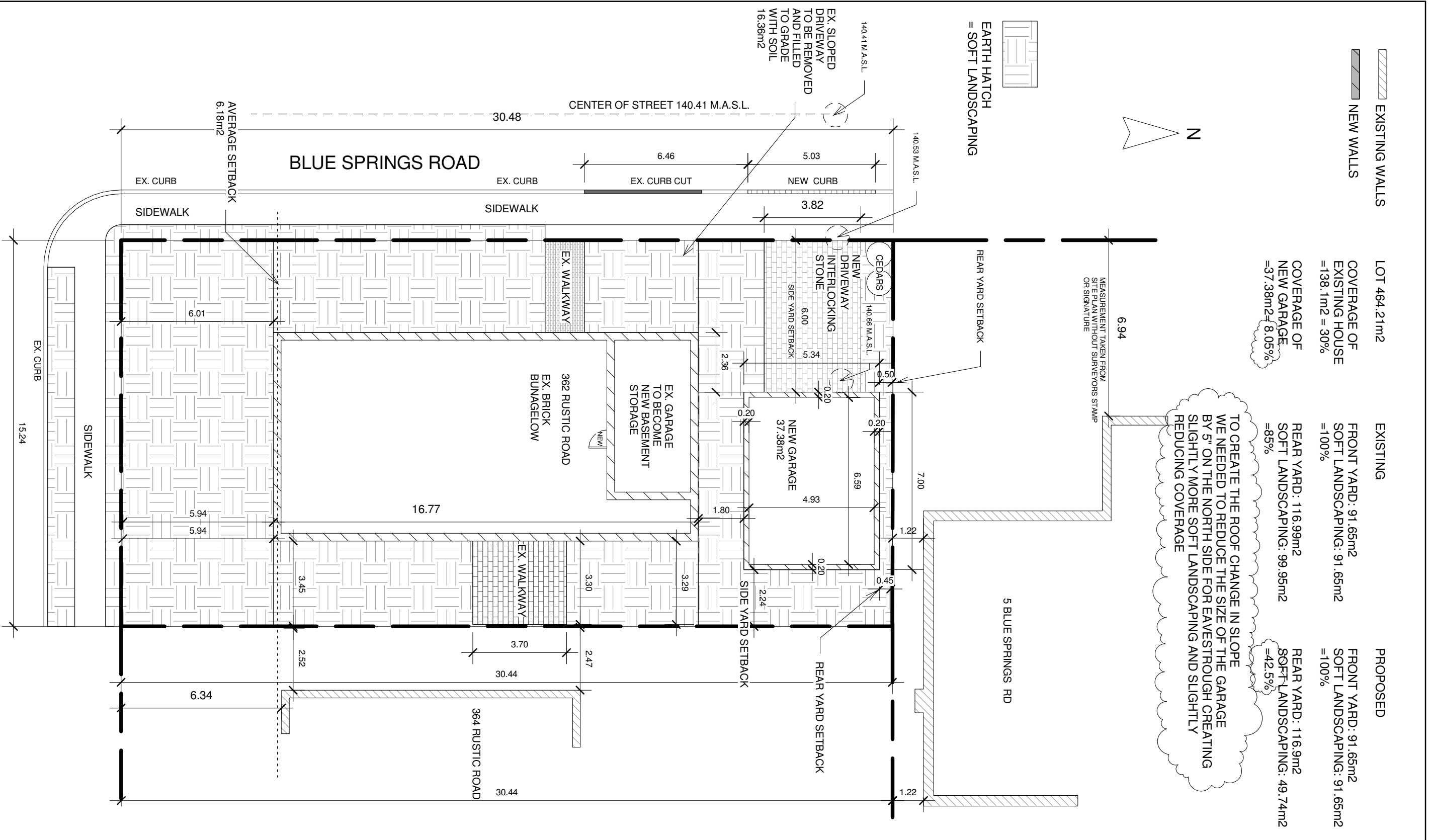
The under signed has reviewed and takes responsibility for this design, and has the qualifications and meets the requirements set out in the Ontario Building Code to be a designer  
**QUALIFICATION INFORMATION**  
 Required unless design is exempt under 2.17.5.1 of the building code  
 Andrew Trotter #38055  
 Name Signature BCIN  
**REGISTRATION INFORMATION**  
 Required unless design is exempt under 2.17.5.1 of the building code  
 AJTDESIGN.CA #102446  
 Name Signature BCIN

**"DO NOT SCALE"**  
**CONTRACTOR MUST VERIFY ALL DIMENSIONS**  
**PRIOR TO COMMENCEMENT OF WORK**  
**ALL PERMITS AND SPECIFICATIONS**  
**ARE THE PROPERTY OF THE DESIGNER**  
**AND MUST BE RETURNED UPON**  
**COMPLETION OF THE WORK**  
**THE DRAWINGS ARE NOT TO BE USED FOR**  
**ANY OTHER JOB THAN THE ONE FOR**  
**WHICH THEY ARE ASSIGNED**

**362 RUSTIC RD**  
**M6L 1W7**

<b>NORTH ELEVATION</b>		<b>A4</b>
Project number 2016		
Date 2016		
Drawn by Andrew J Trotter AATO		
Checked by	Checker	Scale 1 : 50

**1**  
1 : 150  
**SITE PLAN**



EXISTING WALLS  
NEW WALLS

LOT 464.21m<sup>2</sup>  
COVERAGE OF EXISTING HOUSE = 138.1m<sup>2</sup> = 30%  
COVERAGE OF NEW GARAGE = 37.38m<sup>2</sup> = 8.05%

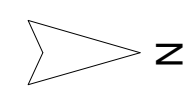
EXISTING  
FRONT YARD: 91.65m<sup>2</sup>  
SOFT LANDSCAPING: 91.65m<sup>2</sup> = 100%  
REAR YARD: 116.99m<sup>2</sup>  
SOFT LANDSCAPING: 99.95m<sup>2</sup> = 85%

PROPOSED  
FRONT YARD: 91.65m<sup>2</sup>  
SOFT LANDSCAPING: 91.65m<sup>2</sup> = 100%  
REAR YARD: 116.9m<sup>2</sup>  
SOFT LANDSCAPING: 49.74m<sup>2</sup> = 42.5%

TO CREATE THE ROOF CHANGE IN SLOPE WE NEEDED TO REDUCE THE SIZE OF THE GARAGE BY 5" ON THE NORTH SIDE FOR EAVESTROUGH CREATING SLIGHTLY MORE SOFT LANDSCAPING AND SLIGHTLY REDUCING COVERAGE

MEASUREMENT TAKEN FROM SITE PLAN WITHOUT SURVEYORS STAMP OR SIGNATURE

EARTH HATCH = SOFT LANDSCAPING



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TORONTO ON  
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The under signed has reviewed and takes responsibility for this design, and has the qualifications and meets the requirements set out in the Ontario Building Code to be a designer  
**QUALIFICATION INFORMATION**  
 Required unless design is exempt under 2.17.5.1 of the building code  
 Andrew Trotter #38055  
 Name Signature BCIN  
**REGISTRATION INFORMATION**  
 Required unless design is exempt under 2.17.5.1 of the building code  
 AJTDESIGN.CA #102446  
 Name Signature BCIN

**"DO NOT SCALE"**  
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362 RUSTIC RD  
M6L 1W7

<b>SITE PLAN</b>		AS
Date 2016		Scale 1 : 150
Drawn by Andrew J Trotter AATO	Checked by	