

# DECISION AND ORDER

**Decision Issue Date:** Thursday, October 31, 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): Sarah Eleanor Garner

Applicant: Sarah Eleanor Garner

Property Address/Description: 767 Euclid Ave

Committee of Adjustment Case File: 18 192441 STE 11 CO (B0069/18TEY), 18 192442 STE 11 MV (A0688/18TEY), 18 192443 STE 11 MV (A0689/18TEY)

**TLAB Case File Number: 18 266700 S53 11 TLAB, 18 266717 S45 11 TLAB, 18 266718 S45 11 TLAB**

**Hearing date:** Friday, June 14, 2019

**DECISION DELIVERED BY T. Yao**

## REGISTERED PARTIES AND PARTICIPANTS

Appellant	Sarah Eleanor Garner
Owner	Assam Joseph Garner
Appellant's Legal Rep.	Amber Stewart
Expert Witness	Franco Romano
Participant	Kathleen O'Reilly
Participant Legal Rep.	Roger Greathead
Participant	Bruce Sharpio

## **INTRODUCTION**

Sarah and Assam Garner own a three storey four-unit dwelling on Euclid Avenue, which is also a through lot fronting on Palmerston Square. I understand that some of the four units in the main building are rental. The Garners wish to sever the lot, the rear of which contains a three-car garage. They intend to replace it with a new three storey dwelling. There is opposition from a Euclid neighbour, Bruce Shapiro, and a Palmerston Square neighbour, Kathleen O' Reilly.

## **EVIDENCE**

Roger Greathead testified on behalf of Kathleen O'Reilly; Bruce Shapiro testified on his own behalf. Mr. Greathead is a retired engineer and Mr. Shapiro a retired real estate executive but neither sought to be qualified in their respective areas of expertise. I also heard from Franco Romano whom I qualified as able to give opinion evidence in the area of land use planning, on behalf of the Garners.

## **MATTERS IN ISSUE**

A severance is not given lightly. The decision maker must have regard to:

- The welfare of present and future Torontonians, that is, both Ms. O'Reilly, Mr. Shapiro and the future renters and homeowners of 767 Euclid;
- higher level Provincial Policies that promote intensification on land that is already serviced, particularly where it is near transit. This land is within 500-800 m or a 10-minute walk from either of the Christie or Bathurst subway stops, which is the yardstick which the Growth Plan for the Greater Golden Horseshoe uses for being near transit.
- matters of provincial interest as referred to in section 2 of the *Planning Act*, similar to the two previous bullet points;
- consideration of the dimensions and shapes of the lots; and
- Official Plan conformity.

The minor variances require a different test under the *Planning Act*, namely that they must individually and cumulatively:

- maintain the general intent and purpose of the Official Plan;
- maintain the general intent and purpose of the Zoning By-laws;
- be desirable for the appropriate development or use of the land; and
- be minor.

## BACKGROUND

The Garners' application was refused at the Committee of Adjustment on November 21, 2018. At that time, they sought four variances for the main building and eight for the new house on the severed lot. Ms. Garner appealed and thus this matter comes to the TLAB. For the TLAB Hearing, they eliminated or reduced some of the (originally proposed) variances for the severed lot house:

<b>Table 1. Variances sought for 767 Euclid Ave;</b>			
<b>Note: strike out variances were withdrawn after the Committee of Adjustment</b>			
		Required	Proposed
Retained lot, Parts 2 and 3 on Euclid			
1	Max. floor space index	0.6 times area of lot required	1.38 times area of lot
2	Min. rear yard setback	7.5 m	1.3 m
3	Number of parking spaces for three secondary units	2 spaces	Zero spaces
4	Number of parking spaces for the converted house	2 spaces	Zero spaces
Severed lot (on Palmerston Square), part 1			
1	Min. lot area	180 m <sup>2</sup>	166.4 m <sup>2</sup>
2,3	Exterior main wall height	7.5 m	9.69 m(front), 9.69 m(rear)
4	Max. floor space index	0.6 times area of lot required	.99 times area of lot
5	<del>Front yard setback</del>	<del>2.615 m</del>	<del>2.2 m</del>
6	<del>Rear yard setback</del>	<del>7.5 m</del>	<del>6.6 m</del>

7	Side yard setback	0.45 m	<del>0 m (north);</del> 0.14 m (south)
8	Front yard landscaping,	50%, with 75% soft landscaping	24.7% soft landscaping (slightly improved)
9	Parking space length	5.6 m	5.45 m

Dining room with lower bay window.  
 Photo taken by Roger Greathead around 1:30 pm  
 on October 22, 2018.



Ms. O'Reilly expressed concerns about the loss of light to two windows in her house that face south (see photo left). Because the current garage is one storey, her house has the unusual benefit of somewhat unobstructed windows in the middle of her building. These will be blocked by the new three storey building that is proposed to be erected.

Ms. Garner's original design would have placed the north wall at the common lot line, from which Ms. O'Reilly's wall is 0.88 m (2.9 feet) away. In response to her concerns, Ms. Garner has instructed her architect to relocate the wall to 0.45 m (1.47 ft) from the lot line, which is the minimum required side yard setback. In addition, she has relocated the second and third floors wall so that it will be stepped back 1.575 m (5.2 feet) from the property line or an additional 1.125 m (3.7 feet). An elevation diagram is on page 6.

## **ANALYSIS, FINDINGS, REASONS**

### **The revisions**

Mr. Romano testified that the revisions were made as a response to Ms. O'Reilly's concerns. Because revised drawings take time to produce, they were not submitted to her until the day before the hearing, when Mr. Greathead was out of town and could not read them and assist her. Both Mr. Shapiro and Ms. O'Reilly suggested that the Hearing date of May 15, 2019 be adjourned to June 14, 2019. Over Ms. Stewart's objections, I agreed with Ms. O'Reilly. Ms. O'Reilly is still opposed to the construction of a new house beside her house at 31 Palmerston Square.

Mr. Romano said:

**Decision of Toronto Local Appeal Body Panel Member: T. Yao**  
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Mr. Romano: It's not uncommon for me to have a discussion with the owner about their proposal. And just because revisions were undertaken doesn't mean that the revisions were necessary in order for me to accept a retainer. In this case it was . . . where some of the concerns related to some of the concerns both participants [Ms. O'Reilly and Mr. Shapiro] have raised, were . . . discussed and Ms. Garner was open to making some revisions, and I provided some input and feedback what those revisions could include and they have been incorporated into the drawings that are in Exhibit 4.

Ms. Stewart: And on what basis did you recommend those revisions?

Mr. Romano: The FSI that was proposed, it's not uncommon to find those FSIs in this neighbourhood, so it wasn't to deal with the numbers, it was to deal with the substance of what was proposed. And that included [the strikeout variances and rear lot line] but basically to tweak the proposed site design and building. That they would be an improvement to address the concerns . . . principally in terms of spatial separation and privacy and sunlight.

First, I find the amendments to the original application are minor and do not need further notice pursuant to s. 18.1.1 of the *Planning Act*. Indeed, they were made at Ms. O'Reilly's request.

Although the revisions may have come about because of a tactical decision, I find the severance and revised variances meet the tests under the *Planning Act*, which I will now discuss.

Ms. O'Reilly's objection

The new construction will indeed block off sunlight to those windows for most of the day, as Ms. O'Reilly states in her Final Summary. She works as a psychiatric nurse, and like any other busy person enjoys moments of respite in her light filled home. She will experience some loss of amenity. However, the test is the intent; and since a wall may be built 0.45 m from the property line as of right, the intent of the zoning by-law here is to allow such impactful changes. In this neighbourhood, the zoning contemplates long narrow houses, close to the side lot line. Were Ms. O'Reilly's house to be built today, the Building Code would not permit glazing for a wall less than 1.2 m from a lot line)<sup>1</sup>.

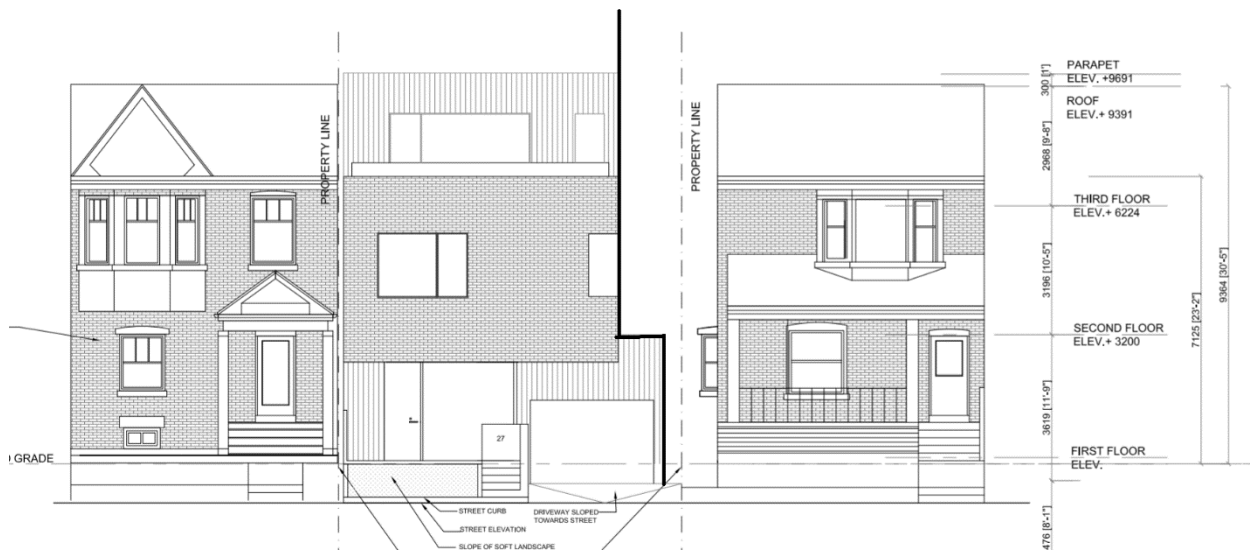
I find the revisions are a reasonable compromise between the present Torontonian<sup>2</sup> Ms. O'Reilly's desire to maintain sunlight, and the needs of the future Torontonians who will reside in the new home. I have illustrated this compromise with a

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<sup>1</sup> Table 9.10.15.4 of O. Reg 332/12 (the section of the Building Code that prohibits windows within 1.2 m of a lot line.)

<sup>2</sup> Section 519240 uses the word "inhabitant of the municipality" instead of "Torontonian".

heavy line below:



No side yard setback variance is sought; and so, the performance standard is “overachieved.” In such circumstances, I find the intent of the By-law is maintained, that it is minor and desirable for the appropriate development of the land, which is to have a home for people instead of cars on this lot within a 10-minute walk of transit.

### Higher level policies in relation to the severance

.This is a severance in a highly urbanized area, a few streets north of the former Honest Ed’s site. It is very close to Downtown as defined in the Official Plan<sup>3</sup>, and Downtown is where growth is expected to occur. Mr. Greathead quoted s. 2.2.1 *Downtown The Heart of Toronto* in which a full range of housing opportunities will be encouraged through sensitive infill within Downtown Neighbourhoods. Mr. Greathead does not feel that this is sensitive infill; I feel that it is, because of the revisions and the context of the current 3-car garage fronting on Palmerston Square, which constitutes an infill opportunity. The lotting pattern replicates what exists everywhere else in the neighbourhood of early twentieth century detached homes, which are typically very close to each other. I find that regard has been had to matters in s. 51 of the *Planning Act* and that this severance conforms to and is consistent with higher level Provincial Policies.

### Mr. Shapiro’s objection

<sup>3</sup> Defined as the Don Valley to Bathurst, but I agree with Mr. Greathead that notwithstanding, this is so close to Downtown, those policies should be generally applicable.

Mr. Shapiro said that his view of the houses in Palmerston Square would be closed off. He bought specifically because of this view. Since the massing of 767 Euclid, his immediate neighbour to the right, extends further to the rear than does his house, he is already blocked on one side. As for Ms. O'Reilly, the Garners' decision to end the underutilization of their rear yard, will impact a desirable feature of a neighbour's building. However, I must balance his expectations with those of the Garners.



In the map on page 8 it may be noted that there is no rear laneway for this block between Euclid and Palmerston Square. Thus, house-to-house distances are shorter and viewing arcs are more circumscribed. Many houses, including Mr. Shapiro's, have resorted to balconies for outdoor amenity areas, and in this very urban setting, such balconies will be viewed as well as overlook other buildings.

As far as I can see, views are generally not protected in Official Plan policies. Public views are mentioned in polices 8,9, 10 and 11 of section 3.1.1 The Public Realm. Section 3.1.2 Built Form mentions light, privacy, shadowing and uncomfortable wind conditions but not private views. For these reasons, I am unable to allow Mr. Shapiro's objections to prevent the Garner development, as applicable policies do not support a right to a view beyond the rear face of a neighbour's back wall to the opposite side of the street and beyond.

### **Lot areas and FSIs**

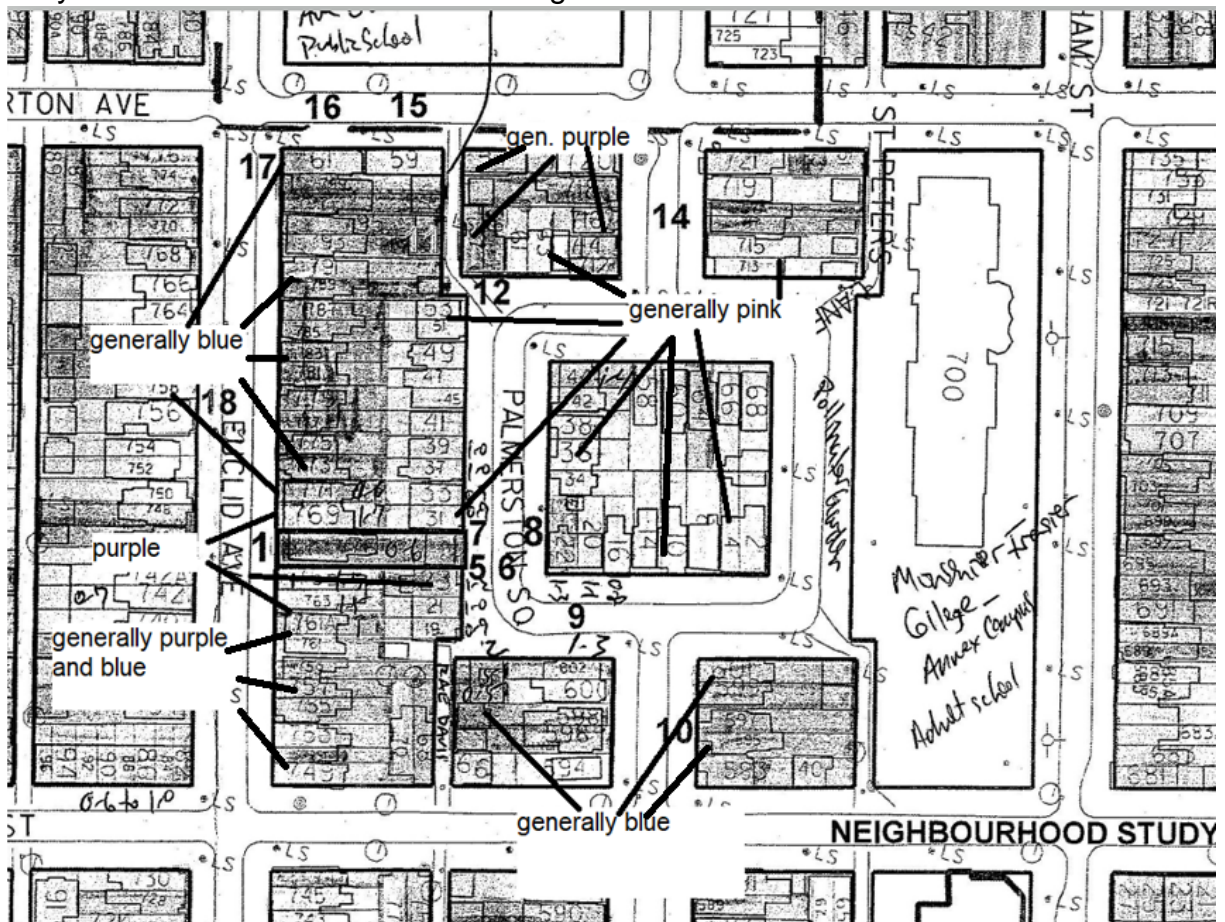
Mr. Greathead, representing Ms. O'Reilly, wrote:

"First let us understand that Palmerston Square is a unique place within this annex area. Streets like Euclid and Manning that are included in [Mr. Romano's] survey bear no resemblance to this quiet little square. To lump it in with a much larger surrounding area, which has many larger houses can be misleading and should not be done when evaluating the suitability of constructing one of the largest houses on the square."

He criticized Mr. Romano's neighbourhood study area of 382 lots as too large and preferred a neighbourhood consisting of just Palmerston Square. The Official Plan requires that development respect and reinforce the physical patterns in the neighbourhood and a neighbourhood is considered to be a short walk in every direction from the subject property. I find that Mr. Romano's choice of neighbourhood is

reasonable. It includes a larger area than Palmerston Square, but whichever study area is used, a through lot is anomalous.

The retained lot will be 221 m<sup>2</sup> in area, and the severed lot 166.4 m<sup>2</sup>. The minimum lot area is 180 m<sup>2</sup>. Mr. Romano found that the frontage of 8.53 m was larger than all but 5% of lots on Euclid; 41% were below 180 m<sup>2</sup> in area. For Palmerston Square, 92% were smaller than the by-law minimum. Reviewing Mr. Romano's evidence, I do not find the proposed densities, pattern of setbacks or other parameters significantly different from other lots in the neighbourhood.



In particular, I do not find the densities different. I reproduce part of Mr. Romano's Floor Space Index map, where the colour codes indicate:

- |                               |        |
|-------------------------------|--------|
| FSI less than or equal to 0.6 | blue   |
| 0.61 to 1.1                   | pink   |
| Larger than 1.1               | purple |

The "island" in the middle of the Square is generally pink (0.6 to 1.1 FSI). The four "corner" blocks, which give the Square its unusual street pattern, do not generally follow any pattern; they are a mixture of densities, not solid blue. The only contiguous strip of



blue (0 to 0.6 FSI) is outside the Square, from #771 to #789 Euclid. The subject property itself, currently 0.78 or pink (0.61 to 1.1), will become purple (>1.1), like its Euclid neighbours.

The severed lot will be pink (0.61 to 1.1), as are most of the lots in this block face, which also contains Ms. O'Reilly's house. So, the new densities will maintain the colour of their immediate neighbours and respect and reinforce the existing physical pattern as required under the Official Plan and so I find the proposal meets the test of Official Plan conformity under s. 51(24)(c) of the *Planning Act*.

The neighbourhood has a significant number of purple houses (>1.1), many of which are most likely nonconforming from a neighbourhood laid out in the early 1900s. The City has moved in the direction of better utilizing these lands by encouraging rental, which is contained in the main building, secondary suite policies and laneway housing (these last two not applicable here). The intent of the Official Plan and zoning is to permit a modest increase in densities in this walkable, well treed and desirable inner city neighbourhood.

The *Planning Act* tests are met for both the severance and the variances.

## **DECISION AND ORDER**

I grant the severance and authorize the variances as set out in Table 1 on the following conditions:

### Consent Conditions

1. Confirmation of payment of outstanding taxes to the satisfaction of Revenue Services Division, Finance Department.
2. Municipal numbers for the subject lots indicated on the applicable Registered Plan of Survey shall be assigned to the satisfaction of Survey and Mapping Services, Technical Services.
3. Prior to the issuance of a building permit, the applicant shall satisfy all conditions concerning City owned trees, to the satisfaction of the Director, Parks, Forestry & Recreation, Urban Forestry Services.
4. Where no street trees exist, the owner shall provide payment in an amount to cover the cost of planting a street tree abutting each new lot created, to the satisfaction of the General Manager, Parks, Forestry and Recreation.

5. Two copies of the registered reference plan of survey integrated with the Ontario Coordinate System and listing the Parts and their respective areas, shall be filed with City Surveyor, Survey & Mapping, and Technical Services.
6. Three copies of the registered reference plan of survey satisfying the requirements of the City Surveyor, shall be filed with the Committee of Adjustment.
7. Within ONE YEAR of the date of the giving of this notice of decision, the applicant shall comply with the above-noted conditions and prepare for electronic submission to the Deputy Secretary-Treasurer, the Certificate of Official, Form 2 or 4, O. Reg. 197/96, referencing either subsection 50(3) or (5) or subsection 53(42) of the Planning Act, as it pertains to the conveyed land and/or consent transaction.

Variance Conditions

8. The owner shall construct the exterior portion of the development in substantial compliance with the plans of Paula Bowley dated May 27, 2019 and filed in this hearing as "Final Plans".



**X**

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T. Yao  
Panel Chair, Toronto Local Appeal Body