

DECISION AND ORDER

Decision Issue Date Wednesday, November 13, 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): JIM DIMAKOS

Applicant: JIM DIMAKOS

Property Address/Description: 34 ELLERBECK ST

Committee of Adjustment Case File: 18 253085 STE 29 MV

TLAB Case File Number: 19 156834 S45 14 TLAB

Hearing date: Monday, October 21, 2019

DECISION DELIVERED BY Ian James LORD

APPEARANCES

Name	Role	Representative
Jim Dimakos	Applicant/Appellant	Meaghan McDermid
City of Toronto	Party	Marc Hardiejowski
Martin Rendl	Expert Witness	
Stephanie Hong	Expert Witness	
William Habkirk	Participant	

INTRODUCTION

This is an appeal from a refusal by the Toronto and East York District panel of the City of Toronto (City) Committee of Adjustment (COA) on an application to construct a parking pad in the front yard of an existing detached two-storey dwelling at 34 Ellerbeck Street (subject property).

The Applicant/Appellant called Mr. Martin Rendl to speak in support of the appeal.

The City called Ms. Stephanie Hong in opposition to the requested relief.

Both were qualified without objection to offer expert opinion evidence on matters pertaining to land use planning.

Mr. William Habkirk, a neighbour several doors to the south, was the only other witness to address the Toronto Local Appeal Body (TLAB).

At the outset, I advised that I had visited the site, walked the immediate area and read, in part, the materials filed but that it is the evidence to be heard at the Hearing that is of importance. I also advised that I had, for a number of years, participated annually with Mr. Rendl in the teaching of a day-long seminar course prepared for and sponsored by the Ontario Professional Planners Institute as part of its continuing educational series for planners.

There were no preliminary matters.

The variances sought are set out in **Attachment 1** (Application).

BACKGROUND

As detailed to an extent in the 'Evidence' section, below, there is a history to the Application.

The subject property is located on the west side of a one-way northbound residential street some two blocks north and one block east of the intersection of Broadview and Danforth Avenues, internal to a residential neighbourhood.

The subject property has an area of 343.6 square meters and a frontage slightly in excess of 8.5 m. It is developed with a substantial, presentable and contemporary two storey detached residential building and rear yard swimming pool. The residence appears to be recently constructed and has frontage on Ellerbeck Street, with no side or rear yard access points.

The Application proposes the institution of a front yard parking pad. In preparation for this, the Applicant has lowered the grade, on separate occasions, to accommodate level access from street grade. As a consequence, both sides of the front yard are supported by low to mid-rise retaining walls of recent construction, running from the municipal right-of-way, essentially to the dwelling foundation, with access walkways.

There is no issue with the presence of the grading plan undertaken by the Applicant, other than the concern it represented to those opposed, for the loss of an elevated continuation of 'green' landscaping, previously present and currently existing on either side, north and south of the subject property.

Despite the obvious preparation of the subject property for the circumstance of front yard parking, the TLAB is to consider the Application as if these works are not present for any specific purpose but simply exist and afford evidence of physical suitability to potentially accommodate off-street parking.

MATTERS IN ISSUE

While the requested variances seek relief for access stairs proximate to the north lot line, and the reduction requested for front yard soft landscaping, both are derivatives of whether relief should be granted for the permission of a parking space in the front yard of the subject property.

The Site Plan for the proposed parking pad space and associated improvements is set out on **Attachment 2**.

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

Martin Rendl described the subject property as a new house with the proposed parking pad located entirely on private property in the front yard. He distinguished this location as not involving boulevard parking (where some or all of the parking space is located on public property and allowed under permit).

His Expert Witness Statement (Exhibit 1) and Responding Witness Statement (Exhibit 2) detail a thorough canvass of his considerations in reaching support for approval of the requested variances. Some of those support themes that he advanced are repeated above and here:

**Decision of Toronto Local Appeal Body Panel Member: I. LORD
TLAB Case File Number: 19 156834 S45 14 TLAB**

1. The subject property is located within a '*Neighbourhoods*' designation but subject to the caveat that the proposal is not 'building development', but rather accessory parking.
2. Both applicable zoning by-laws require on-site parking and the location of parking 'behind the main front wall of the dwelling'; in this case, the building is built, the side yards offer insufficient width for the passage of a motor vehicle, there is no rear lane access and no integral garage. The only possible way to comply with the by-law requirement to provide one parking space entirely on the lot is as proposed or seek an exemption from the requirement (not sought) – the other options being foreclosed.
3. The neighbourhood is stable and mature with an observed front yard parking map and photo studies showing a substantial number of parking spaces being common and 'typical' in front of the main front walls. He plotted front yard parking demonstrating, by dots, existing front yard parking conditions in his 'Immediate Context' area Exhibit 1, Schedule D. These were undifferentiated as to whether they existed under lawful permission, constituted authorized 'boulevard' permit parking, were 'illegal' installations or constituted parking in driveways associated with garages internal to a dwelling, or otherwise accessed by driveways to garages located in a rear yard. He was firmly of the opinion that in the Immediate Context and Geographic study area, front yard parking constituted an open and obvious element of the 'existing physical character of the neighbourhood'. In Official Plan terms, including the revisions of OPA 320, he felt the area of greatest relevance to be the street itself. There are 81 dots in the Geographic Study Area, and 24 instances of front yard parking so defined on Ellerbeck, although he had not performed a total residence count.
4. He said the subject property was a new house that had undergone a minor variance approval process, but for which he had no familiarity. Clearly it did not involve an integral garage or a request for the total elimination of the parking requirement or an on-site front yard pad location permission. He noted that, simultaneously, the Applicant had sought a 'boulevard parking' permit permission. This Mr. Rendl defined to be under Municipal Code By-law Chapter 918 and to involve parking on-site but encroaching on the municipal right-of-way, although not extending into the sidewalk. That permission was deferred on several occasions and ultimately refused by Council, on appeal, and at a time when the subject Application had been instituted. He implied the owner's original intent and pursuit had always been for the lawful permission to park in front of the residence.
5. Mr. Rendl clarified his understanding of applicable parking controls:
 - a) On street parking permits issued by the City. The Applicant has two of these; they are issued based on available spaces to between 100 and 110% of availability. There is a waiting list.
 - b) Off –street boulevard parking permits under Municipal Code, Chapter 918, for front yard parking space pads overlapping the municipal right-of-way;

**Decision of Toronto Local Appeal Body Panel Member: I. LORD
TLAB Case File Number: 19 156834 S45 14 TLAB**

- c) Zoning by-law permissions, variations or exceptions, by variance, for front, rear yard, side yard or integral garages and driveways.
- d) Parking regulations on-street, pertaining variously to permit holders and the general public, and applicable to time of day permissions, duration and alternating side of street seasonal variations.

Because the permission in b) above, had been denied, the Application seeks approval under c) as a variance exception to permit angled parking (**Attachment 2**) entirely on the subject property. In his view, the variance route for on-site permission does not engage the 'boulevard parking' permit process. The Municipal Code language contemplates front yard parking permission on-site being available through its permitting process or "any other by-law," e.g., zoning. He had no personal experience with this interpretation.

- 6. It was his view the majority of dwellings in the area have no side or rear yard access that permits consistency with the general by-law requirement as to location: namely, that parking not be located in the front yard; over time, he said, off-street parking is turning to front yard parking examples, as described in paragraph 3, above, and has been demonstrated to do so for decades.
- 7. In his view, the on-street parking systems, items a), b) and d) above were not connected to the general zoning prohibition of front yard parking but were specific management tools to deal with the on-street supply of parking. He observed that narrow lots can also serve to constrain on-street parking supply and this is prevalent on the east side of Ellerbeck Street in the vicinity of the subject property.
- 8. He opined the variance for the stairs that "are there, right on the lot line" do not impede movement and provide access to the street, with no off-site impact. He felt the stairs, and reduction in soft landscaping, from 75% required to 19%, to be appropriate with a condition requiring permeable pavers and additional matching soft landscaping improvements to the public boulevard. Transportation and Engineering Services presented no objection, despite City Planning's opposition. He acknowledged there would be a loss of one on-street parking space by a curb cut, off-set by the provision on one on-site parking space and the release of one on-street parking permit.
- 9. He was not aware of whether the Applicant owned a motorcycle, evident on a site visit and in the photographic record parked opposite the subject property, on the street.
- 10. Mr. Rendl's support opinion covered policy, provincial and municipal, and the 'four tests', individually and cumulatively. He felt approval would not constitute a precedent and the parking space pad so defined in **Attachment 2** would form part of the existing physical character and was "materially consistent with the prevailing existing character of properties in both the Immediate and Geographic Context area." He acknowledged that the one front yard parking

**Decision of Toronto Local Appeal Body Panel Member: I. LORD
TLAB Case File Number: 19 156834 S45 14 TLAB**

space sought was not a 'prevailing' physical characteristic but was present 'in substantial numbers' as a defining element.

11. In cross examination by Mr. Hardiejowski, Mr. Rendl acknowledged the City's 'harmonizing' By-law 569-2013 recognized lawfully existing spaces; however, he did not know where these were or whether that recognition included the widening of spaces, clearly evident as present in the neighbourhood. He noted that zoning is 'indifferent' as to the angle/orientation of the parking space, and that no off-street parking space permissions on private property in front of a dwelling had been created by variance. He felt the diagonal orientation did not make a difference to his opinion, although he acknowledged it creates a different geometry for the landscaped open space component, by not being perpendicular to the street.

Stephanie Hong presented her evidence with reference to her Expert Witness Statement (Exhibit 3), with Appendices and the City Exhibits Book (Exhibit 4).

She identified certain factual matters left unclear in the evidence of Mr. Rendl:

- i). The subject property had received minor variance consideration by decision of February 24, 2016; this somewhat dated the period of building construction on the subject property;
- ii). Zoning differs on the two sides of Ellerbeck Street, with narrower lot widths and more restricted unit variety (single detached) on the east side. The density permission is 0.6x lot area on the west side in mixed dwelling types; 0.35x lot area on east side, with lesser setbacks.
- iii). Council denied the front yard boulevard parking permit for the subject property, after three deferrals, on March 19, 2019. The variance application was filed November 8, 2018. Complete excavation of the south half of the front yard of the subject property took place after June 10, 2019.
- iv). To construct the pad proposed, a portion of the existing front porch would be required to be removed to permit unobstructed turning into the angled space, as well, certain of the access stairs require relocation.
- v). A Traffic Management Plan Report dated June 29, 2018, was performed as a comprehensive review of the Playter Community, including the subject property's street; it reiterated parking management objectives to control off-street parking due to its resultant consequences: loss of vegetated green space and natural features; streetscape disruption; loss of on-street parking; traffic and pedestrian safety related to turning movements; the purpose and intent of parking restrictions. This Plan had the prior

**Decision of Toronto Local Appeal Body Panel Member: I. LORD
TLAB Case File Number: 19 156834 S45 14 TLAB**

assessment support of a 1996 study 'Preserving Neighbourhood Streetscape Report' provided in Exhibit 4.

vi). Off-street boulevard parking permits/licenses granted in the 1980's and 90's had since ceased with only one had been issued on Ellerbeck of a more recent vintage as it had demonstrated a 6m sufficient intersection clearance . Otherwise, there were no off-street licenses granted on the west side of Ellerbeck and no curb cuts existed for other than the properties granted permissions in the 1980's and 90's.

Ms. Hong's opinion evidence included the following:

1. In her April 25, 2019 Staff Report, she saw a relationship between Council's ongoing direction from a 1996 and 2018 Parking Management Study works to date, to evaluate front yard parking applications from the perspective of the erosion and management of on-street parking.
2. She saw a material difference by the Application in street landscaping with continuous, elevated, mature soft landscaping and limited driveways on the west side of Ellerbeck.
3. The site plan (**Attachment 2**) failed to demonstrate the 0.3 m separation distance required under section 220.5.1; further, that the existing porch, stairs and retaining walls are obstacles to turning movements. She felt the orientation of the space is 'out of character' and contrary to traffic flow on the street, unusual, difficult; further, the proposal contravened the very issues that the 2018 Traffic Management Report had identified and was endeavouring to alleviate, including the loss of one on-street parking space and pedestrian safety concerns.
4. Contrary to Mr. Rendl, she felt the City Official Plan made direct reference to parking considerations: section 3.1.2.2 (to minimize property impact and improve safety and minimize curb cuts); section 4.1.5: e) prevailing location of garages; g) landscaped open space; and h) continuation of special landscaped open space features; section 4.1.8, recognition of 'parking as a zoning by-law compatibility element. In her view, the proposal would alter the quality and perception of the streetscape through the loss of the soft landscaping and, to that extent failed to recognize, respect and reinforce neighborhood character in a contributory manner, constituting a negative precedent encouraging future requests.
5. She felt the four tests were not met for any of the variances.

In cross examination by Ms. McDermid, Ms. Hong acknowledged that Council had never considered the angled parking pad proposed; further, the fact that a variance application provided an alternative option. In so stating, she clarified that it was her view the variance application could not permit parking on the public boulevard, which she described as the intention of the Applicant from the outset.

**Decision of Toronto Local Appeal Body Panel Member: I. LORD
TLAB Case File Number: 19 156834 S45 14 TLAB**

She said there was a legitimate public interest concern as to the now established consequence of the loss of one on-street parking space, by an approval.

She agreed that the 'experts' from the City Engineering Services Department had not expressed concerns respecting access and egress to and from the public street and that she had not discussed her concerns on this aspect with that department, noting it is not generally a commentator, unless public property is involved. She acknowledged that no variance is required from the 0.3 m turning condition.

Further, she would not agree that the existing character consisted of front yard parking; she preferred to state that only 12% were off-street permit/licensed spaces on properties on Ellerbeck, excluding private drives and illegal expansions. In her view, the planned function did not envisage increases in off-street parking pads, a consistent approach since that used in the 1980's and 90's. She felt the west side demonstrated some newer housing with integral garages but acknowledged, overall, that parking solutions considerations could be described as a mix.

She noted that lots with a lawful driveway tended to exhibit cars parked in their driveways, often in front of the main front wall of the dwelling.

Finally, she agreed that the soft landscaping provision, like the front yard parking prohibition in zoning, applied City wide and failed to recognize diversity - but added that she had considered the circumstance. She had not fully investigated the issue of potential precedent on a lot analysis basis.

Mr. William Habkirk had lived nearby for 41 years and strongly objected to the requested variances. His Participants Witness Statement is Exhibit 5. He cited what he felt to be several inaccuracies in the Site Plan, **Attachment 2**, including:

- i). The width of the sidewalk, it being reduced to 0.65 m (two feet) after deleting the existing retaining wall (200mm);
- ii). The location of the 'existing' stairs, as patently not where they are represented.
- iii). The necessary removal of the existing stairs and porch.

On the matter of streetscape retention, he advised the TLAB that for a stretch of 65 m, a 'unique' row of 9 'century homes', singles and semi's, have co-existed without driveways presenting a common, mature, raised landscaped streetscape on the west side of Ellerbeck. The proposal, in his view, would abruptly alter that in a manner that was not gradual or a 'fit' that is in keeping with the Official Plan principles of sustainability or the goal to respect and reinforce the existing physical character of the area.

He felt that the hard surfacing proposed would be an abrupt start to the erosion of the streetscape with the obvious erosion of existing green space and potential loss of trees, vegetation, infiltration benefit as well as its aesthetic and practical value.

He felt the angled drive to be not compatible with area character, an 'unfortunate precedent'; he observed the worsening consequence of an added driveway in winter with the reduced capacity of the street system to accommodate parking.

He felt that the principles' involved were too important to be minor and urged acceptance of the staff Planning Report in opposition.

He acknowledged in cross-examination that street parking was typically full.

Argument was reserved to written submissions as the day had advanced to 6:30 pm.

ANALYSIS, FINDINGS, REASONS

The TLAB has had the benefit of two well prepared Written Argument documents provided by Ms. McDermid and Mr. Hardiejowski, both with authorities cited or included. As well, a Reply Submission was received from Ms. McDermid dated November 1, 2019. The Arguments have been fully considered.

The single significant issue, above identified, is the request to provide front yard parking on the subject property.

As is appropriate, the Applicant, in an extensive and commendable set of prepared materials, sought, albeit unsuccessfully, to convince Council and the COA that this employment of space was appropriate in all the circumstances.

Mr. Rendl supported the proposition of angled front yard parking from a professional planning perspective by examining the 'Geographic' and 'Immediate' neighbourhood, terminology employed by the Official Plan, as amended by OPA 320.

He was of the opinion, in a Response Witness Statement, that the provision of a parking pad space did not constitute 'development' as envisaged, so as to invoke the Built Form provisions of the Official Plan. He did convincingly provide, in photographs, diagram (Appendix D) and tabular form, evidence to demonstrate that front yard parking, while not a 'prevailing' characteristic of the neighbourhood study areas, does "have a significant presence" as an element of area physical character.

Ms. Hong, on the other hand, applied the policy analysis through a different lens, examining front yard parking both as to character and timing. She noted significant distinctions, on Ellerbeck Street, of the consequence of different zone regulations, the timing of front yard parking permissions, Council's examination over time of parking conditions and policy options applicable to the 'Playter Estate' area, and drew distinctions between as-of-right driveway accesses, boulevard parking permits, garage locations in zoning by-law compliance and illegal parking space additions.

While not denying the undifferentiated presence of examples of 'front yard parking', she distinguished the examples in the Immediate Context area including their rarity on the west side of Ellerbeck and their proliferation on the east side, largely ending in the 1980's and '90's. These she ascribed to evolution, as the City undertook

**Decision of Toronto Local Appeal Body Panel Member: I. LORD
TLAB Case File Number: 19 156834 S45 14 TLAB**

management control studies and introduced a more rigorous program of off-street parking permit reviews and on-street parking permit issuance.

Mr. Rendl did not distinguish zone provisions or history as it applied to the Immediate Context area, asking that the application of the Official Plan policies of relevance apply to assess the 'existing physical character' of the area. He did not accept that the nuances of timing, type of permission or house form design in compliance with zoning, as matters relevant to that assessment and application of policy intent in character evaluation.

He asserted that off street parking exists in substantial numbers, is readily apparent, and that Official Plan consideration is factually addressed. In his view, as argued, the various forms of off street parking, including the application of Chapter 918, has no relevance.

I agree that off street parking has a substantial presence and is a material but not the sole consideration. I agree that a focus solely on permit/licensed spaces is not sufficient to define 'on the ground' character, if that were the limit of City Staff considerations. The City argues, in paragraph 13, that there are physical differences observable in parking solutions in the neighbourhood. I did not take Ms. Hong's evidence in its entirety to be premised only on the character attributes of licensed parking spaces.

I find that the status of the zoning appeal of By-law 569-2013 on this matter to not be determinative. A variance is required under applicable zoning by-laws and there is no flexibility in that requirement. I accept the City argument that the outstanding appeal considerations may or may not result in a reconsideration of this City wide standard. The TLAB is obliged to make a decision on the matters before it.

I am concerned that Mr. Rendl dismissed a parking pad as 'development' for the purposes of Chapter 3, Built Form policies, but continued to apply the assessment criteria of Chapter 4, which also speaks to 'development'.

The City argued, paragraph 8, that the approach of disregarding the Built Form policies of Chapter 3 would have an 'absurd result' if a distinction were maintained between the use of terminology in the policy document described as 'new development' or simply 'development'. Statutory construction principles suggest that the use of terminology that differs does imply differing intentions and with that I agree. Here, however, there are no definitions provided, both occur in a policy document (the Official Plan which is to be given a 'large and liberal' construction interpretation), and Mr. Rendl agreed in cross examination that 'development' can have different interpretations and a broader meaning in the planning context.

In the Reply Submissions, it is argued that Mr. Rendl addressed the Built Form policies by finding them not relevant: that they were intended to address 'development involving buildings, and particularly more substantial developments such as multi-storey buildings' (paragraph 2). The Reply then goes on to cite subsections of Chapter 3 to the effect that even if they did apply (Reply, paras. 4, 5), certain interpretations follow. Respectfully, that was not the evidence and while argument can urge conclusions from

the application of policy, argument is not evidence and certainly cannot be attributed to a witness who did not address that subject matter or conclusion.

I find, as Ms. Hong noted, that the provision of ‘parking’ is an element of land use policy woven throughout the Official Plan and its reference to zoning standards. Further, that the consideration of ‘parking’ goes beyond matters of mere physical presence and engages its implications, including in this circumstance the parallel variances sought to side yard incursion and soft landscaping.

In this regard, the amended Official Plan, section 4.1.5 (addressed by both planners) includes the following references, emphasis added:

“5. Development in established Neighbourhoods will respect and reinforce the existing physical character of each geographic neighbourhood, including in particular:

- a) patterns of streets, blocks and lanes, parks and public building sites;
- b) prevailing size and configuration of lots;
- c) prevailing heights, massing, scale, density and dwelling type of nearby residential properties;
- d) prevailing building type(s);
- e) prevailing location, **design and elevations relative to the grade of driveways and garages;**
- f) prevailing **setbacks** of buildings from the street or streets;
- g) prevailing patterns of rear and side yard setbacks and **landscaped open space;**
- h) continuation of **special landscape** or built-form **features** that contribute to the unique physical character of the geographic neighbourhood; and
- i) conservation of heritage buildings, structures and landscapes.

The geographic neighbourhood for the purposes of this policy will be delineated by considering the context within the Neighbourhood in proximity to a proposed development, including: **zoning**; prevailing dwelling type and scale; lot size and configuration; street pattern; pedestrian connectivity; and natural and human-made dividing features...

The physical character of the geographic neighbourhood includes both the physical characteristics of the entire geographic area in proximity to the proposed development (the broader context) and **the physical characteristics of the properties that face the same street as the proposed development in the same block and the block opposite the proposed development (the immediate context).**

Proposed development within a Neighbourhood will be materially consistent with the prevailing physical **character of properties** in both the broader and immediate contexts. In instances of significant difference between these two contexts, the immediate context will be considered to be of greater relevance. The determination of material

**Decision of Toronto Local Appeal Body Panel Member: I. LORD
TLAB Case File Number: 19 156834 S45 14 TLAB**

consistency for the purposes of this policy will be limited to consideration of the physical characteristics listed in this policy. In determining whether a proposed development in a Neighbourhood is materially consistent with the **physical character of nearby properties**, only the physical character of properties within the geographic neighbourhood in which the proposed development is to be located will be considered....

While prevailing will mean most frequently occurring for purposes of this policy, this Plan recognizes that some geographic neighbourhoods contain a mix of physical characters. In such cases, the direction to respect and reinforce the prevailing physical character will not preclude development whose physical characteristics are not the most frequently occurring but do **exist in substantial numbers** within the geographic neighbourhood, **provided that the physical characteristics of the proposed development are materially consistent with the physical character of the geographic neighbourhood and already have a significant presence on properties located in the immediate context or abutting the same street in the immediately adjacent block(s) within the geographic neighbourhood...**

No changes will be made through rezoning, minor variance, consent or other public action that are out of keeping with the overall physical character of the entire Neighbourhood ...

8. Zoning by-laws will contain numerical site standards for matters such as building type and height, density, lot sizes, lot depths, lot frontages, **parking**, building setbacks from lot lines, landscaped open space and any other performance standards to ensure that new development will be compatible with the physical character of established residential Neighbourhoods”

I find from these extracts that the framers of the Official Plan considered parking and its implications an integral component of neighbourhood character to be assessed as a component of development. As such, the presence of even a myriad of examples is instructive but not the determinant of subsequent approvals.

In the present case, a new house was constructed with a design that did not afford the opportunity to satisfy the parking regulation under zoning of being located ‘behind the main front wall’. No side driveway, rear or integral garage was incorporated in the design. Instead, the Applicant sought a front yard boulevard parking permit for a design only partially located on the subject property, as depicted in the Response Witness Statement of Martin Rendl, Appendix A. It envisaged parking perpendicular to the street. Because of the limited setback from the right-of-way of this proposed and now existing dwelling unit, the requisite parking space dimensions could not possibly be accommodated on the lot, in that configuration.

The house was built while the parking issue was unsettled; the boulevard parking permission was refused on appeal – some 2-3 years later.

I accept as an uncontested working hypothesis that front yard parking permission can be applied for under the variance provisions of section 45 of the *Planning Act*, where the space is to be located entirely on private property. Indeed, this is the only

**Decision of Toronto Local Appeal Body Panel Member: I. LORD
TLAB Case File Number: 19 156834 S45 14 TLAB**

vehicle now available to this Applicant to meet with the requirement to satisfy that one parking space be provided on the lot. It is prohibited to be in front of the main front wall of the dwelling and relief, it is agreed, can be sought under section 45 for the recognition of (and presumably, absolution from) the requirement.

In addressing this matter, I also do not find it necessary to determine whether there are engaged, connected, supportive or conflicting relationships in the above noted and varied parking controls applicable on Ellerbeck. Elsewhere I have expressed the view that these controls can operate independently of one another (see: *40-42 Elmer Avenue* (18 243484 S 53 32) issued September 30, 2019).

I have looked carefully at the materials, listened to the objections, verbal and in writing by Mr. Habkirk and scrutinized the opinion evidence of Ms. Hong on the issues of streetscape continuity, landscaped open space (soft landscaping) compromise, impact considerations, the purpose, evolution and effect of parking management efforts exercised by the City, and the pattern of approvals and the timing thereof over the years.

It is unfortunate that the parking space option for the lot was not resolved at or before building permit issuance. Apparently, after an earlier COA decision was rendered, a building permit was issued on the strength of an application for boulevard parking permit relief being applied for and on appeal to Council. How that occurred or whether it is a matter of practice and its efficacy is not before me for consideration.

Nevertheless, that process permitted the construction of a substantial house without a garage and in an alignment with adjacent housing in relatively closer proximity to the street, than housing to the north. There is simply not enough room for perpendicular parking, the neighbourhood norm where it exists, without a boulevard parking permit.

That option was closed, by Council, in a 2019 decision.

The Applicant has done everything possible to prepare the site for the now proposed angular parking. That preparation lowered the grade of the front yard of the subject property, removed any landscaping and has created a level space capable of receiving a vehicle, angled in the front yard, between the residence and the public sidewalk.

I find that this proposed parking solution is not the norm and has no proximate example. The parking at 103 Ellerbeck has driveway access to the rear yard; its angled parking supplements an approved driveway.

I find that the decision on this matter can be addressed on practical considerations as much as policy application. The proposed solution is, quite understandably, a responsive reaction to achieve zoning compliance.

However, I find the proposal in **Attachment 2** constitutes a 'gerrymandering' of the required space in a manner that is disruptive to the continuity of the streetscape, diminishes the character of the dwelling itself, and creates an unconventional patchwork

**Decision of Toronto Local Appeal Body Panel Member: I. LORD
TLAB Case File Number: 19 156834 S45 14 TLAB**

of soft landscaping that is inconsistent with prevailing patterns and at a disruption to the elevated grade continuation.

I find that the design proposal causes partial demolition of an existing newly constructed porch and garbage storage area, creates turning movement conflicts with the built form of the dwelling and its stairs, and creates an entrance sidewalk of minimal dimensions, even if incorporated into the design with permeable pavers.

The plotting of the proposed space, even as presented in **Attachment 2**, does not appear to be entirely on private property and does not afford the 0.3 m turning dimension referenced by Ms. Hong.

The removal of the portion of the front porch obviates the screened garbage receptacle area recently provided, casting the potential for garbage containers to be left at grade in the front yard due to required stair access to the side yard.

I find the turning angle proposed to be awkward, conflicted and a potential risk to public health and safety. If allowed to be constructed, I am confident that users will not use the angle, or could seek to park two cars. I find that out of convenience, for safety in all seasons and by human nature, future occupants or visitors will park perpendicular to the street, encroaching on the public boulevard, albeit not necessarily the sidewalk.

While that result might arguably be within the character of the neighbourhood, a matter in dispute, I find it inappropriate, inadvisable and not a desirable circumstance to create a situation of this nature with its consequence of allowing indirectly an unauthorized result: boulevard parking.

This would be exactly the circumstance Council declined to permit; such actions would pit the owner in conflict with the Parking Authority. I am not prepared to sanction indirectly the potential for an abuse of the use of City property in these circumstances.

I am not prepared to cast the burden of enforcement onto neighbours and the City, both because of issues of my jurisdiction and the precedent use of the variance power itself that may be seen to flow from such a decision.

I find that the practical implications of the proposed design to be in conflict with the streetscape, landscaping and driveway access goals of the Official Plan, to be undesirable and to not meet the intent and purpose of the zoning by-law prohibition or the requisite tests of a minor variance or desirability. I think it unnecessary to address the issue of precedent or degree of impact but do agree with the Applicant's argument that a specific basis for a determination of precedent encouragement on this street has not been proven by the City.

While I am prepared to grant minimal relief, for the above reasons I am not prepared to support the recognition of a parking space as defined in zoning in this front yard.

I find that it is not appropriate to leave the subject property in violation of the zoning requirement to provide one on-site parking space.

I asked but did not receive an answer as to whether the current occupants owned a motorcycle, often seen parked in front of the dwelling. A motorcycle, while a motor vehicle for *Highway Traffic Act* purposes, does not have the dimensions, scale or turning restrictions of a motor vehicle which the parking space dimensions in zoning serve. Even without a ramp or pedestrian curb cut, a motorcycle parked on the lot would not appear to create anywhere near the concerns for a drastic landscaping change expressed in the evidence concerning front yard parking.

There should be no compromise to the soft landscaping provision of the by-law or any requirement for further stair encroachment.

Motorcycles should not park on the public street in winter conditions or, preferably, for extended periods.

DECISION AND ORDER

The appeal is allowed in part.

1. The subject property is not required to provide a parking space anywhere on the lot as required under the applicable zoning bylaws.

2. One motorcycle may be parked in the front yard of the subject property provided vegetated screening is provided, independent as to whether a pedestrian curb cut or ramp is applied for or granted.

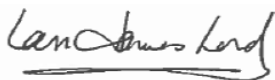
3. It is a condition to paragraph 2 of this Decision and Order that any hard surfacing material that is installed in the front yard be of an interlocking brick or permeable paver variety. The soft landscaping requirement under zoning continues to apply.

4. The variances as applied for and appealed as identified in **Attachment 1** are not approved save and accept as above provided and that the exterior stairs existing in the front yard as at the date of this Decision and Order or their functional replacement are recognized and may be maintained.

5. The diagram or Plan as identified in **Attachment 2** is not approved.

If there are difficulties that arise in the implementation of this Decision and Order, the TLAB may be spoken to.

X



Ian Lord
Panel Chair, Toronto Local Appeal Body
Signed by: Ian Lord

Attachment 1

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

1. **Chapter 10.5.40.60.(3)(A)(iii), By-law 569-2013**
Exterior stairs may encroach into a required building setback provided the stairs are no closer to a lot line than 0.6 m.
In this case, the stairs will be located 0.0 m from the north lot line.
2. **Chapter 10.5.50.10.(1)(D), By-law 569-2013**
A minimum of 75% of the front yard landscaping must be soft landscaping (30.89 m²).
In this case, 19% (7.9 m²) of the front yard will be soft landscaping.
3. **Chapter 10.5.80.10.(3), By-law 569-2013**
A parking space may not be located in a front yard or a side yard abutting a street. In this case, the parking space will be located in the front yard.

A1035/18TEY

2

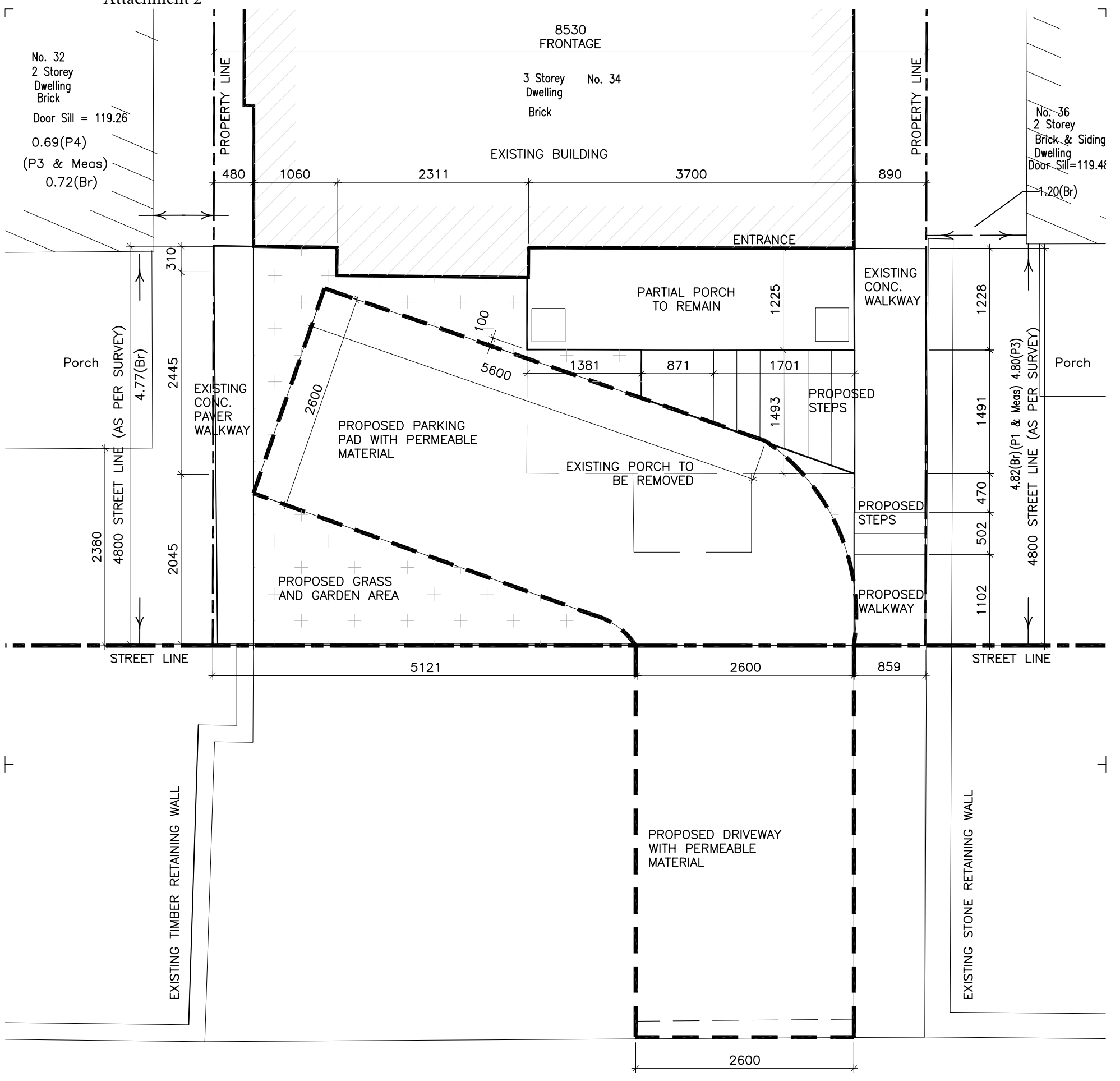
1. **Section 6(3) Part IV 1(E), By-la 438-86**
It is prohibited to park motor vehicles on the portion of the lot between the front lot line and the front wall of the building.

In this case, the parking space will be located on the portion of the lot between the front lot line and the front wall of the dwelling

Attachment 2.

Attachment 2

FILENAME: C:\Users\sam\Documents\New folder\120 suite\Site Plan.dwg
DRAWING LAST EDITED: 25OCT18 11:44:43



CONCRETE SIDEWALK

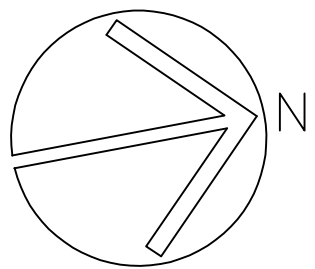
CONCRETE CURB

RAMP

ELLERBECK STREET

2600

FRONT YARD PARKING		CHAPTER 918			F.Y.P. — 100859		
TOTAL PARKING AREA ON STREET ALLOWANCE	11.9 m ²	PRIVATE PROPERTY			STREET ALLOWANCE		
		AREA m ²	%	CODE	AREA m ²	%	CODE
TOTAL AREA		40.32	100		39.2	100	
LANDSCAPED OPEN SPACE		21.4	53.8	50% min.	27.3	69.6	50% min.
PAVED AREA		18.48	46.2	50% max.	11.9	30.4	50% max.
SOFT LANDSCAPING		7.9	36.17	75% min.	23.5	86.1	75% min.



FRONT YARD PARKING at 34 ELLERBECK ST

FRONT YARD PARKING

Scale:

1:50

Date:

SEPT 2018

Project No.

18008E

Drawn by:

CS&P

Revision:

-

Drawing No.

SP1