

DECISION AND ORDER

Decision Issue Date Monday, November 04, 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): MAZIAR MANI

Applicant: ALI KASHANI

Property Address/Description: 37 DEFOREST ROAD

Committee of Adjustment Case File: 18 269223 STE 04 MV

TLAB Case File Number: 19 164679 S45 04 TLAB

Hearing date: Thursday, October 24, 2019

DECISION DELIVERED BY JUSTIN LEUNG

APPEARANCES

Name	Role	Representative
Ali Kashani	Applicant	
Zahraossadat Tousizadeh	Primary Owner	
Maziar Mani	Appellant	Martin Mazierski
TJ Cieciora	Expert Witness	
Robert Gavin	Party	
Vincent Gladu	Party	
Jessica Paterson	Party	
Jason Healey	Party	
Shirley Charland Garvin	Party	

Margaret Healey	Party	
Name	Role	Representative
Monika Janus-Healey	Party	
Michael Healey	Party	
James Schaus	Party	
James Healey	Party	

INTRODUCTION

This is an appeal from a decision of the Toronto and East York Committee of Adjustment (COA) Panel pertaining to a request to permit a series of 5 variances for 37 Deforest Road (subject property).

The variances, if allowed by the Toronto Local Appeal Body (TLAB), would permit a two storey front addition and two storey rear addition to the existing detached dwelling on the subject site. This property is located in the High Park-Swansea neighbourhood in the City which is situated south of Bloor Street West and bounded by Windemere Avenue to the west and Runnymede Road to the east. The property is located on Deforest Road, south of Bloor Street West and north of Morningside Avenue.

At the beginning of the hearing, I informed all parties in attendance that I had performed a site visit of this subject property and the immediate neighbourhood and had reviewed all pre-filed materials related to this appeal.

BACKGROUND

The variances required are outlined as follows:

- 1. Chapter 10.10.40.10.(2)(B)(ii), By-law 569-2013**
The maximum permitted height of all side exterior main walls facing a side lot line is 7.0 m. The height of the side exterior main walls facing a side lot line will be 7.9 m.
- 2. Chapter 10.10.40.70.(1), By-law 569-2013**
The minimum required front yard setback is 3.74 m. The front yard setback will be 2.38 m.
- 3. Chapter 10.10.40.40.(1)(A), By-law 569-2013**
The maximum permitted floor space index is 0.6 times the area of the lot (115.11 m²). The floor space index will be 0.96 times the area of the lot (184.6 m²).
- 4. Chapter 10.5.50.10.(1)(D), By-law 569-2013**

A minimum of 75% of the required front yard landscaping must be soft landscaping (5.57 m²). The front yard soft landscaping area will be 55.98% (4.16 m²).

5. Chapter 10.10.80.40.(1), By-law 569-2013

Vehicle entrances through the front main wall of the building are permitted provided the lot has a minimum frontage of 7.6 m. In this case, the lot frontage will be 6.64 m.

These variances were heard and refused at the May 15, 2019 COA meeting. Subsequently, an appeal was filed on June 3, 2019 by the property-owners of 37 Deforest Road within the 20 day appeal period as outlined by the *Planning Act*. The TLAB received the appeal and scheduled a Hearing on October 24, 2019.

MATTERS IN ISSUE

The appellant's legal counsel contends that the initial decision of the COA to refuse the application and the requisite City Planning staff report which is not supportive of the proposal were delivered without proper consideration of relevant planning issues. The other interested parties in attendance at the Hearing argue that the COA decision and staff position should be afforded proper attention by the TLAB. The Tribunal must assess the appeal matter and all relevant materials to deliver an adjudicated decision, while also ensuring that matters identified under the 'Jurisdiction' section below, under the *Planning Act* is afforded proper consideration in the process.

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

The proceedings began with opening statements by Martin Mazierski of Mazierski Law, legal counsel for the owner and applicant of the subject property. He espouses that there may be evidence provided by the other parties in attendance to argue against the allowance of an integral garage. However, the zoning requirements for this area do not prohibit integral garages. The front yard setback variance as requested is attributed to the existing front building wall which he contends is of legal non-complying status. The overall building height is in compliance with zoning requirements, while there is a variance requested for exterior main wall height. The current property accommodates a rear detached garage. The subject proposal is to allow for a front facing integral garage which, he asserts, would be more accommodating for this land parcel and would allow for the return of soft landscaped area at the rear of the property.

Jason Healey, a party to the proceedings, was in attendance to provide representations for his family who reside at the adjacent 39 Deforest Road. Mr. Healey indicated to the TLAB that he was not a professional planner nor a lawyer and was approaching this matter as a layperson. The TLAB acknowledged this and reiterated that parties to a proceeding do not require professional credentials to present to the Tribunal. With respect to soft landscaping, they are concerned about this as there appears to have been flooding issues in the past. The detached rear garage is existing and the owners are able to currently provide adequate parking needs for the subject property.

TJ Cieciora of Design Plan Services, expert witness as retained by the applicant and owner, was called to provide testimony and the presiding TLAB member qualified him to provide opinion evidence in the field of land use planning. Mr. Mazierski did interject to indicate that the Zoning Notice as prepared by the City Building Department had been revised just prior to scheduled COA meeting; however, the overall variance requests and proposal were not substantially altered as a result.

Mr. Cieciora outlined that the proposal is to allow for additions to be built to the rear and front of the existing detached dwelling with the detached garage at the rear to be removed in the process. The area is comprised of existing houses and recently redeveloped homes as well. In terms of Official Plan Amendment (OPA) 320 which was passed by the City, Mr. Cieciora described that this planning document applies only to 10 homes immediately adjacent to the subject property. In assessing the area development characteristics, he opines that redevelopment has begun to occur here. As such, he asserted there no longer exists a prevailing built form which would define the neighbourhood. The rear detached garage has not been maintained and is in a substandard condition.

The proposed removal of this garage would allow for landscaped area to be recovered in the rear portion of the property. There is a shared driveway between the subject property and the adjacent property (35 Deforest Road). However, as part of a site visit to the area, Mr. Cieciora noted the driveway is narrow and did not appear to be in active use.

With respect to integral garages in the neighbourhood, he stated that the Zoning By-law is not meant to restrict such a garage type but sets certain requirements whereby a land parcel can accommodate an integral garage design. The variance requests relate to the current Zoning By-law 569-2013 in effect for the City. No variances are requested with respect to the older Zoning By-law 438-86. There had originally been an additional variance relating to side yard setback which had been revised, as per discussion with City staff and other interested parties. In addition, there were some discussions at the COA meeting which resulted in some of the variance requests being reduced 'on the spot' at the meeting. Ultimately, the COA did elect to refuse the application.

Mr. Cieciora outlined that the provincial planning documents are prescriptive in that they provide specific direction to intensification in established urban areas. Efficient use of land is contemplated by provincial policy-makers and is to be considered by municipalities in crafting their own local planning policies and initiatives. He contends that the Province's policies with regards to this is to prevent further greenfield development (development extending out beyond the established urban area) and to have more intense or 'focused' development in existing urban areas which would decrease pressure on the environment and municipal infrastructure.

The presiding TLAB member inquired if the provincial planning documents include any language which outlines if such intensification measures would result in conflict or tension as it relates to residents of these established areas and potential means of addressing such concerns. Mr. Cieciora responded that his assessment of these documents demonstrates the Province has adopted an 'intensification first' policy and does not contain specific language addressing such issues. However, his interpretation of the policies is that the Province is describing that there may be some minor inconveniences in pursuing intensification in established urban areas, and this would be necessary to achieve a new development model. Moreover, the City's Official Plan also provides additional direction to allow for potential regeneration to occur in established neighbourhoods to address the need of existing and future area residents.

Mr. Cieciora also outlined that there is an access easement which exists between the subject property and adjacent property. Integral garages are only regulated as it pertains to lot frontage; however, it does not prohibit integral garages in this area as of right. Due to grades in this area, the building on this subject property is actually 1 metre lower than the permitted building height requirements as per the Zoning By-law.

The subject property is an undersized lot in relation to the other parcels of the neighbourhood.

In further assessing the integral garage proposal, Mr. Cieciora opines that an integral garage results in vehicles that may be required to park on the street which are now being parked on the subject property thereby relieving pressure for on-street parking allocation. Furthermore, the landscaped area for the rear property is now being improved with the removal of the rear detached garage.

As part of preparing for this appeal, the expert witness also undertook research of previously granted variances for the area. He also described that this research would not have captured front yard driveways where the entirety of the front yard had been paved over. As these may have been done illegally, this information would not be available as part of his variance research materials. In terms of house typology of this area, the front yard setback variance will not contribute to a disruption in the neighbourhood streetscape rhythm and would still be consistent with the prevailing sighting of houses in the immediate area.

The access easement which exists between the subject property and adjacent 35 Deforest Road cannot allow any variances or construction in the easement area.

Mr. Cieciora stated that the floor space index (FSI) and its related calculation method should not be the primary determining factor for a house size. He also contends that as part of his minor variance research, it appears that several previously heard minor variance applications did request for relief from FSI requirements. The proposal is a modest redevelopment which is consistent with the development pattern of the area.

In response to drawings submitted by parties S. Garvin and J. Paterson which shows the proposed building on the subject property as a grey rectangular figure, Mr. Cieciora responded that as this material was not to scale or with proper lot characteristics. Moreover, this material is rudimentary in nature and should not be provided credence by the TLAB.

Jason Healey, a party of 39 Deforest Road, then commenced his opening remarks to the TLAB. He outlined that he was representing his parents who reside at this above-referenced house. Redevelopment is not being opposed but he argued that it should be done in a manner consistent with the existing neighbourhood character. He indicated that initial discussions with the applicant to remove the integral garage occurred prior to the COA meeting; however, the applicant did not revise their proposal. The four tests for a minor variance are not met as the cumulative effect of the requested variances would be substantial in nature.

The FSI variance request is considerably greater than what is permitted by the Zoning By-law. He confirmed that the access easement/driveway connected to the rear of the properties of 39 Deforest Road and the subject property is being actively used by vehicles to park in the rear property area. The proposed integral garage with associated front driveway also puts into question whether soft landscaping can be placed in the front portion of the property. If a curb cut were needed to accommodate the integral garage design, it could result in the loss of an on street parking spot further constraining the parking allocation for the area.

There has been redevelopment in the area; however, Mr. Healey argued that mostly had been in keeping with the Zoning By-laws. As the minor variance Notice of Public Hearing was circulated to residents within a 60 metre radius of the subject property, the impact and character conformity considerations should be assessed within this radial area. He describes that the subject property is not occupied by the registered owner and questioned the intention for redeveloping this property. The presiding TLAB

Member responded that the Tribunal is not typically concerned whether the owner will reside on the property but is focused on whether the proposal being assessed would be compatible for the area.

In his cross examination, Mr. Mazierski asked Mr. Healey about the drawing which showed a proposed building 'block' superimposed onto the subject property and whether it is an accurate representation. Mr. Healey responded that it could be used as a reference to show how the proposed additions and integral garage would appear once it was constructed. Mr. Mazierski referenced the previous Zoning By-law provisions relating to below grade garages; however, he did not have the specific information with him. The presiding TLAB Member commented that typically municipal engineers, do not support below grade garages and corresponding reverse slope driveways due to potential flooding issues.

Mr. Mazierski inquired if Mr. Healey is aware of municipal requirements pertaining to curb cuts and their potential impact on street parking supply. Mr. Healey responded that he had encountered this issue as part of his research into another property's proposal in the area.

Robert Gavin, resident at 34 Deforest Road and another party, commented that it appears that the TLAB permits the majority of appeals which are presented before it and that it also appears that expert witness testimony is given greater weight by the TLAB in assessing appeal matters. The presiding TLAB Member responded that the statistics as they pertain to the approval or denial of TLAB appeals should not be taken purely on face value as there are a variety of factors which impact decisions, In terms of placing greater consideration on expert witness testimony, the TLAB recognizes and equally considers testimony of all interested parties to an appeal and is cognizant of local issues and perspectives.

Mr. Mazierski requested that Mr. Cieciora return to the stand to provide responses to statements as raised by the other involved parties. Mr. Mazierski initiated this by asking about the provisions restricting entrances to the main front wall and if they were conceived as a means to prohibit integral garages. Mr. Cieciora responded that, in his professional opinion, this was not the intent of the Zoning By-law but that it was crafted to ensure that a front facing garage would not be the most prominent feature of a residential dwelling. Mr. Mazierski then inquired as to why Mr. Cieciora's research and assessment of development patterns was done for a broad area and not confined to the 60 metre radius surrounding the subject property. Mr. Cieciora responded that while the *Planning Act* requires circulation of a Notice of Public Hearing for a 60 metre radius, he does not believe that limiting his review criteria to such a defined geographic area would sufficiently capture the overall physical character of particular community. In terms of below grade garages, Mr. Cieciora commented that the City Engineering Department is not supportive of these due to potential flooding issues.

It is noted that Vincent Gladu of 35 Deforest Road, Jessica Paterson of 35 Deforest Road, Monika Janus-Healey of 39 Deforest Road, Michael Healey of 39 Deforest Road, James Schaus of 28 Deforest Road and James Healey of 39 Deforest Road, listed as participants, were not in attendance at the Hearing.

ANALYSIS, FINDINGS, REASONS

The evidence which the appellant and the other interested parties presented at some length related to the proposed integral garage as part of the front addition to the existing detached dwelling. This would result in reconfiguring the parking for this subject property by relocating the parking from the rear to the front of the property. The existing access easement between the subject property and neighbouring 39 Deforest Road to the rear of the property would remain as 39 Deforest Road would continue to utilize this easement for its own vehicle use. The front and rear addition to the existing dwelling would result in a modern design being introduced into an established neighbourhood (see Figure 1).

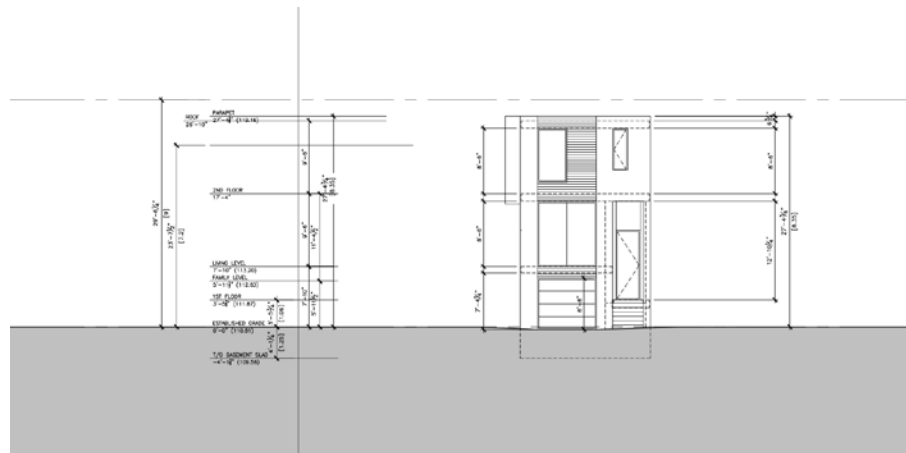


Figure 1: front elevation of proposed additions to existing detached dwelling

Although the Zoning By-law as it pertains to this subject property does not contain language which conclusively prohibits integral garages, it does contain zoning requirements which require a minimum lot frontage be retained in order for an 'opening' to the front wall of a building to be possible. In this instance, Variance #5 is being sought as the lot frontage is deficient in allowing an integral garage as part of this proposal. In assessing previous minor variance decisions in the immediate radial area of this subject property, it was found on the City's *Application Information Centre (AIC)* and also as part of the appellant's disclosure document, that there had been two recent variance requests which also included a proposal for integral garage. The two matters were 94 Lavina Avenue (to construct a new three storey detached dwelling with front integral garage, rear patio and rear third storey deck) which was conditionally approved by COA, and 129 Beresford Avenue (to construct a new detached dwelling with integral garage) which was refused by COA. This information shows that the COA has assessed integral garage proposals on a case-by-case basis, especially in relation to the compatibility of such a design as it pertains to the Swansea neighbourhood. I find that it further demonstrates that assertions which were made by one of the participating

parties that the City has engaged in carte-blanche approval of integral garages is unfounded and without merit.

The party Jason Healey did outline as part of his evidence an assessment of the housing stock of the area and how redevelopment which has occurred in the immediate area has been accomplished by reinforcing the existing built form of the area. His evidence was proffered by his residency of several decades in this community and observations and insights which have emerged through these lived experiences in the Swansea neighbourhood. His perspective and insights draw parallels to 'on the ground' information the presiding TLAB Member obtained as part of a site visit of the subject property and of the immediate area. This visit showed that the area has a varied housing typology interspersed with mid-rise apartment buildings as well. It is noted that as part of this site visit is that integral garages were not seen as a prevailing character of the existing area housing stock.

The area also has a variety of grade differentials due to uneven, hill-like topography. As such, the site visit also illuminated that there are few below-grade garages in this area. This can be attributed to the grading for this area as the potential for flooding of such below-grade garages could be greater due to area site conditions. The visit also showed that this area is within walking distance to subway stations on of the TTC Bloor Danforth line. Approximately 30 minute walk to the south of the subject area is the TTC 501 Queen Streetcar line. These site characteristics are significant as they demonstrate that there are sufficient transit options for the residents of the area in lieu of reliance on automobile use.

Along Bloor Street West, there have been a few condo apartments which have been constructed more recently which were developed as part of the City's support for greater increased transit-oriented development (TOD). Mr. Healey acknowledged this and acquiesced that such development would be typical of development pattern occurring along a major thoroughfare such as Bloor Street West. This site visit depicts an area which has undergone some redevelopment while also retaining a certain degree of neighbourhood features which has contributed to the formation of a unique community within the City. As such, a proposal such as the one being considered should be done in a manner which is respectful of these neighbourhood attributes. Furthermore, due to the abundance of transit options for this area, prioritization of parking needs for residential dwellings may not be as pertinent here for the residents who currently reside here or new residents intending to relocate to this area. Within this issue, the emphasis on the integral garage for this proposal does not appear to bear merit as parking is not a crucial factor in the existing and future development of the area.

The parties to these proceedings did highlight the decision of the COA and the related planning report and the significance to which the presiding TLAB Member should afford to both documents. Section 2(1) of the *Planning Act* requires that the Tribunal give consideration to the previous decision as delivered by the municipal council or approval authority, in this instance the COA. In addition, it is further noted that proceedings are held as a *de novo hearing* where the matter is held as a fresh hearing.

Materials relating to that COA application have been included as part of the evidentiary submissions to the TLAB.

The COA's decision and requisite planning report are not supportive of the proposal. I find that the planning report states that discussions were initiated with the applicant to determine if the integral garage could be removed. Its removal was seen by City Planning staff as potentially decreasing the overall impact of the building footprint while also preventing the introduction of an integral garage which staff were of the opinion is not a prevailing garage design of the area:

“Planning staff are of the opinion that the dwelling could be revised to eliminate Variance No. 5 (relating to the integral garage), which could also potentially lead to the elimination or reduction of the variances for floor space index and main wall height. Planning staff have discussed these concerns with the applicant and the applicant has advised that they are willing to reduce the floor space index and main wall height variances, however they intend to maintain the integral garage.”¹

The commentary from the planning report above shows that the applicant did not feel that the proposal should be revised and choose to proceed to the COA to allow it to render a decision. Discussions were undertaken at the COA meeting, where again the applicant expressed an intent to proceed with the proposal with slight alterations to the variance requests, while not substantially altering the overall built form as had originally been presented. With the information as presented to them, the COA elected to refuse the application. The applicant then appealed the decision of the COA to allow the matter to be considered by the TLAB.

While this matter is now being considered anew by the presiding TLAB Member, I find concurrence and relevancy in the previous discussions which the COA, planning staff and residents had engaged in for this proposal. Both the COA decision and planning report were not in support of the proposal, there are elements of this proposal which had resulted in both parties finding it not consistent with the four tests for a minor variance as per the *Planning Act*. As this material was submitted as part of the evidentiary documents, the TLAB has reviewed them comprehensively and I find credence in conclusions which arose as part these materials as they relate to this appeal matter.

With the evidence as presented to the TLAB, I prefer the evidence as provided by the Parties Jason Healey and Robert Gavin who had been in attendance at the hearing. These parties sufficiently demonstrated to the tribunal that the proposal as presented would result in an altered detached dwelling which would not be consistent with the area fabric of the Swansea neighbourhood. This would most notably be seen in variances #3, 4 and 5 as part of the overall proposal. Although the Zoning requirements

¹ City of Toronto (2019, May). Staff Report: Committee of Adjustment Application: 37 Deforest Road. Retrieved from <http://app.toronto.ca/DevelopmentApplications/associatedApplicationsList.do?action=init&folderRsn=4583250&isCofASearch=false&isTlabSearch=true>

for this area do not prohibit integral garage design for houses, this type of garage is not a common characteristic of the housing stock in the area.

In addition, the subject property currently contains a rear detached garage accessed by an access easement (shared driveway) between it and 39 Deforest Road. As such, I find that the parking needs for this property are currently being provided for. The request to redesign the parking configuration has not been presented in a persuasive manner by the appellant to TLAB. In addition, the proposal is inconsistent with the provisions of Chapter 4.1.5 of the City's *Official Plan* as it does not respect and reinforce the street pattern nor does it preserve the prevailing building typology. Other concerns with this proposal which are of note are the reduction in the soft landscaping space in the front yard and potentially new privacy issues of these front and rear addition for the adjacent residents. The proposed reduction by approximately 19% of landscaped space does enhance potential issues with water discharge and regeneration at this site.

While mitigation possibilities such as a return of soft landscaped area to the rear yard with the removal of the rear detached garage were proposed, it is noted the Zoning requirements specifically delineate for a front soft landscape area which would have been prescribed in the Zoning By-law as per planning staff consultation with other relevant municipal departments such as Parks and Engineering. This may have been attributed to rainfall, snow and other phenomenon resulting in water which emerges along the main thoroughfares (streets) in the area. The submissions as provided by the opposing parties outlined previous flooding and water runoff issues which have occurred along Deforest Road due to the area grading. It was indicated that there had previously been discussions with City staff on this and public work to address infrastructure issues here had been done. This could provide an explanation as to why these requirements were incorporated into the Zoning requirements for this area.

The increase in the floor space index (FSI) by approximately 2 times the allowable area of the lot criteria of the Zoning By-law results in a building massing which is more prominent in relation to the other houses along the street. It potentially also increases impacts such as privacy and sun access for the neighbouring properties. The reduction in front yard soft landscaped area by just under 20% also results in an altered detached dwelling which no longer possesses the same front yard characteristics of other houses along the street acting to disrupt the neighbourhood rhythm.

Groundwater runoff from the subject property onto other adjacent properties would also be exacerbated as a result. While the minimum lot frontage requirement to allow a vehicle entrance to the front main wall is deficient only by under 1.0 metre, the metrics as shown do lend credence to argument that the lot is undersized to support a front facing garage, which acts to justify the existence of the current rear detached garage with shared driveway connecting it to the front street (Deforest Road). I agree that an allowance of this variance request could potentially negatively affect the local parking and traffic situation negatively as front accessing driveways with frontal garages are not typical of this street's characteristics. Traffic conflicts that did not previously exist would now emerge with the road users of this area.

DECISION AND ORDER

The appeal is refused, and the Committee of Adjustment decision, dated May 21, 2019, is upheld. The variances are not authorized.

X 

Justin Leung
Panel Chair, Toronto Local Appeal Body
Signed by: Leung, Justin