

# DECISION AND ORDER

**Decision Issue Date** Monday, December 23, 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): Gregory Pechersky

Applicant: Alex Akselrod

Property Address/Description: 8 Springhurst Ave

Committee of Adjustment Case File: 19 133808 STE 04 MV (A0327/19TEY)

**TLAB Case File Number: 19 209028 S45 04 TLAB**

**Hearing date:** Tuesday, December 17, 2019

**DECISION DELIVERED BY Ted Yao**

## REGISTERED PARTIES AND PARTICIPANTS

Appellant Gregory Pechersky

Appellant's Legal Rep. Maggie Bassani

Expert Witness Tyler Grinyer

Observer Corinna Prior

## INTRODUCTION

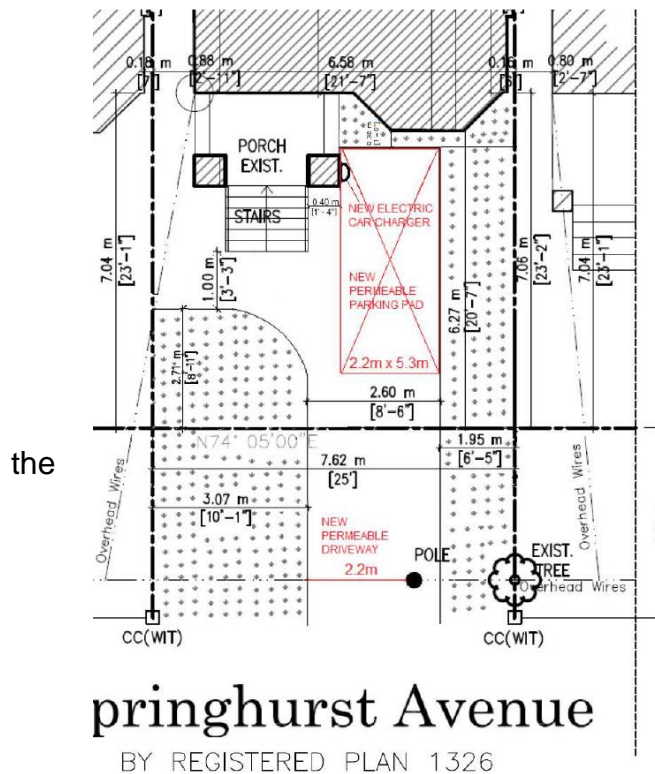
Gregory Pechersky wishes to construct a front yard parking pad when the zoning prohibits front yard parking. He wishes a variance<sup>1</sup> from this prohibition because he wishes to construct an external charging station in preparation for the purchase of an electric car. On nuanced advice from the Transportation Department, the Committee of Adjustment refused Mr. Pechersky's request on July 31, 2019; he appealed and so this matter comes before the TLAB.

<b>Table 1. Variances sought for 8 Springhurst Ave</b>
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<sup>1</sup> Because appeals against 569-2013, it is Building Department policy to examine for compliance with both by-laws, resulting in the duplication of a single needed variance.

		Required	Proposed
<b>Variances from Zoning By-law 569-2013</b>			
1	Parking space location	Must be in rear yard or a side yard which does not abut a street	In front yard
<b>Variances from old City of Toronto Zoning By-law 438-86<sup>2</sup></b>			
2	Parking space location	Cannot be between front wall of the building and front lot line	In front yard

Fig 1. Site Plan



This application is part of a concurrent interior renovation of the residence at 8 Springhurst, none of which needed any variances.

**MATTERS IN ISSUE**

I must be satisfied that the application is not inconsistent with higher level Provincial policies and meets the four tests under s. 45(1) of *Planning Act*; that is, whether the variance:

- maintains the general intent and purpose of the Official Plan;
- maintains the general intent and purpose of the Zoning By-laws;
- is desirable for the appropriate development or use of the land; and

- is minor.

**EVIDENCE**

I heard from Mr. Pechersky’s planner, Tyler Grinyer, whom I qualified as an expert planning witness. There were no other witnesses. This was a careful and thorough appeal. Mr. Grinyer’s 500-page document disclosure included a favourable arborist report dealing with a City owned horse chestnut tree, which will require minor

<sup>2</sup> Because appeals against 569-2013, it is Building Department policy to examine for compliance with both by-laws, resulting in the duplication of a single needed variance.

root pruning, which will “improve moisture content to nearby roots”. In short, there was no opposing evidence to Mr. Pechersky’s variance application.

## **ANALYSIS, FINDINGS, REASONS**

### **Climate Change**

Since the 2015 report *TransformTO: Climate Action for a Healthy, Equitable and Prosperous Toronto*, the City has worked to implement a “Transportation Demand Management” strategy (“TDM”), in which Torontonians are encouraged to take fewer and shorter car trips and to use transit. Increasing use of electric vehicles is one component of this strategy, but operational details, such as providing a charging station for “garage orphans” that is, those without a garage, is not yet fully articulated in the various policy documents. In Chapter 2 (Shaping the City) of the Official Plan, sentence 2.4.9: d comes close:

- 2.4.9: In support of the [Transportation Demand Management] and environmental policies of this Plan, the City may:
- a. support the conversion of required parking spaces to designated publicly accessible car-share spaces;
  - b. encourage new developments to include publicly accessible bike share facilities;
  - c. encourage parking providers to designate preferred parking spaces for the exclusive use of carpool and low-emissions vehicles;
  - d. **encourage parking providers to install plug in stations for electric vehicles;** and <sup>3</sup>
  - e. provide on-street, reserved parking spaces for car sharing vehicles in selected locations.

The bolded section refers to presumably **providers of parking to the general public** but might be interpreted to include persons such as Mr. Pechersky, who provide parking for themselves and their families. Nonetheless I find that the variance maintains the general intent of the Official Plan, particularly when read in conjunction with more recent reports and resolutions endorsed by City Council. These include:

- November 2016 *Transform TO* (short term strategies for lowering greenhouse gas emissions);
- July 2018 Environment and Energy Division Report: *Electric Mobility Strategy Framework*,
- Sept 2019 *Final report of Toronto’s Transform TO Reference Panel on Climate Action*; and
- Council resolution at its meeting of October 2, 2019, in which Council committed to “accelerating the implementation of Transform TO climate actions at every opportunity”.

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<sup>3</sup> I would suggest that this wording be changed to “encourage **persons building or maintaining parking** to install plug in stations for electric vehicles

Mr. Grinyer stated that the City's Electric Mobility strategy includes residential on-street electric vehicle charge station pilots that would allow electric vehicles parked on the street to plug into City installed [in conjunction with Toronto Hydro] charging stations. Plainly, facilitating private charging stations on private property is a complementary strategy that furthers Official Plan climate change objectives.

### No loss of street parking

One of Mr. Grinyer's first concerns was whether this parking pad would cause a loss of street parking. It will not, as there is no parking allowed on either side of Springhurst in this block.

### Traditional analysis based on no adverse impact, etc.



Fig. 2 shows the immediate area from an aerial perspective. The site is in extreme southeast Parkdale and the Dufferin streetcar runs south on Dufferin St and uses Springhurst Ave to make a loop at Springhurst and Fort Rouille St (dotted white line). Opposite the subject property (white circle) is a 5 storey apartment building which appears to have no parking. Down the street is an Apartment Neighbourhood with many mid-rise apartment buildings (6 stories plus) and to the east of Dufferin is an area designated "Core Employment".

Section 4.1.5 of the Official Plan states:

5. Development in established *Neighbourhoods* will respect and reinforce the existing physical character of each geographic neighbourhood, including in particular:
  - e) prevailing location, design and elevations relative to the grade of driveways and garages;
  - g) prevailing patterns of rear and side yard setbacks and landscaped open space;

Mr. Grinyer's geographic area consists of 74 lots, of which slightly under one half contain front yard hard surfacing. Most of these consist of a front yard parking pad but a small minority of these hard-surfaced front yards are in effect front yard patios with no

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parking. Figure 3, right, shows the hard-surfaced lots as shaded. I accept Mr. Grinyer's opinion that the variance reinforces the physical character of the neighbourhood because:

“front and side yard parking pads are common in the neighbourhood, as are hard surfaced front yards. Furthermore, the proposal will provide the required front yard landscaping including soft landscaping prescribed within the underlying Zoning By-laws with no variance required.”

I accept as well that the intent of the zoning provisions is to provide for an attractive streetscape. In conclusion I find all the statutory tests are met.



### **Municipal Code 918 – Boulevard parking**

The final issue is how this variance application squares with the boulevard parking By-law Municipal Code 918. This issue led to the Committee's refusal and perhaps caused this application to “go off the tracks.” On July 25, 2019, Andre Filippetti, Manager, wrote to the Committee as follows:

Although the proposed parking space is located in front of the property, entirely on private property, and, therefore, not regulated by Chapter 918, Transportation Services feel that **the intent of the proposal is contrary to the spirit of the moratorium** for the provision of front yard parking (FYP) in Ward 14. Therefore, Transportation Services do not support the subject variance. (My bold)

Transportation Services' non-support is couched in an oblique fashion: “**not regulated** by Chapter 918” . . . “the **intent**” is contrary to the “**spirit**” of the moratorium.

The word “Intent” is one of the key terms used in s 45 of the *Planning Act* and I as decision maker am required to ascertain the “intent” of two key planning documents written by Council. Municipal Code 918 does not have a preamble stating what the intent is; so, it must be inferred by study and analysis. It is unreasonable to require citizens to do this and in my view led to confusion about the intent of the moratorium and how a boulevard licensing by-law relates to a variance for a parking pad “entirely on private property.” Nor is it clear to me how the Committee of Adjustment squared its task when Mr. Filippetti's email clearly disclaimed any regulatory “reach” by 918.

Municipal Code 918 deals with the licensing of parking pads and is not passed under the authority of the *Planning Act*. Nonetheless it says:

**§ 918-3. Front yard.**

A. No person shall park any motor vehicle in any front yard unless parking is authorized under this chapter or any other **by-law provision**. (my bold)

This prohibition looks like a zoning provision, but it is not. Zoning by-laws, unlike licensing by-laws, have recourse for obtaining a variance, and may be avoided if there is a legal non-conforming use.

In my view, this application highlights a legislative and policy “gap”, namely that the Municipal Code 918 does not clearly address the minor variance process and the moratorium and commenting process under the boulevard parking legislative scheme have not caught up to climate change imperatives. In researching 918, I noted that it was passed pursuant to the *Municipal Act* and was drafted in early 2000s. S. 10(23).5 of the present *Municipal Act* permits a single tier municipality to pass by-laws:

for the economic, social and environmental well-being of the municipality including respecting climate change

indicating that the Province itself has highlighted climate change as a key consideration, even for non-planning legislation.

I note as well an October 29, 2019 email from Nadine Al Hajj, Project Lead – Policy and Research, Environment & Energy Division | City of Toronto

As I mentioned earlier we will be addressing the EV charging barrier facing residents who live in garage orphans and multi-unit residential buildings in the upcoming EV Strategy. We are making recommendations for actions that explore revising existing policies to allow front-yard parking permits if owners install charging infrastructure, in addition to other conditions. Please feel free to reach out with comments. Thank you, Nadine

Thus, the appropriate policy makers are aware of this gap. I hope that this decision, which details the arduous and expensive steps a Toronto homeowner must take if she or he wishes to become “part of the solution,” can inform the dialogue and assist in closing that gap.

**DECISION AND ORDER**

The variances in Table 1 are authorized, subject to the conditions that the parking pad be constructed of permeable pavers and substantially in accordance with the site plan shown as Figure 1 on page 2.

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Ted Yao  
Panel Chair, Toronto Local Appeal Body