

## DECISION AND ORDER

**Decision Issue Date** Monday, February 10, 2020

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): Jonathan Andrew Caners

Applicant: Keith O'Brien

Property Address/Description: 124 Brentcliffe Rd

Committee of Adjustment Case File: 19 209265 NNY 15 MV (A0570/19NY)

**TLAB Case File Number: 19 233776 S45 15 TLAB**

**Hearing date:** Wednesday, February 05, 2020

**DECISION DELIVERED BY Ian James LORD**

### REGISTERED PARTIES AND PARTICIPANTS

Appellant Jonathan Andrew Caners

Applicant Keith O'Brien

### INTRODUCTION

This matter arises by way of an appeal from a decision of the North York Panel of the City of Toronto (City) Committee of Adjustment (COA) refusing three variances necessary to permit construction of a storage shed at 124 Brentcliffe Road (subject property).

In attendance at the Hearing were the Appellant, understood to be the owner, and the Applicant. Neither the City nor any other person was represented or present.

I described I had conducted a site visit, had familiarity with the Leaside Community history, and had reviewed the pre-filed materials but would rely primarily on the evidence heard - addressing by the Applicant the relevant policy and statutory tests.

## **BACKGROUND**

The COA heard this matter on September 26, 2019 and issued its decision, without substantive reasons, on October 3, 2019.

I clarified the intention of the Party present to present evidence in support of the variances sought through Mr. Keith O'Brien. There were to be no other speakers.

Mr. O'Brien would not be permitted to argue submissions.

## **MATTERS IN ISSUE**

There are three variances sought, as follows:

- 1. Chapter 10.5.50.10.(3)(A), By-law No. 569-2013**  
A minimum of 50% of the rear yard must be soft landscaping, if the lot frontage is greater than 6.0m.  
The proposed rear yard landscaping area is 37.12%.
- 2. Chapter 10.5.60.20.(3)(C)(i), By-law No. 569-2013**  
The ancillary building must be set back from the side lot line that abuts the street 5.49m.  
The proposed side yard setback for the ancillary building is 0.23m.
- 3. Chapter 200.5.1.10.(2)(A)(ii), By-law No. 569-2013**  
The required parking space must have a minimum length of 5.6m.  
The proposed parking space will have a length of 4.93m

Their substantiation was required in relation to the jurisdiction of the Toronto Local Appeal Body (TLAB) including the statutory tests summary below recited.

## **JURISDICTION**

### **Provincial Policy – S. 3**

A decision of the Toronto Local Appeal Body ('TLAB') must be consistent with the 2014 Provincial Policy Statement ('PPS') and conform to the Growth Plan for the Greater Golden Horseshoe for the subject area ('Growth Plan').

### **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**

Mr. O'Brien, being sworn, introduced himself and read extensively from the pre-filed materials, consolidated from some five parts on the TLAB website. I consider all of the Witness filings by Mr. O'Brien as Exhibit 1.

He had graduated from the Architectural School at the University of Toronto in 2004 and has practiced as a City Building Code consultant for 18 years. While not a member of the Ontario Association of Architects or the Ontario Professional Planners Institute, his practical experience in City By-law application, including more than fifty (50) COA applications, together with prior qualifications to give evidence before the former Ontario Municipal Board, the Local Planning Appeal Tribunal and the TLAB, permitted me to qualify him to give expert opinion evidence on the matters in issue.

Mr. O'Brien described the subject property as having been created by plan of subdivision (Registered Plan 3111) in 1941 with the surrounding area developed in the period post 1942 and the dwelling itself constructed in 1947. He described the north east quadrant of the Bayview/Eglinton intersection through area mapping and photography as being a stable residential community, primarily of period housing. In terms of the more immediate neighbourhood, he concentrated on the immediate block in which the subject property is situate at its north east corner. That block is exclusively single detached dwellings consisting of 32 lots and four corner properties.

He described the Application as the desire to remove an existing rear yard shed and construct a larger shed structure of 25.08 square meters (270 square feet), to accommodate storage. The subject property has pad vehicle parking, no garage and is a corner property, undersized in comparison to the majority, if not all, internal lots to the block.

In describing neighbourhood character, his survey had indicated to him that properties with garages, integral, side or rear yard were largely used for storage other than motor vehicles. He noted most lots had some form of storage shed and parking was frequently outside the garage structure, on pads or access driveways.

Mr. O'Brien stated that the proposed shed would provide similar storage space available to all other properties in the block and beyond, The proposed shed, he explained, required no size, area, height, width or depth variances. The relief requested related to the application of the (new) City zoning by-law 569-2013 establishing regulatory performance standards to which this and other pre-existing corner lots in the community could not reasonable comply.

He provided a site plan showing the intended improvements arising as a result of the variance application, included as **Attachment 1**, hereto (Site Plan).

The Site Plan shows the following characteristics:

- a. a shed size of 270 square feet whereas the size of the subject property would permit a shed size of 322 square feet;
- b. a location set back 8 feet from an existing fence along Glenvale Boulevard, to the north;
- c. vegetative planting between the fence and the dormer side of the proposed shed;
- d. a shed 10 feet in height, as permitted by the by-law for accessory structures, with its roof sloping east to west, the lower portion being in proximity to the solid brick wall of 195 Glenvale, the property to the immediate west;
- e. a fence configuration on the Glenvale frontage responding to discussion with the Transportation Services division designed to maximize sight lines from a redesigned and extended parking pad configuration maximizing the ability to park wholly within the lot and not engaging or encroaching upon the public boulevard ;
- f. a reconfigured rear porch platform to accommodate the reduced parking length dimension requested by the third variance to permit vehicle parking wholly within private property.

Mr. O'Brien explained that the subdivision design provided that the subject property backed on a side yard and not a rear yard configuration. This established a side yard setback, based on the main front wall of the adjacent property to the west, that imposed undue hardship on the subject property. The subject property has a frontage width on Brentcliffe Road of some 8 meters (12 meter required), well below the by-law standard, and an area of only some 80% of that contemplated by the current regulations. Having a side yard setback established by the frontage of the dwelling to the west rendered not just a shed of significant size as impractical but also would not permit construction on the subject property of a dwelling unit of reasonable or practical size.

**Decision of Toronto Local Appeal Body Panel Member: Ian Lord  
TLAB Case File Number: 19 233776 S45 15 TLAB**

He described the City wide performance standards as being unable to be accommodated by this long standing, narrow lot of record, similar in affecting the four corner lots in the immediate block.

In respect of Variances 1 and 2, above, he described the By-law as creating 'unfair restrictions' on the construction of an accessory shed.

In like manner, the narrow lot could not incorporate a drive access from Brentcliffe Road in a consistent streetscape, and corner lots were required to provide parking solutions from the street flankage. Due to the built form of the residence and its rear exit, the lot width generated the need for a foreshortened parking pad length requested in Variance 3. He described the reduction as still being able to accommodate all but the largest of vehicles and constituted an improvement that was supported by City Transportation Services, with the fence alteration diagonal design in the Site Plan to be implemented to improve visibility. The variance would provide a vehicle pad that better serves to avoid unauthorized parking on the public boulevard.

Mr. O'Brien stated that Transportation Services had no objection to the vehicle parking pad space reduction with the fence improvements and an encroachment agreement, all being 'on hold' pending the TLAB consideration of the variances.

In a thorough review of existing corner lots in the larger neighbourhood (19) and in the immediate block (3), Mr. O'Brien demonstrated all had equal or greater size rear yard garages that projected well in front of adjacent dwellings fronting on flanking streets, as proposed by the Site Plan. He suggested that none of these existing structures could be located where their existing physical form now exists, under the new By-law. In effect, he stated that the existing physical character of the immediate and extended area is not respected or reinforced in Official Plan (OP) terminology, by the City wide regulations applying to accessory structures, in the circumstances.

In the immediate block, he presented photographic and diagrammatic depictions applicable to 187 Glenvale Boulevard, 2 Fairland Road and 96 Brentcliffe Road demonstrating the common attribute of accessory structures projecting well forward of the front face of the properties on which they abut.

His evidence also pointed out two variance approvals for reduced side yard setbacks under By-law 569-2013, at 22 Ainsley and 582 Broadview Avenue.

In addressing the 'four tests', Mr. O'Brien applied the OP, section 4.1.5 addressing subsections b,c,d,e,f,and g as relevant. These are well described in his Witness Statement, Exhibit 1 to the end conclusion that the proposal, variances and Site Plan would reflect a sensitive, gradual change that fit with area physical character. In his opinion, the shed in the location and the scale proposed was consistent with the configuration and orientation of the existing physical character of corner lot properties.

Although Planning Staff had provided a brief report arguing the impact of the proposal on rear yard landscaped open space and the prevailing pattern of setbacks was unsupportable, the report provided no evidence in support of the conclusion and

was 'false', incomplete and inaccurate on the analysis he had performed and provided, at least in respect of location.

He indicated a willingness on the part of the owner to remove the patio stone tiles in the rear yard and replace same with permeable pavers.

He also pointed to uniform letters of support from all abutting and visible neighbouring properties.

He was of the opinion that there were no adverse impacts arising from any of the variances and that each provided visible enhancements advancing their desirability: enclosed storage space; landscaping; on-site parking; property investment.

From the zoning perspective, he advised that for 79 years the property had enjoyed the as-of-right construction of the proposed shed structure under prior zoning and that it was only the recent performance standards that failed to respect and reinforce the existing physical character of the neighbourhood.

In terms of provincial policy, on prompting, he described the Application to be 'incredibly minor in nature', not directly related to growth and an investment in the maintenance of an existing property.

He recommended approval of the variances.

I have including in the foregoing a brief recitation of Mr. O'Brien's evidence, and his responses to my questions.

There was no cross examination at the conclusion of the evidence.

## **ANALYSIS, FINDINGS, REASONS**

I find on the basis of the uncontested evidence of Mr. O'Brien that the variances requested in the Application and above recited are supportable.

The witnesses' evidence was thorough, concise and well presented. It presented a picture of a modest sized accessory structure that would provide appreciable storage space, outside the main dwelling and on the lot as commonly provided in the general and immediate area.

While those structures are predominantly free standing garages, I accept their frequent use for storage purposes with open air parking on drives, driveways and parking pads.

I find that the variance respecting parking space length is an appropriate balance between rear platform reduction, preserving dwelling access in place and accommodating most vehicles. I accept that Transportation Services has provided no

objection to the reduction and is satisfied with the requirements for a fence encroachment agreement that provides for a fence location and design as depicted in the Site Plan.

I find that the 8 foot setback from the existing fence appropriately accommodates the shed location on its own lot, provides room for landscaping (with the fence encroachment agreement common in the greater Leaside community) and has no adverse or unacceptable off-site or streetscape impact. I also find that the proposed setback reduction applicable to the shed is minor, desirable and in keeping with the OP and zoning concerns for protecting existing area character and historic zoning privileges.

I find the proposal desirable as an improvement to the subject property.

## **DECISION AND ORDER**

The decision of the Committee of Adjustment is set aside.

The following variances indicated as proposed are approved subject to the conditions of variance approval next following:

**1. Chapter 10.5.50.10.(3)(A), By-law No. 569-2013**

A minimum of 50% of the rear yard must be soft landscaping, if the lot frontage is greater than 6.0m.

The proposed rear yard landscaping area is **37.12%**.

**2. Chapter 10.5.60.20.(3)(C)(i), By-law No. 569-2013**

The ancillary building must be set back from the side lot line that abuts the street 5.49m.

The proposed side yard setback for the ancillary building is **0.23m**.

**3. Chapter 200.5.1.10.(2)(A)(ii), By-law No. 569-2013**

The required parking space must have minimum length of 5.6m.

The proposed parking space will have a length of **4.93m**

### **Conditions of Variance Approval**

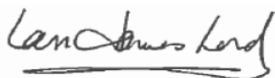
- 1. Construction of the accessory (shed) structure shall be generally in accordance with the Site Plan and elevation drawing in Attachment 1 hereto;**
- 2. No building permit shall issue for construction of the accessory (shed) structure until such time as an encroachment agreement has been executed and provided satisfactory to the City including**

provision for the parking pad and fence alignment improvements substantially as per the Site Plan in Attachment 1 hereto or such works have been concluded;

3. Where removal and resurfacing of patio tiles and parking pad areas is undertaken by the owner, permeable pavers or stones are to be employed.

If difficulties 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 (Site Plan)



The architect has reviewed and taken responsibility for this design and for the specific use and construction of the site plan as set out in the Ontario Building Code to be approved. The drawing is the property of the architect and may not be used without approval of the architect.

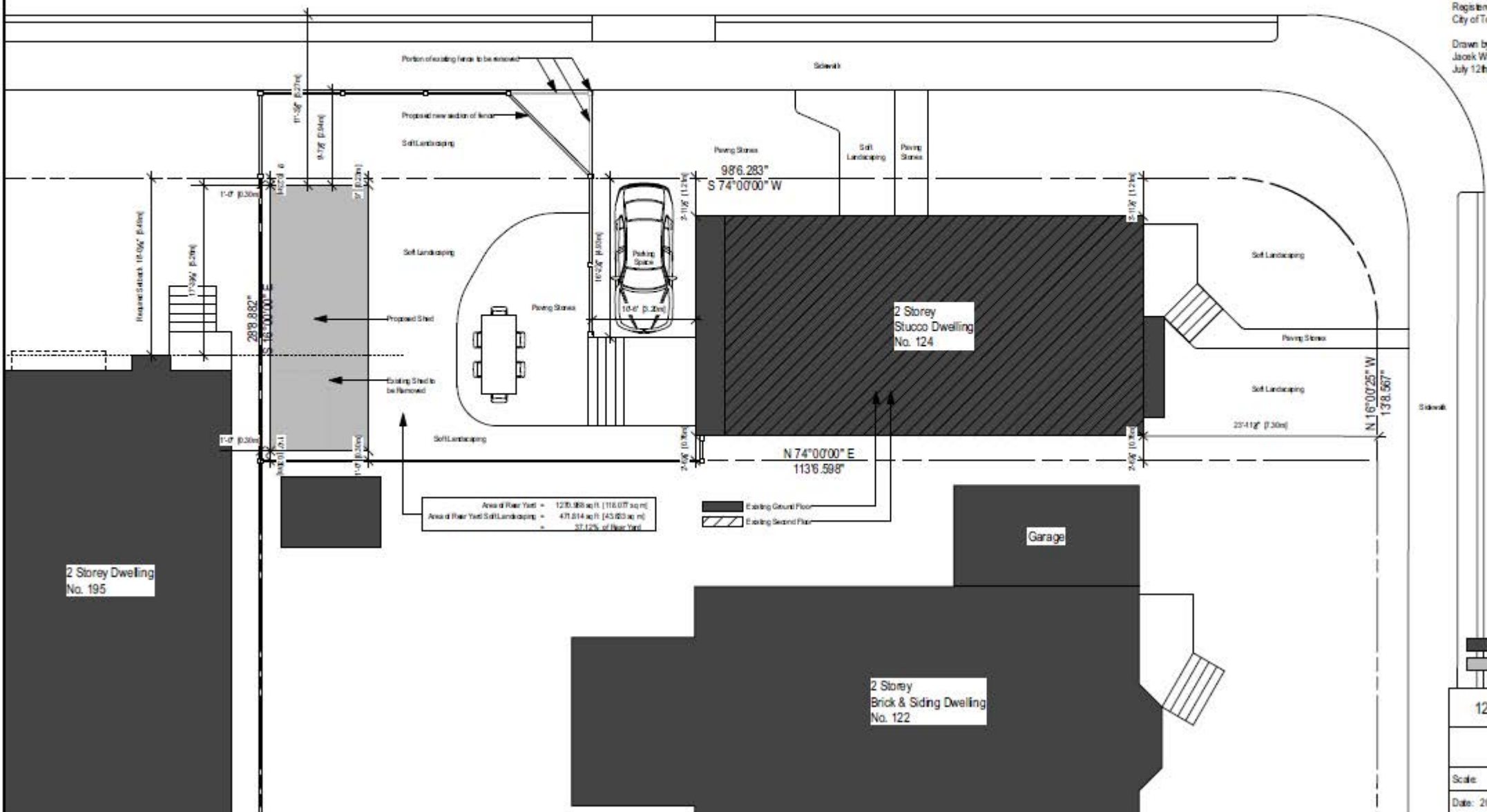
QUALIFICATION INFORMATION  
 He is not a design in respect of 2.13.1.1 of the building code  
 Keith O'Brien Design 103-46  
 Suite 103-46 2211  
 WARDEN SQUARE

Glenvale Boulevard

Information for this drawing taken from:

Surveyor's Real Property Report - Part 1  
 Plan of Survey of  
 Part of Lot 959  
 Registered Plan 3111  
 City of Toronto

Drawn by:  
 Jacek Walczak O.L.S.  
 July 12th, 2019



Brentcliffe Road



Existing to be removed  
 Existing to remain  
 Proposed

124 Brentcliffe Road

Site Plan

Scale: 1"=10'-0"

Date: 2019 Dec 22

**A1.0**