

DECISION AND ORDER

Decision Issue Date Monday, June 22, 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): ERIC KWOK-LAM TANG

Applicant: ERIC KWOK-LAM TNG

Property Address/Description: 406 HORNER AVE

Committee of Adjustment Case File: 18 270646 WET 03 MV

TLAB Case File Number: 19 131150 S45 03 TLAB

Hearing date: Friday, September 06, 2019

DECISION DELIVERED BY JOHN TASSIOPOULOS

APPEARANCES

Name	Role	Representative
Erik Tang	Appellant/Owner/Applicant	
Terrance Glover	Expert Witness	

INTRODUCTION & BACKGROUND

This is an appeal to the Toronto Local Appeal Body (TLAB) from a decision of the Committee of Adjustment (COA) decision for 406 Horner Avenue, dated March 7, 2019. The COA refused the increased height variance requested to enlarge the existing detached garage in the rear yard of the house. The site is located on the north side of Horner Road, approximately midway between Kipling Avenue to the east and Brown's Line to the west. The variance application to the COA requested one variance for height, to By-law 569-2013.

The Appellant, Mr. Eric Kwok-Lam Tang and the Expert Witness, Mr. Terrance Glover, a Registered Professional Planner, were the only parties in attendance at the Hearing.

I disclosed to Mr. Tang, during the Hearing, that I had visited the site prior to, and in preparation of, the Hearing.

MATTERS IN ISSUE

I must be satisfied that the revised height variance sought, to enlarge the rear detached garage at 406 Horner Avenue, meets the four tests under s. 45(1) of the *Planning Act*.

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. Tang provided a brief introduction on the appeal at the beginning the Hearing. He explained that he was trying to expand the height of the garage to address the storage needs of his family. He further mentioned that based on a survey, the garage existed on the lots prior to 1985 and was 5.0m in height. The increase in height sought was to be able to accommodate car parking and storage in the upper portion of the garage. When he applied for a permit in September 2018, City staff informed him that he would need to apply for a variance at the COA. He subsequently made an application for the height variance to the COA and a Hearing was scheduled for March 7, 2019. He further explained that on March 1, 2019 he was informed by City Planning staff that they would not be supporting the variance sought. He went forward with COA Hearing after it was explained to him by Planning and COA staff that the COA decision is not solely based on Planning support and he proceed onto the Hearing without revisions to his plans. When the variance for height was refused by the COA, he appealed the decision to TLAB and retained a planning and urban design expert, Mr.

Terrance Glover, for assistance in the redesign of the application. He indicated that Mr. Glover was selected because of his extensive planning experience.

Mr. Tang went on to explain that in May 30, 2019 a Motion was filed to adjourn the originally scheduled TLAB Hearing in order to negotiate with City Planning and their neighbour at 17 Davick Drive, abutting their rear yard, who opposed the COA application. These neighbours indicated that a lower height would satisfy their concern. Mr. Tang also mentioned that his immediate neighbours at 402, 404 and 408 Horner Avenue were all in support of the original application and the current revised plans. Their letters of support were filed with TLAB.

The revised drawings for the garage lowered the height to 5.5m and was presented to their neighbours at 17 Davick Drive, for review. They in turn provided a letter supporting the revised plans on June 3, 2019 which was filed with TLAB on August 16, 2019. When Mr. Tang approached the City staff with the revised plans on June 4, 2019, staff indicated that after consulting with the City legal department, they were not prepared to comment on the matter since they were not a Party to the TLAB Hearing.

Having completed his introduction, Mr. Tang asked Mr. Terrance Glover to present his evidence. Having reviewed Mr. Glover's Curriculum Vitae in preparation for the Hearing, I indicated that based on his experience of approximately 27 years in the Planning profession and his Acknowledgement of Expert's Duty (Form 6), I would qualify him as an expert witness to provide planning evidence.

Mr. Glover proceeded to provide an overview of the zoning for the property and the surrounding area and indicated that the height permitted for ancillary buildings for this property was 4.0m. He indicated that the existing garage had a height of 5.0m and that it was approved in the 1980s. Given this, he asserted that the existing garage height should be considered a legal non-conforming use. He then went on to state that he reviewed Planning staff's comments regarding the request of height variance to permit a 6.22m height and agreed that this height was perhaps too high but maintained that the roofline, massing and structure were consistent in character with other structures in the neighbourhood.

Mr. Glover indicated that Mr. Tang agreed to adjust the height based on a height that Mr. Glover felt was more in keeping with the massing and scale of structures in the area. He had contacted Mr. Tony Lu, the City Planner, to discuss what would be considered a more appropriate scale and massing and it was agreed that a further reduction in the proposed height and adjustment to the roofline would be required. When Mr. Glover and Mr. Tang tried to follow up with City staff to discuss the revised plans, it was indicated to them that they could not comment on the matter since it was before the TLAB. Realizing that they would not be able to ascertain the support from City Planning, Mr. Glover began preparing an Urban Design Brief to present the proposed revisions to the garage at the TLAB Hearing.

Mr. Glover went on to present renderings of the revised garage design in his Urban Design Brief and indicated that not only was the height reduced, but that the architectural details, fenestration and the roofline design created a form that was in keeping with the character of the area, while at the same time providing needed storage space to the Owner.

He further opined that since the existing garage had a 5.0m height, it should have been considered a legal non-conforming use because the existing structure being altered exceeded the permitted height of 4.0m.

In Mr. Glover's opinion, the Official Plan policies are maintained because the proposed changes are residential in nature and in character with surrounding area. The Zoning By-law with respect to ancillary buildings is maintained especially when the adjustment to 5.5m in height compares to the existing 5.0m height is considered. Mr. Glover noted that allowing for the added height will allow for more storage allowing Owner to maintain his property and avoid potential clutter and outside storage which could be "*detrimental to character and feel of the neighbourhood*". In addition, he mentioned that the neighbours most impacted by the proposed plan were all in support of the proposed revised height. He concluded that the proposed variance for the garage building height of 5.5m was good planning, that it met the four tests, and that it should be approved.

ANALYSIS, FINDINGS, REASONS

Given that there were no other Parties to this matter, or in opposition, at the Hearing, I rely on the evidence provided in Mr. Tang's overview, the uncontroverted expert testimony of Mr. Glover, and on the files and documentation within the Hearing file, in order to determine whether the proposed variances for a detached garage meet the four tests under s. 45(1) of the *Planning Act*.

Having considered the uncontroverted evidence provided by Mr. Glover and the revised elevation drawings indicating the lower height of 5.5m, the letters of support from all impacted neighbours, and renderings presented in Mr. Glover's Urban Design Brief, I find that the requested variance in height, is indeed minor.

The general intent and purpose of the Official Plan and the Zoning By-Law are maintained as the ancillary structure is in keeping with the residential character of the area and the slight increase in height is negligible in terms of impact to adjacent properties. I accept Mr. Glover's explanation that the garage was existing and that the original height was 5.0m. Given this was an existing condition and this height was present since the 1980's the increase to 5.5m is modest. Furthermore, the provision of this added height will provide the Owner with additional storage space that he has indicated is desirable for the appropriate use and maintenance of his property. Finally, the variance is minor and the Owner in good faith, along with assistance from Mr. Glover, has adjusted the height and roofline to accommodate his storage needs while mitigating the potential impact of height to his neighbours.

In these reasons, nothing should be taken to suggest that I place any reliance on the references made to legal non-conforming use protection. No application and no jurisdiction was invoked on appeal to expand or enlarge a legal non-conforming use to which considerations unrelated to the 'four tests' can apply.

Legal non-conforming use protection extends to the use of land, buildings or structures. It does not extend to regulations that apply to the use. (See: *San Joaquin Investments v. Toronto (City)* 1978, per Robbins, J.). We are dealing here exclusively with a requested height regulation variance.

For these reasons, I find that the appeal should be allowed and that the one variance for height sought, be approved as it meets all four tests under s. 45(1) of the *Planning Act*.

DECISION AND ORDER

The TLAB allows the appeal of the COA decision. The following variance is approved on condition:

1. Chapter 10.5.60.40.(2)(B), By-law 569-2013

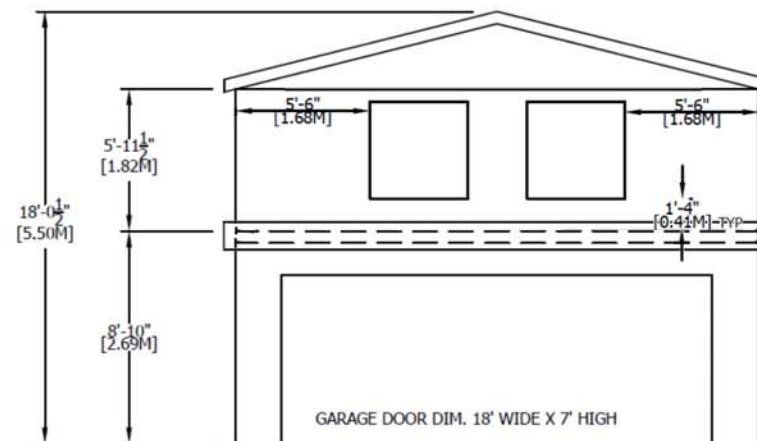
The maximum permitted height of an ancillary building or structure is 4 m.

The altered ancillary structure (detached garage) will have a **height of 5.5 m**.





The proposed garage alterations will be constructed substantially in accordance with the elevations in **Attachment 1** (Drawings #2A, 2B, 2C, and 2D). Any additional variances not identified in this decision that are required and as may appear on the plans referenced, are expressly not authorized.

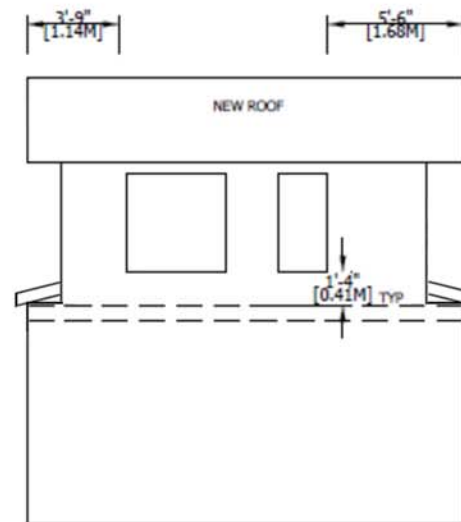
X

John Tassiopoulos
Panel Chair, Toronto Local Appeal Body







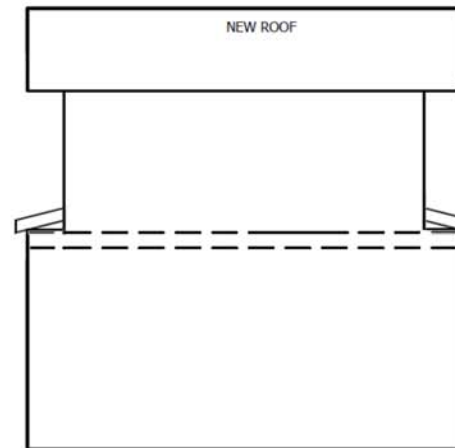
FRONT VIEW

Drawn By	Signature	Date	Revise Section of Roof to Exisiting Garage - 406 Horner		
Eric Tang		July 2, 2018	SIZE A4	SCALE 1/8" = 1'-0"	REV E
Eric Tang		Sept. 20, 2018			
Eric Tang		Oct. 2, 2018			
Eric Tang		July 29, 2019			
Drawing #2A					







SIDE VIEW -EAST

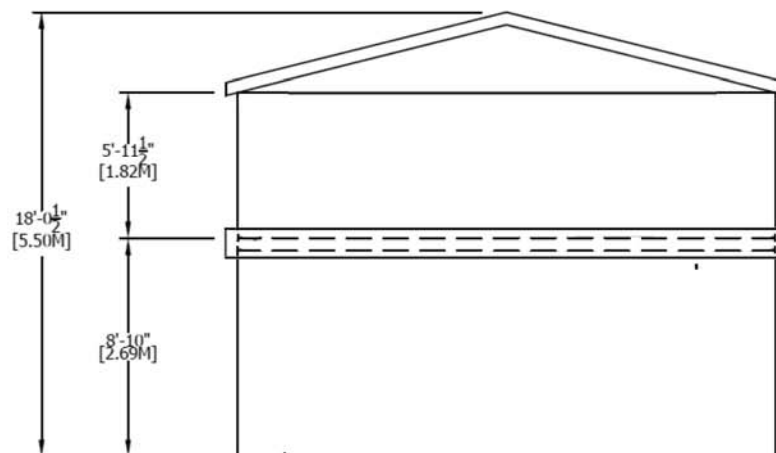
Drawn By	Signature	Date	Revise Section of Roof to Exisiting Garage - 406 Horner		
Eric Tang		July 2, 2018	SIZE A4	SCALE 1/8" = 1'-0"	REV E
Eric Tang		Sept. 20, 2018			
Eric Tang		Oct. 2, 2018			
Eric Tang		July 29, 2019			
Drawing #2B					







SIDE VIEW - WEST

Drawn By	Signature	Date	Revise Section of Roof to Exisiting Garage - 406 Horner		
Eric Tang		July 2, 2018	SIZE A4	SCALE 1/8" = 1'-0"	REV E
Eric Tang		Sept. 20, 2018			
Eric Tang		Oct. 2, 2018			
Eric Tang		July 29, 2019			
			Drawing #2C		

RECEIVED June 18, 2020
By Toronto Local Appeal Body



REAR VIEW

Drawn By	Signature	Date	Revise Section of Roof to Exisiting Garage - 406 Horner		
Eric Tang		July 2, 2018	SIZE A4	SCALE 1/8" = 1'-0"	REV E
Eric Tang		Sept. 20, 2018			
Eric Tang		Oct. 2, 2018			
Eric Tang		July 29, 2019			
Drawing #2D					