

REVISED REVIEW REQUEST ORDER

Review Issue Date: Monday, March 30, 2020; Re-issued 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): YEN PING LEUNG

Applicant: KEVIN CHENG

Property Address/Description: 787 DUNDAS ST W

Committee of Adjustment Case File Number: 17 255982 STE 19 MV (A1198/17TEY)

TLAB Case File Number: 18 213028 S45 19 TLAB

Decision Order Date: Thursday, May 30, 2019

DECISION DELIVERED BY Ian James LORD

REVIEW REQUEST NATURE AND RULE COMPLIANCE TO INITIATE

On August 6, 2019, the Toronto Local Appeal Body (TLAB) issued its Review Request Order (Review) in respect of the Decision and Order issued by Member Gopikrishna on June 26, 2019 (Decision).

The Review was, effectively, an interim order insofar as it suspended the Decision and provided direction for the final disposition of the Review.

This is an addendum to the Review.

BACKGROUND

Following issuance of the Review there ensued communications between the Parties, principally via the TLAB from Kevin Cheng and John Provart.

The TLAB was advised on January 17, 2020 that Andrea Kronos was to be removed from the exchanges.

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These exchanges took different forms and it is clear from their review that the TLAB was not privy to all discussions and communications as between Mr. Cheng on behalf of Yen Ping Leung (Appellant) and Mr. Provart.

That said, both have been abundantly clear in communications received by the TLAB as to outstanding matters. I thank them for their diligent participation.

Under date of January 17, 2020, well within the six (6) month period suggested in the Review, Mr. Cheng served a Notice of Motion requesting various relief to advance the matter based on the 'Design Direction' identified in the Review.

The Motion included Plans (undated A-01 to A-04), identified the need for 'finalized design feedback', requested a further six (6) month extension, an oral Hearing and various other relief.

No Motion return date was appointed. Instead, the TLAB advised the Parties/Participants by correspondence dated January 21, 2020 that it would entertain written comments until January 31, 2020 on the matters raised in the supporting materials to the Motion. Otherwise, the Appellant/Requestor was "free to complete" submissions to the City compliant with the Review. The time for completion of the Review was extended accordingly and the Motion suspended with a direction that if matters remained outstanding on August 3, 2020, the TLAB would consider setting a date for consideration of all matters.

Mr. Provart provided an extensive e-mail on January 31, 2020 to the matters raised and the TLAB forwarded this to the Requestor for response.

A lengthy response, somewhat late, was received from Mr. Cheng dated March 3, 2020 and was copied to Mr. Provart. The correspondence on behalf of the Appellant/Applicant/Requestor included further revised plans A1 –A5 dated January 15, 2020, the latter of which includes a stair well detail (A5).

Also contained were extracts and responses from City division representatives on such aspects a Building Code, Fire Code and Noise control aspects of the plans related to an emergency fire escape to the rear of the subject property, 787 Dundas Street West.

In essence, the TLAB has the benefit of a Motion, response and reply although attestations via affidavit evidence was not requested.

All of these materials have been shared between the Requestor, Mr. Provart and the TLAB.

JURISDICTION

The Review has proceeded under Rule 31 as it existed prior to May 6, 2019. Below are the TLAB Rules applicable to a request for review.

As Chair, I have requested through the TLAB further submissions from the Requestor and those in opposition as provided for under Rule 31.

Motions are not permitted under the TLAB Rule 31 without the leave of the TLAB; in this circumstance, the TLAB has elected to request further written submissions rather than engage in the heavy cost machinery in time and resources of convening a formal Motion Hearing.

Jurisdiction under Rule 31 as it then read continues and is as set out in the Review and, in part, repeated below:

“31.6 The Local Appeal Body may review all or part of any final order or decision at the request of a Party, or on its own initiative, and may:

- a) **seek written submissions** from the Parties on the issue raised in the request;
- b) grant or direct a Motion to argue the issue raised in the request;
- c) grant or direct a rehearing on such terms and conditions and before such Member as the Local Appeal Body directs; or
- d) confirm, vary, suspend or cancel the order or decision.

31.8 Where the Local Appeal Body seeks written submissions from the Parties or grants or directs a Motion to argue a request for review the Local Appeal Body shall give the Parties **procedural directions relating to the content, timing and form of any submissions**, Motion materials or Hearing to be conducted.” (emphasis added).

CONSIDERATIONS AND COMMENTARY

In the foregoing summary, the Decision and in the Review Request itself, I am of the view that, as cited in the Review: “This application seeks only to extend the fire escape stairs which is lawfully existing as per the issued hotel building permit and previous survey.” (page 4).

Nothing in the subsequent exchanges served to reset the focus as to what was in issue in the application, the appeal and the Review.

No issue is taken with the variance requested to recognize and maintain that there is no capability of on-site parking.

In the Review (at page 8), I provided the following direction:

“Given the stairs proximity to the lane and rear yards of residential properties, there is an apparent need for attention, more than that which has been focused to date. The suggestion of an engineering design and consultation with Toronto Fire and the Ontario Building Code would appear to be beneficial with a view to minimizing potential conflicts.

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I am satisfied that sufficient issues have been raised to constitute an error of fact or law that warrant a further consideration.”

Based on that Direction and the ensuing Decision and Order, I am now satisfied based on the exchanges, that a final disposition of the Review can be addressed.

In the Review, the Decision and Order had the following components. Adjacent each and inserted are my findings (*in italics*) resulting from the intervening submissions made by the Party and Mr. Provert:

“DECISION AND ORDER

The Decision is suspended.

The Appellant is to consider a stairwell design (rear fire escape structure and stairs) in consultation with the Fire and Building officials in the City supported by an engineering design.

There have been consultations with City representatives from Toronto Buildings (February 6, 2020), Toronto Fire Services (February 11, 2020), Toronto Noise Standards and Property Standards.

The design is to incorporate as many features as are necessary to function for life safety, Ontario Building Code and City Fire and Building Department regulation purposes while incorporating features, internal and external to the building, to avoid external nuisance and occupants use other than for building exit purposes in emergency circumstances (‘Design Direction’).

It is clear from these exchanges that fire escapes and stairs, etc., must conform to section 3.4.7 and 9.8 of the Ontario Building Code. Further, that ‘guards’ on stairs can be equated to ‘privacy screens’ and are governed by section 9.8.8. of the Ontario Building Code as to minimal height. While no maximum height is regulated, construction materials of guards must be fire proof, i.e., non-combustible. There are no noise control standards applicable to the construction of exterior stairs.

It is only with the submission of final plans (or a project plans review application) that any final determination can be made under applicable law as provided for by the Ontario Building Code Act, including the need for further variances.

The TLAB has no direct approval jurisdiction in any of the Building Code matters.

Despite the TLAB latitude given in correspondence, the Requestor has not pursued a formal application or plans review pending a final design consultation agreement or ‘mediation’ in order ‘to avoid multiple applications’ following design consultations.

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The design is to be provided to the Party, Mr. John Provart, for his review, consideration and input as may be forthcoming. If a suitable design plan can be settled satisfactory to the City Fire and Building Departments, Director level, the design is to be submitted for a new, separate Plans Review Examination as to any necessary variances.

Mr. Provart had registered dissatisfaction with noise control and abatement issues, lighting, access, loitering, the absence of revised Plans and the adequacy of stairwell design and its visibility. He advised the 'revised plans' are the same or similar and the height, materials and design of the privacy screen suggesting that the matter is not ripe to proceed; no further correspondence has been received since the January 31, 2020 e-mail.

In my view, detailed design is not a matter for public regulation nor can it be delegated by the TLAB to another person external to the owner/applicant. Issues related to the Hotel use and parking, if any, are not part of the Review Request.

I am satisfied with the submissions of the Requestor that the majority of these matters in dispute have been addressed and that others can be addressed satisfactorily by conditions to any approval:

- i) Exterior lighting has been approved under a building permit;*
- ii) Limited stair access and 'no smoking' signs have been posted;*
- iii) Access/egress has been signed as "Emergency Exit Only";*
- iv) One-way door hardware has been installed*
- v) An external security door alarm has been removed from the top of the existing stairs;*
- vi) A minimum height guard on the stairs of 1070 mm is permissible; a higher requirement can be specified by condition.*

If the foregoing is completed within six (6) months of the date of issuance of this Review, or earlier, the TLAB on request will provide a Motion Hearing date and a Notice of Hearing before a Member appointed by the Vice Chair, written or oral as may appear appropriate to the TLAB, for the purpose of determining whether the suspension should be lifted and the Decision confirmed, varied, cancelled or a different determination reached.

For greater certainty, the Motion, if convened, shall have for its consideration:

1. The result of the Design Direction as above provided, if any;
2. The Plans Review Examination and resultant variances, if any;

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3. The position of the Parties, whether expressed through consent filings, mediation, written or oral evidence;
4. Opinion evidence on any variances requested, or the need therefore;
5. The full jurisdiction to finally determine the matter.

In the event a Motion Hearing is not requested within the time period above identified, or any permitted extension, the Decision shall be confirmed.

I am of the opinion, as above expressed, that a Motion Hearing is not now required and a further attempt at mediation is neither realistic nor needed. I am grateful to those engaged that the matters at issue have been defined and either have been addressed or are capable of being addressed by condition language coupled to the variance relief.

To the extent necessary, an extension is granted to address the matters in issue.

I agree with the Requestor that certain matters described earlier as issues are not relevant or capable of being addressed by the TLAB in respect of the stairwell variances. These include:

- a) *A standard of noise attenuation; while an acoustical barrier or 'guard' can be made a condition of approval, errant and intermittent noise emission standards are not within the jurisdiction of the TLAB and are more suited for enforcement through nuisance and Noise Control By-law complaints.*
- b) *Building maintenance and repair issues may be accessed through City Property Standards controls, if applicable.*
- c) *Standards and procedures of management for Hotel enforcement of patrons and facilities is not a matter within the purview of the TLAB.*
- d) *Use issues internal to the hotel.*

With the mitigation measures in hand, above, and the application of appropriate conditions, I see no reason to further delay the presentation of suitable plans to the City Buildings Department for review, the identification of further requirements, if any, and permit issuance, or as the case may be.

If there are difficulties in implementing this disposition, if there is a request for mediation or if there is the necessity to request a summons to witness, the TLAB may be addressed with Notice to the Parties and to the City, care of the City Solicitor."

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While these latter matters were generally not acted upon, for the reasons expressed, this provision can be varied as below indicated.

The reasons expressed in this Revised Review Request Order are supplemental to those in the Review. I find that with the actions taken and to be required, all variances meet the policy world relevant to this scale of application and the statutory tests are appropriately addressed and supportable on the evidence addressed in the Review and considered by the Member.

DECISION AND ORDER


The interim suspension of the Decision of Member Gopikrishna is removed and the Review is granted. The Decision is varied in accordance with the following:

1. The variances identified in **Attachment A** are allowed subject to the following conditions:
 - a) Any rear emergency access stairwell (rear fire escape structure and stairs) is to be provided, constructed and maintained as follows and substantially in accordance with Drawing A5 identified in **Attachment B** and dated January 15, 2020, prepared by Yoon and Associates Engineering Ltd., as may be revised to comply with the following:
 - i) All platforms and rises with sides abutting the lane shall be constructed with a guard or privacy screen consisting of a neutral, opaque colour, non-combustible material and at least 1.8 m in height;
 - vii) Stairwell access/ egress is signed as "Emergency Exit Only";
 - viii) One-way door hardware is installed at the interior side of any rear building face doors;
 - ix) An external security door alarm is removed from the top of the existing stairs;
 - ii) Exterior lighting is to be directed downward and toward the on-site building.

- 2 **Attachment A** and **Attachment B** form part of this Decision and Order.

If there are difficulties in implementing this disposition, the TLAB may be spoken to on Notice.

X



Enter Panel Member Name

Panel Chair, Toronto Local Appeal Body

Signed by: Ian Lord

Attachment A

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

1. Chapter 200.5.10.1.(1), By-law 569-2013

A minimum of one parking space for the hotel is required to be provided on the lot. In this case, zero parking spaces will be provided on the lot.

2. Chapter 40.10.40.70.(2)(B)(i), Development Standard Set 2, By-law 569-2013

The minimum required rear yard setback is 7.5 m.

The altered building will be located 0.96 m from the south rear lot line.

3. Chapter 40.5.40.70.(1)(B), By-law 569-2013

A building or structure must be no closer than 3.5 m from the original centreline of a lane if the lot abutting the other side of the lane is in the Residential Zone category or Open Space Zone category.

The altered building, as measured from the new rear fire escape stairs, will be located 1.61 m from the original centreline of a lane and the lot abutting the other side of the lane is in the Residential Zone category.

1. Section 4(4)(b), By-law 438-86

A minimum of one parking space is required to be provided for the hotel. In this case, zero parking spaces will be provided on the lot.

2. Section 8(3) Part II 4(a), By-law 438-86

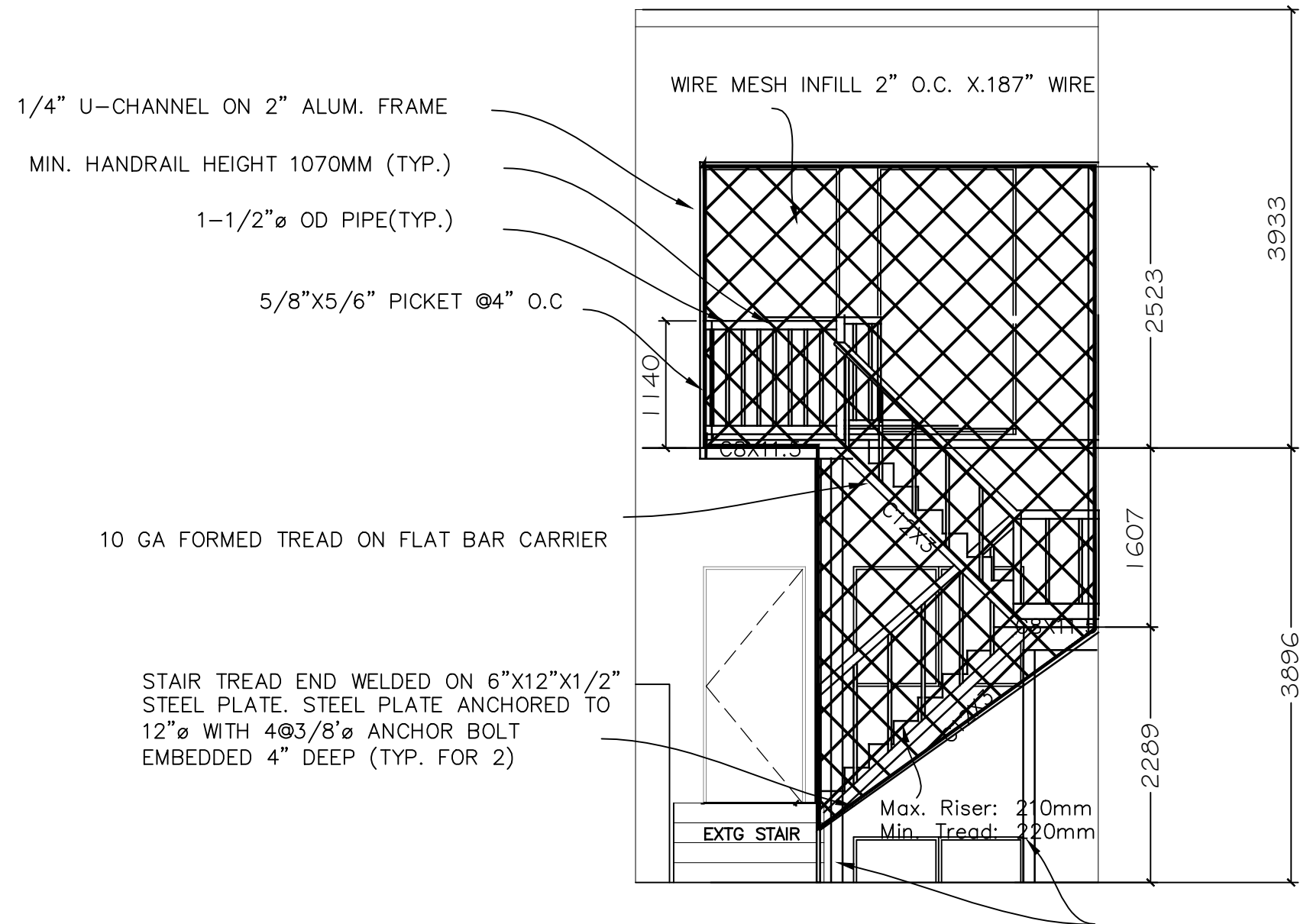
The minimum required set back from a lot in a residential or park district is 7.5 m.

The altered building will be located 2.26 m from a lot in the residential district.

3. Section 4(14)(A), By-law 438-86

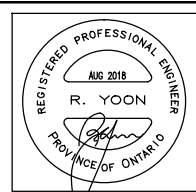
The minimum required setback from the original centre line of a public lane is 3.5 m.

The altered building, as measured from the new rear fire escape stairs, will be located 1.61 m from the original centre line of the public lane.



Stair Detail

4"x4"x3/8" HSS COLUMN ON
 8"x8"x1/2" STEEL PLATE ON 16"Ø
 SONOTUBES /W 4 23/8"Ø ANCHOR BOLT
 EMBEDDED INTO CONCRETE SLAB(TYP. FOR
 4)



YOON & ASSOCIATES ENGINEERING
 370 STEELES AVE. W., UNIT 209, VAUGHAN, ON
 TEL. (905) 532-9009

ALL DRAWINGS, DETAILS AND SPECIFICATIONS AND REPORT ALL DISCREPANCIES TO DESIGNERS BEFORE PROCEEDING WITH WORK.
 ALL DRAWINGS AND SPECIFICATIONS ARE INSTRUMENTS OF SERVICE AND THE PROPERTY OF THE DESIGNER OR ARCHITECT WHICH MUST BE RETURNED AT THE COMPLETION OF THE WORK.
 CONTRACTOR MUST VERIFY ALL JOB DIMENSIONS. LATEST APPROVED DRAWINGS TO BE USED FOR CONSTRUCTION ONLY.

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787 DUNDAS ST. W. HOTEL
 TORONTO, ON