



## APPEARANCES

Name	Role	Representative
CITY OF TORONTO	APPELLANT	MICHAEL MAHONEY
THOMAS MARZOTTO ARCHITECT	APPLICANT	MARC KERMERER
PETER CIBULA	PARTY	
MELISSA CABLE-CIBULA	PARTICIPANT	
DAVID MCKAY	EXPERT WITNESS	

## INTRODUCTION

This is a Settlement Hearing in writing before the Toronto Local Appeal Body (TLAB) of the appeal of the Committee of Adjustment (COA) approval with conditions of variances to permit a new three storey house at 49 Harshaw Avenue (the subject property). The subject property is located in the Lambton Baby Point neighbourhood of Toronto. On July 15, 2020, the COA approved the variances requested. On August 4, 2020, the City of Toronto (City) appealed the matter to the TLAB. On October 28, 2020, a *Notice of Hearing* was issued for this matter to be heard electronically on April 6, 2021.

On October 20, 2020, the TLAB received email correspondence from an Owner of the property, Mr. Peter Cibula, informing the TLAB that the application had been revised and he was anticipating that the City would be withdrawing its appeal of the matter. On December 11, 2020, the TLAB received a request from Mr. Cibula that a settlement Motion be scheduled for an expedited Hearing and a *Notice of Motion* to be heard in writing was filed on December 12, 2021, with a Hearing date set for January 4, 2021, for the purposes of settling this matter.

On December 10, 2020, The TLAB received an email from the City solicitor, Mr. Mahoney, supporting the Minutes of Settlement.

The Motion requests that the following variances be approved:

### **1. Chapter 10.5.40.60.(1)(A)(i), By-law 569-2013**

A platform without main walls, attached to or less than 0.3 metres from a building, with a floor no higher than the first floor of the building above established grade may encroach into the required front yard setback 1.5 metres if it is no closer to a side lot line than the required side yard setback.

The proposed platform encroaches 1.16 metres into the required front yard setback and is 0.74 metres closer to the eastern side lot line than the required setback.

### **2. Chapter 10.5.40.60.(1) (C), By-law 569-2013**

A platform without main walls, attached to or less than 0.3 metres from a building, with a floor no higher than the first floor of the building above established grade may encroach into the required rear yard setback 2.5 metres if it is no closer to a side lot line than 0.64 metres.

The proposed platform encroaches 2.24 metres into the required rear yard setback and is 0.46 metres from the eastern side lot line.

**3. Chapter 10.5.40.60.(1)(D), By-law 569-2013**

A platform without main walls, attached to or less than 0.3 metres from a building, with a floor higher than the first floor of the building above established grade may encroach into the required rear yard setback 1.5 metres if it is no closer to a side lot line than 1.76 metres.

The proposed platform encroaches 0.38 metres into the required rear yard setback and is 1.2 metres from the western side lot line and 0.46 metres from the eastern side lot line.

**4. Chapter 10.5.40.60.(3)(A)(ii) , By-law 569-2013**

Exterior stairs providing pedestrian access to a building or structure may encroach into a required building setback if the stairs are no wider than 2.0 metres.

The proposed stairs at the front are 2.18 metres wide.

**5. Chapter 10.5.40.60.(3)(A)(iii) , By-law 569-2013**

Exterior stairs providing pedestrian access to a building or structure may encroach into a required building setback if the stairs are no closer to a lot line than 0.6 metres.

The proposed stairs at the front are 0.46 metres from the eastern lot line.

**6. Chapter 10.20.40.10.(4)(A) , By-law 569-2013**

The permitted maximum height is 7.2 metres.

The proposed height is 9.7 metres.

**7. Chapter 10.20.40.10.(4)(C) , By-law 569-2013**

The permitted maximum number of storeys is 2.

The proposed number of storeys is 3.

**8. Chapter 10.20.40.20.(1) , By-law 569-2013**

In the RD zone with a minimum required lot frontage of 18.0 metres or less, the permitted maximum building length for a detached house is 17.0 metres.

The proposed building length is 17.93 metres.

**9. Chapter 10.20.40.40.(1)(A) , By-law 569-2013**

The permitted maximum floor space index is 0.4 times the area of the lot: 91.08 square metres.

The proposed floor space index is 1.12 times the area of the lot: 249.6 square metres.

**10. Chapter 10.20.40.50.(1)(A) , By-law 569-2013**

The permitted maximum number of platforms at or above the second storey located on the rear wall of a detached house is 1.

The proposed number of platforms located on the rear wall is 2.

**11. Chapter 10.20.40.50.(1)(B) , By-law 569-2013**

The permitted maximum area of each platform at or above the second storey of a detached house is 4.0 square metres.

The proposed area of the second storey balcony is 15.9 square metres and the proposed area of the third floor balcony is 23 square metres.

**12. Chapter 10.20.40.70.(3)(C) , By-law 569-2013**

The required minimum side yard setback is 1.2 metres where the required minimum lot frontage is 12.0 metres to less than 15.0 metres.

The proposed eastern side yard setback is 0.46 metres.

**13. Chapter 10.5.40.50.(2) , By-law 569-2013**

A platform without main walls attached to or within 0.3 metres of a building, must comply with the required minimum building setbacks for the zone; 1.2 metres. The proposed second and third floor platforms at the rear of the building are 0.46 metres from the eastern property line.

## **BACKGROUND**

The City of Toronto appealed the COA decision in this matter and has subsequently come to a settlement with the owners, Peter Cibula and Melissa Cable-Cibula. Of the 19 variances approved by the COA, four have been eliminated and one has been amended as a result of the settlement reached between the Parties. This matter has been brought before the TLAB via a Motion seeking the TLAB's authority to approve the amended list of variances.

While there may be an accord between the Parties, the TLAB's duty is to consider **all** of the variances afresh and to arrive at an independent decision under s. 45(1) of the *Planning Act (Act)*. As this is not a contested Hearing, the evidence before me is limited to the affidavit and witness statement of Mr. McKay which provides a comprehensive analysis and basis for deliberation of this matter.

## **MATTERS IN ISSUE**

The reasons cited in the City's initial filing are not specific, except with regard to permission for front yard parking, which is an issue that has been eliminated from the list of variances I have been asked to approve via this Motion. The matter at issue is thus the higher-level question of whether the variances individually and cumulatively meet all of the four tests under s. 45(1) of the *Act*.

## **JURISDICTION**

### **Settlement - TLAB Rule 19.4**

Where no Person at the Hearing opposes the proposed settlement or where the TLAB rejects an objection the TLAB may issue an order giving effect to the settlement and any necessary amendments.

### **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**

Evidence in support of this settlement was provided via an Affidavit remotely sworn by David McKay, whom I qualify to provide professional opinion evidence in the area of land use planning.

Since the Committee of Adjustment hearing, the owners have revised their proposal to satisfy concerns raised by the City of Toronto. The following changes have been made:

- Removed the variance for the rear stairway width;
- Removed the variances for front yard landscaping and front yard soft landscaping;
- Remove the variance for the proposed parking in the front yard; and
- Remove the variance for the required size of a parking pad.

The subject property is located in the Lambton Baby Point neighbourhood of Etobicoke. Mr. McKay defined a geographic neighbourhood study area for the purposes of analysis as per Policy 4.1.5 of the Official Plan (OP). He provided a photographic survey of the immediate context and prepared an analysis of the facing block and block within which the subject property is located.

Mr. McKay's analysis concludes that, in his opinion, the proposed variances meet the general intent and purpose of the OP. He reviewed the requirements of the built form policies of the OP (s. 3.1.2) and concluded that the proposal meets those requirements. In his opinion, the development respects and reinforces the existing physical character of the neighbourhood (Policy 4.1.5). I have highlighted his analysis regarding Floor Space Index (FSI), height and side yard setbacks below.

- *"The proposal will result in a FSI of 1.12. The proposed scale and massing of the proposal is similar to replacement dwellings and additions to existing dwellings in the Immediate Context which have resulted in FSI's up to 1.352. In my opinion the proposal respects the existing physical character of the area, specifically with respect to the building massing."*
- *"Relative to height, the proposal is comparable to dwellings within the immediate and broader context. There have been six (6) variances within the immediate*

*area and six (6) variances within the broader context approved, including a maximum height of 9.75 and three storeys for a flat roof building at 54 Harshaw Avenue, which is within the immediate area context.... (T)he maximum permitted height in the area is 11 m and 3 storeys for sloped roof buildings. The minor increase in height above the flat roof maximum will fit within the heights that exist and are permitted, and will be imperceptible from the street given the stepping of the built form that has been incorporated into the design.”*

- *“The requested variances for side yard setbacks respect the existing character of the neighbourhood as reductions in rear yard and side yard setbacks are prevalent and recognize the built form within the Immediate Area, which is single detached dwellings with a shared driveway access. The proposed side yard setbacks currently exist on site and as such the proposed variances are to recognize the existing condition. Furthermore, given the urban context, the side yards being requested reflect the existing and planned character of the neighbourhood.”*

It is Mr. McKay’s opinion that the requested variances maintain the general intent and purpose of the zoning by-law. He provides an analysis of each of the requested variances and references the broader and immediate contexts. I have provided extracts regarding key components below.

**“Platforms (Variances 1, 2, 3, 10, 11 and 13)**

- *The proposed encroachment into the front yard (Variance 1) relates to a covered porch and canopy element. In my opinion the requested variance allows for a built form element (a front porch) which is common throughout the Broader and Immediate Contexts. The covered porch and canopy element assist with the breaking up of the massing (along with other articulation and fenestration elements) and is appropriate and reasonable.*
- *The proposed encroachment into the required rear yard setback (Variance 2) relates to the rear deck. The side yard reduction matches the existing setback of the house and is less (by 0.24 m) of the permitted rear yard encroachment. The encroachment will not cause undue overlook or privacy impacts.*
- *Variances 3 and 13 relate to the deck from the second floor, which partially covers the deck at ground level and the third floor deck. This encroachment again matches the side yard setbacks of the house and is well below the permitted rear yard encroachment. While at a higher level, overlook and privacy impacts will not occur as solid 1.52 m privacy fencing is proposed on the east and west sides of the platforms.*
- *Variance 10 would allow two platforms to exist on the main rear wall – the second and third floor decks. ... In this case, the platforms are created due to the stepping of the building, which reduces the overall massing of the building.*

*Utilization of these flat roof areas for amenity space is appropriate given the urban setting, with privacy and overlook issues minimized by implementing fencing on the east and west sides of the platforms as noted above.*

- *Relative to platform size (Variance 11), as noted the two upper level platforms are created due to the building design, which creates roof area that can be utilized for amenity space. ... In my opinion, the utilization of these roof areas for amenity space is reasonable and appropriate in an urban context. ... Overlook, privacy and noise concerns are mitigated in my opinion by the use of 1.52 m high fencing on the east and west sides of the platforms. I further note that there have been seven (7) approvals within the broader context (including one (1) in the immediate context) for increased platform areas.*

*Location and Size of Stairs (Variances 4 and 5)*

- *In my opinion the proposed front stairs are modestly oversized (by 0.18 m) and fit harmoniously with the proposed building façade.*

*Height (Variances 6 and 7)*

*(T)he overall height permission is 11 m and 3 storeys for sloped roof buildings. The variances are required as the proposal is for a flat roof building. The reduced height requirements for flat roof buildings was to moderate massing which, in this case, is achieved through the stepping of the building at the front and rear of the building... (T)he requested variance is in keeping with the range of other approved height with thirteen (13) variances (7 approvals within the immediate area) to height approved in the neighbourhood.... When considering the proposed height in relation to other dwellings in the area, the proposed variances are in keeping with the existing context. In this case I believe the proposal is appropriate given the existing context, as can be seen in the photographic surveys of the Broader and Immediate Context. The proposed variances for height in my opinion maintain the general intent and purpose of the By-law.*

*Building Length, Building Depth (Variance 8)*

- *The proposed building depth is generally in keeping with the existing building lengths in the Broader and Immediate Contexts. The slight increase to 0.93 m will not cause any undue impact and the overall length of the house maintains sufficient rear yard space for use as amenity as well as for on-site parking.*
- *When considering the proposed length in relation to other dwellings in the area, the proposed variances are in keeping with the existing context. For the reasons noted above, the proposed variance for the proposed building length maintains the general intent and purpose of the By-law.*

*Floor Space Index (Variance 9)*

*While the requested variance is numerically substantial over the permitted FSI, the existing dwelling has an FSI of 0.92 times the lot area, therefore when comparing the existing dwelling with the proposed it is a modest increase of 0.2.*

- *Further, the proposed density is within the range of densities that already exist in the immediate neighbourhood and within the range of recently approved variances within the immediate area (0.38 to 1.352 FSI) and neighbourhood. As noted previously, all but one building in the Immediate Context are substantially over the current permission, and thus the slight increase of 0.2 FSI will not undermine or be out of character with the Immediate Context.*

#### **Setbacks**

- *The proposed development is in line with the existing setbacks for the property as well as for those within the area per my (Mr. McKay's) observations. The proposed eastern setback provides sufficient clearance for maintenance (if/when required) and access to the rear yard is obtained from the western setback. Relative to privacy / overlook, no above grade windows are proposed, and as such no overlook / privacy issues will arise.*
- *(T)here have been many properties within the Broader and Immediate Context which have obtained side yard setback reductions. To this point, there have been fifty-four (54) approved variances (17 within the immediate area).*

*In summation, in my opinion the variances individually and collectively maintain the intent and purpose of the By-law."*

In the opinion of Mr. McKay, the requested variances represent good planning and are in the public interest for the following reasons:

- The requested variances have regard for matters of provincial interest listed in s.2 of the Planning Act.
- The requested variances are consistent with the Provincial Policy Statement.
- The requested variances conform to the Growth Plan.
- The requested variances do not create any undue impacts to adjacent properties from a planning perspective.
- The requested variances are in keeping with the existing and planned character of the neighbourhood.
- The requested variances fulfill the criteria of Section 45(1) of the Planning Act in that:



- they maintain the general intent and purpose of the Official Plan;
- they maintain the general intent and purpose of the Zoning By-laws;
- they are appropriate and desirable for the use and development of the property; and
- they are minor in nature.

## **ANALYSIS, FINDINGS, REASONS**

This is an uncontested Hearing for the purposes of approving a revised set of variances on the basis of a settlement achieved between the Owners and the City. I have reviewed the materials and affidavit witness statement submitted by Mr. McKay and concur with his analysis. I note that as a settlement, this case has no precedential value since any findings of fact are for the limited purpose of ensuring that the settlement is not contrary to the *Planning Act*.

On the basis of the evidence provided, I concur with Mr McKay that the proposed variances meet the general intent and purpose of the OP and that the proposal respects and reinforces the existing physical character of the neighbourhood. I concur that the general intent and purpose of the Zoning By-laws is maintained and that the variances, individually and collectively, do not, from a planning perspective, create any undue impacts to adjacent properties. On the basis of the evidence before me, I find that the variances are minor and that they are desirable for the development of the land.

I find that the revised variances requested by the Applicant and before the Tribunal for approval via this settlement Hearing are in the public interest and I agree that, individually and cumulatively, they fulfill the four tests under Section 45(1) of the Planning Act and be approved.

I find that the elimination of the four variances – for rear stairway width, front yard landscaping and front yard soft landscaping, proposed front yard parking and required size of a parking pad - to be minor and not require further notice as might otherwise be relevant under section 45(18.1.1) of the *Planning Act*."

## **DECISION AND ORDER**

The variances set out in Attachment A, below, are approved subject to the condition that the proposed development shall be constructed substantially in accordance with the revised drawings and site plan prepared by Thomas Marzotto Architect, dated September 2019, and attached as Attachment B.

A handwritten signature in black ink, appearing to read "Abassios".

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Ana Bassios

Panel Chair, Toronto Local Appeal Body

## **ATTACHMENT A**

### **1. Chapter 10.5.40.60.(1)(A)(i), By-law 569-2013**

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The permitted maximum number of storeys is 2.

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A platform without main walls attached to or within 0.3 metres of a building, must comply with the required minimum building setbacks for the zone; 1.2 metres. The proposed second and third floor platforms at the rear of the building are 0.46 metres from the eastern property line.



**GENERAL NOTES**

THESE PLANS AND SPECIFICATIONS ARE THE UNREVISED PROPERTY OF THE ARCHITECT. NO PART OF THESE PLANS OR SPECIFICATIONS SHALL BE REPRODUCED OR TRANSMITTED IN ANY FORM OR BY ANY MEANS, ELECTRONIC OR MECHANICAL, INCLUDING PHOTOCOPYING, RECORDING, OR BY ANY INFORMATION STORAGE AND RETRIEVAL SYSTEM, WITHOUT THE WRITTEN CONSENT OF THE ARCHITECT. NO SET FORWARDED FROM THE ARCHITECT SHALL BE RETURNED TO THE ARCHITECT WITHOUT THE WRITTEN CONSENT OF THE ARCHITECT. THE ARCHITECT'S LIABILITY IS LIMITED TO THE DESIGN AND CONSTRUCTION OF THE PROJECT AND DOES NOT INCLUDE ANY OTHER WORK. DRAWINGS ARE NOT TO BE SIGNED.

NO.	DATE	DESCRIPTION
1	10/1/10	ISSUED (20% DESIGN)
2	10/1/10	ISSUED (30% DESIGN)
3	10/1/10	ISSUED (40% DESIGN)
4	10/1/10	ISSUED (50% DESIGN)
5	10/1/10	ISSUED (60% DESIGN)
6	10/1/10	ISSUED (70% DESIGN)
7	10/1/10	ISSUED (80% DESIGN)
8	10/1/10	ISSUED (90% DESIGN)
9	10/1/10	ISSUED (100% DESIGN)

**THOMAS MARZOTTO ARCHITECT**  
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**PROPOSED RESIDENCE**  
 49 IARSHAW DRIVE

**FOUNDATION PLAN**

**DATE:** 10/1/10  
**SCALE:** 1/4" = 1'-0"











