

# DECISION AND ORDER

**Decision Issue Date**      Tuesday, February 02, 2021

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): SOUTH ARMOUR HEIGHTS RESIDENTS ASSOCIATION

Applicant: META FORM ARCHITECTS INC

Property Address/Description: 274 Yonge Blvd

Committee of Adjustment Case File:      19 252085 NNY 08 MV

**TLAB Case File Number:      20 119329 S45 08 TLAB**

**Hearing date:**      Monday, November 23, 2020

**DECISION DELIVERED BY A. Bassios**

## APPEARANCES

NAME	ROLE	REPRESENTATIVE
SOUTH ARMOUR HEIGHTS RESIDENTS ASSOCIATION	APPELLANT	WILLIAM ROBERTS
CITY OF TORONTO	EXPERT WITNESS	SHIRIN YAZDANI
TERRY MILLS	EXPERT WITNESS	

## INTRODUCTION

This is an appeal by the South Armour Heights Residents Association (SAHRA) of the North York Panel of the City of Toronto (City) Committee of Adjustment (COA) approval, in part, of variances requested to construct a two storey addition with a garage on the north side, with a second and third storey addition to the rear and a third storey platform.

The subject property, 264 Yonge Blvd, is located west of Yonge St, and south of Highway 401. It is designated *Neighbourhoods* in the City of Toronto Official Plan (OP) and is zoned RD (f18.0; a690) under the City of Toronto Zoning By-law No. 569-2013 and R3 under the former City of North York Zoning By-law No. 7625.

A total of 7 variances were originally sought, four of which were withdrawn prior to the COA's consideration of the application and so were not approved.

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

#### **1. Chapter 10.5.40.70.(1), By-law No. 569-2013**

The minimum required front yard setback is 8.34m.

The proposed front yard setback is 2.89m.

#### **2. Chapter 10.20.40.50.(1)(B), By-law No. 569-2013**

The permitted maximum area of each platform at or above the second storey of a detached house is 4.0m<sup>2</sup>.

The proposed area of third storey front yard platform is 11.163m<sup>2</sup>.

#### **3. Chapter 10.20.40.10.(4)(A), By-law No. 569-2013**

The permitted maximum height is 7.2m.

The proposed height is 10.06m.

#### **4. Chapter 10.20.40.10.(4)(C), By-law No. 569-2013**

The permitted maximum number of storeys is two.

The proposed number of storeys is three.

#### **5. Chapter 10.5.40.60.(1)(A)(i), By-law No. 569-2013**

A platform without main walls, attached to or less than 0.3m 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 2.5m if it is no closer to a side lot line than the required side yard setback.

The proposed platform encroaches 2.91m into the required front yard setback.

#### **6. Chapter 10.20.40.20.(1) , By-law No. 569-2013**

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

The proposed building length is 17.13m.

**7. Section 12.7, By-law No. 7625**

The maximum permitted building height is 8m.

The proposed building height is 10.93m.

On February 6, 2020, the COA approved three variances related to height and the number of storeys, as follows:

**1. Chapter 10.20.40.10.(4)(A), By-law No. 569-2013**

The permitted maximum height is 7.2m.

The proposed height is 10.06m.

**2. Chapter 10.20.40.10.(4)(C), By-law No. 569-2013**

The permitted maximum number of storeys is two.

The proposed number of storeys is three.

**3. Section 12.7, By-law No. 7625**

The maximum permitted building height is 8.0m.

The proposed building height is 10.93m.

On March 13, 2020, SAHRA appealed the COA approvals to the Toronto Local Appeal Body (TLAB) and an in-person Hearing was originally scheduled for June 18, 2020. Because of the COVID-19 pandemic, the TLAB ordered a cessation of all Hearings effective March 16, 2020 and this matter was rescheduled to be heard as an electronic Hearing on November 23, 2020.

Ms. Shirin Yazdani, employed by the City of Toronto (City) as an Assistant Planner in the North York District of the City Planning Department, was summonsed as an expert witness by SAHRA. Ms. Yazdani had reviewed the COA application for variances and had prepared the staff report that was submitted to the COA.

The Owner of the subject property and the Applicant in this matter did not participate in any part of the TLAB process and did not appear at the Hearing.

## **BACKGROUND**

The Applicant sought to construct a two storey addition to an existing detached dwelling consisting of a second and third storey addition to the rear, with a third storey platform and an attached garage to the north. The COA heard the application on February 6,

2020. Variances for front yard setback, maximum building length and variances related to platforms were withdrawn prior to the COA's consideration of the application and so were not approved. The three remaining variances for height and the number of storeys were considered and approved.

## **MATTERS IN ISSUE**

One of the powers of the TLAB under s. 45(18) of the Planning Act (Act) is that the Tribunal may make any decision that the COA could have made on the original application, meaning that an application that was before the COA is to be considered anew by the TLAB.

The Applicant is required to satisfy the TLAB that its application satisfies the four statutory tests mandated by s. 45(1) of the Planning Act. Since the Applicant did not participate in the Hearing, the variances approved by the COA cannot be approved by the TLAB in the absence of the necessary evidence that the proposal meets the four tests.

At the outset of the Hearing, SAHRA were apprised of the jurisdiction and requirements of the TLAB but, having invested effort in preparing their case before the TLAB, wished to continue with the Hearing and have their evidence heard for the record. This Decision will document the evidence of SAHRA to that end, but the Decision and Order will be made on the basis that there was no foundation for the TLAB to consider the application that precipitated the Appeal.

## **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').

### **Same Powers as COA – S. 45(18)**

The Tribunal may dismiss the appeal and may make any decision that the committee could have made on the original application.

### **Minor 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**

The burden is on the Applicant to prove its case before the TLAB, even when the COA has previously approved the variances. The Applicant did not file any materials with the TLAB and did not appear at the Hearing.

Ms. Yazdani was called to the stand and qualified as an expert witness. She testified that she had prepared the staff report and had recommended that the variances for the subject property be refused. Her opinion has not changed. She testified that, in her professional opinion, the four tests under S. 45 (1) of the Planning Act were not satisfied. Regarding the Official Plan, she noted that the height of the proposal exceeds all other applications in the area. Some height variances have previously been approved, but they are quantitatively smaller and have only been approved for two storey, not three storey dwellings. Sloped roofs predominate in this neighbourhood.

In Ms. Yazdani's opinion, the requirements of Policy 4.1.5 of the OP are not satisfied and the proposal does not reinforce the existing character of the neighbourhood.

Terry Mills was called to the stand and was qualified as an expert in land use planning. Mr. Mills provided evidence on behalf of SAHRA. His witness statement that was entered as Exhibit A. Mr. Mills reported that the Applicant had withdrawn four of the requested variances prior to the matter being heard by the COA. The COA had approved the remaining three variances without benefit of revised drawings. To this date, no revised drawings have been submitted.

Mr. Mills submitted visual and statistical evidence in support of his expert planning opinion.

The Applicant's original drawings included four additions to the existing two-storey house:

- a one-storey garage, substantially encroaching into the front yard setback
- a two-storey addition, replacing the side-driveway

- a second-storey addition, on top of an existing one-storey rear portion
- a third-storey addition across the rear portion of the existing building

Mr. Mills defined a broad area for his analysis and described a larger segment that is zoned RD(f18.0), which means that the minimum frontage of the lots is set at 18m. A smaller segment of the broader area is zoned RD(f12.0), i.e. with a minimum frontage set at 12m. The broader neighbourhood abuts Highway 401. He characterizes the physical character of the neighbourhood as a mixture of house-styles typical of the 1950s era, in conjunction with one-off custom-designed homes. The prevailing pattern of houses consists of two-storey buildings. Sloped-roof lines are a fundamental characteristic found throughout the area. The prevailing pattern is hip and ridge roofs above a two-storey cubic building-form. A less-frequent style is cottages, with 2nd-floor dormer windows in the roof lines.

For the purposes of examining the requirements of Policy 4.1.5 of the OP, Mr. Mills defined the immediate neighbourhood as the full block on which the subject property is located and the full block facing the subject property.

Three-Storey buildings are not part of the prevailing or substantial character of the broad study area. There are two existing three storey buildings within the broad study area's 223 houses, representing a frequency of occurrence of 0.9%. There are no three storey dwellings in the immediate neighbourhood. The request for building height variances for the subject property exceed all other COA applications for height variances. It is Mr. Mills' opinion that the proposed development does not maintain the general intent and purpose of the OP in that it does not respect and reinforce the existing physical character of the neighbourhood.

The development of the neighbourhood was shaped by the former North York planning framework of regulating the scale and massing of residential buildings by the combination of 1) percentage of lot coverage and 2) the number of storeys. Mr. Mills notes that these standards have prevailed in the neighbourhood and there is a diversity of two storey building forms and that the two storey requirement has provided a harmonizing effect, "blending together building forms". In Mr. Mills' opinion, the building height variances should not be approved, as to do so would not maintain the general intent and purpose of the zoning by-laws.

In Mr. Mills' opinion, the proposed third storey addition does not represent an appropriate development of the subject property; the proposed development does not represent good planning, is not minor, does not meet the four tests under the Act and the variances are not appropriate, individually or cumulatively.

## ANALYSIS, FINDINGS, REASONS

This was an uncontested Hearing and the TLAB heard only from the Appellant, the expert witness retained by the Appellant and the City planner under summons. I find the evidence provided by Mr. Mills and Ms. Yazdani persuasive.

There was no evidence from the Applicant in this matter, and so I find that there is no basis upon which to grant the variances which had previously been approved by the COA. As the Applicant did not participate in the Hearing, the variances approved by the COA cannot be approved by the TLAB in absence of the necessary evidence that the proposal meets the four tests.

## DECISION AND ORDER

The appeal of the Committee of Adjustment Decision is allowed; the decision of the Committee dated February 6, 2020, is set aside and the variances are not granted.

X

*Abassios.*

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Ana Bassios

Panel Chair, Toronto Local Appeal Body