

DECISION AND ORDER

Decision Issue Date: Wednesday, March 24, 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): MAJID OGHABI
Applicant(s): MAJID OGHABI
Property Address/Description: 79 NORTHCOTE AVE
Committee of Adjustment File Number(s): 19 257412 STE 09 MV
TLAB Case File Number(s): 20 173212 S45 09 TLAB

Hearing date: Thursday, March 11, 2021

DECISION DELIVERED BY S. Makuch

APPEARANCES

NAME	ROLE	REPRESENTATIVE
MAJID OGHABI	APPELLANT/APPLICANT	RUSSELL CHEESEMAN
SEAN GALBRAITH	EXPERT WITNESS	

INTRODUCTION

This is an appeal from a decision of the Committee of Adjustment, refusing six variances which would permit the expansion and renovation of the second and third floors of an existing two-story semi-detached dwelling, the conversion of the basement to permit a secondary suite, and the conversion of an existing garage to a two story laneway suite.

BACKGROUND

While six variances are sought, much of the construction is within the confines of the footprint and/or envelope of the existing dwelling and the existing garage. Variance 1, respecting the front yard setback, is within the footprint of the existing dwelling, as it is to permit the extension of the second and third floors over the first floor porch at the front of the existing dwelling and the enclosure of the front porch. Variance 2 is with respect to a 1m² deficiency in rear yard soft landscaping. Variance 3 is the result of a required 1.5 m set back in order to place a door in the existing north wall of the existing garage rather than its east wall. The fourth variance is to permit an FSI of 1.26 whereas 1.0 is permitted. It results in a dwelling 28.76 m² greater than permitted. The fifth variance which results from the extension of the second and third floors is to permit main wall heights of 9.8 m for approximately 30% of their length, while 7.5 m is the permitted height. Finally, the sixth variance is technical in nature to permit a modification to the front wall of the house with a secondary suite. The variances are set out in Appendix 1.

MATTERS IN ISSUE

There are no matters in issue as no one appeared in opposition to the appeal. Nevertheless, since the variances are under appeal, the appellant still has to demonstrate that TLAB has jurisdiction to approve the variances.

JURISDICTION

Provincial Policy – S. 3

A decision of the Toronto Local Appeal Body ('TLAB') must be consistent with the 2020 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:

- o maintain the general intent and purpose of the Official Plan;
- o maintain the general intent and purpose of the Zoning By-laws;
- o are desirable for the appropriate development or use of the land; and
- o are minor.

EVIDENCE

The entire unchallenged evidence was provided by Mr. Sean Gailbraith, a land use planner, who has been qualified numerous times to give evidence before the OMB and TLAB. His evidence was clear and concise. Individually and cumulatively, the variances meet the requirements of the PPS and the Growth Plan as they provide for the more efficient use of land by increasing the area of the existing dwelling and by providing for the conversion of the garage to a dwelling. His evidence was also that cumulatively and individually the variances met the four tests of the *Planning Act*. The changes meet the general intent of the Official Plan as they would result in a dwelling which respected and reinforced the physical character of the neighbourhood as other dwellings had similar front additions. Moreover, a family dwelling would be improved with additional floor space, and a new dwelling constructed from the garage. Both of these changes would not be noticeable from the street.

No one appeared in opposition to the appeal. The neighbour to the north had opposed the application at the Committee of Adjustment and had a concern of a canyon effect resulting from the alterations to the house; but Mr. Gailbraith gave evidence as to how that was not a concern and that the proposal was appropriate and minor.

ANALYSIS, FINDINGS, REASONS

Given the evidence of Mr. Galbraith outlined above and in his witness statement and given the lack of any evidence in response, it is clear that the variances, cumulatively and individually meet the requirements of the Growth Plan and the PPS, as well as the four tests of the Planning Act.

DECISION AND ORDER

The appeal is allowed and the variances set out in Appendix 1 are approved, subject to the condition that construction shall substantially in accordance with the plans in Appendix 2.

X 

S. Makuch
Panel Chair, Toronto Local Appeal

APPENDIX 1

1. Chapter 10.5.40.70.(1)(A), By-law 569-2013. The minimum required front yard setback is 7.12 m. The altered detached dwelling will be located 4.83 m from the west front lot line.
2. Chapter 150.8.50.10.(1)(A), By-law 569-2013. A minimum of 60% (17.0 m²) of the area between the rear main wall of the residential building and the front main wall of the ancillary building containing a laneway suite must be for soft landscaping. In this case, 56% (16.0 m²) of the area between the rear main wall of the residential building and the front main wall of the ancillary building containing a laneway suite will be soft landscaping.
3. Chapter 150.8.60.20 By-law 569-2013. The minimum required side yard setback for an ancillary building containing a laneway suite is 1.5 m. The altered ancillary building containing a laneway suite will be 0.0 m from the north side lot line.
4. Chapter 10.10.40.40.(1)(A), By-law 569-2013. The maximum permitted floor space index of a semi-detached dwelling is 1.0 times the area of the lot (184.54 m²). The altered semi-detached dwelling will have a floor space index equal to 1.16 times the area of the lot (213.3 m²).
5. Chapter 10.10.40.10.(2)(A), By-law 569-2013. The maximum permitted height of all front and rear exterior main walls is 7.5 m. The height of the front and rear exterior main walls will be 9.8 m.
6. Chapter 150.10.40.1.(3)(A), By-law 569-2013. A secondary suite is a permitted use provided that an exterior alteration to a building to accommodate a secondary suite does not alter a main wall or roof that faces a street. The addition to the semi-detached dwelling will alter a main wall and roof that faces the street.

APPENDIX 2

CA Plans Filed with TLAB January 20, 2020, 79 Northcote Ave.

RECEIVED

By Committee Of Adjustment at 11:24 am, Jan 30, 2020

