

INTERIM DECISION AND ORDER

Decision Issue Date Tuesday, February 23, 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):	Haidar Baalbaki
Applicant(s):	
Property Address/Description:	47 White Abbey Pk
Committee of Adjustment File	
Number(s):	20 101844 ESC 21 MV
TLAB Case File Number(s):	20 128412 S45 21 TLAB

Hearing date: January 19, 2021

DECISION DELIVERED BY **A. Bassios**

APPEARANCES

NAME	ROLE	REPRESENTATIVE
Haidar Baalbaki	Appellant	Stephen Sukiasyan
CITY OF TORONTO	PARTY	Marc Hardiejowski

INTRODUCTION

This is an Appeal to the Toronto Local Appeal Body (TLAB) by Hairdar Baalbaki of the Decision of the Scarborough Panel of the City of Toronto Committee of Adjustment (COA) to refuse a variance to permit a widened front driveway for the newly constructed dwelling at 47 White Abbey Pk, the subject property. On Thursday March 5, 2020, the COA refused the requested variance. A *Notice of Appeal* (Form 1) was filed with the

TLAB by Mr. Baalbaki's representative on March 16, 2020, and again on July 13, 2020 as a result of a second COA Notice of Decision issued by the COA because of the COVID 19 pandemic order suspending timelines. On October 19, 2020, a *Notice of Hearing* was issued for this matter to be heard electronically on January 19, 2021. The City of Toronto has elected to be a Party to this matter.

The subject property is located in Scarborough.

On January 5, 2021, the TLAB received email correspondence from Mr. Stephen Sukiasyan informing the TLAB that a settlement with the City of Toronto had been achieved. As a result, the Hearing date set for January 19, 2021 was convened as an expedited Settlement Hearing.

REQUESTED VARIANCE:

By-law No. 569-2013

The proposed driveway will have a maximum width of 7.5 m;
The maximum permitted driveway width is 4.16 m.

The proposed settlement would permit a driveway width of 7.5 m with conditions.

BACKGROUND

In attendance at the Hearing were: Mr. Stephen Sukiasyan on behalf of the Owner; Mr. Marc Hardiejowski, legal counsel for the City of Toronto and Mr. Matt Jajahed, who identified himself as an observer of the proceedings.

The purpose of the application before the COA was to request a widened front driveway for the newly constructed dwelling on the subject property. A previous COA Decision for the subject property had approved variances for setbacks, dwelling height and driveway width. The previous Decision of the COA (A0278/19SC) had approved a driveway width of 4.35 m. The Owners constructed the driveway in excess of the permitted width allowed by the previous COA Decision. The application before the COA on March 5, 2020 requested a driveway width of 7.5 m, whereas the maximum driveway width permitted by the Zoning By-law is 4.16 m.

The as-built flared driveway has an existing curb cut of 4.35m width and widens to a width of 9.63m measured at the widest point. A revised site plan was presented at the COA Hearing on March 5, 2020, showing a reduced driveway width of 7.5 m and the addition of one additional parking space beside the dwelling's integrated garage. The requested variance for a 7.5 m driveway width spans the width of the existing garage and the additional parking space beside it.

The proposed settlement identifies areas of the existing driveway to be removed and to be replaced with sod.

MATTERS IN ISSUE

The matter in issue is simply the question of whether the variance, with the conditions proposed, meets 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

Mr. Sukiasyan gave evidence regarding the settlement that has been proposed. Exhibit A is a site plan which delineates the areas of the driveway to be removed and the areas to be sodded. Exhibit B sets out the proposed conditions of approval, which were as follows:

1. Areas 2 & 3 (as identified in the revised site plan drawing file with the TLAB) are replaced with sod and shall remain as such in perpetuity; and
2. The TLAB's issuance of its final order be withheld until the Site Plan Technician, Community Planning, Scarborough District confirms that Condition 1) (i.e. Areas 2 & 3 are replaced with sod) has been satisfied.

Under the terms of this proposed settlement, the driveway width of 7.5 m will remain, which allows for a driveway in front of the integrated garage plus a parking space beside the garage on the north side. The paving on two areas as delineated on the site plan would be removed and be landscaped.

Mr. Sukiasyan attests that the proposal complies with Minimum Front Yard Landscaping (60%) and Soft Landscaping percentages (75%) as set out in City of Toronto By-law 569-2013 Chapter 10.5.50.10 Landscaping.

The conditions of approval as proposed in the settlement were discussed with the Parties in a videoconference on February 23, 2021, and revised as contained in the Interim Decision below, with the consent of all Parties.

ANALYSIS, FINDINGS, REASONS

This is an uncontested Hearing for the purposes of approving a variance for driveway width on the basis of a settlement achieved between the Owner and the City of Toronto. 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.

I find that the partial replacement of the driveway surface with sod mitigates the visual impact of the existing driveway and limits the number of cars which can be parked on the forecourt of the dwelling. The proposed settlement achieves the soft landscaping requirement of the By-law and would improve the presentation of the property to the street. Therefore, I conclude that the proposal meets the purpose and intent of the Official Plan, it meets the purpose and intent of the Zoning By-laws, it is desirable for the development of the land and it is minor.

I find that the variance and the associated conditions of approval proposed in the settlement are in the public interest and that the variance for meets the four tests under Section 45(1) of the Planning Act.

INTERIM DECISION

The variance to approve a driveway width of 7.5 m is authorized, subject to the following conditions:

1. Areas 2 & 3 as identified in the revised site plan drawing, included as Attachment A, are replaced with sod and shall remain as such in perpetuity; and
2. The issuance of the TLAB's final Decision and Order be withheld, for no longer than eight months, pending confirmation by way of an email to the TLAB and all Parties from legal counsel to the City that Condition 1) (i.e. Areas 2 & 3 are replaced with sod) has been satisfied.



Ana Bassios
Panel Chair, Toronto Local Appeal Body

ATTACHMENT A:

