

## DECISION AND ORDER

**Decision Issue Date**      Monday, March 22, 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): LEASIDE PROPERTY OWNERS ASSOC INC

Applicant(s): MEMAR ARCHITECTS INC

Property Address/Description: 83 GLENVALE BLVD

Committee of Adjustment File

Number(s): 20 108577 NNY 15 MV (A0063/20NY)

**TLAB Case File Number(s): 20 167118 S45 15 TLAB**

**Hearing date: March 8, 2021**

**DECISION DELIVERED BY A. BASSIOS**

## APPEARANCES

NAME	ROLE	REPRESENTATIVE
MEMAR ARCHITECTS INC	APPLICANT	
LEASIDE PROPERTY OWNERS ASSOC.	APPELLANT	
LIPING MA	PARTY/OWNER	TIAN YUE MA
CITY OF TORONTO	PARTY	
GEOFF KETTEL	PARTY	
LING WANG	PARTY	
ALAN YOUNG	EXPERT WITNESS	
NIGEL HEATH	PARTICIPANT	
GIUSEPPE D'ANGELO	PARTICIPANT	
ANDREW BEAMER	PARTICIPANT	

## INTRODUCTION

This is an appeal by the Leaside Property Owners Association (now known as the Leaside Residents' Association) of the City of Toronto (City) Committee of Adjustment (COA) approval, with conditions, of variances to construct a new detached dwelling at the subject property.

The subject property is located in the Leaside Neighbourhood of the former Borough of East York. It is designated *Neighbourhoods* in the City Official Plan (OP) and zoned RD (f12; a370; d0.6) by By-law 569-2013 and R1B by former Leaside By-law 1916. The COA had before it a request for eight variances.

In attendance at the Hearing were: Geoff Kettel, representing the Leaside Residents' Association (LRA), the Appellant in this matter; Jason Davidson, legal counsel for the City and Alan Young, Expert Witness for the City; Tian Yue Ma, for the Owner/Applicant and Liping Ma, the Owner. Participants Nigel Heath, Giuseppe D'Angelo, and Andrew Beamer were in attendance.

I advised that pursuant to Council's direction, I had attended the site and the surrounding area and had reviewed the pre-filed materials but that it is the evidence to be heard that is of importance.

At the commencement of this Hearing, it was established that the Applicant had not provided any Disclosure documents to support the application and had not retained Legal Counsel or an Expert Witness to provide evidence on their behalf. Ms. Ma stated that her intent was to rely on the Expert Witness of the City (Mr. Young). Mr. Davidson,

for the City, asserted that it is the City's view that there is no chance of success for the Applicant in that they have not provided any evidence that the Application meets the four tests under s. 45(1) of the Planning Act (Act). In this light, the City requested that the Hearing be curtailed and the Decision of the COA be set aside. After a recess to consider the City's request, I ruled that I would hear from the Applicant whatever statement in support of the application they were able to make, recognizing that this was a situation of a self-represented Applicant. The other Parties could, thereafter, measure the extent of the evidence they wished to bring to the Toronto Local Appeal Body's (TLAB) attention in response.

## **BACKGROUND**

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

#### **1. Chapter 10.5.40.50.(2), By-law No. 569-2013**

A platform without main walls, such as a deck, porch, balcony or similar structure, attached to or within 0.3m of a building, must comply with the required minimum building setbacks for the zone; in this case 1.2m.

The proposed east side setback to the front porch is 0.9m.

#### **2. Chapter 10.5.40.50.(4)(C), By-law No. 569-2013**

Platforms attached to or within 0.3m of a rear main wall, which are greater than 1.2m above the ground at any point below the platform, are limited to projecting 2.5m from the rear wall and may be no higher than the level of the floor from which it gains access.

The proposed rear deck projects 3.05m from the rear wall.

#### **3. Chapter 10.20.40.10.(1), By-law No. 569-2013**

The maximum permitted building height is 8.5m.

The proposed building height is 8.98m.

#### **4. Chapter 10.20.40.70.(3)(C), By-law No. 569-2013**

The minimum required side yard setback is 1.20m.

The proposed east side yard setback is 0.9m.

#### **5. Chapter 10.20.40.70.(3)(C), By-law No. 569-2013**

The minimum required side yard setback is 1.20m.

The proposed west side yard setback is 0.9m.

#### **6. Chapter 10.20.40.40.(1), By-law No. 569-2013**

The maximum permitted floor space index is 0.60 times the lot area.

The proposed floor space index is 0.695 times the lot area.

#### **7. Chapter 10.5.50.10(1), By-law No. 569-2013**

The minimum required front yard soft landscaping is 75.00%.

The proposed front yard soft landscaping is 72.00%.

### **8. Section 6.3.3, By-law No. 1916**

The maximum permitted building height is 8.50m.  
The proposed building height is 9.31m.

## **MATTERS IN ISSUE**

The Applicant had provided neither Document Disclosure nor Witness Statements as per TLAB requirements and stated their intention to rely on cross examination of the City's Expert Witness as the evidentiary basis for the Application.

Both the LRA and the City expended considerable effort and cost to fully prepare for the Hearing of this matter, having complied with all of the TLAB requirements. The Applicant had provided no indication to the other Parties of even the most basic arguments they wished to employ in pursuing the Application at the Hearing.

The City, supported by the Appellant, sought a setting aside of the Decision of the COA as the Applicant had provided no evidentiary basis for the TLAB to approve the Application.

## **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').

### **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**

TienYue Ma is the daughter of the Owner, Liping Ma, and spoke on his behalf.

Ms. Ma acknowledged that they were unfamiliar with the TLAB's procedures and had been "negligent with deadlines". She advised the Tribunal that they had consulted

professionals but that the fees were “way over budget” so they decided not to hire professionals and represent themselves.

Ms. Ma identified a home at 476 Broadway Ave. (the street immediately behind the subject property) that had a lot similar in size that has a double car garage and similar height which she cited as precedent. She indicated that there was a house on Laird Dr. which also had a double car garage. Ms. Ma asserts that there is precedent for the height of the proposal in the immediate neighbourhood. No photographs, diagrams or maps were referenced.

Ms. Ma asserted that the proposal conforms to a number of features of the By-law.

In closing, Ms. Ma asserted that “there are a lot of precedents of similar designs to theirs” and they have been approved. She said that her family were trying to modernize their house while describing the neighbourhood as consisting of “still the old seventies” houses. She believes their “variances are according to the By-laws”.

Ms. Ma, under cross examination from Mr. Kettlel was not able to show any familiarity or understanding of the concept of “prevailing character”. She further acknowledged to Mr. Davidson that she is not an urban planner and has no experience defining what “physical character” is. She acknowledged that a modern house can be designed without a two-car garage.

Mr. Davidson, for the City, advised that he had reached out to the Applicant twice by email to establish their intentions regarding the Hearing. In January, he had a telephone conversation with Ms. Ma where he raised the issues of attending a Hearing without legal counsel, or an Expert Witness. The City has expended considerable resources in preparing for this Hearing. Mr. Davidson indicated that he went above and beyond in communicating with the Applicant expressing both the requirement for expert evidence and directing the Applicant to resources on the TLAB’s website. Mr. Davidson advised that the City reserves the right to seek costs in this matter.

Mr. Davidson asserted that Ms. Ma has not provided evidence to allow the Application to move forward. The City was of the opinion that it was not necessary to go through the evidence that the City has prepared and suggested that the Witness Statement of Mr. Young be received by the TLAB as an Affidavit and treated as evidence and testimony as in a written Hearing. With agreement from the Parties, Mr. Young’s Witness Statement was received as such and marked as Exhibit B.

Mr. Young briefly identified some key points of evidence. He identified the neighbourhood and immediate context area as per Official Plan (OP) Policy 4.1.5. The inclusion of the two-car garage with two floors of living area above pushes the height of this proposal to three storeys, which he states is very rare in the geographic neighbourhood.

Mr. Young stated that in his analysis, there were only two comparable developments out of the 628 lots in the neighbourhood, and there were none in the immediate context area. In his expert opinion, the variances do not comply with the intent of the OP.

For the same reasons cited by the City regarding Mr. Young's Witness Statement, Mr. Kettel's Witness Statement was received as an Affidavit and marked as Exhibit C. Mr. Kettel fully supported the evidence supplied by Mr. Young. He wished to note that numerous neighbours who requested to speak at the COA Hearing were denied the opportunity to do so. He drew the TLAB's attention to the Leaside Character Preservation Guidelines 2003. In his opinion, the requested variances create a development that does not meet the four tests under s. 45 (1) of the Act and therefore they do not represent good planning and should be refused.

Participant Andrew Beamer had intended to make a statement to the TLAB but had not been able remain in attendance.

Participant Nigel Heath identified himself as the immediate next-door neighbour to the subject property. He indicated that he spoke for nine neighbours in the immediate context. He stated that he has nothing against modernization, but that the size and scale of this proposal is not in keeping with the street and it does not comply with the OP.

Participant Guiseppe (Joe) D'Angelo is of the opinion that the structure is too tall and that if all the components are added up, they create a very large home that stands out in a bad way. He said that the house proposed is collectively much bigger than what the neighbourhood is used to seeing.

## **ANALYSIS, FINDINGS, REASONS**

The TLAB is committed to sustaining an accessible forum for the resolution of land use disputes within its mandate. On occasion, this means that latitude will be granted to those who are self-represented and those who are not familiar with the TLAB Appeal process. This does not mean, however, that a Party involved in a Hearing before the TLAB is excused the basic responsibilities and respect that must be accorded to the TLAB process and to the other Parties and Participants engaged in the matter. There are numerous resources, on the TLAB website and elsewhere, that are available to assist the general public in understanding what a Hearing entails and the duties and obligations of Parties and Participants in TLAB Appeals.

In this matter, it is the Applicant that is proposing a significant reconstruction on their property but has chosen to spare themselves the expense of retaining an Expert Witness or legal counsel to guide them through the process of the Hearing of the Appeal. This is a choice, perhaps ill advised, that they are free to make. They are not, however, free from obligations to the TLAB and the other Parties to abide by the basic principles of procedural fairness.

While the principles of administrative law, or those of good land use planning, might be mysterious to lay persons, even the most cursory of research would identify that the basis for granting of variances to a Zoning By-law in Ontario, whether at a committee of adjustment or via appeal at a tribunal, rest on the four tests outlined in the Act s. 45(1):

Do the variances maintain the general intent and purpose of the Official Plan; do they maintain the general intent and purpose of the Zoning By-laws; are they desirable for the appropriate development or use of the land; and are they minor?

An Appeal against the decision of the COA is a Hearing “de novo” meaning that the entire application must be considered anew. The burden is on the Applicant to prove its case, even where the COA has previously authorized the requested variances. The Applicant is required to satisfy the TLAB that its application satisfies the four tests mandated by s. 45(1) of the Act.

It is the Applicant’s responsibility to put before the Tribunal the evidence necessary to enable the Tribunal to make findings required by the Act. In this matter, the Applicant has failed to address these four tests in any aspect. I therefore have no basis to find that the variances meet any of the four tests outlined in the Act. The Applicant has not satisfied the burden upon which the TLAB could reasonably authorize the requested variances in any respect.

Mr. Davidson provided Authorities in the form of three cases in support of the dismissal of the application and the setting aside of the COA decision. The cases cited are as follows:

- 1744656 Ontario Inc. v. Toronto (City) 2015 O.M.B.D. No. 436
- Ding v. Toronto (City) 2015 O.M.B.D. No. 451
- Lofti v. Toronto (City) 2015 O.M.B.D. No. 1224

All of the cited cases support the position of the City in this matter, and I concur that the Applicant has failed to provide the evidentiary basis for a finding in their favour.

## **DECISION AND ORDER**

The Appeal is allowed, and the decision of the Committee of Adjustment issued June 23, 2020, for the Case File Number referenced above is set aside.



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Ana Bassios  
Panel Chair, Toronto Local Appeal Body