

DECISION AND ORDER

Decision Issue Date Friday, November 05, 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): ROBERT LESLIE DICK

Applicant(s): DREW LASZLO ARCHITECT INC

Property Address/Description: 92 MONA DR

Committee of Adjustment File

Number(s): 20 118922 NNY 08 MV (A0122/20NY)

TLAB Case File Number(s): 20 174114 S45 08 TLAB

Hearing date: March 17, 2021

DECISION DELIVERED BY S. TALUKDER

REGISTERED PARTIES AND PARTICIPANTS

APPLICANT	DREW LASZLO ARCHITECT INC.
APPELLANT	ROBERT LESLIE DICK
APPELLANT'S LEGAL REP.	AMBER STEWART
PARTY	PETER SIMON
PARTY'S LEGAL REP.	JENNIFER EVOLA
PARTY	CARRIE SIMON
PARTY'S LEGAL REP.	JENNIFER EVOLA
PARTY	JAMES HUBBARD

PARTY'S LEGAL REP.

LEE ENGLISH

EXPERT WITNESS

FRANCO ROMANO

INTRODUCTION

1. The owner, Robert Leslie Dick, applied to the Committee of Adjustment (CoA) for approval of variances to construct a new house on his property at 92 Mona Drive (Subject Property). The Subject Property is located west of Avenue Road and south of Lawrence Avenue West.
2. The CoA refused the owner's application. The owner appealed the CoA decision and the matter is now before the TLAB. The other Parties to the appeal are Peter Simon and Carrie Simon, owners of 353 Glencairn Avenue, which is the abutting property to the north of the Subject Property, and James Hubbard and Jennifer Hubbard, who are owners of 357 Glencairn Avenue, which is also an abutting property to the north of the Subject Property.
3. The owner and the Parties entered into a settlement and filed Minutes of Settlement with the TLAB on March 15, 2021. As a result of the settlement, the Appellant filed a revised list of variances and conditions.

MATTERS IN ISSUE

4. The Applicant requests the approval of the variances listed below and in Schedule A to this decision:

Variances before CoA	Variances before the TLAB
<p>1. Chapter 10.20.40.10.(1)(A), By-law 569-2013 The permitted maximum height of the building is 10.0m.</p> <p>The proposed height of the building is 10.25m.</p>	<p>1. Chapter 10.20.40.10.(I)(A), By-law 569-2013 The permitted maximum height of the building is 10.0m.</p> <p>The proposed height of the building is 10.25m.</p>
<p>2. Chapter 10.20.40.40.(1)(A), By-law 569-2013 The maximum permitted floor space index is 0.35 times the area of the lot.</p>	<p>2. Chapter 10.20.40.40.(I)(A), By-law 569-2013 The maximum permitted floor space index is 0.35 times the area of the lot.</p>

<p>The proposed floor space index is 0.80 times the area of the lot.</p>	<p>The proposed floor space index is 0.72 times the area of the lot.</p>
<p>3. Chapter 10.20.40.70.(2)(B), By-law 569-2013 The minimum required rear yard setback is 7.62m.</p> <p>The proposed rear yard setback is 7.17m.</p>	<p>N/A</p>
<p>4. Chapter 10.20.40.70.(3)(D), By-law 569-2013 The minimum required side yard setback is 1.5m.</p> <p>The proposed north side yard setback is 1.22m.</p>	<p>N/A</p>
<p>5. Chapter 10.20.40.70.(3)(D), By-law 569-2013 The minimum required side yard setback is 1.5m.</p> <p>The proposed south side yard setback is 1.22m.</p>	<p>3. Chapter 10.20.40.70.(3)(0), By-law 569-2013 The minimum required side yard setback is 1.5m.</p> <p>The proposed south side yard setback is 1.22m.</p>
<p>6. Chapter 0.5.40.50.(2), By-law 569-2013 A platform without main walls, such as a deck, attached to or within 0.3m of a building, must comply with the required minimum building setback of 1.5m.</p> <p>The proposed rear deck is 1.22m from the north lot line.</p>	<p>N/A</p>

5. The Parties also agreed on proposed conditions, which are set out in Schedule B. The revised Site Plans and Elevations are attached to this decision as Schedule C.
6. The TLAB strongly encourages the settlement of outstanding matters in dispute pursuant to Rule 19 of the TLAB's Rules of Practice and Procedure. Nevertheless, the approval of the variances and any conditions arising out of a

settlement must still satisfy the statutory tests for variances in s. 45(1) of the *Planning Act (Act)*. Therefore, at issue is whether these variances should be approved subject to the conditions set out in Schedule B.

JURISDICTION

Provincial Policy – S. 3

7. A decision of the 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)

8. 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, ANALYSIS, FINDINGS, REASONS

9. S. 45(18.1.1) of the *Act* allows me to find that no notice is required when a change in plans is submitted to TLAB provided I find that the change is a minor one. The settlement has resulted in the reduction of the number of variances from six before the CoA to three. These three variances are for FSI, the maximum building height and south side yard setback. The requested variance for FSI has decreased. As there are fewer variances and changes, I am satisfied that notice is not required.
10. Mr. Franco Romano, a registered Professional Planner, was the sole witness in the settlement hearing. He was qualified to provide expert opinion evidence in the area of land use planning.
11. Mr Romano testified that the Subject Property is the first lot on the west side of Mona Drive and south of Glencairn Avenue. The other Parties' properties abut the north side of the Subject Property, such that the rear of these properties face the north side yard of the Subject Property.
12. Mr. Romano stated that the amendments to the plan resulting from the settlement discussion are as follows:


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- a. The length of the building was decreased, which resulted in the removal of the back-yard setback.
 - b. The decrease in length has also resulted in a lower FSI, with the submitted plans showing an FSI of 0.715, which has been rounded up to 0.72.
 - c. The north yard side yard increased to 1.52 m for the front portion of the dwelling and the rear portion increased to 2.32 m, which also resulted in a reduction of FSI. As such, the north side yard setback is no longer required.
 - d. At the rear, the second floor balcony is removed and replaced with a Juliette balcony railing.
 - e. Frosted glass for the second storey windows on the north wall to address the Parties' privacy concerns.
 - f. The Appellant proposes to remove the boundary unregulated trees that are shared with 357 Glencarin Avenue. As part of the settlement, the Appellant will replace these trees with a row of European beech trees (or similar species), which will provide additional privacy. The Appellant will also plant shrubs near these beech trees.
 - g. A privacy screen will be installed along the north side of the rear deck.
13. The requirements for tree/shrub planting, privacy screen and frosted windows are incorporated as proposed conditions for approval of the variances (as found in Schedule B).
14. Mr. Romano provided detailed opinion evidence on the proposal, the neighbourhood, and whether the requested variances meet the four statutory tests. Mr. Romano also provided neighbourhood maps and photos of houses in the neighbourhood. His evidence was uncontroverted and I have accepted his evidence, which is summarized below.
15. Mr. Romano testified that the Neighbourhood Study Area, referred to as the Geographic Neighbourhood, in Mr. Romano's witness statement, is bounded by Avenue Road to the east, Coldstream Avenue to the north, Glen Rush Blvd and Alexandria Wood to the west, and Lytton Blvd. Mr. Romano noted that this neighbourhood is mature, with dwellings occupying the front center or central portion of the lot depending on the lot depth. The neighbourhood is characterized by low scale and low-rise residential buildings, with modest to large lot sizes. The lots are mostly rectangular and some with irregular shape as a result of curvilinear and angled local road and street patterns. He noted that the integral garages are common in the neighbourhood.
16. Mr. Romano noted the following with respect to the variances requested:

- a. Building height: the proposed building is a two storey house with an integral garage, which fits within the geographic neighbourhood comprising of 1 to 3 storey houses. The massing of the building is orientated towards the front and at the central portion of the lot, which is similar to the designs existing in the neighbourhood. The proposed roof is a modern version of the hipped roof design articulated to provide visual massing at the front. Behind the front façade, the roof slopes away towards the side, with the middle portion of the building having a lower height than the requested variance. This height variance allows for architectural proportionality of the building without creating excessive massing and results in a low profile two storey building which he opined 'fits' within the existing physical context of the neighbourhood.
 - b. FSI: the revised proposal for FSI of 0.72 times the area of the lot is similar to what exists in the neighbourhood and in the immediate neighbourhood context. For example, the CoA approved an FSI of 0.68 x for the dwelling at 90 Mona Drive. Mr. Romano used a GFA/lot Area range (as proxy for FSI), to emphasize that the lots in the immediate and adjacent context along Mona Drive have a range of FSIs between 0.23 and 0.97. As a result, he opined that the neighbourhood can accommodate for higher density dwellings. The proposed dwelling, with the FSI variance requested, will respect and reinforce the existing physical characteristics in the neighbourhood.
 - c. Side yard setback: the proposed south side yard setback is at 1.22 m near the front of the dwelling and widens out to 2.59 m at the rear of the dwelling. The north side yard setback is at 1.52 m at the front of the dwelling with a 2.31 m setback at the rear. The deck at the rear does not extend to the whole rear wall of the building but is set back further. This side yard set back of 1.22 m is common in the geographic neighbourhood which has lots with tight to modest side yard setbacks. In addition, within the immediate context, there are a significant number (33.3%) of properties with side yard setback at less than 1.2 m. Mr. Romano noted that the proposed stepped back side yard setback will allow for access and maintenance of the property through the side yards as well as provide adequate separation between the adjacent properties.
17. Based on Mr. Romano's detailed oral testimony and his written witness statement, which was uncontroverted, I agree that the proposal is for a modest two storey dwelling and the variances requested satisfy the tests for general intent and purpose of the OP and the zoning by-laws. Further, the variances requested are minor and the inclusion of privacy screen, frosted windows, and the trees and shrubs addresses the privacy concerns of the abutting neighbours. This dwelling will accommodate a higher density, without being out of context in its neighbourhood. I find that this proposed dwelling is a desirable development in this neighbourhood.

DECISION AND ORDER

18. The appeal is allowed. The variances in Schedule A are approved and are subject to the conditions in Schedule B.

X 

Shaheynoor Talukder
Panel Chair, Toronto Local Appeal Body
Signed by: Shaheynoor Talukder

**Schedule A
Variances**

1. Chapter 10.20.40.10.(I)(A), By-law 569-2013

The permitted maximum height of the building is 10.0m.

The proposed height of the building is 10.25m.

2. Chapter 10.20.40.40.(I)(A), By-law 569-2013

The maximum permitted floor space index is 0.35 times the area of the lot.

The proposed floor space index is 0.72 times the area of the lot.

3. Chapter 10.20.40.70.(3)(0), By-law 569-2013

The minimum required side yard setback is 1.5m.

The proposed south side yard setback is 1.22m.

**Schedule B
Conditions**

1. The proposed dwelling shall be constructed substantially in accordance with the Site Plan, Front Elevation, Rear Elevation, Side (South) Elevation, and Side (North) Elevation, all dated January 22, 2021, and prepared by Drew Laszlo Architect (attached as Schedule C).
2. A Juliette Balcony railing shall be installed above the roof of the rear one-storey portion of the dwelling, as shown on the second floor of the Rear Elevation.
3. The north-facing windows on the second storey of the Side (North) Elevation shall be installed with permanent frosted or sand-blasted glazing.
4. A minimum 1.8 m high privacy screen shall be installed along the north side of the rear deck.
5. The Owner shall replace in equal number any trees that are removed from 357 Glencairn and that straddle the property line with 357 Glencairn ("Replacement Trees"). The Replacement Trees shall be approximately fifteen (15) feet in height at the time of planting and will be European Beech trees or similar species. The Replacement Trees will be planted in the north side yard of the Subject Property, generally in the area of the location of the Boundary Trees, as shown on the Site Plan.
6. The Owner shall plant a row of shrubs ("Shrubs") in the north side yard of the Subject Property, generally adjacent to the Replacement Trees, as shown on the Site Plan. The species selected shall be approximately five (5) feet (1.5 m) in height at the time of planting.
7. The Replacement Trees and Shrubs shall be installed in the first planting season after construction of the new dwelling is substantially complete.
8. The Owner shall apply for a permit to injure or remove City-owned and Privately owned tree(s), pursuant to Chapter 813 of the Municipal Code, Articles II and III.