

# DECISION AND ORDER

**Decision Issue Date** Thursday, January 20, 2022

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): ANAHID HOVSEPIAN

Applicant(s): KELLY YANG JIN ARCHITECT

Property Address/Description: 12 KING MAPLE PL

Committee of Adjustment File

Number(s): 21 146749 NNY 17 MV

TLAB Case File Number(s): 21 177721 S45 17 TLAB

**Hearing date: November 25, 2021**

**Deadline Date for Closing Submissions/Undertakings: n/a**

**DECISION DELIVERED BY TLAB VICE-CHAIR A. BASSIOS**

## REGISTERED PARTIES

APPELLANT ANAHID HOVSEPIAN

APPELLANT'S LEGAL REP. FRANK SHOSTACK (DEVRY SMITH FRANK LLP)

APPLICANT KELLY YANG JIN ARCHITECT

PARTY YANJING QU

PARTY'S LEGAL REP CHRISTINA KAPELOS (RITCHIE KETCHESON)

EXPERT WITNESS CHRISTOPHER MARCHESE

## **INTRODUCTION**

This is an Appeal of the North York panel of the City of Toronto (City) Committee of Adjustment's (COA) approval, with a condition, of an application for variances for the property known as 12 King Maple Place (subject property). The purpose of the application is to construct a new detached dwelling with an attached garage. The subject property is located in the Bayview Village neighbourhood of the former City of North York. It is designated *Neighbourhoods* in the City Official Plan (OP) and zoned RD (f21.0; a0975) (x70) under Zoning By-law 569-2013, and R2 under the former City of North York Zoning By-law 438-86 (By-laws).

In attendance at the Hearing were:

- Christina Kapelos, legal counsel for the Owner, and Expert Witness Chris Marchese (Land Use Planning);
- Frank Shostack, legal counsel for the Appellant, and Monica Hovsepan, Witness and representative for Anahid Hovsepan.

Mr. Shostack, legal counsel for the Appellant, advised that his wife is the owner of 10 King Maple Pl, which is abuts the subject property to the north. He undertook that he would not make any representations of 10 King Maple Place.

## **BACKGROUND**

The Applicant proposes to demolish the existing detached dwelling and construct a new two-storey single detached dwelling.

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

#### **1. Chapter 900.3.10(70), By-law No. 569-2013**

The minimum front yard setback is 9m.

The proposed front yard setback is 8.03m.

#### **2. Chapter 900.3.10(70), By-law No. 569-2013**

The minimum side yard setback is 1.8m on each side for a one- storey building, plus 0.6m for each additional storey or portion thereof.

The proposed North side yard setback is 1.4m.

#### **3. Chapter 10.20.40.70.(2), By-law No. 569-2013**

The required minimum rear yard setback is 10.37m.

The proposed rear yard setback is 9.6m.

#### **4. Chapter 10.5.40.60.(3), By-law No. 569-2013**

Exterior stairs providing pedestrian access to a building or structure may encroach into a required building setback if the stairs are no wider than 2.0m.

The proposed stairs are 2.62m wide.

**5. Section 11.2.6, By-law No. 7625**

The maximum permitted height is 8.8m.

The proposed building height is 10.58m.

**6. Section 6(30)a, By-law No. 7625**

The maximum finished first floor height is 1.5m.

The proposed finished first floor height is 1.58m.

The variances were approved subject to the condition that the front, side and rear yard setbacks be developed substantially in accordance with the site plan drawing attached to the decision.

## **MATTERS IN ISSUE**

The central matter at issue was the proposed height of the new house, with the associated issues of overlook, privacy, and shadowing.

As this is a Hearing '*de novo*' i.e., the application is being heard anew, the burden remains with the Applicant to satisfy the TLAB that all of the requested variances meet the four tests of s. 45(1) of the *Planning Act*.

## **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**

A summary of evidence is presented here for the purpose of providing some context for the following sections of this Decision. All of the evidence and testimony in this matter has been carefully reviewed and the omission of any point of evidence in this summary should not be interpreted to mean that it was not fully considered, but rather that the

recitation of it is not material to the threads of reasoning that will be outlined in the *Analysis, Findings and Reasonings* section below.

## MARCHESE

Mr. Marchese's testimony was based upon his Expert Witness Statement (Exhibit 2). He described the neighbourhood context as large lots with a variety of dwelling sizes; the originally built dwellings are mostly one storey in height whereas the redeveloped dwellings appear to be two storeys in height.

Photo Study Map

12 King Maple Place, North York



Figure 1: Exhibit 1, page 400

I was advised that a revised Zoning Notice had been issued (Exhibit 3) which corrected an error in the previous Zoning Notice. The previous zoning review had identified the permitted height as 8m. The correct permitted height is 8.8m with a maximum of two storeys. The proposal has not changed from that which was approved by the COA.

## MONICA HOVSEPIAN

Ms. Hovsepian is the daughter of the Appellant/Owner of the abutting property on the south side. She stated that she was the Witness on behalf of her mother in this matter.

Ms. Hovsepian's primary concern was overlook and shadowing from the height of the proposed building. Photographic evidence was provided to address the views to and from the subject property and the Appellant's property. She provided fulsome photographic evidence (Exhibit 4) showing the relationship between the existing houses on the King Maple PI cul de sac.

In the course of Ms. Hovsepan's testimony, she raised the issue of an application the Applicant made to remove the cedar hedge between the two properties. The TLAB and the Applicant had not previously been made aware of this issue prior to the Hearing. Ms. Hovsepan had submitted a Form 12 (Witness Statement) in accordance with the TLAB's Rules of Practice and Procedure, but had not included a Witness Statement with it. The retention of the cedar hedge was important to Ms. Hovsepan in light of her concerns regarding overlook and privacy.

## **ANALYSIS, FINDINGS, REASONS**

### **GENERAL INTENT AND PURPOSE OF THE OFFICIAL PLAN**

Mr. Marchese provided his opinion that the proposal maintains the general intent and purpose of the Official Plan. His analysis can be found in his Expert Witness Statement (Exhibit 2). I accept his evidence and concur that the proposal meets this first test.

A discussion of OP Policy 4.1.5 of the Official Plan benefits this decision as it is one of the key policies which guides development in Neighbourhoods. It mandates that development in neighbourhoods will respect and reinforce the existing physical character of the neighbourhood and it cites specific criteria which are to be met.

*4.1.5 Development in established Neighbourhoods will respect and reinforce the existing physical character of each geographic neighbourhood, including in particular:*

- a) patterns of streets, blocks and lanes, parks and public building sites;*
- b) prevailing size and configuration of lots;*
- c) prevailing heights, massing, scale, density and dwelling type of nearby residential properties;*
- d) prevailing building type(s);*
- e) prevailing location, design and elevations relative to the grade of driveways and garages;*
- f) prevailing setbacks of buildings from the street or streets;*
- g) prevailing patterns of rear and side yard setbacks and landscaped open space;*
- h) continuation of special landscape or built-form features that contribute to the unique physical character of the geographic neighbourhood; and*
- i) conservation of heritage buildings, structures and landscapes.*

Of the criteria listed, 4.1.5 c) warrants further discussion in this Decision as the primary objection of the Appellant was the proposed height.

Of note in my consideration, is that the proposal does not require a variance from Toronto's more recent, harmonized Zoning By-law (569-2013). Some of the height provisions of By-law 569-2013 remained under appeal at the time of this application for variances, and therefore in this case, the former North York By-law No. 7625 continues to apply.

The high-level purpose of the harmonized Zoning By-law is to implement Official Plan policy. In other words, the By-law is intended to reflect the intent of the Official Plan. Since the proposed variance for height falls within the scope of the harmonized By-law as adopted by Council, I find that the proposal, with respect to height, maintains the general intent and purpose of the Official Plan.

The proposed variance in the context of the second test, that of maintaining the general intent and purpose of the Zoning By-law(s), will be addressed in the next section of this Decision.

I accept Mr. Marchese's evidence that the heights, massing, scale and dwelling type of nearby properties are generally similar to those in the immediate context and the broader neighbourhood and that the proposal respects the planned context for the neighbourhood. I find that the proposal meets the criteria set out in OP Policy 4.1.5 and I therefore find that the proposal respects and reinforces the existing physical character of the geographic neighbourhood. I find that the application for variances maintains the general intent and purpose of the Official Plan.

#### **GENERAL INTENT AND PURPOSE OF THE ZONING BY-LAW(S)**

- Variance 1 – Minimum Front Yard Setback

Mr. Marchese's evidence was that the intent of the minimum required front yard setback performance standard is to ensure a consistent streetscape as well as allowing adequate front yard space for vehicular access and front yard landscaping.

The curvature of King Maple PI, being a cul de sac, is pronounced and therefore the front yard setback requirement is similarly angled.



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- Setback line arrowed..

- Variance 2 – Side Yard Setback

I accept Mr. Marchese's evidence that the side yard setback maintains the general intent and purpose of the Zoning By-law. I note that the variance is for a relatively small corner of the proposed garage and that there is a similar side yard penetration on the other side of the common lot line (on the north side of the subject property).

- Variance 3 – Rear Yard Setback

The permitted minimum rear yard setback is angled to reflect the rear lot line, which is not perpendicular to any of the other lot lines. The positioning of the proposed building implicates the rear yard setback for a small area. I was advised that the encroachment into the permitted rear yard setback is only for the ground floor and consists of a 1.43m<sup>2</sup> portion of the kitchen area “bump out”.

The objection of the Appellant to the rear yard setback centres on the privacy and overlook implications of a taller building and the increased building depth. I find that the rear yard setback variance as described does not affect overlook and privacy beyond what is permissible as of right.

The Appellant would prefer that the proposal be constrained further in its building length and depth. The Zoning By-law confers, as of right, permission to build within the minimum setbacks as set out in the By-law. No variances are required for building length or depth. The mandate of the TLAB in this matter is confined to the adjudication of the requested variances and I shall not constrain a proposal in a manner that would be available, as of right, to any other applicant in the vicinity.

Nonetheless, to ensure that the proposal is built as described by the evidence and drawings submitted as justification, I shall grant any approvals subject to the condition that the building be constructed substantially in accordance with the site plan submitted.

I find that the proposed rear yard variance maintains the intent and purpose of the Zoning By-law.

- Variance 4 – Exterior Stairs

This variance was not contested at the Hearing.

On this relatively large lot and wide frontage, the proposed wider stairs will not result in massing that is out of balance.

I find that the variance for the exterior stairs to maintain the general intent and purpose of the Zoning By-law.

- Variance 5 and 6 (North York By-law 7625) maximum height and maximum first floor height.

The requested variances for maximum height and maximum first floor height are required to the former North York Zoning By-law 7625, as the provisions of the harmonized City of Toronto Zoning By-law (569-2013) were under appeal at the time that the application was filed. The proposed heights do not require variances to the harmonized By-law as they are within the prescribed maximums.

What complicates the consideration of height in this matter is that the two By-laws measure height from a different starting point. The harmonized By-law measures the height from an established grade which is defined as the average elevation of the ground measured at the two points where the projections of the required minimum front yard setback line is 0.01m past each side lot line. The former North York By-law defines established grade from the elevation of the centre line of the street at the mid-point of the front lot line.

Variance 5 – Maximum Height



**Decision of Toronto Local Appeal Body Panel Member: A. BASSIOS**  
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Mr. Marchese's evidence was that the intent and purpose of the building height regulation is to "ensure the massing of the building is consistent between dwellings throughout the neighbourhood... as well as to address privacy and shadowing issues".

Ms. Hovsepien's primary concern expressed before the TLAB was one of privacy and overlook from the larger and taller building proposed on the subject property.

Ms. Hovsepien referenced photographs which she had annotated to show views and comparative heights. The dimensions, comparative scale and perspectives of the photographs included in the Disclosure of the Appellant are as photographed and drawn by a lay person. While they do not provide a basis for accurate depiction of comparative height and perspective, I appreciate that they provide a clear record of Ms. Hovsepien's concerns.

It was Mr. Marchese's evidence that the proposed roof design will appear as a sloped roof from the street.

Mr. Marchese advised that there had been multiple examples of height variances granted under the former North York By-law throughout the geographic Neighbourhood. Reference to the Neighbourhood Research Request Table (Exhibit 1, Tab 4-3) shows, however, that perhaps only one of the variances granted was as high as what is proposed for this application.

Mr. Marchese's evidence was that because there is no variance required under the harmonized By-law, the proposed height is in keeping with the planned context and the resulting massing of the proposed dwelling will have no further impact than what is already contemplated by the Zoning By-law.

It is reasonable for Mr. Marchese to look to the future in considering the proposal. The notion of "planned context", however, is a feature of the Official Plan which looks to set policy for future growth. The Zoning By-law is a more definite and inflexible statement of intent and does not accommodate in this way for a future set of regulations.

The height provisions of the harmonized Zoning By-law were not in force at the time of application, which is the sole reason the variance to the former North York By-law is required. The narrow scope of the second test is whether the variance meets the general intent and purpose of in-force By-laws, which in the case of the height variance, includes that of the former North York.

Should the Appeal of the harmonized Zoning By-law be resolved before the Ontario Land Tribunal, and the maximum height requirement be finalized at 10m in this neighbourhood, the need for a variance would fall away and the Applicant would be permitted to construct a house at the proposed height as-of-right.

Recognizing Mr. Marchese's statement that the intent and purpose of the height provision is to ensure the massing is consistent between dwellings, I have not been provided the evidence necessary to conclude that the height of the proposal is consistent with the height or massing of the nearby houses of the neighbourhood.

I find that the proposed height does not maintain the general intent and purpose of the former North York By-law 7625. A variance is not required under the harmonized City of Toronto By-law (569-2013).

#### Variance 6 – Maximum First Floor Height

Mr. Marchese's evidence was that the intent of the By-law is to create a compatible front entrance and create a consistent streetscape.

The requested variance is for 8cm and I find that the variance would not create a discernable difference in the context of the large lots and wide frontages on King Maple Pl.

I find that the requested variance for finished first floor height to maintain the general intent and purpose of the Zoning By-law.

#### CONCLUSION – GENERAL INTENT AND PURPOSE OF THE ZONING BY-LAWS

With the exception of the requested maximum height variance, I find that the remaining variances requested, individually and cumulatively, maintain the general intent and purpose of the Zoning By-law(s).

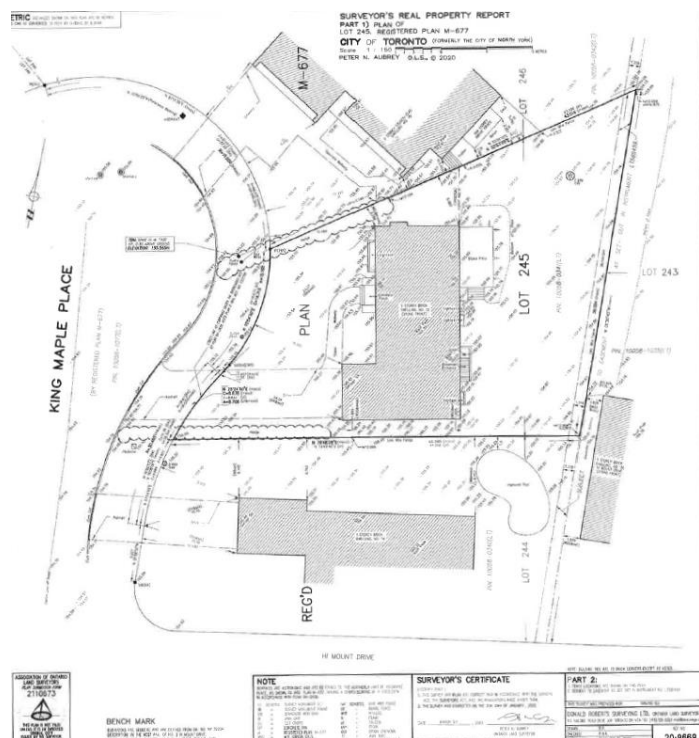
#### DESIRABLE FOR THE DEVELOPMENT OF THE LAND

I find on the basis of the evidence submitted by the Applicant, that the requested variances are desirable for the development of the land, with the exception of the requested height variance which I have found does not maintain the intent and purpose of the former North York Zoning By-law 7625.

#### MINOR

The test for "minor" is not that there be no impact, and it is not only evaluated on the basis of size or degree, but rather whether the imputed impact rises to the level of being an unacceptable adverse impact of a planning nature.

Mr. Shostack was clear that his client's objection to the height of the proposal was based on the adverse impact he asserted it would have on his client's property, particularly on her yard area (side yard/backyard). He asserted that the proposed house would completely block sun for most of the day including onto the area where a pool is located.



The survey submitted by the Applicant (above) contains the north marker and depicts the position of the house at 14 King Maple Pl, to the south, as well as the subject property. There can be no question that the subject property is located to the north of the Appellant's property. As was established by Ms. Kapelos, shadows are cast from south to north in all parts of the globe that are located north of the Tropic of Cancer. Sun shadow will only be cast from the Appellant's property towards the Applicant's, not the other way round.

Mr. Shostack urged me to consider the impact of the proposal on his client's enjoyment of her property. The measure of this test of "minor" is not that there be no impact, but that there be no undue adverse impact from the granting of the variances. Both of the applicable By-laws permit a two-storey home as of right on the subject property and development in this form is to be expected with the accompanying degree of overlook that is characteristic of an urban or suburban neighbourhood.

I find that the proposed variances qualify as minor.

## ADDITIONAL COMMENTS

### Cedar Hedge

The Appellant received notice in July 2021 from the Urban Forestry division at the City of Toronto of an application under the Ravine and Natural Feature Protection By-law to remove 2m of the cedar hedge that is located on the boundary between 12 and 14 King Maple Pl. I find it concerning that this hedge is not depicted on any of the drawings

submitted as part of this application, especially in light of the Appellant's concern regarding privacy.

I am, at the same time, wary of imposing a condition regarding preservation of the cedar hedge and preempting the Urban Forestry permit process as the issue was raised as without warning at the Hearing and the Applicant's counsel and Expert Witness were not afforded the opportunity to establish the fact and background on this issue.

On this issue, I would go as far as to suggest that retention of the cedar hedge would go some small way to mitigate the concerns of the Appellant and would be a positive gesture on the part of the Applicant.

## CONCLUSION

I have found that the requested variance for height does not maintain the general intent and purpose of the former North York Zoning By-law 7625. A finding that a key variance, such as the height variance in this case, does not meet the general intent and purpose of the By-law can in many cases mean that the proposal as a whole fails. In this matter, I find that the remaining variances, for setbacks, exterior stairs and maximum first floor height) can stand independently of the height variance.

The variances which are to be approved will be allowed subject to the condition that the building is constructed in substantial compliance with the site plan submitted as part of these proceedings.

## DECISION AND ORDER

The Appeal is allowed in part and the variances listed in Appendix A are authorized, subject to the condition contained therein.



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Ana Bassios  
Panel Chair, Toronto Local Appeal Body

## **APPENDIX A**

### **APPROVED VARIANCES AND CONDITIONS OF VARIANCE APPROVAL:**

**1. Chapter 900.3.10(70), By-law No. 569-2013**

The minimum front yard setback is 9m.

The front yard setback is 8.03m.

**2. Chapter 900.3.10(70), By-law No. 569-2013**

The minimum side yard setback is 1.8m on each side for a one- storey building, plus 0.6m for each additional storey or portion thereof.

The North side yard setback is 1.4m.

**3. Chapter 10.20.40.70.(2), By-law No. 569-2013**

The required minimum rear yard setback is 10.37m.

The rear yard setback is 9.6m.

**4. Chapter 10.5.40.60.(3), By-law No. 569-2013**

Exterior stairs providing pedestrian access to a building or structure may encroach into a required building setback if the stairs are no wider than 2.0m.

The stairs are 2.62m wide.

**5. Section 6(30)a, By-law No. 7625**

The maximum finished first floor height is 1.5m.

The finished first floor height is 1.58m.

### **CONDITION:**

Any proposed dwelling that relies on the variances approved by this Decision shall be constructed substantially in accordance with the Site Plan drawing (A1-1) prepared by Kelly Yang Jin Architect and dated March 2020, attached hereto.

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