

DECISION AND ORDER

Decision Issue Date Friday, August 20, 2021

PROCEEDING COMMENCED UNDER Section 45(12), subsection 45(1) of the
Planning Act, R.S.O. 1990, c. P.13, as amended

Appellant(s): JOSE DE CASTRO

Applicant(s): BUILDING PERMIT CONSULTANTS

Property Address/Description: 4 EVERGLADES DR

Committee of Adjustment File

Number(s): 20 128873 WET 05 MV (A0186/20EYK)

TLAB Case File Number(s): 20 200997 S45 05 TLAB

Hearing date: Thursday, May 20, 2021

DECISION DELIVERED BY C. KILBY

REGISTERED PARTIES AND PARTICIPANTS

Applicant	BUILDING PERMIT CONSULTANTS
Appellant/Owner	JOSE DE CASTRO
Appellant's Legal Rep.	JOSEPH ROMERO
Participant	ALFRED FARRUGIA
Participant	ALICE FARRUGIA
Participant	JOSEPH SPATOLA
Participant	JULIE SPATOLA

INTRODUCTION

This is an appeal to the Toronto Local Appeal Body (**TLAB**) regarding an application to construct a second storey addition above an existing detached garage at the rear of the property known as 4 Everglades Drive (**Subject Property**). The City of Toronto (**City**) Committee of Adjustment (**COA**), Etobicoke York Panel refused the proposal in a decision mailed on September 23, 2020. Jose De Castro (**Owner**) appealed the COA decision.

The TLAB set a 'virtual' Hearing date of May 20, 2021 and the sitting was convened by way of the City's WebEx platform. In attendance in support of the Appeal were Mr. De Castro and his Representative Joseph Romero. Opposing the Appeal was a neighbour, Emilia Barbosa, who was not registered as a Party or Participant. The City did not participate in this Appeal and there were no other Parties or Participants in attendance.

I advised that as per City Council's direction, I had visited the site and walked the neighbourhood prior to the Hearing. I also advised that a Hearing before the TLAB is a Hearing *de novo* and all evidence in support of the Application would have to be presented anew. I advised that I had reviewed the pre-filed materials in the Appeal but that the evidence to be heard and referenced is of importance.

BACKGROUND

The Applicant seeks four variances from the City harmonized Zoning By-law 569-2013 (**Zoning By-law**). The variances relate to lot coverage and area, floor area, and height of the ancillary detached garage located at the rear of the Subject Property. The proposed increase in the area and height of the garage is the result of a proposed second storey to accommodate additional storage space. Mr. Romero confirmed during the Hearing that no revisions had been made to the proposal following the COA hearing, and that the July 29, 2020 drawings and zoning waiver were current.

MATTERS IN ISSUE

At issue in this Appeal is whether the proposed variances meet the four statutory tests set out in section 45(1) of the *Planning Act* (**Act**). The proposed variances are as follows:

1. Section 10.80.30.40.(1)(A), By-law 569-2013

The maximum permitted lot coverage is 30% of the lot area (97.12 m²).

The altered ancillary building (detached garage) and existing dwelling will cover 40.18% of the lot area (130.17 m²).

2. Section 10.5.60.70.(1), By-law 569-2013

The total area on a lot covered by ancillary buildings or structures may not exceed 10% of the lot area (32.37 m²).

The altered ancillary building (detached garage) will cover 16.97% of the lot area (54.96 m²).

3. Section 10.5.60.50.(2)(B), By-law 569-2013

The maximum permitted floor area of all ancillary buildings or structures on a lot is 40 m².

The altered ancillary building (detached garage) will have a floor area of 54.96 m².

4. Section 10.5.60.40.(2)(B), By-law 569-2013

The maximum permitted height of an ancillary building or structure is 4 m.

The altered ancillary building (detached garage) will have a height of 5.5 m.

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-law, 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

The following exhibits were entered into evidence during the Hearing:

Exhibit 1 – Drawings/Plans dated July 29, 2020

Exhibit 2 – Zoning Waiver dated July 29, 2020

Exhibit 3 – Letters of Support from Neighbours

Exhibit 4 – Planning Staff Report to the COA dated August 18, 2020

Exhibit 5 – Photograph

Exhibit 6 – Survey with hand drawn annotations by Mr. Romero

Exhibit 7 – Hand drawn diagram by Mr. Romero

Mr. Romero gave evidence in support of the proposal. Although he is an architect by training, Mr. Romero did not seek to be qualified as an Expert Witness.

Prior to the COA hearing, the Applicant originally proposed a taller second storey addition to the existing garage, with a separated second floor and a flat roof. Following consultations with Community Planning staff, however, the Applicant revised the plans to reduce the height of the proposed second storey, remove the second floor, and change the roof style to be more in keeping with that of other ancillary structures in the neighbourhood (see Exhibit 4.)

Mr. Romero asserted that the proposal would not alter the streetscape given the location of the garage at the rear of the property. He confirmed that the proposed additional space would not be used as residential space, and that the Owner accepted all conditions proposed by City Planning staff recommended in their Report to the COA at Exhibit 4.

Regarding the height variance, Mr. Romero characterized the proposed 1.5m increase in the height of the garage as being minor in his opinion, and a relatively small increase over the existing height of the garage. Mr. Romero tendered letters of support from neighbours on Everglades Drive and the surrounding neighbourhood (Exhibit 3). He indicated that the additional space will offer storage for the Owner, which he suggested is desirable. When asked whether there are other examples in the neighbourhood of two storey garages, Mr. Romero said there were not many, and no others similar to the proposal.

In terms of the other three variances at issue in this Appeal, Mr. Romero gave evidence that these variances were not related to or caused by the proposed addition. There was limited evidence as to how the remaining variances meet the four tests.

Ms. Barbosa did not elect Party or Participant status, however, I permitted her to speak to the Appeal as she is a neighbour of the Subject Property and her opposition

was not surprising to Mr. Romero. Ms. Barbosa was concerned about the impact the proposal would have on her privacy, given the windows proposed to be built in the additional storey of the garage. She was concerned that the Owner might later add a residential unit to the garage.

Both Mr. Romero and the Owner gave reply evidence that the garage would not be rented out as an apartment, as the additional space is intended for storage. In cross-examination Mr. Romero used visual aids to assert that the variances requested for the construction of the second storey addition to the garage would not result in any undue adverse impacts of overlook or privacy on Ms. Barbosa's property.

Ms. Barbosa gave evidence that the Owner previously constructed an addition to the side of the garage, close to the property line between her property and the Subject Property. I asked Mr. Romero whether that addition triggered the other variances identified by the City Planning staff and considered by the COA. Mr. Romero said it had not, and that he was unaware of a garage addition constructed before this proposal was made.

ANALYSIS, FINDINGS, REASONS

To succeed on this Appeal, the Applicant needs to establish that all of the variances, individually and cumulatively, meet the four tests set out in section 45(1) of the Act. The evidence presented is insufficient to meet this requirement.

The Appeal concerns four variances. Mr. Romero focused on the height variance as the only one relevant to the proposal. The Owner provided no evidence as to whether a prior addition to the garage gave rise to the lot area, lot coverage, and floor area variances, or whether they arise from the Application. There was almost no discussion of the reasons for these non-height variances.

Moreover, aside from a reference to the City Planning Report to the COA, the Owner provided insufficient evidence to support whether the variances for lot area, lot coverage, and floor area maintain the general intent and purpose of the Official Plan, how they maintain the general intent and purpose of the Zoning By-laws, whether they are desirable for the appropriate development or use of the land, or if they are minor. Therefore, I have no basis to find that the non-height variances meet the four tests.

With respect to the height variance, Mr. Romero focused on the small size of the variance and proposed use of the additional space as storage for the Owner. I find any evidence which Mr. Romero did offer to demonstrate how the proposal maintains the general intent and purpose of the Official Plan to be unconvincing. Although he asserted that the City Planning Report to the COA discusses this issue, I find that insufficient to demonstrate how the Application would respect and reinforce the existing physical character of the neighbourhood.

The Subject Property is in an area designated as *Neighbourhoods* by the Official Plan. Policy 4.1.5 of the Official Plan states that "development in established

Neighbourhoods will respect and reinforce the existing physical character of each geographic neighbourhood.” The Owner did not present a geographic neighbourhood study area as directed in Policy 4.1.5 of the Official Plan. When asked about examples in the neighbourhood of developments similar to the proposal, Mr. Romero confirmed that there are very few other two-storey garages in the neighbourhood. There was no photographic evidence of other garages in the area which might echo the modifications proposed in this Application.

Based on the evidence presented, I find that the variances requested and the Application to alter the existing ancillary garage proposed by the Owner does not respect and reinforce the existing physical character of the neighbourhood. Accordingly, I cannot find that the height variance meets the test of maintaining the general intent and purpose of the Official Plan.

The Act requires that the variances sought must meet all four tests set out in section 45(1). For the reasons above, I find that the variances do not meet the four tests and the Appeal must be dismissed.

DECISION AND ORDER

The Appeal is dismissed and the decision of the COA noted above and mailed on September 23, 2020 is final and binding.

X 

Christine Kilby
Panel Chair, Toronto Local Appeal Body