

DECISION AND ORDER

Decision Issue Date: Friday, August 13, 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): IRVING FOX

Applicant(s): DREW LASZLO ARCHITECT INC

Property Address/Description: 485 ATLAS AVE

Committee of Adjustment File

Number(s): 20 206391 STE 12 MV (A0920/20TEY)

TLAB Case File Number(s): 21 121872 S45 12 TLAB

Hearing date: June 23, 2021 AND August 3, 2021

Deadline Date for Closing Submissions/Undertakings:

DECISION DELIVERED BY S. MAKUCH

REGISTERED PARTIES AND PARTICIPANTS

Applicant	DREW LASZLO ARCHITECT INC
Owner	BELLA LEE FOX
Appellant	IRVING FOX
Appellant's Legal Rep.	ALLISON SPEIGEL
Party	ILDIKO HEGYI
Party's Legal Rep.	STELLA NUVA CORP (EKATERINA TROPYNINA)
Party	ROBERT-CRISTIAN MARIA
Expert Witness	TAE RYUCK
Witness	CATHERINE JUNG

INTRODUCTION

This is an appeal of a refusal of minor variances to construct a two-storey detached house with an integral garage, a front porch, a rear basement walkout and a rear first storey deck on the property known as 485 Atlas Ave, the subject property. The requested variances were as follows:

1. Chapter 10.5.40.50.(4)(C), By-law 569-2013

The level of the floor of a platform, such as a deck or balcony, located at or below the first storey of a residential building, may be no higher than 1.2 m above the ground at any point below the platform, except where the platform is attached to or within 0.3 m of a rear main wall, any part of the platform floor located 2.5 m or less from the rear main wall may be no higher than the level of the floor from which it gains access.

The portion of the platform located more than 2.5 m from the rear main wall of the building will be approximately 1.0 m higher than the permitted 1.2 m height.

2. Chapter 10.5.40.60.(1)(A)(i), By-law 569-2013

A platform without main walls, attached to or less than 0.3 m from a building, with a floor no higher than the first floor of the building above established grade may encroach into the required front yard setback 2.5 m if it is no closer to a side lot line than the required side yard setback; 1.2 m.

The covered porch will encroach 0.45 m into the required front yard setback and will be located 0.44 m from the north side lot line.

3. Chapter 10.80.40.70.(3), By-law 569-2013

The minimum required side yard setback is 1.2 m.

The detached house will be located 0.46 m from the north side lot line and 0.91 m from the south side lot line.

4. Chapter 10.5.40.60.(7), By-law 569-2013

Roof eaves may project a maximum of 0.9 m provided that they are no closer than 0.30 m to a lot line.

The roof eaves will project 0.3 m into the north side yard setback and will be located 0.16 m from the north side lot line.

5. Chapter 10.5.40.60.(3)(A)(iii), By-law 569-2013

Exterior stairs providing pedestrian access to a building or structure may encroach into a required building setback if the stairs are no closer to a lot line than 0.6 m.

The rear basement walkout will be located 0.46 m from the north side lot line.

BACKGROUND

The owners of the subject property appealed the refusal and there was only one party who participated in the hearing in opposition to the appeal, Ms. Ildiko Hegyi, the owner of the adjacent property to the north who gave evidence in opposition. Her son attended part of the hearing but did not participate. She called two witnesses: Ms. Tro-pynina, a civil engineer who is a friend and Ms. Jung, who is the City planner who wrote the planning report recommending refusal of the variances and who appeared under summons. The appellants called one witness, Mr. Ryuk a land use planner qualified to give expert opinion evidence on the planning merits of the appeal. A neighbour, Mr. Abecassiis gave evidence as an intervenor.

MATTERS IN ISSUE

There was really only one matter in issue although the matter of the height of the rear deck was referred to. That issue was the side yard setbacks and in particular the setback from the north property line which was shared with Ms. Hegyi. This issue came down to whether the two side yard setback variances should be granted. There was no dispute as to whether the building otherwise respected and reinforced the character of the area and met the four tests of the *Planning Act* and provincial requirements.

JURISDICTION

It is clear that the following provisions are applicable to my decision.

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

I allowed the evidence of Ms. Hegyi and Ms. Trapynina, although neither was qualified to give expert evidence. My conclusion on hearing all of the evidence was that on a factual basis there was not a great deal of disagreement. Moreover, the evidence I heard was confirmed by my visit to the site and the area. This is an eclectic area undergoing change as new homes are being constructed in it. The only issue, therefore, is whether a new house with narrower side yard setbacks, which thus permit an integral garage would be out of keeping with the character of the area.

Ms. Hegyi is more concerned that the setback will bring a taller than existing building closer to her property line than permitted and will cause problems of shadowing, melting snow, and privacy. Ms. Jung is concerned that all the properties on this particular block of Atlas, opposite a park, have a side yard driveway and this proposal will be out of keeping with that pattern. Her report to the Committee of Adjustment stated:

“The character of Atlas Avenue includes dwellings which are well-spaced apart. The proposed dwelling will negatively impact the character of Atlas Avenue. The proposed dwelling with reduced side yard setbacks on both sides does not maintain the intent of the Zoning By-law and the Official Plan, is not minor in nature, and is not desirable for the appropriate development or use of the land.” Ms. Tropykina's evidence supported this opinion.

Mr. Ryuk's evidence which is based on the broader neighbourhood points out examples of new construction with reduced side yards and integral garages. He noted that not all dwellings on Atlas Ave. have such setbacks and side yard driveways. There are numerous new dwellings in the areas with reduced side yards.

ANALYSIS, FINDINGS, REASONS

As a result of my visit to the area I agree with Mr. Ryuk. There are numerous new dwellings with reduced side yards and integral garages which make up the character of this eclectic area. The existence of older dwellings with side yard driveways on one curved of Atlas Ave. does not preclude the placement of a new dwelling without such a driveway. Indeed, Ms. Jung agrees with that as she was prepared to approve variances for a new dwelling on the subject property with reduced side yards and no side yard driveway. Moreover, a lesser south side set back than proposed would be acceptable to Ms. Jung but would not satisfy Ms. Hegyi.

Moreover, the concerns of Ms. Hedyi are unfounded as there is a driveway between her dwelling and her south property line. There is no real issue respecting privacy, over-shadowing and snow melting on her dwelling. In addition, the granting of this appeal will not adversely impact on future construction of a dwelling on her property.

Mr. Ryuk's evidence in my view was largely uncontradicted in that the general intent of the Official Plan is maintained by the setback variances, as the proposal will respect and reinforce the character of this eclectic neighbourhood which contains similar dwelling with similar setbacks. These variances, individually and collectively, meet the four tests of the *Planning Act* based on Mr. Ryuk's witness statement and oral evidence and thus also meet all provincial requirements.

DECISION AND ORDER

The appeal is allowed all the variances set out above are approved and the decision of the Committee of Adjustment is set aside.

X 

S. Makuch
Panel Chair, Toronto Local Appeal