

INTERIM DECISION & ORDER

Decision Issue Date Friday, August 27, 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): MASOUD NADJAFI-ASL

Applicant: SAIED MAHBOUBI FROM GREEN DOT ARCHITECTS

Property Address/Description: 326 MANOR ROAD EAST

Committee of Adjustment Case File: 19 182339 NNY 15 MV (A0482/19NY)

TLAB Case File Number: 19 226110 S45 15 TLAB

Hearing dates: Thursday, January 16, 2020 and Monday, October 26, 2020

DECISION DELIVERED BY S. Karmali

APPEARANCES

NAME	ROLE	REPRESENTATIVE
Saied Mahboubi	Applicant/Agent	
Masoud Nadjafi-Asl	Appellant/Owner	John Alati
City of Toronto	Party	Sara Amini
Carol Bongard	Party	
Janis Cameron	Party	
Al Kivi	Party	
Martin Rendl	Expert Witness	

INTRODUCTION & MATTERS IN ISSUE

The Owner requires eleven variances from City-wide Zoning By-law 569-2013 (ZBL 569-2013) and two variances from former City of Toronto Zoning By-Law 438-86 (ZBL 438-86) to construct his new modern flat roof two-storey detached home in the mature and stable Davisville Village area.

The Committee of Adjustment (COA) refused all the variances in the Owner's application. The Owner then appealed that decision to the Toronto Local Appeal Body (TLAB). The Owner's requests are reproduced in TABLE 1 below.

Do the variance requests meet the policy and legal tests?

TABLE 1

VARIANCE NUMBER	PERFORMANCE STANDARD	VARIANCE REQUEST
ZBL 569-2013		
PLATFORM, DECK & STAIRS		
1	The minimum required side yard setback of the platform is 1.8 metres.	The proposed side yard setback of the second level platform is 1.06 metres from the east side lot line.
2	A platform without main walls, such as a deck, porch, balcony or similar structure, attached to or within 0.3 metres of a building, must comply with the required minimum building setbacks for the zone, 0.9 metres.	The rear platform (deck) at the first level encroaches into the required minimum side yard setback by 0.29 metres.
3	Exterior stairs providing pedestrian access to a building or structure may encroach into a required building setback if the stairs are no longer than 1.5 horizontal units for each 1.0 vertical unit above grade at the point where the stairs meet the building or structure.	The proposed front stairs are 1.58 horizontal units for each 1.0 vertical unit above grade at the point where the stairs meet the building or structure.
BUILT FORM		
4	The permitted maximum building depth is 17.0 metres.	The proposed building depth is 19.06 metres.
5	The permitted maximum height of all front exterior main walls is 7.0 metres.	The proposed height of the front exterior main walls is 7.4 metres.
6	The permitted maximum height of all rear exterior main walls is 7.0 metres.	The proposed height of the rear exterior main walls is 7.4 metres.

**Decision of Toronto Local Appeal Body Panel Member: S. KARMALI
TLAB Case File Number: 19 226110 S45 15 TLAB**

7	The permitted maximum height of all side exterior main walls facing a side lot line is 7.0 metres.	The proposed height of the side exterior main walls facing a side lot line is 7.4 metres.
9	The permitted maximum floor space index is 0.6 times the area of the lot (171.36 square metres)	The proposed floor space index is 0.72 times the area of the lot (205.79 square metres)
FRONT YARD SOFT LANDSCAPING		
8	A minimum of 75% of the required front yard landscaping must be soft landscaping.	The proposed front yard soft landscaping area is 54%.
TRANSPORTATION-RELATED		
10	A parking space may not be located in a front yard or a side yard abutting a street.	The proposed parking spot is located in a front yard
11	The required minimum number of parking space(s) for the dwelling unit is one space.	The parking space is not permitted in the proposed location and therefore the proposal will have zero spaces.
ZBL 438-86		
12	The by-law requires a minimum of one parking space to be provided.	The number of proposed parking spaces is zero.
13	The by-law prohibits the parking of motor vehicles on the portion of the lot between the front lot line and the front wall of the building.	The proposed parking does not comply and is located in the front yard.

JURISDICTION

Provincial Policy – S. 3

A decision of the TLAB must be consistent with the 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 the four tests under subsection 45(1) of the *Planning Act*.

The tests are whether the variances:

- maintain the general intent and purpose of the Official Plan, as amended by Official Plan Amendment 320;
- maintain the general intent and purpose of the ZBL 569-2013, as amended by ZBL, 1426-2017, and ZBL 438-86;
- are desirable for the appropriate development or use of the land; and
- are minor in nature.

EVIDENCE, ANALYSIS, FINDINGS, REASONS

The following items were tendered and accepted as exhibits:

- Exhibit 1 - Combined Expert Witness Statement of Mr. Rendl
- Exhibit 2 - Document Disclosure of Mr. Rendl
- Exhibit 3 - Responding Witness Statement - Mr. Rendl
- Exhibit 4 - Witness Statement of Ms. Bongard
- Exhibit 5A - Original Witness Statement of Ms. Cameron
- Exhibit 5B - Revised Witness Statement of Ms. Cameron
- Exhibit 6A - Witness Statement of Mr. Kivi
- Exhibit 6B - Visual Witness Statement of Mr. Kivi
- Exhibit 6C - Reply to Responding Witness Statement - Mr. Kivi

Mr. Martin Rendl is a Registered Professional Planner and a full member of the Canadian Institute of Planners and the Ontario Professional Planners Institute. He is a seasoned land use planner and has previously appeared before land-use planning committees and appeal bodies to support or oppose development applications. I qualified Mr. Rendl to provide me with expert opinion evidence in land-use planning. His summary opinion is that the requested variances are consistent with and conform to provincial policies. They also individually and cumulatively satisfy all four tests of Section 45(1) of the *Planning Act* for minor variance approval. He opined that the proposed development represents good planning.

Mr. Al Kivi is the Chair of the South Eglinton Ratepayers and Residents Association (SERRA) Neighbourhoods Working Group. He said he acts in support of SERRA and opposes the proposed development. Mr. Kivi has previously appeared before land-use planning appeal bodies to provide factual evidence. He has also been found qualified at the TLAB in some of those appearances as a local knowledge expert. Mr. Kivi's opinion is that the requested variances, when considered individually and collectively, create a development that is not indicative of good planning. Therefore, he does not believe the variances meet the legal tests for variance approval. He would like the appeal to be dismissed and the proposal to be refused. Elsewhere in his testimony, Mr. Kivi mentioned that the appropriateness of the proposed dwelling could be improved by removing the second level platform and shortening the depth of the dwelling (Exhibit 6A at p.11).

Decision of Toronto Local Appeal Body Panel Member: S. KARMALI
TLAB Case File Number: 19 226110 S45 15 TLAB

Ms. Carol Bongard lives at the property just east of the subject property. She has lived in her home for twenty-one years and is concerned about her space and the potential for negative experiential impacts on her current level of privacy and sunlight. She objects to the floor space index (FSI), building depth, the deck, building height, front-yard landscaping and transportation-related variances. Ms. Cameron lives just west of the subject property and has lived there for over thirty-five years. Her concerns include the height, width, depth, and proposed balcony. She generally shared that there would be potential negative impacts on privacy, parking and the environment. Both Ms. Bongard and Ms. Cameron are self-represented. They both allege that the Owner has not made bona fide efforts to accommodate their needs in his development proposal.

Ms. Amini represents the City's position. The main concerns raised included the proposed building depth, soft yard landscaping, and the setback for the second-floor balcony. She did not call a land-use planner. Perhaps less important, planning staff at the City did not provide a report on the application or object to any of the variances in the application. Ms. Amini requests the TLAB deny the appeal and refuse the variances.

In evidence, Mr. Rendl opined about the Provincial Policy Statement and its treatment for the application. He testified that the requested variances represent an efficient use of land, promote efficient land use patterns, and efficiently use the infrastructure and available public service facilities. He added that the variances conform and do not conflict with the Growth Plan since the proposed development supports intensification efforts in the City and conforms to the City of Toronto's Official Plan.

Neither Ms. Amini nor Mr. Kivi objected to Mr. Rendl's application and interpretation of provincial policy on the development proposal.

I accept that the proposal is consistent with the 2014 PPS and conforms to the 2019 Growth Plan, both of which are high-level policies.

Mr. Rendl discussed his planning rationale given the statutory tests. He described the subject site and commented about the site and area photographs he integrated into his testimony. He said the site has a lot width of 7.62 metres, a lot depth of 37.54 metres, a lot area of 285.6 square metres, and has a 1.10 metre right-of-way along the east lot line in favour of 328 Manor Road East. He defined his neighbourhood study area as including all properties zoned Residential, generally 500 metres from the subject site, and bounded by Mount Pleasant Road to the west, Eglinton Avenue East to the north, Millwood Road to the south and Bayview Avenue to the east. He defined the immediate neighbourhood context to include properties from 322 to 380 Manor Road East on the north side and 349 to 407 Manor Road East on the south side of the street. Mr. Kivi appropriately mentioned that the immediate context includes properties on Manor Road East between Forman Avenue and Cleveland Avenue.

Mr. Rendl opined that the subject site is designated *Neighbourhoods* in the Toronto Official Plan. He acknowledged that neighbourhoods are stable but not static and that they will not stay frozen in time. He added that physical changes must reinforce the stability of the neighbourhood by ensuring the development respects the existing general physical pattern. He opined that *respects* includes being compatible with, which, he said, means something that can co-exist in harmony with its surroundings. He emphasized that development does not have to replicate existing development in the vicinity.

Mr. Rendl considered several Official Plan policies as relevant in his planning analysis. He referred to Policy 4.1.5 (c) prevailing heights, massing, scale density and dwelling type of nearby residential properties, Policy 4.1.5 (d) prevailing building types, and Policy 4.1.5 (g) prevailing patterns of side yard setbacks and landscaped open space.

Floor Space Index

Floor space index generally relates to the Official Plan in terms of prevailing density. The maximum fsi is 0.6 times the lot area or 171.36 square metres whereas the proposed floor space index is 0.72 times the lot area or 205.79 square metres.

Mr. Rendl said the proposed value is within a range, between 0.613 and 1.16 times the lot area of fsi variances which have been approved for other new dwellings and additions (Exhibit 1 at Appendix C). He specifically said that there are six properties in the immediate context that have been approved with fsi values between 0.693 and 0.82 times the lot area.

Ms. Cameron testified that the proposed fsi value is an example of infill overdevelopment and unacceptable.

Mr. Kivi's data table shows a range of fsi values in the immediate context using an intelligible banded quantile analysis (Exhibit 6A). For example, while Mr. Kivi said 0.61 times the lot area is the average fsi in the immediate context, he also said that twenty-nine properties are in the fsi range of 0.5 to 0.59 times the lot area, twenty-six properties are in the fsi range of 0.60 to 0.69 times the lot area, and seventeen properties are in the fsi range of 0.70 to 0.79 times the lot area. I appreciated that Mr. Kivi included a column for fsi value and a column for lot area in his organization of data. Knowing the lot area helped me appreciate the gross floor area of the homes in his data table.

Still, a fsi value of 0.72 times the lot area (205.79 square metres) here cannot be said to be an excessive request. There are also examples of fsi values in the broader context, which are around the requested value, according to Mr. Rendl's evidence. Additionally, ZBL 569-2013 permits additions to existing homes of up to a fsi value of 0.69 times the lot area.

I accept Mr. Rendl's opinion that there are examples of larger new homes which have replaced original houses, which seems to point to an evolving neighbourhood character in terms of modest increases to density. Mr. Rendl also assured me that the fsi value is compatible with the neighbourhood and would not destabilize the neighbourhood. He opined that there would be no undue adverse shadow, privacy and overlook impacts on adjacent and nearby properties should this variance be approved. I accept that the variance for fsi meets the general intent and purpose of the Official Plan and ZBL 569-2013, is desirable and minor in nature.

Depth

Mr. Rendl said that built form is determined by factors such as fsi, depth, building height, and main wall height. These factors importantly relate to open spaces and streets. Mr. Rendl opined that building depth is measured from the required front yard setback to the rear wall. He contrasted this from building length, measured between the front wall of the building to the rear wall. He added that since the subject property is in the Residential zone, not the Residential Detached zone, there is no regulation for building length in this instance. Depth, however, is regulated. Mr. Rendl said that depth is controlled to avoid a home extending too far into the lot, which could compromise the amount of rear yard available for use as outdoor amenity space. The depth of the subject lot is 37.54 metres, the proposed building depth is 19.06 metres, and the permitted maximum building depth is 17.0 metres. Mr. Rendl testified that the depth variance would accommodate a 6.1 metre in length required parking space between the front lot line and the front wall of the proposed dwelling, all on private property. The depth variance would also accommodate a 1.16-metre-deep area of landscaping between the dwelling and the front yard parking space. Accordingly, Mr. Rendl said the proposed new home would extend 0.95 metre beyond the rear wall of the two-storey rear addition at 324 Manor Road East. He pointed out 367 Manor Road East, which is immediate and has a building depth of 18.22 metres. He also pointed out 196 Manor Road East, outside of the immediate context, and has a building depth of 19.5 metres.

Ms. Amini challenged Mr. Rendl's opinion evidence concerning depth. Mr. Rendl admitted that the depth variance is being requested because the Owner would like a parking pad and a certain style of home. However, he added that there is no proposed integral garage and, therefore, no resulting tall house is proposed. He admitted he found only three variances to maximum building depth on Manor Road East.

Mr. Kivi's data band analysis showed the average depth in the immediate context is 14.3 metres. His detailed analysis was that eighteen homes have a depth between 14 metres and 15 metres, fifteen homes have a depth between 15 metres and 16 metres, seven homes have a depth between 16 metres and 17 metres, thirteen homes have a depth between 17 metres and 18 metres, and six homes have a depth between 18 metres and 19 metres. The proposed depth value, he said, would increase the massing of the development when combined with the main wall heights. Mr. Kivi added that the encroachment is 2.06 metres beyond the depth line and that a deck and a balcony would continue the overall extension of the development. Ms. Bongard and Ms. Cameron amplified this concern and described it as overdevelopment.

Interestingly, based on Mr. Kivi's data, there are more homes in the immediate block with a building depth between 17 metres and 18 metres than homes with a building depth between 16 metres and 17 metres. I understand the relationship between the proposed depth variance and the Owner's desire to accommodate landscaping, and a parking space wholly on private property. I also heard Mr. Rendl mention, in terms of depth, that the Owner would like a certain style of house. However, I have reservations about the proposed depth. The excess depth of 2.05 metres could create a mass that does not fit with the nearby properties. In addition, after considering the sun and shadow studies submitted from both sides (Exhibit 3 at Appendix B and Exhibit 6C at Appendix 2), undue adverse impacts to incoming light could result in more shadowing on abutting properties by permitting a depth value increase of 2.05 metres. Still, Mr. Kivi testified that the Owner could improve the appropriateness of the proposed dwelling by shortening the depth of the dwelling.

Accordingly, based on the evidence, the Appellant can modify the variance for depth to a value between 17.1 metres and 18.0 metres. If the Appellant takes up this opportunity, no further notice would be required since, after considering the other variances cumulatively, the modification would be in the downward order of magnitude. However, the Appellant would need to provide me with revised plans and commit to maintain the proposed frosted glass installation of 1.8-metre-high privacy screens on both sides of the proposed rear second-floor balcony, which is another request for variance I discuss further below. On the other hand, should the Appellant decline this opportunity, the proposed variance of 19.06 metres is refused as it is neither desirable for the appropriate development or use of the land nor can I consider it minor in nature. Furthermore, there was less compelling evidence about compatibility and mitigation of undue adverse impacts regarding the excess depth of 2.05 metres. I heard that a reduced depth request could avert significant negative impacts and find fitting in the immediate context.

Height

The permitted maximum height of all side exterior main walls facing a side lot line and all front and rear exterior walls is 7.0 metres. The Owner proposes 7.4 metres for these main walls.

Mr. Rendl testified that main wall height is measured from established grade to the point supporting the roof of a building. He pointed out that the proposed development is for a two-storey home with a compliant building height of 8.6 metres, under which he said the massing is contained.

Mr. Kivi stated that the flat roof dwelling would accentuate the massing, and the parapet would increase the perceived height of the dwelling. He further stated that there are no articulations to reduce the perceived height of the side walls. Finally, he provided a shadow study on which impacts were labelled and analyzed as simply moderate or significant.

Ms. Bongard testified that the increase of 0.4 metres in height would interfere with her angle of sunlight. She claimed that this would be unreasonable. Ms. Cameron said the proposed height increase is too large.

Mr. Rendl did point out immediate context main wall heights: 7.35 metres at 297 Manor Road East, 7.85 metres at 358 Manor Road East, 7.73 metres at 368 Manor Road East, 7.62 metres at 378 Manor Road East, and 7.98 metres at 391 Manor Road East. He opined that the general intent and purpose of the Official Plan and ZBL 569-2013 are maintained in terms of height. The proposed main wall heights are consistent with the scale of the proposed home and are compatible with other dwellings in the broader context.

Overall, I prefer Mr. Rendl's evidence here. It is not clear to me that a significant adverse shadow would be cast on the adjacent homes due to a 0.4-metre increase in wall heights. In my view, it seems more likely that marginally greater shadows would result, which would be within the tolerance level for this urban area. I also accept that the wall height variances are desirable for the appropriate development of the land and are minor.

Front Stairs, Ground Floor Rear Deck and Second Floor Rear Balcony

Mr. Rendl referred to the elevation plan and testified that the proposed front exterior stairs, which provide pedestrian access, is technical in nature. I heard it is considered technical because the proposed dwelling would have four steps and a front porch that is 0.8 metres above grade, which is consistent with the existing porch configuration and alignment of the other homes on the street. Mr. Rendl further testified that ZBL 569-2013 requires a vertical and horizontal rise of steps ratio of 1:1.5. He indicated the front stairs are 0.08 horizontal units more than the By-Law, or 1:1.58.

Mr. Kivi mentioned that the proposed porch appears to be overly large when compared to the front yard. He indicated there might need to be an additional variance required to address the porch extending to the west property line. I do not have that additional variance before me to consider and weigh on a balance of probabilities standard.

Mr. Rendl discussed the proposed rear deck at the ground floor. He mentioned that the 1.06 metre setback from the east side lot line combined with the 5.95-metre-wide rear deck results in a deck that encroaches 0.29 metres into the required 0.9 setback from the west lot line. Put differently, the rear deck has a 0.61 metre setback from the lot line. Mr. Rendl opined that since the deck has a greater setback from the west lot line (0.61 metre) than the dwelling (0.45 metre), the deck does not impinge on the setback or the relationship between the buildings on 324 Manor Road East and 328 Manor Road East.

Mr. Rendl then discussed the proposed second-floor balcony at the northeast corner of the dwelling. The balcony is 3.45 metres away from the west lot line shared between the subject home and 324 Manor Road East. He said that the new dwelling generally maintains the setback of the existing dwelling from the east lot line. He also said that the proposed balcony aligns with the east side wall of the dwelling and does not project beyond it. He concluded that the balcony would have no impact on privacy for 324 Manor Road East and would not alter the "overview characteristics" associated with the existing home. He clarified that there would be no "appreciable overlook."

Mr. Kivi, on the other hand, shared that the balcony would create an overlook issue and reduce the privacy of nearby neighbours. Both Ms. Bongard and Ms. Cameron shared that the platform would impact their privacy and increase the mass of the building. Ms. Amini pointed out that Mr. Rendl had indicated privacy screening in his responding witness statement.

In my view, without the privacy screening condition, there could be a significant overlook and privacy issue experienced as a result of the location of the balcony. I accept Mr. Rendl's evidence that the variances for the second-floor rear balcony, the ground floor rear deck and the front stairs maintain the general intent and purpose of the Official Plan and ZBL 569-2013. Additionally, I accept that these variances are desirable for the appropriate development of the land and are minor in nature.

Front yard Soft Landscaping

Soft landscaping means an area used for trees, plants or other landscape or architectural elements. Mr. Rendl testified that the purpose of the front yard soft landscaping requirement is to avoid an excessive amount of hard surface in the front yard and maintain an attractive streetscape. The proposed soft landscaping at the subject property is 14.32 square metres or 54 per cent, whereas the requirement is 19.94 square metres or 75 percent. Mr. Rendl opined that soft landscaping is still maintained along the right-of-way, the parking space, the front porch and the steps in the front yard. He further opined that the variance maintains an appropriate balance between hard and soft surfaces in the front yard, which is desirable.

He shared the following addresses, which were approved for soft landscaping in the front yard: 279 Manor Road East at 60 per cent (17.88 square metres), 298 Manor Road East at 64 per cent (19.819 square metres), and 391 Manor Road East at 49 per cent (14.5 square metres).

Ms. Bongard testified that the existing City tree that sits in the subject property's front yard would be affected. Mr. Kivi stated that the proposed landscaping request is very small. He said stormwater runoff would increase as a result.

Elsewhere, however, Mr. Kivi agreed that the immediate context could be described as consisting of parking pads and varying amounts of landscaping (see Exhibit 6C at paragraph 46). Thus, Mr. Kivi factually agreed that the proposed landscaping would be consistent with the existing landscaping pattern.

In my view, based on the evidence, there are homes in the immediate context which have different soft landscaping values. In the broader context, this difference is more wide-ranging. There is no question that soft landscaping is a necessary and vital part of this neighbourhood. It helps support the growth of grass, trees, flowers, and other plants. It also provides for an attractive streetscape. Accordingly, erosions to soft landscaping ought to be avoided, particularly in tight lot settings. In this case, however, Mr. Rendl's planning evidence was that the proposed soft landscaping is reasonable and would be consistent with the existing neighbourhood pattern and meets the legal tests individually and cumulatively.

Mr. Kivi and Ms. Bongard could have referred to reliable and credible scientific and/or technical evidence to illustrate how the soft landscaping requested variance request could or would cause undue adverse impacts.

Transportation-related: location and number of spaces

The proposed parking solution is a parking pad instead of parking behind the front wall or rear yard parking.

Mr. Rendl testified that a parking space must be located either in a detached garage or at the side or rear yard of the property. He indicated there is no detached garage being proposed. As for the side yard and rear yard, the existing right-of-way between the subject property and 328 Manor Road East would be too narrow to manoeuvre a car through a 2.15-metre-wide mutual driveway. Mr. Rendl added that no adjustment is planned to the mutual right-of-way, which seems to resolve Ms. Bongard's concern about her parking space use. I make no findings about easement holder rights.

Mr. Rendl opined that the Davisville Village Zoning Study considered front yard parking to be part of the neighbourhood's physical character. He further opined that the location of the parking space would maintain the general intent and purpose of ZBL 569-2013, as amended by ZBL 1426-2017.

Mr. Kivi's data showed that there are several detached homes with parking pads in the immediate context.

Furthermore, the City's Transportation Services indicated that the location of the proposed space does not impact the overall function of the driveway and is consistent with existing neighbourhood conditions.

Overall, I accept Mr. Rendl's planning evidence in respect of the transportation-related variance requests.

Finally, and to be clear, I accept that Mr. Rendl has demonstrated that the requested variances (except for the proposed depth, at this time) are individually and cumulatively minor in nature, appropriate for the development of the land, and maintain the general intent and purpose of the Toronto Official Plan and Zoning By-Laws.

INTERIM DECISION & ORDER

1. The Appellant has until February 28, 2022, or six months from the date of this decision, to submit: (i) an amended depth variance request in the range of 17.1 metres and 18.0 metres, and (ii) corresponding amended plans. The amendment would be excepted from further notice under subsection 45(18.1.1) of the *Planning Act*. I will review the amended depth request and amended plans, in light of the established evidentiary record, and issue my Final Decision and Order forthwith.
2. Alternatively, should the Appellant decide not to make these submissions, the Appellant must advise the TLAB as such no later September 10, 2021. I will then issue my Final Decision and Order forthwith.

X

Sean Karmali
Panel Chair, Toronto Local Appeal Body