

DECISION AND ORDER

Decision Issue Date Thursday, April 07, 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: VAHID ALEX HADITAGHI

Owner(s): 2200347 ONTARIO INC

Property Address/Description: 211 Forest Hill Rd

Committee of Adjustment File

Number(s): A0632/21TEY

TLAB Case File Number(s): 21 117619 S45 12 TLAB

Hearing date: March 11, 2022

DECISION DELIVERED BY TED YAO

REGISTERED PARTIES AND PARTICIPANTS

Name	Role	Representative
Vahid Alex Haditaghi	Appellant (did not appear at hearing)	
2200347 Ontario Inc.	Owner/Applicant	Amber Stewart
Franco Romano	Expert Witness (planning)	
P. Naddef	Expert Witness (architecture)	

INTRODUCTION

2200347 Ontario Inc. wishes to tear down its house at 211 Forest Hill Rd and build a new three storey house. In order to build its desired design, it seeks the variances in Table 1.

Table1. Variances sought for 211 Forest Hill Rd		
	Required	Proposed

Table1. Variances sought for 211 Forest Hill Rd			
Variances from Zoning By-law 569-2013			
1	Height side main walls	8.5 m	East:11 m; west 9.8 m
2	Building length	17 m	22.36 m
3	Building depth	19 m	22.36
4	Floor space index	0.35 times the area of the lot	0.79 times the area of the lot
5	Side yard setback	1.5 m	East lot line 1.2 m
Variances from Zoning By-law 438-86¹			
6	Building height	11 m	11.35 m

BACKGROUND

The Committee of Adjustment granted the application on Oct. 6, 2021. The next door neighbour Mr. Haditaghi appealed and so the appeal came to the TLAB.

MATTERS IN ISSUE

The Provincial Policy Statement and the Greater Golden Horseshoe Growth Plan must be considered, but they contain a high level of generality. For example, the Provincial Policy Statement discourages lot creation on prime agricultural land and prefers municipal water and sewage over private systems and so on. I do not find these policies offer guidance for a replacement house, in which the major issue is whether the size, length, depth and density maintains the intent of the Official Plan of the City of Toronto.

The variances must comply with s. 45(1) of the *Planning Act* and must cumulatively and individually:

- maintain the general intent and purpose of the Official Plan;
- maintain the general intent and purpose of the Zoning By-laws;
- be desirable for the appropriate development or use of the land; and
- be minor.

¹ Because there are still appeals against present zoning by-law, plan examiners study compliance with both the present and former zoning by-laws, sometimes resulting in additional or duplicative variances.

With respect to the Official Plan, s. 3.2.1 Housing and s. 4.1.5 Neighbourhoods must be considered. Both sections require the physical form of the development to “fit in” physically with the surrounding neighbourhood. There is a second relevant policy in 3.4, the Natural Environment: providing a suitable growing environment for trees; this is within the context of the Ravine and Forest Protection comments from City Planning.

Right to develop

The obligation is on the proponent 2200347 Ontario Inc to demonstrate to the decision-maker that the tests are met on the balance of probabilities; there is no right to a variance.

EVIDENCE

I heard from Mr. Romano, 2200347’s land use planner, whom I qualified as able to give opinion evidence in the area of land use planning. I also heard from Mr. Naddaf, the architect.

I made a site visit. Although my views are not evidence, they give context to help me understand the testimony of Mr. Romano and Mr. Naddef.

ANALYSIS, FINDINGS, REASONS

Ms. Stewart said that her client “had done everything right” and requested that Mr. Haditaghi’s appeal be dismissed because he was a “no-show”. I replied that I had an independent duty to assess the variances under the *Planning Act* but was willing to reserve judgment on her motion until I had heard from Mr. Romano. Later she said that my “reserving” amounted to a denial of her motion and so she treated it as being withdrawn.

Having heard Mr. Romano’s planning evidence, I am satisfied that the tests have been met. I will highlight his evidence on density, tree and ravine protection, shadow impacts and height below.

Density

Mr. Romano’s study area contains 402 properties, of which 132 have sought Committee of Adjustment variances in the last 10 years. I accept his study area as appropriate. Of these 132, 99 obtained a density variance; the average being 0.67. 2200347 seeks a density of 0.79, which is on the high side; it would be somewhere between the 20th or 25^t in rank order, when I sort the 99 addresses. I have not eliminated duplicate addresses in this exercise. In the absence of opposing evidence, I find that this density respects and reinforces the existing physical character of the neighbourhood. While the density is higher than most granted by the Committee of Adjustment, it is not extreme.

Tree and Ravine protection

Number 211 Forest Hill Road backs on the Kay Gardner beltway, a linear park subject to the Ravine and Natural Forest section of Community Planning Department of the City of Toronto. Trees and ravines are subject to several policies in the City calling for protection of these features.² Those policies are implemented by planners with forestry experience in the City of Toronto Planning Department in the same manner as Urban Forestry, but those persons look at every tree on public lands, not just those over 30 cm breast height diameter. By email of Sept 27, 2021, Mark Di Prospero, Community Planning (RNFP) advised the Committee of Adjustment that he had no concerns with the application.³

Height and the shadow study

Mr. Haditaghi's appeal letter is all we have to understand his concerns. The letter mentions shadowing.⁴ As a consequence, 2200347 Ontario Inc. commissioned a shadow study from Mr. Naddef, the architect, with the hope that it could persuade Mr. Haditaghi to withdraw his appeal.

Shadow studies are usually only required for larger buildings. My approach is to look primarily at the shoulder seasons (spring and fall equinoxes), because there is very little shadowing in the summer and in the winter, all buildings will cast shadows over adjacent buildings at some point during the day. The Naddef study has March and June shadow periods, which is appropriate. I accept this study.

² The Official Plan provides for the conservation of Toronto's urban forest, ravines and river valleys in policies protecting the natural heritage system contained in Section 3.4 and Map 9 of the plan. The conservation of important heritage resources includes those policies protecting Toronto's natural heritage areas (3.1.5 Heritage Conservation)

The urban forest is essential to the city's character. More than three million trees dominate our ravines, line our boulevards and beautify our parks. (3.4 The Natural Environment)

Policies

1. To support strong communities, a competitive economy and a high quality of life, public and private city-building activities and changes to the built environment, including public works, will be environmentally friendly, based on:

B) sustaining, restoring and enhancing the health and integrity of the natural ecosystem, supporting bio-diversity in the city and targeting ecological improvements, paying particular attention to: . . .iv. Landforms, ravines, watercourses, wetlands and the shoreline and associated biophysical processes;

D) preserving and enhancing the urban forest by

i. Providing suitable growing environments for trees

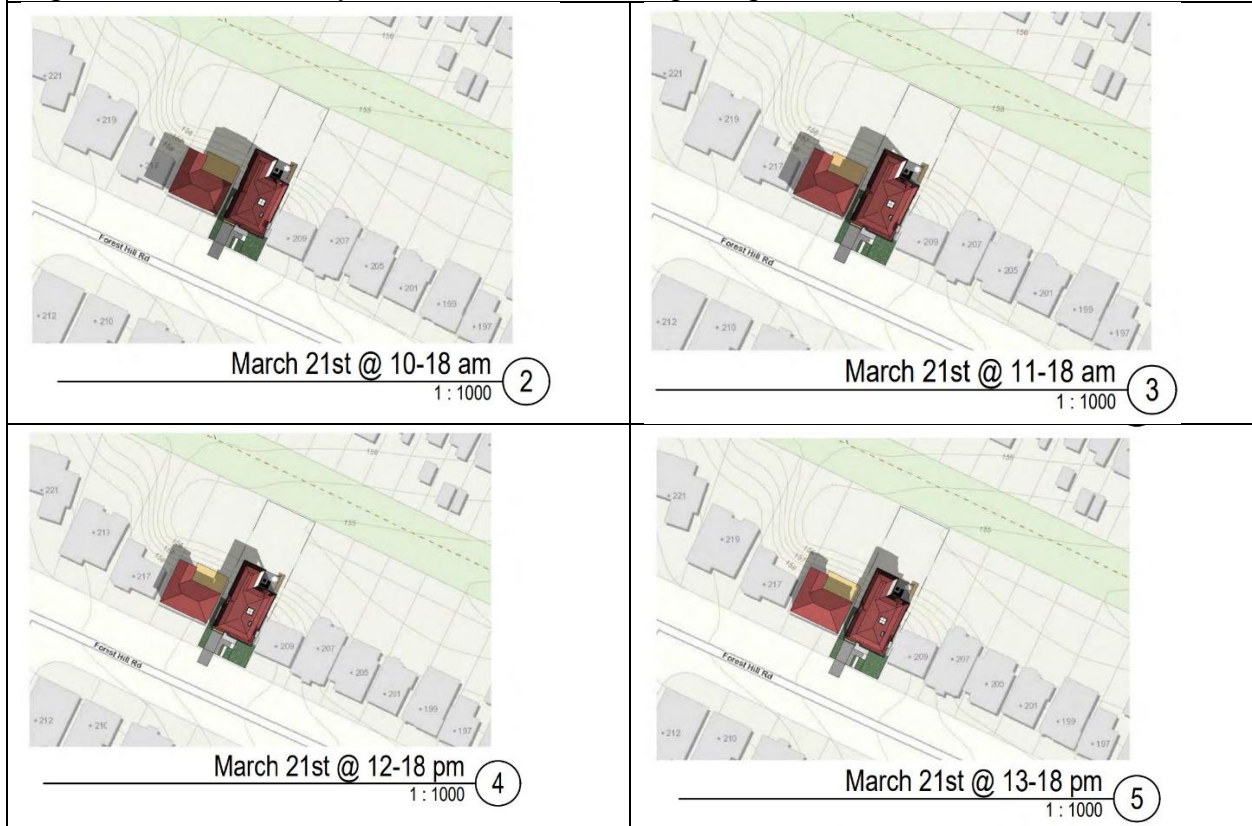
ii. Increasing tree canopy coverage and diversity, especially of long-lived native and large shade trees; and

ii. Regulating the injury and destruction of trees;

3 RNFP has no conditions for these four COA applications Best Regards, Mark Di Prospero on behalf of: Ravine and Nature Feature Protection (RNFP)

⁴ I am the owner of the lands municipally known as 215 Forest Hill Rd in the City of Toronto,

Figure 2 Shadow Study; left house Mr. Haditaghi; right house 2200347 Ontario Inc.



The March 21 shadow study shows the sun casts a shadow at 11:18 AM and swings around, so that by 1:18 PM the Haditaghi back yard is completely in sunlight.

Mr. Naddaf said:

After the appeal, I approached [Mr. Haditaghi] by phone. He asked me to provide him with some evidence, which I did by email. Since then, I haven't received any response from him. I called him several times, I left a message, I asked for a meeting in order to

next door to the subject application lands.

On October 6, 2021 the Committee of Adjustments held a public hearing to review the above referenced application variances. I was not able to attend the meeting due to prior business commitments.

I believe that the application as proposed is not appropriate **in that it will interfere with my property's sunlight exposure due to the excessive height** of the proposed building and that the application is excessive in its scale and massing for this location. I do not believe that the general purpose and intent of the Official Plan or the Zoning By-Law have been maintained, and I do not believe the variances are minor in nature. Accordingly, I am appealing the Committee of Adjustments decision because of the reasons above and other issues which flow from the massing and height variances on the property.

I have emailed the appeal letter and a cheque for \$300.00, payable to the City of Toronto, representing the filing fee for this appeal to the [TLAB] will follow. Also, I have a completed Appellant Notice of Appeal form 1 will follow. Yours truly, Alex Haditaghi, 215 Forest Hill Rd City of Toronto

present the evidence and explain them, but I have received any response. He told me he was going to be out of the country for a while, for Christmas holiday, and that would be all. There is nothing else I can add.

I now turn to height. Had Mr. Naddaf been able to speak to Mr. Haditaghi, he would have explained what Mr. Romano said to me; that the height variance of 11.35 m (11 m permitted) is only needed because the method of measuring height has changed with the new (2013) zoning by-law and the former 1986 by-law is only being considered because there are still appeals from the adoption of the new by-law in 2013⁵. Because of these appeals, plan examiners have to review projects under both by-laws. 2200347's height of 11 m complies with the new by-law and the variance sought from the 1986 by-law amounts to a "technical" variance.

I find the height variance required by the old by-law reasonable as there is compliance the current by-law standard. Both by-laws use the same height standard, i.e., 11 m.

Motion for costs

Ms. Stewart brought a motion for costs, coupled with a request that I waive Rules 28.4 and 28.5 that require that costs motions be in writing and supported by invoices.⁶ She asked for \$5,000, comprising the costs of the hearing and the shadow study. The grounds are Rule 28.6 (a) "whether a Party failed to attend a Proceeding or to send a Representative when properly given notice, without giving the TLAB notice".⁷ I find this has happened.

⁵ *Bahardoust V Toronto (City)*, 2021 CANLII 102668 (ON LT)

⁶ 28.4 Notwithstanding Rule 17.4 all submissions for a request for costs shall be made by written Motion and Served on all Parties and Filed with the TLAB, unless a Party satisfies the TLAB that to do so is likely to cause the Party significant prejudice. 28.5 Submissions for a request for costs shall address: a) the reasons for the request and the amount requested; b) an estimate of any extra preparation or Hearing time, and a breakdown of all associated rates, fees and disbursements, caused by the conduct alleged to attract costs and specifically any of those matters outlined in Rule 28.6; c) copies of supporting invoices for expenses claimed or an Affidavit of a Person responsible for payment of those expenses verifying the expenses were properly incurred; and d) attach an Affidavit in which the Party swears the costs claimed were incurred directly and necessarily

⁷ 28.6 Notwithstanding the TLAB's broad jurisdiction to award costs the TLAB is committed to an approach to awarding costs that does not act as a deterrent to Persons contemplating becoming a Party or continuing to be a Party to a Proceeding. In determining whether to award costs against a Party the TLAB may consider the following: a) whether a Party failed to attend a Proceeding or to send a Representative when properly given notice, without giving the TLAB notice; 39 b) whether a Party failed to co-operate with others or the TLAB, changed a position without notice or introduced an issue or evidence not previously disclosed; c) whether a Party failed to act in a timely manner; d) whether a Party failed to comply with the TLAB's Rules or procedural orders; e) whether a Party caused unnecessary

Decision of Toronto Local Appeal Body Panel Member: T. YAO
TLAB Case File Number: 21 117619 S45 12 TLAB

A person can only claim costs against another party and Mr. Haditaghi has not elected to be a party. The TLAB Public Guide (p 15 out of 41) states:

If you are the Appellant in a particular matter, you are a Party by right, and therefore completing the form is unnecessary. However, the full subsequent disclosure obligations under the Rules continue to apply.

An appellant who takes no further part in the hearing, not even to talk to the other side places himself in a negative position when it comes to costs, analogous to a person who starts a lawsuit and then walks away from it. Mr. Haditaghi has invoked the public process, put a burden on the TLAB dispute resolution system without following through. I find he does not fall in the category of a persons who would be deterred by a cost award; most people “contemplating becoming a Party or continuing to be a Party” intend to show up at the hearing, or if unable to do so, would send notification and an explanation. This is simple courtesy.

Therefore, I am satisfied that Mr. Haditaghi has engaged in a course of conduct that is unreasonable. Launching the appeal without further involvement or communication with the TLAB is not appropriate and unjustifiable. As a result, I find this to be in bad faith.

28.7 In all cases a Member shall not order costs unless the Member is satisfied that the Party against whom costs are claimed has engaged in conduct, or a course of conduct, which is **unreasonable**, frivolous, vexatious or **in bad faith**.

I believe this is a proper case for costs: The amount demanded is based on the following calculation:

Ms. Stewart 3.5 h x \$425 per hour	=	\$3500
Mr. Romano 3.5 h x \$375 per hour ⁸	=	<u>\$2800</u>
		\$6300
	13% HST	\$ 819
Shadow study		<u>\$3500⁹</u>
Grand total		\$10,619

I note that hearing preparation and Mr. Naddef’s attempts to reach Mr. Haditaghi are not considered in this calculation. Since even the courts do not generally award full out-of-pocket costs. I agree with Ms. Stewart that her suggestion of \$5,000 costs is a reasonable award.

⁸ This is the figure given to me by Mr. Romano in his sworn testimony.

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Decision of Toronto Local Appeal Body Panel Member: T. YAO
TLAB Case File Number: 21 117619 S45 12 TLAB

The TLAB does not award costs just when one side or the other is not successful. Good faith dispute resolution, putting forward sincerely held views, etc., is not sanctionable by costs. This did not occur here.

DECISION AND ORDER

I authorize the variances set out in Table 1 on condition that construction is substantially in compliance with the plans filed with the Buildings Department. I order that Alex Haditaghi pay 2200347 Ontario Inc the sum of \$5,000 with interest at the same rate as provided in the *Courts of Justice Act*.



X

Ted Yao
Panel Chair, Toronto Local Appeal Body