

# DECISION AND ORDER

**Decision Issue Date**      Thursday, May 05, 2022

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

Appellant(s): QUAN LIN

Applicant(s): LHW ENGINEERING LTD

Property Address/Description: 662 GLADSTONE AVE

Committee of Adjustment File

Number(s): 20 230021 STE 09 MV (A1193/20TEY)

**TLAB Case File Number(s): 21 212980 S45 09 TLAB**

**Hearing date:**      Wednesday, April 20, 2022

**DECISION DELIVERED BY** *TLAB Vice-Chair A. Bassios*

## REGISTERED PARTIES AND PARTICIPANT

Appellant	Quan Lin
Appellant Rep.	Mohammad Firouzi LHW Engineering LTD
Applicant	LHW Engineering LTD

## **INTRODUCTION**

This is an Appeal of the Toronto and East York panel of the City of Toronto (City) Committee of Adjustment's (COA) refusal of an application for variances for the property known as 662 Gladstone Ave (subject property). The purpose of the application is to convert the existing two-storey, one-unit detached house to a two-storey, two-unit detached house by constructing a rear two-storey addition with a rear deck and a rear basement walkout.

The subject property is located in the Dovercourt Village neighbourhood of the former City of Toronto. It is designated *Neighbourhoods* in the City Official Plan (OP) and zoned Residential (R) under Zoning By-law 569-2013.

In attendance at the Hearing was Mr. Mohammed Firouzi representing the Appellant. Mr. Firouzi is not a lawyer nor a planner.

## **BACKGROUND**

The Applicant proposes to alter the existing detached dwelling by constructing a two-storey rear addition, a rear deck, and a basement walkout. The intention is also to convert the building to a two-unit dwelling

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

#### **1. Chapter 10.10.40.40.(2), By-law 569-2013**

Additions to the rear of a detached house erected before October 15, 1953 are permitted provided the residential floor space index of the building, as enlarged, does not exceed 0.69 times the area of the lot (167.83 m<sup>2</sup>).

The detached house will have a floor space index equal to 0.80 times the area of the lot (195 m<sup>2</sup>).

#### **2. Chapter 10.10.40.30.(1), By-law 569-2013**

The maximum permitted depth of a detached house is 17.0 m.

The detached house will have a depth of 18.73 m.

#### **3. Chapter 10.5.50.10.(3), By-law 569-2013**

A minimum of 50% (46 m<sup>2</sup>) of the rear yard must be maintained as soft landscaping. In this case, 28% (30.8 m<sup>2</sup>) of the rear yard will be maintained as soft landscaping.

## **MATTERS IN ISSUE**

The fundamental matter at issue is the application of the TLAB's mandate that the four statutory tests of the *Planning Act* have been met. The practical matter at issue in this case, however, stems from the Appellant's lack of understanding that the TLAB is a quasi-judicial tribunal bound by the basic legal rules of evidence and procedure.

## **JURISDICTION**

### **Provincial Policy – S. 3**

A decision of the Toronto Local Appeal Body ('TLAB') must be consistent with the 2020 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**

The sum total of the statement provided to the TLAB in advance of the Hearing was the following two paragraphs plus the site plan and drawings illustrating the proposal.

*"The CoA hearing was held on September 1st, 2021, and the number is MV – A1193/20TEY. Our minor variance is a 2 storey addition behind the existing house which: requesting relief of maximum floor space index from 0.69 to 0.80; requesting relief of maximum building depth from 17m to 18.73m; requesting relief of minimum rear yard soft landscaping from 50% to 28%. The north neighbor is larger and longer than 622 Gladstone Ave. Furthermore, compare to its neighbors at this community, especially 670 to 682 Gladstone who have a very big and long house; this minor variance is nature, reasonable, and acceptable.*

*During the hearing, All the committees were positive to these minor variances; however, they were only focused on the interior layout. The additional ground floor bedroom did not have its own kitchen and did not have an interior entrance*

*to the existing ground floor. Now, the layout has been changed; a ground floor interior door has been added to connect proposed and existing house. Therefore, I sincerely request to approve our minor variance."*

I explained to Mr. Firouzi the role and mandate of the TLAB and some of the basic expectations for evidence in relation to the four statutory tests,

He advised me that his expectation for the Hearing had been that he would answer the questions that he understood were outstanding from the COA meeting in order to get the approval.

After some discussion regarding the expectations of evidence before the TLAB. Mr. Firouzi provided a few additional comments in support of the Appeal, as follows.

- The neighbouring property is longer than the subject property. With the addition, the building on the subject property would be the same length as the neighbour's. Mr. Firouzi was not able to provide me with a dimensioned plan or a measurement of the neighbouring property to which he referred; he relied on imagery from Google Maps.
- The proposal will not affect the front of the building and therefore will not change what is seen from the street.
- With respect to the landscaping variance, a lot with 6m frontage is required to have only 25% landscaping. The frontage of the subject property is 10cm longer and therefore, if not for that 10cm, they would comply (with the landscaping requirement).

## **ANALYSIS, FINDINGS, REASONS**

The TLAB is committed to sustaining an accessible forum for the resolution of land use disputes within its mandate. On occasion, this means that latitude will be granted to those who are self-represented and those who are not familiar with the TLAB Appeal process. However, having filed an appeal to the Tribunal, an Appellant is obligated to cultivate a basic understanding of the format, expectations, and Rules of the TLAB.

Mr. Firouzi unfortunately did not understand that the Hearing before the TLAB was a fresh hearing of the matter, a hearing "*de novo*", and that the burden rests with the Applicant/ Appellant to justify the requested variances independently of any consideration that the COA might have had.

Mr. Firouzi also did not understand that specific evidence addressing the four tests of s.45(1) of the *Planning Act* is required in this forum. Without evidence regarding the general intent and purpose of the Official Plan, and the general intent and purpose of the Zoning By-law, I have no basis for concluding that the requested variances meet the first two tests.

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Mr. Firouzi's comments reflect an opinion that the proposal is minor and desirable, but little evidentiary substantiation for this opinion was provided and these tests were not directly addressed in evidence or testimony.

I find that the Applicant/ Appellant has not provided sufficient grounds to establish that the variances requested meet the four tests set out in s. 45(1) of the *Planning Act*.

**DECISION AND ORDER**

The Appeal is dismissed. The Committee of Adjustment decision noted above is final and binding, and the file of the Toronto Local Appeal Board is closed.

X 

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Ana Bassios  
Panel Vice Chair, Toronto Local Appeal Body