

# DECISION AND ORDER

**Decision Issue Date**      **Friday, July 8, 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(s): DAVID MATHESON

Applicant(s): VFA ARCHITECTURE AND DESIGN INC.

Property Address/Description: 35 ADMIRAL ROAD

Committee of Adjustment File

Number(s): 21 157248 STE 11 MV (A0671/21TEY)

**TLAB Case File Number(s): 22 117902 S45 11 TLAB**

**Hearing date: Wednesday, July 6, 2022**

**Decision Delivered By TLAB Panel Member G. Swinkin**

## REGISTERED PARTIES AND PARTICIPANTS

Appellant	David Matheson
Appellant's Legal Rep	David Bronskill
Applicant	VFA Architecture and Design Inc.
Expert Witness	Sean Galbraith

## INTRODUCTION

David Matheson and Sarah Gillin (the "Appellants") are the owners of the property municipally known as 35 Admiral Road (the "Property"), which is improved with a stately semi-detached dwelling which they purchased in March of 2021. They have

chosen to upgrade the Property and have secured a building permit to undertake various interior alterations which are now underway. In connection with adding a minor additional floor area to the front of the dwelling at the third floor level over and above the floor area improvements in the rear of the dwelling, they were obliged to seek Zoning By-law variance relief. They made application to the Committee of Adjustment (the Committee”) for that purpose. That application also included requests for relief to accommodate a front yard vehicle parking space.

The Committee heard the application and approved the requests for relief with respect to floor area and front step width but refused the four heads of relief related to the proposed front yard parking space.

The Appellants appealed that decision of the Committee to the Toronto Local Appeal Body (the “Tribunal”).

The Appellants were represented by counsel, David Bronskill, who called a land use planning consultant, Sean Galbraith, to provide the Tribunal with evidence to support the appeal. As Mr. Galbraith has extensive experience and credentials in the area of land use planning, he was qualified by the Tribunal to offer opinion evidence on land use planning matters.

No other persons were registered as Parties or Participants and none appeared at the hearing.

## **BACKGROUND**

The specific Zoning By-law relief which was sought before the Committee was as follows:

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

1. Chapter 10.10.40.40.(1)(A), By-law 569-2013  
The maximum permitted floor space index of a semi-detached dwelling is 1 times the area of the lot (377.78 m<sup>2</sup>).  
The altered dwelling will have a floor space index equal to 1.01 times the area of the lot (382.68 m<sup>2</sup>).

2. Chapter 10.5.40.60.(3)(A)(ii), 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 wider than 2 m. The front porch stairs will be 2.27 m wide.

3. Chapter 10.5.50.10.(1)(B), By-law 569-2013

A minimum of 50% (24.61 m<sup>2</sup>) of the front yard is required to be landscaping.  
In this case, 19.4% (9.55 m<sup>2</sup>) of the front yard will be maintained as landscaping.

4. Chapter 10.5.50.10.(1)(D), By-law 569-2013

A minimum of 75% (18.4575 m<sup>2</sup>) of the required front yard landscaped open space shall be in the form of soft landscaping.  
In this case, 31.65% (7.79 m<sup>2</sup>) of the required front yard landscaped open space will be in the form of soft landscaping.

5. Chapter 10.5.80.10.(3), By-law 569-2013

A parking space may not be located in a front yard or a side yard abutting a street.  
The parking space will be located in the front yard.

6. Chapter 10.5.100.1.(1)(C), By-law 569-2013

The maximum permitted driveway width is 6 m. In this case, the driveway width will be 6.9 m.

Since the consideration of this proposal before the Committee, changes have been made to the layout of the features in the front yard and the requests for relief regarding minimum landscaping and soft landscaping in the front yard have been modified to the following:

- Front yard landscaping: original proposal: 19.4% (9.55m<sup>2</sup>); revised proposal: 35.55% (17.50m<sup>2</sup>)

- Front yard soft landscaping: original proposal: 31.65% (7.79m<sup>2</sup>); revised proposal: 55.55% (13.67m<sup>2</sup>).

In both of these cases, the revised variances are improvements over the original design, resulting in less of a variance being required.

In accordance with the provisions of s.45 (18.1) and s.45 (18.1.1) of the *Planning Act*, the Tribunal accepts these amendments to the application and deems them to be sufficiently minor so as to obviate the need for further notice.

## MATTERS IN ISSUE

As noted above, the Committee approved the first two variances related to the FSI excess of .01 over the permitted FSI of 1.0 and the widening of the front step by 0.27m over the permitted width of 2.0m. Mr. Galbraith advised that this was the smallest FSI excess that he has ever dealt with and had no hesitation in recommending it as minor, desirable and meeting the intent and purpose of the City Official Plan ("OP") and Zoning By-law as those instruments are supportive of housing renewal and improvement. Similarly with the front step widening, the step width proposed is not disproportionate, will better serve access to the dwelling and has no discernible negative impact on the Property, its neighbouring properties or streetscape. In his opinion, these two heads of relief clearly satisfy the four tests set out in s.45(1) of the *Planning Act*. The Tribunal accepts that opinion and will endorse the Committee approval of those two heads of relief.

The contentious matter was the proposed hammerhead drive/parking space. In order to appreciate the issue, context is essential. The previous owners had installed a front yard parking space using flagstone pavers largely in the city boulevard along the northern portion of the front yard, which would have involved removal of some soft landscaping. This parking space would position the parked vehicle perpendicular to the house. There is no known authority for the creation of this parking space as the Property does not have the benefit of a pad parking permit (which authorizes the creation of a parking space in the City right-of-way) or any previous variance relief.

The proposed variances will facilitate the legalizing of a front yard hammerhead parking space, as the current mutual driveway space between the Property and 33 Admiral Road (the property to the south) is not wide enough for modern cars to access the rear yard. It is also of significant note that 33 Admiral Road has a front yard parking space. This space is designed so that the vehicle rests at approximately a 45 degree angle to the front main wall of the dwelling.

The other feature of note is that there is a very large Norway maple in the City right-of-way in front of the Property. This tree is marked with a large orange dot, which Mr. Galbraith has confirmed signifies that it is slated for removal due to poor health.

The City Planning Department commented to the Committee on the application. They offered no substantive comment on the floor area or front step variance requests. However, with respect to the hammerhead parking space, they noted that Policy 3.1.2.4 of the OP states that development will improve the safety and attractiveness of the public realm by limiting new, and removing existing, surface parking between the front of a building and the public street or sidewalk. They further went on to offer the view that the proposed front yard parking space does not conform to the land use and built form policies applicable to this site. Specific note was made that the proposed front yard parking space is oriented parallel to the front lot line, saying that its orientation impacts the public realm by occupying space otherwise required for soft landscaping amenity

with hardscaping and vehicular parking. In their view, this does not maintain the general intent of either the Official Plan or Zoning By-law.

Mr. Galbraith spoke pointedly to these observations and held an entirely different opinion, which will be discussed below.

## **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**

As noted above, Mr. Galbraith provided contextual, policy and opinion evidence on the matter before the Tribunal.

The Property is located in what is known as the East Annex neighbourhood. In accordance with the prescription of Policy 4.1.5 of the OP, which details considerations aimed at preserving the character of neighbourhoods in the Neighbourhoods designation (which is the circumstance with the Property), Mr. Galbraith established a geographic neighbourhood area and an immediate context. The geographic neighbourhood captured similarly zoned properties from west of the Mixed Use designation of the properties on the west side of Avenue Road over to the western edge of the properties on Admiral Road, its south limit to just north of Lowther Avenue and its north limit to the south of the Mixed Use designation on the south side of Davenport Road. This included the relevant sections of Bernard Avenue, Tranby Avenue, Boswell Avenue and Elgin Avenue within the broad geographic neighbourhood limits. The

immediate context was the southern leg of Admiral Road down to the broader neighbourhood limit north of Lowther Avenue.

The document disclosure filed in the proceeding contained a voluminous gallery of over 300 images of the properties in the described geographic neighbourhood. This was also accompanied by a diagram which highlighted those properties in the geographic neighbourhood which currently had front yard parking and a notation as to which of those properties were currently the beneficiary of a pad parking permit.

It was clear from the photographic evidence as well as the diagram that the preponderance of properties in the geographic neighbourhood as well as the immediate context have front yard or side yard parking, the bulk of which is without the benefit of a parking pad permit. According to Mr. Galbraith there are relatively few instances of variance relief for these parking spaces.

The result of this review leads him to the conclusion that the *character of this geographic neighbourhood and the immediate context is marked by front or side yard parking*. As such, the proposal here conforms with the OP policy to maintain the prevailing character of the area as described in Policy 4.1.5 of the OP

This would appear to set up a conflict with Policy 3.1.2.4 of the OP as referenced by the Planning Department in its comment to the Committee. Mr. Galbraith explains how this policy must yield to the character policy in Policy 4.1.5 as this is a historic neighbourhood with its peculiar characteristics and that it is not the intent of the OP to ignore the history and evolution of particular neighbourhoods.

The Tribunal is familiar with the OP's interpretation policies and appreciates that the document must be read as a whole and reconciled as necessary based upon context and overriding objectives. In this regard, it is the finding of the Tribunal that the proposed parking configuration on the Property is entirely compatible with the character of the neighbourhood and is thus supportable.

The Zoning by-law is meant to implement the OP and can therefore be approached in a similar fashion. In the circumstances, the zoning which fails to recognize this prevalent neighbourhood characteristic can fairly be taken to be intended to function in the role of a screening mechanism, whereby proposals such as this one can be scrutinized by the Committee, and the Tribunal on appeal, and reviewed to ensure that the goal of front yard aesthetics can be achieved on as optimal a basis as is possible. That is precisely what happened on this application. Due to further consideration of the front yard layout, the application has been amended and a greater area of the front yard will be devoted to landscaping and soft landscaping.

There is also a very important further dimension to the proposal. As Mr. Galbraith advises that there is currently a moratorium on parking pad permits in this area, the parking space must be wholly located on the Property. The only way to achieve this is by way of the hammerhead design rather than a space which is laid out perpendicular to the dwelling. It appears to the Tribunal that this design will indeed protect for the replacement of the diseased Norway maple in the City right-of-way and also allow for enhanced landscaping in the front yard. Furthermore, there are numerous

examples of the perpendicular alignment of parking spaces within the geographic neighbourhood.

In light of these observations and findings of Mr. Galbraith, he concludes that the variances associated with establishment of this front yard parking space in its context can be treated as minor and are clearly desirable for the appropriate use of the property. As noted above, his opinion is that the proposal is in keeping with the intent and purpose of the OP and the Zoning By-law. As such, the four tests of s.45(1) of the *Planning Act* are met on this modified application.

The Tribunal accepts the opinion of Mr. Galbraith and is satisfied that the entirety of the heads of variance relief, as modified and presented in this hearing, meet the four tests in s.45(1).

## **ANALYSIS, FINDINGS, REASONS**

In light of the very site specific and limited nature of the proposal and variance relief required to implement it, Mr. Galbraith acknowledged that his review of the Provincial Policy Statement caused him to conclude that there was no issue of failure of consistency with that document and no issue arises with respect to conformity with the Growth Plan for the Greater Golden Horseshoe, 2020.

Based upon the evidence and issues discussed above, the Tribunal concludes that the modified set of variance relief requested before the Tribunal meets the four tests set out in s.45(1) of the *Planning Act* and should be approved.

Mr. Galbraith advised the Tribunal that the City's Urban Forestry division had requested two conditions on any approval. In addition to this, Mr. Galbraith thought it appropriate to tie the requested approval to the plans which have been used in the processing of the application, as they have been modified for the Tribunal hearing. Those conditions will be set forth in the Tribunal's Order below.

## **DECISION AND ORDER**

The Tribunal will allow the Appellant's appeal, in part, based upon the amendments to the relief requested as advanced before the Tribunal in the hearing.

The recast relief will thus be as follows:

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

1. Chapter 10.10.40.40.(1)(A), By-law 569-2013

The maximum permitted floor space index of a semi-detached dwelling is 1 times the area of the lot (377.78 m<sup>2</sup>). The altered dwelling will have a floor space index equal to 1.01 times the area of the lot (382.68 m<sup>2</sup>).

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6. Chapter 10.5.100.1.(1)(C), By-law 569-2013

The maximum permitted driveway width is 6 m. In this case, the driveway width will be 6.9 m.

**This approval is subject to the following three conditions:**

1. That the building, parking, and landscaping be constructed substantially in accordance with the site plan dated May 12, 2022, and front, rear, and side elevations dated May 12, 2022, as prepared by VFA Architects + Design Inc. for the Tribunal appeal hearing.

2. Prior to the issuance of a building permit, the applicant/owner shall submit a complete application for permit to injure or remove a City owned tree(s) under Municipal Code Chapter 813, Trees Article II, Trees on City Streets, to the satisfaction of the Supervisor, Urban Forestry, Tree Protection and Plan Review, Toronto and East York District; and



3. Prior to the issuance of a building permit, the applicant/owner shall submit, as necessary, a complete application for permit to injure or remove privately owned tree(s) under Municipal Code Chapter 813, Trees Article III, Private Tree Protection, to the satisfaction of the Supervisor, Urban Forestry, Tree Protection and Plan Review, Toronto and East York District.



**X**

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G. Swinkin

Toronto Local Appeal Body, Panel Member