

DECISION AND ORDER

Decision Issue Date Wednesday, July 13, 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): Patrik Rogalla;

Applicant: Soodeh Salehin

Property Address/Description: 27 Ridge Dr

Committee of Adjustment Case File Number: 21 174608 STE 11 MV (A0816/21TEY)

TLAB Case File Number: 21 250842 S45 11 TLAB

Hearing date: Monday, June 20, 2022

Undertakings fulfilled as of July 4, 2022

DECISION DELIVERED BY T. Yao

REGISTERED PARTIES AND PARTICIPANTS

Name	Role	Legal representative
Soodeh Salehin	Applicant	
Matthew Larose, Jillian Dorazio	Owners	Raj Kehar
Patrik Rogalla	Appellant	
Mark de Groot, Yann Rioux	Parties	Robert Brown, William Roberts

INTRODUCTION AND SUMMARY

Ms. Dorazio and Mr. Larose wish to down their house at 27 Ridge Drive and request three variances to build a new home (set out in Table 1).

Table1. Variances sought for 27 Ridge Dr			
		Required	Proposed
Variances from Zoning By-law 569-2013			
1	Building Length (now deleted)	17 m	Now complies as a result of redesign of third floor balcony; originally 17.6 m
2	West side yard setback	1.2 m	0.92 m
3	Max balcony size	4 m ²	11.5 m ² (reduced from 12.3 m ²)
Variances from Zoning By-law 438-86¹			
4	Building height	11.0	11.40 m (reduced from 11.96 m)

On December 14, 2021, the Committee of Adjustment made its decision, largely approving the application. A neighbour, Patrik Rogalla, appealed and so this matter came to the TLAB. Since this is a settlement, I will omit more extensive discussion of the legislative and policy framework.

However, I still have an independent duty to ascertain that the statutory tests under s. 45(1) of the *Planning Act* have been met. I heard a brief amount of evidence from Sean Galbraith, the applicants' planner, whom I qualified as able to give opinion evidence as to land use planning. His evidence permits me to find that the tests are satisfied, that is, that the variances 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.

ANALYSIS, FINDINGS, REASONS

Amended from the original application

¹ Because appeals to the 569-2013 Zoning By-law are still outstanding, plan examiners review all applications for compliance with both the present by-law and in the former by-law; in this case By-law 438-86. The implications of this additional review are discussed in this decision.

As set out above, this application is being amended from the original request. Mr. Kehar, the applicants' lawyer, asked me to make an order that the changes are minor and therefore, no new notice need be given. The relevant parts of the *Planning Act* are in footnote 2². In summary, if variances are diminished or eliminated, in this case, an order will be made routinely. The change is to eliminate the length variance by coming within the by-law, and to lower the height variance from that sought at the Committee of Adjustment. In any case, the neighbours are aware of this change.

I will make the order requested that the changes are minor and no new notice has to be given.

No attachment

First I discuss why I do not attach the Minutes of Settlement to this decision. The short answer is that they are not necessary to explain this decision. This settlement has a "public" part and a "private" part, consisting of contractual matters that do not involve the TLAB. I have decided not to attach the settlement documents to this decision to respect the privacy of the contracting parties.

West side setback

Ridge Drive is an east west street and # 27 is about seven houses east of Mount Pleasant on the south side. In Figure 2, north is to the right. And the west side yard variance is circled. Mr. Rogalla's house is the one with the carport and the Rioux/ de Groot house is #31.

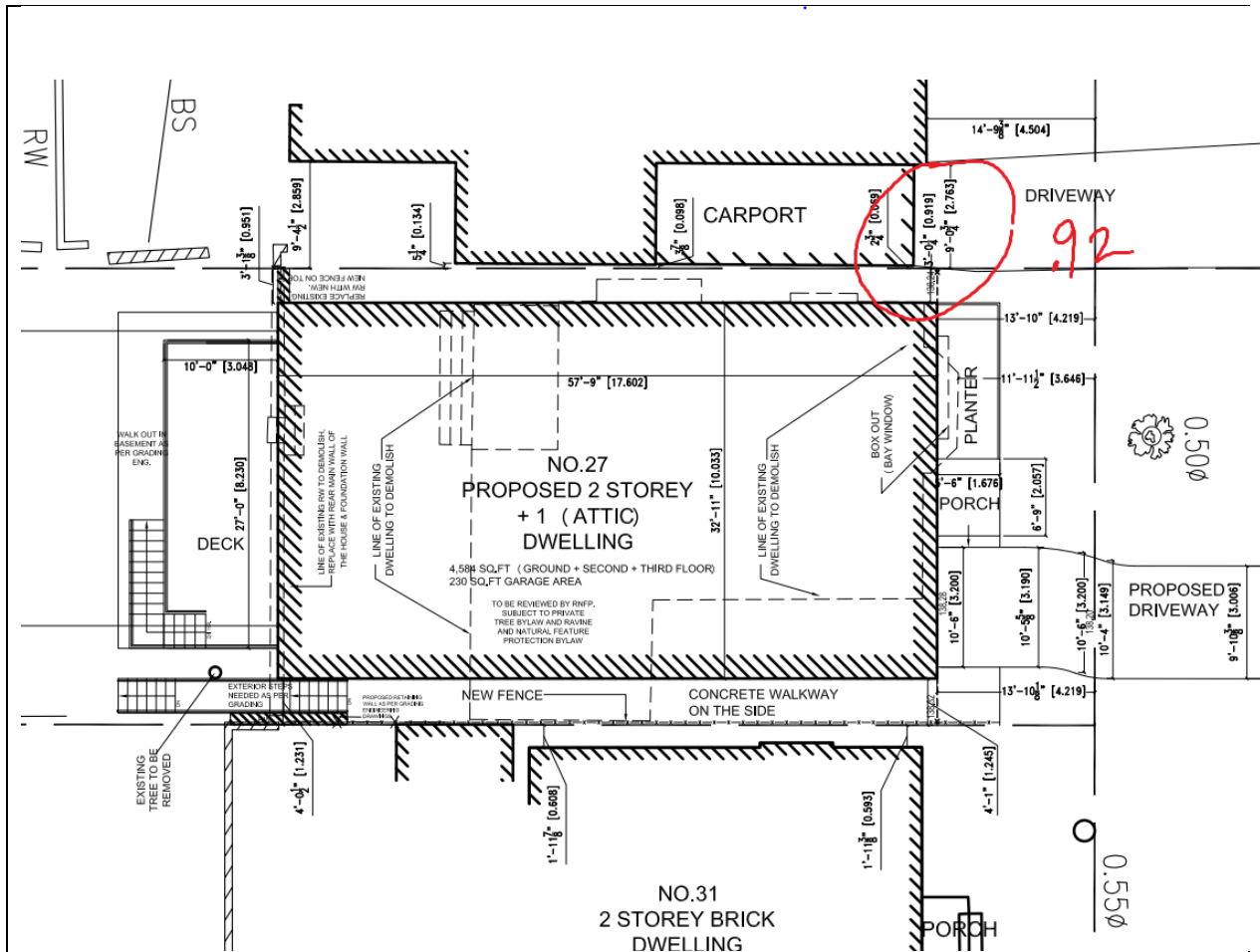
Figure 2. The west side setback shown. Projections to be removed are in dotted lines

² Amended application

(18.1) On an appeal, the Tribunal may make a decision on an application **which has been amended from the original application** if, before issuing its order, written notice is given to the persons and public bodies who received notice of the original application under subsection (5) and to other persons and agencies prescribed under that subsection.

Exception

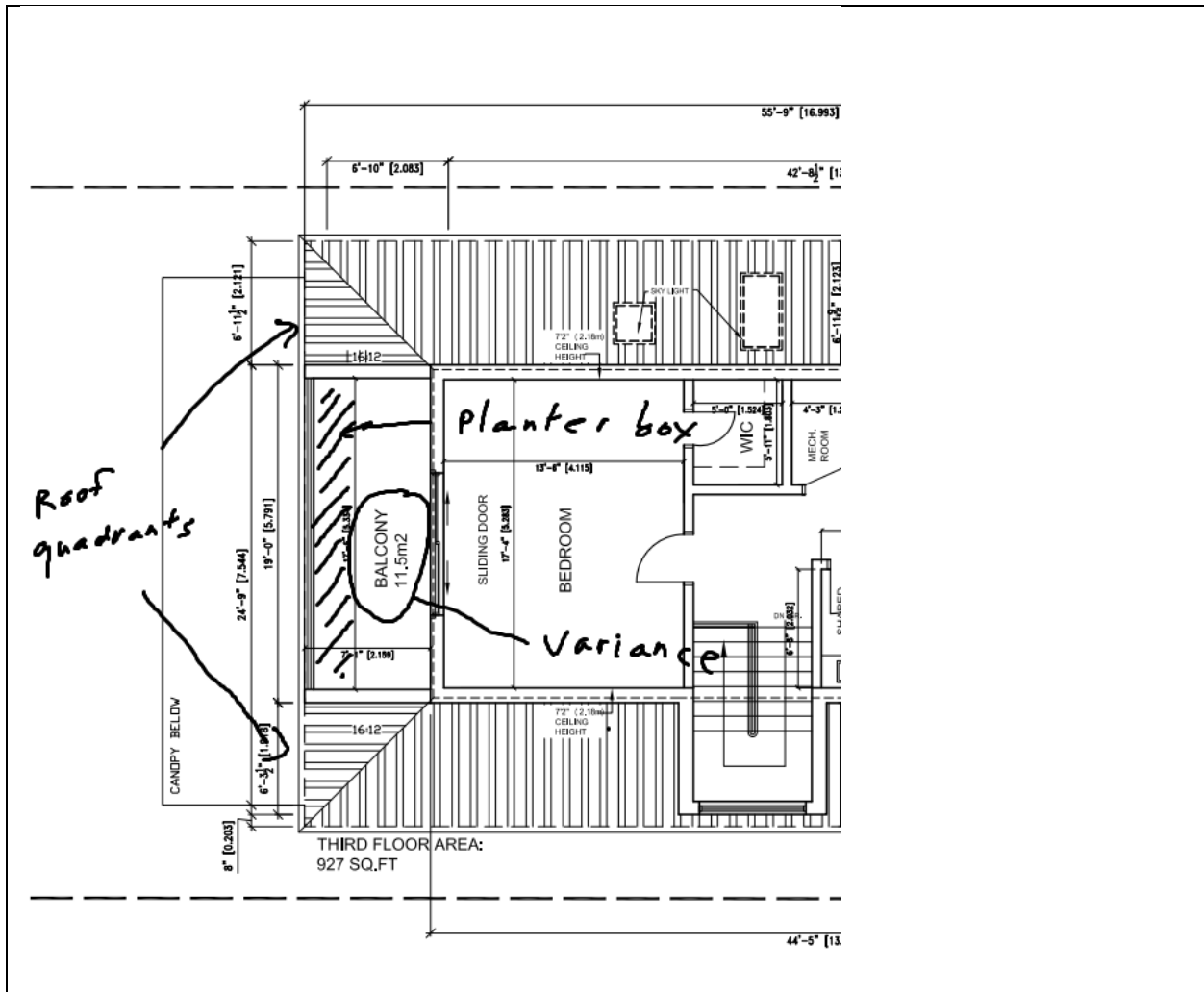
(18.1.1) The Tribunal is not required to give notice under subsection (18.1) if, in its opinion, the amendment to the original application is minor.



The side yard variance is related to 27 Ridge’s proposed west wall, which is towards the top in Figure 2. I have circled the relevant dimension. Mr. Galbraith said that the new west wall will be an improvement over the present situation as some protrusions in the masonry wall that are currently closer than 0.92 m will be eliminated.

The third-floor balcony size has been reduced by pulling it into the third floor (Figure2). The reduced size of 11.5 m² results from integrating it into roof quadrants at the ends (making a balcony that does not run the width of the house as the Larose/ Dorazios presented at the Committee) and a new planter box (hashed lines). This box is a result of the settlement negotiations. While not part of the structure, the planter will decrease the sitting area on the balcony. The parties understand that the box is not part of the list of items to be checked by the building inspector once the permit is issued.

Figure 2. Detail of third floor balcony



The overall height limit is 11 m, which the Dorazio/Larose family has always met. This height is measured from “established grade”, the term used in the current by-law. Under the older by-law (438-86, for the former City of Toronto), there is the same 11 m limit, but height was measured from “average grade”, a lower starting point, resulting in a height exceedance of 0.96 m under the former by-law only. Since the settlement, the Dorazio/ Laroses have lowered the former by-law height to 11.40 m, still above 11 m, but less than sought previously at the Committee. In any case, the height under the current bylaw (established grade) may be considered to supersede the “average grade” height and I am satisfied that this variance is minor and meets the other tests.

In conclusion I find on Mr. Galbraith’s evidence that the four tests under the Planning Act have been met.

DECISION AND ORDER

I find the changes made after the application to the Committee of Adjustment to be minor and order that no further notice is required of the changes.

I authorize the variances in Table 1 subject to the following conditions:

1. Prior to issuance of a building permit, the applicant/owner shall submit a complete application for a permit to injure or remove a private owned tree(s) located within a ravine protected area and/or the submission of a complete application for a permit to place or dump fill or refuse or alteration of grade on any land within a ravine protected area, as per City of Toronto Municipal Code Chapter 658, Ravine and Natural Feature Protection, to the satisfaction of the Supervisor, Ravine and Natural Feature Protection, Urban Forestry.
2. That the building be constructed substantially in accordance with the site plan dated June 20, 2022 and marked as Exhibit 3, and front, rear and side elevations dated June 20, 2022 and marked as Exhibit 3, being the settlement plans.
3. That while the third floor platform (roof terrace) will be 11.5 m² , a railing inside the outer edge will be installed to create privacy and a smaller seating area? space that is no greater than 8.0 m² . In the area outside of the railing, but on the platform (non-occupiable space), planters will be installed for aesthetic purposes



X

T. Yao
Panel Chair, Toronto Local Appeal Body