

DECISION AND ORDER

Decision Issue Date Wednesday, August 10, 2022

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

Appellant(s): DIANE CORNACCHIA

Applicant(s): CAL DESIGNS

Property Address/Description: 60 KIMBOURNE AVE

Committee of Adjustment File

Number(s): 21 152064 STE 14 MV (A0626/21TEY)

TLAB Case File Number(s): 21 216039 S45 14 TLAB

Hearing date: February 15, 2022

DECISION DELIVERED BY TLAB Panel Member C. Kilby

REGISTERED PARTIES AND PARTICIPANT

Appellant	Diane Cornacchia
Appellant's Rep.	Michelle Cornacchia
Applicant	Cal Designs
Participant	Sandra Abdelkerim

INTRODUCTION

In a decision mailed September 7, 2021, the Committee of Adjustment (**COA**) refused permission for a soft landscaping variance for 60 Kimbourne Avenue (**Property**). Diane Cornacchia, the Property owner (**Appellant**), appealed to the Toronto Local Appeal Body (**TLAB**) seeking permission for the variance which will legalize and maintain the existing front yard landscaping at her home.

A hearing of the Appeal took place on February 15, 2022 via the City of Toronto (City) WebEx platform (Hearing). Michelle Cornacchia, the Appellant's daughter, appeared on her behalf. I granted Sandra Abdelkerim Participant status, but she did not present evidence at the Hearing. The City of Toronto (City) did not participate in this Appeal and there were no other Parties or Participants in attendance.

I advised that I had visited the Property and the neighbourhood prior to the Hearing, as directed by City Council. I also advised that a Hearing before the TLAB is a hearing *de novo* and all evidence in support of the Application would have to be presented afresh. The onus lies on the Applicant to demonstrate that the relevant statutory tests are met.

BACKGROUND

The Property is in the former borough of East York in an area designated by the City's Official Plan (OP) as "Neighbourhoods." The Property is zoned RS (f10.5; a325; d0.75)(x312) H8.5m (ZZC) under the City's comprehensive Zoning By-law 569-2013 (Zoning Bylaw).

On the Property is a two-storey detached house with an elevated front entrance, an integral garage, and a driveway. The house was substantially redeveloped in 2016 based on plans dated November 23, 2015.¹ Following approval of the building permits, the Appellant increased the proportion of hardscape in her front yard, departing from the design that was originally approved and exceeding what is permitted by the Zoning Bylaw.² The Appellant requests permission for the following variance from the Zoning Bylaw to preserve the existing driveway:

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

A minimum of 75% (38.25 m²) of the front yard is required to be soft landscaping.

In this case, 10% (5.2 m²) of the front yard will be in maintained as soft landscaping.

MATTERS IN ISSUE

The central issue in this Appeal is whether the TLAB should permit the variance required for the existing driveway, which reduces the amount of soft landscaping in the Property's front yard to less than the zoning standard.

After carefully considering the evidence presented during the Hearing, I have determined that this Appeal should be allowed. For the reasons set out below, the requested variance is granted.

¹ Exhibit 5.

² Exhibit 5 includes as the first page a plan of the driveway as it currently exists, dated as revised March 11, 2021.

JURISDICTION

Provincial Policy – S. 3

A decision of the 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 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

Ms. Cornacchia was the sole witness in this Appeal. The following exhibits were entered into evidence at the Hearing:

Exhibit 1 – Photo Book filed by Appellant January 23, 2022

Exhibit 2 – Notice of Appeal dated September 21, 2021

Exhibit 3 – “CA Supporting Document filed August 25, 2021” – Email from Cal Designs to Lawrie Surdon dated August 25, 2021 – photo taken by architect hired by Appellant

Exhibit 4 – “CA Supporting Document filed August 25, 2021” – two photographs of 60 Kimbourne Avenue, taken by architect hired by Appellant

Exhibit 5 – Cal Designs Plans for 60 Kimbourne Ave., filed May 14, 2021 with COA

Exhibit 6 – May 8, 2021 Survey

Exhibit 7 – City Planning Report dated August 25, 2021

History

In 2016 the Appellant received approval to build a two-storey home where a bungalow previously stood. When the original plans³ were approved, the Appellant was in good health. Near the end of the construction process, however, the Appellant's health declined such that the original driveway design would no longer accommodate

³ See Exhibit 5.

her needs. As a result, the design was changed during construction but after the plans were approved.

The key reason for increasing the hardscaping in the front yard of the Property is that it promotes accessibility for the Appellant. The Appellant's mobility has been hampered by health concerns which have progressive implications. The Appellant requires assistance to enter and exit her vehicle and may eventually require a lift to the front door from the driveway in order to access her front door. Ms. Cornacchia explained that a hard surface such as the paved driveway mitigates against tripping, sinking, and accommodates shifting weight by those walking on it. Soft landscaping, she explained, would not adequately support the use of a walker or cane, and would be challenging to navigate using a wheelchair, which is expected to become necessary in the future.

Ultimately Ms. Cornacchia says that the hardscaping in the front yard of this home is a critical component of keeping the home accessible for her parents, who desire to live independently in their own home for as long as possible.

Physical Character of the Neighbourhood

Exhibit 7 is a Staff Report dated August 24, 2021 from the Director of Community Planning, Toronto and East York District, to the COA (**Report**). The Report recommends that the variance application be refused because the Property's reduced soft landscaping is inconsistent with the prevailing pattern of soft landscaping in the neighbourhood.

Ms. Cornacchia submitted that the Appellant's driveway is, in fact, consistent with the character of the neighbourhood. She said that multiple homes on Kimbourne Avenue have substantial hardscape in their front yards, and there are multiple properties on other streets with little to no softscaping. She presented a neighbourhood study area (**NSA**), as required by OP Policy 4.1.5. The northern boundary of the NSA is Memorial Park Avenue and the southern boundary is Sammon Avenue. The eastern boundary is Bonnie Brae Boulevard, and the western boundary is Leroy Avenue. The NSA has the same (or substantially the same) zoning.

With reference to Exhibit 1, neighbourhood photos taken from Google maps, Ms. Cornacchia highlighted the existing physical character of over 50 front yards in the NSA, with a specific focus on front yard landscaping, consistent with OP Policy 4.1.5(g). She drew my attention to properties directly across the street from the Property which have what she described as "zero" softscaping.⁴ She also suggested that the shift by property owners towards increased hardscape has been made over time after the completion of approved building plans. I did not have sufficient evidence before me to make a finding about this premise. Ultimately, Ms. Cornacchia's evidence was that the neighbourhood character was one of little to no softscaping in front yards.

⁴ See, e.g., photos 9-10, pp. 13-14, Exhibit 1 and Exhibit 3. Ms. Cornacchia did not have data to substantiate her estimate of the proportion of soft landscaping on each property she used in her presentation, so the "0%" and "<70%" figures used in her evidence are not taken as factual but rather as illustrative editorial language.

Additional Considerations

Ms. Cornacchia pointed out the soft landscaping in the boulevard in front of the Property, as well as on the north side of the front porch and in the rear yard. I asked about possible ways to increase the soft landscaping on the Property. She said that to reduce the available hardscape by adding soft landscaping (such as a flower bed at the foot of the entry stairs) would jeopardize both her parents' safety and limit their options for aging in place as accessibility becomes more challenging over time. She said that adding more softscaping in the form of planters or pots would create more work for her parents and possibly limit the accessibility to the side south entrance to the house.

Ms. Cornacchia asserted that no neighbours have complained about the Property's driveway and paving/soft landscaping mix. She explained that many neighbours in the immediate context, including those adjacent to the Property, have also increased their own hardscaping in order to accommodate more parking spaces.

Overall, Ms. Cornacchia emphasized the importance of making the home accessible for the Appellant. To permit the hardscaping as it currently exists will permit the Appellant and her spouse to stay in their home and remain independent as they age in place.

ANALYSIS, FINDINGS, REASONS

Policy

TLAB decisions must be consistent with the 2020 Provincial Policy Statement (PPS) and conform to, or at least not conflict with, the Growth Plan for the Greater Golden Horseshoe (**Growth Plan**) for the area. The PPS and Growth Plan are high level provincial policy documents that are not typically engaged by a local variance application. I find the Application is consistent with the PPS and conforms to the Growth Plan. In any event, I do not find the Application to conflict with these policy documents.

The Four Tests

For a variance to be approved, it must satisfy each of the four tests under subsection 45(1) of the Act, listed above.

Intent and Purpose of the OP

The OP provides localized planning direction to guide decision-makers. It is a key planning document and must be read as a whole. The OP creates land use designations for different areas of the City. Neighbourhoods are one such designation for residential areas considered to be physically stable. Proposed development should respect and reinforce the existing physical character of the neighbourhood, including with respect to the prevailing pattern of landscaped open space.

In this neighbourhood which has a mix of physical characters with respect to front yard landscaping, the Property's front yard can be permitted if the reduced soft landscaping exists in substantial numbers within the NSA, is materially consistent with the physical character of the NSA, and already has a significant presence on properties located in the immediate context or in the immediately adjacent block(s).

I find from the evidence that many driveways in the NSA (the broader context) have a larger proportion of paving and hardscaping than soft landscaping. In some examples from the same block (the immediate context), there was almost no soft landscaping in the front yard. The adjacent block of Kimbourne Avenue south of Mortimer Avenue has several examples of limited soft landscaping in the front yard. Therefore, I find that the requirement set by OP Policy 4.1.5 for development to respect and reinforce the existing physical character of the neighbourhood is met. The soft landscaping variance continues an existing physical characteristic that is well-represented in the neighbourhood and does not set a new precedent.

Therefore, I find that the purpose and intent of the OP is maintained.

Intent and Purpose of the Zoning Bylaw

The Zoning Bylaw is meant to set standards which facilitate the goals of the OP. OP Policy 4.1.8 says that zoning bylaws will contain numerical site standards "to ensure that new development will be compatible with the physical character of established residential 'Neighbourhoods'." Having found that the Property's front yard soft landscaping "fits" within its neighbourhood context, I conclude that the general intent and purpose of the Zoning Bylaw to ensure compatibility with the neighbourhood is met.

Insofar as the soft landscaping zoning standard is meant to control water runoff, I accept Ms. Cornacchia's evidence that the Property has soft landscaping in the rear yard. Although small, there is also a garden at the front of the Property which will absorb some rain and which contributes to a positive relationship between the Property and the street. From the photographic evidence, the Property's appearance is softened by the existing, albeit small, soft landscaping in the boulevard, which is an improvement over other properties in the NSA having little to no front yard soft landscaping.

Therefore, the general purpose and intent of the Zoning Bylaw is met.

Desirable for the Appropriate Use of the Land

The soft landscaping variance does not create a precedent in the neighbourhood. The driveway was permitted when the house was constructed. Therefore, I find this test is satisfied.

Minor

The variance is not numerically small – only 10% of the front yard is covered by soft landscaping, rather than the required 75%. In this neighbourhood, however, that size of variance does not stand out. Some of the properties shown in Exhibit 1 appear to

have completely paved front yards. There is a widespread practice of creating parking space in the front yard of properties in this area. Accordingly, I do not regard the numeric size of this variance sufficient reason to disallow it.

In terms of whether the variance would create an undue adverse impact of a planning nature on neighbouring properties, Ms. Cornacchia's evidence was that the adjacent neighbours both have similar hardscaping in their front yards for parking purposes. Ms. Cornacchia also pointed out that there was no opposition at the TLAB from neighbours and none from the City other than its planning report filed as Exhibit 7 in this Hearing. The evidence demonstrates that the neighbourhood is home to many examples of substantial hardscape in front yards.

I find the test of minor is satisfied.

DECISION AND ORDER

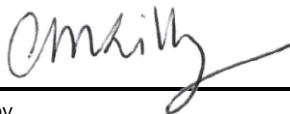
The Appeal is allowed and the decision of the Committee of Adjustment dated September 7, 2021 in File 21 152064 STE 14 MV (A0626/21TEY) is set aside. The following variance is permitted:

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

A minimum of 75% (38.25 m²) of the front yard is required to be soft landscaping.

In this case, 10% (5.2 m²) of the front yard will be in maintained as soft landscaping.

Any other variances not referenced in this Decision and Order are not authorized.

X 

C. Kilby
Panel Chair, Toronto Local Appeal Body