

# DECISION AND ORDER

**Decision Issue Date**      Tuesday, July 26, 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): HAMED GHAMOOSHI RAMANDI

Applicant(s): RANDAL DICKIE, URBANSCAPE ARCHITECTS INC

Property Address/Description: 508 ST GERMAIN AVE

Committee of Adjustment File

Number(s): 21 133554 NNY 08 MV (A0248/21NY)

**TLAB Case File Number(s): 21 171308 S45 08 TLAB**

**Hearing date: October 5, 2021**

**DECISION DELIVERED BY C. KILBY**

## REGISTERED PARTIES AND PARTICIPANTS

Applicant	RANDAL DICKIE
Applicant	URBANSCAPE ARCHITECTS INC
Appellant	HAMED GHAMOOSHI RAMANDI
Appellant	MARYAM SABOURI
Appellant's Legal Rep.	LIA BORITZ/DENISE BAKER

## INTRODUCTION

This is an Appeal to the Toronto Local Appeal Body (**TLAB**) from a May 27, 2021 decision of the Committee of Adjustment. The Committee granted permission for seven of the eight variances sought for the construction of a new dwelling at 508 St. Germain

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Avenue (**Property**). The property owners Hamed Ghamooshi Ramandi and Maryam Sabouri (**Appellants**) seek approval from the TLAB of all eight proposed variances.

A virtual hearing of this Appeal was held on October 5, 2021 (**Hearing**). Counsel for the Appellants, Lia Bortiz, attended with proposed expert Randal Dickie, whom I qualified as an Expert Witness in land use planning. No one else attended or otherwise participated in the Hearing.

I advised that I had visited the site, walked the neighbourhood and had familiarized myself with the pre-filed evidence but that it is the evidence to be heard at the Hearing that is of importance. I also explained that a TLAB Appeal is a hearing *de novo* such that evidence about every element of Application should be presented afresh.

## **BACKGROUND**

The Property is in an area designated as “Neighbourhoods” by the City of Toronto Official Plan (**OP**). According to the Zoning Notice provided at Tab 9 of the Appellant Disclosure, the Subject Property is zoned RD (f9.0; a275)(x1463) under the City Comprehensive Zoning By-law 569-2013 (**Zoning Bylaw**). It is also subject to Zoning By-law No. 7625, as amended (**North York Bylaw**). Under the North York Bylaw, the Subject Property is zoned R7, and is in District No. 9 (Schedule A). Permission is sought for the following variances:

	<b>Zoning Bylaw Provision</b>	<b>Proposed Variance</b>
<b>Zoning Bylaw</b>		
1	The permitted maximum height of a building or structure is 7.2 metres.  [10.20.40.10.(1) Maximum Height] A)	The proposed height of the building is 8.5 metres.
2	In the RD zone with a minimum required lot frontage of 18.0 metres or less, the permitted maximum building length for a detached house is 17.0 metres.  [10.20.40.20.(1) Maximum Building Length if Required Lot Frontage is in Specified Range]	The proposed building length is 22.21 metres.
3	The permitted maximum lot coverage is 30 percent of the lot area.	The proposed lot coverage is 32.51 percent of the lot area.

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	[10.20.30.40.(1) A) Maximum Lot Coverage]	
4	The permitted maximum area of each platform at or above the second storey of a detached house is 4.0 square metres.  [10.20.40.50.(1) B) Platforms at or Above the Second Storey of a Detached House]	The proposed area of the rear platform at the second storey is 6.14 square metres.
5	The permitted maximum building depth for a detached house is 19.0 metres.  [10.20.40.30.(1) Maximum Building Depth if Required Lot Frontage is in Specified Range]	The proposed building depth is 22.21 metres.
6	The permitted maximum number of storeys is 2.  [10.20.40.10.(3) A) Maximum Number of Storeys]	The proposed number of storeys is 3.
7	The permitted maximum number of platforms at or above the second storey located on the front/wall of a detached house is 1.  [10.20.40.50.(1) A) Platforms at or Above the Second Storey of a Detached House]	The proposed number of platforms located on the front wall is 2.
<b>North York Bylaw</b>		
8	The maximum permitted building height is 8 metres.  [14-B(8) - Maximum Building Height]	The proposed building height is 8.95 metres.

**MATTERS IN ISSUE**

In order to be approved, the requested variances, individually and cumulatively, must satisfy the four tests set out by subsection 45(1) of the Planning Act (**Act**).

## 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 must be satisfied that the applications meet each 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.

The variances must individually and cumulatively satisfy the four tests for the Appellants to succeed. After carefully considering all the evidence presented during the Hearing, this Appeal is dismissed for the reasons set out below.

## EVIDENCE AND ANALYSIS

Mr. Dickie's was the only evidence before the TLAB in respect of this Appeal. The following exhibits were entered into evidence at the Hearing:

Exhibit 1: Appellant Disclosure

Exhibit 2: Expert Witness Statement of Randal Dickie

### The Proposal

The Subject Property is in the Avenue Road and Lawrence Avenue West area of Toronto. The lot currently hosts a detached one-storey dwelling with an attached single car garage. The Appellants seek permission for the above-listed variances in order to construct a new detached multi-storey dwelling with an integral garage (**Proposal**). A design feature of the Proposal is the internal "car stacker" in the garage which will permit the storage of a vehicle underground in the basement.<sup>1</sup> Mr. Dickie emphasized the following elements of the proposed design:

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<sup>1</sup> Exhibit 2, paragraph 19.

- The proposed dwelling will have two full storeys with a partial third floor. There will also be a full basement in which a car will be stored. The result of this basement level is the designation of the partial third floor above the garage as a third storey
- Visual dominance of the driveway and garage are reduced by the stacking feature which allows one car to be stored below the other in the basement
- The driveway will remain in its present location on the lot
- The ground floor is close to grade, reducing the number of steps leading to the front door and improving the dwelling's relationship to the street
- The building length variance applies to an excavated deck to be constructed at the rear of the new dwelling

The Appellants' evidence centred on the variance for three storeys, as this was the sole variance not permitted by the Committee of Adjustment.

### **Provincial Policy**

TLAB decisions must be consistent with the PPS and conform to, or at least not conflict with, the 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. Nevertheless, these documents discuss intensification in existing built-up areas such as the neighbourhood in this case, and favour development in transit-served areas. As the Application proposes to construct a replacement low-rise dwelling in an established residential neighbourhood in which similar activity is ongoing, 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 Proposed Variances**

In general, the variances sought by this Application relate to the construction of a larger dwelling than what currently exists: building length, depth, height, storey, and lot coverage variances facilitate increased massing and footprint on the Property. There are also variances sought for number and size of platforms at or above the second storey of the dwelling.

The Committee of Adjustment denied permission for the third storey variance. City Planning staff submitted a report dated May 14, 2021 in which the third storey variance was deemed to be contrary to the intent of the Zoning Bylaw, described as being "...in part, to ensure a consistent pattern of development."

### **The Four Tests**

The variances sought by the Appellants must satisfy the four tests set out in subsection 45(1) of the Act individually as well as cumulatively. To this end, the TLAB requires a meaningful analysis of each proposed variance's compliance with the statutory tests.

## **General Intent and Purpose of the OP**

A variance must maintain the general intent and purpose of the OP in order to be approved. While the entire OP is relevant to this assessment, a key policy highlighted by the Appellants is Policy 4.1 regarding “Neighbourhoods.” Development in designated “Neighbourhoods” must respect and reinforce the existing physical character. The OP states that proposed development in a “Neighbourhood” “will be materially consistent with the prevailing physical character of properties in both the broader and immediate contexts.”

OP Policy 4.1.5 highlights various physical characteristics to consider when making this assessment. I accept Mr. Dickie’s evidence that the Application will not depart from or impact the prevailing physical character of the neighbourhood as it relates to the characteristics listed under Policies 4.1.5(a), (b), (d), (f), (h) and (i).

As policies 4.1.5(c), (e) and (g) are most relevant to the Appeal, evidence about the prevailing physical character of the Property’s surroundings in relation to heights, massing, scale, density and dwelling type of nearby residential properties; prevailing location, design and elevations relative to the grade of driveways and garages; and prevailing patterns of rear and side yard setbacks and landscaped open space are of importance.

### **Heights, Massing, Scale – 4.1.5(c)**

Mr. Dickie noted that there has been a shift in the prevailing heights of neighbourhood dwellings from single storey original dwellings to 2-storey dwellings in the first wave of redevelopment, to the current shift towards 3-storey dwellings. His view was that the design in this case is compatible with the height and massing of many newer dwellings in the neighbourhood.

Mr. Dickie presented evidence about the existing physical character of the neighbourhood with reference to select dwellings within 500 metres of the Property. Mr. Dickie manually reviewed historic variance applications for 325 properties within 500m of the Property over the past 10-12 years. He determined that 35 of those applications received approval for a third storey. The sample highlighted by Mr. Dickie included properties with heights exceeding what is sought in this Application. Mr. Dickie’s review of these decisions included information about building height and storeys, but not about the other variances sought in this Application. There was also limited information about the zoning standards applicable to the properties identified.

In addition, Mr. Dickie presented photographic evidence to show that the existing pattern of development is consistent with what is proposed by the Appellants. Based on the photographs tendered, I accept his evidence that there are certain dwellings in the neighbourhood which have similar physical characteristics to those proposed in the Application, including:

- Taller homes with two full storeys above a garage,
- Homes with integral garages at street level,

- Homes with steps leading to the front door, and
- Newer homes that are taller than their immediately adjacent neighbours.

I accept Mr. Dickie's evidence that a third storey variance was approved for selected properties within 500m of the Property. However, this evidence represents only a partial view of the physical character of the neighbourhood. A neighbourhood study area, delineated in accordance with OP Policy 4.1.5, was not presented. This is a key requirement for the analysis of existing physical character of the Property's geographic neighbourhood. Without more information about the Property's immediate and broader contexts, it is difficult to ascertain if the third storey exemplified by the identified properties is the prevailing physical characteristic of the neighbourhood, the Property's immediate context, or otherwise reflects the general intent and purpose of the OP as articulated throughout its policies.

### **Driveways and Garages – 4.1.5(e)**

While there was some photographic evidence showing garages and driveways in the neighbourhood, the evidence presented was insufficient for me to determine the prevailing character of the neighbourhood as it pertains to this criterion.

### **Setbacks and Landscaped Open Space – 4.1.5(g)**

Mr. Dickie's opinion in relation to Policy 4.1.5(g) was that the Application complies with all rear, side, and front yard setback requirements, and maintains the required amount of landscaped open space for this zone. While this may be the case, it does not assist me to determine the existing physical character of the neighbourhood in relation to building length, depth, and lot coverage. Without such evidence, I cannot determine the existing physical character of the neighbourhood in respect of these variances or make a finding that the Application respects and reinforces that character.

### **Conclusion on OP**

Expert witnesses in the area of land use planning can offer the TLAB opinion evidence as to how a particular application conforms to, or maintains the general intent and purpose of, the OP. Ultimately, however, the interpretation of the OP is a question of law, not of fact.<sup>2</sup>

The photographic and Committee of Adjustment evidence presented does not reveal the existing physical character of the neighbourhood in relation to storeys, lot coverage, building length and depth, and number and area of platforms. When asked about such evidence, Mr. Dickie opined that the Proposal's general conformity to the overall character of the neighbourhood means that these variances maintain the general intent and purpose of the OP. I find this to be an overly general statement without adequate supporting evidence. As a result, I am unable to find that all the variances, individually as well as cumulatively, maintain the general intent and purpose of the OP.

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<sup>2</sup> *Niagara River Coalition v. Niagara-on-the-Lake (Town)*, 2010 ONCA 173 at para. 43, citing with approval *Toronto (City) v. Romlek Enterprises*, [2009] O.J. No. 2232 at paragraph 34.

## **The General Intent and Purpose of the Zoning Bylaw**

As I have found that the variances do not satisfy the first test set out by the Act, the Appeal necessarily must fail. Nevertheless, I will briefly comment on the evidence and my findings concerning the remaining statutory tests.

Mr. Dickie said that the proposed height of the dwelling maintains the general intent and purpose of the Zoning Bylaw and the North York Bylaw because the overall height and massing of the dwelling will be similar to what exists in the neighbourhood. Mr. Dickie said that the dwelling will have a consistent appearance to other two-storey dwellings in the area which read as three-storey dwellings due to their heights.

Mr. Dickie articulated the purpose and intent of the storey zoning standard as to ensure a consistent pattern of development. While this may be one purpose of that standard, the second test under subsection 45(1) is distinct from the first. That is, general consistency in development patterns may indeed be an aim or a product of the Zoning Bylaw, which is deemed to comply with the OP. However, the specific intention of a zoning standard regulating the number of storeys in a zone where height is also regulated is of interest in this case. Mr. Dickie's explanation does not speak to this point, but rather focuses on visual appearances of homes with two storeys above a garage. In this case, a third storey is proposed, even if Mr. Dickie characterizes it as partial. I have insufficient evidence from Mr. Dickie about how this aspect of the proposed design maintains the general intent and purpose of the Zoning Bylaw which specifically proscribes three-storey dwellings in this zone.

With respect to the other variances, Mr. Dickie's evidence is that these variances are either small in numeric or impact terms, or that the absence of related variances (such as setbacks) renders them compliant with the general intent and purpose of the Zoning Bylaw. He referred me to the drawings in Exhibit 1 to show that the building mass will not extend very far past abutting dwellings, and to show that the length and depth variances relate mostly to a proposed rear deck. He also explained that variances for rear and front yard setbacks are not required, thereby demonstrating that the proposed building length and depth maintain the intent and purpose of the Zoning Bylaw.

Mr. Dickie's evidence was that there is sufficient space on the lot for parking, amenity space, and access, and as such, the lot coverage variance maintains the general intent and purpose of the Zoning Bylaw.

For the platform variances, Mr. Dickie's evidence was that they meet the general intent and purpose of the Zoning Bylaw to limit adverse impacts on the public domain or abutting properties because they overlook the street and are only accessible through separate rooms. The size of one balcony is only slightly larger than what is permitted because of its width, not its depth. That dimension arises from the width of the adjoining room. He also pointed to a short wall on the west side of the dwelling designed to provide privacy for neighbours. In terms of number of platforms, Mr. Dickie opined that the small size of the proposed balconies means that their existence and number will not



have a negative impact on abutting properties or the street/sidewalk. Therefore, they will meet the intent of the Zoning Bylaw to prevent such adverse effects.

I am satisfied with Mr. Dickie's explanation of how some of the variances individually maintain the general intent and purpose of the Zoning Bylaw and the North York Bylaw. Nevertheless, I cannot find on the evidence before me that the third storey variance satisfies this test, as there was no evidence about the purpose and intent of that particular zoning standard. Moreover, given the lack of evidence discussed above, I am unable to conclude that the proposed design is consistent with the pattern of development in the neighbourhood. Cumulatively, the variances do not satisfy this test.

### **Desirable for the Appropriate Use of the Land**

I accept Mr. Dickie's evidence that the proposed development is desirable for the appropriate use of the land. It is an example of the ongoing local redevelopment of smaller homes into larger homes and preserves sufficient open space through its respect for setbacks. The relationship of the front of the house to the streetscape is taken into consideration through the design of the garage and front entrance. The innovation of a car stacker allows for a smaller garage that occupies less of the dwelling's façade.

### **Minor**

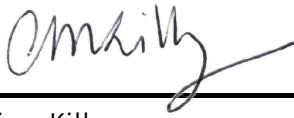
Mr. Dickie's opinion was that the requested variances, individually and collectively, are minor, both in numeric and impact terms. He relied on the proposed dwelling being consistent with the character of the neighbourhood and compatible with other developments in the area. I accept Mr. Dickie's evidence in this regard.

### **CONCLUSION**

Based on the lack of evidence as to the prevailing physical characteristics of the Property's neighbourhood, as required by the OP, I was unable to determine if the variances, individually and cumulatively, maintain the general intent and purpose of the OP. There is insufficient evidence about the prevailing physical character of the neighbourhood in relation to the length, depth, lot coverage, and platform variances. In addition, I am not convinced that the storey variance maintains the general intent and purpose of the Zoning Bylaw. Having failed to satisfy these statutory tests, I find that the Appeal must be denied.

### **DECISION AND ORDER**

The Appeal is denied and the Decision of the Committee of Adjustment dated May 27, 2021 in file number 21 133554 NNY 08 MV (A0248/21NY) is confirmed.

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Christine Kilby  
Panel Chair, Toronto Local Appeal Body