

# DECISION AND ORDER

**Decision Issue Date**      Friday, August 12, 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")

Owners/Appellants: SARAH FERRARA, STEPHEN NEU

Agent: LATTAG STUDIO INC

Property Address/Description: 33 HOPEDALE AVE

Committee of Adjustment File

Number(s): 21 217537 STE 14 MV (A1240/21TEY)

TLAB Case File Number(s): 22 114283 S45 14 TLAB

**Hearing date: August 2, 2022**

**DECISION DELIVERED BY Panel Member T. Yao**

## REGISTERED PARTIES AND PARTICIPANTS

Name	Role	Representative
Stephen Neu	Owner/developer	
Melanie Cooney	Participant	

## INTRODUCTION AND SUMMARY

Mr. Neu has built a shed in the rear of his house at 33 Hopedale without obtaining a building permit and seeks the variances in Table 1 to bring this structure within the by-law.

<b>Table1. Variances sought for 33 Hopedale Ave</b>		
	The requested variance (combination of request plus the zoning standard)	What has to be done to comply if no variance is granted

<b>Table1. Variances sought for 33 Hopedale Ave</b>			
1	Rear yard setback	Permit east shed wall to be 0.22 m from lot line (0.3 required)	Move shed 0.08 m (3.15 inches) to the west
2	Side yard setback	Permit south shed wall <sup>1</sup> 0 m from lot line (0.3 required)	Move shed 0.3 m (.98 ft) to the north
3	Eaves setback (Mr. Neu offers to forgo this variance)	East side eaves are 0.07 m from lot line (should be 0.15 m) <sup>2</sup>	Move eaves 0.08 m (3.15 inches) to the west

## **BACKGROUND**

The Committee of Adjustment refused the application on January 26, 2021. Mr. Neu appealed and so the appeal came to the TLAB. At the TLAB hearing, Ms. Cooney, Mr. Neu’s rear yard neighbour, opposed Mr. Neu. These were the only persons to testify at the hearing.

## **LEGISLATIVE AND POLICY CONTEXT**

The variances must comply with s. 45(1) of the *Planning Act* and must 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.

With respect to the Official Plan, s. 3.2.1 Housing and s. 4.1.5 Neighbourhoods must be considered. Both sections require the physical form of the development to “fit in” physically with the surrounding neighbourhood.

### **Right to develop**

The obligation is on the proponent Mr. Neu to demonstrate to the decision-maker that the tests are met on the balance of probabilities; there is no right to a variance.

### **Site visit**

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<sup>1</sup> The affected neighbour has written a letter supporting this variance, and for reasons set out in this decision I am satisfied that it meets the four tests.

<sup>2</sup> There are no eaves on the south side and so a similar variance is not needed for that elevation.

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I made a site visit. Although my views are not evidence, they give context to help me understand the testimony of the two witnesses.

**ANALYSIS, FINDINGS, REASONS**

Mr. Neu built a shed to in January 2020 to store his daughter's playthings and building materials (he is a contractor as well as a homeowner). He thought he did not need a building permit, as the enclosed area of the shed was less than 10 m<sup>2</sup>. It should be noted that the zoning by-law sometimes applies to structures, even though no permit is needed, such as fences, decks and trellises.

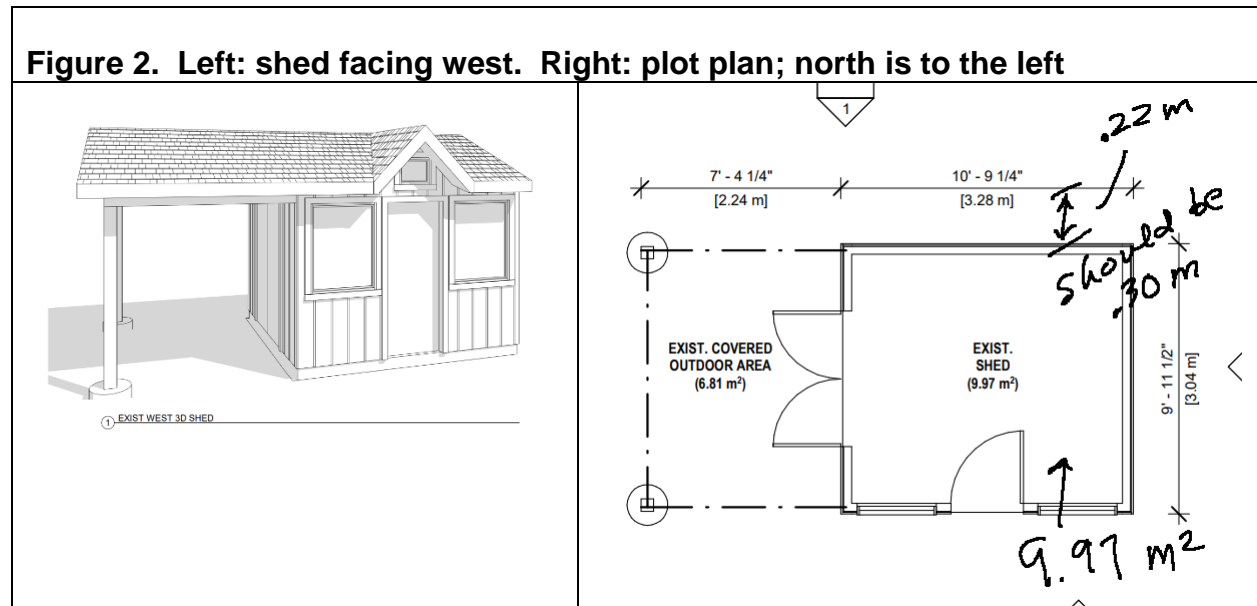


Figure 2 right shows the current shed, in which the right (south) half occupies 9.97 m<sup>2</sup>, just under the 10 m<sup>2</sup> cut off for obtaining a permit. The question is whether the left half, which is open to the elements, and has a swing for his daughter, should be counted in the 10 m<sup>2</sup>. The *Building Code Act* states:

building" means,

- (a) a structure occupying an area greater than ten square metres consisting of a wall, roof and floor or any of them or a structural system serving the function thereof including all plumbing, works, fixtures and service systems appurtenant thereto,

Mr. Neu received an Order to Comply (construction without a permit) on April 2, 2020. He received email confirmation from Kevin Quan of the Building Department on April 27, that based on the measurements Mr. Neu gave him, Mr. Quan was closing his file. However, for whatever reason, the file was reopened about 15 months later, and Mr. Neu received a second Order to Comply ordering him to obtain a building permit.

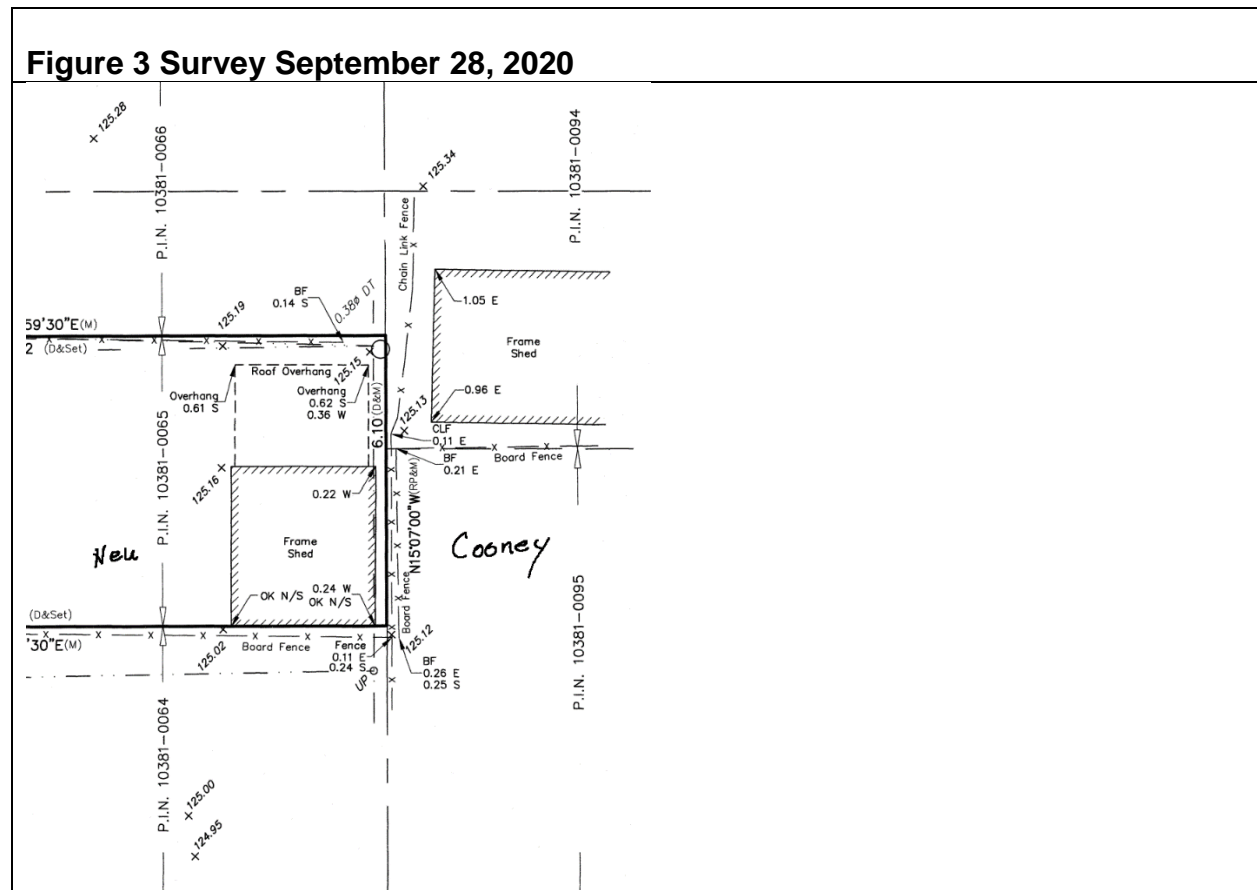
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Mr. Neu applied to the Committee of Adjustment and was refused, as set out above.

The application to the Committee required Mr. Neu to obtain a survey.<sup>3</sup> The key conclusions from the survey are:

- the shed is too close to Ms. Cooney's lot line by 8 centimetres (3.2 inches); and
- the chain link fence is not on the property line.

Mr. Neu was aware of the zoning requirement of 0.3 m from Ms. Cooney's lot line, but used the fence (x's on the survey) for his estimation of the required setback. However, the fence is about 4.3 inches east of the property line and this accounts for much of the variance that Mr. Neu seeks.



For any as-constructed structure, the usual approach is to assume the structure is not yet built; neither punishing the owner for having built without a permit, nor being lenient because of a wish to spare the owner the cost of demotion and rebuilding.

<sup>3</sup> It shows that the north end of the shed roof is 0.36 m (1 foot, 1.3 inches) and the south corner of the shed is .24 m (9.4 inches) from the lot line.

I now consider the *Planning Act* tests. The **Official Plan** requires that the shed “fits into” to the physical character of the neighbourhood and I find that it does. Mr. Neu showed photographs of 29, 31, 32, 41, 45 and 46 Hopedale, all showing rear sheds in relation to fences, roughly similar to his shed.

The Act also requires that the intent of the **zoning by-law** be met, and the variance be minor. “Intent” means I look at the whole of the zoning by-law to see what it is trying to accomplish. There is a complicated provision<sup>4</sup> regarding setbacks of sheds. It is more stringent if the shed is in a side yard, near the main building, or on a corner lot, which is not this case. It is in a rear yard and the smallest setback applies. The purpose of protecting those other more sensitive locations is met. The by-law also allows a maximum height of 4 m (13.1 feet)<sup>5</sup>, and since this shed is a little shorter, it is less intrusive than a shed that high, but built in the proper place.

In addition, I find the variances minor and desirable for the appropriate development of the land. Accordingly, the four tests have been met.

Mr. Neu has offered to cut off the eaves and install a gutter on Ms. Cooney’s side to alleviate any concerns about drainage. This alleviates the need for Variance #3. Since the application has changed since the Committee of Adjustment heard the application, I am required to make an order dispensing with further notice.

## **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.

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<sup>4</sup> (3) Ancillary Buildings or Structures - Side Yard Setback Subject to regulations 10.5.60.20(6) and (7), in the Residential Zone category, the required minimum side yard setback for an ancillary building or structure: (A) in a side yard, is the required minimum side yard setback for the residential building on the lot; (B) in a rear yard and less than 1.8 metres from the residential building on the lot, is the same as the required minimum side yard setback for the residential building; and (C) in a rear yard and 1.8 metres or more from the residential building on the lot, is as follows: (i) if it is on a corner lot, and a residential building on an adjacent lot fronts on the street that abuts the side lot line of the corner lot, the ancillary building or structure must be set back from the side lot line that abuts the street a distance equal to the required minimum front yard setback for the residential building on the adjacent lot; (ii) if it is on a lot with a required minimum lot frontage of 21.0 metres or more, and its height is greater than 2.5 metres or its floor area, is greater than 10 square metres, the required minimum side yard setback is equal to half the height of the ancillary building or structure; and (iii) in cases other than those set out in (i) and (ii) above, the required minimum side yard setback is 0.3 metres.

<sup>5</sup> 10.5.60.40 Height . . . (2) Maximum Height of Ancillary Buildings or Structures The permitted maximum height of an ancillary building or structure in the Residential Zone category is: (A) 2.5 metres, if the ancillary building or structure is located less than 1.8 metres from the residential building on the lot; and (B) 4.0 metres in all other cases.

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I authorize the first two variances set out in Table 1 on condition that the east side eaves (i.e., nearest Ms. Cooney) are cut off and a gutter installed on the east side. This condition is to be completed by December 1, 2022. Otherwise, the variances are not granted.

To repeat, more formally:

Approved Variances:

**1. Chapter 10.5.60.20.(2)(C), By-law 569-2013**

The minimum required rear yard setback for an ancillary building or structure is 0.3 m. The ancillary building (shed) is located 0.22 m from the rear (east) lot line.

**2. Chapter 10.5.60.20.(3)(C)(iii), By-law 569-2013**

The minimum required side yard setback for an ancillary building or structure located in the rear yard and 1.8 m or more from the residential building on the lot is 0.3 m. The ancillary building (shed) is located 0 m from the side (south) lot line.

Condition:

That the eaves located on the east side of the shed be removed and a gutter installed prior to December 1, 2022, failing which the variances are denied.

X



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Ted Yao  
Panel Chair, Toronto Local Appeal Body