

DECISION AND ORDER

Decision Issue Date Tuesday, August 9, 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): MICHAEL GOURLEY

Applicant(s): STAMBUK HOMES

Property Address/Description: 42 CEDARVIEW DR

Committee of Adjustment File
Number(s): 21 221133 ESC 25 MV (A0326/21SC)

TLAB Case File Number(s): 21 245618 S45 25 TLAB

Hearing dates: May 24, 2022, June 13, 2022 & June 14, 2022

Date of email from B. Teichman August 2, 2022

DECISION DELIVERED BY TLAB Panel Member T. Yao

REGISTERED PARTIES AND PARTICIPANTS

Name	Role	Representative
Michael and Nicole Gourley	Owners/Appellants	Zachary Fleisher
Ryan Guetter	Expert Witness	
City of Toronto	Party	Sara Amini
Kevin and Laura Moran	Parties	Brad Teichman
Antonio Volpentesta	Expert Witness	
Nick Rhamey Smith (Weston Consulting)	Observer	
Pamela Mashke	Observer	

On June 27, 2022, I issued an interim decision and advised I would authorize two variances for 42 Cedarview Dr, upon receipt of a satisfactory arborist report.¹ These variances are reproduced in Table 1 of this decision below.

Table 1. Variances sought for 42 Cedarview Dr			
		Required	Proposed
Variances from Zoning By-law 569-2013			
1	Building Length	17 m	28.28 m
2	Building Depth (this variance has been altered since the COA meeting)	19 m	Originally 40.59 m but 38.59 m was decided in the June 27, 2022 decision

The Gourleys submitted an arborist report dated July 8, 2022, by Serg V. Litvinov, who states:

Overall, 9 bylaw-protected trees are on the property or within 6m of it and were visually assessed by Tree Doctors. No trees require injury or removal permits in order to allow for proposed development:

A portion was missing, and this was later supplied on July 29, 2022.² I find that this report satisfies my concerns about two provisions of the Official Plan:

- “Preserving existing mature trees wherever possible”;³ and
- The City’s tree regulation provisions⁴.

¹ I will authorize variances with after receipt of the following:
 A landscaping plan should be prepared with caliper sizes, species and locations of the screening (TLAB decision June 27, 2022)

³ Site Organization & Location 1. Development will be located and organized to fit with its existing and planned context. It will frame and support adjacent streets, lanes, parks and open spaces to promote civic life and the use of the public realm, and to improve the safety, pedestrian comfort, interest and experience, and casual views to these spaces from the development by. . . e) preserving existing mature trees wherever possible. (3.1.2 Built Form)

⁴ 1. To support strong communities, a competitive economy and a high quality of life, public and private

The arborist report deals only with the existing front yard trees. A second “tree issue” is the type and placement of trees to mitigate privacy concerns of the Morans; that is, to limit the extent to which the Gourleys can look into the Morans’ rear yard. Plantings for this purpose are in a drawing A002 filed with the TLAB on July 1, 2022, Figure 2, below. The words describing species are hard to read, so I reproduce them here in larger font:⁵

“17 Thuja occidentalis ‘S Marago’ 245 cm/8ft 60 cm / 2 ft BB
 (max height 25 ft)

8 Calamagrostis acutiflora ‘Karl Foerster’ (max height 150 cm)”

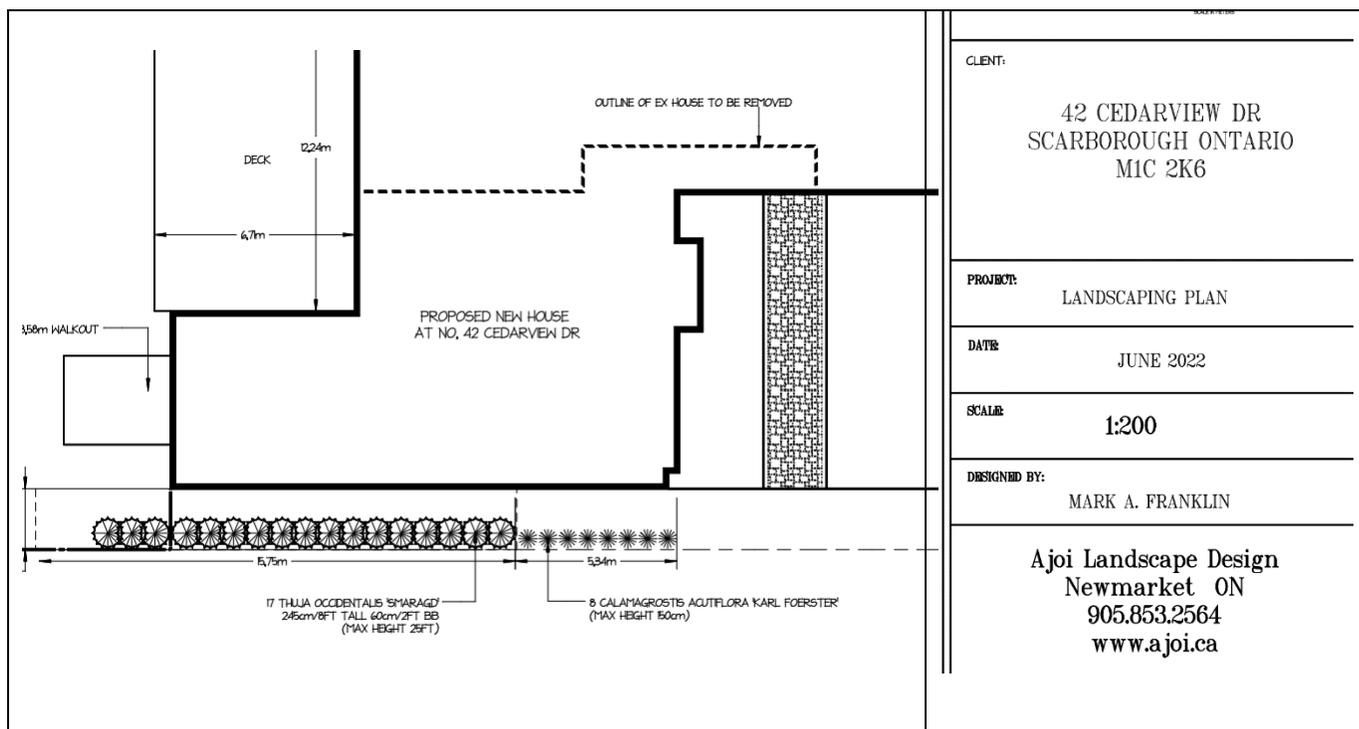


Figure 2. Left: Thuja plantings to mitigate privacy; Right: title block of landscaping plan

city-building activities and changes to the built environment, including public works, will be environmentally friendly, based on: . . .d) preserving and enhancing the urban forest by: i. providing suitable growing environments for trees; ii. increasing tree canopy coverage and diversity, especially of long-lived native and large shade trees; and iii. regulating the injury and destruction of trees. (3.4 The Natural Environment)

⁵ All TLAB decisions, including diagrams, must comply with *Ontarians with Disabilities Act*, i.e., have a sufficiently large font to read. “barrier” means anything that prevents a person with a disability from fully participating in all aspects of society because of his or her disability, including a physical barrier, an architectural barrier, an information or **communications barrier**, an attitudinal barrier, a technological barrier, a policy or a practice; (“obstacle”))

On July 13, 2022, Mr. Teichman wrote that the choice of *Thuja Occidentalis* was inadequate due to lack of height at maturity.⁶ Mr. Fleisher replied that his arborist had considered other solutions and recommended this species.⁷ I accept this recommendation and find the landscaping plan adequate.

A third issue is the wording of conditions. On August 2, 2022, I wrote to ask for the landscape plan, not realizing that the notations about *Thuja Occidentalis* were in the small font on a previously submitted plan. (Left, Figure 2) and also asked for draft wording of conditions.

Mr. Teichman wrote to advise that his client considered the conditions were not sufficient to tie the Gourleys to the elevations they presented in the hearing.⁸ I agree with Mr. Teichman and impose the standard condition to rectify his concern.

Once variances are granted, the TLAB has the same powers as the *Ontario Land Tribunal Act*, which allows flexibility in how it may proceed.⁹ Conditions “may” be imposed (this word is permissive) that the decision maker considers “fair in the circumstances”. I consider the conditions imposed to be fair in the circumstances.

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⁶ It is apparent that the proposed plantings will not achieve that result given that the largest window is on the second floor at a height of approximately 26.5 feet. (Teichman email July 13, 2022)

⁷ My client’s arborist confirmed that a maximum height of 20-25 feet is achievable, and also advised that faster growing hedges are extremely brittle and have a high chance of becoming diseased and dying prematurely. The *Thuja Occidentalis* have been chosen for longevity to provide for privacy over the long term. (Fleishman email July 14, 2022)

⁸ Mr. Fleishman’s proposed wording was “The building length and building depth be developed substantially in accordance with the Site Plan (Drawing No. A002) attached to this decision.” Mr. Teichman wrote: “

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I authorize the variances in Table 1 on the following conditions:

1. The new detached dwelling shall be constructed substantially in accordance with the exterior elevations and site plan filed with the plan examiner.
2. The 17 Thuja Occidentalis and 8 Calamagrostis Acutiflora shall be planted in substantially the locations noted on the Landscape Plan prepared by Ajo Landscape Design dated June 2022 part of which is in Figure 2.

If additional conditions are required would the parties please write to me at tlab@toronto.ca by Aug 16, 2022. Such conditions should not relitigate already confirmed matters.

X



T. Yao
Panel Chair, Toronto Local Appeal Body