

# INTERIM DECISION AND ORDER

**Decision Issue Date**      Thursday, July 28, 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): ANDREW MACDONALD

Applicant(s): JENNIFER MACDONALD

Property Address/Description: 65 CAROLINE AVE

Committee of Adjustment File

Number(s): 21 165535 STE 14 MV (A0749/21TEY)

**TLAB Case File Number(s): 21 242741 S45 14 TLAB**

**Hearing date: July 15, 2022**

**DECISION DELIVERED BY TLAB Panel Member C. Wong**

## REGISTERED PARTIES AND PARTICIPANTS

APPELLANT	ANDREW MACDONALD
APPLICANT	JENNIFER MACDONALD
PARTY	PHILIP HAHN
PARTY	KRISTA LEA CLARK

## BACKGROUND AND INTRODUCTION

The Applicant and Appellant (hereafter the “Applicants”) wished to alter their existing two-story semi-detached dwelling by constructing a rear ground-floor deck with a wood privacy screen on their property at 65 Caroline Avenue.

This property is designated as *Neighbourhood* in the Official Plan and is subject to the City-wide Zoning By-law No. 569-2013, as amended.

At the Committee of Adjustment, the Applicants requested a variance from **Chapter 10.5.50.10.(3)(B), By-law 569-2013** for residential buildings other than an apartment building, requiring rear yard soft landscaping of “A minimum of 25% (18.15 m<sup>2</sup>).” The Applicants requested a variance for no soft landscaping to be maintained in the rear yard. The COA refused this application.

At the Toronto Local Appeal Body (TLAB) Hearing on July 15, 2022, the Applicant’s south side abutting neighbours, Philip Hahn and Krista Clark (who share the same dwelling) were in attendance in opposition to the request.

## JURISDICTION AND POLICY

### *Provincial Policy*

#### **Planning Act, S. 3**

A decision of the Toronto Local Appeal Body (‘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*

#### **Planning Act, 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 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 City of Toronto Official Plan;
- maintain the general intent and purpose of the City of Toronto Zoning By-laws;
- are desirable for the appropriate development or use of the land, building or structure; and
- are minor from the provisions of the by-law, in respect of the land, building or structure or the use thereof.

In addition, the TLAB's Rules, specifically Rules 19 and 20, encourage mediation between Parties and the settlement of some or all the issues in dispute. TLAB Rule 19 addresses Settlements before final determination of an appeal matter. More specifically, Rule 19.1 encourages parties to settle some or all of the issues by informal discussion. Rule 19.2 requires Parties who arrive at a settlement to serve the terms as soon as possible. And 19.4 gives the TLAB authority to issue an order giving effect to the settlement and any necessary amendments.

The Rules also allow the Tribunal to conduct an expedited Settlement Hearing on the terms of the proposed settlement and to issue an order giving effect to the settlement where no Persons at the Hearing oppose the proposed settlement and if the Applicant has satisfied the statutory tests in the *Planning Act*.

## **ANALYSIS, FINDINGS, REASONING**

On the hearing date, the Applicants and Parties agreed to, and the hearing was converted to, a TLAB-led Mediation. During the Mediation, the Applicants and Parties advised the presiding Member that they had reached a settlement in principle.

With only one variance at issue, the Parties then advised the presiding Member of their request to convert the afternoon of July 15, 2022, to an expedited Settlement Hearing. All Parties consented that I continue to be seized as the presiding Member at the expedited Settlement Hearing. The Applicants provided evidence to support their revised application according to the settlement in principle.

### ***Does the Applicants' Proposed Settlement meet the Planning Act requirements?***

#### ***A. Variance request for 10% rear yard soft landscaping***

At the expedited Settlement Hearing, the only requested variance was for 10% rear-yard soft landscaping, from the 25% minimum.

#### **1. General Intent of the City of Toronto Official Plan (OP), Chapter 4.1 Policy 5 - Development Criteria in Neighbourhoods**

"The stability of our Neighbourhoods' physical character is one of the keys to Toronto's success. While communities experience constant social and demographic change, the general physical character of Toronto's residential Neighbourhoods endures. Physical changes to our established Neighbourhoods must be sensitive, gradual and generally "fit" the existing physical character. A key objective of this Plan is that new development respect and reinforce the general physical patterns in a Neighbourhood.

"Scattered throughout many Neighbourhoods are properties that differ from the prevailing patterns of lot size, configuration and orientation. Typically, these lots

are sites of former non-residential uses such as an industry, institution, retail stores, a utility corridor, or are lots that were passed over in the first wave of urbanization. In converting these sites to residential uses, there is a genuine opportunity to add to the quality of Neighbourhood life by filling in the “gaps” and extending streets and paths. Due to the site configuration and orientation, it is often not possible or desirable to provide the same site standards and pattern of development in these infill projects as in the surrounding Neighbourhood. Special infill criteria are provided for dealing with the integration of new development for these sites, and for intensification on existing apartment sites in Neighbourhoods.

“5. Development in established Neighbourhoods will respect and reinforce the existing physical character of the neighbourhood, including in particular:

- a) patterns of streets, blocks and lanes, parks and public building sites;
- b) size and configuration of lots;
- c) heights, massing, scale and dwelling type of nearby residential properties;
- d) prevailing building type(s);
- e) setbacks of buildings from the street or streets;
- f) prevailing patterns of rear and side yard setbacks and landscaped open space;
- g) continuation of special landscape or built-form features that contribute to the unique physical character of a neighbourhood; and
- h) conservation of heritage buildings, structures and landscapes.

“No changes will be made through rezoning, minor variance, consent or other public action that are out of keeping with the physical character of the neighbourhood.”

From the evidence admitted, the Applicants demonstrated that both at the time of purchase and currently there is 0% rear yard soft landscaping (Exhibit 2 - Disclosure, and Exhibit 1 - Form 20). The other Parties also did not dispute this.

The Applicants offered to increase soft landscaping in the rear yard from the garage door along the south end of the property from 0% of the rear yard to 10%.

The Applicants showed that numerous other houses in the neighborhood have 0% rear yard soft landscaping. Based on the other Parties’ evidence, however, 0% rear yard soft landscaping does not constitute the majority of the 101 houses on either side of the lane.

I find that increasing the current rear yard soft landscaping from 0% to 10% is in keeping with Official Plan Policy 4.1.5g. I find that the proposal respects the existing physical character of the neighborhood.

2. General intent and purpose of the City of Toronto Zoning By-laws

*Rainwater and snow infiltration and flows*

I accept that reducing wet weather flow peaks is a global objective as set out in the City's Official Plan, and the incremental implementation of this objective through the 25% rear yard soft landscaping requirement needs to be looked at in this broader city-wide light, considering each individual site's circumstances.

While the City's Zoning By-law does not limit the size of rear decks directly, it does so indirectly through soft landscaping requirements and setbacks.

I accept that the general intent of the Zoning By-law is to regulate the size of rear decks, ensure effective storm water management, and sufficient greenspace to support a variety of other ecosystem services.

Although the Applicants proposed a deck size that does not allow for 25% rear yard soft landscaping, the Applicants have offered to improve water infiltration in the rear yard by increasing soft landscaping from 0% to 10%.

Of the 12 concrete slabs currently in the rear yard, the Applicants proposed to remove 8 and keep only 4 concrete slabs at the bottom of the proposed stairs.

I understand that the Applicants will remove several slabs from the area that is not covered by the proposed deck to increase the soft landscaping to 10%, which would support direct rainwater and snow infiltration.

In addition, they proposed to keep the ground below the deck as soft landscaping to allow for storm water infiltration.

3. Desirable for the appropriate development or use of the land

All Parties agreed to the terms of settlement, which demonstrates the desirability of the development and use of the land. I do not have any outstanding public interest concerns in allowing this development.

4. Minor

"Minor" does not require that there be no impact. Although size and degree are relevant, the determination of minor is primarily a question of whether the

imputed impact rises to the level of being an unacceptable adverse impact of a planning nature. I find that the proposed settlement meets the test for “Minor”.

Following the provision of evidence and Terms of Settlement at the expedited Settlement Hearing, the Applicants agree to submit a final, fully agreed upon and signed Terms of Settlement (TOS) to the TLAB and served on all Parties, within one month from the Hearing Date (i.e., August 15, 2022). In addition to the TOS, the Applicants agreed to submit a revised site plan and revised variance requested to TLAB by this date.

I approve of the requested variance contingent on the Applicants’ proposal to leave the ground below the deck as soft landscaping to allow for storm water filtration, even though, according to the By-laws this does not technically constitute soft landscaping. This measure was not material to the Parties Clark and Hahn but will support better drainage of water that does flow through and around the deck surface to prevent build-up that could run off onto surrounding properties. As a ground-level deck that is higher than grade, the permeability of the ground under the deck may be more relevant than if it was at grade-level.

Any Party may contact TLAB if issues arise due to this Order.

## **DECISION AND ORDER**

I approve of the variance of 10% soft landscaping, contingent on the following conditions being met:

1. The Applicants file a finalized Terms of Settlement signed by all Parties, and revised site plan reflecting the Terms of Settlement with TLAB by August 15, 2022.
2. The revised site plan clearly identifies:
  - a. which concrete slabs will be removed from the rear yard;
  - b. the area of the rear yard which will be soft landscaping, expressed as an area in m<sup>2</sup> and as a percentage of the rear yard;
  - c. the area under the deck to be maintained unpaved and permeable (in m<sup>2</sup> and as a percentage of the rear yard)

X



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Carissa Wong  
Panel Chair, Toronto Local Appeal Body