

# DECISION AND ORDER

**Decision Issue Date**      Thursday, August 04, 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): ROMAN HRYCYSHYN

Applicant(s): JENNIFER SCHOLES ARCHITECT INC

Property Address/Description: 24 GLENELLEN DR E

Committee of Adjustment File

Number(s): 21 241719 WET 03 MV (A0584/21EYK)

**TLAB Case File Number(s): 22 110280 S45 03 TLAB**

**Hearing date: August 2, 2022**

**DECISION DELIVERED BY TLAB Panel Member G. Swinkin**

## REGISTERED PARTIES AND PARTICIPANTS

Applicant	JENNIFER SCHOLES ARCHITECT INC
Party/ Owner	ERIC KHAN
Appellant	ROMAN HRYCYSHYN
Appellant's Legal Rep.	GIUSEPPE DI MARCO

## **INTRODUCTION**

Eric Khan and Stephanie DeBona (the “Owners”) are the owners of 24 Glenellen Drive East (the “Property”). Although it is presently improved with a single detached dwelling, they wish to demolish that structure in order to construct a new dwelling more in keeping with their needs. To that end, they engaged an architect to develop plans and drawings for the new dwelling and associated structures.

As the new proposal would not conform with the regulations of the Zoning By-law in various regards, their architect, on their behalf, made application to the Committee of Adjustment (the “Committee”) for variance relief. That relief, as to four of the five heads applied for, was approved by the Committee.

The property owner to the rear of the Property, Roman Hrycshyn (the “Appellant”), who owns 5 South Kingslea Drive, appealed that decision and thus triggered this hearing of the Toronto Local Appeal Body (the “Tribunal”).

## **PRELIMINARY MATTER**

Mr. DiMarco, the legal representative acting for the Appellant, at the outset of the hearing, wished to address a request that he had advanced by way of his letter dated July 20, 2022 directed to the Tribunal. That letter advised that due to a medical reason of his client, which apparently prevented the Appellant’s attendance at the hearing, he was seeking a short adjournment.

Mr. DiMarco was advised by the Tribunal that, save for adjournments involving the consent of all Parties, requests for adjournment were to be brought by Notice of Motion and that such motions were to be served no less than 15 days before the scheduled date of the hearing. The letter fell far short of providing a proper basis for the adjournment request and, given its date of service, would not constitute proper time of service.

In addition to the foregoing procedural considerations, the fact was that the Appellant was not an intended witness and was not essential to the undertaking of the hearing.

As the Owners have a reasonable expectation of a timely hearing, which is reflected in the Tribunal’s *Rules of Practice and Procedure*, there must be a compelling ground upon which the hearing should be adjourned. An adjournment in this instance would clearly be prejudicial to the Owners. There was no basis presented to the Tribunal to suggest prejudice to the Appellant in the presentation of his case.

As such, the Tribunal denied Mr. DiMarco’s request for adjournment.

## **BACKGROUND**

As set out in the Committee Notice of Decision, the following were the requested heads of variance relief:

1. Section 10.20.30.40.(1)(A), By-law 569-2013

The maximum permitted lot coverage is 33% of the lot area (187.75 m<sup>2</sup>). The new dwelling will cover 41.12% of the lot area (234.27 m<sup>2</sup>).

2. Section 900.3.10.(42)(A)(i), By-law 569-2013

The maximum permitted gross floor area, including an attached or detached garage, is 118 m<sup>2</sup> plus 25% of the lot area (260.24 m<sup>2</sup>), up to a maximum floor space index of 0.5 (284.46 m<sup>2</sup>).

The new dwelling, including the attached garage, will have a gross floor area equal to 118 m<sup>2</sup> plus 40.04% of the lot area (345.77 m<sup>2</sup>) and will have a floor space index of 0.61 (345.77 m<sup>2</sup>).

3. Section 10.20.40.50.(1)(B), By-law 569-2013

The maximum permitted area for a platform at or above the second storey is 4 m<sup>2</sup>. The proposed second storey rear roof terrace will have an area of 9.9 m<sup>2</sup>.

4. Section 10.5.100.1.(1)(C)(iii), By-law 569-2013

The maximum permitted driveway width is 3.61 m. The proposed driveway will have a width of 4.94 m.

5. Section 10.5.60.40.(2)(B), By-law 569-2013

The maximum permitted height of an ancillary building or structure is 4 m. The proposed ancillary structure (shed) will have a height of 4.45 m.

The Committee approved heads 1 - 4 and refused the relief requested under head 5. The approval was on the following conditions:

1. Submission of a complete application for a permit to injure or remove a City-owned tree(s), as per City of Toronto Municipal Code Chapter 813, Trees Article II Trees on City Streets.

2. Submission of a complete application for a permit to injure or remove a privately owned tree(s), as per City of Toronto Municipal Code Chapter 813, Trees Article III Private Tree Protection.

3. The following conditions shall be fulfilled to the satisfaction of Development Planning and Review, Transportation Services:

3.1 The site plan shall be revised to illustrate that the portion of the driveway width that extends west of the west wall of the garage be designated on the site plan as a "walkway"; i.e., the limit of the walkway shall be defined by a line projecting south of the west wall of the garage;

3.2 Further to the above, the width of the walkway and the driveway (less the width of the walkway) shall be shown on the revised site plan;

3.3 The site plan shall be revised to illustrate the following notation: "The proposed driveway shall be designed and constructed to the applicable City design standards".

## **MATTERS IN ISSUE**

The Notice of Appeal filed by the Appellant identified two issues, that the requested coverage permission sought was too extensive and that the proposed second storey platform was excessive.

## **JURISDICTION**

### **Provincial Policy – S. 3 of the *Planning Act***

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 – S. 45(1) of the *Planning Act***

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 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**

The Owners completed their disclosure and filing of witness statement by the prescribed date set out in the Tribunal Notice of Hearing. The Tribunal will reiterate here what it expressed to Mr. Khan at the hearing. The Owners clearly informed themselves as to the relevant official plan policy, did the typical type of research concerning Committee decisions within the general neighbourhood and organized this data in logical and legible fashion as well as addressing the four tests as set out in s.45 of the *Planning Act*.

The material was directly on point as to establishing the appropriateness of what the Committee had decided, which the Tribunal finds falls within prevailing norms for this neighbourhood.

Mr. Khan readily acknowledged that head 5 of the requested relief was refused and he advised that their proposal would be modified to ensure that any shed to be constructed would be in compliance with the Zoning By-law's requirements.

By contrast, the document disclosure filed on behalf of the Appellant was essentially at odds with the Notice of Appeal grounds described above.

A witness statement was filed by J. William Birdsell, an architect retained by the Appellant. This witness statement was very terse but very clear. Mr. Birdsell flatly states that he had been retained by the Appellant to respond to the application as it concerns the proposed rear shed. He also indicates that he takes no objection to the proposed alteration and addition to the house.

The Tribunal questioned Mr. Birdsell on these statements and he reaffirmed that his understanding of the objection was confined to the proposed shed and that there was no objection to the new dwelling as it has been proposed. This position was bolstered by numerous statements by the Appellant's legal representative that, apart from the shed, there was no objection being taken by the Appellant to the relief granted by the Committee or to the new dwelling project.

The Tribunal drew to Mr. DiMarco's attention that the Committee had refused the requested relief under head 5 regarding the height of the shed. Despite acknowledging this fact, Mr. DiMarco still wished to persist in advancing an argument that the Committee had been misled by the Owners with respect to the grading information which had been provided to the Committee. The Tribunal found no relevance to this line of questioning in light of the stated position of the Appellant.

The Tribunal will here note that all of the disclosure filed by the Appellant was late by a month. The date for document disclosure and filing of witness statements was June 20, 2022. The Appellant's filings were on July 20 and 25, 2022. This is not consistent with the Tribunal's Rule 2.1, which declares that the Tribunal is committed to

fixed and definite dates, and this was pointed out to Mr. DiMarco. His response was that he was late retained.

## ANALYSIS, FINDINGS, REASONS

The Tribunal found the Owners' evidence to be comprehensive and persuasive. The evidence presented by the Appellant did not have merit to undermine the conclusions which were established by the Owners through their evidence. Based upon that evidence, the Tribunal finds that the decision of the Committee satisfies the four tests under s.45 of the *Planning Act* and should be sustained.

The Tribunal is satisfied that the Committee decision is not inconsistent with the Provincial Policy Statement 2020 nor does it fail to conform with the policies of the Growth Plan for the Greater Golden Horseshoe.

## DECISION AND ORDER

The Tribunal Orders that the Appellant's appeal is dismissed.

A rectangular box containing a handwritten signature in black ink. The signature is cursive and appears to read 'G. Swinkin'.

X

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G. Swinkin  
Panel Chair, Toronto Local Appeal Body