

DECISION AND ORDER

Decision Issue Date Friday, September 16, 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): SAMEER HUSAIN

Applicant(s): ARCHITECT RAVI DOIPHODE INC

Property Address/Description: 491 ST. CLEMENTS AVE.

Committee of Adjustment File

Number(s): 21 245915 NNY 08 MV (A0875/21NY)

TLAB Case File Number(s): 22 123765 S45 08 TLAB

Hearing date: Tuesday, August 23, 2022

DECISION DELIVERED BY TLAB Panel Member S. Makuch

REGISTERED PARTIES AND PARTICIPANTS

Appellant	SAMEER HUSAIN
Appellant's Legal Rep	NATALIE AST
Applicant	ARCHITECT RAVI DOIPHODE INC
Expert Witness	DAVID IGELMAN

INTRODUCTION AND CONTEXT

This is an appeal from a decision of the Committee of Adjustment refusing variances to permit the maintenance of a rear deck which was too close to the west property line and too large. The variances sought were as follows:

1. Chapter 10.20.40.70.(3)B), By-law No. 569-2013

The required minimum side yard setback is 0.9m where the required minimum lot frontage is 6.0m to less than 12.0m.

The proposed side yard setback is 0.48m to the west side lot line.

2. Chapter 10.20.40.50.(1)B), By-law No. 569-2013

The permitted maximum area of each platform at or above the second storey of a detached house is 4.0m².

The proposed area of each platform at or above the second storey is 27.33m².

NOTE: The basement slab is closer to established grade compared to the "first floor". Thus, the basement slab is considered the first floor.

THE LEGISLATIVE AND POLICY FRAMEWORK

Provincial Policy – 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 – 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 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.

SUMMARY OF EVIDENCE

No one appeared in opposition to the appeal. Indeed the neighbour to the west gave evidence that he was not in opposition to the appeal. Mr. Igelman was qualified as a land use planner to give evidence in favour of the appeal. He filed a witness statement on July 18 2022, in support of the variances and adopted that statement. It sets out in detail his reasons for finding that the variances met the PPS, the Growth Plan and the four tests of the Planning Act. That evidence need not be repeated here and can be viewed in the TLAB files. He also gave oral evidence. The oral evidence supported the written submission and stated that the deck had little or no impact on the adjacent neighbours and that the size variance was technical in nature as there was a change in elevation. He also stated that such rear decks and set backs were not out of keeping with the character of the neighbourhood.

He did however state that the purpose of the size limitation was to mitigate noise and overlook and that this problem could be addressed by opaque screens on the east and west side of the deck. The City did not appear in opposition, however the City Planner had recommended that the COA not approve the variance because of a concern respecting overlook and noise.

ISSUES AND ANALYSIS

There appear to be no issues arising since there was no opposition at the Committee or at TLAB. Mr. Igelman's evidence can clearly be relied upon that the appeal should be allowed. However, I agree with the City planner's advice to the COA, and since Mr. Igelman opined that fencing could be of benefit in reducing noise and overlook issues with respect to adjacent properties I believe opaque screening should be required on the deck to address noise and overlook. The applicant /appellant was not opposed to such a requirement.

CONCLUSION

I find the appeal should be allowed subject to the condition that the deck be constructed substantially in accordance with the plans in Appendix 1 and that opaque privacy screens be constructed on the east and west edges of the deck substantially in accordance with the plans in Appendix 2.

DECISION AND ORDER

The appeal is allowed and the variances set out above are approved subject to the following conditions:

- (1) The deck is constructed and maintained substantially in accordance with the plans in Appendix 1, and
- (2) Opaque screens are constructed on the east and west sides of the deck in accordance with the plans in Appendix 2.

X 

S. Makuch
Panel Chair, Toronto Local Appeal

APPENDIX 1

ADD PLANS ON FILE WITH C OF A

APPENDIX 2



