

ISSUE DATE:

April 01, 2014



PL131081

Ontario
Ontario Municipal Board
Commission des affaires municipales de l'Ontario

IN THE MATTER OF subsection 45(12) of the *Planning Act*, R.S.O. 1990, c. P.13, as amended

Applicant and Appellant:	Bijan Farrokhi, Shohreh Sabaghpour
Subject:	Minor Variance
Variance from By-law No.:	569-2013 & 438-86
Property Address/Description:	32 Cranbrooke Avenue
Municipality:	City of Toronto
Municipal File No.:	524/13NY
OMB Case No.:	PL131081
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APPEARANCES:

Parties

Bijan Farrokhi and Shohreh Sabaghpour

Michael Dell

City of Toronto

Counsel*

Amber Stewart*

Lauren Elliott (student-at-law)

DECISION DELIVERED BY C. HEFFERON AND ORDER OF THE BOARD

BACKGROUND

[1] The applicants have appealed to the Ontario Municipal Board ("Board"), the August 13, 2013 decision of the City of Toronto Committee of Adjustment ("Committee"), denying their application for a total of 13 minor variances from the provisions of Zoning By-law No. 438-86 ("By-law") and Zoning By-law No. 539-2013 ("new By-law").

[2] The applicants propose to demolish the existing 90 year old two-storey home at 32 Cranbrooke Avenue ("subject property") and construct a new two-storey home with integral garage.

[3] Michael Dell, the next-door neighbour, who was granted party status, opposed the appeal.

[4] At the commencement of the hearing, Lauren Elliott, counsel for the City of Toronto ("City"), requested an adjournment so that the City could prepare its case. Ms. Elliott explained that there had been an internal mix-up with the result, that the legal department had not yet received instructions from Council respecting this appeal. Ms. Elliott submitted a copy of an internal memo that indicated that Council was to meet the week after this Board hearing was scheduled to begin to discuss its options respecting the subject appeal. This memo was entered into the evidence as Exhibit 16.

[5] After consulting the Board's *Rules of Practice and Procedure* respecting adjournments, this Panel refused the request. At this point, the City withdrew from the hearing.

MATTER BEFORE THE BOARD

[6] Prior to the commencement of the proceedings before the Board, the applicants modified the application that had been before the Committee. A number of the earlier requested variances have either been eliminated or reduced. A table comparing the earlier requested variances and the variances before the Board was entered into the evidence as Exhibit 6. The six requested variances in the subject proceedings were entered into the evidence as Exhibit 5. They are:

1. **Section 10.10.40.10.(2), By-law No. 569-2013**
Proposed height of 7.92m for the side exterior main walls facing a side lot line WHEREAS the maximum permitted height is 7.5m for all side exterior main walls facing a side lot line.
2. **Section 10.10.40.10.(6), By-law No. 569-2013**
Proposed first floor height of 2.72m above established grade WHEREAS the maximum permitted first floor height is 1.2m above established grade.
3. **Section 10.5.100.1(1)(C)(ii), By-law No. 569-2013 & Section 6(3) Part II 3(II), By-law No. 438-86.** Proposed driveway width of 4m WHEREAS the maximum permitted driveway width is 3.5m.

4. **Section 10.10.40.40.(1), By-law No. 569-2013 and Section 6(3) Part I 1, By-law No. 438-86.** Proposed floor space index (F.S.I.) of **0.77** times the area of the lot WHEREAS the maximum permitted floor space index (F.S.I.) is 0.60 times the area of the lot.

5. **Section 10.10.40.70.(4), By-law No. 569-2013 and Section 6(3) Part II 3.b(II), By-law No. 438-86.** Proposed west side yard setback of 0.41m WHEREAS the minimum required west side yard setback is 0.45m for a wall with no openings (By-law 569-2013) and 0.45m for that portion of the building not exceeding 17m in depth (By-law 438-86).

6. **Section 6(3) Part II 3(II), By-law No. 438-86**
Proposed distance of 0.68m from the portion of the side wall of the adjacent building (34 Cranbrooke Avenue) that contains openings WHEREAS the minimum required distance is 1.2m from the portion of the side wall of an adjacent building that contains opening.

[7] The requested modifications were considered under s. 45(18.1) of the *Planning Act* (“Act”). After consideration of the submission of Amber Stewart, counsel for the applicant, the Board finds that the modifications are minor and that pursuant to s. 45(18.1.1) of the Act, no further public notice is required.

PARTICIPANTS

[8] Four local residents requested and were granted participant status. They included:

Larry Isaacson Alan Maguire

Jeffery Dell Marilyn Dell

[9] The participants’ main stated objection to the proposal concerned the design of the proposed new house – particularly the integral garage facing the street. The addition of an integral garage raised the height of the ground level of the two-storey structure 2.72 metres. They said this made the building too tall and rendered the two main floors disproportionately high when compared with the other homes on both sides of the block running between Yonge Street and Jedburgh Road.

[10] The Dell family (Michael, Marilyn and Jeffery) also objected to the length and height of the proposed new home because, they contended, it would block direct sunlight from hitting their patio for what they estimated to be two or more of the key daylight hours - particularly during the two equinox time periods.

APPELLANT'S POSTION

[11] Michael Dell, the appellant, contended that the proposed new building did not fit in with the prevailing design aesthetic of the block of Cranbrooke Street between Yonge Street and Jedburgh Road and that it was so tall that it would block the sunlight from reaching his patio during certain times of the day. He maintained that having unimpeded sunlight on their rear patio especially during the shoulder seasons (late summer and early spring) is critically important to his family's enjoyment of their home.

APPLICANTS' POSTION

[12] The applicants contend that their proposed new home suits their family needs perfectly and that it will be similar in design and appearance to other homes in the area, including the home under construction at 28 Cranbrooke Avenue, which is on the east side of the Dell family home. They also contend that the proposed new home is similar in design and appearance to the relatively new homes on Cranbrooke Avenue west of Jedburgh Road, on Woburn Avenue (one block south) and on Brookdale and Fairlawn Avenues, which are respectively one and two blocks north of Cranbrooke Avenue. The agreed-to Study Area was entered into the evidence as Exhibit 7. Photos of homes in the agreed-to Study Area, which runs from Yonge Street on the east, Greer Road on the west, Fairlawn Avenue on the north and Woburn Avenue on the south were entered into the evidence in Exhibit 10 and in Exhibit 3, Tab 17.

CORE ISSUE

[13] The parties agreed that the core issue in these proceedings is the design of the proposed new home featuring the integral garage.

LEGAL FRAMEWORK

[14] In order for a variance from the provisions of a zoning by-law to be authorized, it must satisfy the four tests as set down in s. 45(1) of the Act. It must conform to the

general intent and purpose of the official plan, it must conform to the general intent and purpose of the zoning by-law, it must be minor both quantitatively and in impact on surround properties and it must be desirable for the appropriate development of the subject property. If it fails even one of those four tests, the Board must refuse to authorize it.

EVIDENCE AND FINDINGS

[15] The Board qualified Terry Mills, who was retained by the appellant, to present opinion evidence on land use planning.

[16] He contended that the design of the proposed new house failed all four of the tests under s. 45(1) of the Act. He testified that the requested gross floor area ("GFA") of 0.77 times the lot area is some 28% greater than the maximum GFA of 0.6 times the lot area permitted in both the old and new By-laws. It is, therefore, contrary to the provisions of the By-law and is neither minor in magnitude nor in potential impact on the surrounding properties since the bulk of the proposed new building will produce unwelcome shadowing on the rear yard of the adjacent Dell home.

[17] He testified it did not conform to the general intent and purpose of either the City of Toronto Official Plan ("OP") or the By-law. He maintained that the proposed new home would not fit on the block because the structure itself was too tall for the site and its mass too great. It would, he contended, not only offend the existing physical character of the street, which is contrary to the *Neighbourhoods* policies in Chapter 4 of the OP but also block the sunlight from reaching his client's patio at certain hours during early fall and spring. A study showing the effect of shadow on the patio of 30 Cranbrooke Avenue (the Dell home) on September 21 at 2:18 p.m. and 5:18 p.m. was entered into the evidence in Exhibit 9.

[18] In sum, the requested variances were, in Mr. Mills' opinion, contrary to the general intent and purpose of both the new and old By-laws and the OP. Further, he contended they were neither minor nor desirable for the appropriate development of the property.

[19] The Board qualified Tony Evangelista, a certified planning technician retained by the applicant, to present opinion evidence on land use planning.

[20] Mr. Evangelista contended that the variances requested are indeed minor in nature. The proposed new building is shorter both in length and in height than is permitted in either the old or the new By-law. The GFA is similar or less than the GFA granted by the Committee to at least 18 of the newer homes built in the area identified and accepted by both himself and Mr. Mills as the "Study Area". As noted, the Study Area, which runs from Yonge Street on the east, Greer Road on the west, Fairlawn Avenue on the north and Woburn Avenue on the south, comprises some 550 homes.

[21] He testified that the *Neighbourhoods* policy 4.1 in the OP requires that new development be compatible with the existing physical character of the area. "Compatible" does not, he contended, mean "identical" or even "similar". While it is City policy that neighbourhoods should remain stable, this does not mean they should remain static or frozen in time. It means, he contended, that new residential development may be different from the surrounding homes in design and mass as well as the way they are sited on a lot so long as they fit harmoniously with the other homes in the area. The only exception to this policy is, he advised, when an area has been designated for heritage preservation and a special set of policies that apply to new development in that area, has been adopted.

[22] He also produced photos (entered into the evidence as Exhibit 2, Tab 3) of other new homes in both the wider study area as well as near the subject property. One photo shows a large double duplex municipally known as 161-163 Cranbrooke Avenue. These homes appear to tower over the surrounding "traditional" homes. Mr. Evangelista testified that these newer homes are also part of the existing physical character of the area and should be considered as such when judging whether a new home will both preserve that character and be compatible in all other ways with the surroundings.

[23] Mr. Evangelista also showed photos of several of the new homes in the Study Area and, as well, new homes on Cranbrooke Avenue, west of Jedburgh Road, which have the integral garage and raised first floor. The appellant and the participants testified this raised first floor with raised front door particularly offend the dominant aesthetic of what they described as their "close knit community". Mr. Evangelista showed the Board the revised front elevation for the proposed new home, which avoids a raised front entrance, and thus in his opinion, satisfies the general intent and purpose

of this section of the old and new By-laws. The revised front elevation showing the front entrance of the proposed new home was entered into the evidence as Exhibit 4.4.

[24] Besides the aesthetics of the integral garage, only the requested GFA of the proposed new structure produced any substantive differences of expert opinion during the subject proceedings. Mr. Mills testified that the requested GFA which exceeds the maximum permitted GFA in the R2Z0.6 zone, both in the old By-law and in the R zone in the new By-law, would result in a home that would be too large and would not fit in with the existing physical character of the area – particularly the block between Yonge Street and Jedburgh Road.

[25] Mr. Evangelista advised that the data show virtually all, if not all, of the already built new homes and approved new homes in the Study Area, have a GFA similar to the proposed new home. These data dating from between 2004 and 2013 were entered into the evidence as Exhibit 3, Tab 21.

[26] Mr. Mills contended that such was the potential for adverse impact on the adjacent property, the Dell family home, that the requested variances taken together cannot be considered minor. And such is the potential that the proposed integral garage and the resulting “tall, skinny” structure (as seen in the photos in Exhibit 3, Tab 17 and also in Exhibit 9) will set an unwelcome precedent on this particular block of Cranbrooke Avenue. The impact of the requested variance for GFA, which the Board was told was a result of the design incorporating the garage within the home, will be so negative as regards preserving the existing character of the subject block, that the requested variance for GFA cannot be considered to be minor or desirable for the appropriate development of the subject property.

[27] Mr. Evangelista testified that his client has attempted to compromise with the appellants. Before the Committee meeting on August 28, 2013, he advised that the applicants offered to reduce the GFA from 0.77 to 0.72, which would remove 2/3 of a metre from the length of the proposed structure. He said that the proposal’s main opponents (the Dell family) were not content with this. They wanted both a building at least 1.2 m shorter in length. One of the participants, Alan Maguire, who identified himself as a registered architect, objected strenuously to the integral garage, which, he

maintained, would destroy the existing physical character of the block of Cranbrooke Avenue between Yonge Street and Jedburgh Road.

[28] Speaking to this point, Mr. Evangelista advised that removing the integral garage would require the applicants to apply for on-site permit parking, which would in turn have required the applicants to poll the neighbourhood to determine if there were any objectors.

[29] One of the participants, Larry Isaacson, advised that all of the other owners of homes on the north side of Cranbrooke were required to poll the neighbourhood and that he for one, would not object to an application for on-site permit parking by the applicants. However, letters of objection sent to the Board prior to the hearing indicated that other residents in the immediate area did, in fact, object to their neighbours parking on their front yard. These letters were entered into the evidence as Exhibit 12.

[30] On the evidence, then, the Board finds that the requested variances confirm to the general intent and purpose of the OP and to the general intent and purpose of both the old and new By-laws. As well, the Board finds that the requested variances are minor both numerically and as regards their potential for adverse impact on the surrounding properties. The Board also finds the requested minor variances are desirable for the appropriate development of the property.

[31] There was some minor difference of opinion respecting the proposal's consistency with Provincial policy, however. Mr. Evangelista contended that the requested variances are consistent with Provincial policy particularly with respect to the intensification and more efficient use of the land and infrastructure within settlement areas. Mr. Mills, on the other hand, contended that the requested variances do not address the intensification and more efficient use of the land and infrastructure in any way since no new dwelling units would be created.

[32] The Board notes that "intensification" is a defined term in both the 2005 Provincial Policy Statement ("PPS") and the Growth Plan for the Greater Golden Horseshoe ("Growth Plan"). The definition of intensification includes "the development of vacant and/or underutilized lots within previously developed areas..." The Board accepts the evidence of Mr. Evangelista that the subject property is underutilized and therefore a candidate for redevelopment. In addition, a strong theme throughout

Provincial policy as provided in the PPS and the Growth Plan is the encouragement of new investment in older residential neighbourhoods through renovation and renewal of homes using infill (which may involve creation of new lots) as well as demolition and replacement. The Board accepts the evidence of Mr. Evangelista and finds that such is the case here. On the bulk of the evidence of both parties, then, the Board finds that the proposed development is both consistent with and conforms to Provincial policy as set down in the PPS and the Growth Plan.

CONCLUSION

[33] On the evidence, the Board finds that the requested minor variance is consistent with Provincial policy and satisfies the four tests pursuant to s. 45(1) of the Act. And, on the evidence, the Board finds that the requested minor variances represent good planning and have adequate regard to s. 2 of the Act, which speaks to the public interest.

ORDER

[34] The Board orders the appeal is allowed. The Board authorizes the requested minor variances subject to the following three conditions:

- i) The proposed new home is built substantially according to the site plan dated March 9, 2014 as shown in Exhibit 4.
- ii) The exterior of the proposed new home is built substantially according to the front elevation plans and drawings dated March 9, 2014 as shown in Exhibit 4.
- iii) The proposed new development respects the conditions of the City of Toronto Urban Forestry. These include:
 - a. The owner shall satisfy the City of Toronto Municipal Code Chapter 813, Article II with respect to City owned trees, to the satisfaction of Urban Forestry Division.
 - b. The owner shall satisfy the City of Toronto Municipal Code Chapter 813, Article II with respect to privately owned trees, to the satisfaction of Urban Forestry Division.

- c. The owner shall submit a tree security deposit (in the form of a certified cheque or letter of credit only) and sign a Tree Preservation agreement, to the satisfaction of Urban Forestry Division.

"C. Hefferon"

C. HEFFERON
MEMBER