

Ontario Municipal Board
Commission des affaires municipales
de l'Ontario



ISSUE DATE: June 25, 2015

CASE NO(S): PL150078

PROCEEDING COMMENCED UNDER subsection 45(12) of the *Planning Act*, R.S.O. 1990, c. P.13, as amended

Appellant:	Andreas Bahr and Cecilia DeMonte Bahr
Applicant:	Kate Katkouskaya
Subject:	Minor Variance
Variance from By-law No.:	Etobicoke Zoning Code
Property Address/Description:	40 Old Oak Road
Municipality:	City of Toronto
Municipal File No.:	A-632/14EYK
OMB Case No.:	PL150078
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OMB File Name:	Bahr v. Toronto (City)

Heard: May 7, 2015 in Toronto, Ontario

APPEARANCES:

Parties

Counsel

Kate Katkouskaya (“Applicant”)

Peter Gross

Andreas Bahr and Cecilia
DeMonte Bahr (jointly “Appellant”)

Self-represented

DECISION DELIVERED BY W. R. WINNICKI AND JASON CHEE-HING AND ORDER OF THE BOARD

INTRODUCTION

[1] Kate Katkouskaya (“Applicant”) is the owner of the property located at 40 Old Oak Road (“subject property”) in the City of Toronto (“City”). The Applicant is seeking to

demolish the above ground components of the existing single storey detached residential dwelling on the subject property and to construct a new two-storey dwelling with an integral at grade garage.

[2] The Applicant initially sought a combined total of ten minor variances to the in-force former City of Etobicoke Zoning By-law No. 1993-108 and the new comprehensive City Zoning By-law No. 569-2013 which was adopted by the City on May 9, 2013 but was immediately appealed in its entirety and is therefore not in force at this time. However, prior to the City's Committee of Adjustment ("COA") consideration of the application, the Applicant withdrew two of the initially sought minor variances: one to the maximum permitted height of all side exterior main walls facing a side lot line; and, the other to the maximum permitted height of the first floor above established grade.

[3] The COA authorized the remaining eight minor variances to the respective zoning by-laws. The COA's decision was subsequently jointly appealed to the Board by Andreas Bahr and Cecilia DeMonte Bahr who reside at 23 Old Oak Road which is situated directly across the street from the subject property.

MATTER BEFORE THE BOARD

[4] In assessing the circumstance of the Applicant, having reduced the number of sought minor variances from what was initially applied for, the Board determined pursuant to s. 45(18.1.1) of the *Planning Act* ("Act") that the revision is minor in the context of this application and no further notice was required and the matter could proceed to be considered as presented.

[5] At the hearing, Ms. Katkouskaya was represented by counsel and had retained a professional planner to provide land use planning opinion evidence. The Appellants were self-represented and did not call any witnesses.

[6] The requested minor variances to the City's applicable in-force Zoning By-law and to the not in-force new comprehensive Zoning By-law before the Board are as follows:

1. **Section 10.20.40.70 (1), By-law 569-2013 and Section 320-40.B**

The minimum required front yard setback is 8.15 m
The new dwelling will be located 8.07 m from the front lot line.

2. **Section 10.20.40.70.(3)(C), By-law 569-2013**

The minimum required side yard setback is 1.2 m.

Section 320-42.1.C.(2)

The minimum required side yard setback is 1.2 m, provided that the aggregate width of both side yards shall equal not less than 20% of the lot frontage (3.28 m).

The new dwelling will be located 0.95 m from the west side lot line and 1.24 m from the east side lot line, and will have an aggregate side yard width of 13.4% of the lot frontage (2.19 m).

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

The maximum permitted area of a platform at or above the second storey is 4 m².
The new dwelling will have a second storey front platform area of 5.52 m² and a second storey rear platform area of 4.72 m².

4. **Section 10.20.40.10.(1)(A), By-law 569-2013 and Section 320-42.1.B.(1)**

The maximum permitted height is 9.5 m.
The new dwelling will be 9.68 m in height.

5. **Section 320-42.1.B.(2)**

The maximum permitted soffit height is 6.5 m.
The new dwelling will have a soffit height of 6.88 m.

6. **Section 10.20.40.20.(1), By-law 569-2013**

The maximum permitted building length is 17 m.
The new dwelling will have a length of 17.45 m.

7. **Section 320-42.1.D.(1)**

The maximum permitted building depth is 16.5 m.
The new dwelling will have a depth of 20.94 m.

8. **Section 200.5.1.10.(2)(A)(ii), By-law 569-2013 and Section 320-18.A.(1)(c)**

The minimum required width of a parking space is 3.2 m.
The proposed parking space, within the attached garage, will have a width of 3.16 m.

[7] This being a hearing *de novo* the onus is on the Applicant to satisfy the Board that all of the following four tests under s. 45(1) of the Act can be met in respect of the proposed variances:

1. maintain the general intent and purpose of the official plan;
2. maintain the general intent and purpose of the zoning by-law;
3. are desirable for the appropriate development or use of the land, building or structure; and,
4. are minor.

EVIDENCE

THE APPLICANT

[8] Counsel called to the witness stand Paul Johnston, a planning consultant (“Planner”), whose professional land use planning credentials include membership in the Canadian Institute of Canada and a Registered Professional Planner designation in Ontario, were presented to the Board (Exhibit 1, Tab 1). Being satisfied with the Planner’s credentials and there being no objections, the Board qualified the Planner to provide planning evidence and expert opinions regarding this matter before the Board.

[9] Mr. Johnston informed the Board that in making his assessments of the requested minor variances, he personally visited the subject property and the surrounding neighbourhood on three occasions. He then provided the Board with a document entitled “Visual Evidence” (Exhibit 2) which contains various aerial and other photographs of properties and dwellings in the immediate vicinity of the subject property. In particular, these photographs portray the present day visual character of this single family neighbourhood which was established over some 50 years ago. The planner informed the Board that initially the dwellings in this neighbourhood consisted of single storey and one-and-a-half storey dwellings with attached garages on lots typically with 40 foot frontages. Over the past number of years, however, there has been a trend

to substantially renovate such dwellings or totally reconstruct them so as to respond to new housing demands. Such activities have generally resulted in two storey buildings with integral garages. Mr. Johnston advised the Board that the photographs in Exhibit 2 provide a number of examples of such renovations and reconstruction within this specific neighbourhood. Some of these photographs specifically feature newly constructed two-storey dwellings on either side of the subject property.

[10] In describing the proposed new dwelling on the subject lands, Mr. Johnston referenced the site plan and building drawings as prepared by Praxis Design Group (Exhibit 1, Tab 9) and expressed his professional opinion how very minor these sought variances were and that in his professional opinion such variances would in no way create any perceivable deviation from the emerging neighbourhood character. In that context, it was pointed out to the Board that:

- the variance to the front yard setback (i.e. Variance 1) and the variance to the side yard setback (i.e. Variance 2) only reflect the existing conditions and circumstances of the dwelling as it was originally constructed and that the proposed building plans for the subject property do not contemplate there to be any change to the existing front yard green space.
- In respect of Variances 4, 5, 6 and 8, Mr. Johnston pointed out to the Board that in the context of the existing zoning by-law requirements, all such variances would create a building circumstance that from a visual perspective would be virtually imperceptible in that such four variances are so slight that they each can be respectively described in terms of inches i.e. the building height would be seven inches higher; the soffit height would be 15 inches higher; the building length would be 18 inches longer; and, the new dwelling would have an increased depth of two inches.
- Variance 3 to allow the front second storey balcony to be larger by 1.52 sq m and the rear balcony by 0.72 sq m is also described by Mr. Johnston as being not being significant in terms of size or visual impact.

- The final remaining Variance 8 which seeks to extend the existing building depth by 4.44 metres reflects the unusual depth of the subject property and furthermore such rear yard extension would not be visible from the street nor create any negative impact to the character of the neighbourhood.

[11] In specifically referencing the four tests that must be met for the proposed variances to be considered as compliant with the Act, Mr. Johnston firstly noted that the subject property is in an area designated Neighbourhoods (Exhibit 1, Tab 3) in the City's Official Plan ("Official Plan"). Mr. Johnston explained to the Board that Policy 1 of the Neighbourhoods land use category describes that in such category the residential buildings are at a lower dimensional scale and that physical changes to established neighbourhoods must generally fit the existing physical character. In this particular neighbourhood, Mr. Johnston described the various residential buildings ranging from one to two storeys in height and in respect of Policy 5 of this Neighbourhoods land use category, expressed to the Board that not only the intended continued use of this property as a single family residence but also its intended construction parameters, would very much respect and reinforce the character of this neighbourhood, specifically referencing the following specific policy provisions of the City's Official Plan, Section 4.1.5.

- (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;

[12] In respect of addressing the subject minor variances in the context of maintaining the general intent of the subject zoning by-laws, Mr. Johnston referenced Tabs 5 and 6 of Exhibit 1 and cited various relevant provisions of these zoning by-laws which are being maintained and, in his opinion, would not in any way be adversely impacted by

allowing the requested minor variances. Mr. Johnston expressed his opinion that these minor variances thus maintain the general intent of these zoning by-laws.

[13] Particularly in the context of today's housing requirements, it is Mr. Johnson's assessment that these variances are very much desirable and appropriate. The proposed new dwelling will support the neighbourhood and its focus on single family dwellings. Such a new dwelling will reflect today's housing trends and serve many of today's single family housing requirements. Furthermore, it is Mr. Johnston's opinion that these minor variances are indeed minor and as applied to the proposed new dwelling, will not be perceived to be appreciably any different than the many other new buildings that have been constructed in the neighbourhood over the past few years.

THE APPELLANTS

[14] The Appellant, Mr. Bahr, then addressed the Board and presented a document (Exhibit 3) which includes statistical analysis of the sought variances personally undertaken by him as well as some 22 photographs of various dwellings throughout the immediate neighbourhood. Mr. Bahr explained to the Board his professional background as a mechanical engineer and that his particular interest in this matter now before the Board is based on being a long-term resident of this neighbourhood residing in a dwelling at 23 Old Oak Drive, immediately across the street from the subject property. He advised the Board that since he did not receive notice of this particular COA meeting at which was considered the subject minor variance application, hence neither he nor the joint Appellant, Cecilia DeMonte Bahr, attended at the COA meeting at which the subject minor variances were approved.

[15] Mr. Bahr also provided the Board with three items of correspondence addressed to the Ontario Municipal Board (Exhibit 4) from three other residents in the neighbourhood who have expressed their objection to the subject minor variances. Only one of these letters was signed by the named party.

[16] Lacking any specific credentials to be considered an expert land use planner, the Board did not confer any expert witness status on Mr. Bahr, but did invite him to continue with his presentation. It is Mr. Bahr's contention that at least two of the four mandatory Act tests are not adequately satisfied and, accordingly, specifically asked the Board to deny the requested minor variances.

[17] To support his contention, Mr. Bahr explained in some detail the results of his statistical analysis of certain quantifiable results in terms of percentage increases the sought variances would have in respect of the current zoning by-law provisions (Exhibit 3, pages 5 and 6). Based on such analysis, Mr. Bahr expressed his personal view that such variances are not minor.

[18] Regarding the statutory test of whether the sought variances are desirable for the appropriate development of the subject property, Mr. Bahr in his submission cited the following eight specific reasons why he does not consider such variances to be desirable:

- Takes away visible green space and replaces it with brick, mortar and/or stucco
- The 30% larger footprint significantly reduces drainage area
- The building size does not match the majority of the surrounding dwellings in the neighbourhood
- The excessive building size will put a disproportionate strain on resources such as City water, electricity and natural gas
- The building size will change the look of the neighbourhood to something typically seen in communities with larger lots such as Mississauga and Oakville
- Building taller, wider, longer houses to maximize interior space will affect the land and neighbours

- Exceeding the By-law provisions should be considered an exception to the rule to address dimensional problems and should not be used a tool to inexpensively maximize dwelling space.

[19] In response to a short cross-examination by Mr. Gross, the Applicant's counsel, Mr. Bahr expressed his personal opinion that no building application should be approved which proposes development standards that exceed the applicable zoning by-law provisions and that he was not aware of any past applications in the immediate neighbourhood which have been considered by the COA and where the COA had allowed such similar zoning by-law variances.

[20] Mr. Gross then presented the Board and Mr. Bahr with a copy of a COA decision that was issued on December 9, 2010, regarding a number of similar types of minor variances as in the 40 Old Oak Road application, that were approved for a nearby property at 11 Old Oak Road (Exhibit 5) and asked Mr. Bahr if he was aware of such matter. Mr. Bahr's response was that he was not familiar with this particular COA decision.

[21] Upon completion of his cross examination of Mr. Bahr, Mr. Gross briefly summarized to the Board the evidence as was provided by the expert planning witness, which he noted in his remarks was not contradicted by the Appellants. In concluding his remarks, Mr. Gross requested that the Board approve the requested minor variances and also that the Board issue a modest cost award of \$500 in favour of the Applicant.

ANALYSIS AND FINDINGS

[22] Based on the evidence and submissions that have been provided at this hearing, it is apparent that this is a desirable single family residential neighbourhood initially comprising of one storey and one-and-a-half-storey detached dwellings with an attached garage. Over the past number of years, this neighbourhood has been characterized by home renovations, additions and, in many instances, new construction replacements of the original dwelling with two storey dwellings with an integral garage.

[23] Many photographs were provided by both the Appellant and the planning witness, Mr. Johnston, showing some of these newly constructed dwellings interspersed amongst the originally built one storey and one-and-a-half-storey buildings. From a visual perspective, the Board finds that the proposed new dwelling on the subject property would be substantially similar in terms of its physical appearance and dimensions with the many new two storey buildings in this neighbourhood. As such, the Board finds that the proposed new dwelling would not only reinforce the character of this neighbourhood but also promote its continuation as a stable, low-scale residential area. Based on the evidence provided by Mr. Johnston, the Board finds that the proposal maintains the purpose and intent of the City's Official Plan.

[24] Based on the particular evidence of Mr. Johnston that of the eight sought minor variances, two of these variances simply reflected existing circumstances, four of these variances were so small as to be virtually imperceptible from a visual perspective; and, the remaining two would not in any significant way create a dwelling that would be out of character with other new two storey buildings in the neighbourhood, the Board finds that the requested variances maintain the general intent and purpose of the respective Zoning By-laws and are minor.

[25] The Board notes that Mr. Bahr's assessments and analysis as presented to the Board, were specifically applied to the ten zoning by-law variances initially applied for by the Applicant. Had Mr. Bahr attended the COA meeting when this matter was considered, it would have been clear that pursuant to City planning suggestions (Exhibit 1, Tab 11), some of the design features of proposed new structure were adjusted by the Applicant and consequently only eight minor variances were presented. As well, in his presentation to the Board, Mr. Bahr made no reference to the fact that two of these eight minor variances merely reflected existing conditions of the subject dwelling as it was originally constructed.

[26] As referenced in Paragraph 18 herein, Mr. Bahr cited eight specific reasons for his assessment that the subject zoning by-law variances are not desirable for the

appropriate development of the subject property. Upon carefully considering each of matters, the Board is not convinced of the Appellant's claim. Furthermore, although Mr. Bahr provided the Board with his detailed statistical assessment from a dimensional perspective of the initially sought ten variances, the Board does not accept Mr. Bahr's contention that these sought eight variances are not minor. The Board is persuaded by Mr. Johnston's testimony that the requested variances both individually and collectively are minor.

[27] The Board is persuaded by the evidence presented by Mr. Johnston that the proposed new dwelling will provide a built form that fits with the emerging character of this neighbourhood and collectively these subject minor variances to the zoning by-laws are desirable type of reinvestment that serves many of today's single family detached housing demands. Accordingly, the Board finds that the proposal is desirable for the use of the subject property.

ORDER

[28] It is for these aforementioned findings and reasons that the Board orders that the appeal is dismissed and the requested variances to the respective Zoning By-laws are authorized subject to the following two urban forestry conditions as imposed by the COA in its decision (Exhibit 1, Tab 15):

1. The owner shall satisfy the City of Toronto Municipal Code 813, Article II, with respect to City-owned trees, to the satisfaction of the Urban Forestry Division.
2. The owner shall satisfy the City of Toronto Municipal Code 813, Article III, with respect to privately-owned trees, to the satisfaction of the Urban Forestry Division.

[29] With respect to By-law No. 569-2013, the minor variances authorized under this By-law are contingent on the said By-law coming into force and effect.

[30] The Applicant had sought a nominal cost award against the Appellant in the amount of five hundred dollars. Pursuant to Rule 103 of the Board's *Rules of Practice and Procedure*, it is the Board's view that the conduct of the Appellant at this hearing was not frivolous, vexatious nor unreasonable such as to attract an award of costs against it. The Applicant's request for costs is denied.

"W. R. Winnicki"

W. R. WINNICKI
MEMBER

"Jason Chee-Hing"

JASON CHEE-HING
MEMBER

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Ontario Municipal Board

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