

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



**ISSUE DATE:** July 16, 2015

**CASE NO(S):** PL150152

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

Applicant and Appellant: Greg Mills, Lynn Richardson  
Subject: Minor Variance  
Variance from By-law No.: 438-86  
Property Address/Description: 67 Glengowan Road  
Municipality: City of Toronto  
Municipal File No.: A876/14NY  
OMB Case No.: PL150152  
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Municipal File No.: A0132/15NY  
OMB Case No.: PL150152  
OMB File No.: PL150311

**Heard:** June 29, 2015 in Toronto, Ontario

**APPEARANCES:**

**Parties**

Greg Mills and Lynn Richardson

**Counsel**

Dennis Wood

## **DECISION DELIVERED BY W. R. WINNICKI AND ORDER OF THE BOARD**

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### **BACKGROUND**

[1] Greg Mills and Lynn Richardson, joint Applicants and Appellants (“Applicants”) desire to demolish an existing two-storey dwelling at 67 Glengowan Road (“subject property”) and to construct a new two-storey dwelling with an integral garage. In 2014, the Applicants sought approval of the City of Toronto (“City”) Committee of Adjustment (“Committee”) in respect of the following six variances, three from By-law No. 569-2013 which is a recently adopted city-wide by-law that is under appeal and therefore not yet in-force, and three variances from the in-force By-law No. 438-86:

1. **Chapter 10.20.40.10.(4), By-law No. 569-2013**  
The maximum permitted building height is 7.2m.  
The proposed building height is 7.58m.
2. **Chapter 10.20.40.20.(1), By-law No. 569-2013**  
The maximum permitted building length is 17.0m.  
The proposed building length is 17.73m
3. **Chapter 10.20.40.40.(1), By-law No. 569-2013**  
The maximum permitted floor space index (FSI) is 0.35 times the area of the lot.  
The proposed FSI is 0.57 times the area of the lot.
4. **Section 6(3) Part 1 1, By-law No. 438-86**  
The maximum permitted residential gross floor area (GFA) is 0.35 times the area of the lot.  
The proposed residential GFA is 0.57 times the area of the lot.
5. **Section 6(3) Part 11 3.B(II), By-law No. 438-86**  
The minimum required east side lot line setback is 7.5 m for the portion of the building exceeding 17.0m in depth.  
The proposed east side lot line setback is 1.52m for the portion of the building exceeding 17.0m in depth.
6. **Section 6(3), Part 11 3.(II), By-law No. 438-86**  
The minimum required west side lot line setback is 7.5m for the portion of the building exceeding 17.0m in depth.  
The proposed west side lot line setback is 1.52m for the portion of the building exceeding 17.0m in depth.

[2] On January 8, 2015, the Committee issued a decision approving in the form submitted variances #1, #2, #5 and #6, and only approved modified versions of variances #3 and #4 such as to respectively permit an Floor Space Index ("FSI") of 0.50 and a Gross Floor Area ("GFA") of 0.50.

### **MATTER BEFORE THE BOARD**

[3] On January 26, 2015, pursuant to s. 45(12) of the *Planning Act*, R.S.O. 1990, c. P. 13, as amended, the Applicants appealed to the Ontario Municipal Board (the "Board") the decision of the Committee to authorize with modification the above two variances (#3 and #4). Subsequently, while a hearing before the Board was pending, the Applicants revised their proposed building plans so as to slightly reduce the gross floor area of the proposed new dwelling and submitted a new application to the Committee seeking approval for two variances, one to By-law No. 569-2013 so as to permit a residential FSI that is 0.563 times the area of the lot, and the other to By-law No. 438-86 to permit a GFA that is also 0.563 times the area of the lot. Both variances address the same particular development criteria as it is related to the proposed gross floor area of the subject dwelling but use different terminologies i.e. FSI vs. GFA.

[4] On March 26, 2015, the Committee once again only approved a modified version of these two requested variances, but in this follow-up application allowing a FSI of 0.53 times the area of the lot in respect of By-law No. 569-2013 and also a GFA of 0.53 times the area of the lot in respect of By-law No. 438-86 (Exhibit 1, Tab 8). Furthermore, similarly as in respect of the Committee's January 8, 2015 decision, this decision of the Committee is subject to compliance with the condition that prior to any construction activity on the subject property, the Applicants secure a permit from the City's Urban Forestry regarding trees on and related to the subject property pursuant to:

- i. City of Toronto Municipal Code Chapter 813, Article 11, City-owned trees
- ii. City of Toronto Municipal Code Chapter 813, Article 111, Privately-owned trees

[5] On April 14, 2015, the Applicants also appealed to the Board this March 26, 2015 Committee decision and pursuant to the Applicants' request, the two files were consolidated and heard by the Board on June 29, 2015.

[6] In order to authorize any variance to a zoning by-law, the Board must be satisfied that the legislative tests set out in s. 45(1) of the *Planning Act* have been satisfied. Those tests require each variance: (i) to maintain the intent and purpose of the municipality's official plan; (ii) to maintain the intent and purpose of the zoning by-law; (iii) to be desirable development of the property; and, (iv) to be minor. Each variance must satisfy each test.

## **EVIDENCE AND ANALYSIS**

[7] At the June 29, 2015 hearing before the Board, Dennis Wood, counsel for the Applicants called Michael Goldberg, a planning consultant, whose professional credentials were provided to the Board along with his executed Acknowledgment of Expert's Duty. The Board qualified Mr. Goldberg to provide planning evidence and expert opinions regarding this matter before the Board.

[8] No one appeared in opposition at this hearing.

[9] The subject property is situated on the south side of Glengowan Road, east of Mount Pleasant in the Lawrence Park neighbourhood of Toronto. Mr. Goldberg described to the Board the boundaries of neighbourhood that he examined (Exhibit 3) and within which he referenced seventy-four photographs (Exhibit 4), advising the Board that these photographs portray the styles of dwellings which clearly depict the single family neighbourhood characteristics. Furthermore, Mr. Goldberg presented the Board with an analysis of Committee's past decisions since the year 2000 of variance applications within this community, which included GFA and FSI matters. Some 90 examples are so listed and the Board notes that 60% depict approvals for FSI and GFA of 0.50 or greater and of this group 25% (i.e. 14 properties) were approved at a density greater than what the current Applicants are seeking. It is Mr. Goldberg's opinion that

the proposed FSI and GFA of 0.563 is well within the range of lot coverage approved in this neighbourhood.

[10] Mr. Goldberg reviewed the proposed variances in the context of the four tests as provided in s. 45(1) of the *Planning Act*. Firstly, in respect of the City's Official Plan, he explained how the variances comply with the various relevant *Neighbourhood* land use policies as stated in s. 2.3.1.1. of such document, and, as well, with the development criteria as outlined in s. 4.1.5. In that context he described the physical characteristics of the proposed dwelling and opined that the variances do comply with these policy provisions.

[11] In respect of maintaining the purpose and intent zoning by-laws, Mr. Goldberg referenced the various by-law provisions of the related single family residential zone in By-law No. 438-86 (Exhibit 1, Tab 3) and those of By-law No. 569-2013 (Exhibit 1, Tab 4). He described particulars of the subject dwelling's proposed features pertaining to the site plan, the floor plans and elevation drawings (Exhibit 2) and the variances that were being sought. He expressed the opinion that the general intent and purpose of the respective zoning by-laws are clearly maintained and thus satisfy the second test for a variance pursuant to the *Planning Act*.

[12] It is Mr. Goldberg's opinion that these sought variances are minor in nature and are appropriate and desirable for the subject property. He expressed his professional opinion that the proposed new single family dwelling is well planned and designed to serve current demands in this up-scale neighbourhood and that it would very much respect and reinforce the physical character of the neighbourhood.

[13] The Board notes the Committee has found acceptable and approved four of the six variances sought by the Applicants and on two occasions has approved a modified version of the other two variances both similar as to being applicable to the gross allowable gross floor area of the dwelling. In this context the Board has noted that with the Committee's approved modification of the FSI and GFA to 0.53 regarding variances

#3 and #4, the Applicant's most current sought FSI and GFA factor of 0.563 is a rather modest differential of only 0.033.

[14] The Board accepts the unchallenged evidence and opinions of Mr. Goldberg. Accordingly, the Board is satisfied that all the proposed variances meet the four tests of s. 45(1) of the *Planning Act*.

## ORDER

[15] The Board orders that the appeal is allowed and the following variances to By-law No. 438-86 and By-law No. 569-2013 are authorized subject to the Committee's conditions regarding the Applicants satisfying the City's Urban Forestry conditions as noted in Paragraph 3 herein:

1. **Chapter 10.20.40.10.(4), By-law No. 569-2013**  
The maximum permitted building height is 7.2m.  
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[16] The herein authorized variances to By-law No. 569-2013 is contingent on By-law No. 569-2013 coming into force as it may apply to the subject property in terms of the variances identified.

*"W. R. Winnicki"*

W. R. WINNICKI  
MEMBER

If there is an attachment referred to in this document,  
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**Ontario Municipal Board**

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