

Ontario Municipal Board
Commission des affaires municipales
de l'Ontario



ISSUE DATE: March 30, 2015

CASE NO(S): PL141041

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

Appellant:	Elmira Zarrabi
Appellant:	Paul Connally
Appellant:	Frances P. Radford
Applicant:	Paul Nisbet
Subject:	Minor Variance
Property Address/Description:	144 Castlewood Road
Variance from By-law:	438-86
Municipality:	City of Toronto
Municipal File No.:	A517/14NY
OMB Case No.:	PL141041
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Heard: January 7, 2015 in Toronto, Ontario

APPEARANCES:

Parties

Elmira Zarrabi

Paul Connally, Paul Nesbit, P.
Frances Radford

Counsel

A. Stewart

D. Wood

DECISION DELIVERED BY C. CONTI AND ORDER OF THE BOARD

INTRODUCTION

[1] This is the decision for appeals by Elmira Zarrabi ("Applicant") and by Paul

Connelly, Paul Nesbit, and P. Frances Radford (“Appellants”) regarding the approval by the City of Toronto Committee of Adjustment of an application for variances to Toronto Zoning By-laws No. 438-86 and 569-2013 to permit the construction of a new dwelling at 144 Castlewood Road, Toronto (“subject property”). The Applicant has appealed the decision because of modifications to the variances in the Committee of Adjustment Decision. The Appellants appealed because they are opposed to the approval.

[2] The subject property consists of a lot in a primarily residential area of Toronto, located north of Eglinton Avenue West and west of Avenue Road. The Applicant proposes to remove the existing one storey dwelling on the property and replace it with a two-storey dwelling with an integral garage.

[3] At the beginning of the hearing, the Board heard that the parties had reached a settlement. The parties agreed to file the final Minutes of Settlement after the hearing which the Board has received and entered into evidence as Exhibit 5. The hearing proceeded to hear evidence about the variances and the terms of the settlement.

REQUIRED VARIANCES

[4] The Board heard that the variances have been revised from those that were considered by the Committee of Adjustment. The proposed variances to Toronto Zoning By-laws No. 438-86 and No. 569-2013 as requested by the Applicant and submitted in Exhibit 2 are the following:

By-law No. 569-2013

1. Section 10.20.40.10. (4) - The maximum permitted height of the building is 7.2 metres, (“m”) whereas the proposed height of the dwelling is 7.9 m.
2. Section 10.20.40.40.1(A) - The maximum permitted gross floor area is 0.6 time the lot area, whereas the proposed gross floor area is 0.78 times the lot area.

3. Section 10.20.40.70.(3) - The minimum required side yard setback is 0.9 m, whereas the proposed south side yard setback is 0.6 m,
4. Section 10.20.40.10.(6) - The maximum permitted height of the finished first floor above the established grade is 1.2 m, whereas the proposed finished first floor height is 1.46 m.
5. Section 10.5.40.10.(5) - A minimum of 10.0 square metres of the first floor must be within 4.0 m of the front main wall, whereas it is proposed that 5.41 square metres of the first floor be within 4 m of the front main wall.

By-law No. 438-86

6. Section 6(3), Part I 1 - The maximum permitted gross floor area is 0.6 times the lot area, whereas the proposed gross floor area is 0.78 times the lot area.
7. Section 6(3), Part II 3 - The minimum required side yard setback is 0.9 m, whereas the proposed south side yard setback is 0.6 m,
8. Section 6(3), Part IV 3(II) - A below grade garage with a vehicle access located in wall facing the front lot line is not permitted, whereas the proposed integral garage is below grade.

[5] The Board heard that the variances had changed from the original application so that the Gross Floor Area ("GFA") has been reduced, the side yard setback has been increased and the variance is required on the south rather than north side, and the finished floor height has been reduced. The changes have been summarized in Exhibit 4.

[6] The Board heard that the revisions to the application are minor, reduce the extent of the required variances, and that no further notice is required under s. 45(18.1.1) of the *Planning Act* ("Act"). The hearing proceeded to hear evidence about the above

variances.

ISSUE

[7] The primary issue in this appeal is whether or not the variances meet the four tests under s. 45(1) of the Act. Specifically, do the variances maintain the general purpose and intent of the Toronto Official Plan, do they maintain the general purpose and intent of Zoning By-laws No. 569-2013 and No. 438-86, are they minor and are they desirable for the use of the property?

EVIDENCE

[8] The Board heard evidence in support of the settlement from Shahrzad Davoudi-Strike, a planning consultant and urban designer. Ms. Davoudi-Strike has Masters Degrees in architecture and urban design and is a Registered Professional Planner. She was qualified by the Board as an expert in land use planning and urban design.

[9] Ms. Davoudi-Strike indicated that she studied properties within 500 m radius of the subject property as identified in Exhibit 1, Tab 11. She stated that the area is characterized by detached dwellings of similar size to the proposed house which is intended to be approximately 2,313 square metres. She provided photographs of homes in that area (Exhibit 1, Tab 11, p. 122 and 123) and stated that there are a number of modern homes similar to the proposal.

[10] Ms. Davoudi-Strike maintained that the size of the proposed dwelling is consistent with other houses in the area. Also, the proposed south side yard setback will be larger than the existing south side yard setback.

[11] Ms. Davoudi-Strike stated that the subject property is designated as "Neighbourhoods" in the Toronto Official Plan (Exhibit 1, Tab 8). She indicated that *Neighbourhoods* are intended to be stable areas where some change will occur over time. She referred to policy 4.1.5 which indicates that new development must respect

and reinforce the existing physical character of the area with regard to a number of factors. Ms. Davoudi-Strike stated that the proposal conforms to the matters included in this policy.

[12] In Ms. Davoudi-Strike's opinion the variances maintain the general purpose and intent of the Toronto Official Plan. |

[13] The Board heard that the property is zoned R1 Z0.6 in Zoning By-law No. 438-86 and RD(f7.5;d0.6)(x1406) in Zoning By-law No. 569-2013. Ms. Davoudi-Strike addressed the provisions of the By-laws that are proposed to be varied.

[14] With regard to the height variance, the Board heard that the proposal is consistent with other flat roofed houses in the area. A shadow study was prepared for an earlier larger version of the proposal which shows that it will cause less shadowing than an as of right building on the property (Exhibit 1, Tab 15, p. 140).

[15] Ms. Davoudi-Strike indicated that the proposed GFA is not excessive and is consistent with the size of a modern house. She indicated that the setbacks are appropriate. Also, the first floor height is similar to the existing height of the first floor and in addition the size of the first floor area will not have a visual impact.

[16] Ms. Davoudi-Strike indicated that the variance for the integral garage is a technical variance, because the garage and driveway will be sloped toward the street. This avoids potential concerns for flooding of the garage area.

[17] In view of these factors, Ms. Davoudi-Strike stated that the variances individually and collectively maintain the purpose and intent of the Toronto Zoning By-laws.

[18] Ms. Davoudi-Strike maintained that the variances are minor. She noted that in the study area, approximately 40% of variance applications were approved with GFAs greater than the proposal and approximately 74% of the applications have been approved with smaller setbacks. Furthermore, approvals in the study area for height

averaged 0.84 m above the By-law's requirement (Exhibit 1, tab 14).

[19] Ms. Davoudi-Strike also maintained that there will be no significant negative impact from the proposal.

[20] Based upon these factors, Ms. Davoudi-Strike's indicated that the variances are minor.

[21] Ms. Davoudi-Strike maintained that the variances are desirable for the use of the property since it will provide a high quality home that will meet the needs of the Applicant's family.

[22] Ms. Davoudi-Strike testified that the conditions included in Exhibit 2 are reasonable and acceptable to the Applicant.

[23] The Board heard that the Minutes of Settlement include provisions to restrict the size of the proposed landing and to protect a row of cedar trees along a property boundary. The Board heard that based upon the Minutes of Settlement and the proposed conditions of approval that the concerns of the Appellants had been satisfied.

ISSUES, ANALYSIS AND FINDINGS

[24] The evidence in support of the revised proposal is uncontested.

[25] Based upon the expert planning of Ms. Davoudi-Strike the Board finds that the proposed variances maintain the general purpose and intent of the Toronto Official Plan. The Board finds that the variances maintain the general purpose and intent of Toronto Zoning By-laws No. 438-86 and 569-2013. Furthermore, the Board finds that the variances are minor and that they are desirable for the use of the property.

[26] The Board also finds that the conditions are reasonable and appropriate.

[27] Furthermore, the Board finds that the revisions to the application are minor and that no further notice is required pursuant to s. 45(18.1.1) of the Act.

[28] Based upon the uncontested opinion evidence and the provisions of the Minutes of Settlement, the Board will allow the appeals and authorize the variances subject to the proposed conditions. Since Toronto Zoning By-law No. 569-21|03 is under appeal, the Board is providing a contingent order for the variances to that By-law.

[29] Subsequent to the hearing, the parties provided a draft order which has been incorporated into the Board's order below.

ORDER

[30] The Board orders that based upon the provisions of the Minutes of Settlement, the appeals are allowed and the variances, as requested to Toronto Zoning By-law No. 438-86 are authorized subject to the following conditions:

1. The dwelling shall be constructed substantially in accordance with the following plans and drawings, all dated January 6, 2015:
 - i. Site Plan (A1);
 - ii. Main Elevation (A6);
 - iii. Rear Elevation (A7);
 - iv. Side Elevation (South) (A8); and
 - v. Side Elevation (North) (A9).
2. The owner agrees to construct the elevated "Deck Landing" to a maximum size of 1.22 m (4 feet ("ft.)) by 0.91 m (3 ft.), as shown on the Site Plan (A1).

3. The owner shall comply with City of Toronto Municipal Code Chapter 813, Article III, Privately-owned trees (www.toronto.ca/trees/private_trees.htm).
4. Where no street tree exists, the owner shall provide payment in an amount to cover the cost of planting a street tree abutting the site to the satisfaction of the General Manager of Parks, Forestry and Recreation.
5. The driveway shall maintain a minimum of 2% positive slope from the street to the entry of the integral garage.

[31] And furthermore, the variances to Toronto Zoning By-law No. 569-2013 are authorised subject to the By-law coming into force and effect, subject to the same conditions noted above.

"C. Conti"

C. CONTI
MEMBER

If there is an attachment referred to in this document,
please visit www.elto.gov.on.ca to view the attachment in PDF format.

Ontario Municipal Board

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