

Ontario Municipal Board
Commission des affaires municipales
de l'Ontario



ISSUE DATE: January 26, 2016

CASE NO(S): PL150665

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

Applicant and Appellant:	Arzhang Sohrabi
Subject:	Minor Variance
Variance from By-law No.:	569-2013 1916
Property Address/Description:	151 Airdrie Road
Municipality:	City of Toronto
Municipal File No.:	A0429/15NY
OMB Case No.:	PL150665
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OMB Case Name:	Sohrabi v. Toronto (City)

Heard: December 9, 2015, in Toronto, Ontario

APPEARANCES:

Parties

Counsel

Arzhang Sohrabi

C. Tanzola
C. Gibson

City of Toronto

C. Iltan
S. Nowosefski

DECISION DELIVERED BY RICHARD JONES AND ORDER OF THE BOARD

[1] Mr. Arzhang Sohrabi ("Applicant/Appellant") is requesting four variances to ensure a recent renovation of his home at 151 Airdrie Road, (the subject lands) in the neighbourhood of Leaside, in the City of Toronto (the "City") is in compliance with by-

law requirements. The variances relate to height and the work has been undertaken and the roof is fully enclosed.

[2] The Applicant requests variances for a building height of 9.01 metres whereas, both Zoning By-laws, By-law No. 1916 which is currently in force, and proposed City-wide by-law, By-law No. 569-2013 permit a maximum height of 8.5 metres. However, the Committee of Adjustment ("COA") previously approved an application for a minor variance in March 2014 for a building height of 8.8 metres.

[3] The COA denied the second application in June 2015 (which is the subject of this appeal) and the variances are as follows:

Chapter 10.20.40.10.(1), By-law No. 569-2013:

The maximum permitted building height is 8.5 m whereas the proposed building height is 9.01 m.

Chapter 10.20.40.10.(2), By-law No. 569-2013.

The maximum permitted height of all the exterior side main walls is required at 7.0 m, whereas, the proposed height of the exterior main side walls is 7.21m for 100% for the south main wall.

Chapter 10.20.40.10.(2), By-law No. 569-2013.

The maximum permitted height of all exterior walls is 7.0 m whereas, the proposed height of the exterior main side walls is 7.21 m for 89% of the north main wall.

Section 6.3.3, By-law No. 1916;

The maximum permitted building height is 8.5 m whereas the proposed building height is 9.01 metres.

[4] The property is zoned R1B under the Leaside Zoning By-law No. 1916 and RD (f12.0; a370; d0.6) in the new City Zoning By-law No. 569-2013. The subject lands are designated Neighbourhoods in the City Official Plan ("OP").

[5] Evidence was heard from Armando Barbini, a professional planner testifying on behalf of the Applicant/Appellant as well as three participants who are neighbours and community representatives opposed to the application. Counsel for the City appeared and did not call any evidence.

[6] In accordance with s. 45(1) of the *Planning Act*, the variances were reviewed in accordance with the four tests noted in that section:

- Is the general intent and purpose of the OP maintained?
- Is the general intent and purpose of the Zoning By-law maintained?
- Are the variances considered desirable for the appropriate development of the land?
- Are the variances minor?

[7] Mr. Barbini, stated that both provincial policy documents, the Provincial Policy Statement 2014 and the Growth Plan for the Greater Golden Horseshoe are supportive of the application because they encourage reinvestment in settlement areas and the intensification of urban activities within those areas.

[8] With regard to the policies in the City "OP", the planner opined the "Neighbourhood" supported the application. The OP requires that development is "harmonious" because the subject property serves as a transitional use between the multi use building to the immediate north (which is zoned for that purpose) and the adjoining and nearby single family uses (also specifically zoned for single occupancy) which predominate along the same street (Airdrie Road) and the neighbourhood in general. Mr. Barbini opined that the new home respected the residential massing already extent along the roadway and incorporated exterior design elements which are found in the neighbourhood which confirmed in his opinion that the new home would "fit" with the established built-form, but not constitute a "simple replication" in conformance with OP policy. Photo exhibits of existing residences were provided to affirm this opinion.

[9] From this evidence the Board notes two particular policies; paragraph 5, page 4-4 of the OP states that : "No changes will be made through rezoning, minor variance,

consent or other public action that are out of keeping with the physical character of the neighbourhood.” Paragraph 8 of page 4-5 states that: “Zoning by-laws will contain numerical site standards for matters such as building type and height, density, lot sizes lot depths, lot frontages, parking, building setbacks from lot lines, landscaped open space and any other performance standards to ensure that new development will be compatible with the physical character of established residential Neighbourhoods.”

[10] With regard to this matter of compatibility, the planner opined that the height difference between the subject residence and nearby homes was not discernable when viewed from the street line. He added that the area is undergoing change involving rebuilds and renovations, and some of this change has involved the approval of height variances although none over nine metres was acknowledged by the witness.

[11] The planner stated in conclusion that the numeric difference between permitted height and that achieved by the subject residence was small, similar to the height variations approved throughout the neighbourhood if only marginally higher, and further, did not materially increase shadowing in his estimation based on personal observations last September. Although the height variance approved for 131 Airdrie Road, represented the tallest building in the area (8.92 metres), nine metres did not represent a “magical” ceiling in this regard, particularly given the transitional circumstances of the subject lands *vis a vis* the adjacent walk up apartment use which is a higher and more formidable structure with respect to mass and street presence.

[12] The four tests were fully met in the planner’s opinion.

[13] Three participants testified convincingly against the application, those being V. Rose of 88 Airdrie Road, L. Bacon of 145 Airdrie Road and Geoff Kettel of 19 Hanna Road. Mr. Kettel spoke as co-president of the Leaside Property Owner’s Association Incorporated.

[14] In summary of their concerns, the following points are made:

- In their estimation the height variance above the limit established by the first COA application (8.8 metres), was intentional on the part of the Applicant/Appellant and the roof was finished and closed despite foreknowledge of the variance of 9.01 metres.
- The height variation is noticeable and therefore objectionable. In their view, the Applicant is seeking permission clearly at odds with the prevailing character of the street and the Leaside neighbourhood. The façade of the building, particularly the small windows and the prominence of the entrance way also creates an architectural impression incompatible with the street. The Board was provided with architectural guidelines created for the neighbourhood of Leaside - although not officially in force - which recommended less assertive, exterior architectural approaches which draw heavily on traditional Georgian and Tudor influences. It is noted that the City's planning department does not typically, according to evidence, employ the guidelines, nor is the neighbourhood a designated heritage area.
- The witnesses stated that the application did not represent intensification, which is a primary provincial development objective, but is instead a form of "massification" because only building volume, rather than resident density, was being increased.
- Finally, the variances are considered a precedent by the participants and an unwanted one, because they will establish a new benchmark for higher buildings on other lots and streets in the future. They all argued that the height limit must be respected.

[15] Counsel for the City were present and opposed the application although municipal planning staff did not attend the hearing despite the planning department's opposition to the COA application. Nevertheless, the participants did as noted provide convincing testimony, no doubt assisted by their intimate knowledge and commitment to

the Leaside community, and their knowledge of planning policy and zoning standards which they demonstrated throughout the hearing.

FINDINGS

[16] The Board does not find in support of the appeal.

[17] A compelling case was not made by the planner why the subject property should have the status of the tallest home in the neighbourhood. The Board was not persuaded that the building height is not discernable to a passerby, or why the Applicant merits another increment in height above that earlier granted by the COA. The Board is also mindful that the approval of variances must rely on Official Plan policy as one of four tests. In this respect, returning to the policy referred in paragraph 9 of this decision, "No change" will be made by variance (or by other means) "which are out of keeping with the physical character of the neighbourhood". In the Board's opinion, approval of a variance which permits the tallest house in the neighbourhood is not compliant with that policy. A policy which begins with the word: "No" cannot be ignored in association with an application which would establish a new benchmark for residential building height. When measured against this policy, the case for compatibility cannot be made.

[18] The argument that the subject lands have a transitional role, situated as they are beside a walkup apartment building is not a persuasive one. The Applicant's property is zoned for single family use, and the adjacent apartment site is zoned for multi density purposes. To the Board's knowledge, there is no transitional zoning provision which would stretch the zoning standards of the subject property in instances where neighbouring multi-residential uses exist.

[19] The 8.5 metre height limit has existed in Leaside for a long period of time, and the new By-law for the City, No. 569-2013 has seen fit to carry this standard forward as a City-wide standard in low density zonings. The longevity of this standard suggests to this tribunal that consistency in height control has considerable importance as a land use control tool. which should not be easily varied. The Applicant/Appellant has already

received one variance for height; a second approval involving this application would fail the test that the general intent and purpose of the Zoning By-law is being maintained.

[20] In summary the tests of s. 45(1) of the *Planning Act* have not been met.

ORDER

[21] The Board orders that the appeal is dismissed and the variances are not authorized.

"Richard Jones"

RICHARD JONES
MEMBER

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Ontario Municipal Board

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