

Ontario Municipal Board
Commission des affaires municipales
de l'Ontario



ISSUE DATE: August 21, 2014

CASE NO(S): PL140331

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

Appellant:	Lucinda Chiu
Appellant:	Carolyn & Cameron Koziskie
Applicant:	David D'Aprile
Subject:	Minor Variance
Variance from By-law No.:	1988-196, 569-2013, Etobicoke 320
Property Address/Description:	19 Friars Lane
Municipality:	City of Toronto
Municipal File No.:	A467/13EYK
OMB Case No.:	PL140331
OMB File No.:	PL140331

Heard: August 5, 2014 in Toronto, Ontario

APPEARANCES:

Parties

Counsel

David D'Aprile and
Jennifer D'Aprile

M. Flynn-Guglietti

Carolyn Koziskie

A. Anderson

Lucinda Chiu

**MEMORANDUM OF ORAL DECISION DELIVERED BY R. G. M. MAKUCH ON
AUGUST 5, 2014 AND ORDER OF THE BOARD**

[1] David and Jennifer D'Aprile ("Applicants") wish to construct a new two-storey dwelling on the subject property. They applied for and received authorization for the following variances from the Committee of Adjustment ("Committee"):

1. Section 900.3.10(45)(A), By-law 569-2013 and Section 1.(x), By-law 1988-196
The maximum permitted lot coverage, including an attached garage, shall not exceed 22% of the lot area (372.68 m²).
The new dwelling, including the attached garage, will cover 25.9% of the lot area (440 m²).
2. Section 900.3.10(45)(D), By-law 569-2013
The maximum permitted gross floor area, including an attached garage, is 465 m², up to a maximum floor space index of 0.28 (474.32 m²).
Section 1.(xi), By-law 1988-196
The maximum permitted gross floor area, including an attached garage, shall not exceed the lesser of 28% of the lot area (474.32 m²) or 465 m².
The new dwelling, including the attached garage, will have a gross floor area of 34.9% of the lot area (592 ma).
3. Section 10.5.40.70.(1)(B), By-law 569-2013 and Section 320-40.C.(1)
The minimum required front yard setback is 24.35 m.
The new dwelling will be located 13.75 m from the front lot line.
4. Section 900.3.10(45)(F), By-law 569-2013 and Section I.(vi), By-law 1988-196
The minimum required side yard setback for the proposed building height of 7.42 m is 3.6 m and the minimum required aggregate side yard width is 6 m.
The new dwelling will be located 2.74 m from the cast side lot line and 2.96 m from the west side lot line for the proposed building height of 7.42 m, and will have an aggregate side yard width of 5.7 m.
5. Section 10.20.40.7042)(B), By-law 569-2013 and Section 320-42.B.
The minimum required rear yard setback is 12.5 m.
The new dwelling will be located 6.5 m from the rear lot line.
6. Section 10.20.40.2041), By-law 569-2013
The maximum permitted building length is 17 m.
The new dwelling will have a length of 24.38 m.
7. Section 10.20.40.3041), By-law 569-2013
The maximum permitted building depth is 19 m.
Section 320-42.1.D.
The maximum permitted dwelling depth is 16.5 m.
The new dwelling will have a depth of 17.75 m.
8. Section 320-42.1.B.
The maximum permitted height, measured to the soffit of the eaves overhang, is 6.5 m.
The new dwelling will have a flat roof height of 7.42 m.

[2] The Committee's decision was appealed by Carolyn Koziskie and Lucinda Chiu, who are abutting property owners to the north and east respectively, resulting in this hearing.

[3] The Board was advised at the commencement of the hearing that the Applicants and the Appellant, Carolyn Koziskie had settled their differences and that the application

was being amended to reflect the agreement reached between them. The variances relating to maximum permitted building length and maximum permitted dwelling depth are no longer being pursued while a variances relating to larger minimum side yard beyond a specific depth, and a variance relating to a maximum permitted platform area at or above the second storey of a detached dwelling were being added.

[4] The Board is satisfied that these amendments are minor and will not require that the application be re-circulated pursuant to s. 45(18.1) and (18.1.1).

[5] The hearing before this Board is a hearing *de novo* and the onus is on the Applicant to satisfy the Board that the application meets the four tests set out under s. 45(1) of the *Planning Act* notwithstanding that the Committee authorized the requested variances. The four tests require any applicant to satisfy the Board that the 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 and use of the lands for the development of the lands; and
- 4) are minor.

[6] The evidence before the Board in support of the appeal in this hearing consists of the *viva voce* testimony of Dr. Edwin "But" Chiu and the Appellant Lucinda Chiu.

[7] The evidence in opposition to the appeal and in support of the application consists of the oral testimony of Eros Fiacconi and Tom Bradley the professional land use planning consultant and professional arborist respectively for the Applicant. The Board also heard from Nicole Ivanov, the City land use planner, who was responsible for processing the application and making recommendations to the Committee. She appeared under summons issued by the Board at the request of the Appellant Lucinda Chiu. Ms. Chiu elected not to call her as a witness but she was nevertheless called by the Applicants.

[8] The Board is satisfied based on the un-contradicted evidence of the three professional witnesses who testified in opposition to the appeal that the appeal should be allowed in part and that the variances as amended should be authorized for the reasons that follow.

[9] The Board is satisfied that the variances, individually and cumulatively, meet the above-mentioned four tests.

[10] The subject property is located in the area known as "Thorncrest Village", one of the first planned communities in Canada dating back to the 1940's. The original deeds for the lots in the village contained restrictions covering matters such as type of construction, fencing and landscaping so as to achieve a high quality development within a pastoral-like setting and sense of openness according to Mr. Fiacconi, who was employed by the City of Etobikoke at the time as a planner. These restrictions remained in force until the mid-1970's and were followed by a preservation by-law enacted by council at the request of the community. Site Specific Zoning By-law 1988-196 was enacted and sets out development standards with respect to lot coverage, lot area, lot depth, side yard setbacks, gross floor area and dwelling height. There has been much re-development since and the area has been described as an "eclectic" one with varied lot sizes and configuration as well as house designs and types.

[11] The subject lot itself is large (0.40 acre) and pie-shaped. The proposal is to construct a two-storey house using the original foundation walls and was initially brought forth as an addition to an existing bungalow type dwelling. Technical issues arose and resulted in the proposal being considered to be new construction rather than an addition.

[12] Firstly, the Board is satisfied that the intent and purpose of the City of Toronto Official Plan is maintained by authorization of these variances. The subject lands are designated "Neighbourhoods" under this Plan. The relevant policies in this designation recognize that development in these areas will respect and reinforce the existing

physical character of the neighbourhood. It is also recognized that these areas are “stable but not static” and that any new development must be compatible with existing development. It is noted that being compatible does not necessarily mean being the same but rather have the ability to peacefully co-exist. Mr. Fiacconi drew the Board’s attention to a number of Committee of Adjustment decisions where similar variances were authorized in the neighbourhood and the Board is satisfied that the proposed variances are within the range of what exists in the neighbourhood and will result in a form of housing that will fit into the neighbourhood by respecting and reinforcing its physical character.

[13] The Board also finds that there is no issue with consistency with the Provincial Policy Statement or conformity with the Growth Plan for the Greater Golden Horseshoe.

[14] Secondly, the Board is satisfied that the variances as amended will maintain the intent and purpose of the zoning by-laws. The subject property is zoned R1 “First Density Residential” and RD “Residential Detached Zone” under Zoning By-law 569-2013, the purpose of which, according to Mr. Fiacconi, is to control the massing and bulk of new development. He opined that the proposed dwelling will fit into this eclectic neighbourhood. The subject lot has an area of 0.40 acres and widens as you go towards the rear of the lot. This allows the gross floor area to be distributed across the lot as opposed to being concentrated in the center part of the lot. The increase in maximum coverage is minor and inconsequential to anyone.

[15] The variance relating to maximum permitted lot coverage and gross floor area are truly minor both quantitatively and qualitatively minor. The variance relating to front yard setback is very much of a technical nature as the setback is related to the setback of the abutting homes on either side.

[16] The variance relating to the reduction of the rear yard setback is also minor as it affects only a small portion of the yard and it is noted that the Appellant Carolyn Koziskie, who would be mostly affected by this variance has settled her differences with

the Applicants. It is noted that the evidence of Mr. Fiacconi showed that there would be no real activity where the rear yard is proposed to be reduced and that these would occur in a large amenity space in the northwest part of the lot.

[17] The variance relating to the maximum permitted platform area at or above the 2nd storey will not have any impacts on any of the neighbors either at the rear or at the side.

[18] There is also no concern with the variance relating to height as it considered to be technical and will not have any impacts on anyone.

[19] The Board notes that there will be less impact on Dr. and Mrs. Chiu resulting from the authorization of these variances than the impacts resulting from an "as of right" development.

[20] Thirdly, the Board is also satisfied that the variances are minor both individually and cumulatively. They are minor both by order of magnitude and will not cause any unacceptable adverse impacts on anyone. While there will always be impacts from new development, there were no demonstrated unacceptable adverse impacts either on the streetscape or on the immediate neighbours. While Dr. and Mrs. Chiu maintain that the variance relating to a reduction in the side yard abutting their property will have negative impacts on their quality of life, the variances only relate to three "pinch points" on corners of the proposed house, which is only one storey at that location. Furthermore, the garage at the rear will be eliminated and the corresponding driveway will be landscaped over creating an improved situation with a softer edge. Dr. and Mrs. Chiu are very much concerned with their loss of view from their front kitchen window. It is well settled law that there is no right to the protection of a view in Ontario. Authorization of these variances will not destabilize or negatively impact the character of the neighbourhood or the abutting neighbors. While the Board found Dr. Chiu's and Mrs. Chiu to be opposed to this development out of genuine concern, they did not adduce any cogent evidence upon which the Board could rely to allow their appeal.

[21] Finally, the Board is also satisfied that the variances are desirable for the

appropriate development of the land. Authorization of these will allow the construction of a dwelling meeting modern needs with a creative design that will maintain the high quality of the neighbourhood allow the gross floor area to spread over the width of the lot as opposed to being centered in a larger mass in the middle of the lot.

[22] The Board is satisfied that the conditions recommended by Mr. Fiacconi are appropriate under the circumstances.

[23] Ms. Ivanov testified that although she initially recommended refusal of the application for variances because she felt it could be improved, she was now in support given the many revisions made by the Applicants to resolve the concerns raised by the City and neighbors.

[24] Mr. Bradley indicated that in his arborist's report that there were no trees to be cut down and there was not any need for an application to protect any trees.

ORDER

[25] Accordingly, the appeal is allowed in part to allow the Board to authorize the variances as amended in accordance with Attachment 1 (Exhibit 5) subject to the conditions set out in Attachment 2. The appeal is otherwise dismissed.

"R. G. M. Makuch"

R. G. M. MAKUCH
MEMBER

Ontario Municipal Board

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19 Friars Lane
Revised list of Variances

1. Section 10.20.40.70.(2)(B), By-law 569-2013 and Section 320-42.B Etobicoke Code
The minimum required rear yard setback is 12.4 m
The proposed rear yard setback is 7.75 metres for the new two storey detached dwelling
2. Section 10.20.40.70.(1), By-law 569-2013 and Section 32-40.C.(1) Etobicoke Code
The minimum front yard setback is 24.35 m
The proposed front yard setback is 13.75 m for the new two storey detached dwelling.
3. Section 10.20.40.70. (5)(A), By-law 569-2013
The required minimum side yard setback is 7.5 metres where the building depth is greater than 17.0 m from the main wall of the building.
The proposed side yard setback measured graphically 4.5 metres at the east side yard setback
4. Section 10.20.40.50. (1)(B), By-law 569-2013
The permitted maximum area of each platform at or above the second storey of a detached house is 4.0 m².
The proposed area of the second floor west side platform at or above the second storey is 9.2 m²
5. Section 900.3.10(45)(A), By-law 569-2013 and Section 1.(x), By-law 1988-196
The maximum lot coverage is 22% of the lot area for the new two storey detached dwelling including an attached garage (372.68 m²).
The proposed lot coverage is 25.5% of the lot area for the new two storey detached dwelling including an attached garage (415 m²)
6. Section 900.3.10(45)(D), By-law 569-2013 and Section 1.(xi), By-law 1988-196
The maximum gross floor area is 28% of the lot area for the new two storey detached dwelling including an attached garage (474.32 m²) or 465 m².
The proposed gross floor area is 35% of the lot area for the two storey detached dwelling including an attached garage new dwelling (592 m²)
7. Section 900.3.10(45)(F), By-law 569-2013 and Section 1.(vi), By-law 1988-196
The minimum required side yard setback for the proposed building height of ~~7.42~~ 7.323 metres is 3.6 metres and the minimum aggregate side yard width is 6 metres
The new dwelling will be located 2.74 metres from the east side lot line and 2.96 metres from the west side lot line for the proposed building height of ~~6.92~~ 7.323 metres, and will have an aggregate side yard width of 5.7 metres.
8. Section 320-42.1B. (2), Etobicoke Code
The maximum height of the soffit or the eaves overhang is 6.5 metres.
The proposed height of the flat roof is 7.323 metres



ATTACHMENT 2

19 Friars Lane

Conditions to approval

- 1 The owner shall satisfy the City of Toronto Municipal Code Chapter 813, Article III (www.toronto.ca/trees/private/trees). with respect to privately-owned trees to the satisfaction of the Urban Forestry Division.
- 2 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.
- 3 No windows are permitted within the 29 ft. (8.84 metres) of the rear wall and balcony.
- 4 The home will be constructed substantially in accordance with the plans and drawings provided in Tab 6, Ex. 7 at the OMB hearing.

