

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



**ISSUE DATE:** October 16, 2014

**CASE NO(S):** PL140674

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

Applicant and Appellant: Lori Track  
Subject: Minor Variance  
Variance from By-law No.: 438-86  
Property Address/Description: 81 Castlewood Road  
Municipality: City of Toronto  
Municipal File No.: A453/13NY  
OMB Case No.: PL140674  
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Heard: September 16, 2014 in Toronto, Ontario

**APPEARANCES:**

**Parties**

**Counsel**

Lori Track

J. Shapira

**DECISION DELIVERED BY H. JACKSON AND ORDER OF THE BOARD**

**INTRODUCTION**

[1] Lori Track (the “Applicant”) applied for seven minor variances to permit the construction of a new detached dwelling with an integral garage for her property at 81 Castlewood Road (“subject property”). The City of Toronto (the “City”) Committee of Adjustment (the “COA”) approved six of the seven requested variances, but denied the variance for gross floor area (“GFA”), which led to this appeal.

[2] Two neighbours, Amanda Davidson, who lives directly adjacent at 79 Castlewood

Road, and Robert Biancolin, who lives at 77 Castlewood Road, opposed the requested variances and were granted Participant status to speak to their concerns at this hearing.

[3] The Applicant retained Michael Bissett to provide land use planning opinion evidence in relation to the requested variances.

### **REQUESTED VARIANCES**

[4] The following are the requested variances from By-law No. 438-86:

1. Section 6(3) Part II 3.B(II)

Proposed south side yard setback of 0.61 m for the portion of the dwelling not exceeding 17.0 m in depth

WHEREAS a minimum south side yard setback of 0.90 m is required for the portion of the dwelling not exceeding 17.0 m in depth

2. Section 6(3) Part II 3(II)

Proposed distance to an adjacent dwelling (No. 79 Castlewood Ave.) of 0.87 m

WHEREAS a minimum of 1.20 m to an adjacent dwelling that contains openings is required;

3. Section 6(3) Part II 3.B(II)

Proposed south side yard setback of 0.61 m for the portion of the dwelling exceeding 17.0 m in depth

WHEREAS a minimum south side yard setback of 7.50 m is required for the portion of the dwelling exceeding 17.0 m in depth

4. Section 6(3) Part II 3.B(II)

Proposed north side yard setback of 1.01 m for the portion of the dwelling exceeding 17.0 m in depth

WHEREAS a minimum north side yard setback of 7.50 m is required for the portion of the dwelling exceeding 17.0 m in depth

5. Section 6(3) Part III 3.D(i)(D)

Proposed soft landscaping of 41.29%.

WHEREAS a minimum soft landscaping of 75% is required

6. Section 6(3) Part I, 1

Proposed G.F.A. (Gross Floor Area) of 0.80 times the lot

WHEREAS a maximum G.F.A. of 0.6 times the lot area is permitted

7. Section 2(1)

Proposed parking space dimensions of 5.79 m x 3.05 m

WHEREAS a parking space requires the minimum dimensions of 5.60 m x 3.20 m

[5] The approval of the variances by the COA was subject to the standard conditions in relation to private and city-owned trees.

[6] Mr. Bissett noted that there was a small typographical error to the section reference on Variance No. 5. The correction was made and is provided above. This correction is minor and no further notice is required.

[7] Mr. Bissett testified that there was a zoning certificate application on April 2, 2013,

and therefore the new comprehensive Zoning By-law No. 569-2013 does not apply in this case.

## **ISSUE**

[8] Section 45(1) of the *Planning Act* (“Act”) allows the Board to authorize variances to a zoning by-law where the variance is minor; is desirable for the appropriate development or use of the land, building or structure; maintains the general intent and purpose of the Official Plan; and maintains the general intent and purpose of the zoning by-law. The Board must be satisfied that all four tests are met in order to authorize the requested variances.

## **EVIDENCE**

[9] The subject property is located northwest of Avenue Road and Eglinton Avenue West. Mr. Bissett described the large study area that he chose for his planning analysis, as shown in Exhibit 2. The study area is within lands designated Neighbourhoods in the City’s Official Plan and the Yonge – Eglinton Secondary Plan, is zoned R1, and consists of detached homes, all with a similar lot pattern. He testified that this is a stable neighbourhood with a significant degree of re-investment underway. The area is served by transit, and soon the Eglinton LRT will increase the transit service in the area.

[10] Mr. Bissett described the character of the neighbourhood with the aid of photographs as provided in Exhibit 3. Many of the original homes have gables and front peaked roofs. He testified there are many new larger homes that maintain the general character of the original homes by incorporating gables and peaked roofs in their design, and also use brick, stone and stucco as building materials. Many of these newer homes have integral garages, and this has the benefit of removing parking from the front yards. Mr. Bissett pointed out at least one home with a “modern” design.

[11] Mr. Bissett described the proposal. He explained that there is an existing two-

storey detached house of about 1,350 square feet ("sq. ft."), with a permitted front yard pad for parking, and a rear garage and shed. The house and rear garage and shed are to be demolished and replaced with a new house of about 2,200 sq. ft.. The new home will have a front driveway and an integral garage, with a new walkway and front porch. The front pad parking is to be removed. The portion of the rear garage that belongs to the neighbour to the north is to remain, and the roof of this garage is to be re-built. The proposed new home is similar in design to the newer homes in the area, with a peaked roof in the front.

[12] Mr. Bissett testified that, as stated in the City's Official Plan and the Yonge Eglinton Secondary Plan, Neighbourhoods are considered to be physically stable areas and development in these areas is to be consistent with this objective and is to respect and reinforce the existing physical character of buildings, streetscapes and open space patterns.

[13] Mr. Bissett testified that the proposed new home with an increase in side yard setbacks is in keeping with the homes in the area. He testified that the increase in mass as manifested by the GFA is also consistent with the density of existing homes in the area. He testified that he undertook a study of floor space index ("FSI"; a density measurement similar to GFA) of lots in the study area (Exhibit 2), and concluded that there are many existing lots with an FSI greater than 0.6 times the area of the lot. He also looked at COA decisions since the year 2000 that granted a density increase greater than 0.6 times the area of the lot. The COA decisions ranged in permitted FSI of up to 0.91 times the area of the lot. He testified that the proposed density and mass of the new home is not out of keeping and will not destabilize the existing physical character of the neighbourhood.

[14] His opinion is that the proposed new home is in a form compatible with the area and fits well with respect to built form, features and building type, and will reinforce the existing physical character of the area. He testified that the new home will be massed to

frame the adjacent street, it will be a mix of brick and stucco, with an integral garage and a peaked roof, and therefore it will fit in with the design of the nearby homes. He testified that the variances are in keeping with the general intent and purpose of the Official Plan in regards to built form.

[15] Mr. Bissett testified that he had a shadow study done to evaluate the additional shadow due to this proposal in comparison to the as-of-right condition (a building of 17 metres (“m”) depth). The shadow study shows that there is a very slight increase in shadow to the north in comparison to the as-of right-condition, and no impact to the south. He testified that there are no detrimental impacts with respect to privacy, as there are no windows facing south on the proposed new home. He testified that the proposed new home provides for adequate light and privacy.

[16] Mr. Bissett testified that policy 3.1 of the Yonge – Eglinton Secondary Plan indicates that Neighbourhoods will consist of a variety of unit sizes, and larger units suitable for families with children will be encouraged, and that this is exactly the case here.

[17] Mr. Bissett testified that the intent of the zoning by-law is to provide for new development that is compatible with existing physical character of the established neighbourhood. He testified that the zoning by-law provides a benchmark to ensure compatibility.

[18] Mr. Bissett testified that the four tests of the Act are satisfied individually and collectively for each of the variances, as described below.

[19] The **first variance** is for relief from the by-law provisions for the south side yard setback for the portion of the dwelling not exceeding 17 m depth. Mr. Bissett testified that the existing home is setback 0.29 m to the south property line. The proposed new home is to be setback 0.61 m, however, the by-law requires a setback of 0.90 m for the portion

of the dwelling not exceeding 17 m depth. He testified that the proposed setback provides adequate separation between the homes, is compatible with the existing neighbourhood, and is an improvement on the existing condition. He testified that this meets the general intent and purpose of both the Official Plan and the zoning by-law. He testified that the variance is desirable as it provides a new dwelling at an increased setback and allows the lot to be redeveloped with a new home. It is minor as the setback is an improvement upon the existing condition.

[20] The **second variance** is related to the required separation distance to an adjacent dwelling that has an opening. The by-law requires 1.2 m. There are no openings on the south elevation of the proposed new home. The existing separation distance is 0.55 m, and the separation distance with the new home will be 0.87 m, an improvement on the existing condition. In this case the proposed setback respects and reinforces the character of the neighbourhood, it provides for an appropriate separation distance between the two dwellings, and it is a slight increase in distance. He testified that this meets the general intent and purpose of both the Official Plan and the zoning by-law. It is desirable as it allow for an appropriate dimension for a new home without any negative impacts, and it is minor as it is a small improvement on the existing condition.

[21] Variances **three and four** relate to the setback required for the north and south side yards for the portion of the dwelling exceeding 17 m in length, which is the as-of-right building length. Mr. Bissett testified that the first floor of the building will extend 0.58 m beyond the 17 m, and the second floor of the building is to extend 1.34 m, due to second storey bay window projections. Mr. Bissett testified that the variances maintain the general intent and purpose of the Official Plan and the zoning by-law, and the variances are desirable as they allow for a building that fits into the neighbourhood without any destabilizing effects, and that respects and reinforces the neighbourhood. Mr. Bissett testified that the increase in the dwelling length beyond 17 m is minor and does not have an unacceptable impact on shadow, overlook or privacy. There are no windows on the south side. The windows on the north side are close to the front of the

house and are against the driveway, and therefore there are no untoward impacts.

[22] The **fifth variance** is for relief from the requirement for 75% soft landscaping of the front yard. The proposed redevelopment will have 41.29% soft landscaping. The existing condition is essentially all a parking pad, as testified by Mr. Bissett. He testified that the proposal will be an improvement upon the existing condition, and that the new front yard with an integral garage, a walkway and steps to a porch will not be out of character with the neighbourhood. He testified that the variance is minor, meets the intent and purpose of the Official Plan and zoning by-law, and it is desirable as it allows a driveway, porch, walkway, and additional landscaping that will improve upon what exists now.

[23] The **sixth variance** is for GFA. The proposed new home will have a GFA of 0.8 times the area of the lot, whereas the by-law permits 0.6 times the area of the lot. This is the only variance that was refused by the COA, though the COA approved all the setbacks that create the building envelope. Mr. Bissett testified that there is a difference of about 500 sq. ft. between a GFA of 0.6 and 0.8 times the area of the lot, in this instance.

[24] Mr. Bissett testified that this variance allows for a building that respects the character of the neighbourhood without adverse impacts with regard to light, view or privacy. The density is consistent with other properties, as shown by the lot study done that indicated that there are several homes in the vicinity that are at a density greater than the zoning by-law standard. The density is manifested in an appropriate massing, scale and form. He testified that the Secondary Plan encourages homes with a larger size to accommodate families with children, and this proposal maintains that intent.

[25] Mr. Bissett testified that the intent of the zoning by-law is to ensure compatibility with the area and to implement the objectives of the Official Plan to respect and reinforce the existing character of the area, which this does. He testified that the variance is

desirable as the requested GFA allows a larger home for a growing family and represents an appropriate intensification of the site and the neighbourhood. He testified that it is minor as there are no unacceptable impacts with respect to shadow and overlook in comparison to the as-of-right zoning envelope.

[26] The **last variance** is for the width of the parking space in the garage that is proposed to be 3.05 m wide, whereas the by-law requires 3.2 m. Mr. Bissett testified that there is nothing specific in the Official Plan with respect to parking. The relief requested does not result in anything out of keeping with the physical character of the outside of the house and therefore the general intent and purpose of the Official Plan is maintained. He testified further that the parking width zoning standard applies City-wide. In this instance, the reduced parking space will function equally and allows the intent and purpose of the zoning by-law to be met. He testified that it is desirable as it allows for an integral garage and opens the rear yard with the removal of the rear garage, and it also removes the front pad parking. It is minor as there is only a difference of 7 centimetres (cm) on either side of the car and there is no impact on the adjacent properties.

[27] Mr. Bissett testified that in his planning analysis, he had regard to matters of provincial interest, particularly in relation to the orderly development of safe and healthy communities and the appropriate location of growth and development. He testified that in this case, the redevelopment of a lot for a new single family home represents the orderly development of the lands, and this minor amount of intensification in the neighbourhood is the appropriate type of growth at the appropriate location.

[28] Mr. Bissett testified that the proposal is consistent with the Provincial Policy Statement 2014 by promoting efficient development and land use patterns and accommodating an appropriate range and mix of uses, including residential uses. He testified that this is an efficient use of land and resources and appropriately and efficiently uses infrastructure and public services. He testified that the proposal provides a larger home for a growing family in a location where services are available. He testified that this

is not an area identified as an intensification area but intensification in Neighbourhoods is consistent in terms of the implementation of the Official Plan.

[29] Mr. Bissett testified that the proposal conforms to the Growth Plan for the Greater Golden Horseshoe that directs that growth be in built up areas. He testified that the increase in density of the new home reflects intensification in the built up area.

[30] Mr. Biancolin testified in regards to his opposition to this proposal. He stated that the new construction will not be compatible with the adjacent existing home at 79 Castlewood Road, as it will be much taller. He noted that the original homes were constructed with great care to ensure compatibility of the homes with each other, to incorporate and create balance, and that this exists currently even with the presence of a grade difference between 79 Castlewood Road and 81 Castlewood Road.

[31] Mr. Biancolin testified that the difference between 0.6 and 0.8 times the lot size for the GFA is a large difference and is especially noticeable in the rear of the homes where there is to be an expansive wall along the south side of the new structure. He says this is overpowering and will reduce the pleasant open views of greenery in the rear yards that all the neighbours now experience. He says that with this building going forward, the only residents with a good view of the back greenery will be the Applicant, whereas the neighbours to the north and to the south of the Applicant will have a hindered view. He says that this proposal encroaches upon the neighbours and lessens the value of the neighbour's experience of the outdoors and green space and this is not appropriate. He says it overpowers the intent of the neighbourhood which is to be leafy and treed.

[32] Mr. Biancolin says that these lots are too small for the size of homes that are being squeezed onto them. He expressed concern over the tearing down of the existing house that has value, and the unmeasurable value of the existing condition with an open backyard and green space.

[33] Ms. Davidson questioned why someone would be permitted to build a home that is so much larger than what the by-law permissions are. She testified that the new home will impact her greatly as it will result in a massive wall that will be an eyesore along her property line and will impact her view to the north. She also complained that the walkout deck that the Applicant has proposed is elevated and will further impede her view to the north.

## **FINDINGS**

[34] The Board has carefully reviewed the evidence and submissions of the Applicant and the Participants. The Board accepts the uncontroverted expert opinion evidence of Mr. Bissett, who testified that the requested variances for the proposed new home meet the general intent and purpose of the Official Plan and the zoning by-law, and result in a desirable and appropriate development of the lands and are minor in nature.

[35] On the basis of the evidence, the Board finds that the proposed redevelopment will fit in to the existing neighbourhood and streetscape that is characterised by a mix of older homes and newer homes that are similarly redeveloped with a front driveway and integral garage. The Board finds that the requested side yard setbacks provide for a slight improvement upon the existing condition and that this provides a new home with improved access for maintenance along the side yard. The integral garage removes the front pad parking and allows for a walkway with landscaping which is also an improvement upon the existing condition.

[36] The neighbours expressed concern regarding the impact to the open, leafy character of the rear yards. The as-of-right permissions allow for a building length of 17 m. The proposed building extends slightly beyond this length. The Board finds that the impact of the additional length beyond 17 m is minor and that this additional length of building does not result in undue negative impact to the adjacent neighbour in comparison to the as-of-right permission.

[37] The Board finds that the massing of the proposed redevelopment is appropriate for this location, and does not consider that the redeveloped home will be “too tall”. The Board notes that there is no variance requested for height. The Board finds the size of the proposed new home, as reflected in the variance for GFA, is compatible with the newer homes in the area, as provided in the evidence.

[38] The Board finds that the requested variances will result in a home that will respect and reinforce the existing neighbourhood, and will not destabilize the neighbourhood.

[39] The Board finds that all of the requested revised variances, individually and cumulatively, result in a development that meets the intent and purpose of the City of Toronto Official Plan and zoning by-law and that it is a desirable and appropriate development of the lands and is minor in nature.

## **ORDER**

[40] The appeal is hereby allowed and the requested revised variances are authorized, subject to the standard conditions for urban forestry.

*“H. Jackson”*

H. JACKSON  
MEMBER

### **Ontario Municipal Board**

A constituent tribunal of Environment and Land Tribunals Ontario

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