

**Ontario Land Tribunal**  
Tribunal ontarien de l'aménagement  
du territoire



**ISSUE DATE:** June 29, 2023

**CASE NO(S):**

OLT-23-000174

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

Applicant and Appellant:

Sara Khalili

Subject:

Minor Variance

Description:

To permit construction of a new two-storey single detached dwelling on an existing vacant lot

Reference Number:

MV-2023-01

Property Address:

17 Hawthorne Lane

Municipality/UT:

Aurora/York

OLT Case No.:

OLT-23-000174

OLT Lead Case No.:

OLT-23-000174

OLT Case Name:

Khalili v. Aurora (Town)

**Heard:**

June 20, 2023 by video hearing

**APPEARANCES:**

**Parties**

Sarah Khalili

Town of Aurora

**Counsel**

Ashon Simpson  
Christopher Manning (*in absentia*)

Patricia De Sario

**MEMORANDUM OF ORAL DECISION DELIVERED BY G.A. CROSER ON JUNE 20, 2023 AND ORDER OF THE TRIBUNAL**

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[Link to Final Order](#)

## **INTRODUCTION**

[1] The Applicant owns the property known municipally as 17 Hawthorne Lane (“Subject Property”) in the Town of Aurora. The original dwelling on the Subject Property was demolished and, at present, the lot is vacant. To facilitate the redevelopment of the Subject Property, the Applicant applied to the Town of Aurora (“Town”) for four minor variances to allow the construction of a new two-storey detached dwelling. The minor variances are to address Zoning By-law No. 6000-17 (“ZBL”).

[2] The Town’s Staff Planning Report (“Town Report”), dated February 9, 2023, recommended approval of all four variances. However, the Committee of Adjustment (“COA”) only granted two of the four variances. The Applicant appealed the COA’s decision to the Tribunal. A settlement was reached between the Parties in advance of the hearing on the merits. Consequently, the Parties appeared before the Tribunal for the purposes of a settlement hearing.

## **SITE CONTEXT**

[3] The Subject Property is located in a mature residential area with a tree canopy. Hawthorne Lane consists of single detached home of one or two storeys with generally uniform lots.

[4] There have been approximately six re-builds in the immediate neighbourhood with two more under construction. The proposed residential dwelling for the Subject Property is designed as a custom home that does not conform to the ZBL.

## APPLICATION

[5] The Applicant submitted an Application to the Town's COA seeking the following variances:

- i. Section 7.2 of the ZBL requires a minimum front yard setback of 9.0 metres. The applicant is requesting a front yard setback of 8.7 metres, thereby requiring a variance of 0.3 metres.
- ii. Section 7.2 of the ZBL requires a minimum Interior Side Yard setback of 3.0 metres. The applicant is requesting an interior side yard setback of 2.2 metres (west side), thereby requiring a variance of 0.8 metres.
- iii. Section 7.2 of the ZBL requires a minimum interior side yard setback of 3.0 metres. The applicant is requesting an interior side yard setback of 2.3 metres (east side), thereby requiring a variance of 0.7 metres.
- iv. Section 5.61(iii) of the ZBL allows a maximum driveway width of 10.0 metres if the lot frontage is 18.0 metres or greater, with the exception that the maximum driveway at the street line shall not exceed 6.0 metre. The applicant is requesting a driveway width of 7.0 metres at the street line, thereby requiring a variance of 1.0 metre.

[6] It was noted by Mr. Jefferson that the Applicant had applied for similar variances in 2017, which were approved by the COA. However, the timeframe for implementing the variances had lapsed. As a result, the Applicant reapplied to the COA with slight changes to the variances previously approved in 2017.

## PLANNING EVIDENCE

[7] The Tribunal relied upon the uncontested and uncontroverted testimony of Steven Jefferson, a witness appearing on behalf of the Applicant. Mr. Jefferson was

qualified by the Tribunal to provide expert opinion evidence in the area of land use planning, and his evidence was delivered with the consent of the Town.

[8] Mr. Jefferson's Affidavit filed in support of the settlement hearing noted that two of the four minor variances were approved by the COA and were therefore "not a subject of this appeal." The Affidavit focused only on the two variances that were not approved by the COA.

[9] The Tribunal reminded all Parties before the onset of the settlement hearing that an appeal pursuant to s. 45 of the *Planning Act* ("Act") is a hearing *de novo*, and the onus of establishing that the four tests under s. 45(1) of the Act are met for each variance is incumbent on the Applicant. This requirement remains the same regardless of whether a hearing on the merits or a settlement hearing is heard by the Tribunal.

[10] The Tribunal expected to hear testimony with respect to each variance at the settlement hearing, and this was provided by Mr. Jefferson.

[11] It was the opinion of Mr. Jefferson that the variances complied with the four tests set out at s. 45(1) of the Act, he stated that the proposed variances both singularly and collectively were: (a) consistent with the general intent and purpose of the Official Plans; (b) consistent with the general intent and purpose of the Zoning By-law; (c) desirable for appropriate development and use of the land; and (d) minor in nature.

### **General Intent and Purpose of the Official Plan**

[12] The Subject Property is located within an area designated "Stable Neighbourhoods" which provides for detached dwellings as a permitted use. The OP at Section 8 states that the OP recognizes the importance of protecting and enhancing stable residential neighbourhoods.

[13] Mr. Jefferson made particular reference to Section 8.1.1 of the Town of Aurora's Official Plan ("OP"). He noted that this section recognizes that redevelopment of older homes is likely in such areas, and that such areas are permitted to evolve and be enhanced. Mr. Jefferson stated that the intent of the OP, with respect to stable residential neighbourhoods, is to encourage landowners to propose new home designs that fit into the streetscape. Mr. Jefferson opined that the proposal for the Subject Property, although architecturally more modern, would be a good fit within the existing streetscape.

[14] With respect to the proposed variances (i) and (iv), as set out in paragraph [5], Mr. Jefferson opined that based on the information collected during his colleague's site visit and his own reviews conducted on Google Maps, that the street contained both recent build and older homes and that the proposed development would maintain the general intent and purpose of the OP, specifically with respect to s. 8.1.1.

[15] With respect to the proposed variances (ii) and (iii), as set out in paragraph [5], Mr. Jefferson noted that the proposed development design plans were similar in style to other new builds. The Planner referenced three other properties on the street that had similar variances approved prior to their redevelopment.

[16] Lastly, the Planner briefly touched on section 4 of the OP on design excellence and included policies to encourage "high quality urban design and architecture," which was embodied by the proposed redevelopment. Mr. Jefferson opined that the proposed development would maintain the general intent and purpose of the OP.

### **General Intent and Purpose of the Zoning By-Law**

[17] Mr. Jefferson referenced Section 7 of the ZBL as applicable to the Application. Section 7 of the ZBL sets out Residential Zones and permitted uses, and the Subject Property is zoned R2 which permits detached residential dwellings. The Planner stated

that the proposed two-storey dwelling would result in lot coverage of 34%, with the zoning permitting a maximum lot coverage of 35%. In his opinion, the variances requested would not result in any negative impact on abutting properties, the surrounding area, or the existing streetscape.

[18] Mr. Jefferson noted that the interior yard setback on the west side was for the encroachment of the bay window and that the main foundation wall on the west side was in compliance with the minimum side yard requirement of 3.0 metres ("m"). Mr. Jefferson then discussed ZBL Section 4.20, titled 'Yard Encroachments Permitted'. In this section, window bays are permitted to project into an Interior Side Yard by 0.33 m if the bay is up to 3 m in width. The variance requested is for 0.8 m which exceeds the encroachment permitted by the ZBL. While Mr. Jefferson was unsure if the window bay in the elevation drawings for the proposed development were less than 3.0 m in width, he suggested that this was as an example of the general intent of the ZBL with respect to window bays.

[19] With respect to the interior yard setback on the east side of the property. Mr. Jefferson stated that this was primarily for the eaves and chimney. The Planner explained that the setbacks are to ensure that adequate spatial separation between the property line and street lines are maintained. As the east interior yard setback encroachment was elevated this would not impact abutting properties.

[20] The Planner's opinion, after reviewing the proposed site plan, was that the proposed side yard setback variances as set out at paragraph 5 (ii) and (iii), were reasonable and would allow for drainage, landscaping and provide adequate space for access and future maintenance of the home exterior. With respect to variances (i) and (iv), as set out in paragraph 5, the Planner opined that they maintained the general intent of the ZBL and were similar to other newer homes in the immediate vicinity of the Subject Property.

### **Appropriate and Desirable**

[21] Mr. Jefferson opined that the proposed development was appropriate in the context of the surrounding neighbourhood and that it would not negatively impact the existing neighbourhood character. The Planner made comments with respect to the height, massing, and exterior design of the proposed development. In his opinion, the requested variances and the construction of the home would not have a negative impact on neighbouring residences from a physical perspective.

[22] With respect to the more modern design of the proposed dwelling, Mr. Jefferson noted that this would not be the first redesigned home on the street. He went on to state that the proposed dwelling was both appropriate and desirable and would fit in well with the streetscape.

### **Minor in Nature**

[23] When considering whether a variance is minor in nature, adverse impact is a key consideration. Mr. Jefferson referenced Unprotected Openings Calculations (“UOP”). In his view, these calculation tables, included at pages 7 and 8 of his Affidavit, provided “a level of assurance” that the home design and requested variances, with particular emphasis on the two variances disallowed by the COA, were acceptable from a health and safety perspective.

[24] Mr. Jefferson explained UOPs are utilized by the Ontario Building Code. Mr. Jefferson stressed that he was not qualified to complete such calculations but noted his experience with such matters when working with municipal staff on other applications. The UOP are an assessment tool to minimize risk to adjacent buildings if the subject building caught on fire.

[25] Mr. Jefferson directed the Tribunal to elevation drawings for the proposed building that had been prepared and signed by an individual who had the qualifications necessary to produce such data. The Planner explained that both the UOP table for the east interior side yard setback and the west interior side yard setback were sufficient.

[26] Mr. Jefferson also referenced the Town Report where it was stated that the proposed dwelling was “comparatively moderate in scale” and was not anticipated “to result in any negative impacts to the neighbourhood or abutting properties. The Planner noted that the COA had not cited any specific reasons for the COA’s decision to refuse the interior side yard minor variance requests. Yet, the COA had previously approved three minor variance approvals on the same street with more substantial interior side yard minor variances than were requested in the Applicant’s application.

[27] The Planner also provided information with respect to the protection of the area’s physical geography, and if the redevelopment would negatively impact the surrounding tree canopy. It was Mr. Jefferson’s opinion that the conditions suggested by the COA for the two variances it had approved, which were subsequently incorporated in Minutes of Settlement entered into by both parties, provided measures to ensure that to protect nearby mature trees.

## **Conclusion**

[28] In summary, the Planner opined that the four requested variances, both collectively and individually, met the criteria of s. 45(1) of the Act, and represented good planning and were in the public interest. He opined that the proposed development was an appropriate infill and redevelopment that was compatible with the streetscape. Mr. Jefferson concluded his evidence with a brief review of the Provincial Policy Statement, 2020 (“PPS”) and the Growth Plan for the Greater Golden Horseshoe, 2020 (“Growth Plan”), and opined that the Application was consistent with the PPS and conformed to the Growth Plan.



## FINDINGS

[29] The evidence put forward in support of the Appeal stood uncontroverted and was supported by the Town. The Tribunal accepts the testimony of Mr. Jefferson and is satisfied that the proposed minor variances meet all requisite legislative tests and are representative of good planning and are in the public interest.

[30] In reaching this finding, the Tribunal has had due regard to matters of Provincial Interest set out in s. 2 of the Act and to the decision of the approval authority under 2.1. The Tribunal finds that the Application meets the general intent of the OP, meets the general intent of the ZBL, is a desirable and appropriate use of the lands, and is minor in nature.

[31] With respect to the conditions to be imposed, the Tribunal finds the conditions proposed in the Minutes of Settlement entered into by both parties to be reasonable. Accordingly, the Tribunal will impose conditions on the approval of the four minor variances listed in paragraph [5].

## ORDER

[32] **THE TRIBUNAL ORDERS** the Appeal is allowed and the variances to Zoning By-law No. 6000-17, as listed in paragraph [5], are authorized subject to the following conditions:

1. That the variances only apply to the Subject Property, in substantial conformity with the site plan(s) attached as '**Attachment 1**', to the satisfaction of the Director of Planning and Development Services or designate.
2. That the owner shall be required to provide an Evaluation Report ("Report") prepared by a Certified Arborist or Professional Registered Forester, to the satisfaction of the Director of Planning and Development Services or designate,

outlining all aspects of the impacts that this proposal will have on existing and current remaining vegetation. The Report shall include recommendations and an action plan on the mitigation of negative effects to vegetation, during and post construction periods as well as measures aimed at tree health care and protection for trees effected by the project and any remaining trees in the vicinity of the project that require applicable maintenance.

3. In addition, the Report shall include a schedule of monitoring the ongoing site work through a series of scheduled site visits by the Arborist/Forester during and post construction to ensure the vegetation preservation measures remain in compliance throughout the project, each site visit to be documented and any resulting action items required by the Arborist/Forester shall be implemented and confirmed on site forthwith by the Arborist/Forester following each visit.
4. The owner may be required to provide vegetation compensation and a replanting plan in accordance with the Town of Aurora TREE REMOVAL/PRUNING AND COMPENSATION POLICY to the satisfaction of the Director of Operational Services as compensation for trees removed to facilitate construction. Compensation planting shall be completed prior to release of the financial securities.
5. The owner shall agree to comply with the Aurora Tree Permit By-law No. 5850 - 16 prior to the removal of any trees on the property.
6. The owner shall agree to provide financial securities based on the total value of the Tree Compensation evaluation and all Arboriculture works as defined by the Town and the Owners Arborist/Forester, to the satisfaction of the Director of Parks and Recreation.

*"G.A. Croser"*

G.A. CROSER  
MEMBER

### **Ontario Land Tribunal**

Website: [www.olt.gov.on.ca](http://www.olt.gov.on.ca) Telephone: 416-212-6349 Toll Free: 1-866-448-2248

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