

Ontario Municipal Board
Commission des affaires municipales
de l'Ontario



ISSUE DATE: March 2, 2016

CASE NO(S): PL150832

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

Applicant and Appellant:	Peter Kohout
Subject:	Minor Variance
Variance from By-law No.:	6752
Property Address/Description:	86 Roosevelt Road
Municipality:	City of Toronto
Municipal File No.:	A0468/15TEY
OMB Case No.:	PL150832
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OMB Case Name:	Kohout v. Toronto (City)

Heard: January 25, 2016 in Toronto, Ontario

APPEARANCES:

Parties

Peter Kohout

City of Toronto

Counsel

Daniel Artenosi and Kelly Oksenberg

Scott Nowoselski and Laura Spaner

DECISION DELIVERED BY J. de P. SEABORN AND ORDER OF THE BOARD

[1] The matter before the Board is an appeal by Peter Kohout ("Applicant") from a decision of the Committee of Adjustment ("Committee") for the City of Toronto ("City"). The Committee did not authorize several variances requested by the Applicant, each of which is required to legalize a recently completed re-development of the existing house and lot. The variances of concern relate primarily to the height of the completed residential dwelling.

[2] The City appeared in opposition to the variances and Jane McFarlane, qualified to provide opinion evidence in the discipline of land use planning, provided evidence. Andrew Ferancik, also qualified to provide opinion evidence in the discipline of land use planning, testified in support of the variances. Two neighbours appeared and were given participant status: Nancy McNulty and Gus Giannikos. Ms. McNulty testified, explaining that in her view the requirements of the governing by-laws should be followed in all respects. Following discussions with the Applicant, Mr. Arsenosi indicated that Mr. Giannikos's concerns were resolved and consequently he did not testify.

[3] By way of background, the Applicant (along with his wife, Seema Kohout) purchased a residential property at 86 Roosevelt Avenue ("Roosevelt") from the builder. Thereafter the Applicant learned that several variances from both By-law No. 6752 ("By-law") and By-law No. 569-2013 ("new By-law") were necessary to legalize the dwelling. An application was made to the Committee seeking relief in respect of: lot coverage; side wall, first floor height and overall maximum height; roof eaves; and north side yard setback. The application, as expressed by the Committee, was to "legalize and to maintain the second floor addition, a two-storey side addition, a rear two-storey addition, and rear ground floor deck constructed onto the detached dwelling without proper authorization". Mr. Arsenosi agreed at the outset that typically these types of variances need to be evaluated as if the structure had not been built. Mr. Arsenosi also indicated that because the house has been constructed, his clients are prepared to remove a portion of the roof, which would result in a reduction of the requested height variance (leaving aside the issue of the front and rear wall and first floor height) to 9.48 metres ("m"), for no more than 37% of roof. That means that the height for the bulk of the roof will be at 9.04 m, resulting in a somewhat better compliance with the by-law standards as they relate to dwelling height. Under both the By-law and the new By-law, the maximum permitted building height is 8.5 m. In addition, under the new By-law, variances are requested for the first floor height (1.39 m vs. 1.2 m under the new By-law); front and rear walls (8.53 m, 9.04 m respectively vs. 7 m under the new By-law); and roof eaves (at 0 m from the lot line vs. the requirement under the new By-law of 0.9 m, provided the eaves are no closer than 0.30 m to the lot line). There was no objection

from the City that the application required amendment to reflect the slightly revised variances, especially given the amended application will more closely align with the applicable zoning standards. In accordance with the provisions of the *Planning Act* ("Act"), I find that the amendments are minor and there is no need for further notice.

[4] The City's position was measured and fair. Ms. McFarlane testified that the City's concerns relate to specific variances. In addition the City expressed that, as a general matter, it is always very concerned when there is new construction in violation of the governing by-laws. On this matter, the Board agrees that builders who proceed without the proper authorization should not be rewarded for their cavalier attitude toward the City's zoning regulations. It is simply not fair, especially to the majority of property owners who go to great length and expense to secure the requisite approvals. On the facts of this case, the Board appreciates that the Applicant purchased the home unaware that there was non-compliance with the zoning. Nevertheless, due diligence is required by all homeowners that they familiarize themselves with the City's requirements and standards.

[5] Ms. McFarlane testified that the variances of concern to the City relate to: the maximum permitted height; the height of the walls; and the request for the height of the first floor to be above established grade at 1.39 m (as opposed to 1.2 m under the new By-law). It was Ms. McFarlane's opinion that the new construction could easily have proceeded within the by-law requirements and that authorizing the variances sets a dangerous precedent. Moreover, it was her planning opinion that the variances as they relate to height fails to reflect or respect the physical character of the neighbourhood or reinforce existing heights as required under the Neighbourhood policies in the Official Plan ("OP"). Ms. McFarlane testified that the variances for height are not desirable, however did agree that there were certainly examples of heights beyond 9 m in the neighbourhood, supported by the Committee in respect of past applications. With respect to the height of the first floor, Ms. McFarlane also agreed that the grade affects the height as well as the necessity for an integral garage (front pad parking would require a variance).

[6] Mr. Ferancik explained that the bulk of the variances are required as a result of the new By-law. The most controversial variance, which relates to height, is however necessary to comply with both the in-force By-law and the new By-law. In response to the City's concerns with respect to height, and as indicated at the outset, the Applicant is prepared to adjust the roof line to better comply with the zoning standards. In this regard, Mr. Ferancik introduced a condition (Exhibit 8, as revised) stipulating that the 9.48 m height variance would only apply to the peaked portion of the roof, located closest to the main front wall. Moreover, the variance shall not constitute more than 37% of the total roof area. In addition, the condition stipulates that no habitable space shall be permitted in the peak portion of the roof above 9.04 m. While Ms. McFarlane's planning opinion was that the variances do not meet the four tests set out in the Act and they should not accordingly be authorized, she did agree that in instances where integral garages are involved heights above 9 m may be appropriate. In addition, the zoning standard in respect of the heights of front and rear main walls is a standard in the new By-law that is not found in the in-force By-law. As a result, Mr. Ferancik explained that many houses in the area would not be in compliance with this requirement.

[7] In evaluating the application (as revised) I find that the individually and collectively the variances sought (as revised and subject to the conditions) should be authorized. They maintain the purpose and general intent of the OP. Re-investment and renovation is ongoing in the neighbourhood. There is no suggestion that the dwelling will in some way destabilize the area. With respect to the zoning requirements, the bulk of the variances are required because of the new By-law. The height variance is however required under both By-laws. I find that the height variance for the front and rear walls, first floor height and overall height maintain the purpose and general intent of the zoning standards. They are desirable and most importantly there was no real evidence of impact. Ms. McNulty expressed an overall concern that the current structure should be brought "in line" with the zoning standards. On this matter, I place reliance on the fact that the Applicant is prepared to remove part of the existing

roof and has agreed to a useful condition in respect of ensuring there is no habitable living space in the peak portion of the roof above 9.04 m.

[8] The appeal is allowed in part. The variances (Exhibit 7) are authorized, subject to the conditions (including the additional condition proposed by the City, Exhibit 8, as revised) all of which is set out as Attachment 1. The variances authorized from the new By-law are contingent upon that by-law coming into full force and effect.

"J. de P. Seaborn"

J. de P. SEABORN
VICE CHAIR

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Ontario Municipal Board

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ATTACHMENT 1

86 Roosevelt Road
Revised List of Variances**Variances to new City of Toronto By-law 569-2013:**

1. Chapter 10.40.30.40.(1), Bylaw 569-2013
The maximum permitted lot coverage is 35% of the lot area (97.55 square metres).
The proposed lot coverage is 42% of the lot area (117.53 square metres).
2. Chapter 10.40.40.10.(1), By-law 569-2013
The maximum permitted height of a building or structure is 8.5 metres.
The proposed height of the building/structure is 9.48 metres.
3. Chapter 10.40.40.10.(2), Bylaw 569-2013
The permitted maximum height of all front and rear exterior main walls is 7 metres.
The proposed height of the front main wall is 8.53 metres and the rear main wall is 9.04 metres.
4. Chapter 10.40.40.10.(4), Bylaw 569-2013
The permitted maximum height of the first floor above established grade is 1.2 metres.
The proposed height of the first floor above established grade is 1.39 metres.
5. Chapter 10.5.40.60.(7), By-law 569-2013
Roof eaves may project a maximum of 0.9 metres provided they are no closer than 0.30 metres to a lot line.
The proposed eaves are 0 metres from the north lot line.

Variances to former East York By-law 6752:

6. Section 7.5.3, Bylaw 6752
The minimum required north side yard setback is 0.45 metres.
The proposed north side yard setback is 0.27 metres.
7. Section 7.5.3, Bylaw 6752
The maximum permitted building height is 8.5 metres.
The proposed building height is 9.48 metres.

Exhibit ⑧,
as revised.

86 Roosevelt Road

Proposed Conditions

1. The 9.48 metres height variance under Chapter 10.40.40.10.(1) of By-law 569-2013 and Section 7.5.3 of By-law 6752 shall apply only to the peaked portion of the roof that is located closest to the main front wall and shall not constitute more than 37% of the total roof area, and the remaining portion of the roof shall have a maximum height of 9.04 metres, all as generally shown on Drawing Nos. A5, A6, A7, A8 and A9 prepared by Lemcad Consultants dated January 19, 2016. No habitable space shall be permitted in the peak portion of the roof above 9.04 metres.
2. The roof structure of the dwelling shall be built substantially in accordance with Drawing Nos. A5, A6, A7, A8 and A9 prepared by Lemcad Consultants dated January 19, 2016.