

# DECISION AND ORDER

**Decision Issue Date** Monday, April 16, 2018

PROCEEDING COMMENCED UNDER subsection 45(12), subsection 45(1) of the Planning Act, R.S.O. 1990, c. P.13, as amended

Appellant(s): KARIN BLAINEY

Applicant: MEMAR ARCHITECTS INC

Property Address/Description: 57 WHITTAKER CRES

Committee of Adjustment Case File Number: 17 235161 NNY 24 MV (A0844/17NY)

TLAB Case File Number(s): 17 269048 S45 24 TLAB

**Motion date:** Friday, April 13, 2018

**Settlement Hearing date:** Friday, April 20, 2018

**Hearing date:** Tuesday, May 01, 2018

## DECISION DELIVERED BY T. Yao

This is a decision based on Minutes of Settlement dated March 16, 2018, entered into by all the parties.

## BACKGROUND

Mr. Nejad Gashti wishes to demolish his house at 57 Whittaker Crescent and build a new house, which needs 13 minor variances.

<b>Table 1. Variances required under Zoning By-law No. 569-2013</b>			
<b>and forming part of this decision</b>			
		Required/Permitted	Proposed
1.	Maximum height of exterior main walls	7.5 m	8.4 m

<b>Table 1. Variances required under Zoning By-law No. 569-2013 and forming part of this decision</b>			
2.	Minimum east side yard	1.8 m	1.66 m
3.	Minimum west side yard	1.8 m	1.20 m
4.	Maximum Building length	17.0 m	18.43 m
5.	Maximum lot coverage	30%	32%
6.	Minimum front yard landscaping	60%	58%
<b>Under Former North York Zoning By-law No.7625</b>			
7.	Maximum finished first floor height	1.5 m	2.72 m
8.	Minimum east side yard	1.8 m	1.66 m
9.	Minimum west side yard	1.8 m	1.20 m
10.	Projection of deck under certain conditions	2.1 m	2.5 m
11.	Projection of a stair, front yard	2.1 m	2.5 m
	Maximum building height	8.8 m	10.12 m
	Maximum Building length	16.8 m	18.32 m

Mr. Nejad Gashti was successful at the Committee of Adjustment, but his neighbour to the west, Karin Blainey, (55 Whittaker Crescent) appealed to the TLAB. The other neighbour, Philip Chang, (59 Whittaker Crescent) elected to become a party. A third person, Douglas Stephens (35 Morewood Crescent) elected to become a participant<sup>1</sup>. Ms. Blainey retained a planner, Douglas Faygas, and a certified arborist, Jennifer Gagné, who both filed reports. Mr. Gashi’s planner, Jonathan Benczkowski, also filed a witness statement and other documents. In short, the matter was on track for the hearing for May 1, 2018.

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<sup>1</sup> Mr. Stephens made this election as a representative of Municipal and Government Affairs (MAGA) - a committee of the Bayview Village Association.

On March 16, 2018, the parties entered written Minutes of Settlement, consisting of:

- A five-page agreement signed by Amir Nejad Gashti, Karin and Shawn Blainey, and Philip Chang, a portion of which is excerpted under the heading “The Minutes of Settlement”.
- Attachment 1, the decision of the Committee of Adjustment;
- Attachment 2, the list of variances, which repeats those variances set out in Attachment 1;
- Attachment 3, the revised plans as part of the proposed conditions of approval (pages 8 and 9 of this document).

## **MATTERS IN ISSUE**

In considering the applications for variances from the Zoning By-laws, the TLAB Panel must be satisfied that the variances conform to the Growth Plan and are consistent with the Provincial Policy Statements. The TLAB must also be satisfied that they meet all the four tests under s. 45(1) of the *Planning Act*. The tests are whether the variances:

- maintain the general intent and purpose of the Official Plan;
- maintain the general intent and purpose of the Zoning By-laws;
- are desirable for the appropriate development or use of the land; and
- are minor.

## **ANALYSIS, FINDINGS, REASONS**

### **The Minutes of Settlement**

Rule 19.4 states:

19.4 Where no Person at the Hearing opposes the proposed settlement or where the Local Appeal Body rejects an objection the Local Appeal Body may issue an order giving effect to the settlement and any necessary amendments.

Since this decision “gives effect” to a settlement, it has no precedential value and there is less need to set out all the analysis and findings. I find that Mr. Benczkowski, Mr. Nejad Gashti’s planner, is qualified to give an opinion evidence and that his evidence supports the conclusion that the variances singly and collectively meet the *Planning Act* tests in the previous section.

Paragraph 2: is the most important part of the Minutes:

1. The Owner will seek approval of the list of variances set out in Attachment 2 (the "Variance List"). The Variance List contains the same variances as those in the Decision on the following conditions:

- (a) the proposed dwelling be constructed substantially in accordance with the revised plans dated February 12, 2018 (the "Revised Plans"), set out in Attachment 3, and will request the TLAB attach the Revised Plans to its decision with such condition;
- (b) hydro vac excavation will be used to minimize root damage and over dig. Any roots to be pruned are to be done so by hand by an arborist and not to exceed Urban Forest Guidelines;
- (c) the first and second floors are to be cantilevered above grade on SW corner of house and that no excavation will take place within 3.00 meters of the exterior base of tree marked T5 on the Revised Plans as per Attachment 3; and
- (d) the Owner to apply for a Permit to Injure or Remove Tree for a tree on NE corner of the house marked T6 on the Revised Plan as per Attachment 3 and to be responsible for cost of removal, if deemed necessary by arborist, for a period of up to two (2) years following the completion of construction.

It appears as if the Blaineys and Mr. Chan have settled this hearing on the basis that Mr. Nejad Gashti has agreed to take extra measures not to injure a tree between 57 Whittaker and the Blaineys' property. I believe that this is a principled and laudable way of resolving this dispute. As part of the resolution, Mr. Nejad Gashti's architect revised the site plan and basement layout by amended plans dated February 12, 2018 and which are attached as pages 8 and 9 of this Decision. Both plans show a slight change to the south west corner of the building. I find this change is minor and does not require further notice under s. 45.18 of the *Planning Act*.

The parties have agreed not to insert the usual Urban Forestry condition, which seems to be a simple omission. I have included it my Order. If there is any difficulty with this decision I ask the parties to please speak to me.

### **The changes made by Mr. Nejad Gashti during the circulation process**

Zoning By-law 569-2013 permits 7.5 m for the height of exterior main walls and Mr. Gahti proposed 8.75 m. In her October 2017 planning report, Assistant City planner Simona Rasanu noted Mr. Nejad Gashti's reductions to main building height and landscaping were "more in keeping with the intent of the zoning by-law" and the Committee accepted her conclusion. Since the appeal triggers a fresh examination of those two variances, I accept Ms. Rasanu's opinion and find those variances meet the

tests and in Attachment 2, the proposed variances are bolded (main wall height reduced to 8.4 m and landscaping and front yard landscaping 58%).

### **Overall building height**

Ms. Rasanu made further recommendations to the first floor height and overall building height, which were not accepted by Mr. Nejad Gashti. She suggested the first floor height be between 1.5 and 1.9 m whereas Mr. Nejad Gashti proposes 2.72 m. She suggested an overall building height between 9.4 and 9.7 m, and 10.12 m is proposed.

Both variances are from the former North York by-law and no variances are needed under the current city-wide by-law. Mr. Benczkowski was of the opinion that these variances are necessitated by an unusually large divergence between the height measured from the crown of the road (North York zoning definition of height) and average grade around the building (City-wide zoning definition).

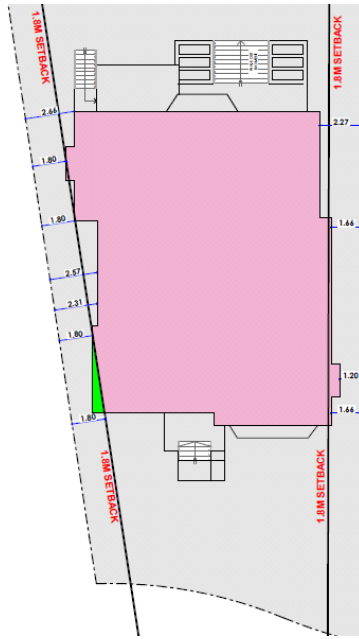
Were the lots in this part of Whittaker flat instead of having a 5 foot slope to the base of the front wall, these variances would not be needed. I find that these variances, despite Ms. Rasanu's suggestion, meet the tests.

### **Side yard setbacks**

Mr. Nejad Gashti proposes a west side yard setback of 1.2 m and an east side yard setback of 1.66 m. Mr. Benczkowski produced a diagram<sup>2</sup> (please see following page; Whittaker Crescent is at the bottom).

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<sup>2</sup> Note that this site plan does not reflect the basement layout reached during negotiations.



This indicates that the pie shaped nature of the lot requires variances toward the front of the lot with side yards at the rear in excess of by-law requirements, which I find to be minor and in keeping with the intent of the zoning by-law.

### **Building length and landscaped open space**

Building length measured from front wall to rear wall is from 16.28 m to 16.97 m; under the by-law requirement. However, since Whittaker curves the by-law requires the zoning examiner to measure building length diagonally (i.e., at line which is perpendicular to the tangent to the curved line of Whittaker), which causes the need for a variance.

Similarly, for landscaped open space, the lot is pinched in at the front and wide at the rear. Were the lot more rectangular, the same sized building might not need this minor variance. In view of the settlement it is not necessary to discuss all of Mr. Benczkowski's evidence on the remainder of the variances

In conclusion I find all the statutory tests are met.

### **DECISION AND ORDER**

The variances set out in Table 1 and authorized by the Committee of Adjustment November 9, 2017 are authorized on condition that the applicant (i.e. the owner of 57 Whittaker Crescent) construct in substantial conformity with:

1. the plans filed with the Committee of Adjustment, except for the site plan and basement plan previously filed; and
2. And with the site plan and basement attached to this decision.

and that

The applicant shall submit an application for permit to injure or remove private trees to Urban Forestry, as per City of Toronto Municipal Code Chapter 813, Article III.  
Applicants requiring additional information please forward inquiries to [tppnorth@toronto.ca](mailto:tppnorth@toronto.ca) or call **(416) 395-6670**.

The settlement hearing date of April 20, 2018 and the hearing date of May 1, 2018 are cancelled and there is no need for anyone to appear at the TLAB offices on those dates.

**X**

*Ted Yao*

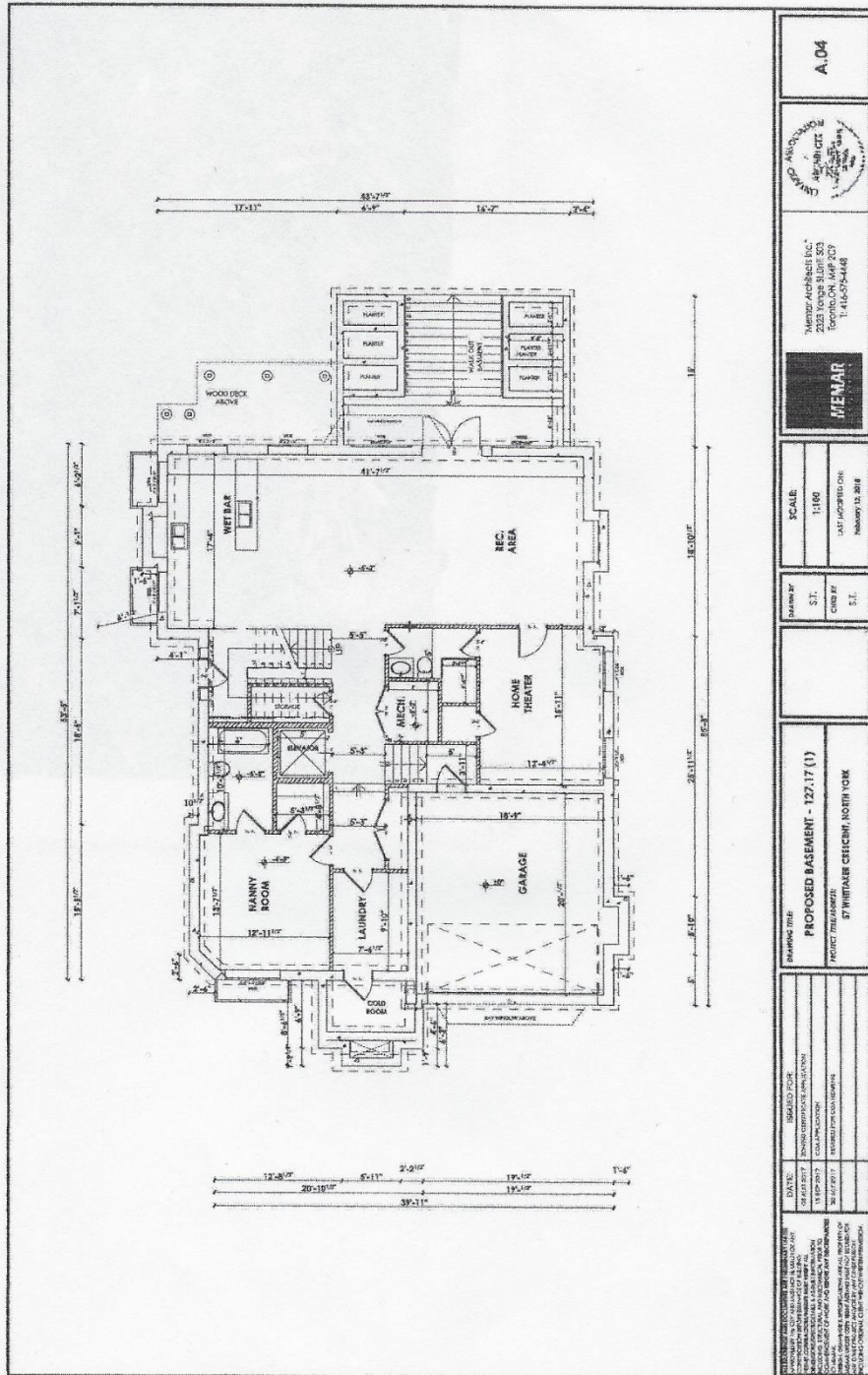
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T. Yao  
Panel Chair, Toronto Local Appeal Body  
Signed by: Ted Yao

Plans attached to the Minutes of Settlement and which form part of this Decision. The plans on pages 8 and 9 of this decision.







		<b>A.04</b>	
<b>MEMORANDUM</b> Andrew Archibald Inc. 2323 Yonge St. Unit 803 Toronto, Ont. M2Y 2C7 Tel: 416-979-4468		<b>SCALE</b> 1:100 DATE: 10/27/17 DRAWN BY: [Redacted] CHECKED BY: [Redacted]	
<b>PROPOSED BASEMENT - 127.17 (1)</b> PROJECT PREPARED BY: [Redacted]		<b>DATE:</b> 10/27/17 <b>DESIGNED BY:</b> [Redacted] <b>CHECKED BY:</b> [Redacted] <b>PROJECT NO.:</b> [Redacted]	
<b>BY: [Redacted]</b> <b>DATE: [Redacted]</b>		<b>PROJECT NO.:</b> [Redacted]	