

# DECISION AND ORDER

**Decision Issue Date**      Wednesday, August 22, 2018 **and amended September 22, 2018**

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

Appellant(s): MICHELLE BAR-HAIM

Applicant: IZEN ARCHITECTURE INC

Property Address/Description: 333 MELROSE AVE

Committee of Adjustment Case File Number: 17 257631 NNY 16 MV

TLAB Case File Number: **18 132543 S45 16 TLAB**

**Hearing date:**      Tuesday, July 17, 2018

**DECISION DELIVERED BY T. Yao**

## APPEARANCES

Name	Role	Representative
IZEN ARCHITECTURE INC	Applicant	Brenda Izen, Meena Alcozai
MICHELLE AND TAMIR BAR-HAIM	Appellants	Amber Stewart
FRANCO ROMANO	Expert witness	

## INTRODUCTION

The Bar-Haims wish to demolish an existing two storey house at 333 Melrose Avenue and construct a new two storey house.

**BACKGROUND**

The Bar-Haims needed 16 variances set out in Table 1

<b>Table 1. Variances sought for 333 Melrose Avenue</b>			
From Toronto-wide By-law 569-2013			
		Required/permitted	Proposed
1	Minimum first floor area near front wall <sup>1</sup>	10 m <sup>2</sup>	2.66 m <sup>2</sup>
2	East <del>West</del> side yard setback for uncovered deck	1.8 m	.84 m
<b>3</b>	<b>Building height of a flat roof from established grade</b>	<b>7.2 m</b>	<b>9.52 m</b>
4	Maximum number of storeys	2	3
5	Building length	17 m	20 m
6	Building depth	19.0 m	20.05 m
7	Minimum east side yard setbacks	1.8 m	.77 m
<b>8</b>	<b>Minimum west side yard setbacks</b>	<b>1.8 m</b>	<b>.73 m</b>
9	Max. lot coverage	.35 times lot area	.3513 times lot area
10	Platform encroachment to the west side yard setback	1.8 m	.84 m
From (former City of North York) By-law 7625			
11	Minimum front yard setback	7.5 m	5.54 m
12	East side yard setback	1.8 m	.77 m
<b>13</b>	<b>West side yard setback</b>	<b>1.8 m</b>	<b>for clarification .73 m to the dwelling and .84 m to the balcony</b>

<sup>1</sup> . This variance is no longer being sought.

14	Building length	16.8 m	20 m
<b>15</b>	<b>Building height of roof from centre line of street</b>	<b>8 m</b>	<b>9.85 m</b>
16	Maximum number of storeys	2	3

On March 1, 2018, the Committee of Adjustment granted all variances except the ones in bold. The Committee of Adjustment modified the west side yard variances and building height as shown in Table 2.

Table 2. Modifications by the Committee			
Variance		Required/permitted	Proposed
<b>8, 13</b>	<b>West side yard setback</b>	<b>1.8 m</b>	<b>1.07 m, instead of .73 m</b>
<b>3, 15</b>	<b>Building height</b>	<b>8 m</b>	<b>9.52 m</b>

The Bar-Haims appealed and so this matter comes before the TLAB.

## **MATTERS IN ISSUE**

I must be satisfied that the application meets 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.

I must consider all the variances not just those modified by the Committee of Adjustment; however, for brevity I will not go into all of Mr. Romano's evidence and describe the salient conclusions.

## **EVIDENCE**

The only witness was Mr. Franco Romano, whom I qualified as able to give opinion evidence in land use planning. In particular no-one other than the Bar-Haims elected to participate in this hearing, and so, Mr. Romano's evidence was uncontradicted.

## ANALYSIS, FINDINGS, REASONS

This is a fresh hearing and I have an independent obligation to satisfy myself that each of the four tests is met. Messrs. Tabatabaie and Cipollone did not participate in the TLAB process but their letter was important for the Committee of Adjustment decision that is being appealed and so use it as a starting point.

My name is Omid Tabatabaie, owner of 336 Melrose Ave. I am writing in opposition of the proposed zoning application for a property in my neighborhood, 333 Melrose Ave. Myself, and Mario Cipollone, owner of 335 Melrose, believe the requested variances are excessive for the neighborhood. Our biggest concern is building height, depth, front and side setbacks. We trust that you, and the city members involved will approve a plan that is more fitting to the neighborhood and its surrounding homes.

### The Official Plan

Mr. Tabatabaie is correct to refer to “fitting [in]to the neighbourhood”, which is a paraphrase of the relevant test in the Official Plan. Mr. Romano’s evidence was that the Bar-Heim house would “fit in”, this being an area with very similarly sized houses, including Mr. Tabatabaie’s, which are situated on the lots in the same way.

For example, in 2012, the Committee of Adjustment granted east side variance of .98 m and west side of .43 m to 336 Melrose (presently owned by Mr. Tabatabaie), in line with what the Committee granted to the Bar-Haims. Although Mr. Tabatabaie does not mention building length, 336 was also granted variance of 19 m. The Bar-Haims seek 20 m.

In 2013 the house to the west, currently owned by Mr. Cipollone, obtained somewhat larger variances for the side yards: east 1.07 m, west 1.0 m, a building length variance of 19 m, plus soft landscaping and deck width variances.

Mr. Romano concluded that the proposal’s built form and site design respected and reinforced the character of the neighbourhood and so **the general intent and purpose of the Official Plan** was maintained.

### Building height



The above illustration shows:

- No. 336 (Mr. Tabatabaie) on the left (9.70 m in height);
- No. 333 (the Bar-Haims) in the middle (9.52 m); and
- No. 335 (Mr. Cipollone) the right (9.00 m).

All three obtained or require a minor variance. Mr. Tabatabaie's house is .28 m higher than the Bar-Haims' which is in turn .5 m higher than Mr. Cipollone's. Melrose Avenue slopes down from west to east (from Avenue Road to Yonge St) and so it is difficult to say how the houses will "read" from a street perspective. Nonetheless I find that the building "fits in" and the building height variance is **minor and is desirable for the appropriate use of the land.**

The zoning intent is to give home owners some range of ceiling heights while at the same time limiting the overall appearance so that a house does not dominate the streetscape. Mr. Romano said that a first-floor ceiling height is usually 10 to 12 feet (the Bar-Haims propose: 9 feet six inches) and the second-floor ceilings are from 9 to 11 feet (proposed: 8 feet 6 inches), which Mr. Romano characterized as "modest".

The property is very close to the Toronto/North York boundary, being on the North York side. The (old)Toronto zoning by-law permitted much "tighter" built form than did the North York by-law. There is also a difference in the way the bylaws measure height; Mr. Roman stated that a Toronto "height" of 9.52 m is 9.85 m under the North York measurement of height and presumably the Committee was aware of this.

This is a complex topic owing to the two by-laws and grade changes in the area. However, I note the following decisions have been granted by the Committee: 320 Melrose (height variance 9.44 m), 322 Melrose (9.24 m); 323 Melrose (severance with height variances of 9.58 m and 9.7 m); Nos. 329, 345 and 347 Melrose (side yard variances but no height variance). On the totality of this evidence, I find that the height

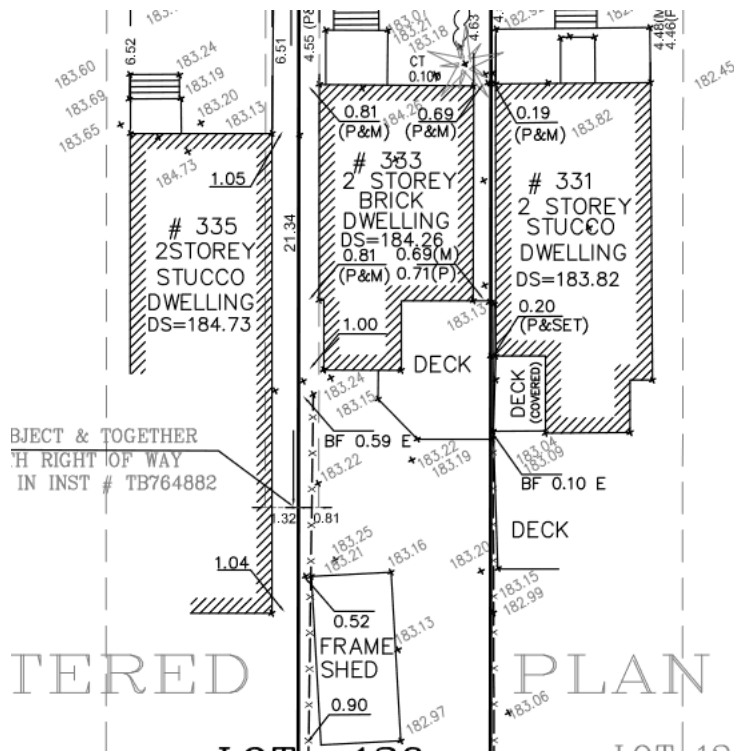
variance is modest and therefore is **minor** and meets the test of maintaining **the intent of the zoning by-law**.

### West Side yard setback

Mr. Romano was retained after the Committee of Adjustment decision. However, he was informed by the Bar-Haims that Mr. Cipollone made an oral submission that he had been required to grant the Bar-Haims property a 1.07 side yard setback and the Bar-Haims should be held to the same standard. Accordingly, the Committee seems to have modified the Bar-Haims' original request of .73 m to 1.07m to match the side yard on the Cipollone side.

Diagram 2 (below), a portion of the survey, shows that the builder for the Cippollone house constructed it with an east side yard setback of 1.05 m at the front, and 1.04 m at the rear. [It would need a further minor variance to correspond to the 1.07 m variance granted in 2013.] The house on the other side, No. 331, has very small side yards of .19 m at the front and .2 m at the back. According to Ms. Izen, the architect, the existing house is 6.21 m wide (20.4 feet). Her design is also 6.21 m wide, but she has chosen to situate the house more or less mid-way between the lot lines instead of favouring one side or the other. Mr. Romano said that the Cipollone house had sufficient room on either side to access the rear yard entirely on its own land.

In my view the solution chosen by Ms. Izen is reasonable and fits the statutory tests.



## Conclusion

This is a hearing at which there is no adverse evidence to contradict Mr. Romano, who supported the variances and gave detailed rationale. I am satisfied that the statutory tests under the *Planning Act*, including the Provincial Policy Statement and Growth plan are satisfactorily addressed. I note that there are small discrepancies between the zoning notice and Table 1; I have used the variances requested by Ms. Stewart; if this causes difficulty could she please address an email to me, care of the TLAB.

### Addendum September 15, 2018

On September 13, 2018, I received a notice of motion requesting I amend this decision and correct minor errors by specifying different plans in Condition 1. The original order referred site plan and elevations dated December 2017. Mr. Romano states in his affidavit that his clients the Bar-Haims also submitted a subsequent set of plans, dated January 25, 2018 to the Committee of Adjustment hearing of February 6, 2018... "However, it appears that the Committee of Adjustment staff did not upload the newest version of the plans to the application Information Centre. As such, I was not aware that they existed. . . . However, my clients assumed they had been uploaded and were available, they did not provide them to me separately. This inadvertence led to the incorrect plans being submitted to the TLAB, and the error was not noticed until Preparation of the building permit application."

The only change between the two plans is that instead of the driveway being on the west it has now on the east side and the entry door switched from east to west. The diagram shown on page 6 is correct. Since this might be a modification from what was presented to the Committee, I find pursuant to s. 18.1.1 of the *Planning Act* that this amendment is minor and requires no further notice.

## DECISION AND ORDER

I authorize the variances set out in Table 1 (except for variance 1, which is not being requested), subject to the following conditions of approval.

### Conditions of Approval

1. The proposed dwelling shall be constructed substantially in accordance with the Site Plan and Elevations dated ~~December 2017~~ **January 25, 2018**, prepared by Izen Architecture and Design.
2. The owner shall comply with Chapter 813 of the Municipal Code, Article II (City-owned trees) and Article III (Privately-owned trees). Where there are no existing street trees, the owner shall provide payment in lieu of planting one street tree on the City road allowance abutting each of the sites involved in the application. The current cost of planting a tree is \$583.00.

X

*Ted Yao*

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