

# DECISION AND ORDER

**Decision Issue Date** Thursday, February 14, 2019

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): ALEXANDRE ANANIEV

Applicant: NATALIA ANANIEVA

Property Address/Description: 18 CREWE AVE

Committee of Adjustment Case File Number: 18 127949 STE 31 MV

TLAB Case File Number: **18 226861 S45 31 TLAB**

**Hearing date:** Thursday, January 24, 2019

**DECISION DELIVERED BY TED YAO**

## APPEARANCES

Name	Role	Representative
Natalia Ananieva, Alexandre Ananiev	Owners	Jaiveer Chauhan
Manni Chauhan	Expert Witness	
City of Toronto	Party	Ben Baena
Andrew Pickett (summons)	Expert Witness, (under summons)	
Naomi Kasman, Simon Mustill	Parties	Phil Pothen

## INTRODUCTION

The Ananievas wish to demolish the house at 18 Crewe Avenue and replace it with a two storey dwelling. To do so they need the following variances;

<b>Table 1. Variances sought for 18 Crewe Ave.</b>			
		Required	Proposed
<b>Variances from new City-wide harmonized By-law 569-2013</b>			
1	Lot coverage	35%	44%
3	Front and rear exterior main wall heights	7 m	7.78 and 7.28 m, respectively
	Side exterior main wall heights	7 m	7.78 m (pair)
3	Maximum floor space index	.75 times area of lot	.85 times area of lot
4	West and east side yard setback	.9 m	0.66 and 0.65 m
5		Parking space may not be located in front yard	Parking space located in front yard

## MATTERS IN ISSUE

I must be satisfied that the applications meet provincial policy and 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.

## EVIDENCE

I heard from Manni Chauhan and Andrew Pickett, whom I qualified respectively as a witness able to give opinion evidence in their areas of expertise.

## ANALYSIS, FINDINGS, REASONS

This is a settlement. It is unusual to have all sides represented by lawyers and planners and in this case two expert arborists as well.

There are two issues, both involving the process, rather than the substantive issues. First, even if all parties agree, I have to be independently satisfied that the statutory tests are met. Mr. Chauhan did satisfy me, testifying that the variances met the four tests and higher-level policy. There was no evidence to the contrary.

The Ananievas originally proposed a two storey over integral garage design and the parties have now settled to remove the integral garage. After a full planning justification of the original proposal given in oral testimony, Mr. Chauhan said, “ I supported the original proposal, but if this is what you guys want [i.e. a non-integral garage design], I’m OK with that.” Accordingly, I will make the order requested. If there are mistakes in the figures set out in Table 1, would the parties please email me via the TLAB.

Second, and this was the more difficult issue, if the settlement is fundamentally unacceptable, I could reject the settlement, and give the parties a further opportunity to advance new evidence to persuade me that the agreed-upon settlement is ultimately acceptable. I can’t do this on a whim or from personal preference; the rejection has to be done judicially; that is, evidence and policy based.

Here, I queried Mr. Baena (the City’s lawyer) whether I should do so, because the settlement requires the destruction of a 90 cm red oak tree belonging to Ms. Kasman and Mr. Mustill. Although located entirely on their property the construction of new foundations at 18 Crewe 0.6 m from the Kasman/Mustill and Ananieva property line and the need to remove a considerable portion of the crown will cause the tree irreparable damage. This is from the testimony of Mr. Pickett., the City’s expert arborist

The parties urged me to grant the variances as requested. It is clear that I have no greater insight after a few minutes’ study than do the parties with their combined expertise and who had worked “months” to try to save the tree. If I reject the application, the Ananievas would build within the by-law and the tree would still be destroyed, with no compensating concessions. Further, by so doing I would be undermining the principle that parties should work to accomplish consensual settlements and so doing is a matter of provincial interest (s. 2(n) of the *Planning Act*).

I wish to commend Ms. Kasman and Mr. Mustill, who expended their own resources to ensure that I have the best evidence and who have taken responsibility for the natural environment as set out in the Official Plan<sup>1</sup> I think that this is a case in which all parties tried to do their part to make the best decision possible.

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<sup>1</sup> Toronto’s future as a city of leaders and stewards is one where: • individuals and communities actively participate in decisions affecting them; • communities share responsibility, for their children and youth; • innovative implementation solutions are embraced; • **everyone takes responsibility for the natural environment**; • the volunteer sector is thriving; • people are inspired to become involved in affecting positive change; • all levels of government recognize their mutual dependence and work together; • **people are engaged and invested in city living and civic life**; • the private sector marshals

## DECISION AND ORDER

I authorize the variances as set out in Table 1 on the following conditions:

1. That the construction of any dwelling is substantially in accordance with the most revised plans and zoning notice dated December 20, 2018 and entered as Exhibit 1 during the hearing held on January 24, 2019. For further clarity, the most revised plans are those indicating no integral garage and a total building height of 8.5m;
2. That the construction of any dwelling is substantially in accordance with the most revised plans and zoning notice dated December 20, 2018 and entered as Exhibit 1 during the hearing held on January 24, 2019. For further clarity, the most revised plans are those indicating no integral garage and a total building height of 8.5m; and
3. That the applicant will submit a complete application for permit to injure or remove privately owned trees under municipal Code Chapter 813 Article III, Private Tree Protection.

X

*Ted Yao*

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

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its resources to help implement public objectives; • we are all advocates for a sustainable city-region; and  
• the City's capital spending priorities support the growth strategies of this Plan. From the Official Plan, "A  
City of Leaders and Stewards". Almost all of these objects is met, particularly the bolded. Bullets.