

# INTERIM DECISION

**Decision Issue Date**      Tuesday, August 20, 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): BABAK LOTFI

Applicant: BABAK GHASSEMI

Property Address/Description: 30 MELROSE AVE

Committee of Adjustment Case File: 19 108276 NNY 08 MV

**TLAB Case File Number: 19 136198 S45 08 TLAB**

**Hearing date:**      Friday, August 09, 2019

## INTERIM DECISION DELIVERED BY TED YAO

### APPEARANCES

Name	Role	Representative
Babak Ghassemi	Architect and applicant	
Babak Lotfi	Owner and appellant	Martin Mazierski
TJ Cieciora	Expert Witness	
Sandra Sabatino-Bulbo	Participant	
Jonathan Hess	Participant	

### INTRODUCTION

Babak Lotfi wishes to demolish the dwelling at 30 Melrose and replace it with another longer house with integral garage. To do so he needed eight variances. On March 21, 2019, the Committee of Adjustment granted Mr. Lotfi all the variances he sought, except for building depth. Mr. Lotfi appealed and so this matter came before

the TLAB. When there is an appeal to the TLAB, all the variances must be considered anew, not just those refused by the Committee of Adjustment.

At the TLAB hearing Mr. Lofti entered into a settlement with Ms. Sabatino-Bulbo and Mr. Hess (the neighbours on either side). Mr. Lofti now requests the following variances:

<b>Table 1. Variances sought for 30 Melrose Ave</b>			
		Required	Proposed
<b>Variances from Zoning By-law 569-2013</b>			
1	Exterior main wall height (for walls facing a side lot line)	7.5 m	8.34 m
2	Building depth	17 m	18.00 m (originally 18.06 m but now reduced as a result of the settlement)
3	Bottom of front door above est. grade	1.2 m	1.43 m
4	Floor space index	0.6 times the area of the lot	Original request was 0.65 times the area of the lot; but now it will be now somewhat less due to the reduction in the length of the building (18.0 m)
5	Main wall west side setback	.9 m	.41 m
6	Front porch west side setback	.9 m	.41 m
7	Max. height of porch above est. grade	1.2 m	1.43 m
8	Rear deck west side setback	.9 m	0.71 m
9	Front yard setback <sup>1</sup>	4.86	4.37 m (estimated by Mr. Cieciora)

I find these amendments to the original application described below in the Analysis section are minor and that no further notice to prescribed persons is necessary pursuant to s. 18.1.1 of the *Planning Act*.

<sup>1</sup> The other variances were requested at the Committee of Adjustment; the front yard setback variance is entirely new at this hearing.

## **MATTERS IN ISSUE AND EVIDENCE**

The variances must meet all four tests under s. 45(1) of the *Planning Act*: that is , whether the variances individually and cumulatively:

- 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 heard from TJ Cieciora, Mr. Lofti's, planner, whom I qualified as able to give opinion evidence in the area of land use planning. The main issue was the building depth on which Mr. Cieciora testified, but the neighbours did not because the settlement was reached prior to their being called upon to testify.

The settlement has the following elements:

- the overall building length of 30 Melrose will be shortened by 0.5 m;
- the front wall will be moved toward the street by 0.5 m;
- the rear "overhang", that is, the distance the rear wall will extend further back from the adjacent buildings' rear walls (to the north), is reduced by 1.0 m as a result of these changes;
- Mr. Lofti has agreed not to construct a fence along the common lot line between his lot and Ms. Sabatino-Bulbo's, for the portion of the lot line between Melrose Ave and the rear wall (i.e. north wall) of the proposed building;
- The rear first floor balcony will have a 2.0 m high privacy wall at the west end that is constructed of either opaque or translucent material; and
- Construction to be in substantial compliance with the Babak Ghassemi prepared drawings dated March 13, 2019 with further revisions.

## **ANALYSIS, FINDINGS, REASONS**

Since this is a settlement, I will not repeat all the evidence. Mr. Cieciora stated that in his opinion all the variances individually and cumulatively meet the statutory tests and I so find. In particular, the planner stated that the rear main walls of even numbered addresses on the north side of Melrose display no particular pattern and he is satisfied that the proposed building depth maintains the intent of the Official Plan. The most relevant policy of the Official Plan is:

4.1.5 Development will respect and reinforce the existing physical character of each geographic neighbourhood, including in particular:

...

- f) prevailing setbacks of buildings from the street or streets;

g) prevailing patterns of rear . . . yard setbacks and landscaped open space;

There is an approximately 23 m rear yard setback as these lots are unusually deep. Mr. Cieciora also found at least one other front yard setback variance had been given by the Committee of Adjustment in the geographic neighbourhood and this is “consistent with what was going on in the neighbourhood.” Because of the City boulevard, there will be at least 4.87 m of grass between the sidewalk and the front wall of the proposed house and Ms. Sabatino-Bulbo’s home has a cantilevered front porch that disguises the precise location of her main front wall. Any front yard setback discrepancy will be inconspicuous to a person walking on the sidewalk or driving down Melrose.

The site plan for the relocated and shortened dwelling has not been examined by the plan examiner Alex Shemilt. The next step is to obtain his view of the variances necessary and if the evidence tendered allows me to come to the opinion that the four tests are met for the new variances, then I will issue a final Decision and Order to that effect. If I cannot come to that opinion, then I will reopen the hearing to see if further evidence will allow me to reach that opinion. I reserve the right to make any order on the basis of all the evidence.

I would like to take the opportunity to thank Messrs. Hess, Mazierski and Cieciora and Ms. Sabatino-Bulbo for their cooperation.

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