

INTERIM DECISION

Decision Issue Date Wednesday, August 28, 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): EDITHA PAGAYON NIETO

Applicant: EDITHA PAGAYON NIETO

Property Address/Description: 86 GLENSHEPHARD DR

Committee of Adjustment Case File: 19 119552 ESC 20 MV

TLAB Case File Number: 19 144272 S45 20 TLAB

Hearing date: Tuesday, August 27, 2019

DECISION DELIVERED BY TED YAO

APPEARANCES

Name	Role	Representative
Editha Nieto	Appellant/Owner	
Idell Stewart, Khadeeja Timbo	Immediate neighbour	

INTRODUCTION

Ms. Nieto has constructed a carport on the south side of her residence at 86 Glenshepard without benefit of a required building permit.

BACKGROUND

The Nietos chose this neighbourhood for its convenient access to Cardinal Newman Catholic High School on Brimley Road South, to which their children could

walk. In 2017, Mr. Nieto suffered a serious work accident that made it difficult for him to shovel snow. Ms. Nieto has a similar injury from a car accident. They retained a contractor, Janet Li, to build a car port since they have a long driveway; enough to park 4 cars in tandem. Ms. Nieto explained that this was the sole purpose of the car port — to decrease the amount of driveway to shovel. They still park their two cars in the uncovered portion of the driveway.

The arrangement with Ms. Li¹ was that the contractor should obtain all necessary permits. Ms. Li told Ms. Nieto to talk to Ms. Stewart, the next door neighbour at 84 Glenshepard, as Ms. Li had made numerous efforts to talk with her without success. Apparently, Ms. Nieto was also unable to contact Ms. Stewart. At any rate, no permit was obtained and whether or not Ms. Stewart assented to the variances prior to the construction is immaterial; I find that Ms. Li did not make a building permit application. The test for whether a variance can be granted or not, is set out in the *Planning Act* and summarized in the section “Matters in Issue” below. It does not operate on the basis of whether a neighbour consents or not, although good communication is always helpful.

The carport was constructed over a two day period in September or October 2018. The next day Ms. Stewart complained, and a building inspector told Ms. Nieto to apply for a permit. She did so, and the City’s plan examiner told her she needed the following variances:

Table 1. Variances sought for 86 Glenshepard Dr		
	Required	Proposed
Variances from Zoning By-law 569-2013		
Roof eaves projection	A maximum of 0.9 metres provided that they are no closer than 0.30 metres to a lot line.	The eaves project 0.147 metres and are 0.153 metres from the side lot line.
Minimum parking space width	3.0 m	2.464 metres
Variances from former City of Scarborough Zoning By-law10048		
Minimum parking space width	3.3 m	2.464 metres

At the Committee of Adjustment (April 11, 2019), Ms. Stewart showed the members of the Committee pictures of the eave troughs and stated that they appear to

¹ I have not heard Ms. Li’s side of the story so the actual facts may not be as recorded here.

encroach on her property. Accordingly, the Committee refused to grant the variances and Ms. Nieto appealed. Thus, this comes before the TLAB.

MATTERS IN ISSUE

I must be satisfied that the applications meet the 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.

ANALYSIS, FINDINGS, REASONS

I explained to the parties that my approach would be neutral with regard to the lack of building permit. Ms. Nieto would not be penalized for failing to get a permit, nor would I be lenient to try to save her the expense of removing the car port if it did not meet the planning tests. In this case, I am satisfied that the intent of the zoning is maintained since there is more than enough driveway surface for two cars. However, an encroachment is not permitted.

I asked Ms. Nieto to call Ms. Li to ascertain if Ms. Li was willing to remove the encroachment from Ms. Stewart's property at Ms. Li's expense and after the phone call, she reported **Ms. Li was willing**.

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I will adjourn this hearing for a period of two months for the parties to report back to me that the removal of the encroachment has been done to Ms. Stewart's satisfaction. Once this is done, I am prepared to grant the variances, since they are minor and meet the tests. If the encroachment is not removed to Ms. Stewart's satisfaction by October 28, 2019, I will refuse the variances.

Since there are always unforeseeable difficulties, I request both parties to keep me informed. If there is an issue that will prevent the satisfactory conclusion of this matter, please write to me by email at tlab@toronto.ca, quoting 19 144272 S45 20 TLAB with a copy to the other side. Ms. Nieto or Ms. Stewart should not wait until October 28, 2019 but report to me as soon as the difficulty arises and hopefully we can solve the problem together.

X

Ted Yao

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