

# DECISION AND ORDER

**Decision Issue Date**      Tuesday, March 02, 2021

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): Andreea Baiasu

Applicant(s): John Boone

Property Address/Description: 39 Bowmore Rd

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Committee of Adjustment File Number(s): 19 265497 STE 19 MV (A1353/19TEY)

**TLAB Case File Number(s): 20 187717 S45 19 TLAB**

**Hearing date:      February 04, 2021**

**DECISION DELIVERED BY T. Yao**

## APPEARANCES

Appellant                      Andreea Baiasu (not appearing at the hearing)

Owner                              Thai Pham Nguyen

Party's Rep.                  John Boone

Expert Witness                Adrian Litavski

## INTRODUCTION

Adele and Thai Nguyen work from home in a software business and are expecting a fourth child. They seek to add a third storey addition to their two storey home at 39 Bowmore Rd. They need height and floor space index (FSI) variances to do so. There are additional variances that are non-contentious, as they represent existing conditions. On August 12, 2020, the Committee of Adjustment granted the variances; Andreea Baiasu appealed and so this matter came to the TLAB.

<b>Table1. Variances sought for 39 Bowmore Rd</b>			
		Required	Proposed
<b>Variances from Zoning By-law 569-2013</b>			
1	Roof eaves	May project 0.9 m if 0.3 m from lot line	Project 0.51 m but are 0.03 m from lot line
2	Building height	10 m	11.23 m
3	Side main wall height	7.50 m	8.99 m
4	FSI	0.60 times area of the lot	0.72 times area of the lot
<b>Variances from Zoning By-law 438-86</b>			
5	Min. front lot line setback	4.11 m	3.94 m
6	Min. side yard setback (full third floor addition)	0.90 m	North side lot setback of 0.54 m
7	Building height	10 m	11.23 m

Even in 2021 there are still some appeals remaining against the City of Toronto By-law 536-2013; so, the Buildings Department requires that applications be tested against both by-laws, resulting in some duplication. With regard to height, the new by-law has resulted in a “downzoning” as I explain below.

### **MATTERS IN ISSUE**

The variances must be consistent with and conform to higher level Provincial Policies. However, I did not find these were helpful in deciding this case, in that issues such as major infrastructure investments, air and water quality, agricultural land and climate change were not involved.

S. 45 of the *Planning Act* requires that the variances must individually and cumulatively:

- maintain the general intent and purpose of the Official Plan;
- maintain the general intent and purpose of the Zoning By-laws;

- be desirable for the appropriate development or use of the land; and
- be minor.

## **EVIDENCE**

I qualified Mr. Litavski in the area of land use planning and Mr. Boone in architecture; both were permitted to give opinion evidence in their respective specialties. The day before the hearing I received an email<sup>1</sup> from Ms. Baiasu indicating her concern with respect to height, largeness and fitting in; she also indicated she would not be attending the hearing and did not do so. She did not ask for an adjournment.

## **ANALYSIS, FINDINGS, REASONS**

Ms. Baiasu outlined several of the issues before me. Since she was unable to attend, I cannot give the concerns expressed in her letter the same weight as I could for the expert oral testimony of Mr. Litavski and Mr. Boone. First, I deal with the issue of tree preservation since there is City tree on the Nguyen lot and Ms. Baiasu does mention this. I have included a standard condition (Condition 2) with relation to the tree in my decision. I notes as well that Mr. Nguyen's witnesses took the position that the Urban Forestry Department had attended at the site, seen the tree and the condition recommended is the least onerous of possible requirements. I also impose compliance with the architect's plans, as Ms. Baiasu' asked in paragraph 2 of her letter. This is also integral to the official plan test of "fitting in" as I shall explain.

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<sup>1</sup> The email from Ms. Baiasu states:

Due to extenuating personal circumstances, we are unable to attend the hearing tomorrow morning, on Feb. 4. We trust that the Appeal Body will give serious consideration to the grounds of appeal, in particular that the height of the proposed three-storey addition is not in keeping with the character of the street and immediate neighbourhood. Both next-door neighbours of 39 Bowmore, already the largest house on the street, voiced serious concerns and complaints in their letters to the city. There were approximately 10 letters of objection in total. This construction project will pose serious danger and risks to children and neighbours walking nearby, as well as to trees and neighbouring property.

At a minimum, we hope that any approval for construction will be tied to the specific set of plans that the architect of 39 Bowmore already submitted online.

Please note that despite several reminders to the city, official notices continue to misidentify the proposed project as an addition in the rear. This is NOT correct. It is a dangerous third-storey addition that will fully cover the current second floor, blocking sunlight and dwarfing the houses around the neighbourhood.

Sincerely,

Ms. Andreea Baiasu  
Dr. Lisa Bradford (Ph.D., C.Psych.)

**Decision of Toronto Local Appeal Body Panel Member: T. Yao  
TLAB Case File Number: 20 187717 S45 19 TLAB**

The major issue is height, for which the Nguyens request a variance of 1.23 m over the limit of 10 m. I have reproduced a diagram drawn by Mr. Boone as Figure 1 of the front elevations of the subject property and its two side neighbours.

The present height limit of 10 m is already higher than the two neighbours' houses. I asked Mr. Boone, the architect, for his design rationale. He said that the "new" Zoning By-law 569-2013, passed in 2013, retained the same 10 m height limit from the former By-law, but changed the **definition** of "building height" from "halfway between eaves and peak" to the simpler definition of the absolute highest part of the roof. The result is to lower the height limit simply by a change in definition. I have indicated what would have been the approximate location of the 'legal' roof under the old by-law (dotted lines) against the proposed roof. Although the latter needs a variance of 1.23 m, it is about a metre lower than the old "legal" roof, which would not need any variance at all prior to 2013.



Mr. Litavski's list of "comparables", that is, the Committee of Adjustment decisions for heights above permitted zoning limits is shown in Table 2.

**Table 2. Height Comparables**

	ADDRESS	HEIGHT (Permitted)	HEIGHT (Proposed)
1	41 Edgewood Grove	7.2 m	9.53 m
2	7 Edgewood Gardens	10.0 m	10.43 m
3	10 Edgewood Gardens	10.0 m	10.63 m

4      39 Heyworth Crescent      10.0 m      10.35 m

Mr. Boone said that Mr. Litavski could only locate these four other instances in a study area of several hundred homes, and that **all four were post 2014**. “This explains why we see so many two and a half and three storey houses when we are walking around the neighbourhood” (Mr. Boone). In my view, Ms. Baiasu’s concerns originate from an evaluation of the number 1.23 m (the exceedance over 10 m) without considering the change in the height definition. A deeper analysis is what I am required to use to assess the prevailing character of the neighbourhood. In doing so, I find there are many older higher buildings whose height and two and a half storey style (i.e., like the Nguyens’ proposal) form the character. The proposed addition at 39 Bowmore will respect and reinforce this character.

The second issue is largeness, in which the Nguyens seek a floor space index of 0.72 times the lot area (0.60 permitted). The original application included two large dormers, now deleted at the request of the neighbours, which dropped the FSI from 0.75 to 0.72.

Mr. Litavski has found 16 “comparable” Committee of Adjustment decisions. Four are less than 0.72 and the rest larger. The City only provides Committee of Adjustment decisions within the last ten years and many additions were constructed prior to 2010, so I find that this evidence, plus the deletion of the dormers to be evidence in support of the FSI variance. I apply the Official Plan test in s. 4.1.5 that requires that the development “respects and reinforces existing physical character” of the neighbourhood and I find that the development does.

Mr. Litavski said that his conclusion on s. 4.1.5 was based on a consideration of many inputs, not just previous Committee of Adjustment decisions. This mature and eclectic area has a wide variety of physical characteristics.

I finally address Ms. Baiasu’s third issue of “fitting in”. Mr. Boone said that the Nguyens had originally thought that they could just add a third floor and be done with it. He persuaded them that they would have to take a larger perspective. Indeed, a large rear addition would be more likely to pass public scrutiny, but that would destroy the rear yard amenity space. Of the various options, the second floor bump-up would not require excavation and keeps the existing footprint intact. Making some concessions to specific concerns of neighbours is a positive act. I agree with the two witnesses whose uncontradicted oral evidence is that this is a modest, sensitively designed addition that will fit in with the neighbourhood.

I find on the evidence that the statutory tests for the variances in the *Planning Act* are met, individually and cumulatively.

## DECISION AND ORDER

I authorize the variances in Table 1 subject to the following conditions:

1. Substantial compliance with the exterior elevations (Mr. Boones' architectural elevations) on file at the Buildings Department.
2. Prior to the issuance of a building permit, the applicant/owner shall submit a complete application for permit to injure or remove a city owned tree(s) under Municipal Code Chapter 813, Trees Article ii, Trees on City Streets, to the satisfaction of the Supervisor, Urban Forestry, Tree Protection and Plan Review, Toronto and East York District.
3. The rear third floor balcony deck shall be constructed with frosted or opaque privacy glass that is permanent, located on the sides of the deck to a minimum height of 1.5 m, measured from the floor of the deck.<sup>2</sup>.



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T. Yao  
Panel Chair, Toronto Local Appeal Body

<sup>2</sup> This is a condition imposed by the Committee of Adjustment and the Nguyens do not contest it.