

# DECISION AND ORDER

**Decision Issue Date**      Tuesday, July 27, 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): FAYA NAMEK

Applicant(s): RESIDENTIAL DRAFTING SERVICE LTD

Property Address/Description: 1373 BIRCHMOUNT RD

Committee of Adjustment File

Number(s): 20 220540 ESC 21 MV

**TLAB Case File Number(s): 21 126261 S45 21 TLAB**

**Hearing date: July 19, 2021**

**Deadline Date for Closing Submissions/Undertakings:**

**DECISION DELIVERED BY ANA BASSIOS**

## REGISTERED PARTIES AND PARTICIPANTS

Name	Role	Representative
Residential Drafting Services Ltd.	Applicant	
Bashkim Cermjani	Owner	
Faya Namek	Appellant	
Lina Shahan	Participant	

## INTRODUCTION

This is an appeal by Faya Namek of the Scarborough Panel of the City of Toronto (City) Committee of Adjustment (COA) approval of variances requested to construct a new

two-storey south side addition and a second storey addition over the existing dwelling at the subject property.

The subject property is designated *Neighbourhoods* in the City of Toronto Official Plan (OP) and is zoned RD under the City of Toronto Zoning By-law No. 569-2013 and S under the Dorset Park Zoning By-law 9508.

Neither the Owner of the subject property nor the registered Applicant in this matter participated in any part of the TLAB process and did not appear at the Hearing.

## **BACKGROUND**

Requested variance(s) to the Zoning By-Law:

- 1. Chapter 10.20.30.40.(1)(A), By-law 569-2013**  
The maximum permitted lot coverage is 33% of the lot area.  
The proposed lot coverage is 36.1% of the lot area.
- 2. Exception RD 143.(D), By-law 569-2013**  
The minimum required side yard setback is 0.9 m.  
The proposed south side yard setback is 0.36 m.
- 3. Chapter 10.20.40.50.(1)(B), By-law 569-2013**  
The maximum permitted area of a platform at or above the second storey is 4 m<sup>2</sup>.  
The proposed rear balcony will have an area of 12.04 m<sup>2</sup>.
- 4. Chapter 10.5.40.60.(7), By-law 569-2013**  
The minimum required setback for an eaves from a side lot line is 0.3 m.  
The proposed eaves and eavestrough are located 0.06 from the south side lot line.
- 5. Chapter 10.5.50.10.(1)(D), By-law 569-2013**  
A minimum of 75% percent of the required front yard landscaping must be soft landscaping.  
A total of 54.95% of the front yard landscaping will be maintained as soft landscaping.
- 6. Chapter 10.5.100.1.(1)(C), By-law 569-2013**  
The maximum permitted driveway width is 3.33 m (width of the parking space in the garage).  
The proposed driveway width is 6.07 m.

## **MATTERS IN ISSUE**

One of the powers of the TLAB under s. 45(18) of the *Planning Act* (Act) is that the Tribunal may make any decision that the COA could have made on the original application, meaning that an application that was before the COA is to be considered anew by the TLAB.

The Applicant is required to satisfy the TLAB that its application satisfies the four statutory tests mandated by s. 45(1) of the Act. Since the Applicant did not participate in the Hearing, the variances approved by the COA cannot be approved by the TLAB in the absence of the necessary evidence that the proposal meets the four tests.

## **JURISDICTION**

### **Provincial Policy – S. 3**

A decision of the Toronto Local Appeal Body ('TLAB') must be consistent with the 2014 Provincial Policy Statement ('PPS') and conform to the Growth Plan for the Greater Golden Horseshoe for the subject area ('Growth Plan').

### **Same Powers as COA – S. 45(18)**

The Tribunal may dismiss the appeal and may make any decision that the committee could have made on the original application.

### **Variance – S. 45(1)**

In considering the applications for variances from the Zoning By-laws, the TLAB Panel must be satisfied that the applications meet all of the four tests under s. 45(1) of the 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**

Faya Namek addressed the TLAB on behalf of herself and her mother, Ms. Lina Shahan. As referenced in Ms. Shahan's Witness Statement, Ms Namek advised that she had been told by the Applicant that he would not proceed with a settlement that had been negotiated with Ms. Namek and Ms. Shahan and would instead proceed with a proposal that would not require any variances.

## ANALYSIS, FINDINGS, REASONS

As the Applicant did not participate in the Hearing, the variances approved by the COA cannot be approved by the TLAB in absence of the necessary evidence that the proposal meets the four tests.

## DECISION AND ORDER

The appeal of the Committee of Adjustment Decision is allowed; the decision of the Committee dated February 17, 2021, is set aside and the variances are not granted.

X 

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Ana Bassios  
Panel Chair, Toronto Local Appeal Body