

# DECISION AND ORDER

**Decision Issue Date**      Tuesday, March 22, 2022

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): MARIA VASCONEZ

Applicant(s): AMBIENT DESIGN LTD

Property Address/Description: 120 FLORENCE AVE

Committee of Adjustment File

Number(s): 21 124820 NNY 18 MV (A0163/21NY)

**TLAB Case File Number(s): 21 212434 S45 18 TLAB**

**Hearing date: February 10, 2022**

**Submission of last zoning examination March 4, 2022**

**DECISION DELIVERED BY TLAB Panel Member T. Yao**

## REGISTERED PARTIES AND PARTICIPANTS

Applicant	Ambient Design Ltd
Appellant	Maria Vasconez
Appellant's Legal Rep.	Russell Cheeseman
Party	City Of Toronto
Party's Legal Rep.	Gabriela Dedelli - City Of Toronto
Party's Legal Rep.	Jason Davidson - City Of Toronto
Expert Witness	TJ Cieciora

## INTRODUCTION

Maria Vasconez wishes to tear down her house at 120 Florence Ave and build a new house. The proposed new house will have more coverage than the by-law allows and thus Ms. Vasconez seeks a coverage variance. The complete list of sought-for variances is in Table 1.

<b>Table1. Variances sought for 120 Florence Ave</b>			
		Required	Proposed
<b>Variances from Zoning By-law 569-2013</b>			
1	Height side exterior main walls	7.5 m	8.3 m
2	No. of stories	2	3
3	Front door sill height	1.2 m	1.42 m
4	Building length	17 m	18.27 (reduced from 19 m to 18.65 m and again reduced)
5	Coverage	30% of the lot area.	32.40% of the lot area.(reduced from 34.24%)
6A	Max. number of 2 <sup>nd</sup> floor balconies	2 balconies	2 (that is, the front and rear porch)
6B	Max. area of each balcony	4 m <sup>2</sup>	front porch is 6.7 m <sup>2</sup> ; rear deck is 11.89 m <sup>2</sup> <sup>1</sup>
7	Side yard setback	1.8 m	East and west: 1.5 m
<b>Variances from former North York Zoning By-law 8625<sup>2</sup></b>			
8	Height	8.00 m	10.22 m
9	Finished first floor height	1.5 m	1.64 m

## **BACKGROUND**

The Committee of Adjustment refused Ms. Vasconez’s application on Sept 4, 2021. She appealed, and so the application came to the TLAB. At the TLAB there is only one other party, the City of Toronto. In the month before the hearing, the City, through their lawyers, settled with Ms. Vasconez.

## **MATTERS IN ISSUE**

The Provincial Policy Statement and the Greater Golden Horseshoe Growth Plan must be considered, but they contain a high level of generality which I find is not applicable to a single lot development in a settlement (i.e., urbanized) area. There is

<sup>1</sup> The Plan examiner has added “Please note, the basement level is considered the first floor, by definition. “

<sup>2</sup> Because By-law 569-2013 is still under appeal, the plan examiner has tested the plans under both the new and the former zoning by-laws, resulting in some additional variances.

one exception in that all policy documents promote housing for persons “at all stages of their life”. The proposal conforms with and is consistent with this policy.

The variances must also comply with s. 45(1) of the *Planning Act* and must cumulatively and individually:

- 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.

The Official Plan of the City of Toronto must be considered; particularly, 4.1.5 Neighbourhoods Policy in which the physical form of the development must “fit in” physically with the surrounding neighbourhood. and “respect and reinforce” its physical character.

### **Right to develop**

The obligation is on the proponents (Ms. Vasconez) to demonstrate to the decision-maker that the tests are met on the balance of probabilities; there is no right to a variance.

### **EVIDENCE**

I heard from TJ Cieciora, Ms. Valconez’s planner, whom I found to be qualified to give opinion evidence in the area of land use planning. There was no other witness.

### **ANALYSIS, FINDINGS, REASONS**

This is a settlement so I will not recount the evidence. In assessing whether a settlement is reasonable, it is useful to consider the approach in the Law Society’s *Stephen Alexander Cooper*<sup>3</sup>. That case suggests that while a tribunal always has the

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<sup>3</sup> *Law Society of Upper Canada v. Stephen Alexander Cooper*, 2009 ONLSAP 7; <https://www.canlii.org/en/on/onlst/doc/2009/2009onlsap7/2009onlsap7.html?autocompleteStr=cooper&autocompletePos=1>

The Supreme Court of Canada also has considered this issue. In *Antony Cook*, It set out the latest test for rejecting a settlement, which is stringent. *Cook* was an appeal by Mr. Cook from a trial judge’s rejection of a plea bargain. The Supreme Court Allowed the appeal, stressing the role of the public interest when the joint submission falls within the range of reasonable outcomes. (*R. v. Anthony-Cook*, 2016 SCC 43 (CanLII), [2016] 2 SCR 204)

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ability to reject a settlement, deference should be given to a settlement on the principle of encouraging a consensual resolution of disputes.

### Whether further notice is necessary when Applicant has made recent changes

Table 1 (page 2) shows building length and coverage have been reduced since the Committee of Adjustment decision. Section 45(18.1.1) of the *Planning Act* allows me to find that a change in plans need not be recirculated if I find the change is a minor one. The relevant case law<sup>4</sup> suggests that if the change is downward, it will be considered minor.

### Coverage

Coverage is the size of the footprint of the first floor of the house divided by lot area. 30% is permitted but the Committee of Adjustment's has an informal ceiling of 32% in the Lansing-Westgate (that is, the 401 /Yonge) area of the former City of North York. This is an area close to the Sheppard/Yonge Centre<sup>5</sup> in which a significant portion of the historic smaller homes have been replaced by newer homes.

This 32% ceiling is one that the City seeks to maintain for consistency in the neighbourhood. Ms. Vasconez has reduced her coverage from 40%, to 34.14%, and then to 32.40%. Ms. Vasconez desires the extra coverage for an elevator and wider hallways to accommodate a relative, who uses a wheelchair. Ms. Dedelli, the City's lawyer stated:"

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<sup>4</sup> *Bickham v. Hamilton (City)*, 2016 CanLII 72356 (ON LPAT) "The Board found that the second variance of the side yard would, escalate, rather than diminish, the potential impact of the sunroom addition, an outcome clearly at odds with the intent and purpose of s. 45(18.1.1) . [...] *Serpa v Toronto (City)*, 2017 CanLII 74744 (ON LPAT) "This revision to the variances, pursuant to s. 45(18.1.1) of the Act was allowed because it involved a reduction of the requested variances. . ." *Dong v. Toronto (City)*, 2016 CanLII 8496 (ON LPAT) The Board finds that as the application as modified, represents a betterment in the relief being sought, pursuant to s. 45(18.1.1) of the Planning Act , ("Act ") no further notice is required. [...] The Board explained that not only is this common practice, but it is also something that is permitted by the Act (s. 45(18.1.1) ).[...] Mr. Cheeseman has also supplied me with PL120787, *Rizzo v. 2022988 Ontario Inc.*, October 22, 2013, Member J. P. Atcheson

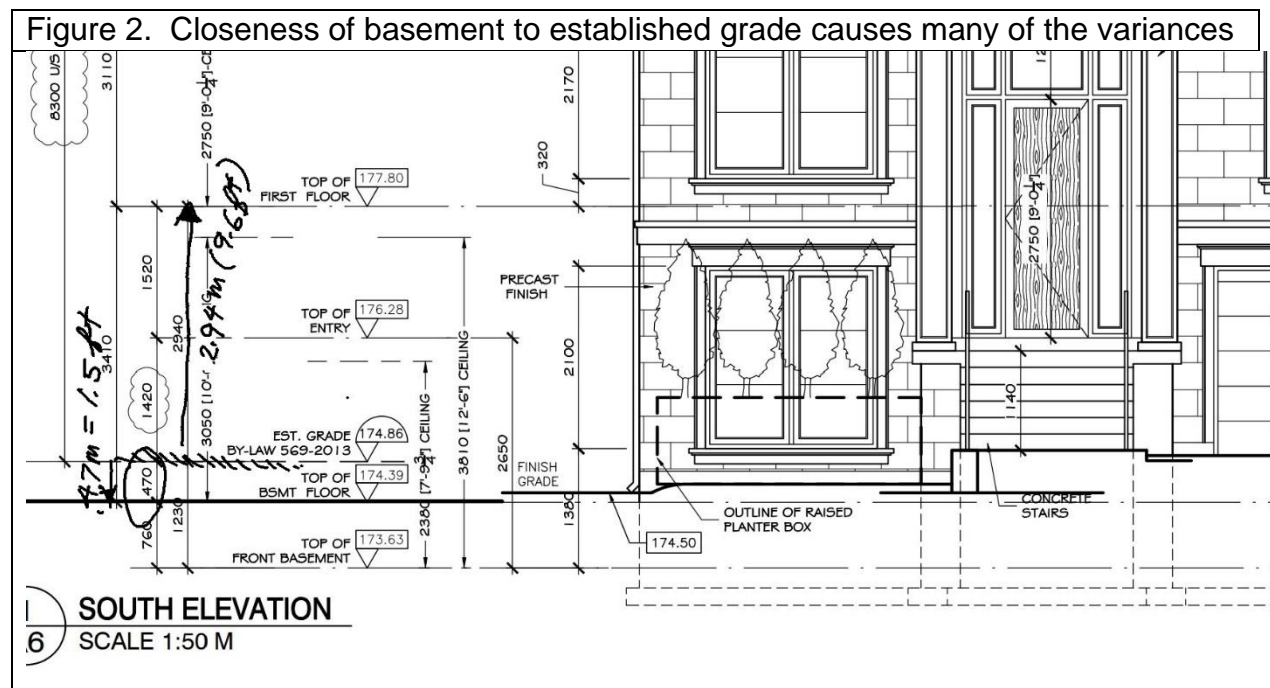
<sup>5</sup> A "Centre" is a defined term in the official plan meaning an area where there is a confluence of public transit where development, particular development that is not car reliant, will be promoted.

The City is concerned with coverage and length in this area but is comfortable with the settlement, given that is to build to the accessibility needs of one of residents living in the house.

I find, based on Mr. Cieciora's evidence that many of the variance decisions in the neighbourhood are for exactly 32% and that the Committee has indeed attempted to be consistent. I find the Floor space index and the design of the house "fit in" to the physical character of this neighbourhood. I find as well that the minor derogation from the 32% is appropriate and consistent with the Official Plan policies, particularly when it is for accommodation for disabled persons.

**Variations related to basement considered as first floor**

Many neighbours wrote to object to variances for a "three storey" house (two stories permitted). What is proposed has always been a conventional two storey house, but the basement is closer to established grade than the "first" floor. This resulted in the first being considered the "second" floor, the porch being considered the second floor balcony and so on, for zoning examination purposes. The elevation diagram below shows this. Because of the unusually low established grade, the top of the basement floor is only 1.5 feet below grade, and the basement is considered the "first floor" of 120 Florence. This anomaly is also responsible for Variance 2: "Number. of stories"; Variance 3: "Front door sill height "; Variance 6: "Max. number of 2<sup>nd</sup> floor balconies"; and Variance 8: "Max. area of each balcony". I find however, the overall appearance is more like a two storey houses and so it "fits in" with this largely two storey neighbourhood.



## Conclusion

I find the statutory tests under the *Planning Act* are met, based on the evidence given about the Committee's consistent approach to coverage and Mr. Cieciora's photographs of the neighbourhood. I note that there is strong policy support for housing accommodating disabled persons, as is the case here and Ms. Vasconez has made compromises to bring her proposal closer to the area standard.

## DECISION AND ORDER

The changes made after the Committee of Adjustment decision are minor under s. 45(18.1.1) of the *Planning Act* and no further notice need be given.

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

1. Submission of a complete application for a permit to injure or remove a privately owned tree(s), as per City of Toronto Municipal Code Chapter 813, trees article iii private tree protection.
2. Where there is no existing street tree, the owner shall provide payment in lieu of planting of one street tree on the city road allowance abutting each of the sites involved in the application. The current cash-in-lieu payment is \$583/tree.
3. The proposal be developed substantially in accordance with the plans on file with the TLAB and marked as Exhibit 2 in the hearing, which facilitates wheelchair accessibility. Any other variance(s) that may appear on these plans but are not listed in the written decision are not authorized."



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Ted Yao  
Panel Chair, Toronto Local Appeal Body