

# DECISION AND ORDER

**Decision Issue Date** Monday, February 14, 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): NADEREH BINESH

Applicant(s): REPLACEMENT DESIGN

Property Address/Description: 141 CRESCENT RD

Committee of Adjustment File Number(s): 20 210209 STE 11 MV (A0944/20TEY)

**TLAB Case File Number(s): 21 163536 S45 11 TLAB**

**Hearing date: Wednesday, November 3, 2021**

**DECISION DELIVERED BY: S. Makuch**

## REGISTERED PARTIES AND PARTICIPANT

Appellant	Nadia Binesh
Applicant	Replacement Design
Owner/Party	Nicole Zarry
Party's Legal Rep	Martin Mazierski
Expert Witness	Jonathan Benczkowski

## INTRODUCTION

This is an appeal by the owner, Ms. Binesh, of 139 Crescent Rd. of 6 variances granted to permit the construction of a one story rear addition and a new detached garage at 141 Crescent Rd. The variances granted are set out in Appendix 1. The dwellings on the two properties are attached.

## BACKGROUND

The only person to give evidence in opposition to the variances was the appellant, who was a single mother who had lived at 139 Crescent Rd. for over 22

years. She was concerned that the construction of the addition was undertaken without a building permit and that it resulted in damage to the fence dividing the properties. She therefore sought costs for the reconstruction of the fence. She was most importantly concerned that the variances permitting the addition would impact negatively on her rear yard and kitchen.

## **MATTERS IN ISSUE**

The only substantive planning matter raised in issue was the impact of the portion of the addition which was visible from 139 Crescent Rd. That portion was approximately two feet higher than the fence which divided the two rear yards. The applicant, of course, was required to demonstrate that the variances met the requirement of the Planning Act and the provincial policy as described below. There was no concerns raised which related to the variances permitting the garage. Ms. Binesh did, however, seek compensation for reconstruction of the fence.

## **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').

### **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

Evidence was given by two persons: Mr. Benczkowski , a qualified land use planner and Ms. Binesh, the the owner of 139 Crescent Rd. It was the uncontradicted and unchallenged evidence of Mr. Benczkowski that the variances met the four tests of the Planning Act and the requirements of the PPS and Growth Plan. There are no variances related to the depth or length of the addition, or its side yard set back, or height. It would not be visible from the street and thus not affect the character of the area. The addition would have no windows and thus not affect privacy or over look and stairs also being constructed would be hidden by the fence.

Ms. Binesh's evidence was that she had no cottage and that her rear yard was her refuge. She felt that the two foot portion of the addition above the fence would make her feel uncomfortable and have an adverse impact on her use of her rear yard. She also stated it would also cast a shadow into her kitchen. She did not object to the addition itself or its massing as such but objected to the two feet that would be visible above the top of the fence.

## ANALYSIS, FINDINGS, REASONS

While I have sympathy for Ms. Binesh's concern, I find that the variances should be allowed. None of the variances permits the addition to be closer or taller than is proposed. One variance relates to the overall FSI of the dwelling but the massing of the addition, as such, can be located where it is, subject only to the rear yard setback. The purpose of the rear yard setback is to prevent dwellings from being too close to the property behind them; not to prevent them from being too close to properties beside them. The variance respecting the rear yard setback allows the addition to be closer to the rear property line and thus extend into to back yard further than permitted. This does not impact the height or side yard concerns of Ms. Binash. There is no objection from a rear property owner.

Finally I note that in an urban area there are going to be additions which have some impact on neighbours. The impact of this addition, I find, is minor as it does not affect privacy, or overlook and is only visible two feet above an existing fence. It is neither closer nor higher than the bylaw permits. It certainly respects the character of the neighbourhood and there is no substantial evidence that it would cast a shadow into Ms. Binesh's kitchen.

Given the uncontradicted and unchallenged evidence of Mr. Benczkowski I find that the variances meet the four tests of the Planning Act and meet all provincial requirements and thus should be approved.

With respect to the issue of the cost of repairing the fence I find that there was insufficient evidence to reach a conclusion on whether the fence was damaged during construction and thus I will make no order regarding that matter.

## DECISION AND ORDER

The appeal is dismissed, the decision of the Committee of Adjustment upheld and the variances set out in Appendix 1 are approved. Subject to the conditions set out in Appendix 2.

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S. Makuch  
Panel Chair, Toronto Local Appeal

## **APPENDIX 1**

1. Section 10.10.40.40.(1)(A), By-law 569-2013. The maximum permitted floor space index is 0.6 times the lot area (215.3 m). The altered dwelling will have a floor space index of 0.91 times the lot area (326.37 m).
2. Section 10.20.40.70.(2)(A), By-law 569-2013. The minimum required rear yard setback is 7.5 m. The altered dwelling will be located 6.79 m from the rear lot line.
3. Section 10.5.40.60.(3)(A)(ii), By-law 569-2013. Exterior stairs providing access to a building or structure may encroach into a required minimum building setback if exterior stairs are no wider than 2 m. The proposed rear deck stairs will have a width of 5.79 m.
4. Section 10.5.60.20.(3)(B), By-law 569-2013. The minimum required side yard setback for an ancillary building or structure located in a rear yard is 1.5 m. The proposed ancillary structure (detached garage) will be located 0 m from the east side lot line.
5. Section 10.5.60.20.(2)(C), By-law 569-2013. The minimum required rear yard setback for an ancillary building or structure is 0.3 m. The proposed ancillary structure (detached garage) will be located 0 m from the rear lot line.
6. Section 10.5.60.40.(2)(A), By-law 569-2013. The maximum permitted height of an ancillary building or structure is 2.5 m. The proposed ancillary structure (detached garage) will have a height of 3.2 m.

## **APPENDIX 2**

1. Construction will be substantially in accordance with plans on file with the Committee of Adjustment.
2. 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 II Private Tree Protection.
3. The following conditions shall be fulfilled to the satisfaction of Heritage Planning, Urban Design, City Planning:

Prior to the issuance of a building permit, building permit drawings, including plans, elevations and details shall be submitted to the satisfaction of the Senior Manager, Heritage Planning, Urban Design, City Planning and a heritage permit shall be obtained under the provision of Section 42 of the Ontario Heritage Act.