

# DECISION AND ORDER

**Decision Issue Date** Friday, July 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): NANCY CATHERINE MCFADYEN

Applicant: ROBYN HUETHER

Property Address/Description: 45 BINSCARTH RD

Committee of Adjustment Case File: 19 233066 STE 11 MV (A1059/19TEY)

**TLAB Case File Number: 20 115938 S45 11 TLAB**

**Hearing date: Monday June 28, 2021**

**DECISION DELIVERED BY T. Yao**

## APPEARANCES

NAME	ROLE	REPRESENTATIVE
Rhys Seymour, Susan Kilby	Parties	Jane Pepino, C.M., Q.C., LL.D
Martin Rendl	Expert Witness	
Nancy Catherine Mcfadyen	Appellant	Andrew Jeanrie
Lindsay Dale-Harris	Expert Witness	

## INTRODUCTION

Ms. Kilby and Mr. Seymour wished to build front and rear additions at 45 Binscarth Rd. and required seven variances to do so. They were successful before the Committee of Adjustment in February 2020. Ms. Mcfadyen, a neighbour, appealed and so this matter came before the TLAB. The original hearing date of May 2020 was adjourned because of the Covid-19 pandemic; the second hearing date of November 2020 was also adjourned. Shortly before this hearing, Ms. Mcfadyen and the Kilby/Seymour family came to a settlement and Table 1 represents the new variances now being sought:

<b>Table 1 Variances sought for 45 Binscarth</b>			
		Required/Permitted	Proposed
Variances from 569-2013			
1	Building height	10 m	11.1 <sup>1</sup> m
2	Rear main wall height	7.5 m	10 m
3	Floor space index	0.35	0.578
4	Side yard setback	1.5 m	
Variances from 438-86 <sup>2</sup>			
5	Building height	10 m	11.1 m

## BACKGROUND

After the hearing at the Committee of Adjustment, the Kilby/Seymour family deleted a proposed front addition and “significantly” (the word is agreed to by both planners) reduced the rear addition. The new variances are contained in Table 1 . The only other person in this hearing is Ms. McFadyen, who lives next door to the east. Her lawyer and planner attended the hearing to ensure that the settlement to which the parties agreed went smoothly.

## Member’s Site visit

As required by my conditions of employment I visited the site for the sole purpose of better assessing the evidence given at the hearing.

## Order under 45(18.1.1) of the *Planning Act*

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<sup>1</sup> This height is the highest point of the new addition.

<sup>2</sup> The City studies building applications under both the old (438-86) and new (569-2013) zoning by-laws. This is because even though the latter was adopted in 2013, the Ontario Land Tribunal is still hearing appeals of the old by-law, particularly as to building heights.

Ms. Pepino (Kilby/Seymour family's lawyer) requested an order under s. 18.1.1 of the *Planning Act*, in which no further notice is required for minor changes subsequent to the Committee of Adjustment hearing. I make this order because the original variances are reduced or eliminated, thus "bettering" the situation.<sup>3</sup>

## MATTERS IN ISSUE

The variances must conform to and be consistent with higher level Provincial policies. Mr. Rendl said that to the extent these policies applied, these requirements were met. Under s. 45(1) of the *Planning Act*, they must also 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.

## EVIDENCE

The witnesses were Mr. Rendl for the proponent and Ms. Lindsay Dale-Harris for the neighbour, both of whom I qualified as able to give opinion evidence in planning matters.

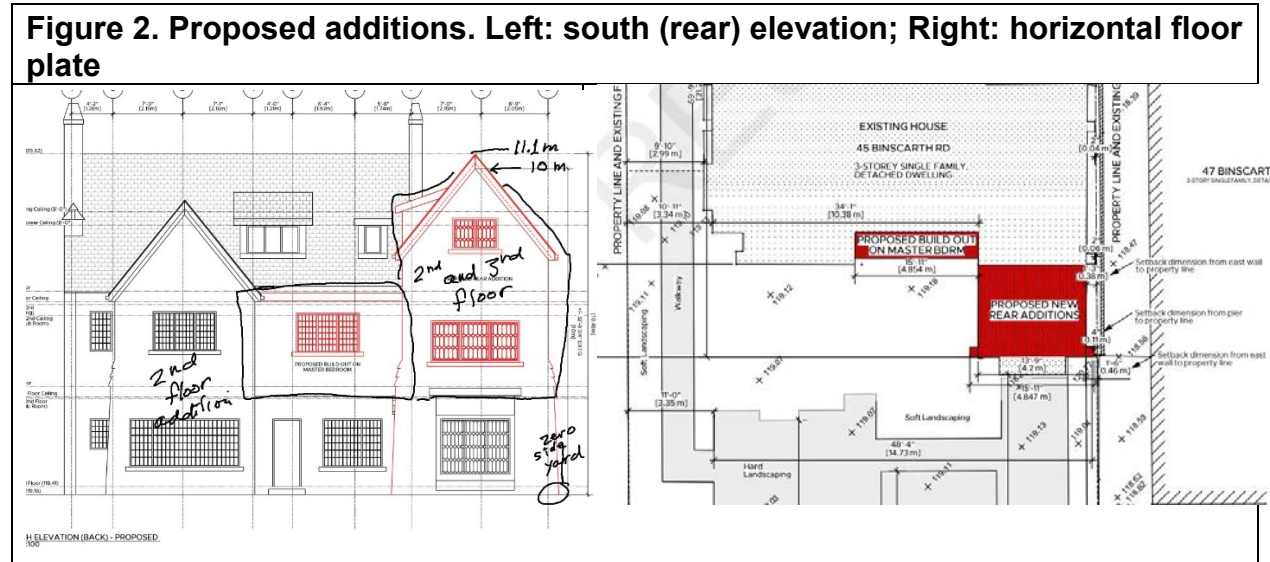
## ANALYSIS, FINDINGS, REASONS

This is a settlement, but I have an independent duty to review the evidence to ensure that s. 45(1) of the *Planning Act* is complied with. I accept the evidence of Mr. Rendl on all relevant matters. From Figure 2, it may be seen that the new third floor will go no higher than the existing roof and will have little massing at this height (this is indicated by the figure 10 m, left drawing). There is a modest-sized second floor bump out ("2<sup>nd</sup> floor addition"). The new 2<sup>nd</sup> and 3<sup>rd</sup> floor will be confined horizontally to the

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<sup>3</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) ).[...]

dimensions of the existing kitchen except for a buttress (see words “zero side yard”), a minor architectural feature. I find these variances and their impact to be minor.



The architect has designed the building so that the shape of the pitched roof and the buttresses on each side of the rear wall will match what already exists. The Mcfadyen house is shown to the right in Figure 2; their consent ensures that the variances will be desirable for the appropriate development of the Kilby/Seymour lands. The Official Plan Policy in s. 4.1.5 requires that the development respect and reinforce the existing physical character in the neighbourhood<sup>4</sup>. The FSI sought was decreased from 0.82 to the current 0.578; 0.35 is permitted and the house's existing FSI is 0.53. The range of floor space indexes in the Binscarth neighbourhood range for 0.60 (202 Roxborough) and 0.947 (65 Binscarth), and the proposed FSI of 0.578 fits within this range. As a result, I find the intent of the Official Plan and zoning are maintained.

I conclude that the statutory tests are met for all the variances, both individually and cumulatively. I wish to thank the parties for settling this matter. If the plan examiner has any difficulty with this order, would she or he please contact me at [tlab@toronto.ca](mailto:tlab@toronto.ca).

## DECISION AND ORDER

4 Development in established Neighbourhoods will respect and reinforce the existing physical character of each geographic neighbourhood, including in particular: . . . prevailing location, design [of] driveways and garages; prevailing patterns of rear and side yard setbacks and landscaped open space;

**Decision of Toronto Local Appeal Body Panel Member: T. Yao**

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I make the order requested pursuant to s. 45(18.1.1) of the Planning Act that no further notice is needed. The appeal is allowed in part. I authorize the variances in Table 1 on the following condition:

That construction be in substantial conformity with the following plans on file at the TLAB (filed June 28, 2021):

A100 Site plan  
A102 2<sup>nd</sup> and 3<sup>rd</sup> floor plans  
A401 Rear elevation  
A403 East Elevation

All plans are dated June 8, 2021.



X

Ted Yao  
Panel Chair, Toronto Local Appeal Body