

# DECISION AND ORDER

**Decision Issue Date**      Wednesday, May 11, 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): RACHEL WANG  
Applicant(s): RACHEL WANG

Property Address/Description: 86 FOCH AVE

Committee of Adjustment File Number(s): 21 118939 WET 03 MV (A0112/21EYK)

TLAB Case File Number(s): 21 212116 S45 03 TLAB  
Appellant(s): Applicant(s): RACHEL WANG

**Hearing dates: Feb 14, April 28, 2022**

## DECISION DELIVERED BY TED YAO

### REGISTERED PARTIES AND PARTICIPANTS

Name	Role	Representative
Al-Asma Ul Hosna	owner (did not appear at hearing)	
Rachel Wang	Applicant/Appellant/Architect	
City of Toronto	Michael Mahoney, Cameron McKeich	
Brian Bulger	Expert Witness	
Kllandre Kljaic	Participant	
Alan McEntee	Participant	

### INTRODUCTION

Mr. Ul Hosna wishes to tear down a bungalow at 86 Foch Ave and build a new two storey house. In order to build the architectural design and size of house he desires, he seeks the variances in Table 1.

<b>Table1. Variances sought for 86 Foch Ave</b>			
		Required	Proposed
<b>Variances from Zoning By-law 569-2013 and former City of Etobicoke By-laws<sup>1</sup> 1979-67 and 1981-272</b>			
1	Building height, measured to mid-point of roof	7.5 m	8.18 m
2	Cellar ceiling height	1.0 m above finished grade	1.47 m
3	Rear bay window, projection	Max encroachment into required setback: 0.75 m	Front yard: 1.25 m; Rear yard: 1.54 m;
4	Coverage	0.35 times the area of the lot	.3735 times the area of the lot
5	Maximum permitted gross floor area	0.4 times the lot area	0.791 times the lot area
6	Front yard setback	5.31 m.	4.67 m
7	Rear yard setback	7.5 m	6.566 m
<b>Variances from former City of Etobicoke By-laws 1979-67 and 1981-272 only</b>			
8	Building height, measured to mid-point of roof	See above var. 1 <sup>2</sup>	
9	Maximum permitted gross floor area	See above var. 5	
10	Cellar ceiling height	See above var. 2	

The Committee of Adjustment refused the application on August 26, 2021. Mr. UI Hosna appealed and so the application came to the TLAB.

## **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 (content of municipal official plans, climate change etc.). Within the confines of specific issues of placement

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<sup>1</sup> Because appeals to the current By-law 569-2013 by-law are still outstanding, plan examiners review applications under the previous by-laws as well, sometimes resulting in additional or duplicate variances.

<sup>2</sup> I am following plan examiner Arwa Alzor's numbering system and therefore introduced some duplication into this table.

of walls and window a one day variance decision I found it was not necessary to consider the conformity or consistency to these higher level documents.

The variances must 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; in particular, section 4.1.5 Neighbourhoods Policy in which the physical form of the development must “fit in” physically with the surrounding neighbourhood.<sup>3</sup>

### **Right to develop**

The obligation is on the proponent, Mr. Ul Hosna 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 Mr. Bulger, whom I qualified to give opinion evidence in the area of land use planning. Mr. Kljaic and Mr. McEntee testified on their own behalves. Ms. Wang interjected at various points but did not ask to be sworn and give her own evidence.

I visited the site and made a site visit for the sole purpose of better assessing the evidence given at the hearing.

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

The key **pre-hearing** event is an agreement between the City and Mr. Ul Hosna in which the City would not only drop its opposition, but actively intervene in support, in return for a redesign of the front façade. The present bungalow and rear separate garage building will be torn down to be replaced by one two storey building with integral two-car garage. Following the Committee of Adjustment’s refusal, Mr. Ul Hosna changed the front façade with a three stories appearance to one that “presents as two stories”. The second floor ceiling was lowered to 8 feet 7 inches on one side and 9 feet on the other. Thus, the City’s chief concern was satisfied and Mr. Bulger wrote in his

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<sup>3</sup> Physical changes to our established *Neighbourhoods* must be sensitive, gradual and “fit” the existing physical character. (p4.4)

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Witness Statement: “I do not have any further concerns with the Application in its revised form”.

The City and Mr. Ul-Hosna then entered into minutes of settlement in which they agreed to “jointly support” the application and that the City would call evidence of “a professional land use planner”. Mr. Bulger, a planner employed by the City, was the City’s witness, in fulfilment of the settlement.

This is not a full settlement to which I should give deference since Mr. Kljaic and Mr. McEntee oppose it

With respect to the three storey appearance, Mr. Bulger said 56% of the study area houses presented as two storey.<sup>4</sup> The cellar height variance, flagged on the original application, was no longer present in the revised plans and is no longer an issue.

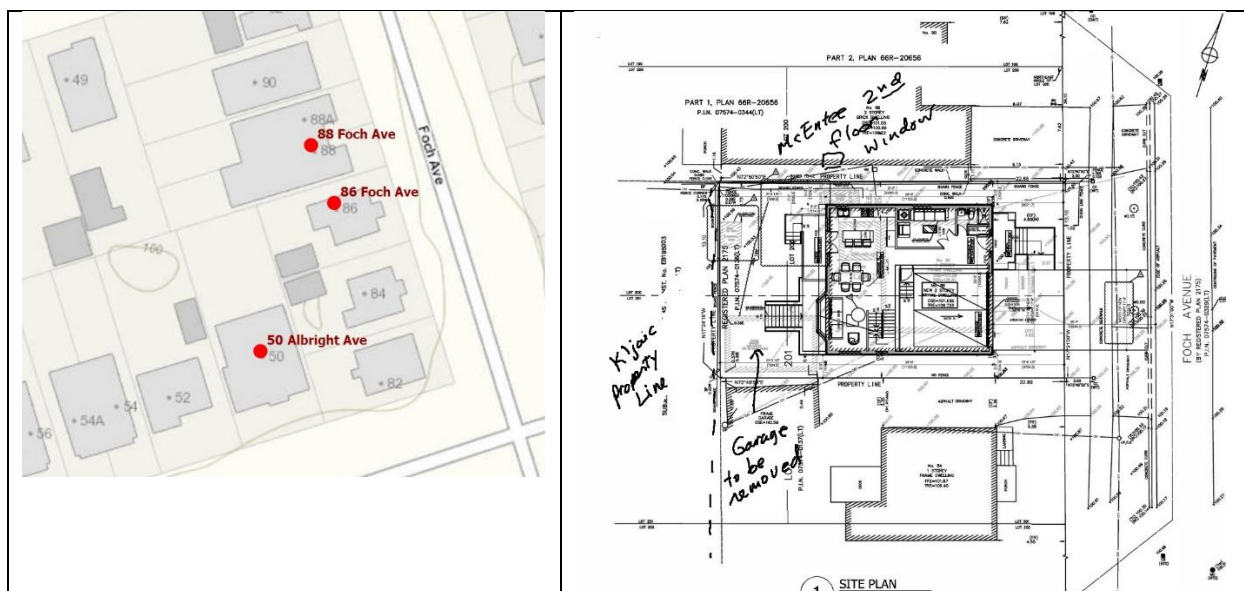
Mr. Bulger said that the building height of 8.18 m was less than the average approved height variance based on the recorded decisions of the Committee of Adjustment of the study area as a whole. The coverage of 37% (35% permitted) and Floor Space Index of 0.79 times lot area (0.4 permitted) were “within the range of previous minor variances in the area.”<sup>5</sup> He concluded while the numbers may “seem high” in the immediate context, overall, the variances requested were “modest” and fitted within the character of the neighbourhood.

Mr. Bulger spent some time on rear yard setback, since this was Mr. Kljaic’s main concern.

**Figure 2. Left local area showing Kljaic residence (50 Albright) and McEntee residence (86 Foch); Right proposed site plan**

<sup>4</sup> The prevailing (i.e., most frequently occurring) building type within the Neighbourhood is a two-storey house (56% or 275 of 489), while one-storey houses exist in substantial numbers (40% 197 of 489). This is also true within the immediate context of the Subject Property, where houses range from onestorey to two storeys in height. (Bulger witness Statement, par 65)

<sup>5</sup> Similarly, the floor space index and . . . lot coverage are within the range of the previous minor variance approvals in the area. Um although the numerical value of 0.67 and a coverage of 37.5 percent ah may seem high for a proposal within an immediate context that has not experienced any minor variance approvals um it’s my professional opinion that the proposed massing and minor variances are modest and fits within the prevailing character. The applicant proposes a gross floor area of 201.3 m<sup>2</sup>, which is 2166.78 square feet and . . . .I believe the house is really quite modest when you look at the floor plans and the living area. Um so I go on to state that the higher numerical value of the FSI and the lot coverage in my opinion area primarily due to the constraints of the lot, um with this lot being smaller than 76% of the lots in this area. . (Bulger oral testimony Feb. 14, 2022)



The UI Hosna lot is only 22.89 m deep (75 feet), similar to 84 and 82 Foch. As a consequence, Mr. Kljaic was concerned with rear yard setback for number 86, which is 6.566 m instead of 7.5 m<sup>6</sup> and Mr. UI Hosna intends to build closer to the Kljaic property line.. Mr. Kljaic noted that the nearest steps in the UI Hosna rear yard are only 3.0 m (9.9 ft) from his property line. Mr. Bulger replied that this was part of a basement walkout and the entire stairway being below ground would not create an unacceptable adverse impact.

Ms. Wang said that the building length proposed was 11.12 m (36.5 ft), considerably less than the 17 m permitted by the zoning by-law and that her client was removing all existing accessory buildings. Despite Mr. Kljaic's preference for the present situation of a detached garage which is located one foot from his property line, Mr. Bulger considered most other persons would prefer **no** rear yard garage. I accept Mr. Bulger's evidence and, while cognizant of Mr. Kljaic's preference, I accept that the rear yard setback variance and other variances meet the four tests under the *Planning Act*.

Mr. McEntee was concerned that the new second floor bedroom window does not face his equivalent window. There was not good evidence on this issue but my best guess is that the McEntee window is pretty far back. Nonetheless I am including an additional condition to make sure they do not directly face. If I am in error and my handling of this issue is not satisfactory to any party, I would ask that I be contacted in writing at [tlab@toronto.ca](mailto:tlab@toronto.ca).

## Decision and Order

The variances in Table 1 are authorized on the following conditions:

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<sup>6</sup> The difference between the two numbers is .9 m or 3 feet.

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1. The proposed dwelling shall be constructed substantially in accordance with the plans filed at the Buildings Dept. and prepared by Oaple Design. This condition applies only to the site plan and exterior elevations and not to the interior floor plans.
2. The second floor bedroom window facing the McEntee residence (88 Foch) shall not face directly into the second floor McEntee window or if it does, it shall be made of frosted glass.
3. The Owners shall submit to Urban Forestry a complete application to Injure or destroy Trees for any City-owned trees, pursuant to the City of Toronto Municipal Code Chapter 813, Article II. \* NOTE 1: Urban Forestry Matters
4. Any application to injure and/or remove a City owned tree may be denied by Urban Forestry regardless of Toronto Local Appeal Body approval. Should the applicant wish to appeal a denial by Urban Forestry, the matter may be referred to City Council through Community Council for consideration.
5. Approval of the consent/minor variances listed in Schedule 2 does not preclude the applicant from obtaining the necessary tree removal/injury permits from Urban Forestry.
6. All bylaw protected trees located on site and within 6 m of the site must be protected in accordance with the City's Tree Protection Policy and Specifications for Construction near Trees. No excavation, grade changes, cutting of tree roots, extensive pruning to the tree's canopy or movement or storage of equipment/construction material/excavated soil is permitted within the minimum tree protection zones of trees unless prior authorization has been obtained from Urban Forestry



**X**

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Ted Yao  
Panel Chair, Toronto Local Appeal Body