

DECISION AND ORDER

Decision Issue Date: Thursday, January 06, 2022 and amended pursuant to Rule 30.1 on Thursday, March 3, 2022 and further revised April 22, 2022; amended May 27, 2022

PROCEEDING COMMENCED UNDER Section 45(12) of the *Planning Act*

Appellant(s): BABAK GHASSEMI

Applicant(s): BABAK GHASSEMI

Property Address/Description: 62 NORDEN CRES

Committee of Adjustment File

Number(s): 21 123175 NNY 16 MV

TLAB Case File Number(s): 21 157559 S45 16 TLAB

Hearing dates: November 24, 26, 2021

DECISION DELIVERED BY T. YAO

Babak Ghassemi
Fariba Tousinejad
Christian Chan

Appellant/Applicant
Owner (did not attend hearing)
Expert Witness

Amber Stewart

Elizabeth Lee
Jane McFarlane

Party
Expert Witness

Kailey Sutton

City of Toronto
Eileen Keng

Party
Expert Witness

Jessica Jakubowski

INTRODUCTION

The proponent, Mr. Ghassemi, wishes to demolish and build a new larger house at 62 Norden Crescent (the subject property) in the Leslie and Lawrence Avenue East area of Toronto. Mr. Ghassemi is described in his filings as “appellant/applicant”, although the Applicant’s Disclosure (September 3, 2021) states that Ms. Stewart’s client is Fariba Tousinejad, the legal owner of the subject property.

This is a settlement. The other party is Ms. Lee, the immediate next door neighbour. Even though this is a settlement, the TLAB does not “rubber-stamp” what the parties have agreed to and must hear some evidence and be independently satisfied that the four tests under the *Planning Act* are met. In this case, as the decision maker, I am satisfied that Mr. Ghassemi has met that threshold.

BACKGROUND

Ms. Tousinejad and Ms. Lee have signed Minutes of Settlement containing agreed to revised plans, a statement of the variances to be granted and conditions. They intended that this document be attached to this Decision but without changing the settlement I refer the reader to the TLAB website if either the Minutes or plans need to be consulted. (Filed November 26, 2021). If this causes difficulty, could the parties please contact me at tlab@toronto.ca.

As set out above the TLAB must hear some evidence even though this is a settlement. The hearing consisted of the testimony of a single witness, the planner Mr. Chan, called on behalf of Mr. Ghassemi whom I qualified as able to give opinion evidence in the area of land use planning. Other attendees included Ms. Lee’s lawyer, Ms. Sutton, as well as her planner Ms. McFarlane, and the City’s lawyer and planner, Ms. Jakubowski and Ms. Keng respectively. Mr. Chan reviewed the Minutes of Settlement and set out reasons why the variances should be granted.

I will now briefly describe the previous interlocutory motion. Mr. Ghassemi had appealed to the TLAB from a refusal to grant 12 variances to Ms. Tousinejad. At the TLAB, Ms. Lee, supported by the City, brought a motion to dismiss Mr. Ghassemi’s appeal because he appeared to be pursuing a second and concurrent variance application before the Committee of Adjustment. Mr. Ghassemi’s concurrent application was not finalized but apparently some steps had been taken. The return date for Ms. Lee’s motion was Sept 6, 2021.

Mr. Ghassemi retained Ms. Stewart prior to the return date and she acknowledges that the TLAB appeal had a “rocky” start, but she and Ms. Sutton worked diligently and succeeded in resolving matters between them. The City of Toronto, while not a party to the settlement, does not object. I thank all concerned for this resolution.

As a result of the settlement, Mr. Ghassemi requests the following variances in Table 1.

Table 1. Variances sought for 62 Norden			
From Zoning By-law 569-2013			
		Required/Permitted	Proposed
1	Height of front main walls	7.5 m for no less than 60% of the total width of all front main walls	8.5 m for 51.9 % of the total width of all front main walls (reduced from 8.66 m for 100% of front main walls)
2	Height of rear main walls	7.5 m for no less than 60% of the total width of all rear main walls	8.5 m for 75.1 % of the total width (reduced from 8.48m for 100% of the total width of all rear main walls.)
3	Front porch height	1.2 m above established grade	1.30 m (reduced from 1.50 m)
4	Coverage	25% of lot area	29.97% of lot area (reduced from 29.99%)
5	Front stairs width	2.0 m	2.44 m (unchanged)
6	Building Height (From By-law 7625 ¹)	8.80 m	9.08 m (reduced from 9.26m)

MATTERS IN ISSUE

The parties agree that as far as the Provincial Policy Statement and the Greater Golden Horseshoe Growth Plan are concerned, the *Planning Act* requirements are met.

There is also agreement that 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 main Official Plan policy is s. 4.1.5 of the Official Plan of the City of Toronto in which the physical form of the development must “fit in” physically with the surrounding neighbourhood.

¹ Despite the fact that by-law 569-2013 was adopted in 2013, appeals against it are still outstanding so the Buildings Department reviews plans under both by-laws.

Table 2. The following variances were originally sought. Mr. Ghassemi has revised his plans “downward” so, they are now <u>not</u> being sought.			
		Required/Permitted	Proposed
1	Height of rear deck above established grade	1.2 m	1.37 m
2	Front porch west side yard setback	1.8 m	1.18 m
3	Minimum required east side yard setback for the front porch canopy	1.8 m	1.21 m
4	West side yard setback	1.8 m	1.3 m
5	Roof eave projection	no closer than 0.3 m	Encroached 1.11m into the west side yard setback.
6	Front porch canopy	No larger than front porch platform	Encroached 0.65m beyond the platform it is covering into the west side yard setback

Section 45 (18.1.1) order

Normally a change made to the application after the Committee of Adjustment decision requires the proponent to give further notice. Section 45(18) of the *Planning Act* is designed to take care of this eventuality by permitting the TLAB to dispense with further notice if the amendments are “minor”². Because no variance is increased (the settlement has brought about only “downward” changes and no parameter has been increased) — I find the amendments are minor. The jurisprudence indicates that in this situation such an order will be routinely made³, and I will make an order dispensing with further notice.

Principles of tribunal deference to a settlement

I am departing from the standard decision template since there is agreement as to the result under s. 45(1) of the *Planning Act*. There is no need to make findings of credibility and there is no chance of a request for a review. I only need to make enough findings to satisfy my duty to ascertain that the four tests have been met.

In assessing whether a settlement is reasonable, it is useful to use the approach in the Law Society's *Stephen Alexander Cooper*⁴. This is a case from the Tribunal's Appeal Division, which was hearing an appeal from the Hearing Panel's (the trial arm's) decision. The parties submitted an agreed statement of facts and recommended to the Hearing Panel a penalty of two and a half months, which the Hearing Panel altered to a more severe penalty of four months' suspension. In other words, the Hearing Panel departed from the parties' agreed-on result. The Appeal Decision said this was an error:

What motivates that jurisprudence [to hesitate to depart from a settlement and do so only in a judicial way] . . . are compelling policy reasons to **presumptively accept** joint submissions. The presumptive acceptance of joint submissions **promotes resolution, the saving of time and expense, and reasonable certainty for the parties**. If joint submissions are regularly disregarded, there is less incentive to enter into them. (my bold)

² 45(18.1) On an appeal, the Tribunal may make a decision on an application which has been amended from the original application if, before issuing its order, written notice is given to the persons and public bodies who received notice of the original application under subsection (5) and to other persons and agencies prescribed under that subsection.

Exception

45(18.1.1) The Tribunal is not required to give notice under subsection (18.1) if, in its opinion, the amendment to the original application is minor. (s. 45, *Planning Act*)

³ *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)).[...]

⁴ *Law Society of Upper Canada v. Stephen Alexander Cooper*, 2009 ONLSAP 7 (CanLII)

This case gives rigour to settlements and fills in gaps in the TLAB's Rules of Practice and Procedure⁵, which encourage settlements but do not give guidance as to how a settlement differs from a normal contested hearing.

ANALYSIS, FINDINGS, REASONS

Cooper states that if a settlement is to be rejected, there must be reasons explaining why the panel has departed from the settlement. Otherwise, deference should be given unless the result falls outside a range of reasonable outcomes. After hearing Mr. Chan's uncontradicted evidence, I find the result set out in the Minutes constitutes a reasonable outcome and, in my view, satisfies the four tests.

I will comment on two key variances.

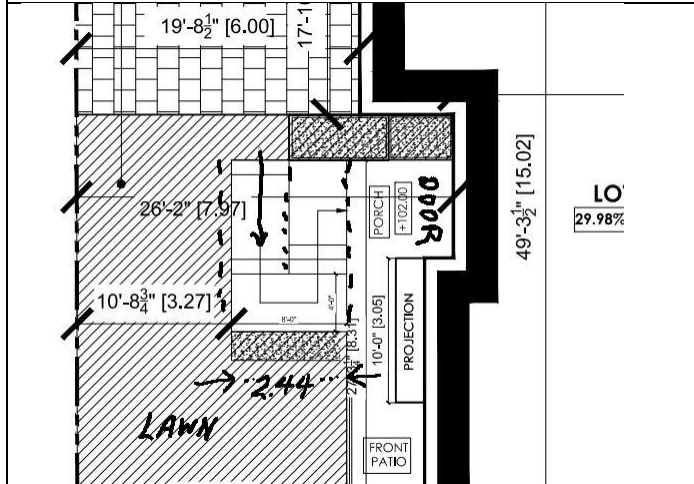
Mr. Chan explained that the main wall heights require only that **one pair** of walls, that is, either the front and rear OR the two side walls must meet the requirement of 7.5 m for no less than 60% of the total width. The remain pair is free to be any height the owner wishes, subject to the overall height limit (10 m, 2 stories).

In paragraph 11.4 of his witness statement, Mr. Chan wrote that a large number of properties in the neighbourhood had received variances similar to or greater than what Mr. Ghassemi was seeking.⁶

On his review of the neighbourhood as a whole, Mr. Chan found the number of properties that had approvals "are in the majority of the development applications in the Geographic Neighbourhood". The subject seeks a main wall height of 8.5 m; 7.5 m permitted. Mr. Chan found an increased height of main wall height was granted for 11 Fordham Place (9.45 m). 98 Berkinshaw Cr (8.78 m) and an overall building height variance was granted to 16 Fordham Pl, (10.56 m). He said that this case would not create a precedent. I accept that the main wall heights meet the statutory tests and would "fit into" this neighbourhood.

⁵ 19.1 The TLAB is committed to encouraging Parties to settle some or all of the issues by informal discussion, Exchange and Mediation. 19.2 Parties who arrive at a settlement shall Serve the terms of the proposed settlement on all other Parties and Participants and File same with the TLAB at the earliest possible date. 19.3 The TLAB shall give notice to all Parties and Participants of the date, time and location of the settlement Hearing, and shall thereafter conduct an expedited settlement Hearing on the terms of the proposed settlement. 19.4 Where no Person at the Hearing opposes the proposed settlement or where the TLAB rejects an objection the TLAB may issue an order giving effect to the settlement and any necessary amendments.

Figure 3: Front porch; width of steps is shown by the number 2.44 between arrows



I now turn to the stair width. The diagram above shows that porch stairs are at right angles to the front door, so that persons entering the house have to make a 180 degree turn on a landing in the middle. It is this landing 2.44 m (8 feet) wide and in effect a “double” staircase that triggers the need for a variance. A straight-on porch would stick into the lawn, possibly needing a new variance for front yard setback, which this design tries to avoid and in so doing maintains the intent of the zoning requirement. I find both the main wall height and stairs deal with specific situations on the subject property to reinforce and respect the physical characteristics of the neighborhood.

In conclusion I find all variances meet the statutory tests individually and cumulatively and are minor and desirable for the appropriate development of the land.

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⁶ Out of these approvals, 150 developments were granted minor variances related to one or more of the zoning regulations seeking massing-related variances to building height, pedestrian entrance height, main wall height, lot coverage, and side yard setbacks. The approvals include: 121 variances for increased lot coverage, 65 variances to reduce the side yard setback, 14 of 21 variances for increased building height, 7 variances to increase the rear main all height, 6 variances to increase the front main wall height, and 1 variance to increase the pedestrian entrance height. (Mr. Chan’s Witness Statement)

I find the amendments are minor (s. 45(18.1.1 of the *Planning Act*) so no further notice has to be given for changes to the original application.

I authorize the variances in Table 1 on the following Conditions of Approval:

1. The proposed dwelling shall be constructed substantially in accordance with the set of plans prepared by Arklab **and filed with the TLAB as part of the Minutes of Settlement on November 23, 2021**⁷: cover sheet and project statistics, Site Plan (A001), Landscaping Statistics (A002), Basement Floor Plan (A100), Ground Floor Plan (A101), Second Floor Plan (A102), Roof Plan (A103), Front Elevation (A200), Rear Elevation (A201), West Elevation (A202), and East Elevation (A203).
2. The owner shall install a minimum 1.8 m high privacy screen on the west side of the rear ground floor deck.
3. No mechanical units, including air conditioning units, shall be located in the west side yard or on the west wall of the building.
4. No security cameras shall be directed at the adjacent property to the west, municipally known as 60 Norden Crescent.
5. No lighting shall be installed on the west wall of the building that is directed at the adjacent property to the west, municipally known as 60 Norden crescent. Notwithstanding the foregoing, wall sconces with downward-directed lighting shall be permitted on the west wall of the building to direct light downward only to light up the path. Security lighting shall be permitted on the west wall of the building, provided that it is located within 1.0 m of the front main wall or the rear main wall, and provided that the lights located near the front main wall are directed generally down and towards the front yard of the subject property, the lights located near the rear main wall are directed generally down and towards the rear yard **of 62 Norden Crescent**, and in no event will such security lighting cast light on 60 Norden Crescent.
6. The grading and drainage plan submitted with the building permit application in respect of 62 Norden Crescent shall ensure that drainage is contained within 62 Norden Crescent, and that downspouts, grading and other water management measures shall not be directed toward the west lot line in a manner that would allow water to drain into or onto the lands known as 60 Norden Crescent.
7. The rear platform height shall be substantially as shown on the plans **in the Minutes of Settlement** and, in any event, **in respect to** the rear platform
 - (i) height shall not exceed 6 ft. 3 in. above front **average established grade** (100.63 m),
 - (ii) depth shall not exceed 7 ft; and

⁷ Bold indicates where I have departed from the wording given by the parties

- (iii) width shall not exceed 19 ft. 4 in.
8. The west side wall shall only have one ground floor window. The west wall shall not have any windows projecting out from the main wall and shall contain no second storey windows.
 9. The owner shall submit a complete application for a permit to injure or remove a city owned tree(s), as per City of Toronto Municipal Code Chapter 813, Trees Article li Trees on City Streets



X

Ted Yao
Panel Chair, Toronto Local Appeal Body