

**Local Planning Appeal Tribunal**  
Tribunal d'appel de l'aménagement  
local



**ISSUE DATE:** January 03, 2019

**CASE NO(S):** PL161314

The Ontario Municipal Board (the “OMB”) is continued under the name Local Planning Appeal Tribunal (the “Tribunal”), and any reference to the Ontario Municipal Board or Board in any publication of the Tribunal is deemed to be a reference to the Tribunal.

**PROCEEDING COMMENCED UNDER** subsection 45(12) of the *Planning Act*, R.S.O. 1990, c. P.13, as amended

Applicant and Appellant:	First Narayever Congregation
Subject:	Minor Variance
Variance from By-law No.:	By-law No. 569-2013 (not in full force) & By-law No. 438-86
Property Address/Description:	187-189 Brunswick Avenue
Municipality:	City of Toronto
Municipal File No.:	A0927/16TEY
OMB Case No.:	PL161314
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OMB Case Name:	First Narayever Congregation v. Toronto (City)

**Heard:** June 19, 2017, August 25, 2017 and January 18, 2018 in Toronto, Ontario

**APPEARANCES:**

**Parties**

First Narayever Congregation

City of Toronto

**Counsel**

Ronald Kanter

Laura Bisset  
Sara Amini

Nicole Schulman and Rob Hanks, Ian Flett  
Chris and Julie Hughes, Suzann  
Kronovič, Sara Allin, Ian and  
Deborah Wallace

## **DECISION DELIVERED BY MICHEL BELLEMARE AND ORDER OF THE TRIBUNAL**

### **A. OVERVIEW**

[1] The First Narayever Congregation (“Congregation”) appealed the City of Toronto’s (“City”) Committee of Adjustment’s refusal to permit their application to expand their place of worship. At the hearing, the City and a group of neighbours raised objections to the Congregation’s plans.

[2] Based on the evidence and for the following reasons, I hold that the Tribunal should allow the appeal and permit the requested relief, subject to several conditions.

### **B. BACKGROUND**

[3] Built in 1890 and listed on the Toronto Heritage Register, the brick building on the subject property has been the Congregation’s home since 1943, when it was converted into a synagogue. To accommodate the needs of worshipers and make the building accessible to all of their members, the Congregation developed plans for a one-storey addition to the front of the building, and an extension into the rear yard.

[4] With the Committee of Adjustment denying permission to go ahead with their plans, the City challenged the Congregation’s appeal, and a group of neighbours joined as Parties at the hearing.

[5] During the course of this proceeding, and without any objections, the Congregation amended its application as the City identified new zoning requirements, and because the Congregation wanted to address concerns and narrow the issues. While the proposal requires no permissions *vis-à-vis* zoning By-law No. 438-86, the

chronology of changes to the requested permissions regarding zoning By-law No. 569-2013 (not yet in full force and effect) are set out in Exhibit 2, Tab 31. The revised permissions (“Revised Permissions”) are as follows:

**1. Chapter 10.10.20.100.(8)(B), By-law 569-2013**

The minimum required lot frontage for a Place of Worship is 30 m. The altered building will be located on a lot with a lawfully existing frontage 9.76 m.

**2. Chapter 10.10.40.40.(1)(A), By-law 569-2013**

The maximum permitted floor space index is 1.0 times the area of the lot (403 m<sup>2</sup>). The altered building will have a floor space index equal to 1.60 times the area of the lot (646 m<sup>2</sup>).

**3. Chapter 10.10.40.70.(1), By-law 569-2013**

The minimum required front yard setback is 3.385 m. The altered building will be located 0.0 m from the front lot line.

**4. Chapter 10.10.40.70.(2), By-law 569-2013**

The minimum required rear yard setback is 7.5 m. The altered building will be located 6.980 m from the rear lot line.

**5. Chapter 10.10.40.70.(3)(C), By-law 569-2013**

The minimum required side yard setbacks for the front addition not located above the lawfully existing building is 7.5 m for the 3.790 m portion of the front addition facing the north lot line and the 3.590 m for the portion of the front addition facing the south lot line. The front addition will be located 0.495 m from the north side lot line and 1.190 m from the south side lot line.

**6. Chapter 10.5.40.71.(4)(B), By-law 569-2013**

The minimum required side yard setbacks for the rear addition is 3.75 m. The rear addition will be located 0.700 m from the north side lot line and 1.195 m from the south side lot line.

**7. Chapter 150.50.50.10.(1)(C), By-law 569-2013**

A Place of Worship must provide a fence and a 3.0 m wide strip of soft landscaping along the entire length of the part of the lot line abutting a lot in a residential zone category. The lot does not have a continuous fence, and will provide a strip of abutting soft landscaping with a width of 0.495 m on the north side, 1.19 m on the south side, and 1.2 m at the rear.

**8. Chapter 150.50.150.1.(1), By-law 569-2013**

A Place of Worship must store all waste and recyclable material in a wholly enclosed building.

In this case, all waste and recyclable material will be stored exterior to the building in an ancillary waste enclosure structure located in the rear yard.

**9. Chapter 200.5.10.1.(1), By-law 569-2013**

A minimum of 18 parking spaces are required to be provided.

In this case, zero parking spaces will be provided.

[6] At the hearing, with no objections from the Parties of record, I granted requests for Party status to the following individuals who live in the surrounding area: Nicole Schulman and Rob Hanks, Chris and Julie Hughes, Suzann Kronovič, Sara Allin, Ian and Deborah Wallace.

**C. ANALYSIS AND FINDINGS**

[7] As a preliminary finding, I am satisfied the changes to the original application are minor and, pursuant to subsection 45(18.1.1) of the *Planning Act* (“Act”), no further notice is required.

**1. Policy Context and Tribunal’s Authority**

[8] Section 2 of the Act requires the Tribunal to “have regard to” several “matters of provincial interest”, including: the conservation of features of significant architectural, cultural, historical, archaeological or scientific interest; the accessibility for persons with disabilities to all facilities, [and] services [...]; the appropriate location of growth and development; the promotion of development that is designed to be sustainable, to support public transit and to be oriented to pedestrians; and the promotion of built form that is well-designed.

[9] Under subsection 3(5) of the Act, decisions of the Tribunal must “be consistent with” policy statements issued under subsection 3(1) of the Act, and shall “conform with” provincial plans or not conflict with them, as the case may be. The Tribunal’s Decision

must therefore be consistent with the Provincial Policy Statement, 2014 and conform with the Growth Plan for the Greater Golden Horseshoe Area (“Growth Plan”).

[10] As subsection 45(18) of the Act provides, the Tribunal “may dismiss the appeal and may make any decision that the committee could have made on the original application”. This is therefore a new hearing on the matter. Also, on any authority or permission it grants, the Tribunal has the power to impose terms and conditions it considers advisable, pursuant to subsection 45(9) of the Act.

## **2. Application Must Satisfy Test for a Legal Non-Conforming Use**

[11] Subsection 45(1) of the Act confers on the Committee of Adjustment—and the Tribunal on appeal—the power to authorize variances to the zoning requirements under a four-part test. However, the Congregation’s plans require no such variances to zoning By-law No. 438-86. As Antonio Volpentesta testified, the latter provides a “permissive exception” for places of worship applying to all use districts. He highlighted section 11(1)3, which provides that “none of the provisions of this by-law or of any restrictive by-law applies [...] to prevent the use of land or the erection or use of a building or structure on land for the purpose of a place of worship provided the land, building or structure was, on April 13, 1959, owned by the place of worship and used for its purposes”. Mr. Volpentesta testified that the Congregation has owned the subject property since 1943 and has used it continuously as a place of worship.

[12] By-law No. 569-2013 introduces restrictive zoning provisions for places of worship. However, the subject property enjoys a legal non-conforming use as a place of worship. The Congregation’s application is therefore governed by subsection 45(2)(a)(i) of the Act, conferring on the Committee of Adjustment—and this Tribunal—the power to permit “the enlargement or extension of the building or structure”.

[13] Unlike subsection 45(1) of the Act, there is no statutory test prescribed under subsection 45(2)(a)(i). However, the Tribunal (and previously, the Ontario Municipal

Board) has developed a two-part test to determine whether to grant permission under this statutory provision. In essence, the Tribunal considers the desirability of the proposed development of the subject property and the impact on the surrounding area. That analysis poses two key questions: (1) is the proposal desirable for the appropriate development or use of the subject property? and (2) Will the proposal have an unacceptable adverse impact on the surrounding area?

[14] The City appeared in opposition to the appeal, and called Mladen Kukič, a professional planner with the municipality qualified to provide evidence in land use planning. The City's main objection related to a proposed reduced rear yard setback—currently 6.98 metres (“m”) — to 5 m. The City was also concerned with privacy and overlook relating to plans for an elevated rear deck, and proposed conditions regarding heritage and tree preservation. In response to these concerns, the Congregation amended their plans to respect the current rear yard setback, and eliminated the elevated rear deck. The Congregation also agreed to the conditions, which I have incorporated into the Order.

[15] Testifying in support of the appeal and the Congregation's application were: Mr. Volpentesta, a professional planner qualified to give evidence in land use planning; Alison Engel-Yan, a member of the Congregation; Jana Levitt, a professional architect qualified to give evidence in that capacity; Gary Lichtblau, a member of the Congregation; and Elizabeth Bohnen, chair of the Congregation's membership committee.

[16] Testifying against the appeal were: Ian Bruce, an arborist qualified to give evidence in that capacity; Suzann Kronovič; and Michael Manett, a professional planner qualified to provide evidence in land use planning.

[17] The Provincial Policy Statement and the Growth Plan contain policies that promote intensification as well as the efficient use of lands where municipal services exist. Subsection 1.1.1 of the Provincial Policy Statement notably provides that healthy, liveable and safe communities are sustained by “accommodating an appropriate range

and mix of residential [...], employment [...], *institutional (including places of worship [...])*, recreation, park and open space, and other uses to meet long-term needs” [Emphasis added].

[18] Policy 4.1.1 in the City’s Official Plan highlights that neighbourhoods “are considered physically stable areas made up of residential uses [...]” where “[p]arks, *low scale local institutions*, home occupations, cultural and recreational facilities and small-scale retail, service and office uses are also provided for [...]. Low scale local institutions play an important role in the rhythm of daily life in Neighbourhoods and include such uses as: schools, *places of worship [...]*” [Emphasis added].

[19] Mr. Volpentesta testified that four of the nine Requested Permissions—relating to minimum frontage for a place of worship, landscaping and fencing, storage of waste, and parking—reflect existing conditions. The other Requested Permissions relate to setbacks for the front and rear additions and the overall density (floor space index) of the building. He testified that the Congregation revised its proposal to address concerns, including the removal of a second storey to the rear yard addition. According to Mr. Volpentesta, the plans’ goal is not to increase the place of worship’s use but to “create a barrier free building to meet accessibility standards” by adding an elevator, improve existing programming by creating more flexible space, and update aging mechanical equipment.

[20] A longtime member of the Congregation, Ms. Engel-Yan testified that her daughter, Gaby, would greatly benefit from the proposal’s features aimed at reducing barriers and improving wheelchair access throughout the place of worship.

[21] Ms. Levitt provided an overview of the architectural plans focused on providing a barrier-free place of worship, reconfiguring current space, and “instead of going up, going down” with additional programming space in the basement to minimize any shadow impact due to the proposal.

[22] Photos entered into evidence illustrated Mr. Volpentesta's description of the physical character of the area as a "mature, urban, residential neighbourhood with a variety of built form, height, scale and density". The area is well-served by public transit with some parking also available on the street. Mr. Volpentesta also highlighted that the absence of onsite parking was not unusual for a place of worship in this part of Toronto. While the Congregation was exploring the possibility of securing off-site parking if necessary, to reach the subject property many congregants either walked, cycled, took public transit or called a taxi.

[23] Mr. Volpentesta testified that the proposal was consistent with the Provincial Policy Statement and conforms with the Growth Plan, is in keeping with the character of the neighbourhood, is desirable for the appropriate development and use of the subject property, and would have no adverse impact on the surrounding area.

[24] Mr. Manett outlined his concerns about the proposal, focused principally around the notion that the building's increase in size would bring about a more intense use, and therefore create an unacceptable adverse impact on the neighbourhood's stability. He surmised that creating a more desirable space would lead to the place of worship holding more events, leading to a greater need for parking (a concern shared by Ms. Kronovič) and waste disposal. At best, I find his conclusions speculative.

[25] As Mr. Volpentesta testified, the absence of parking on the subject property has been "an existing condition since the 1890s" when the building was constructed. Also, the proposal will see waste and recycling—currently stored along the side of the vestibule—moved and enclosed at the rear of the building. With the proposal subject to site plan, it is the City's responsibility to enforce the site plan conditions and its own by-laws, including parking and property standards.

[26] Mr. Manett also highlighted his concern that the building was included in the City's Heritage Register, and believed it was premature to consider any changes until the City had completed its heritage assessment. However, the Tribunal's Order is

conditional on the Congregation submitting a heritage impact assessment to the City's satisfaction, prior to the issuance of any building permit.

[27] I prefer the planning evidence of Mr. Volpentesta and that of Mr. Kukič who, given the revised rear yard setback, had “no objections” to the proposal.

[28] Mr. Bruce provided his assessment concerning a City-owned tree in front of the subject property. He was unaware of the Congregation's own arborist's assessment (Exhibit 2, Tab 33) of that tree plus another in the back yard of the adjacent property to the north. The Congregation's plans are to protect and preserve the City tree—under the City's supervision—and prune the neighbouring tree that overhangs the subject property without causing any significant injury to it.

[29] As Ms. Bohnen testified, members of the Congregation value the place of worship's location in this part of Toronto. I find that its presence here for the past 75 years is evidence of the place of worship's status as a local institution with deep roots in the community.

### **3. Revised Permissions Meet the Test**

[30] Based on the evidence, I find that the Revised Permissions, both individually and cumulatively, meet the requirements under subsection 45(2) of the Act. I am satisfied that the proposal: has regard for matters of provincial interest; is consistent with the Provincial Policy Statement; conforms with the Growth Plan; is, from a planning and public interest point of view, desirable for the appropriate development and use of the subject property; and will have no unacceptable adverse impact on the surrounding area.

#### **D. ORDER**

[31] The Tribunal allows the appeal and grants the Revised Permissions, subject to the following conditions:

1. Prior to the issuance of any building permit, the Congregation shall submit a Heritage Impact Assessment that satisfies the requirement of the Senior Manager, Heritage Preservation Services.
2. The proposal shall be constructed substantially in accordance with the plans prepared by LGA Architectural Partners dated January 15, 2018.
3. Submission of a complete application for a permit to injure or remove City owned trees under Municipal Chapter 813 Article II, Street trees.
4. That the second floor of the proposed addition have a maximum building depth of 15.6 metres, as per architectural plans dated January 15, 2018.

[32] The requested permissions relating to By-law No. 569-2013 are contingent on that by-law coming into full force and effect.

*“Michel Bellemare”*

MICHEL BELLEMARE  
MEMBER

If there is an attachment referred to in this document,  
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**Local Planning Appeal Tribunal**

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