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PL081422

Ontario
Ontario Municipal Board
Commission des affaires municipales de l'Ontario

IN THE MATTER OF subsection 53(19) of the *Planning Act*, R.S.O. 1990, c. P.13, as amended

Applicant/Appellant: Darryl Jessop
Subject: Consent
Property Address/Description: 14-16 Wineva Ave
Municipality: City of Toronto
OMB Case No.: PL081422
OMB File No.: PL081422
Municipal No. B0131/08TEY

IN THE MATTER OF subsection 53(19) of the *Planning Act*, R.S.O. 1990, c. P.13, as amended

Applicant/Appellant: George Gasiiecki
Subject: Consent
Property Address/Description: 18 Wineva Ave
Municipality: City of Toronto
OMB Case No.: PL081422
OMB File No.: PL081423
Municipal No. B0133/08TEY

IN THE MATTER OF subsection 45(12) of the *Planning Act*, R.S.O. 1990, c. P.13, as amended

Applicant /Appellant: Darryl Jessop
Subject: Minor Variance
Variance from By-law No.: 436-86
Property Address/Description: 14-16 Wineva Ave
Municipality: City of Toronto
OMB Case No.: PL081422
OMB File No.: PL081424
Municipal No. A0927/08TEY

IN THE MATTER OF subsection 45(12) of the *Planning Act*, R.S.O. 1990, c. P.13, as amended

Applicant /Appellant: Darryl Jessop
Subject: Minor Variance
Variance from By-law No.: 436-86
Property Address/Description: 14-16 Wineva Ave
Municipality: City of Toronto
OMB Case No.: PL081422
OMB File No.: PL081425
Municipal No. A0928/08TEY

IN THE MATTER OF subsection 45(12) of the *Planning Act*, R.S.O. 1990, c. P.13, as amended

Applicant/Appellant: Darryl Jessop
 Subject: Minor Variance
 Variance from By-law No.: 436-86
 Property Address/Description: 14-16 Wineva Ave
 Municipality: City of Toronto
 OMB Case No.: PL081422
 OMB File No.: PL081426
 Municipal No. A0929/08TEY

IN THE MATTER OF subsection 45(12) of the *Planning Act*, R.S.O. 1990, c. P.13, as amended

Applicant /Appellant: Darryl Jessop
 Subject: Minor Variance
 Variance from By-law No.: 436-86
 Property Address/Description: 14-16 Wineva Ave
 Municipality: City of Toronto
 OMB Case No.: PL081422
 OMB File No.: PL081427
 Municipal No. A0930/08TEY

APPEARANCES:

Parties

Counsel*/Agent

Darryl Jessop

A. Brown*

City of Toronto

A. Moscovich*

Toronto East Beach Residents Association

J. McInerney

DECISION DELIVERED BY R. ROSSI AND ORDER OF THE BOARD

This is an application under Sections 53 and 45 of the *Planning Act* for consent and variances to merge two lots, 14 and 16 Wineva Avenue (located at the northwest corner of Wineva Avenue and Alfresco Lawn in the Beach neighbourhood of the City of Toronto) in order to create a parcel of land and to further sever the merged land into three (3) residential lots and to create rights-of-way to widen the abutting laneway that would provide rear access to the lots. The following variances are sought:

East Lot

1. Proposed residential gross floor area of the new home is 1.06 times the area of the lot (197.6 square metres), whereas the By-law permits a residential gross floor area of 0.6 times the area of the lot (111.6 square metres).
2. Proposed new home will be located 1.12 metres from the front lot line, whereas the By-law requires a minimum setback of 6.0 metres from the front lot line.
3. Proposed new home will have a rear yard setback of 3.79 metres, whereas the By-law requires a minimum rear yard setback of 7.5 metres.
4. Proposed new home will have a flanking side yard setback of 1.69 metres, whereas the By-law requires a flanking side yard setback of 6.0 metres from Wineva Avenue.
5. Proposed landscaped open space is 22% of the area of the lot (41.2 square metres), whereas the By-law requires a minimum landscaped open space equal to 30% of the area of the lot (55.8 square metres).

Centre Lot

1. Proposed residential gross floor area of the new home is 1.39 times the area of the lot (192.8 square metres), whereas the By-law permits a residential gross floor area of 0.6 times the area of the lot (83.4 square metres).
2. Proposed new home will be located 1.12 metres from the front lot line, whereas the By-law requires a minimum setback of 6.0 metres from the front lot line.
3. Proposed new home will have a rear yard setback of 3.79 metres, whereas the By-law requires a minimum rear yard setback of 7.5 metres.
4. Proposed landscaped open space is equal to 21% of the area of the lot (30.4 square metres), whereas the By-law requires a minimum landscaped open space equal to 30% of the area of the lot (41.7 square metres).

West Lot

1. Proposed residential gross floor area of the new home is 1.38 times the area of the lot (192.8 square metres), whereas the By-law permits a residential gross floor area of 0.6 times the area of the lot (84.0 square metres).
2. Proposed new home will be located 1.12 metres from the front lot line, whereas the By-law requires a minimum setback of 6.0 metres from the front lot line.
3. Proposed new home will have a rear yard setback of 3.79 metres, whereas the By-law requires a minimum rear yard setback of 7.5 metres.
4. Proposed landscaped open space is equal to 21% of the area of the lot (30.4 square metres), whereas the By-law requires a minimum landscaped open space equal to 30% of the area of the lot (41.7 square metres).

Counsel Adam Brown represented the Applicants and Planner Michael Goldberg spoke in support of the application. Counsel Abbie Moscovich represented the City of Toronto and City Planner Leontine Major spoke in opposition to the application. The Toronto East Beach Residents Association (the "Association") was granted Party status on consent with questioning and presentations made by a number of residents. Both the Association and interested participants spoke in opposition to the application. Both professional witnesses were qualified to provide their professional land use planning evidence and expert opinions.

The subject property is located at the corner of Wineva Avenue and Alfresco Lawn in the Beach neighbourhood of the City of Toronto. There is a pair of existing semi-detached dwellings on the subject site with frontage on Wineva Avenue. Three new homes, each roughly 2,000 square feet in size, would be created on three, square lots. Generous third-storey decks, permitted in the Zoning By-law, would be built atop each roof to serve as amenity space. The structures would be still under the maximum height allowed in the By-law. Lots A and B would have frontage on Alfresco Lawn and Lot C would have frontage on Wineva Avenue. The lot frontage for Lots A and B would be the same at 9.14 metres; the corner lot, Lot C, would have frontage of 12.19 metres. The overall height of the three dwellings would be 10.77 metres, below the By-law maximum standard of 12 metres. That measurement is taken to the top of the railing of

the third-floor deck. The real roof height would be approximately 9.44 metres. A three-metre-wide private lane, with an effective width of 3.49 metres and extending from Wineva Avenue to City Lane, would serve as the entrance for the homeowners to parallel park their vehicles in the rear of their homes. This laneway would connect with City Lane, a public laneway that serves residents' rear yards on Leuty and Wineva Avenues.

Density for each house would exceed 1 times the lot area, which is not an unusual feature of the neighbourhood based on existing structures and previous City approvals of higher density applications. As Planner Michael Goldberg opined, this speaks to the characterization of the area as a high-coverage and high-GFA ratio neighbourhood in the R2 Z0.6 Zone. The City has approved similar densities in excess of 1 times the lot area in the neighbourhood in forms of development comprised of semis, singles and apartment buildings. Examples include 36/38 Glen Manor Drive (1.78 density); 15 Glen Manor Drive (2.12); 56/58 Hammersmith Drive (1.65); 60/62 Hubbard Boulevard (1.67); 58 Hubbard Boulevard (1.67); and 74 Hubbard Boulevard (1.96). Variations in density and built forms are established features of this neighbourhood.

The Beach is a highly desirable neighbourhood and the subject property is situated near the boardwalk as well as being located in close proximity to Lake Ontario. There is a desire for reinvestment in this neighbourhood and the area has experienced both reinvestment and redevelopment, mostly in the form of additions to existing houses. Numerous examples of such redevelopment were referenced at the hearing and the City has approved other applications requesting lower frontages and a full range of densities. Some of these proceeded without appeals.

This is also a tightly knit, urban residential neighbourhood with a range of lot frontages, many of which are small. Mr. Goldberg's study area was broader than that of the City or the lay witness from the Residents Association. The Board accepted Mr. Goldberg's area of study as appropriate for and supportive of his informed evaluation of the proposal in the larger context of what is occurring and currently existing in the larger neighbourhood. On Wineva Avenue, data he presented to the Board showed that 65% of the lots fall into the category of 7.62 metres or less of lot frontage. 366 lots in this planner's study area, or 62%, fell within that range. There are numerous, close property

relationships and a range of lot depths, such that the proposed homes are not out of keeping with the surrounding neighbourhood. Exhibit 3 showed conventional lotting arrangements with 30-to-35-metre depths as well as shallower depths, such as 20.13-metre depths for the homes at 2 to 10 Alfresco Lawn; and 13.1 to 14.8-metres deep lots at 64 to 70 Hubbard Boulevard at the corner of Glen Manor Drive. The Board determines there is little consistency in terms of lot depths but it is that variation that contributes to the neighbourhood feel that residents derive from their rear yards, whether generous or limited in size. This too, is a feature of the Beach neighbourhood.

In terms of lot orientation, the proposed eastern lot would front onto Wineva Avenue as the existing semi-detached homes front. The new homes on the western and centre lots would front onto Alfresco Lawn in keeping with the alignment of the other homes on this portion of the street. The Board was presented with visual evidence of existing side yard walls immediately adjacent to rear lot lines, most notable in conditions where an east-west street intersects a north-south street. Examples exist, among other places, on Alfresco Lawn, Violet, Lee, Bonfield and Selwood Avenues. The Board determines that lot orientation for the proposed development is not out of keeping with what occurs already in the neighbourhood and no impacts are caused by proposing rear lot lines facing a side wall of a neighbour's home.

There are a number of two-storey, two-and-a-half-storey and three-storey dwellings in the neighbourhood, comprised of mostly older houses and architectural styles. City Lane runs behind the homes on Leuty and Wineva Avenues in a north-south direction, providing access to the rear yards of the homes on these streets where the driveways and garages for vehicle parking are located. The common architectural vernacular in the area is for houses to have both a front porch and second-floor deck facing the front. Front yards for these homes are typically small and are defined by setbacks from the front lot line. There is no sidewalk on the north side of Alfresco Lawn and its public boulevard is actually a lawn at a zero-metre lot line. Residents of the homes along Alfresco Lawn are able to use the public boulevard as their lawns.

The area is designated "Neighbourhoods" in the City of Toronto Official Plan and is zoned R2. Z0.6. There are some traditional standards north of the subject property but moving south, one notes a pattern of smaller-configured lots, larger footprint coverage as well as apartment dwellings. Many of these properties have no outdoor

amenity spaces and instead have decks. Many do not have rear lawns and instead, the rear yards are covered with driveways for parking as well as with accessory buildings. There are also numerous renovated and newer residential buildings throughout the neighbourhood. The Board notes the new building located at the corner of Hubbard Boulevard and Glen Manor Drive – a three-storey apartment building that covers most of the lot at a density of 2.12 times the area. At 15 Lee Avenue, there is an apartment building that was constructed in 1994 as well as many vintage apartment buildings throughout the neighbourhood. There are several multi-unit dwellings in close proximity to the subject property. The entire area is zoned R2 and is one of the more permissive zones for residential use, allowing for a wide range of singles, semis, semi-detached duplexes, apartment buildings, walk-up apartment buildings, rows and townhouses. (Exhibit 2, Tab 3, pp 19 and 22). Residents have taken full advantage of this fact by building a diverse range of houses, whether maintaining existing structures, renovating and refurbishing those buildings or electing instead to build new structures. It is this blend of old and new, original and renovated that defines the character of this neighbourhood in the Board's determination.

Parking in the neighbourhood is as varied as the types of dwelling units. Some residents park on the street. Others are able to park on front yard pads and in the rear yards or in rear, detached garages, with some open spaces having decks spanning the top of the rear yard spaces. These areas are accessed from lanes or flanking yards. Some front garages, such as those at the corner of Balsam and Hammersmith Avenues, occur in redeveloped homes. A common feature of this neighbourhood is the high number of these rear yard garages that are often located adjacent to neighbouring lot lines. In recent years, the City has approved previous applications for below-grade, at-grade and rear parking situations near the subject property.

The Applicant proposes a parking solution that maximizes use of the rear yards of the three new lots. In the case at hand, parallel parking would serve each of the three units and the formal right of way, at three metres wide (an effective width of 3.49 metres to accommodate the three parking spaces parallel to the laneway), satisfies the City's requirements for parallel parking. The laneway is made possible as a result of an agreement concluded between the Applicant and the property owner of 18 Wineva Avenue. Evidence was also presented to show that neither the Transportation Services nor the Technical Services Division of the City opposes the proposed laneway. The

City planner also presented no evidence to counter Mr. Goldberg's evidence that the laneway is operationally feasible as a right of way entrance to the parking spaces. From an operational standpoint, residents whose properties would abut the new laneway would have to ensure that the laneway remains clear of obstacles and like any other private laneway in the City, residents would have to address the issue of snow clearance during snowfalls. The Board assigned no weight to two residents' concern, with no supporting evidence, that people driving along Hubbard Boulevard might confuse the entrance to the new laneway with the street and try to enter it instead of traveling toward Alfresco Lawn. As stated, the relevant departments of the City reviewed all aspects of the proposed laneway and they expressed neither objection to, nor concern with, the operability of the new laneway. The Board determines that the laneway is appropriate to service and support the three new residential lots and would create no adverse impacts on the surrounding homes or the larger neighbourhood.

Like the subject property, and as with the new lots, most homes in the area front onto the street. The existing dwelling on the subject property fronts onto Wineva Avenue with its side yard facing Alfresco Lawn. The replacement dwelling on the corner would have the same orientation to Wineva Avenue as the existing semi-detached dwelling, while the two new houses fronting onto Alfresco Lawn would have a north-south orientation just like the other houses on that street. The proposed frontages for the new houses would be larger than many of the houses in the area. The Board finds persuasive Mr. Goldberg's opinion that from a streetscape perspective, it is not possible to determine the depth of a lot when viewed from the street; a fact with which City Planner Leontine Major agreed. The most important aspect of the proposed lot creation and deployment of the new houses is how they would present to the street. Mr. Goldberg noted that they are 'operational', in that they sit no differently than other dwellings in the neighbourhood and amenity space would be provided on top floor outdoor decks. In the Board's determination, these front-facing decks are in fact permitted in the By-law and they would fit into the pattern of decks in an area where people use these features in lieu of traditional rear yards.

In respect of heritage, the subject property and its existing semi-detached structure are neither designated nor listed. This is also not a heritage conservation district. The nine properties to the north of the subject property on Wineva Avenue received an historical listing in 1973 for reasons of architecture but it is noteworthy that

the heritage department had no comments on the application and there is nothing in the proposed application that offends in any way the architectural styles found in proximity to the subject lands. The Board assigned no weight to Christine Harvey-Kane (Residents Association representative) that the neighbourhood would see tourism fall off were three newer homes built on the subject land. This was overstatement in the Board's determination. Rather, the area is appropriate for reinvestment and infill of a type that the Applicant proposes.

As for the style of the proposed dwellings, they represent a more modern and non-traditional style than the style of some of the vintage homes in the neighbourhood. What is amply clear is that the multitude of different dwelling types, styles and configurations, including their yards, establish that there is a liveable mix of dwelling styles existing in the area supported by diverse parking solutions. In the Board's determination, these contribute to the character of the neighbourhood. What is proposed would be a compatible expression of built form and operability on the proposed lots.

As for the fit of the proposed development in the area, Exhibit 7 was a helpful depiction of the new homes. The corner unit would be somewhat different from the two other new dwellings that would front onto Alfresco Lawn. There are varied articulations and step backs planned for each dwelling. From the Alfresco Lawn curb line looking skyward, one might see the top of a third-storey deck but not much of it, given the step backs and angular plane. As for the wrap around porch on the corner house, the neighbourhood is replete with that type of feature looking out onto the streets. While the architecture does not mimic the vintage of the surrounding homes, the height, side yards, front yard setbacks, in combination with the boulevard that existing homeowners enjoy, the manner of proposed massing and single homes deployed on the lot would, in fact, be conventional from massing and orientation points of view. This is an important and persuasive planning opinion in the Board's determination. It is not enough to turn down the application because some residents say that a different form of architecture would be employed. The architectural diversity is part of change, and change, approved by the City in previous applications from both residents and developers, is anticipated in Toronto neighbourhoods. In the case at hand, change that respects the fit and feel of the neighbourhood has been achieved through the proposed design.

From a visual perspective, the front of the new house proposed to face Wineva Avenue would line up with the other houses on that street. While a portion of the bricked front entrance of the new house would line up with the other homes' balconies, the new house would also have a front-facing at-grade porch that would line up with the other houses' porches and balconies. Ms Major admitted that the new home would fit with other homes in this regard.

In the Board's determination, Mr. Goldberg provided the Board with a most rigorous and well-reasoned analysis of the application and the variances to the extent that the evidence in opposition was simply not as comprehensive or persuasive that the new houses would detract from the character of the area. The Board determines that approval of the variances and the consent would create a harmonious fit in terms of the property-to-property relationship between homes along Wineva Avenue and Alfresco Lawn.

Mr. Goldberg's evidence regarding the proposal's compliance with the broad objectives of both the Provincial Policy Statement and the Growth Plan was uncontradicted. Efficient forms of development and land use patterns are encouraged to sustain healthy, liveable and safe communities. These should accommodate an appropriate range and mix of, among other things, residential uses to meet long-term needs. The overall goal of intensification is promoted and the proposed development is one such modern form, as well as infill. The proposal would add one more dwelling to what currently exists – a pair of semi-detached dwellings. Ms Major cited certain passages of these instruments' broad objectives but offered no opinion as to whether the proposal achieved or did not achieve those broad goals.

Mr. Goldberg referenced the relevant sections of the City of Toronto Official Plan in respect of this application and showed persuasively how the proposed development would fit in with the neighbourhood. The following statement, referenced by both sides, is instructive:

[N]eighbourhoods will not stay frozen in time....Some physical change will occur over time as enhancements, additions and infill housing occurs on individual sites. A cornerstone policy is to ensure that new development in our neighbourhoods respects the existing physical character of the area, reinforcing the stability of the neighbourhood.

Those in opposition would argue that because the built form is more contemporary than the existing older homes in the immediate area, the physical character of the area would not be respected. The Board disagrees. This proposal addresses to the Board's satisfaction all salient and relevant design issues as detailed in the first part of this decision. There is room in the City for architectural differences and the proposed development is a fit and is compatible in its surrounding property-to-property relationship. Indeed, the City itself recognizes this fact of the Beach neighbourhood by approving a number of diverse proposals for the area and without resident opposition.

In terms of the Official Plan's Development Criteria for Neighbourhoods, similar statements to those found in Section 2.3 highlight the importance of physical character. Mr. Goldberg reviewed these in the context of how the proposed development would respect this attribute, such as the creation of a lane that would provide a private connection to City Lane. He explained that the new homes would have large frontages in relation to many if not most of the other properties in the area. Some shallow lots do in fact form part of the physical character of the area and he noted that one does not perceive depth from the street, a fact with which Ms Major agreed. From the street front, no discernible difference of lot depth is seen and the Alfresco Lawn homes would fit harmoniously with the other homes on that street. The proposal also meets other development criteria. Single-detached dwellings would be created with conventional setbacks for this neighbourhood; that is, the setbacks of the proposed residential dwellings would not be unlike those of other dwellings in the Beach neighbourhood. The Board was persuaded by Mr. Goldberg's reading of the policies found within the Development Criteria section and determines that the proposal meets these relevant sections of the Official Plan.

Most importantly, Mr. Goldberg opined that the proposed development is not out of keeping with the surrounding neighbourhood. From the standpoint of heights, massing, scale and dwelling type, the new homes would fit within the surrounding neighbourhood. He mentioned that the only difference is the type of architecture that might differ from the local architecture. In the context of the Official Plan's recognition of the inevitability of change over time, this instrument allows for differences to coexist; it tolerates them; and in point of fact in many Toronto neighbourhoods, it is the existence of these differences that create and define the character of the neighbourhood. In the

Board's determination, the existing site would not be so overbuilt that it would overwhelm either the neighbourhood or the lot. The proposed development would not create any adverse impacts and, adopting Mr. Goldberg's terminology, the new dwellings would be conventionally deployed on the subject lands, thus ensuring, in the Board's determination, the proposed dwellings' harmonious coexistence with the varied built forms and architectural offerings that characterize this neighbourhood.

As for one resident's concern with shadow impacts on her parents' home and rental income property at 1 Leuty Avenue (abutting the existing subject property's existing rear yard), there is already a one-storey detached garage and a fence that cast shadows on a portion of the rear yard of 1 Leuty Avenue. It was Mr. Goldberg's uncontradicted evidence that the shadows cast on a portion of the rear yard of 1 Leuty Avenue by the new easterly building, although taller, would be gone by about 10 a.m. The southerly shadows would cast on the sidewall of the existing building and in fact, the existing dwelling is actually closer to the northern neighbour than the site of the newer dwellings. Mr. Goldberg added that in Toronto, within the confines of the narrow lots in many neighbourhoods, some shading is expected but in the case at hand, no adverse impacts are created whatsoever on this small part of the neighbour's rear yard or on any other property of any significance.

It was this central component of the Plan – respect for the physical character of the neighbourhood – to which the Applicant, the City and the Residents Association ascribed the most evidence and opinion. The Board finds the Applicant's planner's evidence to be the most instructive and persuasive for the reasons given, and it determines that the proposal achieves the Official Plan's objective of ensuring that new development is compatible with the physical character of the established residential neighbourhood. The Board places great reliance on the notion that the term "compatible" does not mean 'the same as'. Variations in built form are anticipated in the relevant planning documents. The proposal before the Board would successfully coexist in harmony with the surrounding homes and the broader neighbourhood. After a review of all of the plans and depictions, the Board determines that the three new dwellings will serve as an attractive and welcoming view from the boardwalk and beachfront toward Alfresco Lawn, wrapping onto Wineva Avenue. Further, the design concept for the three dwellings as artistically rendered in Exhibit 7 presents as a visually

appealing, appropriate and sensitive style of built form for placement near the boardwalk and within this tightly-knit beach community.

Mr. Goldberg reviewed the relevant criteria of subsection 51(24) of the *Planning Act* and opined that the proposed consent application meets these. The Board finds persuasive his evidence that the proposed plan does conform to the Official Plan and that the dimensions and shapes of the proposed lots are in keeping with the neighbourhood for the reasons provided in this decision.

Mr. Goldberg reviewed the four tests for a minor variance as contained in subsection 45(1) of the *Planning Act*. He opined that whether considered individually or cumulatively, they are minor in nature. It was his professional planning opinion that each of the minor variances sought meet the four tests outlined in subsection 45(1) of the *Planning Act*. The new homes would not block views toward the lake although one resident said a lady living farther up Wineva Avenue would have a portion of her lake view from her rear yard obstructed. This was insufficient evidence to undermine the planner's opinion and Ms Major did not take issue with this fact, given the location of the new homes on an east-west street alongside other such homes. Further, the height requirements of the By-law in respect of new construction are met and the homes would be conventionally oriented in the neighbourhood, thus achieving the Official Plan's goals.

Mr. Goldberg opined that the general intent and purpose of both the Official Plan and Zoning By-law are maintained. Permitted uses and standards are either achieved through the proposed construction or by means of variances that ensure compatibility with the surrounding neighbourhood and do not create adverse impacts.

He opined that the variances are desirable for the appropriate development of the site as neighbourhood reinvestment is encouraged in the Plan. Further, through Board approval, the minor variances would serve to stabilize this form of reinvestment by ensuring development for residential purposes. Lastly, he added that the variances are minor, given that they are well within the realm of minor changes occurring within the broader neighbourhood and they are tolerable based on the planning policies and principles that he highlighted for the Board. He said that the proposed development is in the public interest and represents good planning.

The Board gave full consideration to Ms Moscovich's questioning and submissions as well as Ms Major's planning evidence and opinion but these did not undermine Mr. Goldberg's planning evidence and opinion. The Board assigned no weight to the statements of Ms Major or the Residents Association that the Board's decision in this application is important because the same Applicant has also a February 18 application to the City to replace two houses on Leuty Avenue, just around the corner from the subject property. They told the Board that approval of this application would set a tone for that and subsequent development applications. The Board cannot assign significant weight to that statement. The Board makes its determination on the best evidence before it and what might occur elsewhere is not a relevant factor in assessing the planning merits of the current application. By extension, the Board may presume reasonably that the City will assess that application on its merits and not be bound by any previous Committee of Adjustment or Board decision, just as the Board would not rely on one of its previous decisions to assess the merits of another appeal. Accordingly, the Board does not place any weight on the suggestion that this decision sets a precedent or has implications for development elsewhere in the neighbourhood.

Both Parties made reference to the City-approved Glen Manor Drive development as either an example of the types of varied dwellings that are possible in the larger area; that it differs from what is proposed at this hearing; or to show how that approval should have never been allowed to occur. On this latter point, City Planner Ms Major had been involved in that application and she expressed regret that she had not objected more rigorously to the Glen Manor Drive development. She said those properties were re-oriented to the side street and the applicant in that case had avoided site plan approval for those homes by characterizing it as a detached house with a 0-metre setback attached to three townhouses.

Documents entered into evidence demonstrated, however, that Ms Major, the City planner responsible for applications in the Beach neighbourhood, has previously endorsed projects that proposed larger dwellings types and at both varied and higher densities than what is proposed in this hearing. She has been intimately involved in the municipal review process for these other applications that ultimately received her approval and imprimatur and subsequently received approval by the Committee of Adjustment. The Board considered Ms Major's verbal explanation that she should have

reconsidered her position on the Glen Manor Drive proposal, but the Board determines that it is the planner's involvement in that application and her support of other earlier applications – very similar to this application – that detract from the weight the Board can assign to her statement, and by extension, the City's opposition to this well-reasoned and thoughtful proposal. In point of fact, what is before the Board in this hearing is not nearly as significant as what Ms Major and the City have supported on previous occasions. The Board was provided with examples of the City's recent record and history of these applications in the Beach neighbourhood and in close proximity to the subject site:

- a 2002 application at 10 Alfresco Lawn by the Residents Association witness for variances to build a ground floor addition on the back of his house and an enclosure for an existing front porch and a front balcony with a new addition at the rear of the second floor, resulting in a density increase to 0.67 times.
- a 2003 application at 55 Glen Manor Drive that replaced an existing two-storey brick building with a pair of three-storey semi-detached dwellings with a consent application to sever the property into two parcels of land that also resulted in an increase in density at approximately 1.07 times.
- a 2004 application at 54 Hammersmith Avenue to convert an existing, semi-detached duplex (four units) to a converted house with six dwelling units and a gross floor area of 1.44 times the area of the lot.
- a 2006 application at 12-14 Glen Manor Drive to demolish the existing dwelling and to build a new, 3-storey townhouse on the newly severed lot. Private outdoor amenity space included an at-grade covered porch and balconies and an integrated, below-grade parking off of a private rear driveway accessed via Hubbard Boulevard.
- a 2008 application at 63 Wineva Avenue to maintain an existing two-storey, semi-detached dwelling and rear integral garage on an undersized lot to be conveyed.

These approvals render the City's opposition to this proposal less persuasive, given the subject proposal's modest form of intensification in a manner the Board

determines to be very much in keeping with the goals and objectives of the planning documents and fits within the character of the neighbourhood.

It is noteworthy that in-between the previous approvals and this application, neither the Official Plan nor the Zoning By-law has changed and the policies and standards that emanate from these instruments remain the same. In this regard, the Board found nothing in Ms Major's evidence to demonstrate any adverse impact on the neighbourhood and no compelling reasons why the proposal should be refused, given her and the City's previous support for the other applications.

The City presented the Board with a series of consent conditions that should be applied were the Board to order provisional consent be given. These are typical of other conditions in other applications for severance. Accordingly, the Board will attach these to its Order that provisional consent be given. However, there are several proposed conditions for the minor variance approval (listed below as 6, 7 and 8) with which the Applicant does not agree.

- Variance 6. "No covered structures be erected on the rooftop patios or stairways leading to the rooftop patios, including canopies, awnings, gazebos, with the exception of an umbrella." City Planner Leontine Major opined that nothing should cause the structure to exceed the 12-metre height limit.
- Variance 7. "Safety railings surrounding the rooftop patios shall be at the minimum height required by the Ontario Building Code and shall consist of opaque glass panels to minimize overlook conditions, while maintaining a light treatment to minimize impact of the additional height that will result." Ms Major said that the railing height is not an issue *per se* but as the Applicant is not seeking a height variance, the limit would ensure that a fence were not built to the maximum height limit (similar to what the City was attempting to control in Variance 6.) The City suggested a condition to control what type of materials should be used on the glass to decrease overlook as well as to provide privacy for the owners.
- Variance 8. "The plans shall be revised to decrease the size of the rooftop decks by 1.0 metre on all sides and a green roof material shall be used within the setback area." Ms Major said the deck should be smaller in order to limit the

number of people that can be out on that deck at one time since there is no at-grade space. She admitted, however, that she does not generally see this as an issue. Her only reason for asking for the green roofing material was that it would be nice to give some additional soft space.

Mr. Goldberg reviewed these contentious variances with the Board. He argued that one would not see conditions such as these attached by the City to other variance approvals for single-detached dwellings. In respect of Variance 6, he noted that there is no requirement for a height variance. Should someone wish to use an awning or umbrella on their deck to seek shade, the City should not attempt to set conditions like this to restrict homeowners from utilizing such popular shade structures where the buildings do not approach the maximum height allowed for in the By-law. There are many other decks in the area that overlook other properties and that utilize a variety of shade coverings. The proposed development can have a deck as its third storey as of right while still respecting the height standard, even with an awning or umbrella in use.

In respect of Variance 7, the 1 Leuty Avenue property is overlooked from other neighbourhood decks to the north. Such decks are common in this neighbourhood. Overlook in these tightly-knit areas with narrow lots and building-to-building and property-to-property relationships in confined proximity. This is part of the normal urban condition in the study area. The Board noted Mr. Goldberg's evidence that the proposed third-storey decks would look into the tree canopies and at the roof lines of the new homes because of the step backs provided for in the decking. Overlook here, in the Board's determination, creates no adverse impact. Accordingly, there is no need to require opaque panels on the deck to shield it or to prevent overlook. Mr. Goldberg also opined that this is an inappropriate condition to place on a single-family home.

Lastly, Mr. Goldberg offered that he had never seen a condition put forward to limit deck size in order to control how many people the future homeowners could bring up to their amenity space. He noted that the City added this variance after the first day of evidence and submitted it for the Board's consideration on the second day of the hearing. He said he was unsure what it would achieve.

In the Board's determination, the City offered no good reasons for seeking to impose such conditions. There is no good planning ground for the City's request to

impose these variance conditions, particularly where no variance for height is sought or required and where the By-law permits rooftop patios. In the Board's determination, they extended beyond the parameters of valid planning considerations. Had the Board approved these conditions, they would have served to intrude on the manner in which people could enjoy their rooftop amenity space. Moreover, the City has not sought to impose such intrusive conditions on other single-detached homes seeking minor variances and by evidence, not in the neighbourhood. If allowed, these conditions would govern how and whether a person could seek shade and what types of shading structures and accessories would be permitted. They also propose to control through size limits the number of persons a homeowner could invite to use their private amenity space; they propose to dictate the types of materials that could and should be used on the railing glass; and in general, they attempted to control how private citizens live within the confines of their private property. The Board determines that such conditions are not in the public interest and they do not contribute to good planning. The Board rejects the attachment of these three variance conditions to the Board's authorization of the minor variances. In the Board's determination, they represent an unnecessary and unwarranted intrusion into the future homeowners' lifestyles and would serve as an inappropriate means to limit private citizens' use of their amenity spaces.

As stated, the Board determines that the City's opposition to the subject proposal was undermined by its previous approval of other applications for consents and variances in this area. The planner was unable to offer very little opposing evidence (other than arguing unsuccessfully that the proposal did not meet two of the consent criteria found in the Act) to show how the new dwellings and their requested variances do not meet the four tests as outlined in the Act. The Board notes and Ms Major acknowledged that there is a vast amount of parkland and open space in close proximity to the subject lands to accommodate an additional household. Residents of the new houses will be able to enjoy their rooftop patios as well as the open spaces of the public realm that lie at their doorsteps.

The evidence proffered by the Residents Association and area residents was considered fully by the Board. The central theme of its opposition was that the proposal would be out of character with the neighbourhood and the Board has stated its findings in this regard. The main witness for the Association, resident Brian McInerney, and the Association's agent, Christine Harvey-Kane, both condemned the proposal and argued

that the variances would create negative impacts and set a precedent for further undesirable development. It was noteworthy that while these Association representatives, Mr. McNerney and Mrs. Harvey-Kane, were so vehemently opposed to the proposal, they and other area residents have made their own applications for variances. Most were successful in having variances granted; one presenter was not. Mr. McNerney sought and received approval from the Committee of Adjustment for a number of variances for his residence located on Alfresco Lawn. Mrs. Harvey-Kane's family made two applications within as many months for the creation of a third-floor addition on their semi-detached house that the Committee of Adjustment rejected. Another resident spoke proudly of how he renovated his home without seeking variances. The residents and others shared their subjective opinions and views of what constitutes appropriate development for the neighbourhood. All of them said they were not opposed to development in general but only where it was compatible with their particular views of what constitutes "appropriate" development, and what is aesthetically and visually acceptable to them. They held very clear views on what should and should not be approved.

Ultimately, the subjectivity of those statements was unhelpful to the Board. It was, in the end, a position that is less relevant to the Board than the objective planning evidence on which the Board must make its findings. The Board cannot and would not make a subjective determination of the appropriateness of any proposal. Rather, it is the professional evidence of planners, the legal provisions of the *Planning Act* and all of the relevant planning instruments before it from which the Board makes its findings and assist the Board in rendering informed and objective decisions. In this regard, there was nothing so significant about the concepts of character and fit that would prevent the Board from approving this proposed development in concert with the best evidence before it.

While the Residents Association and some residents recited excerpts of the Official Plan to the Board, all of these derived from the Plan's objective that new development should respect the physical character of the surrounding neighbourhood. Some people opposed the three-storey height, alleging that the homes would tower over other residential homes in the area. The Board notes, however, that the proposed dwellings are actually lower than the maximum height standard set out in the By-law. There is no evidence the proposed new homes would 'protrude higher than any other

building in the area' and the Board notes that there are many other homes that are either three full storeys or comprised of windows and roof treatments that can be easily perceived as three storeys in the immediate and surrounding area.

The density maps and data submitted establish that there are a variety of densities in area homes, above, at or above what is proposed for the neighbourhood. As already stated, the Board determines that there is significant variety in the types of homes, built forms and architectural offerings that comprise the near and larger neighbourhood, such that it is appropriate to conclude that the addition of three modern homes in the manner presented by the designer is appropriate and represents interesting and appropriate development of the subject lands that respects the physical character of the surrounding neighbourhood.

It is important to remember that there is no minimum lot area or lot depth requirement for these lots. If such standards had been required, the City could have added these to its Official Plan but as the Board has determined, the proposed areas and depths are not out of keeping with what one might find in other parts of the Beach neighbourhood. The neighbourhood policies of the Official Plan anticipate new lots and change. These neighbourhoods will continue to mature, evolve, houses will be torn down and renovated and some lot creation will occur. The Plan anticipates this type of development and it is, in the Board's determination, entirely appropriate and supportable for the reasons stated.

In the Board's view, Mr. Goldberg's evidence in this case was unshaken, despite the vehement opposition of the proposal by those residents in attendance and the opposite view of the City planner, whose evidence did not match Mr. Goldberg's coverage of the relevant policies and whose opposition was determined to be less persuasive for the earlier-stated reasons. In that regard, Mr. Goldberg was the only planner to not only cite all of the relevant policies but in addition provided a persuasive rationale for why the variances should be approved and provisional consent be given.

In the Board's view, this proposal represents sensitive infill, as modest as it is. Mr. Goldberg showed both quantitatively and qualitatively in his review that the lots fit; they possess appropriate shapes and dimensions; and they are able to accommodate well-designed homes that every witness agreed fit into the streetscape in respect of

lining up with the other homes. They would be constructed at an appropriate height with appropriate side yards and landscaped open space in the front yards that is more generous than other homes that have different parking solutions. Additionally, the new dwellings will present a visually attractive and appealing view from the boardwalk and from Alfresco Lawn.

While the City presented the Board with the Samimi case for its consideration of the Board's reasoning in a similar situation (*Samimi v. Toronto (City)*, [2007] O.M.B.D. No. 688, July 13, 2007), the current circumstances must be distinguished from that case. The subject area in that case is bounded by York Mills and Highway 401 and the applicant sought variances from the minimum lot area. In the case at hand, not only is there no lot area minimum, there is no disparity in lot size, given that there are no variances requested for lot size or frontage. That situation, and the resulting reasoning of the Board in that case, is distinguishable from the particular circumstances of this application.

Having considered all of the evidence, the Board allows the appeal and Orders that provisional consent be given subject to the six (6) consent conditions listed in Attachment "1". The Board authorizes the minor variances subject to the five (5) variance conditions listed in Attachment "2" and Orders that the dwellings be constructed substantially in the form as set out in the site plan presented as Exhibit 8.

So Orders the Board.

"R. Rossi"

R. ROSSI
MEMBER

DRAFT CONDITIONS**Consent Conditions**

1. The Owner provide confirmation of payment of outstanding taxes to the satisfaction of Revenue Services Division, Finance Department, City of Toronto.
2. Municipal numbers for the subject lots indicated on the applicable Registered Plan of Survey shall be assigned to the satisfaction of Survey and Mapping Services, Technical Services, City of Toronto.
3. The Owner submit two copies of the registered reference plan of survey integrated with the Ontario Coordinate System and listing the Parts and their respective areas, shall be filed with City Surveyor, Survey & Mapping, Technical Services, City of Toronto.
4. The Owner submit three copies of the registered reference plan of survey satisfying the requirements of the City Surveyor, shall be filed with the Committee of Adjustment.
5. The owner provide a servicing proposal to the City, satisfactory to the Executive Director, Technical Services.
6. Within one year of the date of the giving of this notice of decision, the applicant shall comply with the above-noted conditions and prepare for electronic submission to the Deputy Secretary-Treasurer, the Certificate of Official, Form 2 or 4, O. Reg. 197/96, referencing either subsection 50(3) or (5) or subsection 53(42) of the *Planning Act*, as it pertains to the conveyed land and/or consent transaction.

Minor Variance Conditions

1. Prior to issuance of the first Building Permit and/or conducting any demolition or excavation on the property, the owner provide a letter of credit in the amount of \$3,673.00 as a Tree Security Deposit for the two existing City-owned trees situated on Wineva Avenue.
2. Prior to the issuance of the first Building Permit, the owner provide a Tree Planting Security Deposit for three (3) new trees to be planted along Alfresco Lawn, on City property, one tree per house, in the amount of \$1749.00 (\$583.00/tree)
3. The owner comply with the requirements of Toronto Municipal Code Chapter 813: Trees.
4. The owner pay any fees to the City required for work within the City right of way.
5. If the accepted servicing proposal includes services within the municipal right of way, the owner provide a letter of credit to the City to secure the completion of said works.