



April 28, 2019

The Planning and Housing Committee

10th floor, West Tower, City Hall

100 Queen Street West

Toronto, ON M5H 2N2

Attention: Nancy Martins

RE: PH 5.7 Toronto Local Appeal Body

Dear Members of the Planning and Housing Committee:

On behalf of the Long Branch Neighbourhood Association, I would like to offer some additional observations and recommendations regarding The Toronto Local Appeal Body.

BACKGROUND

As of today, the Long Branch neighbourhood has

- Completed 2 TLAB hearings
- Completed 1 TLAB hearing that is being appealed to Divisional Court
- Ongoing hearings at TLAB on 11 other consents and “minor” variance applications
- 1 hearing pending with TLAB
- 4 upcoming COA consent and “minor” variations hearings

All of these have been applications for consent to sever and minor variances.

OBSERVATIONS

Our experience with TLAB staff and members is that they generally have been helpful have tried to make the process as inclusive as possible so residents have an opportunity to have their voices heard.

They have gone out of their way to allow participants an opportunity to speak and to try to accommodate their availability by flexibility in the order of evidence presented.

The process is well thought out and procedures are fairer to residents than the OMB was - a huge improvement.

Mr. Lord's report does not show clearly enough that TLAB hearings are consuming far more time than anyone could have anticipated.

The 3 TLAB hearings that have been completed in Long Branch required 2 days or less.

However, the ongoing consent and "minor" variance hearings are taking between 5 and 8 days, and we anticipate future matters to require similar times. Not only are more hearing days required beyond the two days currently allotted, but completion of the hearings is stretching to 5 to 12 months as TLAB has to scramble to find additional hearing dates that work for multiple Parties, the Members and the Hearing Rooms.

A key factor impacting the length of hearings is Land Use Planners who are called as expert witnesses on behalf of the builders. We are seeing these planners taking up a full day providing their evidence-in-chief, with another full day being required for cross-examination. Professional Counsel should be capable of extracting the key points in their arguments in less time.

ISSUES

a.) Protecting Citizen Participation

The expectation that residents who are volunteering their time to protect their community and can make themselves available on numerous days without jeopardizing their employment, needs to be reassessed. This is on top of twice monthly COA hearings where the same volunteers are required to address the high volume of consent and "minor" variance applications.

Paid advocates are happy to drag things out, and do so, it would seem, as a deliberate tactic to deter opposition.

b.) Definition of Minor Variance

The lack of clear definition when a variance should no longer be considered minor has a ripple effect that cascades through the entire development review process from Planning review, through the Committee of Adjustment and then at TLAB

One of the hardest and most complicated parts of a case to argue is how the public and City staff interpret how minor variances can be.

There currently exists no clear objective definition of when a variance no longer qualifies as minor. This is not defined in *The Planning Act*, The Official Plan, nor the bylaws. The concept most often used to assess whether a variance is minor is impact. There is no definition of how impact is to be judged in these pieces of legislation.

We believe the lack of clear definitions for minor variances is the single most important factor driving TLAB caseload.

RECOMMENDATIONS

First, before scheduling hearings, TLAB should request input from ALL parties on the amount of time they feel they require to present their cases so they can accommodate resident/residents association constraints while being able to schedule hearing days to help realize their goal of delivering decisions in a timely manner. Parties should be held to the time they request, which should mean they will put more thought into their estimates.

Perhaps scheduling Pre-Hearing Conference calls with all Parties once the Witnesses and Participants are confirmed would improve the process of booking time for hearings.

This probably requires more public consultation and possibly could be done through deputations to TLAB's Business Meetings.

Second, TLAB's caseload would be dramatically reduced if the City were to adopt a bylaw that clearly defines when a variance no longer qualifies as "Minor".

In 2015, Bill 73 amended Section 45 (1) of *The Planning Act* to permit local municipalities to pass a By-law which establishes additional criteria to be satisfied in addition to the four tests of a minor variance. Under Subsections 45 (1.01) to (1.03) of the Planning Act, new and additional criteria enacted through a Local Variance Criteria By-law (LVCB), passed by Council, would establish local criteria that the COA must also consider before it can authorize a minor variance. Similarly, staff must also consider these criteria in order to provide advice and comment to the COA.

When objective standards are available to Planning Staff on minor variances, it enables them to provide clearer advice and direction to the Committee of Adjustment.

When objective standards are available to the Committees of Adjustment on minor variances, it should cause a greater proportion of applications to be refused. If the written decisions include reference to an application's failure to conform to clear standards – as opposed to the boilerplate text that currently is being used - it becomes harder for applicants to question the decision and appeal a decision to TLAB.

At TLAB, clearer standards would reduce room for subjective interpretation and debate over why a variance should be considered minor when the standards are written in the form of a bylaw.

The Town of Oakville is in the process of introducing a bylaw to define when a variance becomes too large to be considered minor. Attached is a draft copy of the proposed bylaw.

While Oakville is still in the process of obtaining stakeholder input on the bylaw, there are two elements in the draft bylaw that are worth pointing out:

First, they will have numeric standards on when a variance goes beyond what could be interpreted as minor

Secondly, applications also have to conform to the Town's character guidelines – similar to what we have in our neighbourhood as the Long Branch Character Guidelines.

Recognition of the Long Branch Character Guidelines – or other similar guidelines published for other neighbourhoods in the City – would reinforce the need for applications to not only conform to the numeric standards in the bylaws, but to also reflect character elements that are expressed in the Official Plan.

Sincerely

Ron Jamieson, MBA, P.Eng.
Director
Long Branch Neighbourhood Association
10 Thirty Eighth Street
Etobicoke, ON M8W 3L9

Att: Town of Oakville Draft Local Variance Criteria Bylaw, 2018
Long Branch Neighbourhood TLAB and COA Activity April 2019
Ron Jamieson Calendar for July 2019

17 Ongoing Consent Applications as of Apr 24, 2019 in Long Branch

11 Active TLAB

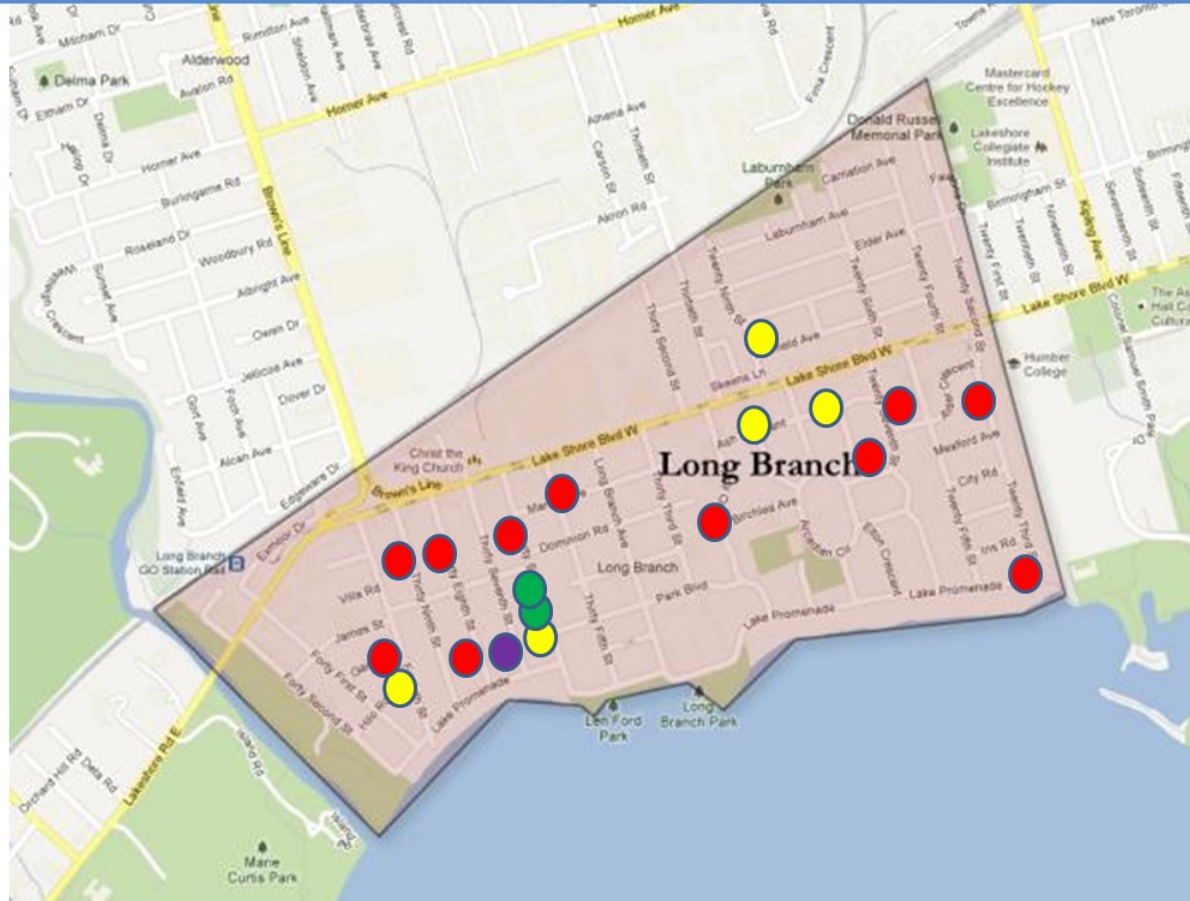
- 65 – 40th
- 80 – 39th St
- 70 – 36th St
- 27 – 39th St
- 74 – 38th
- 77 – 35th
- 80 – 23rd St
- 99 – 27th St
- 11 Shamrock
- 38 – 31st St
- 10 Lake Promenade

2 Completed TLAB

- 38 – 36th (Refused)
- 32 – 36th (Refused)

1 Leave to Appeal to Divisional Court

- 9 – 38th St



- TLAB Active
- Leave to Appeal
- TLAB Completed
- COA

4 Upcoming COA

- 19 – 29th St
- 90 Ash Cres
- 36 Ash Cres
- 11 Garden Pl

1 Completed COA

- 30 – 36th (Refused)

July 2019

July 2019							August 2019						
Su	Mo	Tu	We	Th	Fr	Sa	Su	Mo	Tu	We	Th	Fr	Sa
7	8	9	10	11	12	13	4	5	6	7	8	9	10
14	15	16	17	18	19	20	11	12	13	14	15	16	17
21	22	23	24	25	26	27	18	19	20	21	22	23	24
28	29	30	31				25	26	27	28	29	30	31

SUNDAY	MONDAY	TUESDAY	WEDNESDAY	THURSDAY	FRIDAY	SATURDAY
Jun 30	Jul 1 Canada Day (Canada)	2	3	4 Independence Day (United States) 9:30am TLAB 80 Thirty Ninth Street (40) 10:00am Committee of	5	6 Cottage with Ross, Melissa, Zoe and Nicola (Wagon Wheel Cottage - Madoc)
7 Cottage with Ross, Melissa, Zoe and Nicola (Wagon Wheel Cottage - Madoc)	8 Cottage with Ross, Melissa, Zoe and Nicola (Wagon Wheel Cottage - Madoc)	9 Cottage with Ross, Melissa, Zoe and Nicola (Wagon Wheel Cottage - Madoc) 9:30am TLAB - 77 Thirty Fifth Street (40)	10 Cottage with Ross, Melissa, Zoe and Nicola (Wagon Wheel Cottage - Madoc) 9:30am TLAB - 77 Thirty Fifth Street (40)	11 Cottage with Ross, Melissa, Zoe and Nicola (Wagon Wheel Cottage - Madoc) 9:30am TLAB - 11 Shamrock (40)	12 Cottage with Ross, Melissa, Zoe and Nicola (Wagon Wheel Cottage - Madoc)	13 Cottage with Ross, Melissa, Zoe and Nicola (Wagon Wheel Cottage - Madoc)
14 Savannah Jamieson's Birthday	15	16	17 8:00am TLAB - 99 Twenty Seventh Street (40 Orchard Park Blvd.)	18 8:00am TLAB - 99 Twenty Seventh Street (40 Orchard Park Blvd.) 10:00am Committee of Adjustment	19 9:00am TLAB - 74 Thirty Eighth Street (40 Orchard Park Blvd.)	20
21	22 9:00am TLAB - 74 Thirty Eighth Street (40 Orchard Park Blvd.)	23 9:30am TLAB - 27 Thirty Ninth Street	24 Simón Bolívar Day (Ecuador) 9:30am TLAB - 27 Thirty Ninth Street	25 9:30am TLAB - 27 Thirty Ninth Street	26	27
28	29	30	31	Aug 1	2	3



THE CORPORATION OF THE TOWN OF OAKVILLE

BY-LAW NUMBER 2018-XXX

A by-law to establish criteria with which a minor variance must conform

WHEREAS in accordance with Subsections 45 (1.01) and (1.0.3) of the *Planning Act*, Council may by by-law establish criteria with which a minor variance must conform;

AND WHEREAS the Town's Livable Oakville Official Plan identifies in Section 11 that the Residential Areas on Schedule A1, Urban Structure, represent the areas that provide for stable residential communities;

AND WHEREAS the Town's Livable Oakville Official Plan recognizes that while there will be some growth and change in those stable residential communities, that such growth and change should be subject to the character of the areas being preserved;

AND WHEREAS the Town's Livable Oakville Official Plan establishes policies intended to maintain and protect the existing character of those stable residential communities with their established neighbourhoods, including Section 11(a), with the objective to maintain, protect and enhance the character of existing residential areas;

AND WHEREAS the Town's Livable Oakville Official Plan in Section 11.1.9 provides that within all stable residential communities any development shall be evaluated using the criteria set out in that section 11.1.9 to maintain and protect the existing neighbourhood character;

AND WHEREAS the existing policies for maintaining and protecting the existing neighbourhood character of the stable residential communities when it comes to minor variance applications have been applied in determining whether the proposed minor variance maintains the general intent and purpose of the official plan;

AND WHEREAS the Town has been monitoring trends in minor variance applications since 2016 which indicate challenges with the requests for large deviations from the Zoning By-law respecting detached dwellings in the "-0" Suffix Zone;

AND WHEREAS the Town undertook a Residential Character Study to identify character attributes within the residential neighbourhoods in the Town and heard from the public that changes in the “-0” Suffix Zone affected character;

AND WHEREAS that Recommendation 8.4 of the Residential Character Study was received by Council which resulted in the exploration of additional prescribed criteria to better deal with requests for large deviations to the Zoning By-law which may have an impact on character in residential neighbourhoods;

AND WHEREAS this By-law is intended to implement and impose the additional criteria related to urban design and deviation limitation beyond that anticipated by the criteria in Section 11.1.9 of the Town’s Livable Oakville Official Plan.

NOW THEREFORE THE COUNCIL ENACTS AS FOLLOWS:

Part I - Interpretation

(1) In this By-law:

- (a) **AODA, 2005** means the Accessibility for Ontarians with Disabilities Act, 2005, S.O. 2005, c 11., as amended from time to time;
- (b) **Character** means the collective qualities and characteristics that distinguish a particular area or neighbourhood;
- (c) **Compatible** means the development or redevelopment of uses which may not necessarily be the same as, or similar to, the existing development, but can coexist with the surrounding area without unacceptable adverse impact;
- (d) **Design Guidelines for Stable Residential Communities** means Part B of the Livable By Design Urban Design Manual, as endorsed by Planning and Development Council on April 29, 2013, as amended from time to time;
- (e) **Detached Dwelling** means “Dwelling, Detached” as defined as defined by Zoning By-law 2014-014, as amended from time to time;
- (f) **Driveway** means “Driveway” as defined by Oakville Zoning By-law 2014-014, as amended from time to time;
- (g) **Dwelling** means “Dwelling or Dwelling Unit” as defined by Zoning By-law 2014-014, as amended from time to time;

- (h) **Floor Area** means “Floor Area” as defined by Oakville Zoning By-law 2014-014, as amended from time to time;
- (i) **Floor Area, Residential** means “Floor Area, Residential” - as defined by Oakville Zoning By-law 2014-014, as amended from time to time;
- (j) **Grade** means “Grade” as defined by Oakville Zoning By-law 2014-014, as amended from time to time;
- (k) **Grade, Established** means “Grade, Established” as defined by Oakville Zoning By-law 2014-014, as amended from time to time;
- (l) **Growth Area** means an area shown as a “Growth Area” on Schedule A1, Urban Structure, “Livable Oakville, town of Oakville Official Plan 2009”;
- (m) **Height** means “Height” as defined by Zoning By-law 2014-014, as amended from time to time;
- (n) **Heritage Conservation District** means any defined area designated as a heritage conservation district under Part V of the Ontario Heritage Act, R.S.O. 1990, c. O.18;
- (o) **Lot Coverage** means “Lot Coverage” as defined by Zoning By-law 2014-014, as amended from time to time;
- (p) **“-0” Suffix Zones** means those Residential Zones designated with an “-0” Suffix on the Part 19 Maps of Zoning By-law 2014-014, as amended from time to time, and for which the Zoning Regulations in Section 6.4 of the Zoning By-law 2014-014, as amended from time to time are applicable;
- (q) **Planning Act** means the Planning Act, R.S.O. 1990, c. P.13, as amended from time to time;
- (r) **Residential Floor Area Ratio (RFA)** means “Residential Floor Area Ratio” as defined by Zoning By-law 2014-014, as amended from time to time;
- (s) **Structure** means “Structure” as defined by Zoning By-law 2014-014, as amended from time to time;
- (t) **Yard** means “Yard” as defined by Zoning By-law 2014-014, as amended from time;
- (u) **Yard, Flankage** means “Yard, Flankage” as defined by Zoning By-law 2014-014, as amended from time to time;

- (v) **Yard, Interior Side** means “Yard, Interior Side” as defined by Zoning By-law 2014-014, as amended from time to time;
 - (w) **Yard, Rear** means “Yard, Rear” as defined by Zoning By-law 2014-014, as amended from time to time;
 - (x) **Yard, Side** means “Yard, Side” as defined by Zoning By-law 2014-014, as amended from time to time;
 - (y) **Zone** means “Zone” as defined by Zoning By-law 2014-014, as amended from time to time.
- (2) Where a term used in this By-law is specifically undefined in this By-law but is specifically defined in the Town’s Zoning bylaw 2014 – 014, then the definition for that term in Zoning By-law 2014 – 014, as amended from time to time, is hereby adopted as the definition for that term in this By-law as if that definition were set out herein.

Part II – Criteria

- (3) In addition to complying with the requirements under subsection 45(1) of the *Planning Act*, a minor variance respecting a detached dwelling (new, alteration, addition) shall be in conformity with the following Criterion or Criteria, as applicable, before being authorized:

(a) Urban Design Criterion

Where a minor variance approval is being sought anywhere in the Town, the built form and placement of a dwelling shall be consistent with the “Urban Design Guidelines for Stable Residential Communities”

(b) Maximum Permitted Deviation Criterion

Subject to Sections 4 and 5:

- (i) where a minor variance approval is being sought in a “-0” Suffix Zone with respect to any or all of the zoning regulations set out in Tables 1 through 5 below; and
- (ii) where the average of the particular regulation or regulations which are the subject of the Minor Variance Application, existing for all properties within the Assessment Area as determined under Schedule 1 of this By-Law is larger or smaller, as the case may be, than that permitted by the Zoning By-law for that particular regulation or regulations then

the maximum or minimum permitted, as the case may be, for that regulation or regulations in any approval of that Minor Variance Application shall be as determined by the application of the Tables below:

(i) **Table 1** - Respecting variances requested for increases in maximum residential floor area ratio (*RFA*)

Column 1	Column 2
Where the maximum permitted <i>RFA</i> for the subject property under Zoning By-law 2014-014 is as set out below	The maximum permitted <i>RFA</i> after any minor variance approval shall be the lesser of : the average <i>RFA</i> determined for all properties found within the assessment area in accordance with Schedule 1 of this By-law OR the corresponding maximum <i>RFA</i> set out below.
43%	45.15%
42%	44.10%
41%	43.05%
40%	42%
39%	41.15%
38%	40.28%
37%	39.59%
35%	37.80%
32%	34.88%
29%	31.90%

(ii) **Table 2** - Respecting variances requested for increases in maximum *Lot Coverage*

Column 1	Column 2
Where the maximum permitted <i>Lot Coverage</i> for the subject property under Zoning By-law 2014-014 is as set out below	The maximum permitted <i>Lot Coverage</i> after any minor variance approval shall be the lesser of : the average <i>Lot Coverage</i> determined for all properties found within the assessment area in accordance with Schedule 1 of this By-law OR the corresponding maximum <i>Lot Coverage</i> set out below.
25%	27.75%
30%	32.70%
35%	37.80%

(iii) **Table 3** - Respecting variances requested for increases in maximum *Height*

Column 1	Column 2
Where the maximum permitted <i>Height</i> for the subject property under Zoning By-law 2014-014 is as set out below	The maximum permitted <i>Height</i> after any minor variance approval shall be the lesser of : the average <i>Height</i> determined for all properties found within the assessment area in accordance with Schedule 1 of this By-law OR the corresponding maximum <i>Height</i> set out below
9m	9.63m

(iv) **Table 4** - Respecting variances requested for decreases in minimum *Yard*:

Column 1 Where the minimum permitted setback for the subject property for the <i>Yard</i> or <i>Yards</i> which is/are the subject of the Minor Variance Application, be they rear yards , interior side yards, flankage yards or side yards, is/are under Zoning By-law 2014-014 as set out below	Column 2 The minimum permitted setback for the <i>Yard</i> or <i>Yards</i> concerned after any minor variance approval shall be the lesser of: the average setback for the applicable <i>Yard</i> or <i>Yards</i> determined for all properties found within the assessment area in accordance with Schedule 1 of this By-law OR the corresponding minimum permitted setback for the <i>Yard</i> or <i>Yards</i> set out below
10.5m	9.45m
7.5m	6.60m
4.2m	3.57m
2.4m	2.00m
1.2m	1.00m

(v) **Table 5** - Respecting variances requested for increases in a maximum *driveway* size:

Column 1	Column 2
Where the maximum <i>Driveway Width</i> or <i>Coverage</i> for the subject property under Zoning By-law 2014-014 is as set out below	The maximum permitted <i>Driveway Width</i> or <i>Coverage</i> after any minor variance approval shall be the lesser of : the average applicable <i>Driveway Width</i> or <i>Coverage</i> determined for all properties found within the assessment area in accordance with Schedule 1 of this By-law OR the corresponding maximum applicable <i>Driveway Width</i> or <i>Coverage</i> set out below.
Width of 6m	6.3m
Width of 9m	9.9m
Coverage of 50%	51.25%

PART III – Exceptions

- (4) Notwithstanding Section 3(b) above, a minor variance need not be in conformity with all or any part of any particular deviation limitation in the Maximum Permitted Deviation Criterion set out in Section 3(b) if the particular deviation limitation concerned prevents the minor variance application from providing relief from the applicable Zoning By-law:
- (a) to address an unusual condition of topography on the property itself as it relates to the calculation of maximum *Height*
 - (b) to address an unusual condition of property shape, or orientation in relation to a right-of-way on the property itself as it relates to the calculation of an applicable minimum *Yard*
 - (c) to address an unusual condition of natural areas or stable-top-of-bank on the property itself as it relates to the calculation of maximum *RFA* and *Lot Coverage*
 - (d) to implement the objectives of the Accessibility for Ontarians with Disabilities Act, where alternative solutions cannot be provided as it relates to the calculation of minimum *Yard*, maximum *Lot Coverage*, and maximum *RFA*.

- (5) Notwithstanding section 3 (b) above, the Maximum Permitted Deviation Criterion does not apply to those minor variance applications related to detached dwellings on lands:
- (a) that are located within a defined Growth Area;
 - (b) that are within a Heritage Conservation District;
 - (c) that are located within a special provision in Section 15 of By-law 2014-014; and
 - (d) that are subject to a holding provision in Section 16 of By-law 2014-014

Part IV – Transition

- (5) Effective Date
- (a) This by-law shall come into full force and effect in accordance with Subsections 45 (1.0.4) of the Planning Act

PASSED this ___ day of _____, 2018.

MAYOR

CLERK

Schedule 1 – Character Assessment Schedule

For the purposes of this By-law, this Schedule is to be used by the Applicant, Town Staff, the Committee of Adjustment and the Local Planning Appeal Tribunal in conjunction with Part II – Criteria of this By-law in making or considering any Minor Variance Application to determine the assessment area including the relevant properties for comparison purposes for any minor variance being sought from the regulations under Zoning By-law 2014-014 and within that assessment area, to determine what the average for the applicable regulation(s) is for the particular minor variance(s) being sought at the date of Application.

The following standards shall apply:

1. The assessment area shall be the lands determined as being within proximity under 2 below to the property which is subject to the minor variance application, and this assessment area forms the basis of identifying neighbourhood character when considering the maximum permitted deviations to the regulations under the Zoning By-law.
2. The assessment area shall consist of all properties within a radius of 60m of the subject site measured from the outside boundaries of the subject site within the same Zone Category

Example:

