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DECISION AND ORDER

Decision Issue Date Thursday, November 23, 2017

PROCEEDING COMMENCED UNDER subsection 45 (1) of the Planning Act, R.S.O. 1990, c. P.13, as amended (the "Act")

Appellant(s): CATHERINE ANN HEIKE

Applicant: LORNE ROSE ARCHITECT INC

Property Address/Description: 311 Chaplin Cres

Committee of Adjustment Case File Number: 17 109083 STE 22 MV

TLAB Case File Number: 17 181621 S45 22 TLAB

Hearing date: Thursday, November 16, 2017

DECISION DELIVERED BY Ian James Lord

INTRODUCTION

This matter relates to the appeal of minor variances related to 311 Chaplin Crescent (the 'subject property'), granted by the Toronto and East York Panel of the Committee of Adjustment ('COA) of the City of Toronto (City). The COA hearing was held on May 30, 2017. The appeal to the Toronto Local Appeal Body ('TLAB') was heard over two and one-half days on September 19, October 25 and November 16, 2017.

The subject property is in close proximity to the intersection of Chaplin Crescent and Eglinton Avenue. To simplify references, Chaplin Crescent can be said to run (roughly) east/west. The subject property is a single detached dwelling that fronts on the south side of Chaplin Crescent, three 'doors' east of the Eglinton Avenue intersection. To the east and west of the subject property are similar house form dwellings of the iconic, well established, 'Chaplin Estates' style: brick and stucco cladding, pitched rooves, often with aspects of tudor revival, Georgian Colonial and, for new-builds, contemporary modern design attributes, and at grade parking. Most dwellings in the Chaplin Estates appear to have been constructed in the first third of the last century in a two-storey configuration with highly presentable appearance,

maintenance and built form. The Chaplin Estates was identified as covering an extensive area bounded between Eglinton Avenue, Chaplin Crescent and Duplex Avenue to the east, and all to the 'north' of the Kay Gardner Beltline Trail (the 'Beltline'), a linear park, natural area and former rail line, extending from Eglinton Avenue to Yonge Street in the east, and beyond. The Beltline forms the southern limit of the subject property. Across Chaplin Crescent from the subject property is an Emergency Medical Services vehicle detachment. The intersection of Eglinton Avenue and Chaplin Crescent is currently in turmoil with the construction on Eglinton of the Metrolinx Light Rapid Transit Line. It was described that an intersection station stop is anticipated; clearly, the area constitutes a busy road network with an acute angle intersection alignment of major and minor arterial roads. Between Eglinton Avenue and the subject property, to the west of its immediate neighbor at 315 Chaplin Crescent, is a seven to nine storey apartment building, constructed post 1960, also backing onto and into the alignment of the Beltline.

BACKGROUND

The proposal for the subject property consists of an architect designed replacement building using, principally, elements of the west, front and east main walls in the construction of a new dwelling. The COA heard from the architect as to the proposed characteristics and built form, described as the construction of "a new three-storey detached dwelling with third floor front and rear balconies" (the 'Application'). The Application required relief from both the new City 'harmonized zoning by-law (the 'new ZBL'), currently under appeal, and the existing, in-force City By-law 438-86 (the 'current ZBL').

As listed on **Attachment 1** hereto and forming part of this Decision, 12 variances were sought from the new ZBL and 7 from the current ZBL. Of these variances, several are duplicative: floor space index ('fsi')/gross floor area ('gfa'); front yard setback (existing condition sought to be maintained); roof eaves and various west side lot line setbacks (existing condition sought to be maintained); rear yard setback; and the required provision of one parking space.

Under the new ZBL, the architects design is of a two-storey rectangular, flat roof façade finished by a recessed third storey, with sloped roof, coupled with front and rear decks on the roof of the second storey. With the new ZBL, required additional relief listed in Attachment 1 included variances for: a rear yard platform encroachment (#1); front platform canopy encroachment (#2); front and rear exterior main wall heights (#'s 4, 5); and maximum permitted front and rear platform areas (#7).

Under the current ZBL, the proposal also engaged relief variances listed in Attachment 1 from: front walkway width maximum (# 5); and front yard landscaping minimum (#6), (both suggested as an existing conditions sought to be maintained).

At the COA, the Applicant sought and achieved approval for all variances to both by-laws, subject to a modification proposed by the architect to respond to opposition concerns for privacy and overlook from the third floor decks. The modification accepted by the COA was a revision to the rear third floor deck plan, as expressed in Condition 1

to the COA decision in Attachment 1. The COA also imposed, as Condition 2, compliance with the Ravine and Natural Features Protection By-law, reflecting City Staff Report input in recognition of the presence of the Beltline to the rear of the subject property.

I have reviewed the Minutes and materials before the COA and note the active role there of the architect, the Appellant and many of participants, the latter two of whom also appeared and provided testimony to the TLAB.

I also indicated to those present on the appeal that, pursuant to Council's direction in the constitution of the TLAB, I had performed a site visit, familiarized myself with the area and reviewed the pre-filed and posted materials.

The Appellant is an immediate neighbour to the east.

MATTERS IN ISSUE

In a somewhat lengthy proceeding for a minor variance appeal, several elements of the variances sought generated opposition, expressions of concern and evidentiary conflicts.

Prevalent among these are all those listed, above, as matters common to both by-laws (excepting tacit agreement and support for the recognition of existing conditions), but supplemented by more focused challenges to the relief sought for density, the elevated decks, the rear yard setback and, to a lesser degree, parking and landscaping.

Since each of these matters cut to the matter of the architects plans, it is incumbent to establish the parameters of relevance to their consideration, the tests and the evidence and opinions addressed on each, individually and collectively.

JURISDICTION

Provincial Policy – S. 3

A decision of the Toronto Local Appeal Body ('TLAB') must be consistent with the 2014 Provincial Policy Statement ('PPS') and conform to the Growth Plan of the Greater Golden Horseshoe for the subject area ('Growth Plan').

Minor Variance – S. 45(1)

In considering the applications for variances form the Zoning By-laws, the TLAB Panel must be satisfied that the applications meet all of the four tests under s. 45(1) of the Act. The tests are whether the variances:

- maintain the general intent and purpose of the Official Plan;
- maintain the general intent and purpose of the Zoning By-laws;
- are desirable for the appropriate development or use of the land; and
- are minor.

Conditions in decision – S. 45 (9)

(9) Any authority or permission granted by the committee under subsections (1), (2) and (3) may be for such time and subject to such terms and conditions as the committee considers advisable and as are set out in the decision. R.S.O. 1990, c. P.13, s. 45 (9).

Powers of O.M.B. – S. 45 (18)

(18) The Municipal Board may dismiss the appeal and may make any decision that the committee could have made on the original application. R.S.O. 1990, c. P.13, s. 45 (18).

The powers of the committee and the Ontario Municipal Board under Section 45 of the Planning Act have been passed to the TLAB by statutory permission and by-law direction, on the appeal.

EVIDENCE

Diverse evidence was heard in this proceeding. The Applicant relied on one witness called in chief to support the Application variances and conditions. Ms. Debra Kakaria was accepted, without challenge by counsel for the Appellant, as an expert witness qualified the TLAB to give professional land use planning opinion evidence. Ms Kakaria is a Registered Professional Planner with an extensive portfolio of experience and qualifications over 22 years. She provided a detailed Witness Statement, filed as Exhibit 2, which was supplemented by an equally thorough compendium of documents, filed for reference as Exhibit 1. Ms. Kakaria was the only professionally qualified land use planner called to give evidence.

Those giving evidence opposed to the variances in sequence were: James Mymryk (315 Chaplin Crescent); Robert Brown, consultant to the Appellant; Terry Evans (309 Chaplin Crescent), Participant; Catherine Heike (309 Chaplin Crescent), Appellant; Jean Mymryk (315 Chaplin Crescent), Participant; Ian Robson (307 Chaplin Crescent), Participant; David Gilmore (307 Chaplin Crescent), Participant. Mr. David Gilmore, in attendance throughout, limited his testimony with refreshing brevity to agreeing with the evidence of his friends and neighbours, reviewed infra.

Each of the foregoing were lay citizen witnesses.

Early objection was taken to testimony and evidence being received from Robert Brown. Considerable examination of this proposed witness and submissions were made by counsel for the Applicant, Ms. Stewart, all to underscore Mr. Browns' lack of credentials to give professional land use planning opinion evidence. Mr. Brown was not tendered by Mr. Roberts to give professional land use planning evidence; however, counsel for the Applicant cannot be faulted for the challenge given the appearance, text and phraseology employed in the Witness Statement of Mr. Brown and his referenced supplementary materials, Exhibits 6 – 12.

For reasons expressed in my Ruling, **Attachment 2** hereto, Mr. Brown was allowed to give lay citizen evidence of a factual and opinion nature as a consultant to his client, the Appellant. He was not sought to be nor qualified as a professional planner.

Ms. Kakaria was retained in July, 2017, well after the decision of the COA. As indicated, her evidence was thorough, supportive, professionally delivered and appropriately focused on the applicable jurisdictional directions, above cited. She indicated she had 'communicated with the project team' and conducted investigatory work, detailed in her Witness Statement, Exhibit 2.

She described two study areas (Boundary of Analysis) for comparative analysis of policy consideration and its application, provincial and local (Exhibit 1, Tab 26). Her larger 'general neighborhood', Ex. 1, Tab 27, excluded non-residential uses, extended east to Yonge Street and well south of the Beltline; she stated it exhibited a uniformity of generally similar lot patterns, lot sizes and building types consisting of 2-3 storey, single detached dwellings. She described the general neighbourhood as not being static, but evidencing new builds and renovations with some 369 variance and consent applications within 1000 m of the subject property, since 2007.

She identified a smaller, triangular shaped area north of Chaplin Crescent, south of Eglinton Avenue and easterly to the west side of Elmsthorpe Avenue, as an appropriate 'immediate neighbourhood', having a similar built form description.

Ms. Kakaria described the lot characteristics of the subject property from its survey, Ex.1, Tab 13, reproduced and attached hereto as **Attachment 3,** as having a lot area of 251.456 sq. m (2706 sq. ft.), being on the 'lower spectrum of the immediate neighbourhood'. She noted its existing fsi, at .69 times the area of the lot, exceeded the By-law standard of .60 fsi. Placing this is a context, she stated that within the immediate neighbourhood of 232 lots,her estimated fsi and gfa calculated densities ranged from 0.23 to one property at 1.43 (53 Duncannon Drive, near Eglinton); and lot sizes ranged from 178 sq m (269 Chaplin Crescent) to 857 sq. m. She opined that the Application proposal for the subject property, at 1.22 fsi, falls within the study area range, adding it is 'closer' to the highest in the immediate neighbourhood given the parcels smaller lot area.

In describing the Application, she noted no variance is sought or required for the third floor, that there is compliance with the overall height permission of both by-law regimes, and that the intent is to maintain the entire west wall and significant portions of the east and main front wall. She noted some relief requested for 'architectural features' and the higher front and rear wall extensions to recognize the flat roof design component. She indicated that the 'architectural features' were limited in the front façade, to about a one foot depth, not as deep as the reconfigured but existing bay window. She described other relief requested as simply to recognize existing conditions. Her Witness Statement provides extensive descriptive and opinion text on each element of the relief requested.

Ms. Kakaria supported the addition of the demolition plans, Ex.1, Tab 14, as a condition of approval. These plans, she said, are demonstrative of the intent that the Application be seen, as asserted by the architect, as a 'renovation'. Further, she supported the incorporation of the revised design for a rear third floor balcony/platform/deck proposed by the architect to the COA, Ex.1 Tab 19. This plan depicts a proposed reduced size of the rear balcony and inset railings that she supported to reduce and mitigate against the prospect of overlook.

She noted that the Planning Staffs' Report, Ex.1, Tab 18, had concern only for overlook, as later addressed in the revised conditions and deck plan, Exhibit 1, Tab 19. The COA incorporated the architects' revised proposal as part of the plans accepted as Condition 1 to its approval, Attachment 1 hereto.

Responding as well to filings by the Participants, she recommended that on the west elevation, a partially retained wall, existing windows be removed and the one new window be glazed.

A succession of apparent good faith concessions, generally relating to addressing privacy concerns and authorized during the TLAB hearing as instructions to counsel for the Applicant, are identified in Revised Conditions of Approval sought and filed as Ex.3 (deck size and railings), then subsequently replaced by Ex. 5 (adding opaque windows; privacy screening on rear elevated deck; storm water management review; geotechnical review; railing setback/platform size) and then ultimately replaced again (to be) filed as Ex. 18 (west side window location).

On the proposed east building wall, no windows are proposed. The east side yard proposed, she said would leave a minimum .92m for passage on the lot. At approximately 3 feet at its most reduced point, she felt this was adequate and exceeded the new By-law standard. On the west side wall, the call for recognition of existing conditions would leave .18 m for the chimney protrusion, and .28m for the main wall. This west side yard separation distance relief would extend to .60m (approximately 2 feet), as the largest side yard separation for the west new wall, at the rear extension.

Over extended testimony, Ms. Kakaria was frank in respect of a somewhat distinct if not unique rationale for several variances, namely those: varying the height permission for the front and rear main walls, under the new ZBL, from 8.5 m to 9.2 m, to allow for a flat roof design and the third floor; increasing the fsi from .6 to 1.22; extending permitted platform size from 4 sq m to 12.35 sq m (front) and, initially, 23 sq

m (rear); extending 'architectural features on the main front wall aligned to the existing, reconfigured bay window, 3.81 m from the front lot line; and reducing the rear yard to 5.83 m from the required 7.5 m, by extending the building 1.19 m further south than an existing vinyl shed.

The rationale, simply put was: that is 'what the plans show'.

On the issue of relief under both by-laws from the provision of one parking space, she noted that the plans do not provide for a space, reflecting the reality that currently no legal parking space of the dimensions required is provided. She indicated that, practically, with the configuration of pavers and landscaping, the existing driveway does accommodate two spaces albeit using a portion of an overly wide boulevard in the location of the subject property. She noted a recent variance nearby, at 305 Chaplin Crescent, had granted relief from the one vehicle parking space requirement based, in part, on an existing parking license/permit. For the subject property, no parking license existed and none had been applied for, although she felt the prospect existed. In the area, some 14 such licenses were said to have been identified.

Earlier she had noted that all new builds on the Chaplin Crescent south side had incorporated parking space provision by way of an integral garage, for one or two vehicles.

On the issues of parking, landscaping and driveway width, she supported the recognition of existing conditions.

Ms. Kakaria presented well-articulated, professional planning evidence as to how the Application was, overall, consistent with the Provincial Policy Statements ('PPS') and conformed to the Growth Plan, with particular reference to promoting compact urban form and modest intensification.

In addressing the City's Official Plan, Ex.1, Tab 6, Chapter 2.3 she canvassed both policy and directory language respecting the Neighbourhoods designation applicable to the subject property. In noting 'Neighborhoods' are to be considered 'stable but not static' (s.2.3.1), she supported that some of the variances sought are within the range of the 'general neighborhood'. Variance approvals are to be 'respectful and reinforce' the physical neighbourhood and 'fit harmoniously' within it (s. 3.1.2). She asserted the oft quoted interpretive doctrine that 'compatibility' does not necessarily mean 'the same as' and the compatibility test is co-existence, without undue impact.

In applying the Official Plan to the Application, she opinion compliance with urban design policies, in having similar setbacks, some based on existing condition retention, with minor exceptions for the squaring of the building (s. 3.2.1. a),b)). She envisaged similarity in proportions and materials but with a modern style, similar to representative examples in the photographic record of Exhibit 1. She provided a shadow impact analysis attesting to minimal incremental shadow impact from existing conditions and none at all on the Beltline property (s.3.1.2 d) and e)). Of the sections evaluative criteria, she suggested three were relevant and that the project, as proposed, met the 'respectful' obligation and design criteria found in s. 4.1.5. The criteria include 'height, massing and scale, as well as to prevailing pattern of landscaping '. To these she

responded that the plans represented a sensitive and gradual fit by virtue of height compliance (b), dwelling type (c), pitched roof, and range of main wall increment. She said small incremental changes are to be expected with urbanization and that even the fsi sought is consistent with the general neighbourhood, Exhibit 1, Tab 28, with densities ranging to 1.91 fsi on east side of Braemar Drive.

She noted that 186 similar type variances had been approved in the general neighbourhood with 170 involving fsi variances greater than .6 times; she noted that the subject property is closer to Eglinton Avenue, an intensification zone. Coupled with this, she indicated that lot depth, at 26.4 m for the subject property, is shallower as demonstrated by areal mapping, Exhibit 1, Tab 3. Despite this, she said that in the Beltway adjacent, a correspondingly larger area remains in public open space 'and almost compensates for the rear yard setback' requested.

On this basis, above, she opinion that the proposal is family friendly, compatible and will respect and reinforce the physical neighbourhood close to Eglinton Avenue, where more intensive development can be expected.

As such, she opined that the test, of maintaining the general intent and purpose of the Official Plan, was met.

With respect to the zoning by-laws, she reiterated several of the above points adding that the new variance for the rear deck at ground level constituted a platform encroachment on the west side lot line and rear yard setbacks that presented no overlook issues. Similarly, the canopy encroachment relief sought, at .1 m into the side yard, was minor. She compared side yard, side wall and height relief to approved variances, e.g. at 249 Chaplin Crescent, and said the proposal was comparable. In her view, slight increases can maintain the general intent and purpose of the zoning by-laws.

On the admittedly contentious issue of fsi, Ms. Kakaria said the proposal maintains a scale and massing consistent with neighbourhood properties with .6 or larger fsi. She said the existing fsi was non-compliant (at .69 times) and that 116 of 231 immediate neighbourhood properties enjoy an fsi of .6 or more.

She provided the example that for an average lot area of 412.7 sq m, the Application's gfa proposed (at 298.8 sq m) would generate an fsi pf .724. – which, she stated, would be less than the average of fsi variances approved, at .728, in the general neighbourhood.

From this she suggested that for this smaller lot there could be expected to be a higher fsi; namely, that by the placement of a similar sized house on the smaller lot, despite the fsi consequence, there would still be a maintenance of the character of the area, in terms of the scale of the built form.

No support was cited for this principle.

In addressing the platforms, she noted the proposed size reductions and recommended privacy screening will be addressed by way of revised conditions, including opaque treatment and set back from the south limit.

On the aspect of the rear yard variance, Ms. Kakaria cited its purpose to be for the provision of amenity space, a portion of which is to remain, with a deck. She noted that at this point, the Beltline is wider and provides greater amenity space. Moreover, the building length and depth provisions of the bylaw are being met. The planner canvassed the rear yard variance matter most thoroughly in paragraphs 94 to 98 of her Witness Statement and oral evidence. She did not emphasize a direct consideration and evaluation of policy 4.1.5 (e) - the prevailing pattern of rear…setbacks - at least to the degree challenged in opposition. Reply evidence was not called.

She opined that the parking variance requested would legalize an existing condition; as recited above, she said 17 licenses exist in the area and given this is a not a new build but is a new design, to the architect a 'renovation', in the absence of a garage now and given the inability to meet the space requirements of a parking pad (2.6m x 5.6m) due in part to the obstruction of 'architectural features', that this relief is appropriate.

As such, she felt the general intent and purpose test of maintaining the (applicable) zoning by-law(s) was met.

In addressing the 'desirability' test, Ms. Kakaria stated forcefully that the Application adds to and allows ongoing redevelopment as well as the regeneration and reinvestment in older housing stock in close proximity to transit. It does so, she said, in a setting where impact is minimized and with screening and mitigating measures, and with many Application variances maintaining existing conditions. The end product would be a desirable detached dwelling with a pitched roof based on variances similar to those experienced in close proximity.

In addressing whether the variances sought were 'minor', the planner added the rear yard setback variance should be seen as acceptable given the wider beltline in the vicinity. She advised that 'minor' is not numerical only, but encompasses fit and context. In this regard, she suggested that the site was on the periphery of the neighbourhood, near Eglinton Avenue and that the variances sought were not 'out of the ordinary'. She stated the appropriate test is whether unacceptable adverse impact would result, in the absence of which, as she has so found (no shadowing; no compromise to privacy), the variances are minor.

Ms. Kakaria reviewed and supported each of the Conditions in Exhibit 3 (later revised) as above described.

In response to the question I posed as to why this density, Ms Kakaria responded by simply acknowledging the smaller lot, stating that other lots are larger and have accommodated larger structures. She said that although the proposal is on a smaller lot, the area of public space and the size of built form proposed is similar to nearby dwellings. She stated that there is a higher expectation of fsi and that is a reflection of higher expectations in the public eye. She suggested the effect is that density is not changing: reflecting the character of the area and the lot fabric, the benefit of natural area buffering, the proximity to the Light Rapid Transit, that intensification includes 'coverage' and the building size is comparable to nearby properties.

She stated the dwelling proposed would be typical, four bedrooms and a recreation room.

On cross examination, Ms. Kakaria acknowledged the following:

1. The existing rear yard fence incorporates Beltline lands, a condition to be corrected on redevelopment.
2. An fsi of 1.22 as sought is at the higher end of the spectrum.
3. The length and depth of the proposed building extension, while compliant, overrides and erodes the rear yard setback.
4. The policy of compatibility in s. 3.1.2 of the Official Plan is augmented by the more specific criteria in s. 4.1.5.; the test is not similarity or compatibility but to respect and reinforce and the Official Plan and this policy document is more specific than the PPS.
5. The purpose of a rear yard setback is to provide private open space and, possibly, drainage.
6. Smaller houses on smaller lots can provide a range of housing.

Evidence from area residents followed.

Many of the concerns expressed by neighbours to the Application for the subject property overlapped. Theirs were issues of perceived impact, direct and indirect, were the consequence of what they believed to be overdevelopment. As is often the perception of residents, there was an expressed expectation that the zoning by-laws would protect against drastic change. In many instances, the roots of this appreciation stem from their long association with their properties, the well expressed tangible and somewhat unique characteristics of the widespread built form of the Chaplin Estates, the recognition of the Beltway as a natural feature attribute and extension to substantial and nearly uniform rear yards. In accepting the planners 'immediate neighbourhood', they stated its prevalent pattern in current reinvestment demonstrated compatibility rooted in their belief that the Chaplin Estates followed a tradition that should be respected and reinforced.

It would not be correct to describe the evidence of the neighbours as but perceptions or mere apprehensions. Their observations, pre-hearing filings and tendered Exhibits 6-17, were testament to detailed consideration given to the implications of the Application on their properties, environment and aspects of the public realm. There were specific issues cited, more or less common to all the neighboring residents: traffic impedances in front of their lots affecting the safety and movement of pedestrians and vehicles; storm water management examples of flooding and discharge, soil erosion, sinkholes, retaining wall repairs; issues of privacy, overlook, building mass, proximity; some loss of sunlight and air flow; ravine protection.

Perhaps more important than these considerations causing unease and disquiet was the pervasive issue of built form generated by the variances. These included not only of the changes to built form proposed in the form of three stories and roof top decks/ terraces, but also the physical form of the structure, closer, wider, longer, taller

and more intrusive than the existing building and their appreciation and evidence of redevelopment examples in the neighbourhood.

Two aspects were entirely common to the lay opposition presented to the Applications: massing (scale) and erosion of landscaped open space, private spaces, front and rear, both opined on as visiting undue impact on the common attributes of use and enjoyment of their outdoor spaces and contrary to prevailing patterns in the neighbourhood.

While the appreciation and perception of impact of the proposed built form was attempted to be described in marked up photographs by Mssrs. Mymryk and Evans, Exhibits 13-17, it was the 'on the ground' measures and responses to the Applicants own materials that most graphically demonstrated the strength and veracity of the views held. The persistent challenge to the focused issues of massing and rear yard erosion required from the TLAB the fulsome examination of the support rational for each of the variances requested.

Ms. Jean Mymryk and Ms. Catherine Heike spoke logically and passionately on the subject of neighbourhood character and its translation to the subject property as to built form, massing, site attributes, rear yards and the importance of the offsite attribute of the Beltline. In lay terms, but consistent with the evidence of Ms. Kakaria, the proposal was described to occupy about ½ of the rear yard space, inclusive of the rear yard extension without regard to at grade decking. The erosion of outdoor private amenity space was described as to be accented by an additional third storey and platform deck, clearly omnipresent and visible from interior and all exterior vantage points. As an undifferentiated mass of brick hosting decks at grade and on the second storey roof, both immediate neighbours objected to oversight into windows, skylights, rear yard amenity space, dining and activity spaces in the rear yards.

Counsel for the Applicant assisted and, in a series of concessions in proposed conditions, detailed above, presented solutions designed to limit and restrict the viewing and 'echo effect' of elevated activity on the platforms, balcony and decks, and their perception of intrusion. This was partially successful in achieving admissions of reducing but not eliminating the concern for undue interference with the use and enjoyment of neighbouring properties. Such concessions were not arbitrarily rejected; rather, their acceptance as improvements came as acknowledgements of expected improvements, should approvals be granted.

Ms. Stewart was successful in achieving a number of acknowledgements that sight lines, viewing distances, noise by-laws, railing setbacks and opaque privacy screens subdued somewhat the apprehensions expressed.

The perception from the plans of the mass and built form, the proximity of the decks to bedrooms and the proposed change and decrease in green space reflected by the enlarged footprint remained; no resident relaxed their opinion that the investment and privilege to live adjacent the Beltline was sufficient to warrant the placement of such a large house on one of the smallest lots in the neighbourhood. The existence of the Beltline in close proximity to the proposed construction raised an awareness that the Natural Area designation, the existence of the park and its appreciation by all houses on

the south side of Chaplin Crescent, should not be diminished by lessening an already undersized rear yard at 311 Chaplin Crescent.

To stay with advice from these resident witnesses, those that spoke to it uniformly rejected the relevance of comparative analyses based on lands south of the Beltline, in residential communities and zone categories unconnected with the Chaplin Estates neighborhood. In rejecting the 'general neighbourhood' area study and analysis reiterated by the planner, Ms. Kakaria, they offered not a planning opinion but a reality check in the sense of describing that area as unconnected by road or engagement in the day to day experience of the Chaplin Estates. This evidence was unchallenged.

The appearances by the neighbours could not be ended without reference to the evidence and replies, with levelled verve, to the cross examination of Jean Mymryk of 315 Chaplin Crescent. In addition to reinforcing evidence already recited, much of her response focus was on built form, scale and massing of the proposal being out of scale with the physical character of the neighbourhood. In the vernacular: 'Massive; and right next door. It is massive, period'. Hers was not a case of design concern. She freely admitted that recent new construction that was bigger and of a flat roof design differed but that these replacement houses coexisted: 'Of course. Some blend in. (But) that modern architecture is of two stories, with garages on a lot larger a lot. The comparison to the proposal is apples and oranges'.

Mr. Robson at 307 Chaplin Crescent joined in a similar refrain adding that the scale, undifferentiated brick face and rear yard incursion, with decks, was 'intimidating'.

Robert Brown was called by Counsel Roberts on behalf of the Appellant as having familiarity with the process of variance considerations having been a sitting member of a City COA on some 5000 applications. As reported earlier, his evidence was admitted for its factual and lay citizen value.

Mr. Brown brought forward several Official Plan policies not previously referenced. Among these were:

a) Zone 4 Flood Map, Ex. 10 showing lands subject to concerns for flooding and the management of surface water;
b) Policy 2.3.1, p.2-23, relating to preserving, enhancing and improving Greenspace with which he suggested the reduction of rear yard setbacks was not consistent;
c) S. 3.1.3 d) advocating the relevance in Neighbourhoods to preserving adequate light and privacy
d) Park and Open Space provisions, s. 3.2.3, and the obligation not to encroach;
e) Policy 3.4 .1 b), p.3-25 supporting the protection, restoration and advancement of the Natural Environment which he again related to the setback variance for the rear yard;
f) Policy 4.1.5, canvassed by Ms. Kakaria but to which he wished to call specific attention, particularly c) height; d) types and f) prevailing patterns of rear and side yard setbacks.

Using these references as a springboard for comment, Mr. Brown focused on the Application causing overlook, the location and height of the rear extension contributing to the massing effect and fsi at 1.22 as being out of context with the neighbourhood. In this regard, he produced two graphs based on data compiled by Ms. Kakaria. Exhibit 8 contains the two PDF exhibits: he observed that of all the COA and OMB decisions Ms. Kakaria referenced, the average fsi demonstrated was 0.72; only 2 of the examples of the 169 referenced exceeded that proposed for the subject property; further, examples that included the larger area, the 'general neighbourhood', including properties south of the Beltline, were in different zone categories and were unrelated to the immediate neighbourhood.

For the more 'immediate neighborhood', the core area accepted by all witnesses, the existing fsi average is 0.46 making the Application at 1.22 'out of context'.

Again, employing the Applicants data, his Exhibit 8 chart of rear yard setbacks suggested an existing average in the neighbourhood of 16.02 m with only one property, 209 Chaplin Crescent, on the Beltline that fails to meet the by-law standard, despite the reduction in lot lengths, nearer Eglinton Avenue.

From these points, in his perspective, both the Official Plan and the zoning provisions related to density and setbacks were not met, were not minor and the perspective afforded the neighbours was of a massing and density of built form that was not desirable nor fitting.

In cross examination, Mr. Brown agreed with the general policy principles put that the City's policy direction contemplated some impact and the goal is to limit or 'adequately' limit that, but not necessarily eliminate it. He agreed that impact could be incremental or reduced by measures taken. He acknowledged that some design features marginally reduced impact: balcony setbacks; privacy screening; recessed third floor. The latter, he suggested, produced a sense of greater mass on the immediate neighbours.

With respect to shadowing, he acknowledged there was no impact on the Beltline, where higher standards apply to the public realm. He agreed that the responsibility for care and protection of Natural Areas was shared by the Toronto and Region Conservation Authority ('TRCA') and the natural system by-law. He acknowledged there had been no overt indications of concern and that all were protected by the proposed Conditions, in Exhibit 18. There no regulations affecting the subject site or the Beltline in this vicinity.

He agreed that new development already experienced generally fits, but that that determination is a function of the size proposed which had to be approached with care and context, in a zone permitting 0.6 fsi. He agreed that while 'density' is not an Official Plan term, it is a regulatory element and planning policy language uses two empirical measurements making density a significant element within the defining ('leveler') criteria, being context.

He responded by observing that 'density' is the product of height, massing and scale, applied to the lot, and was not necessarily the dwelling type. He agreed height,

building length and depth affected massing and that those measures by themselves are well within the zoning permission for which no relief is requested in the Application.

He did not agree with the proposition, put in cross examination, that the scale of the house proposed was similar to the scale of dwellings along the same side of the street. He responded that a large gross floor area on a smaller property does not fit; that the comparison was not a proper 'valuation' point.

The witness acknowledged no concern or consideration for alternative, even larger, design schemes that might be possible. He expressed less concern for the variance request to eliminate parking, a matter he felt could be addressed by an application for a front yard parking pad.

ANALYSIS, FINDINGS, REASONS

This Panel Member accepts Ms. Stewart's referenced support from the Growth Plan, over objection by Mr. Roberts in argument, that increased building size can constitute a limited form of intensification in conformity with the Growth Plan.

The Applicant proposes a house it supports as consistent in height, massing and scale with dwellings on nearby properties in the 'immediate neighbourhood', of the planner Kakaria's two study areas. The lot on which the proposal is to be situate is one of the smallest identified, if not the smallest, in terms of that area. The lot is not otherwise constrained except perhaps by its proximity to Eglinton Avenue and the growing traffic congestion experienced backing into and affecting Chaplin Crescent. The dwelling is proposed to contain four bedrooms, a recreational room, rooftop patios, a grade related rear deck and reduced front, rear and side yards. No parking is to be provided to the by-law standard.

Connected to the opposition concerning impact on neighbouring properties are the two principle issues of undue massing and loss of rear yard greenspace.

Despite thorough cross examination, inroads into and the partial acknowledgement of proposed mitigation measures well and responsibly crafted in the proposed Conditions, Exhibit 18 and **Attachment 4** hereto, neither major concern was released.

On all the evidence tendered, this Member has significant reservations concerning a variety of aspects of the Applications.

1. Density or fsi: the Application request yields an fsi of 1.22 times the area of the lot. The fsi existing is @ .696; under both the new and the City By-law, the permission is .60.

It is patent is assessing good planning that matters not turn on a mere number. The Toronto Official Plan, offering direction as to how to assess whether approvals sought 'respect and reinforce' the physical character on an area, directs that

consideration be given to, inter alia, measures of height, massing and scale. This direction is further amplified by the anchoring challenge of whether the proposal, in all its manifestations, physically 'fits' within its environs and context.

These tests are not unexpected, novel, ambiguous or unclear. They engage consideration of the many influencing factors, including the adequate use of spatial separation and consideration of the numerous private and public interests in delivering good community planning.

In that regard, decisions need to be cognizant that the fsi measure is but one gauge of the assessment of massing, scale and fit. What is most significant in this evaluation process is the presence that this proposal would assume in a physical relationship to existing and planned built form. Fit is, of course, a relative term. On the one hand an object may fit into a container but it might be entirely inappropriate to do so in the absence of insulating the object from injury, thereby requiring a bigger container.

In the same manner, as indicated, consideration is required as to whether the concerns of the neighbours for the proposed massing are simply apprehensions or identify real incompatibility. We are all aware of the adaptability of the human form to accept circumstances not of one's initial choosing.

I agree with the interpretation of the planner Kakaria that 'compatibility' does not mean sameness. However, I did not take the concerns of the Appellant and Participants to be so narrowly focussed.

The appreciation of the measure of fsi must come from its context and the objectives of land use planning, including the making of determinations in the best long term interests of those affected by them, present and into the future.

I also agree with the submission from counsel for the Applicant, that where the Official Plan strives for compatibility in physical character, this does not mean or require that the application of a uniform fsi standard is necessary to implement the goal. Namely, what is important is to stand back and examine the larger context and in suitable circumstances grant or support aberrations on touchstones of compatibility, fit, impact and neighbourhood context.

The use of fsi as one regulatory control is an important element of a variety of considerations. In a temporal sense, the subject property at an fsi of .696 has, for many decades enjoyed a perfect integration with its neighbours and in the context of multiple example dwellings in the 'immediate neighbourhood'. The request for approval is more than twice the regulatory permission and approaching twice the existing reality. It therefore seems incumbent to have closely examined the evidence in support of its justification, with the larger context of considerations in mind.

I agree that current construction trends demonstrate an increase in building size (potentially density on a lot) and can be considered, even expected as an element of a demolition and new construction or a substantial rebuild. That increase, however, should be grounded on more than architectural drawings attesting to construction feasibility. It should have a rationale beyond "it is within the range experienced in the 'general neighbourhood'".

In my view, it requires more than a justification of replicating a dwelling type and scale within a size range that does not share the subject properties reduced lot dimensions or location.

Moreover, I find insubstantial vague references to property location, being near Eglinton Avenue as an 'edge condition' to be any form of justification in a substantive sense. Increasing the gross floor area permitted for some property types may well be justified 'because of proximity to Eglinton Avenue and its available higher order public transit'. However, for residential single detached dwellings within a Neighbourhood designation where 'stability' is recognized, 'fit' is mandated and change is to be 'gradual', the rationale seems a recipe for disruption. Where Council has sought to recognize and encourage higher densities and greater heights, massing and built form, it has done so with specific policies, ''Avenue designations', and zoning regulatory adjustments. None of these factors were said to be present or applicable to the subject property.

Here, the proposed increment in fsi was couched in a single rationale: 'that's what the plans show". The architect was not present to provide further insight and the planner was not able to demonstrate any contribution to the reasons proposed for the scale, massing or implications on landscaped open space.

Ms. Kakaria ably supported the project employing statistical measures, some from the 'general neighbourhood', which I agree are not applicable to justify site specific attribution. She provided a creditable photographic list of identified and similar new rebuilds, including on Chaplin Crescent, but these were on lots and with integral garages not comparable to the subject proposal, except perhaps in broad design and floor area attributes.

Ms. Kakaria did describe the project as having the laudable objective of retaining some foundation and support walls, west, east and front. She stopped short, however, of adopting as her own the terminology, the descriptor of a 'renovation', or even character continuity or enhancement. This was appropriate, forthright and honest for the plans clearly demonstrate no lasting legacy of such retention, beyond the advantage the contribution to mass and fsi by incorporating portions of existing walls through their reduced west side yard and front yard setbacks. Indeed, although the planner suggested that the retention of the main front wall and construction on its foundation was an important element of retaining the character of the area, such cannot be gleaned from a purposive review of the plans. Not only is the existing at grade bay window to be reconfigured and 'squared off', existing window configuration on both the west and north (front) wall appears dramatically altered. In addition, 'architectural features at grade are intended to alter the appearance of the building, supplemented by increased wall height. I am not convinced that the plans envisage elements of retention that justify any contribution to retaining the prevailing character of the area in a façade, design or even, necessarily, materials sense. Rather, the plans as filed need to be reviewed as they are admittedly presented: new construction. As such, little weight is

ascribed to the retention of existing foundation or above grade walls, other than as an appropriate justification to permit their practical recognition and maintenance.

With the advantage of the established west side yard and front yard reductions from the standards of the by-laws, the Application also requests relief for façade features and the rear yard setback, for no internal or on-site parking and height facilitation for a flat roofed building topped by a partial third storey. The building envelope so created is then further filled out by the (otherwise permitted) full two-storey rear yard extension.

Rather than comparing the proposed fsi of 1.22 times the lot area to the permission set in both by-laws, I find it incumbent on the proponent to explain, in land use planning terms, the reality of how that figure attaches to the context of the site and is a reasonable development standard for this lot. I find the explanation that it yields a dwelling size in the range of its new peers on different sized lots to be less than compelling. I find to create a notional fsi for the subject property, based on applying the projects size to an average lot size on an area basis, as described by the planner and counsel in argument, to be unhelpful. To accept such a rational would be tantamount to saying the contribution of the density control as a guide to the carrying capacity of a lot, is no longer a relevant land use planning tool or consideration. I am not prepare to go that far; the proposed increment needs to be viewed against the built form of its environment and in that context I find more in favour of the perceptions and measures of the neighbours, on massing impact, than the professional evidence, the support pillars for which I find were lacking.

It was argued by inference that because relief is not sought for height, building depth and length or for the ‘as of right’ permission for three stories, a much less sensitive proposal could occur. In the absence of evidence or any concerns of the Appellant and Participants to permitted construction, this aspect was not long pursued.

I was urged in argument by Ms. Stewart to accept that the ‘choice’ to renovate drives the built form and that in the absence of any substantive evidence of impact I should not arbitrarily reduce the admitted massing component of fsi, especially where that fsi would be (only) .79 times the lot area, if on a regular sized lot.

I have found that the ‘choice’ is not ‘renovation’, but redevelopment. I find that the scale, mass, built form and reduction in rear yard amenity space does create impacts that are tangible. For reasons expressed below, I cannot accept the rationale of ‘the architects plan’ or the comparison of ‘if on an average lot’.

It is clear that the current proposal demonstrates imaginative and talented architectural design, knowingly incorporating allowances and built form features that both maximize the attractiveness of the building attributes, now coupled with multiple instances of design solutions directed at mitigating impact. It is unfortunate that the lot

size itself, by virtue of the variances sought, does not lend itself to the carrying capacity necessitated by the design exercise.

2. Parking. I am also concerned with the elimination of any technical parking requirement in respect of a proposed residential dwelling at this location with at least four bedrooms. The Application requests relief from the provision of one parking space based on the potential presence of an authorized parking pad, the existing non-compliance and the asserted benefit of proximity to higher order transit services. There is an admission that rebuilds in the area, at least from all comparable examples, included integral garages at grade. No full edification was provided as to why one nearby variance - to eliminate the required one on-site parking space - was approved. It was said to have a front yard permit in hand. The current Application is not a case of coming with an existing permission in hand for one or two off-street parking spaces being approved, using the public boulevard. It would seem appropriate that, prior to requesting the elimination of required parking for as substantive a residential property as that proposed, that the Applicant address the reality on-site parking demand at such a busy intersection. This was not done.

3. Absence of Planning Rationale. I am concerned that the justification for several of the variances sought was a frank (and mandatory) admission that the architect had supplied the plan and that is what it revealed and required. The planner was retained after the COA Decision, had no originating input into the slate of variances sought and gave no indication of any attempt to influence the variances sought despite the appeal challenges. There were no variance modifications in the Applicant Disclosure under the TLAB Rules. The planner roundly supported the variances and, to be clear, made no references to other preferences or concerns as to their appropriateness. Where a perception of impact was identified, Ms. Kakaria was quick to look for and recommend mitigation measures, many of which received the agreement of the Applicant and became incorporated in Exhibit 18, Attachment 4 hereto. Without having participated in the origin, purpose or thinking behind the built form other than is represented in the Plans filed, the planner was at some disadvantage in projecting compatibility, character and fit. The explanation was that the variances sought for: wall height; decks (platforms), density; setbacks; parking deletion, and reduced front, side and rear yards were all the derivative of the architects plans, supplied to her. The architect did not testify nor was there any indication that the architect was present in the room for any of the evidence.

4. Platforms. The third floor ‘platforms’ proposed initially represent a significant departure from by-law permissions. Platforms are permitted, some are characteristically found in the area and only their size is regulated. Their scale, grade and second-storey roof-top locations and attributes were presented simply as being part of the Plans filed. No owner representations were made as to their intended use, necessity, appropriateness or functionality.

In response to concerns expressed at the COA, the architect as above described, filed a revised platform plan for the rear deck, in-setting side railings some one meter, to inhibit direct overlook of rear yards to the west and east. This aspect was supplemented by the planner during the course of her testimony to recommend that the side railings of the rear deck platform above the second floor be opaque, translucent or

solid to avoid visibility from and to their location. That recommendation and, indeed the recessed railings themselves did eventually get extended to the Beltway (south) side of the platform.

The concessions, responsibly entertained by the Applicant, aptly demonstrate the privacy concerns for the built form, as expressed by the residents in their resistance to observational and noise intrusions, potentially into their living rooms, skylights, bedrooms, rear yards and outdoor dining spaces. Both the Applicant and the residents are to be commended for their constructive limitations on but not elimination of the impact concerns for privacy of their personal spaces.

5. Study Area. I am concerned with the two 'Study Areas' selected by the planner. The larger area, being the source for a number of supporting comparative statistics (fsi, side and rear yard variances), appears unduly large incorporating zoning categories and housing stock distinctly different from that in the vicinity of Chaplin Crescent. The criteria for study area selection are not static nor governed by immutable language either in policy or planning principle. However, the study area delineation must have some descriptive logic capable of being replicated, critically appropriate, understood or plainly obvious in similarity to the subject property. Such was not the case. Rather, the two study areas were variously described as the 'general' and 'immediate' neighbourhoods. From each, much City information source statistics were gathered as to variance applications, variance 'approvals' and the specific types of relief granted (fsi; main wall height extensions, parking, decks or platforms and setbacks.) There are two areas of concern in respect of this data gathering effort, apart altogether from any representation that the boundaries were intended to define a 'neighbourhood', for application and consideration of the City Official Plan. One aspect is that the variance measures recorded in the information tables and site location plots were not tied to information as to zoning, lot characteristics or unit type. Rather, the data was raw and presented as a justification of 'ranges' of relief compared to that applied for, and in the case at least of the immediate neighbourhood, granted. Second, much of the data was based on extrapolations of the materials provided by the City; namely, the data was interpolated by air photography mapping and site inspections to conclude specific measures of statistical ranges: fsi, lot sizes, setbacks, etc. The information was generalized, but more important, it was derived over such a large area and subject to these evaluation methods such that compelling weight cannot be assigned to their authenticity or value.

In the case of the 'immediate neighbourhood', accepted by all, it is instructive to examine the description of the 'Chaplin Estates', within which the subject property is said to lie and which was the subject of a relatively contiguous construction period of somewhat uniform housing design. The Chaplin Estates was described as having a distinct replicable character. However, it is an area undergoing redevelopment with clear examples of differing building forms, if not types. That perception clearly played in the mind of the long term resident opponents. Regrettably, no witness pursued this with any rigour. TLAB is left on the one hand with a set of raw statistics on some standards over a significant geographic area, and a somewhat inchoate set of local perceptions on the other. Neither are determinate of any of the discrete variances framed in the Application and appeal. I do accept the agreement that the 'immediate neighbourhood' is the appropriate zone for comparative analysis.

6. Area Character. Much was said about area character and issues of uniformity and differing building forms. I agree with the characterization by the Applicants planner that the surrounding area, however defined, is undergoing some change, especially in built form. There are multiple examples along Chaplin Crescent and in the single detached neighbourhoods to the north, south of Eglinton Avenue, of redevelopment of the character proposed, including attributes of flat rooves, decks and larger massing on their lots. In general, from the examples shown, new house construction of the design proposed appears to be new builds, namely, redevelopment by demolition and replacement. TLAB was not provided with any examples where existing walls were sought to be retained and the construction purported to be a 'rebuild' or 'renovation' of the existing structure. Rather, the examples appear to be replacement buildings. Indeed, as earlier described, the Applicants planner was frank to acknowledge that the proposal envisaged by the Applications could not be advanced on the basis of a 'renovation' as the percentage of wall retention, being below 50%, took it out of this qualifying criteria. It was, however, urged on separate occasions that the retention of the main west wall, some of the east wall and the majority of the front (north) wall warranted consideration. That consideration was described as justification for the retention of building setbacks, side and front yard. This member agrees that the retention of an existing wall location can justify variances that are 'technical', to, in effect, recognize and maintain an existing built form, setback or other aberration from zoning standards that may have been put in place long after the original construction occurred.

That said, the question arises as to whether it is appropriate, with the acknowledgement that retention of the existing structure does not meet the qualifying criteria for renovation v. new construction, to allow variances both to recognize and maintain existing conditions and grant new variances that have the effect of substantially increasing the size and usability of new construction. In addressing this above, I have found that the retention only adds to the objections based on scale, massing and loss of green space. I find that the retention of some walls adds minimally or nothing to the test or assistance of maintaining the character of the area or of respecting and reinforcing its physical fabric.

In the evidence, close scrutiny was paid to the plans and the intention, as expressed by the Applicants planner, as to what constitutes new construction and what was proposed to be retained from the existing dwelling. Indeed, an undertaking was given to accept, that in the event of an approval of the variances (and the dismissal of the appeal), that a condition incorporating the plans filed, including the demolition plan showing wall retentions, was acceptable.

I have found that the Applications seek to retain the advantage of permissions recognizing existing by-law encroachments and seek to permit additional expansions elsewhere. The result is a massing and built form particular to the lot resulting in more than a doubling of the floor area of the dwelling unit involving impressive heights and scale distinctly greater than either neighbour. Indeed, the resultant fsi proposed is fundamentally larger than any other single detached dwelling lot on Chaplin Crescent, new or old.

Policy 4.1.5 f) of the City Official Plan requires that development respect and reinforce 'prevailing patterns of rear and side yard setbacks' in the neighbourhood. On the interpretation that 'prevailing' means 'predominant', I find that the rear yard variance proposed on the evidence, and its further compromise by at grade decking, does not maintain the intent and purpose of the Official Plan. The reduction proposed reduces or eliminates the purpose of the standard in the zoning by-laws and as such it is neither minor nor desirable.

Whether the fsi result should be the product of maximizing allowances based on existing conditions, applying relatively permissive zoning regulations respecting height and setbacks, and coupling these with the granting of new variances permitting increases in built form, massing and scale, is the fundamental question that must be answered.

I find that the answer is both clear and complicated. I find that the mass, scale and compromise to the rear yard green space on this smaller than average lot is too great. I find that aspects of some of the variances do not maintain the intent and purpose of the Official Plan or the 'bones' of the zoning by-law, to permit lot development of a scale commensurate with ensuring a built form that does not overpower adjacent properties or depart unduly from the measure of the physical character of the area. The specific variance requests that I find can be so categorized and also described as being not minor nor desirable, are identified by their disposition in the Decision and Order section of this decision. Those conclusions are based on the recitation and application of the evidence, reasons and findings above described.

The COA did not have before it, or on the record, the evidence presented to the TLAB. I therefore am unable to concur in the entirety with its decision. In the result, should the interests of all be able to be advanced, I provide below an opportunity to conclude an appropriate direction for the site.

There is much merit in providing for the regeneration of older housing stock. Provincial policy promotes that objective and the City Official Plan guides its implementation. I find that it is appropriate to provide for the redevelopment of the subject property, but to a scale more commensurate to its context and surroundings.

For the subject property to respect and reinforce the physical character of its neighbourhood, it must not push those elements of relief such that the end product sets itself apart from its context. There was no issue here of fear of change; renovation and redevelopment was recognized - and likely will be embraced. The Applicant has done much work to consider and refine a project that can deliver a desirable building product. The result has prevented a finding on massing, scale and landscaping that it can constitutes good community planning. That enterprise and imagination should not, however, be left without direction for consideration and hopefully the avoidance of a re-application and further approval process.

In the interests of the owner and the participation of those engaged to date, I am not prepared to accede to the admonition that the fsi not be 'arbitrarily' reduced. Or that such consideration be mechanically connected to an analytic measure of impact. While both comments are appropriate considerations, neither were founded in jurisdiction or

precedent. If accepted, I would be compelled to remit the matter back in its entirety for further consideration. I find that there is much merit in the evidence provided both for and against redevelopment of the nature proposed. I am satisfied that there is sufficient evidence to warrant a proportional estimate of appropriate built form. To the extent that it is reflected in a statistic such as a measure of fsi should not preclude that effort, supported as it is by several days of testimony, analysis and filings. I believe it publically responsible to advance redevelopment.

In disposing of the appeal, below, with a view to allowing redevelopment without the obvious necessity of a further application, the owner and the architect are encouraged to demonstrate they can present a sensitive and modest deployment of scale, mass and built form in keeping with both the character and context of the Chaplin Estates.

DECISION AND ORDER

The appeal is allowed in part. The requested variances listed in **Attachment 1** have the following dispositions for the subject property, 311 Chaplin Crescent, applicable to the specified by-laws identified below:

By-law 569-2013

Contingent on this by-law coming into full force and effect in regard to these matters, it is ordered that:

1. Appeal allowed, variance refused.
2. Appeal allowed, variance refused.
3. Appeal dismissed, variance approved.
4. Appeal dismissed, variance approved.
5. Appeal dismissed, variance approved.
6. Appeal allowed in part: the Applicant shall have a period of six months from the date of this decision to obtain a building permit for the subject property having a maximum permitted floor space index not to exceed 1.0 times the area of the lot but failing which, on that date, the appeal is allowed and the variance is refused.
7. Appeal allowed, variance refused.
8. Appeal dismissed, variance approved.
9. Appeal allowed, variance refused save and except for any at or near grade deck, compliant with side yard setbacks.
10. Appeal dismissed, variance approved.
11. Appeal dismissed, variance approved.
12. Appeal allowed in part: the Applicant shall have a period of six months from the date of this decision to obtain a parking space pad permit satisfactory to the City's Director of Transportation Services for the parking of one or more

vehicles on the subject property upon receipt of which the appeal is dismissed and the variance is approved but failing which, on that date, the appeal is allowed and the variance is refused.

By-law 438 -86

It is ordered that:

1. Appeal allowed in part: the Applicant shall have a period of six months from the date of this decision to obtain a building permit for the subject property having a maximum permitted residential gross floor area not to exceed 1.0 times the area of the lot but failing which, on that date, the appeal is allowed and the variance is refused.
2. Appeal dismissed; variance approved.
3. Appeal dismissed; variance approved, the new detached dwelling will be located 0.28 m from the west lot line.
4. Appeal allowed; variance refused, save and except for any at or near grade deck, compliant with side yard setbacks.
5. Appeal dismissed; variance approved.
6. Appeal dismissed; variance approved.
7. Appeal allowed in part: the Applicant shall have a period of six months from the date of this decision to obtain a parking space pad permit satisfactory to the City's Director of Transportation Services for the parking of one or more vehicles on the subject property upon receipt of which the appeal is dismissed and the variance is approved but failing which, on that date, the appeal is allowed and the variance is refused.

AND it is further ordered that in the case of both of the above noted by-laws, the approvals are subject to the Conditions identified in Attachment 4 hereto, as modified in BOLD and strike out, subject to any necessary changes to give effect thereto and being in respect of any facilities or matters to which they refer and may be present or proposed in any building permit issued.

There are no approved plans attached to this decision and order.

If there are any difficulties experienced in the interpretation or application of this decision, the TLAB may be spoken to.

X 

Ian Lord

Panel Chair, Toronto Local Appeal Body

Signed by: Ian Lord

ATTACHMENT 1

REQUESTED VARIANCE(S) TO THE ZONING BY-LAW:

1. Chapter 10.5.40.60.(1)(C), By-law 569-2013

   A platform without main walls, attached to or less than 0.3 m from a building, with a floor no higher than the first floor of the building above established grade may encroach into the required rear yard setback 2.5 m if it is no closer to a side lot line than 1.07 m.

   In this case, the platform will encroach 2.36 m into the required rear yard setback and will be located 0.58 m from the west side lot line.

2. Chapter 10.5.40.60.(2)(A), By-law 569-2013

   A canopy, awning or similar structure above a platform may encroach into a required building setback to the same extent as the platform it is covering.

   In this case, the canopy will encroach 0.1 m beyond the front platform it is covering towards the east and west lot lines.

3. Chapter 10.5.40.60.(5)(B)(ii), By-law 569-2013

   A chimney breast on a building may encroach into a required building setback a maximum of 0.6 m provided it is located no closer than 0.3 m to a lot line.

   In this case, the chimney will be located 0.18 m from the west side lot line.

4. Chapter 10.20.40.10.(2)(A)(i), By-law 569-2013

   The maximum permitted height of all front exterior main walls is 8.5 m.

   In this case, the height of the front exterior main wall of the new dwelling will be 9.03 m.

5. Chapter 10.20.40.10.(2)(A)(ii), By-law 569-2013

   The maximum permitted height of all rear exterior main walls is 8.5 m.

   In this case, the height of rear exterior main wall of the new dwelling will be 9.03 m.

6. Chapter 10.20.40.40(1)(A), By-law 569-2013

   The maximum permitted floor space index is 0.6 times the area of the lot (146.76 m^2). The new detached dwelling will have a floor space index equal to 1.22 times the area of the lot (299.32 m^2).

7. Chapter 10.20.40.50.(1)(B), By-law 569-2013

The maximum permitted area of each platform at or above the second storey of a detached house is 4.0 m².

In this case, the front platform at or above the second storey will have an area of 12.35 m² and the rear platform at or above the second storey will have an area of 23.0 m2. The combined area of the platforms at or above the second storey will be 35.65 m2.

8. Chapter 10.20.40.70.(1), By-law 569-2013

The minimum required front yard setback is 4.67 m.

The new detached dwelling will be located 3.81 from the front lot line.

9. Chapter 10.20.40.70.(2)(A), By-law 569-2013

A minimum required rear yard setback is 7.5 m.

The new detached dwelling will be located 5.83 m from the rear lot line.

10. Chapter 10.20.40.70.(3)(B), By-law 569-2013

The minimum required side yard setback for a detached house is 0.9 m.

The new detached dwelling will be located 0.28 m from the west side lot line.

11. Chapter 10.5.40.60.(7), By-law 569-2013

Roof eaves are permitted to project 0.9 m provided they are no closer than 0.3 m to a lot line. In this case, the roof eaves will be located 0.18 m from the west lot line.

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

A minimum of one parking space is required to be provided. In this case, no parking space will be provided.

ATTACHMENT 1

1. Section 6(3) Part I 1, By-law 438-86

   The maximum permitted gross floor area of a detached dwelling is 0.6 times the area of the lot (146.76 m²).

   The new detached dwelling will have a residential gross floor area equal to 1.22 times the area of the lot (299.32 m²).

2. Section 6(3) Part II 2(II), By-law 438-86

   The minimum required front yard setback on an inside lot is 4.67 m.

   The new detached dwelling will be located 3.81 m from the front lot line.

3. Section 6(3) Part II 3.B(II), By-law 438-86

   The minimum required side lot line setback for the portion of the dwelling not exceeding a depth of 17 m is 0.9 m.

   The new three-storey dwelling will be located 0.18 m from the west side lot line (setback measured to the canopy).

4. Section 6(3) Part II 4, By-law 438-86

   The minimum required rear yard setback is 7.5 m.

   The new dwelling will be located 5.83 m from the rear lot line.

5. Section 6(3) Part III 4, By-law 438-86

   The maximum width of a walkway located between the front lot line and any wall of the building facing the front lot line is 1.06 m

   In this case, the front walkway will have a width of 2.62 m.

6. Section 6(3) Part III 3(d)(i)(D), By-law 438-86

   A minimum of 75% (28.35 m²) of the required front yard landscaped open space shall be in the form of soft landscaping.

   In this case, 40% (15.3 m²) of the required front yard landscaped open space will be in the form of soft landscaping.

7. Section 4(4)(b), By-law 438-86

A minimum of one parking space is required to be provided. In this case, no parking space will be provided.

Wednesday, October 25, 2017

R U L I N G

LORD, I. (ORALLY):

All right. I apologize, that took a little longer than I had predicted. So, I guess this constitutes a Ruling in respect of the objection taken to the calling of Mr. Robert Brown.

I want to begin by saying that Land Use Planning is a recognized professional discipline. It has two streams of membership in the Province of Ontario. One is membership in the Ontario Professional Planners Institute with a designation provided by the legislature for status. It is undergoing a review and being amplified with a draft bill that's in front of the House at the moment. But, both the existing private act and the public bill that's proposed contemplate that the discipline of Land Use Planning will be a recognized profession in Ontario subject to regulation and enforcement. In both cases, they also recognize that there are planners in the world that - and in Ontario, that have not elected to become members.

Currently, the Ontario Professional Planners Institute is a membership corporation that is not mandatory or obligatory on planners. And that, so far, is intended to be the course under the new legislation. However, it is recognized that

because the profession has adopted rules of membership criteria and has worked collaboratively with other provinces to achieve the standards board and has adopted a discipline code and has an enforcement committee, it's understood that members who ascribe to that organization should be accredited recognition above and beyond those who elect not to be a member. Having said that, there are lots of professional planners still in Ontario.

That's not really of any issue here, either qualification criteria, because I do not see the witness being tendered as a professional planner. In fact, I think that was made clear at the outset. And therefore, although it's instructive to know the basis of planning discipline and membership accreditations in Ontario, to me, it is not an absolute bar in general circumstances and it's not a bar in this circumstance because there is no effort to qualify Mr. Brown as a planner.

I think that it is an important element of both counsels' positions that his evidence will not be tendered as expert testimony in Land Use Planning. I think it's important that both counsel are alert to the ability to police where that issue may arise: that where there is an opinion being given that might be considered to be a professional planning opinion and we will look to police that.

There's no objection by counsel, either counsel, to

lay witness evidence being given. There have been guidelines referred to in the three cases referenced by the Applicants counsel, Regina v. Mohan and the Fort Erie case and the Street numbered City case, I think it was Adelaide Street, that are interesting and important. I do acknowledge this Tribunal, like the Ontario Municipal Board, does have a gatekeeper role in insuring that the evidence it hears meets qualifications of relevance and, as Mohan put it, necessity and expertise in an area of qualification, if that qualification is sought.

In this instance, I've looked quickly, at the witness statement of Mr. Brown. I've looked quickly at the document base that is referred to as a PDF attachment. I'm not going to accept the opinion conclusion evidence of the witness statement as a professional land use planning opinion. Something I admit, Mr. Brown, because I think that is a cumulative opinion that is really the preserve of a professional planner, however qualified.

I don't find the qualifications present to, at this stage to be clear enough, to admit Mr. Brown is a professional planner capable of giving expert testimony in Land Use Planning. I do, however, say that a client, in this case, Ms. Heike...

MS. HEIKE: Heike.

CHAIR: ...Heike, is entitled to select the

representatives and the witnesses that she wishes to, that is a principle rule of natural justice. And, to the extent that Mr. Brown is being called to provide factual evidence and evidence that is relevant to the proceeding, I will hear that. I think I should hear that. It is subject, of course, to the limitation on exclusion of opinion evidence that is planning opinion evidence.

Now, to be a properly qualified expert, we don't need to look at the standards for a professional planners because that's not what's being tendered. But, there is experience in the witness in various fields of endeavour and I glean from the quick review, there has been effort at study of the subject site and property that may have factual relevance and be necessary to give a full picture. So, I'm prepared to hear that.

The challenge ingredients to a professional include independence. I don't think that has been raised or pressed. I have no basis to exclude Mr. Brown on the basis of independence. I understand him to have a client. There was no issue. Mr. McKenzie was clear that a simple retainer by a client is not an indication of bias and I accept that conclusion in the review case of Ms. Schiller's decision which requires the - I recall it was before the Fort Erie decision.

So, not qualified – counsel can challenge any

attempts to make Land Use Planning conclusions beyond those that may be reached by any lay citizen, informed or otherwise, I think is an appropriate solution and I'm grateful that counsel have largely come to that conclusion.

The other aspect is that I am reluctant to exclude any factual study that may have relevance to the determination of a variance as sought in this hearing. If it's relevant and is competently prepared and subject to challenge, I think the vehicles of challenge and cross examination are available to challenge the relevance and the extent of the evidence called. I know that there is a competent counsel present who will do that even though it may result in a slightly extended hearing which already has occurred, it's almost 11:00.

So, on that basis, I'm going to allow Mr. Brown to testify. I make no comment on the timing of the challenge, it is what it is.

I am going to distinguish the application of Mohan on the basis that expertise is not being proffered here in a particular discipline or element.

I'm going to distinguish Fort Erie in that Mr. Brown has not been demonstrated to be a member of any association that's relevant to this hearing or this setting or this site. If that were the case, I would – might think differently but it hasn't

been established and I repeat that in the absence of any evidence of lack of independence, I'm not prepared to exclude him on that ground. He's not bound by any rules, I know that, but we can police by cross examination if there are areas that are to be explored that relate to, perhaps, gratuitous comment or anything unfounded by normal concepts of professional discipline.

And, I'm going to distinguish the 257 Adelaide Case, Appeal 151187, Mr. Freedman again, on the basis that there is no request to qualify Mr. Brown as a planner.

So, I appreciate the milieu that you're in. Mr. Brown you are now under a strict regimen of, stick with the facts, the old Jack Friday's, 'facts, only the facts, ma'am', and lay conclusions from them and relevance to this site and this property. And beyond that, I'm going to give Ms. Stewart a latitude to challenge areas where you might stray.

That concludes my Ruling. It's not very clean or neat but we're going to hear from Mr. Brown.

And, I notice there, in the materials filed, a lot of, a litany of extracts from the Official Plan and from the Zoning Bylaw. They're fair to call to our attention but I want to remind you that Ms. Kakaria has been very diligent in setting out policies and we don't need to repeat those or elements. If

there are others that you think need to be brought to our attention or areas where you disagree with her evidence on them, fine, but let's not rebuild the world of Provincial Policy and Growth Plan and the OP beyond that.

* * * * * * * * *

Attachment 3

PG. 6239

SURVEYOR'S REAL PROPERTY REPORT

PART 1) PLAN AND TOPOGRAPHIC DETAIL OF

PART OF LOTS 11 AND 12
REGISTERED PLAN 2639–Y
CITY OF TORONTO

SCALE 1:150

1.5m 0 1.5 7.5metres

VLADIMIR DOSEN SURVEYING, O.L.S.

PART 2) **SURVEY REPORT**

REGISTERED EASEMENTS AND/OR RIGHT OF WAYS:
NO EASEMENTS OR RIGHT OF WAYS ARE REGISTERED
COMPLIANCE WITH MUNICIPAL ZONING BY–LAWS:
THIS PLAN DOES NOT CERTIFY COMPLIANCE WITH ZONING BY–LAWS.

THIS REPORT WAS PREPARED FOR DAVID NAGHDI AND THE UNDERSIGNED ACCEPTS NO RESPONSIBILITY FOR USE BY OTHER PARTIES.

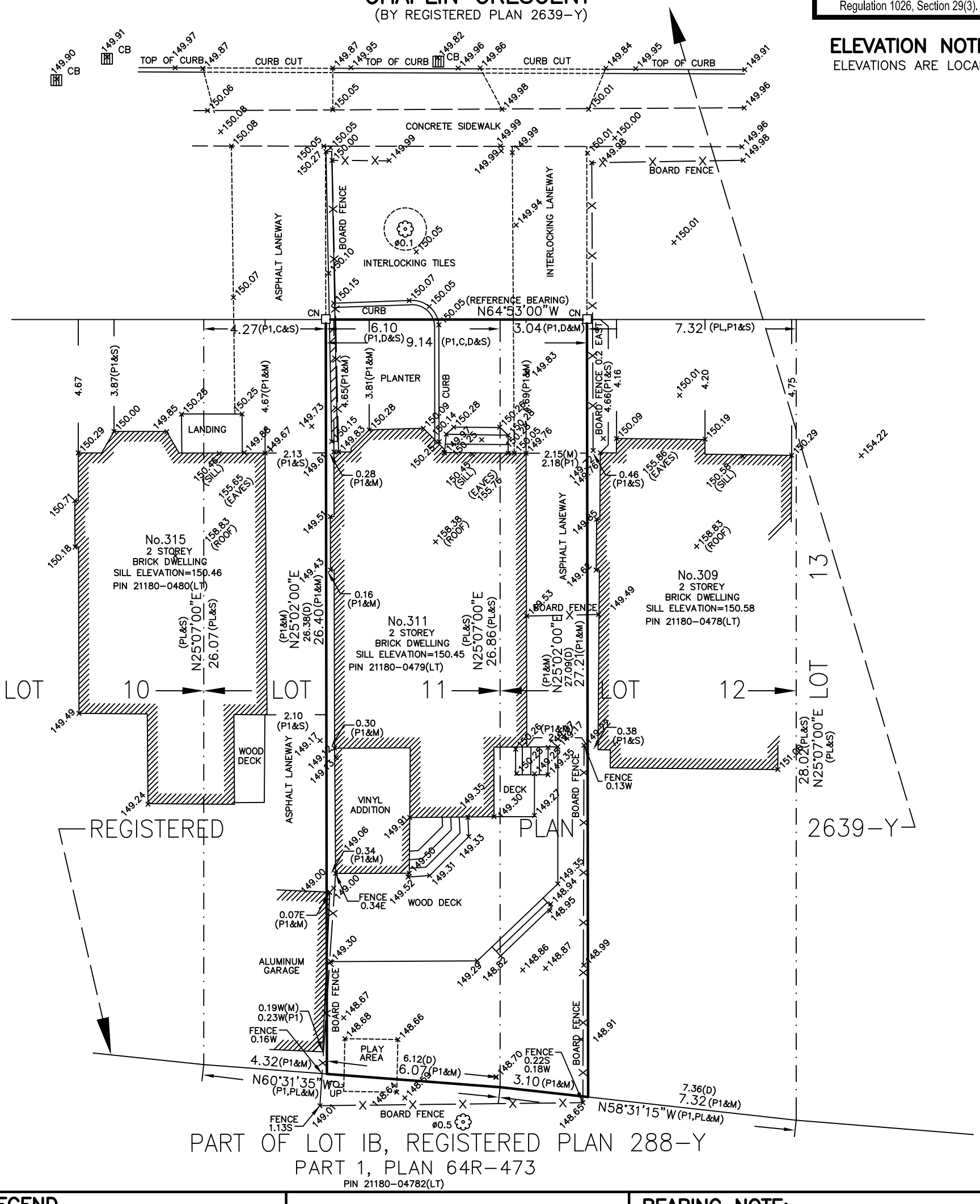
METRIC

DISTANCES SHOWN ON THIS PLAN ARE IN METRES AND CAN BE CONVERTED TO FEET BY DIVIDING BY 0.3048

ASSOCIATION OF ONTARIO LAND SURVEYORS
PLAN SUBMISSION FORM
1988567

THIS PLAN IS NOT VALID UNLESS IT IS AN EMBOSSED ORIGINAL COPY ISSUED BY THE SURVEYOR In accordance with Regulation 1026, Section 29(3).

ELEVATION NOTE:
ELEVATIONS ARE LOCAL



NOTES AND LEGEND

□	DENOTES SURVEY MONUMENT PLANTED
■	DENOTES SURVEY MONUMENT FOUND
SIB	DENOTES STANDARD IRON BAR
IB	DENOTES IRON BAR
CC	DENOTES CUT CROSS
WIT	DENOTES WITNESS
OU	DENOTES ORIGIN UNKNOWN
S	DENOTES SET
M	DENOTES MEASURED
C	DENOTES CALCULATED
PL	DENOTES PLAN 64R–473
P1	DENOTES PLAN BY P. SALNA Co. LTD., O.L.S. DATED AUGUST 30, 1993.
D	DENOTES INST. No.CA623069
UP	DENOTES UTILITY POLE
CB	DENOTES CATCH BASIN
MH	DENOTES MANHOLE
HYD	DENOTES FIRE HYDRANT
ø	DENOTES DIAMETER
⚘	DENOTES TREE

SURVEYOR'S CERTIFICATE

I CERTIFY THAT:

1. THIS SURVEY AND PLAN ARE CORRECT AND IN ACCORDANCE WITH THE SURVEYS ACT, THE SURVEYORS ACT AND THE REGULATIONS MADE UNDER THEM.
2. THE SURVEY WAS COMPLETED ON THE 17th DAY OF AUGUST, 2016.

SEPTEMBER 8, 2016
DATE

VLADIMIR DOSEN, B.Sc.
ONTARIO LAND SURVEYOR

BEARING NOTE:

BEARINGS ARE ASTRONOMIC AND ARE DERIVED FROM THE SOUTHERLY LIMIT OF CHAPLIN AVENUE AS SHOWN ON PLAN 64R–473 HAVING A BEARING OF N64°53'00"W

VLADIMIR DOSEN SURVEYING
ONTARIO LAND SURVEYORS

555 DAVISVILLE AVENUE
TORONTO, ONTARIO M4S 1J2
PHONE:(416) 466–0440 EMAIL:vladdosen@rogers.com

FIELD: KUMAR	CAD FILE: 311 CHAPLIN CRESCENT
DRAWN BY: NATHAN	FILE: 16–148
CHECKED BY: VD	JOB No: 16331

ATTACHMENT 4

311 Chaplin Crescent (7 181621 S45 22 TLAB)

List of Conditions: As varied by TLAB Order

1. ~~Subject to conditions 2 and 3 below, the proposed dwelling shall be constructed substantially in accordance with the Site Plan, Elevations prepared by Lorne Rose Architect and dated January 24, 2017, filed as Exhibit 1.~~
2. The railings on the second or third ~~rear third~~ storey rear balcony, if any, shall be inset from the interior of the side parapet walls by 0.91 m, ~~as shown on the Third Floor Plan dated May 26, 2017, filed as Exhibit 1, Tab 19.~~ The railings, if any, shall also be inset from the interior of the rear parapet wall by 0.61 m.
3. The owner shall install opaque or translucent privacy screens a minimum of 1.8 m in height on the sides of any rear second or third ~~the rear third~~ storey platform, to be inset consistent with condition #2.
4. Prior to the issuance of a demolition and/or building permit, the owner shall satisfy all matters relating to Ravine and Natural Feature Protection By-law, to the satisfaction of the Supervisor, Ravine and Natural Feature Protection.
5. Prior to the issuance of a demolition and/or building permit, the owner shall submit the following:
    a. A grading and drainage plan to the satisfaction of the City's Engineering and Construction Services Division;
    b. Any required engineering reports or plans, including a geotechnical report by a qualified engineer, to demonstrate the adequacy of the soils for the proposed foundation, as required by and to the satisfaction of the City's Engineering and Construction Services Division.
6. Lot grading for the site shall be to the satisfaction of the City of Toronto Building Division. The Chief Building Official of the City is requested to pay particular attention ~~to try~~ to ensure that overland stormwater drains away from and does not adversely affect adjacent properties.
7. ~~The~~ Any second storey window on the West Elevation shall be translucent or frosted glass, and it shall be offset from any second-storey windows on the east wall of 315 Chaplin Crescent.
8. The downspouts shall not discharge into the side yard between 311 Chaplin Crescent and 315 Chaplin Crescent.