

# DECISION AND ORDER

**Decision Issue Date**      Wednesday, August 29, 2018

PROCEEDING COMMENCED UNDER section 53, subsection 53(19), section 45(12), subsection 45(1) of the Planning Act, R.S.O. 1990, c. P.13, as amended (the "Act")

Appellant(s): JONATHAN BENCZKOWSKI

Applicant: SOL ARCH

Property Address/Description: 130-132 SEARS ST

Committee of Adjustment Case File Number: 17 256890 STE 32 CO, 17 256894 STE 32 MV, 17 256895 STE 32 MV, 17 256896 STE 32 MV, 17 256897 STE 32 MV, 17 256898 STE 32 MV, 17 256899 STE 32 MV

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18 144513 S45 32 TLAB, 18 144514 S45 32 TLAB,  
18 144515 S45 32 TLAB, 18 144516 S45 32 TLAB,  
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**Hearing date:**      Thursday, August 16, 2018

**DECISION DELIVERED BY** Ian James LORD

## APPEARANCES

Name	Role	Representative
SOL ARCH	Applicant	
Jonathan Benczkowski	Appellant/Owner	David Bronskill
Jane McFarlane	Expert Witness	
Yves Lavigne	Participant	
Douglas Wilkins	Participant	
Richard Serrao	Participant	
Katherine Kim	Participant	

## **INTRODUCTION**

This is an appeal from multiple decisions of the City of Toronto's (City) Toronto and East York District panel of the Committee of Adjustment (COA) refusing severances, lot assembly and variances to permit construction of two detached and four semi-detached dwelling units, at 130 -132 Sears Street (subject property).

The subject property is vacant following demolition in 2017 of several structures. It is located mid-block between Laing Street and Knox Avenue, south of Queen Street and north of Eastern Avenue in the 'Leslieville' area of the City.

The subject property is bounded on its south limit by Sears Street, a 6.09 m wide improved road, with limited services. It is bounded on the north by Memory Lane, a 6.04 m wide public lane, again with limited services but inclusive of waste collection, on both.

The COA found prematurity for deficiencies in several elements including the lack of supporting evidence on suitability for residential uses, the dimensions and shapes of lots, and the adequacy of roads, access, parking, utilities and municipal services, among other matters.

## **BACKGROUND**

The applicant/owner is a registered professional planner. Although known to the Toronto Local Appeal Body (TLAB), he did not attend the hearing but was represented by legal counsel and a qualified professional planner, above identified.

I advised that I had walked the site and surrounding area and had familiarized myself with the file materials.

Three Participants attended and spoke to the matters on appeal: Yves Lavigne, 128 Sears Street, residential neighbour to the immediate west; Douglas Wilkins, 104 Knox Avenue, adjacent to 132 Sears Street (and proposed Part 1) to the east; and Richard Serrao, 94 Knox Avenue, also to the immediate east of the subject property.

Mr. Lavigne raised the preliminary issue of late filings by the Applicant/Appellant which deprived those of interest of a period of some four weeks to review changes to the applications. He argued that the late filings, including survey materials and the planner's Witness Statement, should not be admitted into evidence,

For his part, Mr. Bronskill advised that he was recently (July 12, 2018) retained; that neither he nor the planner, Ms. McFarlane (retained June 15, 2018), appeared before the COA; and that they had no knowledge of the concern for late filings, despite an almost 6 week hiatus between the late filing and the opening of the Hearing. He noted that prejudice had not been asserted by Mr. Lavigne, but rather that a complaint that 'due process' had not been followed had been made.

With the Party and all but one of the Participants present, I determined the Hearing should proceed on its merits. Mr. Bronskill was requested to advise his client, Mr. Benczkowski, that a failure to engage the community, a pattern of late filings, late retainers of counsel and professional assistance and unresponsive conduct is not the hallmark of responsible developer, let alone the standard of excellence expected of a professional planner.

## **MATTERS IN ISSUE**

In that the owner is the appellant, I determined it appropriate that evidence be called by the appellant first, followed by the express concerns of the Participants with a right of reply in the appellant.

The owner's obligation is to demonstrate satisfactory regard for the statutory tests and considerations listed below, under 'Jurisdiction'. This justification is required and although the appellant proposed to hear from (and release) the Participant's first, this was refused by the TLAB.

This allowed for a better understanding of the revisions to the applications on appeal, which included the reductions in several variances as a result of changes to the plans, and the elimination of several variance as a result of design adjustments. It also afforded an opportunity to explain the existing lot pattern of the subject property and how it would be reconfigured and reassembled, to create six proposed lots of record to accommodate 2 detached dwellings (east side) and 4 semi-detached dwellings (west side).

As described below, the Participants did not oppose development, as such, but rather expressed concerns for the number of variances sought, privacy issues, excessive density, design considerations and proposed parking solutions.

No one appeared from the City; no City planning staff report was available; however, there were reports from Engineering and Technical Services, Urban Forestry and the Toronto Region Conservation Authority. None objected to the severances.

Fundamentally, at issue was whether development should be permitted given the absence of services in front of 3 of the 6 proposed lots on a public lane and whether the degree of intensification permitted by the proposed variances was appropriate.

## **JURISDICTION**

### **Provincial Policy – S. 3**

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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').

**Consent – S. 53**

TLAB must be satisfied that a plan of subdivision is not necessary for the orderly development of the municipality pursuant to s. 53(1) of the Act and that the application for consent to sever meets the criteria set out in s. 51(24) of the Act. These criteria require that " regard shall be had, among other matters, to the health, safety, convenience, accessibility for persons with disabilities and welfare of the present and future inhabitants of the municipality and to,

- (a) the effect of development of the proposed subdivision on matters of provincial interest as referred to in section 2 of the Planning Act;
- (b) whether the proposed subdivision is premature or in the public interest;
- (c) whether the plan conforms to the official plan and adjacent plans of subdivision, if any;
- (d) the suitability of the land for the purposes for which it is to be subdivided;
- (d.1) if any affordable housing units are being proposed, the suitability of the proposed units for affordable housing;
- (e) the number, width, location and proposed grades and elevations of highways, and the adequacy of them, and the highways linking the highways in the proposed subdivision with the established highway system in the vicinity and the adequacy of them;
- (f) the dimensions and shapes of the proposed lots;
- (g) the restrictions or proposed restrictions, if any, on the land proposed to be subdivided or the buildings and structures proposed to be erected on it and the restrictions, if any, on adjoining land;
- (h) conservation of natural resources and flood control;
- (i) the adequacy of utilities and municipal services;
- (j) the adequacy of school sites;
- (k) the area of land, if any, within the proposed subdivision that, exclusive of highways, is to be conveyed or dedicated for public purposes;

(l) the extent to which the plan's design optimizes the available supply, means of supplying, efficient use and conservation of energy; and

(m) the interrelationship between the design of the proposed plan of subdivision and site plan control matters relating to any development on the land, if the land is also located within a site plan control area designated under subsection 41 (2) of this Act or subsection 114 (2) of the City of Toronto Act, 2006. 1994, c. 23, s. 30; 2001, c. 32, s. 31 (2); 2006, c. 23, s. 22 (3, 4); 2016, c. 25, Sched. 4, s. 8 (2).

### **Minor Variance – S. 45(1)**

In considering the applications for variances from 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.

### **EVIDENCE**

Ms. McFarlane, a registered professional planner, was qualified and gave the only expert planning opinion advice heard by the tribunal.

She advised that while not having appeared at the COA, she had reviewed revised plans and made separate adjustments she could support. Her evidence was as follows.

The subject property was comprised of two parcels, totaling 1030 sq. m in area, with a frontage of 17.1 m on each of Sears Street and Memory Lane. It abuts a private lane to the east (running most of its length between the two access routes over which 132 Sears Street was said to enjoy a right-of-way or easement). There was no expressed intention for the project to use this lane, which serves as rear access and parking for homes on Knox Avenue.

North of the subject property, a 7 storey mixed use residential commercial building fronting on Queen Street is under construction. It takes vehicular and pedestrian access from Memory Lane (Rockport property). There are also residential properties infrequently taking frontage and access from both Sears Street and Memory Lane.

Largely unchallenged, she also provided the following relevant opinion advice:

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1. A Phase 1 and 2 soils contamination report of the property had been completed advising of contamination that was required to be satisfactorily addressed prior to building permit issuance. While a Record of Site Condition had not been completed, efforts were underway to satisfy a residential development standard that could be addressed by an appropriate condition of approval.
2. In describing and studying a general and a more proximate study area, she derived indicia of mixed area character with similarities to the proposal and 16 examples of severance and variance applications engaging criteria similar in nature to the subject appeals relating to: lot areas, building length, parking and lane only access. None of the examples were similar to the proposed assembly, including its design. However, she noted similarities in built form, building type, side yard reductions, parking relief and fsi/gfa densities, some more substantial than proposed.
3. The development is in an R zone which permits singles and semi's with a density limit of 1x coverage. The height is limited to 12 m. There is no limit on the number of stories. Despite the number of variances sought (76 over the 6 proposed lots for two applicable zoning by-laws) there is general compliance with area zoning, on important aspects such as lot frontage, height, lot depth and lot area. As well, requests for variances for roof and eaves overhang and for landscaped open space reductions in front yards had been eliminated. No change had occurred to the consent application.
4. It was her advice, accepted by the owner, to enhance landscaping for better infiltration and storm water management. All exterior side yard setbacks were increased to 0.6 m, thereby also reducing the fsi variances requested.
5. Although applied sequentially by lot, the number of variances were addressed by categories as well:
  - a. Density: she advised the range proposed was from 1.13x to 1.17x on a permission of 1.0x lot coverage. Employing Attachment 11 to Exhibit 1 (the planners Witness Statement), it was described that of 16 COA/OMB decision examples of approvals, the range was experienced and appropriate to the primary study area, as well as the general study area. It was noted that parking is via front yard pads and that fsi/gfa is not contributed to by the provision of parking on-site. As such, she contended area character was being maintained in built form and scale.
  - b. Side Yard Setback: she advised that 0.6 m was proposed from a standard of 0.9, except for interior side yards where the reduction was greater at 0.45 m between the semi's. She concluded that on the examples reviewed, area observations and as-of-right permissions of

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0.45 m where no side wall windows were present, the variances requested were appropriate to permit access. She noted that adjacent to Mr. Lavigne's building at 128 Sears Street, the setback for Part 9 would be 0.9 m despite the permission of 0.45 m, there being no windows. She noted as well, that at Mr. Lavigne's side main entrance, the presence of a parking pad would enhance the perception of openness.

- c. Front yard Setback: she advised that a variance from the 6.0 m setback standard to 4.8 m, was sought on Memory Lane only, and related to a small portion of the building. As there were no cantilever design elements and parking pads were of sufficient depth, in the absence of adjacent buildings fronting onto the Lane, she felt the reduction appropriate as ancillary structures on Memory Lane were often at or close to the lot line.
- d. Building Depth: she advised that the 17 m standard, which was proposed to be changed for the two semi's and detached unit on Sears Street, necessitated a 'technical' variance as the calculation is dependent on the front yard setback and as no front yard setback is proposed for Sears Street. She noted that there are no actual building length variances requested for any of the proposed new 6 units.
- e. Parking: she described the variety of parking solutions evident in her primary study area, including front yard parking pads, envisaged by the by-law for parking to exist only in the rear yard or behind the main front wall. As lot frontages did not permit side driveways, she supported both the location and dimensions of the on-site provision of mandatory parking via pads for all 6 units. For three units, reduced width dimensions from a required 2.9 m to 2.6 m arose because of the design presence of an intervening wall. The planner felt the (one foot) reduction could be accommodated by smaller vehicles or careful parking locations, and was a minor reduction for 3 units – preferable to a request for no parking or on-street parking. She noted that the City's Division of Transportation Services had no comments on the requested variances. Since the by-law contemplated a parking space permission in front of an integral garage, she felt the allowance of front yard parking pads, found in the area, created negligible impact. The Rockport development, across the lane, contemplated lesser townhouse frontages of 4.75 m, including garage and pedestrian entrances.
- f. Lot Location: she described that the by-laws did not contemplate dwelling units fronting on a lane. She felt that the Memory Lane frontages, in particular, required relief and cited numerous examples of such access and frontages. She included Sears Street in this request as a technical recognition of the fact that there had been some confusion as to Sears Street being on the City's roster of public streets.

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She noted the principle that parcels not be landlocked and that residential building frontages on Memory Lane maintain the intent that the roadway provide access and benefit from services provided: ploughing; garbage collection. She suggested the 6+m width was sufficient for vehicle turning and precedent had been set by existing property.

- g. Services: she described that neither Sears Street nor Memory Lane provided water or sanitary sewer services but that the owner had prepared a preliminary servicing solution and a condition of approval which, if not met satisfactory to the City simply meant that no development could occur. She noted the March 27, 2018 Memorandum from Engineering Services, entered as Exhibit 4, and recommended its four conditions as elements of any approval.

In summary, she opined that the intent of the zoning by-laws was maintained by the variances sought and that collectively they enabled a form of development consistent with the area. She advised that the plans show no windows on the third floor acting to limit privacy and overlook issues. Finally, as there are no height, lot area or lot frontage variances sought, the proposed variances were very close to meeting all by-law standards of a substantive nature.

From a policy perspective, Ms. McFarlane referenced the definition of 'Intensification' in the Provincial Policy Statement. She was of the opinion that currently vacant and under-utilized sites, like the subject property, were to be considered (s.1.1.3.3) opportunities (1.3.4) to provide for a range (s. 1.4.3b) of housing options and development standards. She opined that the proposal was consistent with these policies and met the guiding principles of the Growth Plan (s. 1.2.1) to prioritize intensification and support transit oriented development.

In considering the Toronto Official Plan 'Neighbourhoods' designation on the subject property, she noted no secondary plan was applicable and that the development is to and would 'respect and reinforce' the existing physical character of the area and its physical stability (s.2.3.1). She concluded that the variances supported the application of the criteria listed in section 4.1.5. She individually applied each; finding them not out of character or inconsistency with the area.

She felt that 6 ground related units for residential purposes were desirable, contributed to the intensification target and supported transit. She said the redevelopment would be compatible and make a contributory benefit from a derelict and underuse property. She felt the variances were minor and yielded no unacceptable level of impact. She said privacy was respected and no shadowing was created that is unacceptable in an urban environment.



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She responded to the number of variances as being in order for 6 dwellings and when considered individually and collectively were minor, some were duplicative and most were typical for the new by-law.

Ms. McFarlane was asked to address the requirements expected of lot division activities in s.51 (24) of the Planning Act. She reviewed each of the consent criteria to the effect that a plan of subdivision was not required and that the development proposed was not premature. She supported that conditional approval provide for the extension of services and that residential standards for lot soils condition be fulfilled.

In summary, she provided the opinion that the revised number and scale of variances and the creation by assembly into 6 parcels constituted good planning for this inner city location. She advised that as a planner she recommended the severances and variances as they met the policy considerations of the Official Plan and all other statutory tests and considerations without undue adverse impact or over-intensification.

Three Participants attended throughout and provided balanced and thoughtful commentary on aspects of concerns germane to each.

Mr. Douglas Wilkins of 104 Knox Avenue expressed concerns for privacy to his dwelling from the proximity of a reduced side yard setback. In context, his property fronts on Knox Avenue and runs east/west with his rear yard terminating at the rear access lane running north/south adjacent the easterly limit of the subject property.

At that point on the subject property, one dwelling, a detached 3 storey dwelling at the north east corner of the subject property would abut the projection of lot lines from Knox Avenue. Assuming fencing and no dwelling unit windows on the third floor as proposed, the opportunities for privacy impact are somewhat limited and, arguably, extend in either direction. However, the new building form would undoubtedly represent a dramatic change from the recently vacant and former low rise developments of the past on the subject property. The side lot line reduction proposed is 0.3 m (1 foot).

He expressed understandable concern for unanswered servicing and soils conditions reporting and felt the development premature. He said that the owner had given assurances these issues would be addressed prior to seeking approvals and noted that the City's Engineering Services were not yet satisfied as reflected in its conditions, Exhibit 4.

He felt the planner had been compromised by timing and had been unable to complete the 'normal' scope of her investigations – a suggestion rejected through reply evidence who described her late filings as the reason to accommodate full research.

Mr. Wilkins presented, both through his wife's written presentation and his own research, a thoughtful commentary distinguishing characteristics of the 16 example precedents employed by Ms. McFarlane as attributes of area character. Curiously, he suggested that they were distinguishable and did not demonstrate "the same type of residential impacts" of concern. However, it was these very impacts that were difficult to sort and identify from his evidence: he referenced the centering of mass on the subject

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property as being unlike peripheral development with more extensive backyards, the absolute number of variances sought, the principle that 'intensification' not be considered a trump card and the likelihood that fewer lots could eliminate certain variances of concern, e.g., side yard setback; parking space reductions. I accept the differentiation identified and have considered whether the area character differences described offend the obligation to respect and reinforce the physical character of the area or are of a nature that offend the tests identified by statute, as relevant considerations.

He felt: that the owner had not dealt with the unknowns as promised and expected; that no normal canvass of neighbourhood concerns had been conducted; and that the appellant had not discharged the onus incumbent upon development to avoid or ameliorate impacts.

Mr. Yves Lavigne, owner of 128 Sears Street, spoke of his 70 foot common lot line exposure with the subject property. His Participants Statement provides a description of the environs. It is thorough, thoughtful and informative. Certain of its issues have been addressed in respect of side yard space, roof and eaves overhang and aspects of health and safety to be addressed by way of building code applications. He details the lot assembly process and did not contradict the evidence of Ms. McFarlane that the assembled parcel consists of three previous lots, merged on acquisition.

He provided more complete evidence on the Rockport project that Ms. McFarlane, albeit not inconsistent. His evidence included how the warehouse like appearance of his and buildings to the south reflect a contrast in development forms, as well as uses in close proximity. While identifying a contrast in nearby land uses, particularly related to the auto body repair shop across Sears Street, there was no indication that this use had adversely affected his own property for residential use and enjoyment.

He regretted that the finding of prematurity at the COA was not doggedly addressed in preparation of the present appeal; he was of the opinion that the owner's pattern of a lack of preparation, haphazard responses, delay and inattentiveness to detail did not inspire confidence as to ultimate development quality.

Like Mr. Wilkins, he asked dismissal of the appeal turning primarily on the consent file where the lot division was seen as forcing overdevelopment into the block at the compromise of multiple zoning performance standards, cramped quarters, the potential for fire hazard, the potential for compromise to fire-fighting capability in narrow side and rear yards and compromises internally to privacy. He felt four units would better fit the standards of applicable zoning as his Participants statement clearly detailed.

He lamented the failure at consultation and to follow through with a previous plan showing less dense development and a greater respect for green space.

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Mr. Richard Serrao of 98 Knox Avenue noted that he uses the laneway east of the subject property for parking and access and expressed concern for reduced setbacks. Like the others, he expressed a major concern being the issue of trust. He noted one instance of site preparation affecting services that had inconvenienced the immediate neighbourhood. He supported development but not at the apparent intensity of the proposal with its excess of variance requests.

## **ANALYSIS, FINDINGS, REASONS**

While I can express a certain affinity with the Participants that the planning process could have unfolded better in their two years of engagement with the subject property, that cannot cloud the planning principles engaged by the applicant/appellant.

I agree that the process undertaken, including up to the engagement of the TLAB, was not commensurate with now normal City wide practices of community consultation and engagement reasonably expected of modern development initiatives.

While such consultation is mandatory with rezoning applications, it is often volunteered in consent and minor variance applications.

That said, and as Mr. Bronskill introduced in summation, the appeal Hearing is *de novo*. It is the evidence that largely governs as to compliance with the policy and statutory tests on applications for severance and variance approvals.

I agree with Mr. Lavigne that it is the consent files that lead the evaluation of the prospect of development; the variances derive from the lot pattern proposed.

Even antecedent the severance and assembly of parcels is the threshold matter of the principle of development. In the circumstances present, no person disputed the benefit of the redevelopment for residential purposes of the vacant, underused and derelict subject property. I agree with the evidence of Ms. McFarlane and the argument of Mr. Bronskill, that Provincial Policy and the City Official Plan, in concert, support as a matter of public policy the intensification and re-use of vacant under-utilized urban spaces always subject to the caveat: 'where appropriate'.

In this regard, the evidence of Ms. McFarlane is not contradicted and is deserving of great weight. I found her investigations and scope of inquiry into area character to be without fault, comprehensive, balanced, well distilled and accurate in observation and content.

I find she did not rely unduly on the 16 selected comparables as a basis for precedent, nor fall into the abyss of attendant assertions based on the use of a few examples to conclude 'one swallow a summer makes'. She reflected appropriately on area descriptors, acknowledged the effect and implications of differing zone categories, identified the shortcomings of the consent applications and added improvements for their required assessment, as a condition of any approvals. She contributed constructively to the reduction in variances in reflection of principles of good community

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planning and provided adequate justification and explanation of those variances resulting from the compact urban form envisaged.

The assembly of two properties, their disassembly into constituent parts and their reassembly into 6 lots that largely or completely meet major zoning parameters of frontage, lot area, height limitations and other measures is a commendable work of both art and science deserving of careful consideration.

Had applicable zoning set more generous lot standards for frontage, area, fsi and reduced height regulations, the lot pattern might have generated a different result. However, in these formative and determinative regulations, the lot parcels formed by the proposed provisional consents are largely responsive and implementing. I find that the suggestion of reducing the lot yield from 6 to 4 is not the application and not supported by compelling evidence.

Moreover, the several elements that give hesitancy to any approval were addressed from a number of angles. The COA said the severances were premature; the zoning says no development is allowed that does not front on an open, assumed public road; and common engineering sense says no construction shall be permitted without adequate proof of environmental integrity and the provision of adequate public communal services.

In general, these indeed are policy and regulatory criteria and principles of good community planning.

I am satisfied by the evidence of Ms. McFarlane that the concerns of the COA and the Participants are answerable by appropriate conditions. The City did not appear in support of any concerns. A severance is not premature if an appropriate canvass has been made and addressed of relevant considerations and if matters appropriate to the future are protected by conditions of satisfactory compliance through future public regulatory review.

Here, 3 of the lots front on an open public lane with limited services that is not a designated street. The evidence is that the lane is equivalent in stature to Sears Street, receives snow ploughing, maintenance and garbage collection services and serves as appropriate vehicle and pedestrian access to existing and planned approval projects in like manner to a public street. A variation in the zoning provision is appropriate to recognize the proposed lot pattern and permit development for recognized permitted uses.

The provision to require a record of site condition as to environmental integrity and to demonstrate an adequacy of supply of public communal services satisfactory to the City is an appropriate control, given the proximity of those services and the absence of City opposition.

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I find the proposed lot pattern suitable, adequate, compliant with all tests and appropriate to permit the redevelopment of the subject property.

I also find that the variances proposed, while numerous, are individually and collectively minor and desirable to accommodate intensification in the form of permitted residential uses. The sheer number of variances (76 down from 94, originally proposed) are a flag necessitating careful scrutiny. The evidence of Ms. McFarlane accomplished this review and concluded that, despite some instances of possible parking discomfort for full sized cars, in the main the variances sought are unobtrusive tweaking to site conditions without resultant adverse impacts of a measurable scale.

It is true that future purchasers will have, in the units proposed, a selection of modest scale houses of three stories; however, each is to be grade related, have on-site parking, rear yard amenity space, three levels of living accommodation and access to a community that is vibrant, central, well served by transit, intensifying, varied, complete, historic, attractive and desirable.

I adopt the observations, opinions and conclusions expressed by Ms. McFarlane at paragraph 122 of Exhibit 1 and elsewhere.

The Participants expressed genuine apprehension as to the quality of redevelopment I cannot share this prospective doubt; not only is it futuristic but the development of a community asset has many oversights, not the least of which is marketability in the discerning eye of the public.

On the evidence, including portions of that supported by the residents who spoke, the Official Plan policies of respect and reinforcement of existing physical character are ensured by the permitted use regime and general compliance with the 'bones' of longstanding zoning use and regulatory provisions applicable to all the properties. No conflict in land uses was made out and no measurable impacts amounting to undue adverse impact can be presumed or were evident or were proven.

I find conformity with Provincial Policy and the City Official Plan, in shape, form and fit.

While the apprehensions expressed in the Participants Statements and evidence are genuine, I find that the overriding interests of public policy are compelling and conditional approval is warranted.

## **DECISION AND ORDER**

The appeal is allowed and the decision of the Committee of Adjustment mailed April 3, 2018, is set aside.

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Provisional consent is granted to sever the subject properties and their assembly into six residential lots shown on a plan of survey with supporting elevation plans, Exhibit 1, Attachment 12. The six lots shall consist of:

- 1. Part 1**
- 2. Part 2+7**
- 3. Part 3+8**
- 4. Part 4**
- 5. Part 5+6**
- 6. Part 9.**

Because the plan set with elevations (Exhibit 1, Attachment 12) is extensive, while incorporated in this Decision and Order, the plans are not physically here attached. Construction is to be substantially in accordance with those elevations.

Provisional consent is subject to the consent conditions identified in Schedule A, below.

Variances are granted as per the Schedule B, below:

**Schedule A: Standard Consent Conditions**

- (1) Confirmation of payment of outstanding taxes to the satisfaction of Revenue Services Division, Finance Department.
- (2) Municipal numbers for the subject lots indicated on the applicable Registered Plan of Survey shall be assigned to the satisfaction of Survey and Mapping Services, Technical Services.
- (3) Prior to the issuance of a building permit, the applicant shall satisfy all conditions concerning City owned trees, to the satisfaction of the Director, Parks, Forestry & Recreation, Urban Forestry Services.
- (4) Where no street trees exist, the owner shall provide payment in an amount to cover the cost of planting a street tree abutting each new lot created, to the satisfaction of the General Manager, Parks, Forestry and Recreation.
- (5) Two copies of the registered reference plan of survey integrated with the Ontario Coordinate System and listing the Parts and their respective areas, shall be filed with City Surveyor, Survey & Mapping, and Technical Services.

**Decision of Toronto Local Appeal Body Panel Member: I. LORD**  
**TLAB Case File Number:** 18 144511 S53 32TLAB, 18 144512 S45 32 TLAB,  
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(6) Three copies of the registered reference plan of survey satisfying the requirements of the City Surveyor, shall be filed with the Committee of Adjustment.

(7) Within ONE YEAR of the date of the giving of this notice of decision, the applicant shall comply with the above-noted conditions and prepare for electronic submission to the Deputy Secretary-Treasurer, the Certificate of Official, Form 2 or 4, O. Reg. 197/96, referencing either subsection 50(3) or (5) or subsection 53(42) of the Planning Act, as it pertains to the conveyed land and/or consent transaction.

**And** the following conditions of the City, Engineering and Construction Services Division:

(8) Subject to the Owner submitting drawings and documentation, to the satisfaction of the Chief Engineer & Executive Director, Engineering & Construction Services, to:

1. Demonstrate how the properties will be municipally serviced by water, storm, and sanitary, all which must be in accordance with Municipal Code Chapter 851 Water Supply and Chapter 681 Sewers, which requires new buildings to have new connections built in conformance with current standards;
2. Demonstrate compliance with applicable fire access protection requirements;
3. Demonstrate compliance with applicable solid waste collection requirements; and
4. Enter into an Agreement(s), as may be required, to secure any improvements to the municipal infrastructure required to service the properties at the Owner's expense.

(9) **And further that** prior to building permit issuance, the Chief Building Official is in receipt of a satisfactory and formal record of site condition from the Ontario Ministry of the Environment or other authorized regulatory authority attesting to the suitability of the lands for residential use and building purposes.

**Schedule B: Authorized Variances**

**Revised List of Variances – 130-132 Sears Avenue (Part 1)**

**VARIANCES TO THE ZONING BY-LAW:**

**1. Chapter 10.10.40.40.(1)(A), By-law 569-2013 The maximum permitted floor space index of a detached dwelling is 1.0 times the area of the lot (183.7 m<sup>2</sup>). The**

**new detached dwelling will have a floor space index equal to 1.13 times the area of the lot (207.04 m<sup>2</sup>).**

**2. Chapter 10.10.40.70.(1), By-law 569-2013 The minimum required front yard setback is 6.0 m. The new detached dwelling will be located 4.80 m from the front lot line.**

**3. Chapter 10.10.40.70.(3)(A)(i), By-law 569-2013 The minimum required side yard setback is 0.9 m. The new detached dwelling will be located 0.60 m from the east side lot line.**

**4. Chapter 10.10.40.70.(4), By-law 569-2013 The minimum required side yard setback is 0.45 m. The new detached dwelling will be located 0.30 m from the west side lot line.**

**5. Chapter 10.5.80.10.(3), By-law 569-2013 A parking space may not be located in a front yard or a side yard abutting a street. The parking space will be located in the front yard.**

**6. Chapter 5.10.30.1.(2) , By-law 569-2013 A building or structure may not be erected or used, on any lot that does not abut a street. The new detached dwelling will be located on a property which does not abut a street.**

**7. Chapter 5.10.30.1.(1)(A), By-law 569-2013 No land may be used and no building or structure may be erected or used on the land unless the land abuts an existing street, or is connected to an existing street by a street or streets, constructed to the minimum base curb and base asphalt or concrete. In this case, the residential use will be on land that abuts a lane.**

**8. Chapter 5.10.30.1.(1)(B), By-law 569-2013 No land may be used and no building or structure may be erected or used on the land unless all municipal water mains and municipal sewers, and their appurtenances, are installed to a lot line of the property and are operational. In this case, the residential use will be on land that does not have access.**

**9. Section 4(11)(A), By-law 438-86 A residential building must be located on a lot having a minimum front lot line of 3.5 metres where fronting or abutting a highway assumed for public highway purposes. The new detached dwelling will be located on a lot which does not front on or abut a highway assumed for public highway purposes.**

**10. Section 6(3) Part I 1, By-law 438-86 The maximum permitted gross floor area of a detached dwelling is 1.0 times the area of the lot (183.7 m<sup>2</sup>). The new detached dwelling will have a gross floor area equal to 1.13 times the area of the lot (207.04 m<sup>2</sup>).**



**11. Section 6(3) Part IV 1(E), By-law 438-86 A motor vehicle parking space is not permitted to be located between the front wall of the building and the front lot line. The parking space will be located between the front wall of the building and the front lot line.**

**12. Section 6(3) Part II 3.B(II), By-law 438-86 The minimum required side lot line setback for the portion of a detached dwelling not exceeding a depth of 17 m is 0.9 m. The new detached dwelling will be located 0.3 m from the east and west side lot lines.**

**13. Section 6(3) Part III 3(d)(i)(B), By-law 438-86 A minimum of 50% (17.78 m<sup>2</sup>) of the front yard area shall be maintained as landscaped open space. In this case, 35% (12.65 m<sup>2</sup>) of the front yard area will be landscaped open space.**

**14. Section 6(3) Part III 3(d)(i)(D), By-law 438-86 A minimum of 75% (12.27 m<sup>2</sup>) of the required front yard landscaped open space shall be in the form of soft landscaping. In this case, 54% (8.84 m<sup>2</sup>) of the required front yard landscaped open space will be in the form of soft landscaping.**

#### **Revised List of Variances – 130-132 Sears Avenue (Part 2+7)**

##### **VARIANCES TO THE ZONING BY-LAW:**

**1. Chapter 10.10.40.40.(1)(A), By-law 569-2013 The maximum permitted floor space index of a semi-detached dwelling is 1.0 times the area of the lot (165.57 m<sup>2</sup>). The new semi-detached dwelling will have a floor space index equal to 1.16 times the area of the lot (192.41 m<sup>2</sup>).**

**2. Chapter 10.10.40.70.(1), By-law 569-2013 The minimum required front yard setback is 6.0 m. The new semi-detached dwelling will be located 4.80 m from the front lot line.**

**3. Chapter 10.10.40.70.(3)(A)(ii), By-law 569-2013 The minimum required side yard setback is 0.9 m. The new semi-detached dwelling will be located 0.45 m from the east side lot line.**

**4. Chapter 10.5.80.10.(3), By-law 569-2013 A parking space may not be located in a front yard or a side yard abutting a street. The parking space will be located in the front yard.**

**5. Chapter 200.5.1.10.(2)(A), By-law 569-2013 The required parking space must have a minimum width of 2.90m. The parking space will measure 2.60 m in width.**

**6. Chapter 5.10.30.1.(2) , By-law 569-2013 A building or structure may not be erected or used, on any lot that does not abut a street. The new semi-detached dwelling will be located on a property which does not abut a street.**

**7. Chapter 5.10.30.1.(1)(A), By-law 569-2013 No land may be used and no building or structure may be erected or used on the land unless the land abuts an existing street, or is connected to an existing street by a street or streets, constructed to the minimum base curb and base asphalt or concrete. In this case, the residential use will be on land that abuts a lane.**

**8. Chapter 5.10.30.1.(1)(B), By-law 569-2013 No land may be used and no building or structure may be erected or used on the land unless all municipal water mains and municipal sewers, and their appurtenances, are installed to a lot line of the property and are operational. In this case, the residential use will be on land that does not have access.**

**9. Section 6(3) Part I 1, By-law 438-86 The maximum permitted floor space index of a semi-detached dwelling is 1.0 times the area of the lot (165.57 m<sup>2</sup>). The new semi-detached dwelling will have a floor space index equal to 1.16 times the area of the lot (192.41 m<sup>2</sup>).**

**10. Section 4(11)(A), By-law 438-86 A residential building must be located on a lot having a minimum front lot line of 3.5 metres where fronting or abutting a highway assumed for public highway purposes. The new semi-detached dwelling will be located on a lot which does not front on or abut a highway assumed for public highway purposes.**

**11. Section 6(3) Part II 3.C(II), By-law 438-86 The minimum required side lot line setback of a semi-detached dwelling is 0.9 m where the side wall contains openings. The new semi-detached dwelling will be located 0.45 m from the east side lot line.**

#### **Revised List of Variances – 130-132 Sears Avenue (Part 3+8)**

#### **VARIANCES TO THE ZONING BY-LAW:**

**1. Chapter 10.10.40.40.(1)(A), By-law 569-2013 The maximum permitted floor space index of a semi-detached dwelling is 1.0 times the area of the lot (165.57 m<sup>2</sup>). The new semi-detached dwelling will have a floor space index equal to 1.13 times the area of the lot (187.73 m<sup>2</sup>).**

**2. Chapter 10.5.80.10.(3), By-law 569-2013 A parking space may not be located in a front yard or a side yard abutting a street. The parking space will be located in the front yard.**

- 3. Chapter 10.10.40.70.(1), By-law 569-2013 The minimum required front yard setback is 6.0 m. The new semi-detached dwelling will be located 4.80 m from the front lot line.**
- 4. Chapter 10.10.40.70.(3)(A)(ii), By-law 569-2013 The minimum required side yard setback is 0.9 m. The new semi-detached dwelling will be located 0.60 m from the west side lot line.**
- 5. Chapter 5.10.30.1.(2) , By-law 569-2013 A building or structure may not be erected or used, on any lot that does not abut a street. The new semi-detached dwelling will be located on a property which does not abut a street.**
- 6. Chapter 5.10.30.1.(1)(A), By-law 569-2013 No land may be used and no building or structure may be erected or used on the land unless the land abuts an existing street, or is connected to an existing street by a street or streets, constructed to the minimum base curb and base asphalt or concrete. In this case, the residential use will be on land that abuts a lane.**
- 7. Chapter 5.10.30.1.(1)(B), By-law 569-2013 No land may be used and no building or structure may be erected or used on the land unless all municipal water mains and municipal sewers, and their appurtenances, are installed to a lot line of the property and are operational. In this case, the residential use will be on land that does not have access.**
- 8. Section 4(11)(A), By-law 438-86 A residential building must be located on a lot having a minimum front lot line of 3.5 metres where fronting or abutting a highway assumed for public highway purposes. The new semi-detached dwelling will be located on a lot which does not front on or abut a highway assumed for public highway purposes.**
- 9. Section 6(3) Part I 1, By-law 438-86 The maximum permitted floor space index of a semi-detached dwelling is 1.0 times the area of the lot (165.57 m<sup>2</sup>). The new semi-detached dwelling will have a floor space index equal to 1.13 times the area of the lot (187.73 m<sup>2</sup>).**
- 10. Section 6(3) Part IV 1(E), By-law 438-86 A motor vehicle parking space is not permitted to be located between the front wall of the building and the front lot line. The parking space will be located between the front wall of the building and the front lot line.**
- 11. Section 6(3) Part II 3.C(II), By-law 438-86 The minimum required side lot line setback of a semi-detached dwelling is 0.9 m where the side wall contains openings. The new semi-detached dwelling will be located 0.60 m from the west side lot line.**

**12. Section 6(3) Part IV 1(E), By-law 438-86 A motor vehicle parking space is not permitted to be located between the front wall of the building and the front lot line. The parking space will be located between the front wall of the building and the front lot line.**

**13. Section 4(17), By-law 438-86 The required parking space must have a minimum width of 2.90 m. The parking space will measure 2.60 m in width.**

#### **Revised List of Variances – 130-132 Sears Avenue (Part 4)**

##### **VARIANCES TO THE ZONING BY-LAW:**

**1. Chapter 10.10.40.30.(1), By-law 569-2013 The maximum permitted depth of a detached dwelling is 17.0 m. The new detached dwelling will have a depth of 18.32 m.**

**2. Chapter 10.10.40.40.(1)(A), By-law 569-2013 The maximum permitted floor space index of a detached dwelling is 1.0 times the area of the lot (183.3 m<sup>2</sup>). The new detached dwelling will have a floor space index equal to 1.17 times the area of the lot (214 m<sup>2</sup>).**

**3. Chapter 10.5.80.10.(3), By-law 569-2013 A parking space may not be located in a front yard or a side yard abutting a street. The parking space will be located in the front yard.**

**4. Chapter 10.10.40.70.(3)(A)(i), By-law 569-2013 The minimum required side yard setback is 0.9 m. The new detached dwelling will be located 0.60 m from the east side lot line.**

**5. Chapter 10.10.40.70.(4)(A), By-law 569-2013 The minimum required side yard setback is 0.45 m. The new detached dwelling will be located 0.30 m from the west side lot line.**

**6. Chapter 200.5.1.10.(2)(A), By-law 569-2013 The required parking space must have a minimum width of 2.90m. The parking space will measure 2.60 m in width.**

**7. Chapter 5.10.30.1.(2) , By-law 569-2013 A building or structure may not be erected or used, on any lot that does not abut a street. The new semi-detached dwelling will be located on a property which does not abut a street.**

**8. Chapter 5.10.30.1.(1)(A), By-law 569-2013 No land may be used and no building or structure may be erected or used on the land unless the land abuts an existing street, or is connected to an existing street by a street or streets, constructed to the minimum base curb and base asphalt or concrete. In this case, the residential use will be on land that abuts a lane.**

- 9. Chapter 5.10.30.1.(1)(B), By-law 569-2013 No land may be used and no building or structure may be erected or used on the land unless all municipal water mains and municipal sewers, and their appurtenances, are installed to a lot line of the property and are operational. In this case, the residential use will be on land that does not have access.**
  
- 10. Section 6(3) Part IV 1(E), By-law 438-86 A motor vehicle parking space is not permitted to be located between the front wall of the building and the front lot line. The parking space will be located between the front wall of the building and the front lot line.**
  
- 11. Section 6(3) Part I 1, By-law 438-86 The maximum permitted floor space index of a detached dwelling is 1.0 times the area of the lot (183.3 m<sup>2</sup>). The new detached dwelling will have a floor space index equal to 1.17 times the area of the lot (214 m<sup>2</sup>).**
  
- 12. Section 6(3) Part II 5(II), By-law 438-86 The maximum permitted depth of a detached dwelling is 17.0 m. The new detached dwelling will have a depth of 18.32 m.**
  
- 13. Section 6(3) Part II 3.B(II), By-law 438-86 The minimum required side lot line setback for the portion of a detached dwelling not exceeding a depth of 17 m is 0.9 m. The portion of the new detached dwelling, not exceeding a depth of 17 m will be located 0.6 m from the east and 0.3m from the west side lot lines.**
  
- 14. Section 6(3) Part II 3.B(II), By-law 438-86 The minimum required side lot line setback for the portion of the building exceeding a depth of 17.0 m is 7.5 m. The 1.32 m portion of the new detached dwelling, exceeding the 17.0 m depth, will be located 0.6 m from the east and 0.3m from the west side lot lines.**
  
- 15. Section 4(17), By-law 438-86 The required parking space must have a minimum width of 2.90m . The parking space will measure 2.60 m in width.**

**Revised List of Variances – 130-132 Sears Avenue (Part 5+6)**

**VARIANCES TO THE ZONING BY-LAW:**

**By-law No. 569-2013:**

- 1. Chapter 10.5.80.10.(3), By-law 569-2013 A parking space may not be located in a front yard or a side yard abutting a street. The parking space will be located in the front yard.**
  
- 2. Chapter 10.10.40.30.(1), By-law 569-2013 The maximum permitted depth of a semi-detached dwelling is 17.0 m. The new semi-detached dwelling will have a depth of 19.04 m.**

- 3. Chapter 10.10.40.40.(1)(A), By-law 569-2013 The maximum permitted floor space index of a semi-detached dwelling is 1.0 times the area of the lot (165.57 m<sup>2</sup>). The new semi-detached dwelling will have a floor space index equal to 1.16 times the area of the lot (192.67 m<sup>2</sup>).**
- 4. Chapter 10.10.40.70.(3)(A)(ii), By-law 569-2013 The minimum required side yard setback is 0.9 m. The new semi-detached dwelling will be located 0.45 m from the east side lot line.**
- 5. Chapter 200.5.1.10.(2)(A), By-law 569-2013 The required parking space must have a minimum width of 2.90 m. The parking space will measure 2.60 m in width.**
- 6. Chapter 5.10.30.1.(2) , By-law 569-2013 A building or structure may not be erected or used, on any lot that does not abut a street. The new semi-detached dwelling will be located on a property which does not abut a street.**
- 7. Chapter 5.10.30.1.(1)(A), By-law 569-2013 No land may be used and no building or structure may be erected or used on the land unless the land abuts an existing street, or is connected to an existing street by a street or streets, constructed to the minimum base curb and base asphalt or concrete. In this case, the residential use will be on land that abuts a lane.**
- 8. Chapter 5.10.30.1.(1)(B), By-law 569-2013 No land may be used and no building or structure may be erected or used on the land unless all municipal water mains and municipal sewers, and their appurtenances, are installed to a lot line of the property and are operational. In this case, the residential use will be on land that does not have access.**
- 9. Section 6(3) Part I 1, By-law 438-86 The maximum permitted floor space index of a semi-detached dwelling is 1.0 times the area of the lot (165.57 m<sup>2</sup>). The new semi-detached dwelling will have a floor space index equal to 1.16 times the area of the lot (192.67 m<sup>2</sup>).**
- 10. Section 6(3) Part II 3.C(II), By-law 438-86 The minimum required side lot line setback of a semi-detached dwelling is 0.9 m where the side wall contains openings. The new semi-detached dwelling will be located 0.45 m from the east side lot line.**
- 11. Section 6(3) Part IV 1(E), By-law 438-86 A motor vehicle parking space is not permitted to be located between the front wall of the building and the front lot line. The parking space will be located between the front wall of the building and the front lot line.**
- 12. Section 6(3) Part II 5(II), By-law 438-86 The maximum permitted depth of a semi-detached dwelling is 17.0 m. The new semi-detached dwelling will have a depth of 19.04 m.**

**13. Section 4(17), By-law 438-86 The required parking space must have a minimum width of 2.90 m. The parking space will measure 2.60 m in width.**

**Revised List of Variances – 130-132 Sears Avenue (Part 9)**

**VARIANCES TO THE ZONING BY-LAW:**

- 1. Chapter 10.5.80.10.(3), By-law 569-2013 A parking space may not be located in a front yard or a side yard abutting a street. The parking space will be located in the front yard.**
- 2. Chapter 10.10.40.30.(1)(A), By-law 569-2013 The maximum permitted depth of a semi-detached dwelling is 17.0 m. The new semi-detached dwelling will have a depth of 18.93 m.**
- 3. Chapter 10.10.40.40.(1)(A), By-law 569-2013 The maximum permitted floor space index of a semi-detached dwelling is 1.0 times the area of the lot (165.57 m<sup>2</sup>). The new semi-detached dwelling will have a floor space index equal to 1.17 times the area of the lot (193.88 m<sup>2</sup>).**
- 4. Chapter 5.10.30.1.(2) , By-law 569-2013 A building or structure may not be erected or used, on any lot that does not abut a street. The new semi-detached dwelling will be located on a property which does not abut a street.**
- 5. Chapter 5.10.30.1.(1)(A), By-law 569-2013 No land may be used and no building or structure may be erected or used on the land unless the land abuts an existing street, or is connected to an existing street by a street or streets, constructed to the minimum base curb and base asphalt or concrete. In this case, the residential use will be on land that abuts a lane.**
- 6. Chapter 5.10.30.1.(1)(B), By-law 569-2013 No land may be used and no building or structure may be erected or used on the land unless all municipal water mains and municipal sewers, and their appurtenances, are installed to a lot line of the property and are operational. In this case, the residential use will be on land that does not have access.**
- 7. Section 6(3) Part I 1, By-law 438-86 The maximum permitted floor space index of a semi-detached dwelling is 1.0 times the area of the lot (165.57 m<sup>2</sup>). The new semi-detached dwelling will have a floor space index equal to 1.17 times the area of the lot (193.88 m<sup>2</sup>).**
- 8. Section 6(3) Part IV 1(E), By-law 438-86 A motor vehicle parking space is not permitted to be located between the front wall of the building and the front lot line. The parking space will be located between the front wall of the building and the front lot line.**

**Decision of Toronto Local Appeal Body Panel Member: I. LORD**  
**TLAB Case File Number:** 18 144511 S53 32TLAB, 18 144512 S45 32 TLAB,  
18 144513 S45 32 TLAB, 18 144514 S45 32 TLAB, 18 144515 S45 32 TLAB,  
18 144516 S45 32TLAB, 18 144517 S45 32 TLAB

**9. Section 6(3) Part II 3.C(II), By-law 438-86 The minimum required side lot line setback of a semi-detached dwelling is 0.9 m where the side wall contains openings. The new semi-detached dwelling will be located 0.6 m from the west side lot line.**

**10. Section 6(3) Part II 5(II), By-law 438-86 The maximum permitted depth of a semi-detached dwelling is 17.0 m. The new semi-detached dwelling will have a depth of 18.93 m.**

If difficulties arise in the implementation of this decision and order, the TLAB may be spoken to.

X



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Ian James Lord  
Chair, Toronto Local Appeal Body  
Signed by: Ian Lord