

# DECISION AND ORDER

**Decision Issue Date** Thursday, November 29, 2018

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

Appellant(s): TANG CHAU

Applicant: ZERO DEGREE STUDIO INC

Property Address/Description: 394 BRUNSWICK AVE

Committee of Adjustment Case File Number: 18 114371 STE 20 MV

TLAB Case File Number: **18 201802 S45 20 TLAB**

**Hearing date:** Tuesday, November 06, 2018

**DECISION DELIVERED BY G. BURTON**

## APPEARANCES

| Name                    | Role           | Representative |
|-------------------------|----------------|----------------|
| Zero Degree Studio Inc. | Applicant      | Roy Chan       |
| Koun Chau               | Owner/Party    |                |
| Tang Chau               | Appellant      | Raj Kehar      |
| Franco Romano           | Expert Witness |                |
| Sam Rabinovitch         | Participant    |                |
| Neville Dastoor         | Participant    |                |
| Tineke Keesmaat         | Participant    |                |
| Eric Hoskins            | Participant    |                |

| Name             | Role        | Representative |
|------------------|-------------|----------------|
| Mark Cheetham    | Participant |                |
| Samantha Nutt    | Participant |                |
| April Franco     | Participant |                |
| Matthew Mitchell | Participant |                |

## **INTRODUCTION**

This was an appeal by the owners from a Committee of Adjustment (COA) decision dated July 11, 2018 that refused variances for internal and external alterations to their detached dwelling at 394 Brunswick Ave., in the Annex area of downtown Toronto. It is on the west side of Brunswick, north of Bloor Street West and east of Bathurst Street.

The property is zoned R (d1.0) (x900) in By-law 569-2013 (the New By-law). The purpose was expressed in that application: “to convert the existing detached dwelling into a seven-unit residential building and to construct a third storey addition and a rear storage shed.”

## **BACKGROUND**

There were ten variances sought from the COA, five under the New By-law as above, and five under the older zoning By-law No. 438-86, many duplicated. Many interested persons commented before and/or attended the COA hearing. Eight of these also sought Participant status in the TLAB appeal hearing. Following the COA refusal, alterations were made to the plans to address both City comments and neighbours' concerns. The Zoning Examiner informed the owners of the subsequent approval of most of the New By-law, so that the only variances now required are from this By-law. (Ex. 3, para. 11, ZTC dated August 28, 2018).

On November 2, 2018, shortly before the scheduled TLAB hearing on November 6, the owners filed a letter written by their counsel Mr. Kehar. This enclosed an amended application for only four variances, together with amended plans. On the hearing date, the only Participant who attended was Mr. Neville Dastoor, who resides at 392 Brunswick Ave. next door to the south.

## **MATTERS IN ISSUE**

In addition to the usual tests to be applied in assessing the remaining minor variances, there was an objection to the late filing of the alterations. It was argued that there was insufficient time to assess the implications.

## **JURISDICTION**

For variance appeals, the TLAB must ensure that each of the variances sought meets the tests in subsection 45(1) of the Act. This involves a reconsideration of the variances considered by the COA in the physical and planning context. The subsection requires a conclusion that each of the variances, individually and cumulatively:

- maintains the general intent and purpose of the official plan;
- maintains the general intent and purpose of the zoning by-law;
- is desirable for the appropriate development or use of the land, building or structure; and
- is minor.

These are usually expressed as the “four tests”, and all must be satisfied for each variance.

In addition, TLAB must have regard to matters of provincial interest as set out in section 2 of the Act, and the variances must be consistent with provincial policy statements and conform with provincial plans (s. 3 of the Act). A decision of the TLAB must therefore be consistent with the 2014 Provincial Policy Statement (PPS) and conform to (or not conflict with) any provincial plan such as the Growth Plan for the Greater Golden Horseshoe (Growth Plan) for the subject area. Under s. 2.1(1) of the Act, TLAB is also to have regard for the earlier Committee decision and the materials that were before that body.

## **EVIDENCE**

Mr. Kehar outlined the revised proposal, which would see the renovation of the existing detached dwelling to include one main and six secondary suites, a total of seven (7). Secondary suites are permitted in the OP Neighbourhood designation on properties zoned “R”. There is no limit on the number of secondary suites possible in a dwelling. However, their size is limited. The variance for unit sizes has been dropped from this proposal, as the proposed now conform to the By-law.

The main rationale for the quite recent alterations to the proposal was to change the parking variances sought. As a parking and access issue was identified by many of the Participants, this aspect of the proposal has been revised. The existing rear garage would be removed, no shed would be built, and four open parking spaces would be provided in the rear yard area. This requires variances for the number of parking spaces, and also for the number of outdoor spaces. This is a reduction from the variance for five spaces sought at the COA.

The owners' evidence was provided by Mr. Franco Romano, a very experienced professional land use planner. He selected a Study Area for evaluation purposes by means of the usual test of a walkable distance, or a short drive. He described the Study Area as being between Bathurst St. and Spadina Ave., and between Bloor St. and Dupont St. It is within the Downtown, a designated Growth Area, where superior access to public transit and on-street permit parking encourages new development. It is zoned for multiple residential, and located within a physical context that includes a wide variety of buildings of a detached, multiplex, apartment and institutional built form in this Annex neighbourhood. He illustrated almost all of his testimony with photos. In addition to detached residential structures there are many apartment buildings, both low rise and "tall midrise" construction throughout, the latter on lands designated Apartment Neighbourhood. Height, mass and scale differences are present throughout the neighbourhood. On Brunswick itself there are generally narrow side yard and front yard setbacks, with strong front wall alignment and undulating rear walls. Where there are larger side yards they are usually driveways. Frontages fluctuate from 4.2 m to over 25 m, and FSI/GFS from 0.19 times to 4.6 times the lot areas. The subject site has a lot frontage of 14.31 m, a depth of 38.91 m., and an area of 556.86 sq. m.

On this side of Brunswick, the R (and former R2) zoning permits a maximum of 1.0 FSI, while across the street the zoning category is the same, but the permitted FSI is 2.0 times the lot area. The result is a significant variety of building types. These are both similar and varied in length/depth, occupying the front central portion of a lot, providing a compact urban form of development. Some however extend deep into the lot, and occupy virtually the entire lot depth. Building heights vary from one to three storeys for similarly zoned and designated lands.

There had been objections to the proposed unit density in the Participants' Statements filed. Mr. Romano pointed out that 375 Brunswick has 63 units, 385 has 48, 391- 19, 397 - 11, 399 - 3, 403 - 6, and on the same side, 396 - 3 and 398, 4 units. No. 388 has seven units on a similarly sized lot. The nearby lot sizes are generally half the size of the subject lot. He found many multiplexes as well on nearby streets, and termed them a substantial part of the neighbourhood fabric. In his review of recent development approvals (Ex. 3, Decision Summary Table) he observed that regeneration frequently involves a GFA of more than 1 times the area. However, the recent revision to the dwelling proposed here requires no GFA variance – at 0.95 x lot area (527.96 sq. m) it is within the By-law requirement of 1.0 x the lot area.

Respecting the built form, the proposal includes a rear third storey addition over the existing two storeys (approximately 3.7 m x 10.5 m), and replacement of the existing rear one storey addition with a three storey staircase addition (approximately 2.6 m x 5.2 m) at about the same location. The addition would increase the floor area by only 85 sq. m., for a total of 527.9 sq. m., which complies with the By-law limit. It does not require any front, side or rear yard setback variances. There would be very small variances needed for depth and main wall height, discussed below.

To address the parking situation, the existing garage would be demolished (and a proposed shed deleted). Four parking spaces (of compliant size) are now proposed in the rear of the property, and the rest of the rear yard would have soft landscaping. Following the changes, there is no variance required for soft landscaping in the rear yard. This is important in considering the report of Urban Forestry to the COA before its hearing – also discussed below. Mr. Romano testified that parking variances are also common in recent approvals, aligned usually with increases in the number of units, and (as here) where there is readily available public transit. He testified that there is an existing mutual driveway with the neighbours to the south, Mr. Dastoor and Ms. Keesmaat. In Photos 2 and 3 and the air photo he supplied, the neighbours appear to be parking in the front of the property as well.

These are the variances now sought:

1. Chapter 150.10.80.1.(1), By-Law 569-2013

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

In this case, four parking spaces will be provided.

2. Chapter 10.5.80.10.(7), By-law 569-2013

A maximum of two parking spaces are permitted to be located outside in the rear yard.

In this case, four parking spaces will be located in the rear yard.

3. Chapter 10.10.40.10.(2)(B)(ii), By-law 569-2013

The maximum permitted height of all side exterior main walls facing a side lot line is 9.5m.

The height of the side exterior main walls facing a side lot line will be 10.0m.

4. Chapter 10.10.40.30.(1)(A), By-law 569-2013

The maximum permitted building depth is 17m.

The proposed building depth is approximately 21m.

The City Planning department made no comments, even on the more extensive proposal before the COA.

Mr. Romano testified that all parking spaces would now be outside. The general intent and purpose of the parking requirements is to ensure an adequate on-site supply. The Transportation Department had expressed no concerns with the parking variances. The goals of minimizing open surface parking and maximizing rear yard soft landscaping are met with this parking proposal.

Mr. Romano explained the depth variance required (21 m when 17 m is the limit). The existing depth is 20.2 m. Such zoning restrictions are intended to minimize construction within rear yards. He had seen depth variances up to 39.82 m in recent decisions, with those in excess of 20 m being quite common. It was measured here from the front of the wrap-around porch (seen on the Site Plan – Ex. 1) to the rear of the new stair addition. Thus the Zoning Examiner determined that a depth variance is required, to address the slight increase over the existing depth. (This was incorrectly labelled as a Length

variance in the designs.) The proposed would be longer than the dwelling to the north, but shorter than Mr. Dastoor's residence at 392 to the south.

The Main Wall Height limitation did not exist in previous zoning By-laws before 2013. It is under review by the City following the Local Planning Appeal Tribunal directive of March 1, 2018 on the appeal of the 2013 By-law. Mr. Romano stated that it is recognized that older sections of the City often exceed this restriction, and that it better addressed only the newer sections. It is difficult to achieve compliance with this limitation for certain lot sizes. The existing main wall already exceeds this new limit. The variance of merely .5 m is required only for the peak of the third storey addition at the rear.

In explaining the plans, he highlighted the "third floor addition" which is to be constructed over the existing building footprint. This now has a two storey format. The appendage at the rear is also a third floor addition, together with a new staircase for access to the new units. This stair would be less than the width of the rear addition, however. Since it is a staircase, with small windows, there would be no overlook or privacy issues, and no adverse shadowing impact. The existing one storey segment at the rear would be removed, and the new three storey addition would be built virtually on top of it. There is no overall height variance required – this would be 9.5 m to the third floor gable, and would comply. An earlier addition to the neighbouring property at 392 had occurred at the top and rear of the structure, and it is now longer than the proposed.

Before the COA hearing, the Urban Forestry department of the City had objected (July 4, 2018) based on the elimination of some of the soft landscaping in the rear. Their concern was for the continued health of a tree in the rear of the neighbouring property to the north. They stated that "multiple large, healthy privately owned trees, which require protection in accordance with the City of Toronto Municipal Code, Chapter 813, are affected by this proposal. If the requested rear landscaping, building depth, and required setback of an accessory structure variances are approved, the proposed construction may require the injury or removal of healthy By-law protected trees. This proposal will also result in an increase in hard surface and the loss of planting area. Urban Forestry requests that the requested rear landscaping, building depth, and required setback of an accessory structure variances be **denied**. Urban Forestry needs to be contacted to secure an appropriate Tree Protection Plan, and to ensure the preservation of the subject trees." Mr. Romano emphasized that the remaining variance required in this appeal is only a half metre of proposed **depth**, and only under the New By-law. Variances of concern to Forestry for rear landscaping and accessory structure setback were no longer required. The hard surfaces now present in the rear would be replaced by soft landscaping. If approved, the owners would also request the condition suggested by Forestry, that application be made for a permit to injure or remove privately owned trees under Municipal Chapter 813 Article III, Private trees. This would ensure that it would not proceed without such a permit.

## **Provincial Policies**

Mr. Romano opined that the proposal is consistent with the 2014 Provincial Policy Statement in particular, as it is within a designated growth area where development is encouraged. It would meet the goals of achieving an appropriate mix and range of housing, optimizing the use of land, and making more efficient use of existing infrastructure. It also conforms to, and does not conflict with, the 2017 Growth Plan. It appropriately implements the Urban Growth Centre policies to accommodate significant population growth, as well as the intensification policies. These achieve the objective of complete communities, with transit-oriented growth focused within settlement areas, where a diverse range and mix of residential land uses is to be achieved. Specifically, Policy 2.2.6 of the Plan promotes secondary suites to create the necessary range and mix of available housing. The Toronto Official Plan has not yet been amended to include this policy, which it is required to do eventually.

### **Official Plan**

However, by Policy 2.2.2 and 2.2.3 of the OP, growth is directed to the City's downtown, where infrastructure, transit and affordable units are encouraged. In his opinion, secondary suites are one tool to create affordable housing. Within the policies for Neighbourhoods in Section 4, there is a framework for assessing elements of the physical character, where new structures should respect and reinforce the general physical patterns of the existing neighbourhood. Change will occur, and changes do not have to duplicate or mimic existing structures, but must nonetheless be sensitive and gradual. This proposal meets the development criteria set out in Policy 4.1.5. The only standards really applicable are c) the height, mass and scale of nearby residential properties (a minimal change to the existing), and f) prevailing patterns of rear and side yard setbacks and landscaped open space (these will be improved.)

Mr. Romano discussed the use of "prevailing" in clause f) and in OPA 320, adopted but not yet in force. He equated it to what most commonly occurs. This would achieve the prevailing rear yard pattern and side yard setbacks seen elsewhere in the area. He concluded that this site alteration would be in keeping with the existing neighbourhood character, because of the great variety nearby. As to performance standards as required under policy 4.1.8, it is compatible with neighbouring structures, since "compatible" here means "capable of coexisting in harmony", and not "exactly the same". The common theme of this street is that many structures are not fully compliant with the zoning standards.

In his opinion, this revised proposal meets the test of respecting the general intent and purpose of the Official Plan. It is designated Neighbourhoods, and is subject to the Downtown policies. The Official Plan policies recognize that change within neighbourhoods will occur over time, and that such change should respect and reinforce the existing physical character of the neighbourhood. As mentioned, the Neighbourhoods policies do not require replication of existing physical character, but instead provide that new development should fit the general physical patterns. These policies acknowledge that different patterns can be found within and contribute to the character of a neighbourhood.

The OP also permits modest intensification within Neighbourhoods in accordance with the Downtown policies in Section 2.2.1, the urban structure policies in Section 2.3.1, the built form policies found in Section 3.1.2, the housing policies found in Section 3.2.1 (including achieving rental unit accommodation), and in the Neighbourhoods land use designation and development criteria found in Section 4.1.1, 4.1.5 and 4.1.8.

Therefore in his opinion, the proposal conforms with and meets the general intent and purpose of the OP, as reflected in modifications contained within OPA 320 (not yet in force). The proposal respects and reinforces the physical characteristics of the neighbourhood and surrounding geographic area, as they currently exist.

### **Zoning By-law**

The site is zoned R in the New By-law. It was R2 in the former By-law 438-86. In Mr. Romano's opinion, the proposed variances, individually and cumulatively, meet the general intent and purpose of the New By-law, the only one from which variances for the present proposal are now required. He testified that the overall intent and purpose of the By-law is satisfied, as the proposed site development is orderly, reasonable and appropriate within the site's physical context.

Addressing the applicable performance standards, he concluded that the proposal reflects appropriate site development conditions that fit in well within this urban environment. Thus the variances meet the general intent and purpose of the zoning by-laws, individually and collectively, qualitatively and quantitatively.

Variance 1 - 4 parking spaces to be provided whereas a minimum of 6 parking spaces are required. The intent of the parking supply provision is to accommodate adequate on-site parking. This is accomplished here by the parking spaces in the rear yard, and yet there would be sufficient landscaped open space as well. In addition, there is direct access to surface and rapid transit on nearby major streets, all within walking distance. As mentioned, Transportation staff had no objections to a larger variance before the COA. In Mr. Romano's opinion, the intent of the parking supply provision is being maintained.

Variance 2 - Four parking spaces will be located outside in the rear yard whereas a maximum of 2 outside spaces is permitted. This requirement is to limit open surface parking to ensure that hard surfaces are minimized there. The proposal organizes the parking in a compact manner, which maximizes rear yard soft landscaping and minimizes surface parking space.

Variance 3 - The height of the side exterior main walls facing a side lot line will be 10.0 m, whereas a maximum of 9.5 m is permitted.

This variance relates only to the rear staircase, a small portion of the building. The existing building is 10 m in total height, including some existing main wall portions. Mr. Romano explained this By-law provision in this way: in this physical context, the number of storeys is not regulated, and the intent of the main wall height limit is to promote low-rise residential buildings. This restriction could result in a limit in the



number of storeys, or flat roofs, so as to create an appropriate building relationship with surrounding properties. In his opinion these aspects are all properly addressed and mitigated in this instance, where the existing three storey structure is to be maintained with only a .5 m extension measured at the side.

Variance 4 - The building depth is approximately 21 m, whereas a maximum of 17 m is permitted. The existing building length is 20.2 m. The intent of the building depth provision is to ensure that the dwelling is oriented towards the front of the property, and to minimize the extent to which main buildings are built into the rear yard. Here, the building would not occupy the rear yard much more than at present.

In conclusion, in his opinion, the proposal contains site design and built form features that exhibit compatible features which will contribute positively to respect and reinforce the neighbourhood's physical character. The improved three storey building has a height, mass and scale that fits in well with the varied height, mass, scale and architectural typology of surrounding properties. The building is sited and designed to fit appropriately and proportionately to the existing lot.

#### **Minor**

Mr. Romano found no unacceptable adverse impact with this proposal, such as shadowing, privacy, overlook, parking, vegetation or drainage. It builds upon existing conditions, reasonable within this physical context. The building addition is sensitively designed to fit in well. He also concluded that the order of magnitude of the minor variance requests is reasonable, in that increases over the existing are very small. The physical context exhibits similar and complementary characteristics.

#### **Desirable for the Appropriate Development and Use of the Land**

Similarly, Mr. Romano concluded that the proposal represents an appropriate, reasonable and compatible site development for this Downtown neighbourhood. The proposal will continue to contribute to its mixed housing character, with mainly the existing built form and site design features. It would be an appropriate adaptation of an existing building to accommodate additional rental units, with standards that are compatible with surrounding properties. He opined that the proposal satisfies the planning and public interest, and is desirable for the appropriate use and development of the land.

Mr. Dastoor had made a motion to the TLAB earlier seeking Party status rather than that of a Participant. He wished to take a more active role in the appeal (by further evidence and the right to cross examine). In a decision of October 23, 2018 this elevation was denied, since TLAB rules require more notice to the other parties and the timely pre-filing of Party witness statements. He and his wife, Ms. Keesmaat, had filed a joint Participant statement. To partially accommodate his concern to seek more information, he was allowed to ask clarifying questions of Mr. Romano. I had requested that Mr. Romano outline the proposal first, so as to ensure that the new proposal was understood.

Mr. Dastoor first objected to the scant notice of the proposed alterations to the variances and the new plans. Mr. Kehar's letter (sent to all Participants) containing this information was dated Friday, November 2, and is shown as posted by the TLAB on November 6, the date of the hearing of the appeal. He considered that although the neighbours received copies on Friday the 2<sup>nd</sup>, they had not had sufficient time to consider the revisions. He requested an adjournment for this purpose. This was denied. The reasons were:

1. Although no decision on the merits of the new proposal was being made prior to completion of the evidence, I was satisfied after a thorough review of the new proposal that it was essentially a reduction on every issue previously raised by the Participant neighbours. Therefore nothing of substance would be gained by further time to consider the new variances and/or plans.
2. I was satisfied therefore that no further notice was required under subsection 45 (18.1.1) of the Act. This states:

(18.1) On an appeal, the Tribunal may make a decision on an application which has been amended from the original application if, before issuing its order, written notice is given to the persons and public bodies who received notice of the original application under subsection (5) and to other persons and agencies prescribed under that subsection.

**(18.1.1) The Tribunal is not required to give notice under subsection (18.1) if, in its opinion, the amendment to the original application is minor.**

I concluded that the amendments were indeed minor, and favourable to the position of the objectors. Nothing further would be gained by an adjournment, as it was evident from the Participants' Statements what their positions were on the prior larger variances. Also, and this was a significant factor, not one Participant other than Mr. Dastoor attended the hearing. At least one might have, had they had remaining concerns after they received the notice on November 2. Following a break to discuss this, Mr. Dastoor indicated that he did not oppose the continuance.

Mr. Dastoor proceeded to point out that the rear stairs were in fact an addition after the COA decision, and that he wondered how this addition would affect the Urban Forestry Report about injury to the neighbour's tree to the north. It had requested denial of variances for rear landscaping, building depth, and required setback of an accessory structure variances. (The only one remaining of these, as Mr. Romano had pointed out, is the building depth, which had not changed since the COA hearing.) Mr. Romano responded that the rear stairs were an addition, but were far away from the neighbour's tree to the rear. The most important element in his view was the elimination of the variance for soft landscaping. Since both the garage and the proposed rear shed would be removed, the hard surfaces would be greatly reduced. In fact, Urban Forestry would have fewer objections.

Mr. Dastoor questioned the statement that there were many multi-unit dwellings in the neighbourhood. He calculated from a study of the variances granted that the predominant number of multi-units was 3 or 4 units only. He asked Mr. Romano for the

average number of units per dwelling, a total that Mr. Romano had not calculated. He explained that it would not be useful, as the main factor is that there is a great variety in the number of units in this neighbourhood. The same base zoning exists here, but with differing density provisions.

Mr. Dastoor then proceeded to provide his testimony, given as well in their Participants' Statement. He is a civil engineer with other business experience, and also has expertise in design and construction, both private and with the Town of Markham. He and his wife support redevelopment in general, and have had a good relationship with the present owners' parents. He wishes to preserve the unique Annex diversity, but not with what he considers to be overdevelopment here. Additions to traffic both on site and off are foreseen. He stated that there should be a balance between density and sustainability in the area, and that this balance is upset with the proposal. He cited lack of communication about both past and current plans, although he said he appreciated the revised plans. He sees as a key concern that there could be 16 to 20 people using the property, with the attendant traffic, even if the units are rented to persons without cars. A transportation expert should review the proposal, he said, respecting the parking spaces required for the proposed number of units. He believes that the flow of traffic will be impeded by the four spots to the rear, given the shared driveway, and that safety concerns would increase. As well, the proposed parking spaces did not meet the required size for obstructed spaces.

He addressed a 2000 decision (COA, March 23) concerning a previous owner's extension to his own dwelling at 392, as filed by Mr. Kehar. He stated that it was "not in the same spirit" as those requested here. Mr. Kehar had said that this decision had permitted a second unit in the basement of 392, a building extension, increased depth to 22 m (when the applicable limit then was 14 m), and more importantly here, deletion of one required parking space, as it would be obstructed by the rear addition. Mr. Kehar stated that this COA decision (only recently discovered as it was not part of those disclosed by the City in the usual ten-year search) resulted in the revision to the rear parking now suggested by the owners. This would effectively create one regular and three tandem spots, which are permitted for secondary units, and there would be no interruption in the mutual easement. Mr. Dastoor saw a different issue in this prior decision for his property, as the Urban Forestry Report to the COA indicates that as a result of the parking spaces, a significant tree would be injured or removed. He sees the stair addition in the rear as exacerbating this threat.

Addressing the "hasty" revisions, he stated that the new design for two units in the basement had, for example, eliminated required utility space. This is more of a building permit issue, he acknowledged, but it presented a concern as to what would actually be built if approved. He had found many decisions where increased density had been denied – 74 Walmer Road (denied 23%), 25 Kendall Ave. (16%), and so on. Even though the City is planning on greater intensification of affordable units, this proposal with its many potential tenants is excessive. It should be limited to 3 or 4 units which he feels is average in the area. He also fears the property will not be properly maintained.

This proposal does not meet the general intent and purpose of either the OP or the zoning By-law.

In his questioning, Mr. Kehar objected to Mr. Dastoor raising the possibility of a City study on secondary units, as he had not raised it in his materials. His fear of excessive construction would be obviated by a condition that the dwelling be built substantially in accordance with the new proposed plans. Differing construction would then require additional variances. Mr. Kehar pointed to the many other dwellings with 7 or more units in the neighbourhood, and that even Mr. Dastoor's home with two units could have 8 persons in each unit. Mr. Dastoor responded that the other multi-unit buildings, however, were properly managed and maintained. He conceded that his concern for the neighbouring tree would be addressed by a condition that Urban Forestry issue a permit prior to construction. He had remaining concerns about the intensification in use, and the shared driveway. Mr. Kehar emphasized again that the proposed density or GFA, and the number of units, did not require a variance. Mr. Dastoor stated that the test for minor variances is a combined one, and when combined, the variances were not minor.

### **Other Participants**

As mentioned, other Participants also submitted Statements, as is required. Dr. Erik Hoskins of 99 Howland Ave. to the west, objected to the number of dwelling units as excessive for the property, as did April Franco and Matthew Mitchell at 107 Howland Ave. Their view would be impeded by the three storey addition and the stairs. Both Statements mentioned 4 additional units and 3 parking spaces as a more realistic proposal. Neither the proposed depth nor the landscaping variance (now eliminated) were minor. They also mentioned "the negative impact on the neighbors to the south given the proposed parking plan and the increased density of the proposed changes. We consider these changes to be well outside the minor variance appeals and should not be approved."

Mr. Kehar then summed up the application saying that a full range of housing, including secondary suites, is a significant concern for both the province and the City. Though consultations are ongoing, there is presently no numerical limit for secondary suites in the By-laws. This location is ideal for such intensification, and is supported by the planning instruments. There had been similar parking reductions in recent decisions, and the rear yards of other structures do not contain parking spaces for each unit in the dwellings.

### **ANALYSIS, FINDINGS, REASONS**

I find that the professional planning evidence by Mr. Romano is the more persuasive in this appeal. This is not to minimize the expertise of Mr. Dastoor in the fields he expressed, but merely to say that the owners' evidence is the more sound in this instance. It is important in considering the effect of the variances requested that there is no overall GFA variance, and so no increase of any consequence in the size of the present structure. The proposal is less than the By-law density requirement of 1.0 times

the lot area. Nor is there a limit on the number of units in this zoning category, or on the number of persons who may occupy existing units. It is an old adage that the City does not “people-zone”.

The main provincial policies both encourage intensification and affordable units, and in the very location represented here – a downtown area where servicing and public transit are readily available. The wide variety of built forms and number of units, even on Brunswick itself, support this goal. The reduction in parking spaces (which are in fact size-compliant) is minor in this context, and Transportation had no comment on even a larger reduction than proposed.

Although the Zoning Examiner had not yet considered the revised set of plans before the TLAB hearing, a condition tying the approval to the Site Plan and Elevations would ensure that anything not shown therein could not be built. I note that while many persons announced their objections and intent to participate in this appeal hearing, only the closest and most affected neighbour attended. This does not indicate their satisfaction with the revisions, but it seems clear that their absence demonstrates no strong opposition.

I note that the Dastoor/Keesmaat home at 392 is already longer than the proposed. The variance for depth (No. 4) is only for the portion of the proposed structure at the stairs, and no construction would occur closer to the neighbouring tree to the north. This is a very small deviation, essentially legitimizing an existing condition.

The main wall height variance is, as argued by Mr. Kehar, a modest one that would not extend to the edges of the site. Not only is there no soft landscaping variance required, but the elimination of the garage and proposed shed would increase the existing soft landscaping. Urban Forestry would still have ultimate control over the design, as a permit would be required.

In this instance, the proposed building addition is sensitively designed in a manner that fits in compatibly with those found in the neighbourhood, including the diversity of development found along Brunswick Avenue and adjacent areas. The proposal represents a modest improvement that maintains and builds upon the existing site features. These maintain a low rise, low scale residential building form that respects and reinforces the site's physical characteristics, and so meets the OP policies.

The parking in the rear yard is also a sensible solution to the threat seen by Urban Forestry to the neighbour's tree. The rearranged tandem placement would address the issue of more cars in the rear. As well, the owners are asking for fewer parking spaces than before the COA, so there would be less traffic along the mutual driveway, not more. There would most likely be an increase over the present situation, however.

If Mr. Dastoor or others see a maintenance issue in the future, they could alert the City's Property Standards Department.

For all of these reasons, I find that the proposal meets the tests in subsection 45(1) of the Act, and also the applicable provincial policies. I have closely considered all submissions by objectors made to the COA and the TLAB.

## **DECISION AND ORDER**

The TLAB orders that the appeal is allowed in part, and that:

1. The following variances to Zoning By-law No. 569-2013 are authorized, contingent upon the relevant provisions of this By-law coming into force and effect:

1. Chapter 150.10.80.1.(1), By-Law 569-2013

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

In this case, four parking spaces will be provided.

2. Chapter 10.5.80.10.(7), By-law 569-2013

A maximum of two parking spaces are permitted to be located outside in the rear yard.

In this case, four parking spaces will be located in the rear yard.

3. Chapter 10.10.40.10.(2)(B)(ii), By-law 569-2013

The maximum permitted height of all side exterior main walls facing a side lot line is 9.5m.

The height of the side exterior main walls facing a side lot line will be 10.0m.

4. Chapter 10.10.40.30.(1)(A), By-law 569-2013

The maximum permitted building depth is 17m.

The proposed building depth is approximately 21m.

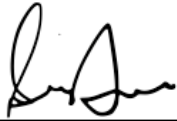
2. The alterations to the dwelling shall be constructed substantially in accordance with the plans attached hereto as **Attachment 1** (Elevation Plans, Drawings A.2.11 to A.2.14, dated August 13, 2018). Any other variances that may appear on these plans that are not listed in this decision are not authorized.

3. The renovation to the parking area at the rear shall be constructed substantially in accordance with the Site Plan Drawing SK-01, dated November 1, 2018, attached hereto as **Attachment 2**. Any other variances that may appear on this plan that are not listed in this decision are not authorized.

4. Prior to issuance of a building permit, the applicant/owner shall submit a complete application for permit to injure or remove privately owned trees under Municipal Chapter 813, Article III, Private Trees, to the satisfaction of the Supervisor, Urban Forestry, Tree Protection and Plan Review, Toronto and East York District.

### **Attachment 1 – Dwelling Plans – Elevations**

### **Attachment 2 – Site Plan**

X 

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G. Burton

Panel Chair, Toronto Local Appeal Body



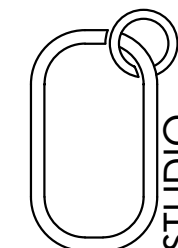




① PROPOSED SOUTH ELEVATION  
1 : 100

80 Micro Ct. Suite 106  
Markham ON L3R 9Z5

info@drdesigngroupinc.com



location:  
394 BRUNSWICK AVE

date: 2018-08-13

proj. no.: 16028

dwg no.:

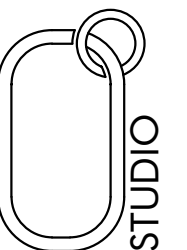
**A2.11**



① PROPOSED WEST (REAR) ELEVATION  
1 : 100

80 Micro Ct. Suite 106  
Markham ON L3R 9Z5

info@drdesigngroupinc.com



location:  
394 BRUNSWICK AVE

date:                      2018-08-13

proj. no.:                      16028

dwg no.:

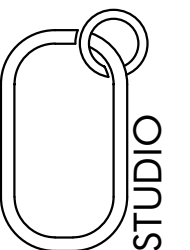
**A2.12**



1 PROPOSED NORTH ELEVATION  
1 : 100

80 Micro Ct. Suite 106  
Markham ON L3R 9Z5

info@drdesigngroupinc.com



location:  
394 BRUNSWICK AVE

date: 2018

proj. no.: 16028

dwg no.:

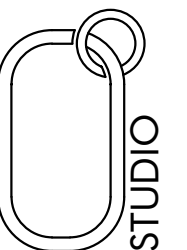
**A2.13**



① PROPOSED EAST (FRONT) ELEVATION \* NO CHANGE \*  
1 : 100

80 Micro Ct. Suite 106  
Markham ON L3R 9Z5

info@drdesigngroupinc.com



location:  
394 BRUNSWICK AVE

date: 2018-08-13

proj. no.: 16028

dwg no.:

**A2.14**