Toronto Local Appeal Body

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REVIEW REQUEST ORDER

Review Issue Date: Monday, June 04, 2018

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

Appellant(s): MONICA MOLSON

Applicant: JOHNSTON LITAVSKI LTD

Property Address/Description: 491 PARKSIDE DR

Committee of Adjustment Case File Number: 17 181634 STE 14 MV

TLAB Case File Number: **17 260813 S45 14 TLAB**

Decision Order Date: Monday, April 16, 2018

DECISION DELIVERED BY Ian James Lord

REVIEW REQUEST NATURE AND RULE COMPLIANCE TO INITIATE

This is a request for a review (Request) under Rule 31.1 of the Rules of Practice and Procedure (Rules) of the Toronto Local Appeal Body (the TLAB). It is made by Wojciech Kozak (Requestor), owner of 493 Parkside Drive.

The Request was made by affidavit (Form 10) sworn May 14, 2018 and was received by the TLAB on the same day, within the limitation period set by the Rules.

The matter that is the subject of the Request concerned the Decision and Order of Member S. Makuch (Member) issued April 16, 2018 (Decision) in respect of the property located at 491 Parkside Drive, (subject property) in the City of Toronto (City).

The Decision allowed the appeal of the owner, Sonja Molson (Owner), for variance relief that would enable, on demolition of existing improvements, the construction of a fourplex and garage on the subject property.

The Requestor asserts four separate categories supporting the Request:

1. Reasons: it is asserted that the Member: “did not hear critical applicable law and other evidence”; that there was a failure to provide “individual analysis” on the four tests applicable to the requested variances; there was an absence of ‘reasons’.
2. Grounds: it is asserted that the Decision: “lacked proper analysis”; disregarded the metrics contained in the applicable zoning by-laws; relied upon a ‘flawed’ Planning Staff Report; excluded the consideration of some evidence; was ‘in conflict with’ applicable zoning for failure to consider ‘zoning exemption 675 and other zoning by-laws’ and may be in conflict with the *Ontario Heritage Act,* by virtue of exclusion (excluded from consideration of a Participants’ Statement, as the participant was unable to attend); and the ‘weighting unfairly’ of evidence filed and on the TLAB website, including: the choice of Committee decisions relied upon; character evidence of the predominant house-form on the block; the Planning Staff Report; and the use of 3-D massing models but its failure to show the ‘lawfully existing building’.
3. New evidence: it is asserted that the owner’s expert witness ‘chose not to mention the applicable Exception 675 and site specific exception A(iv) that the minimum lot width for a fourplex is 18 m.”; that there was no evidence of actual historical use as a fourplex to support a use variance; that the maximum permitted side wall height is 7.5 m.; that photographs not made available at the hearing “are now available” (and are provided) ,showing existing sunlight conditions to be impacted by the proposal, using the 3-D modelling; that the argument that a new building of a different building type, but roughly the same mass, “is somehow exempt from the intent and purpose of the Official Plan” even when exceedances are shown on the drawings and increased shading is the result; Official Plan policies and their intent were avoided or ignored in relation to zoning standards supportive of sloped rooves, the heritage significance of nearby High Park, the absence of special impact studies.
4. Applicable Rules or law in support of the request; it is asserted that: latitude in the Rules was extended only to the Applicant; the application conflicted with the zoning standards that support Official Plan policy for a stable neighbourhood; the Decision was made on ‘information not in evidence’; the absence of support for the proposition that the existing massing, scale and built form can be applied to override the differing prescriptive standards for residential detached and fourplex uses when “metrics appropriate to a fourplex would mitigate some negative impacts identified by the neighbours”.

The Request concludes that there should be some reasonable expectation that the TLAB will enforce existing by-laws “despite the quality, or absence of effective opposition to an application or an argument”. As such, it is suggested that the review should overturn the Decision and that it is not unreasonable for the TLAB to follow suit with the earlier decisions of the Committee of Adjustment.

BACKGROUND

I set out below the scope of a Review as directed by the Rules applicable to the Requestor and the Chair, in conducting a review.

The Request follows a Hearing that itself was preceded by a lengthy period of Hearing Date identification, prescribed filing dates, exchanges, opportunities for clarifications, motions and productions.

It appears that the Hearing was convened on the basis that there were to be 5 formal Parties and at least 6 registered Participants. For a minor variance appeal, this is not a slight or inconsequential engagement. Neither the Decision nor the Request challenges any of the procedural opportunities available in advance of the Hearing, whether exercised or not, to tender evidence, identify issues and provide direct testimony.

There is nothing to indicate that the prosecution of the appeal by all those engaged was other than open, accessible, accessed and inclusive.

Indeed, it is clear from the Decision that the applicant/owner/appellant took its opportunity to lead a case supported by a qualified land use planner. As well, several parties spoke in opposition; it is the content of the Hearing itself then and its resultant expression in the Decision that is put in issue.

As a prelude to the conduct of a Hearing, it is the practice of the tribunal to visit the subject property and the surrounding neighbourhood, review the pre-filed electronic file inclusive of the record of filings before the Committee of Adjustment. As well, for the members to generally familiarize themselves with all prescribed preparation filings exacted through the application of the TLAB Rules and any extenuating Motions.

Even so, these activities are preparatory to distilling the issues as are called forward and supported at the Hearing, with qualified opinion evidence, lay or expert.

Simply because a document is filed on the TLAB website does not make it evidence. To be received and ascribed weight, a document, Witness Statement, petition, photograph, model or other manifestation of information intended to communicate a matter of import must be brought forward – lifted from the extensive posted filings.

On being brought forward, it is subject to challenge by those opposed; even without a challenge, a document, work effort, witness statement must be ‘proved’ successfully by the proponent before it can achieve a status as evidentiary. Such a production can be subject to cross-examination, contrary evidence and argument.

It is only on surviving that vetting process that a document or production can be ascribed a measure of weight. The acceptance of evidence, the marking of Exhibits, the proof by the author and the challenges are all but steps in a process to weighing evidence. Indeed, even then, in law the most compelling evidentiary support can be negated by the overriding considerations of administrative policy, properly enunciated.

The weighing of evidence, the application of law and the overriding potential of administrative policy are all matters remitted, in the first instance, to the 'trier of fact', in this instance the TLAB hearing officer, the Member.

A number of propositions accompany a Hearing that subscribes to the principles of administrative law. These include:

a) He who asserts, must prove;
b) There are no presumptions of entitlement;
c) The decision is not bound by the 'evidence' and while the 'evidence' may be strongly directory to the outcome, the 'evidence' may be overridden by the larger considerations of administrative policy;
d) Jurisdiction of a tribunal is set by statute;
e) A decision of the tribunal must trace a replicable path; not every turn in the road needs be acknowledged with punctilious accuracy but the reasons must reflect a genuine reference to the supporting evidence and policy and lead to a conclusion supported by it;
f) The decision is discretionary.
g) A review of the decision, whether by the tribunal itself in a different forum or by the court, must subscribe to principles of law set out in regulatory directions or precedent.
h) Reviews are not themselves retrials, unless the result of the review creates a finding that a retrial is just, appropriate, necessary or advisable in the circumstance. A review is not a vehicle to reargue a case but rather to identify a qualifying defect that cries out for correction.

I have reviewed both the Request and the Decision in light of these parameters.

Below, the applicable TLAB Rules are repeated for convenience of reference.

The requestor, by virtue of Rule 31.4, is obliged to set out the reasons, the grounds, any new evidence supporting the request and any applicable Rules or law supporting the request.

The Requestor has followed this format in form. The issue of substance is addressed in the section of these reasons entitled 'Considerations and Commentary'.

In conducting the review, I am provided a discretion as to applicable remedies. These are available to conduct further inquiry, to compel additional scrutiny by a Motion Hearing, if felt appropriate, and to allow the Review, confirm, vary, suspend or cancel the order or decision.

The language specifics are set out below as Rule 31.6.

The discretion vested is, however, circumscribed by the requirement that "the reasons and evidence provided by the requesting party are compelling and demonstrate grounds which show" one or more of the listed areas of potential transgression. These eligible areas are listed in Rule 31.7a) to e), below. Only if the allegations in the review constitute the requisite foundation for relief are the remedies due and owing for consideration.

JURISDICTION

31.6 The Local Appeal Body may review all or part of any final order or decision at the request of a Party, or on its own initiative, and may:

a) seek written submissions from the Parties on the issue raised in the request;

b) grant or direct a Motion to argue the issue raised in the request;

c) grant or direct a rehearing on such terms and conditions and before such Member as the Local Appeal Body directs; or

d) confirm, vary, suspend or cancel the order or decision.

31.7 The Local Appeal Body may consider reviewing an order or decision if the reasons and evidence provided by the requesting Party are compelling and demonstrate grounds which show that the Local Appeal Body may have:

a) acted outside of its jurisdiction;

b) violated the rules of natural justice and procedural fairness;

c) made an error of law or fact which would likely have resulted in a different order or decision;

d) been deprived of new evidence which was not available at the time of the Hearing but which would likely have resulted in a different order or decision; or

e) heard false or misleading evidence from a Person, which was only discovered after the Hearing, but which likely resulted in the order or decision which is the subject of the request for review.

31.8 Where the Local Appeal Body seeks written submissions from the Parties or grants or directs a Motion to argue a request for review the Local Appeal Body shall give the Parties procedural directions relating to the content, timing and form of any submissions, Motion materials or Hearing to be conducted.

CONSIDERATIONS AND COMMENTARY

In reviewing the Request and the Decision, and without categorizing the details of either, I am content that the issues raised are sufficiently clearly articulated – with some exceptions- that a further inquiry into them by requesting written submissions of the applicant/appellant, other parties or the participants, is unnecessary. There is one review Request and it is the material in support that is relied upon for completeness.

I do not find it to be my duty to investigate the nuances of the Hearing, listen to the Digital Audio Recording, review the filings not referenced or otherwise rebuild the factual or evidentiary underpinnings of the proceeding beyond that demonstrated in the Request. Rather, this review is conducted on the material provided, which in this case includes the affidavit of Wojciech Kozak, its attachments and the Decision.

At issue is: do these materials give rise to a necessary remedy in the consideration of administrative justice?

In terms of the grounds for review, Rule 31.7, the headings most germane to the matters identified and expressly raised in the Request are that the Member:

"c) made an error of law or fact which would likely have resulted in a different order or decision;

d) has been deprived of new evidence which was not available at the time of the Hearing but which would likely have resulted in a different order or decision."

Where demonstrated, the reasons and evidence must be compelling and demonstrative.

First, there is the allegation that the Member did not hear critical applicable law and other evidence necessary to effectively and completely adjudicate the matters before it.

In support of the issue of error of law, Rule 31.7 c), above), the Requestor cites:

a) The absence of analysis and reference to key applicable law.
b) The exclusion of evidence: e.g., the Participant Statement of Allan Killin, who could not be present;
c) The failure to address each variance in light of each of the relevant statutory considerations, individually and cumulatively;
d) Unfair weighting of evidence: e.g., the characterization of the 'predominant house-forms that define the actual character of the block'; reliance on a 'flawed Planning Staff Report not given weight by the Committee of Adjustment; diminution of the 3-D model images used to demonstrate 'impact';
e) The unfounded consideration of existing building massing, scale, built form and size as a foundation ('general match') for a different replacement use, a

fourplex being a use never previously existing on the site as a consideration relevant to the application and assessment of the 'general intent and purpose of the Official Plan and to avoid the conflicts its dimensions entail "with key applicable Zoning By-law metrics".

In support of the issue of new evidence, Rule 31.7 d), above, the Requestor cites:

a) The failure of the applicant/appellant to reference a by-law special provision, Exception 675, establishing a minimum lot frontage (18 m) and maximum building depth (14 m) for development of a fourplex, as proposed by the applicant;
b) The failure to acknowledge proposed side wall heights exceed the standard under the new City zoning by-law and the existing buildings on the subject property; and
c) New photographs (7), 'now available' and attached, purporting to show the potential for reduced sunlight into selected rooms of the Requestor.

I address each of these matters in turn. In so doing, I find that many paragraphs in the Review Request are arguments for a different conclusion than that reached by the Member. I assign to these arguments very little weight or consideration. Unless they are accompanied by a qualifying ground or error that is compelling and is demonstrable within the categories provided, they are little more than a disagreement with the Decision.

A. Alleged Errors of Law, Rule 31.7 c)

a) and c), above

The absence of analysis and reference to key applicable law.

The failure to address each variance in light of each of the relevant statutory considerations, individually and cumulatively.

Although no support was supplied for these propositions which, combined, challenge the integrity of the Decision, it is a generally accepted proposition that the duty of a Hearing Officer is to apply the statutory tests and policies to each of the variances sought. The purpose of this is to conclude on each, individually and collectively, and to judge acceptability to the jurisdiction, spirit and letter of the statutory and policy directions, within the ambit of that language.

Where the Member properly instructs himself on that duty, it can be a matter of degree as to the amount of detail engaged. In this case, there were 21 variances on appeal and each is subject to the consideration of the policy and 'tests'.

That said, their consideration can vary in detail on a number of factors: whether they (the variances) are a recognition of existing conditions; whether they are the same variance under the two applicable zoning instruments under consideration

in the City; whether repetition is warranted; whether the variance itself is contested or in issue.

While it may be inappropriate to simply accept all variances in mass by way of acceptance of the verbal evidence of a Witness, it might otherwise be appropriate to do so buttressed by a detailed description in a Witness Statement.

Such adoption and reference may be an entirely satisfactory way of communicating acceptance of some or all and the expression of the reasons therefore, over mere repetition.

The decision fully and accurately recites the 'Jurisdiction' under which the Member was acting. I find that this reference clearly identified the Member's task and tests involved in the Hearing and constitutes appropriate and correct direction by referencing 'applicable law'.

While the Decision is relatively short, I have no hesitation in finding that the Member identified and addressed sufficiently the specific issues and variances of concern to the opponents of the project, including the Requestor, in adequate detail, conjoined to the applicable variance relief requested.

The Member had professionally qualified opinion evidence available from two planning sources: Staff and the applicants' planner. That evidence addressed the statutory directions and was supplemented by written reports or witness statements and documents that were pre-filed and available. Where that evidence was challenged, the Member resolved the challenge by express findings on the preferred evidence. The applicable variances followed from these findings.

While I agree that the Member did not isolate each variance and make findings individually and cumulatively, he did so in detailed responses to criticisms with individual findings for those variances in substance placed in issue by those in opposition. The Request does not identify a single variance that can be ascertained as having been missed or not addressed in the Members analysis and direction.

I cannot find a compelling and demonstrated omission, misdirection or rationale that would constitute "an error of law or fact which would likely have resulted in a different order or decision" that is made out by these two grounds.

b) *The exclusion of evidence: e.g., the Participant Statement of Allan Killin, who could not be present.*

In the context of a Hearing to which natural justice principles apply, the rules of evidence can be employed to insist on basic fairness. The tribunal is often called upon to rule on questions of admissibility when raised by a party.

While the rules of evidence are more relaxed in administrative law proceedings generally, they are not to be ignored on pain of being held accountable for denying natural justice.

Pre-filed materials are a hallmark of the Rules of the TLAB. The Rules establish a regimen of disclosure to prevent 'trial by ambush' and to expose positions that may require response by those affected by filings.

Pre-filed materials, however, as above noted are not evidence. They must be proven, spoken to and be made subject to cross examination of the author, when challenged, as previously described.

I find it is entirely within the discretion of the Member to exclude from the evidence pre-filed materials from a lay or professional person who is or cannot be brought before the tribunal for proof and challenge.

I find no error in law a ruling on the exclusion of evidence that protects a party from unsubstantiated evidence that is not capable of being challenged.

d) *Unfair weighting of evidence: e.g., the characterization of the 'predominant house-forms that define the actual character of the block'; reliance on a 'flawed Planning Staff Report not given weight by the Committee of Adjustment'; diminution of the 3-D model images used to demonstrate 'impact'.*

While the 'fairness principle' is well entrenched in administrative law, it is not generally seen to be based on disagreement with findings as warranting a Review or that can constitute an error of law. Lack of fairness can be an error of law or jurisdiction. However, in the examples cited, these are instances where the Member, on hearing the evidence and the submissions, made findings of weight, credibility, preference and acceptance.

It is not sufficient to say one disagrees with such findings. There has to be something more in the nature of bias, bad faith or improper purpose. Not only are no such matters raised, cited or proven, they are nowhere to be found in the Request or the Decision. In the examples provided, it was open to the Member to distinguish the difference in opinions as to 'predominant house-forms'. Not only is that not an express test in the Official Plan of the City in force for the subject applications, but the area of relevance and reference can extend beyond the immediate block. The Member makes an express finding that the Requestor failed to satisfy this Official Plan policy and impact application, as two of the 'four tests':

> "Nor did he (Mr. Kozak) give any evidence as to how the applicant's fourplex would not fit within the physical character of the neighbourhood, or how four units within the building envelope of an existing building, would, in any way adversely affected him or his immediate neighbours."

As well, to argue the Planning Staff Report is 'flawed' needs an assessment and evidentiary opinion base. None was referenced. An argument is not evidence, and unproven assertions are entitled to be attributed no weight.

By statute, the decision of the Committee is to be 'had regard to' but that amounts to little more that to be given serious consideration. The statutory direction does not imply either the decision or the consideration of evidence that was before the Committee needs to be followed by the TLAB.

The Member considered the 3-D model imaging and indeed makes multiple references to it, undoubtedly as helpful renderings, to a degree. Without the designer available to attest to its construction and, in the absence of its use to test impact based upon a replication of the existing built form, it was open to the Member to limit the conclusions urged on the use of the model.

In all these circumstances, I cannot find indicia of an 'error of law or fact which would likely have resulted in a different order or decision.' Rather, I find that there is argumentative disagreement with the evidence accepted by the Member in his task to consider and weigh the evidence. That disagreement is not a compelling and demonstrated ground upon which I can consider granting review relief.

e) *The unfounded consideration of existing building massing, scale, built form and size as a foundation ('general match') for a different replacement use, a fourplex being a use never previously existing on the site as a consideration relevant to the application and assessment of the 'general intent and purpose of the Official Plan and to avoid the conflicts its dimensions entail "with key applicable Zoning By-law metrics.*

An acknowledged significant element of the Decision, raised repeatedly in the review Request, is the presence, location, dimensions and treatment of the existing abandoned building and its contribution to the support for the proposed fourplex project. There are two aspects to this: legality and planning rational. The Requestor is correct in pointing to the concern that the existing building and its dimensions are not a basis to ignore the regulatory standards applicable to a new building, purpose built as a fourpex.

Those standards clearly exist and apparently were made known. They form part of the context of consideration. However, I find that the Member did not ignore, avoid or demonstrate any unawareness of the applicable regulatory permissions for a fourplex. Indeed, it was these very standards that were the subject matter of certain of the variance applications.

At the outset of the Decision, the Member acknowledged an 'apartment building is prohibited', the existing frontage condition of the property (12 m) does not meet the fourplex standard of 18 m, and the building envelope 'exceeds the setbacks for a new building'. The dimensions of these variances are listed in Attachment 1 to the Decision, which clearly identifies the change being requested in the regulatory provisions.

On the issue of the legality of the existing built form, a matter raised by the Requestor, the Member had no evidence beyond apprehension that the existing improvements were not lawfully protected. The Member notes that the Requestor had observed the existing building without complaint for 25 years and neither challenged its legality nor the approval and construction of a more recent fourplex project abutting the subject property and in in close proximity to the Requestor's residence. It is not for the TLAB to make findings on the legal compliance of the existing structure proposed to be demolished, where that subject is not squarely in issue. The Request provides no detail as to the construction aspects of its history.

The concern expressed about the use made of the existing structure as a planning rationale for a new project is not new. The planning profession, in applying the 'four tests' of variance approvals (and other planning instruments) frequently employ references to existing conditions, as-of-right zoning permissions and other analogies to describe changes and assessment measures of impact: density; location (building envelope/footprint), massing, height comparisons, gross floor area/floor space index descriptors. These measures are seen as being helpful to gauge actual and perceived change and impact, and to yield opinion evidence on the test of whether 'any undue adverse impact' occurs resulting from a proposal. These aspects are relevant to all of the 'four tests', as to the degree of change proposed.

The argument or planning rationale presented as to impact assessment is guided by the use of these comparative descriptors. Again, this is a matter of evidence to be accepted or rejected by the Member and weighed in the context of the relief requested by the variance applications.

There are multiple references to these comparisons made by the Member as well as the acceptance of evidence on the rationale and relevance of the 'footprint' and building envelope' occupied by the existing residence, as support for gauging the change and impact of the proposal. As with 'legality', I find that the Member was conscious of the issue raised, and recognized and dealt with it, as was his prerogative.

It is clear, with the use of 3-D modelling that the issue of impact was addressed in the evidence, albeit not with the complete modelling information that could have been presented. To receive, consider and employ evidence on the degree of change from existing to proposed conditions does not amount to closing one's mind or adopting a misdirection that "permission to repair and reconstruct an existing building (is) justification to construct a new building". While the subject matter of the evidence may be notional, anecdotal and general, it is neither an uncommon rationale nor an irrelevant consideration.

I see no error in law or fact in the receipt and use of this evidence on comparative impact, let alone a sufficiency of information that 'likely would have resulted in a different order or decision'.

In support of the issue of new evidence, Rule 31.7 d), above, the Requestor cites:

a) *The failure of the applicant/appellant to reference a by-law special provision, Exception 675, establishing a minimum lot frontage (18 m) and maximum building depth (14 m) for development of a fourplex, as proposed by the applicant;*

I have found, above, that the Member was aware of these standards as part of the subject matter of the very application on appeal. Bringing the standards forward in a different form or by specific articulation does not constitute 'new evidence'. It is sufficient that the subject matter was known and addressed. I find as a fact that the Member was aware of the standards applicable to new construction of a fourplex and that they were considered in relation to existing rights, existing built form conditions and the advice of Planning Staff as to a more suitable adjustment of the new building envelope.

Moreover, the Member clearly addressed comparable use and built form in the neighbourhood from the perspective of the neighbourhood's physical attributes, proximity and historical Committee approvals. This demonstrates a common approach to the use of evidence and an acceptance and application of the relevant 'tests' in the context of applicable Official Plan policies.

b) *The failure to acknowledge proposed side wall heights exceed the standard under the new City zoning by-law and the existing buildings on the subject property*;

This challenge, found at paragraph 3.6.3 of the Request, is illustrative of a difficulty of its application. It asserts that the reasons do not express an element of the evidence: higher wall heights proposed than those existing, ignored.

Paragraph 3.6.3 recites that the evidence was, in fact, before the Member by way of drawings. There is therefore no 'new evidence', a qualifying threshold requirement for relief under this ground.

Moreover, wall height relief was clearly before the Member by virtue of variance 5 under By-law 569-2013.

The Member was alert to this building envelop variance:

"The variances listed relate to:
(4) the building envelope…- variances…5…"

And at page 4of 7:

"(The applicants' planners') opinion was shared by planning staff who, in their report, stated that the proposed building was comparable in size and massing to the existing building and similar in depth (to) the houses in the area and therefore was appropriate in the context of the neighbourhood."

And again at page 6 of 7:

"The north side wall of the proposed building is increased by a variance but the north side yard setback is increased over that which is existing. It is not at all clear that the shadow on Mr. Kozak's north side rooms would be made worse by the variance, given the increase in the setback. Moreover, it was not at all substantiated that those rooms currently receive sunlight. Given his background (sic: with degrees in architecture and engineering) Mr. Kozak could have taken some photos to demonstrate the amount of sunlight, if any, currently reaching those rooms."

I see no 'new evidence' in the assertions that the Member could have made more detailed reference to portions of the evidence. It is not necessary for the Member to recite every fact and element of the evidence and findings on the positions of the parties in the journey to a conclusion. It is sufficient that the subject matter of required relief is considered in view of the evidence and that a replicable route is traced and supported in making findings and resolving the appeal.

I find that the issue of side wall height exceedances was properly canvassed.

c) *New photographs (7), 'now available' and attached, purporting to show the potential for reduced sunlight into selected rooms of the Requestor.*

The Request includes 7 photographs/images taken since the Hearing to demonstrate aspects of impact on the Requestors property to the north. There is nothing in the Request to describe why these images were 'not available at the time of the Hearing but which would likely have resulted in a different order or decision'.

It would be improper for me to receive and act upon evidentiary submissions sent after the conclusion of the Hearing when it is clear than such evidence could have been placed before the Member to support the direct evidence and testimony of the party.

In a Review Request, it is incumbent upon the Reviewer to demonstrate compelling and demonstrable support for the grounds raised. I do not consider the criticism of the depth of references to the evidence in this instance to be either accurate or substantive.

I see no compelling omission, in the receipt or consideration of evidence, that raises an error of law or fact that likely would have resulted in a different order or decision.

The allegation of 'unfair weighting of evidence' in the absence of the presence of bias or misdirection, is unproven, argumentative and not an eligible ground for a review under Rule 31. It is not the purpose of a Review to retry the case that was before the Member, except in the circumstance that the review leads to a conclusion that an issue or the entirety needs to be considered before another panel.

I find that the Request has not identified 'new evidence' of the standard, quality or unavailability that could not have been brought forward in the Hearing itself. It is not

in the public interest to have multiple iterations of the same issues premised upon information that might have been brought forward in support of one's case.

I find as well that much of the Review consists of argument as to how the Member might have viewed the evidence had it been considered through the lens or emphasis of a particular perspective.

This, too, is not the proper basis for a remedy of any of the elements of the requested relief offered under Rule 31.6.

I find that the Member properly addressed his mind to the variances in the context of the evidence of existing conditions and the existing physical character of the neighbourhood. He did so with proper regard to the evidence on the statutory steps and consideration of applicable provincial policy. This included the parameters of applicable zoning identified and requested to be varied. In this, I see no misdirection in relation to 'applicable law' and no error in relying on the evidence provided, despite the Requestor's characterization of this as "information not in evidence". The Request fails to particularize what is absent and what is the relevant distinction.

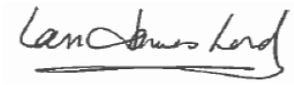
The Request asks for a review of the Decision. In completing that, I commend the Requestor for the diligence exhibited in the expression of concerns in reviewing the Decision. It represents a commitment to own property, the neighbourhood and the process in place of City building. I disagree that relief is warranted.

DIRECTION (IF APPLICABLE)

I find that the Request, to review the order or decision issued April 16, 2018 in respect of 491 Parkside Drive, has not provided reasons and evidence that are compelling and demonstrate grounds which show a qualifying basis for relief.

DECISION AND ORDER

The Request is denied and the Decision and Order dated April 16, 2018 on TLAB Case File Number 17 260813 S45 14 TLAB is confirmed.

X 

Ian Lord

Panel Chair, Toronto Local Appeal Body

Signed by: Ian Lord