

# DECISION AND ORDER

**Decision Issue Date**      Tuesday, September 24, 2019

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): HAYES COLLIN STEINBERG

Applicant(s): CLIMANS GREEN LIANG ARCHITECTS INC

Property Address/Description: 65 TILSON RD

Committee of Adjustment Case File Number: 19 113330 NNY 15 MV (A0085/19NY)

TLAB Case File Number: 19 141090 S45 15 TLAB

**Hear date:**    Tuesday, September 03, 2019

**DECISION DELIVERED BY T. Yao**

## APPEARANCES

Name	Role	Representative
Jennifer Gould	Appellant/Owner	David Bronskill
James Diamond	Informal Advisor to Ms. Gould	
Tae Ryuck	Planner	
John Plumpton	Party	
Robert Brown	Informal advisor to Mr. Plumpton	
John Hippler, Karen Dean	Participants	
Bob Green	Observer	

## INTRODUCTION

Jennifer Gould and Hayes Steinberg (whom I will simply refer to as “Ms. Gould”) wish to make front and rear additions to their semi-detached house (65 Tilson)<sup>1</sup>. This house shares a party wall with John Plumpton’s semi-detached house (63 Tilson). To do so they need two variances as follows:

<b>Table 1. Variances sought for 65 Tilson Rd</b>			
		Required	Proposed
<b>Variances from Zoning By-law 569-2013</b>			
1	FSI	0.60	0.77
2	Front yard setback	4.97 m	4.36 m

The Committee of Adjustment (April 4, 2019); refused to grant the variances; Ms. Gould appealed, and thus this comes before the TLAB.

## MATTERS IN ISSUE

I must be satisfied that the applications meet the four tests under s. 45(1) of the *Planning Act*, that is, whether they individually and cumulatively:

- 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.

The main issue is whether the 0.77 FSI should be granted. Ms. Gould’s planner, Tye Ryuck asserts the four tests are met, based on his map showing other Committee of Adjustment, LPAT etc. decisions granting variances of over 0.70. Mr. Plumpton felt that the requested FSI was “pushing it.”

## EVIDENCE

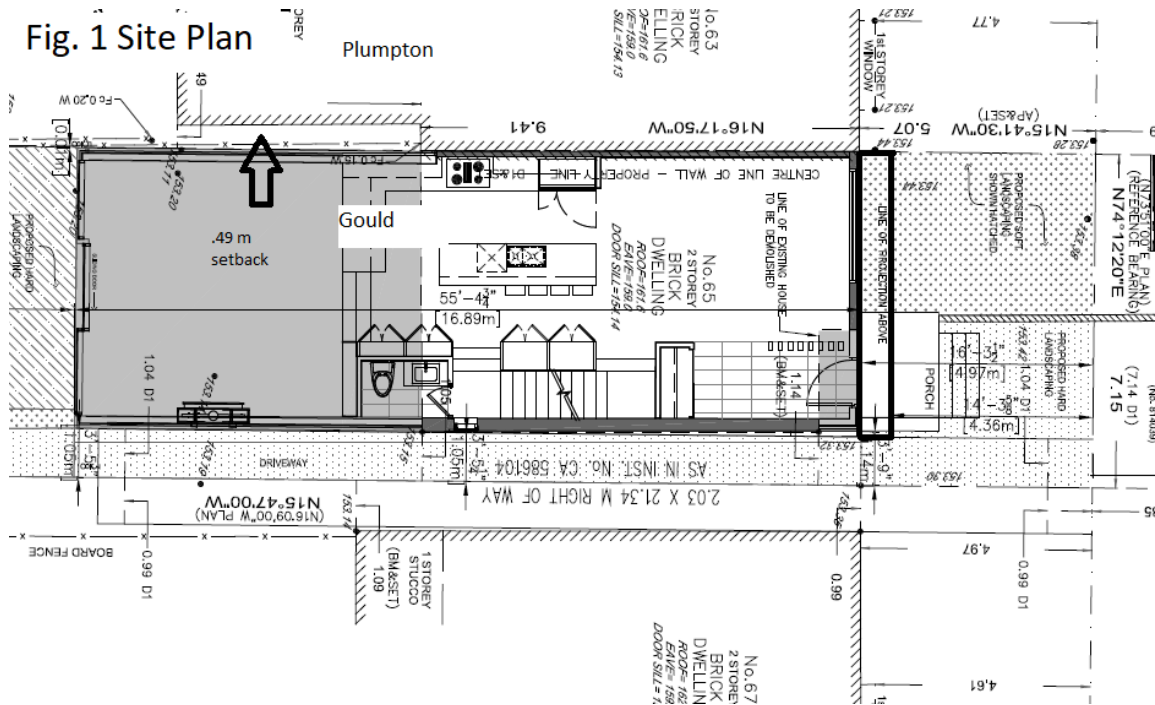
I qualified Mr. Ryuck as able to give opinion evidence in the area of land use planning. Mr. Hippler, a neighbour, and Mr. Plumpton, the adjoining party wall neighbour, testified on their own behalves.

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<sup>1</sup> A rendering of the proposed front elevation is found at page 10.

**BACKGROUND**

Tilson forms a two block long “enclave” in Davisville Village, prized by residents because it is free from the through traffic of Hillsdale Ave, Manor Rd and Davisville Avenue. The residents of Tilson socialize with each other; for example, there is an annual block party and communal fireworks.



Mr. Plumpton, an architect, owns the other half of a semi (upper building in Figure 1). In 2012, he renovated it, increasing the FSI to 0.58, under the by-law limit of 0.60. The other half (now owned by Ms. Gould) was owned by a neighbour who was “difficult.” He or she did not keep up the property so Mr. Plumpton was “thrilled” to learn that he would have new neighbours with a family. Notwithstanding the lack of cordiality between Mr. Plumpton and the former neighbour, Mr. Plumpton was careful to respect the built form of the other half; he set back his rear addition 18 inches from the common lot line, which was not required (upwards arrow, Figure 1). Ms. Gould proposes to build right up to the lot line, as she is permitted to do, without a sideyard variance. This is the chief basis for Mr. Ryuck’s assertion that the house is a modest intensification; except for the FSI and front second storey projection; there are no other variances.

Mr. Plumpton has children. He says there is enough room in his remodeled house for his blended family.

Ms. Gould along with her partner, Mr. Steinberg, acquired 65 Tilson in October 2018. From the outset she attempted to reach out to others to smooth the way for her redevelopment. Despite her efforts there was still some opposition at the Committee of Adjustment. She was particularly disappointed that Mr. Plumpton opposes her at the TLAB. There was this email exchange on the eve of the Committee of Adjustment hearing, put into evidence by Mr. Bronskill, her lawyer.

John (Plumpton) to Hayes (Steinberg): It's close to what we requested of your Architect, so we won't be opposing.

Hayes to John: Thanks for the response. Will you be emailing or texting the signed letter?

John to Hayes: We appreciate the effort to address our concerns. However, we are not persuaded to send a letter of support because it doesn't fully address our concerns. We can confirm will (sic.) not oppose and stand in the way of you renovating your house. I hope this puts it to rest and wish you the best of luck at the Committee.

In cross examination, Mr. Bronskill asked Mr. Plumpton why it was not reasonable for Mr. Steinberg and Ms. Gould to interpret this as active assent. Mr. Plumpton replied that he was "desperate" to maintain good relations with his new neighbours and sought to maintain a neutral position at the Committee because he foresaw that the matter would have to be resolved at the TLAB anyway.

Two preliminary matters had to be decided before the hearing. Mr. Plumpton asked for an adjournment and I granted it, adjourning the hearing from the Friday before the Labour day weekend to the following Tuesday. Mr. Bronskill wrote an email to ask that I in effect disallow Mr. Plumpton's late filing, which I refused. I released written Decisions covering both matters.

## **ANALYSIS, FINDINGS, REASONS**

### **The Proposal**

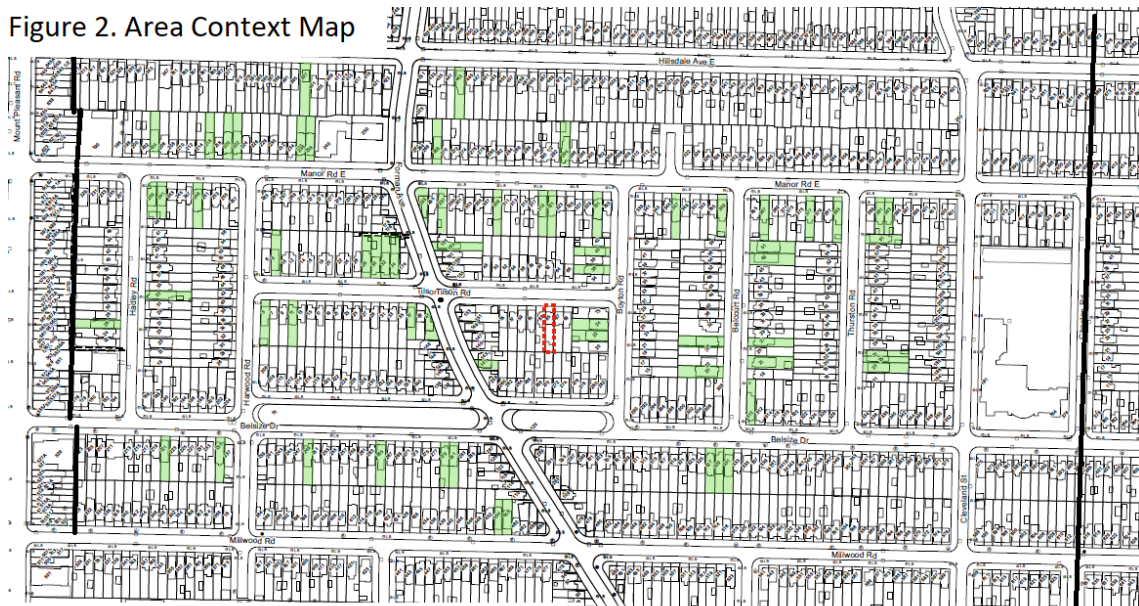
Ms. Gould proposes to roughly double the gross floor area of her existing two storey semi.

<b>Table 2. Proposed interior space, by floor</b>			
			Expressed as FSI
Existing	113 m <sup>2</sup>	1216 sq. ft	42%

Proposed Basement (not counted in GFA)	102 m <sup>2</sup>	1095 sq ft	
Proposed First Floor	102 m <sup>2</sup>	1095 sq ft	37.6%
Proposed Second Floor	106 m <sup>2</sup>	1137 sq ft	39.1%
Total proposed	207 m <sup>2</sup>	2232 sq ft	77.44%

**Mr. Ryuck’s Study Area Map**

Mr. Ryuck called this a “modest intensification,” and primarily with as-of-right dimensions. To justify the FSI increase he showed all approvals within the last ten years. His study area is Hillsdale to the north, Cheston to the east, Millwood to the south and Mount Pleasant to the west. His Area Context Map is reproduced below as Figure 2, with the lightly shaded lots being those he identified as having FSIs of over 0.70. (I have added the heavy lines at each end to make clearer the boundaries.) I accept Mr. Ryuck’s study area for purposes of Official Plan development policies.



Mr. Ryuck did not attempt to break down the over 0.60 FSIs further, so we only have those properties over 0.70 (shaded) and under 0.70 (blank). Nor did he supply the underlying spreadsheet information. This would have given greater insight into the distribution of FSI overages.

**The immediate context**

This section concerns two properties in the immediate context 56 Tilson and 55 Tilson. The Official Plan requires Ms. Gould’s development to be “materially consistent with the broader and immediate context, with the immediate context being more

relevant where there are differences<sup>2</sup>. Neither property is shaded in Mr. Ryuck's map on page 5 and if they were, presumably this would have supported his conclusions.

Figure 3. Hippler photo of 56  
Tilson



Mr. Hippler's evidence includes an aerial photograph, reproduced below as Figure 4, with labels that I have added. His (Mr. Hippler's) written statement concedes that 56 Tilson has an FSI of 0.94, along with a photograph (Fig. 3) of that property. Nonetheless Mr. Hippler states that the house "fits in perfectly." It appears to a two-story single detached house with a third-floor dormer addition, (of which only a tiny portion is visible in the photograph). I agree with Mr. Hippler that,

despite its high density, 96 Tilson has maintained the original façade or something that looks like the original façade and general roofline, and thus is respectful of its neighbours.



The second possible candidate for an over 0.60 FSI house is 55 Tilson, currently under construction. This house is left of the middle of the southern (bottom) row of Tilson houses. Mr. Ryuck had not studied this house as its minor variances (if any) were not available to him at the time of document disclosure. I asked him to send this information to me after the hearing.

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<sup>2</sup> Proposed development within a Neighbourhood will be materially consistent with the prevailing physical character of properties in both the broader and immediate contexts. In instances of significant difference between these two contexts, **the immediate context will be considered to be of greater relevance.** (My bold)

He may have sent it and I did not see it, or some other glitch occurred. I will assume that some sort of variance was needed, but I cannot assume that it was an FSI increase or to what extent.

By my count, there are 68 or 69 over 0.70 properties out of 770, which is 9%. For the immediate context we have 1 or 2 properties out of 19, (55, assuming it did receive a over .0.70 FSI, and 56 Tilson, 0.94) which is 10.5%. If we use the whole two block stretch of Tilson Rd, we have 10 or 11 out of 50, or 22%. Even assuming these are an undercount because of prior approvals, I do not consider numbers in this range large enough to form **the** physical character of the area.

Mr. Plumpton stated that most of the shaded properties are single detached house, not a semi and this appears to be correct. As far as I can tell, Tilson Rd has about 30% semis, the rest being single detached, like 56 Tilson. Most of the semis are in the “west” half of Tilson. The subject property is part of three pairs of semis in the “east” half of Tilson Road.

The only shaded semis I found in the broader context were 141 Forman, 163 Forman, 27 Belcourt (each one being one half of a pair) and 25-27 Thurston Road and 391-393 Manor Rd (latter two being both halves). There seem to be only three properties with a shaded semi next to an unshaded one. This is certainly true for Tilson itself, where none of the shaded properties are semis; so, the proposed development would be a first. I will return to the issue of analysing semis as if they were detached, at the end of the next section (the bottom of page 11).

### **Mr. Ryuck’s photo analysis**

I now turn to Mr. Ryuck’s photo analysis, intended to illustrate that there are many architecturally dissimilar juxtapositions and that the proposed development would not produce incompatibility or destabilization.

After explaining that the entire neighbourhood had a “very tight urban condition” with very small side yard setbacks, Mr. Ruck took me through his photographs. Mr. Ryuck’s commentary is in italics and my commentary will be in regular font.

Mr. Ryuck said

*So, you find on 37 Tilson Road, 28, 30, 32, 34 Tilson Road, different rooflines, different types of dwellings. Different styles.*

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In addition, as you go, newer developments on Manor Road. Picture 7, Picture 8, [Here Figure 5] 297 Manor Road. **Similar types of FSIs**, different rooflines, different architectural design in terms of the front elevation and front façade. 298 Manor Road, **Similar FSIs as well, in terms of .077 or greater [Figure 6].**

You look at Picture Number 10, 22 and 24 Boynton Road as well, once again newer homes situated beside the existing dwelling, difference in height; but **higher in terms of FSIs, at 0.77 [Figure 7, right].**



8. 297 Manor Road E.



9. 298 Manor Road E.

Figs. 5,6



Fig. 7

10. 22 and 24 Boynton Road



Fig. 8

11. 528 and 530 Millwood Road



Figure 9

12. 597 and 599 Millwood Road

Furthermore, in looking at 528–530 Millwood Road [Figure 8], semidetached dwelling, you'll also note that there are differences in terms of materials that are proposed between attached, semidetached dwellings. In addition, 597-599 Millwood, once again, different materials, different colours, that are found, as one side has done renovations and the other side has decided to go with a different architectural feature, architectural design and colours.



Fig. 10

13. 28 and 30 Hadley Road

Stopping at this point, I note that numbers 22 and 24 Boynton are both single detached houses, not two sides of a semi. Numbers 528 – 530 Millwood Road [Fig. 8] are semis while I agree with Mr. Ryuck that “there are differences in terms of materials,” nonetheless the two homes have **the same basic massing**, and differ mostly in detail, (e.g. porch pillars on the left) and in colour palette. The same goes for 597-599 Millwood [Figure 9], with their continuous rooflines, placement of windows, doors and porch roofs.

Mr. Ryuck continued:



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So again, 28 and 30 Hadley Road [figure 10, previous page], review, if you look at the roof lines, it's different, in terms of the dormers are there, but there's an actual feature, one at 28, at the front dormer, which provides for a different look or different style. In terms of the roofline, in terms of the eavestroughs that's located at the front here. So, its not a mere match of the adjacent semi-detached dwelling.

For the property at the left, Mr. Plumpton elicited a correction that the downward sloping portion for the left-hand dwelling [Figure 10] is a design feature and not part of the roofline, although the upper windows appear to be different sizes.



Figure 11  
14. 43 and 41 Hadley Road

43 and 41 Hadley Road [Figure 11], once again, a different style, one has an enclosed porch, the other has an open porch; once again differences in between the two semidetached dwellings.



Fig. 12  
15. 23 and 21 Cheston Road



Figure 13  
16. 379, 381, 383, 385, 387 and 389 Hillsdale Ave E



Fig 14  
17. 397 Hillsdale Ave E

23 and 21 Cheston Road [Figure 12], you'll note that this is also a semidetached dwelling, but at 23, you'll note that there's a roof element that sticks above the adjacent semidetached dwelling so that it has a different roofline. Also, you'll note in the front this has an enclosed porch or vestibule that is located at front, whereas the adjacent dwelling has an unenclosed porch.

Going to the next picture, 379-871-383-385-387 [and 389 Hillsdale Ave East [Figure 13]. Pairs of semidetached dwellings all with different heights, different design in terms of colours, articulation as well. In terms of front façade and the different materials that are being used.

397 Hillsdale [Here Figure 14]. Once again, a newer home. **Similar in terms of FSI**, it's a single detached home; it's a flat roof. More of a contemporary design that is found within the neighbourhood as well.

450 and 452 Hillsdale. [Photo next page] You'll note it's a pair of semidetached. Different rooflines at the front, also different window treatments on the second floor. So, these are not mirror images; rather there are differences between existing semidetached dwellings.



18. 450 and 452 Hillsdale Ave E



19. 458 and 460 Hillsdale Ave E



20. 473 and 475 Hillsdale Ave E

*And finally, 458 and 460 Hillsdale [Fig. 16], similar situation in terms of using different materials. Having different window treatments, as well. The adjacent dwelling has an enclosed porch, enclosed porches, and then go to the next picture at 473 and 475 Hillsdale [Fig 17], once again different treatments, different look, not mere mirror images of each other in terms of the semidetached dwelling.*

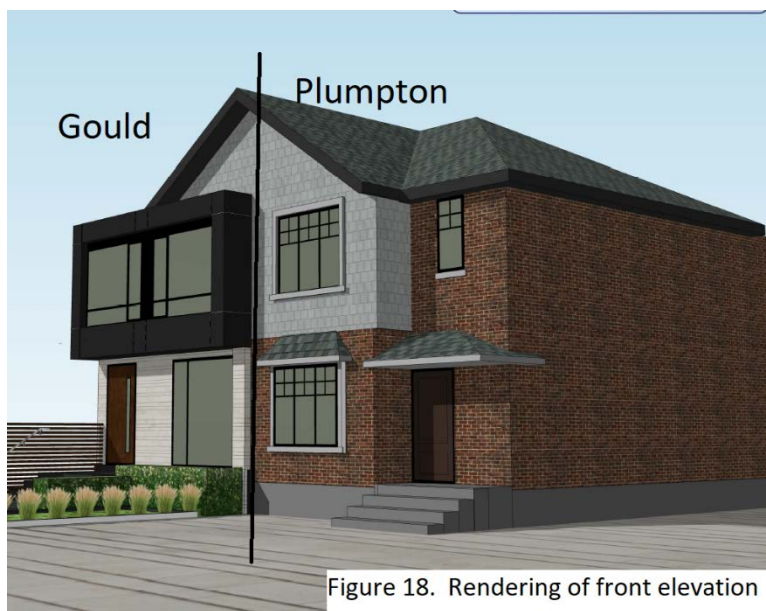


Figure 18. Rendering of front elevation

After studying the photos, I agree that there are sometimes different materials, but the inference that Mr. Plumpton would not be satisfied with anything other than a mirror image is not warranted. To the left is the proposed facade at 65 Tilson. The additional FSI created by the darker projection is 0.01 and Mr. Ryuck seemed to think this was too little to argue over. While the proposal (please see rendering in figure 18) will maintain the same pitched roof,

the full second floor projection, plus the enlargement of all windows creates an unbalanced façade where the left half does not respect and reinforce the right half.

Mr. Plumpton produced about 200 photographs, 100 of them being pairs of semis. (These are unlabelled, and he used a wider study area than did Mr. Ryuck.) A sample is shown below. The only widely disparate juxtaposition is the photo in the bottom right corner. I conclude that, for whatever reason, adjoining owners of semis in

this neighbourhood, while not being tied to renovate in mirror-image fashion, tend not to treat their front facades as freely as they would, if they owned single detached homes.



Figure 19. Plumpton compendium of semis

I have overall reservations with the map evidence adduced on behalf of Ms. Gould. First, I have already mentioned that Mr. Ryuck’s map contains .0.70 as an inflection point, whereas the proposed density is 0.77 and this was either “over or under”; as opposed to giving some nuance of the type of overages typically granted. Second, no underlying data was produced. Third, Mr. Ryuck failed to update his map, which suggests he did not take the written submissions of Mr. Hippler seriously. Fourth, he never addressed the neighbourhood from a detached/semidetached analysis. In the whole of the evidence from both parties, the only proven .77 densities are 298 Manor, 24 Boynton, 397 Hillside, 25 Thurston and 96 Tilson — all single detached.

Most of all, I accept Mr. Plumpton’s assertion that the various parameters – height, setbacks, FSI provide an overall envelope in which the homeowner can “mix and match” to provide flexibility. Ms. Gould’s team took the position that this envelope was the minimum entitlement; a starting point that may not be appropriate for an owner of a semidetached house.

### Other TLAB decisions

Under 15(b) of the *Statutory Powers Procedure Act*, I may, in making my decision

(b) take notice of any generally recognized scientific or technical facts, information or opinions within its scientific or specialized knowledge.

Neither side produced any case law. I presume other TLAB decisions fall under “generally recognized opinions . . . within its . . . specialized knowledge.” I wanted to know how the TLAB as an organization deals with variance applications by the owner of one half of a semi. I also wanted to study the types of applications owners of semis in Toronto typically make. I found very few “semi” applications; less than ten or so out of about 800 cases.

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In *321 Queensdale Ave*, and *93 Hertle Ave*, permission to build a rear addition was refused. Neither case is exactly like the present case in that the owners were unrepresented and did not have a professional planner. In *10 Methuen Ave*, the owner was represented and succeeded in obtaining a variance of 0.54 FSI where 0.40 is permitted. However, the last case, one of the few that was approved, involved a rear addition only, with no change in the front façade.

In *99 Pinemore*, which was a case I decided, the owner wished to erect an entire second floor where her neighbour's side contained a bungalow. I wrote:

As far as I can determine, there are dozens of semidetached houses on Pinemore, Combermere, and Cannonbury, but most are still one storey. There are two additions to semis at 49 Combermere and 88 Pinemore, both appear not to be recent construction, and in each, the other owner has remained with the original one storey house.

In other words, while it was within the bounds of possibility to ignore the semi-detached nature of one's house, most people in that situation had not done so. Another case with a change to the front façade is *48 Kenilworth*, which was the demolition and replacement of the north half of a semi. This property was the corner house; with frontage on Kenilworth, a north-south street, and flankage on Kew Beach Crescent, an east-west street. TLAB Vice-Chair Mr. Lombardi wrote:

[The architect] confirmed that while the exterior building envelope will appear as one main dwelling, the building envelope incorporates two distinct but attached dwelling units, one facing east and one facing west.

The variance was 1.1 where 0.6 is permitted. However, this is an unusual case where the owner proposed the creation of a second unit for rental, thus bringing herself within the rental housing policies of the Official Plan.

The final case I wish to mention is *9 Gibson Ave*, a semi-detached two storey house with an added new third storey. By the time of the TLAB hearing, there was no opposition to this development. I wrote:

The existing floor area of 207 m<sup>2</sup> is equivalent to a 1.04 floor space index (0.6 permitted) and these additions will bring the FSI to 1.11. . . . This 1.11 FSI is a slight reduction from the originally sought-for FSI of 1.12 which was refused at the Committee of Adjustment. The lowering of 0.01 FSI was part of the settlement now to be described. Although the original front façade design did not need any variances, it elicited the greatest concern among Dr. Anderson's [the owner's] neighbours. Accordingly, Dr. Anderson voluntarily recessed the third-floor portion, that is, relocated it slightly back from the street so that it would be less prominent, and made other changes.



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In other words, the owner made concessions she did not need to make because she recognized that a pleasing streetscape is a matter of public interest, even though the architectural “look” does not fall strictly under the zoning rules. There is some recognition of this in s 3.1.2 of the Official Plan (Built Form)

Great cities are built one building at a time, with each new building making a contribution to the overall urban design of the City.

I conclude the onus of proving that the development meets the four tests has not been met. In particular, the FSI overage does not seem to be minor nor does it meet the Official Plan test of respecting and reinforcing the existing physical character of the neighbourhood. I find as well that the overage of 0.77 FSI, the massing of 65 Tilson’s half dominates the façade instead of “fitting in.” **However**, I should make it clear in my view, Ms. Gould has acted in good faith and, not having architectural expertise, she has attempted to satisfy the needs of her family and the views of her neighbours as best she could. She is not to be faulted for this effort. It is my hope that with further consultation, Ms. Gould can find a compromise solution to her redevelopment.

**ORDER**

The appeal is dismissed, and the variances are not authorized.



**X**

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T. Yao  
Panel Chair, Toronto Local Appeal Body