

DECISION AND ORDER

Decision Issue Date Monday, September 30, 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): 2593438 ONTARIO INC

Applicant: DAVID MCKAY

Property Address/Description: 40 HARWOOD RD

Committee of Adjustment Case File: 18 125548 STE 22 MV (A0247/18TEY)

TLAB Case File Number: 18 239925 S45 22 TLAB

Hearing date: Monday, March 25, 2019

DECISION DELIVERED BY S. Talukder

REGISTERED PARTIES AND PARTICIPANTS

Appellant	2593438 ONTARIO INC
Appellant's Legal Rep.	Amber Stewart
Party	City of Toronto
Party's Legal Rep.	Marc Hardiejowski
Party	Al Kivi
Party	Tracey Hamilton
Party	Steven Lamb
Participant	Charlotte Misurka
Participant	James Darling
Participant	Linton Carter
Participant	Marie Muir

Participant	Kelly Snowden
Participant	Anne Louise Brown
Participant	Linda Rowe
Expert Witness	David McKay

INTRODUCTION

1. The Applicant appeals the Committee of Adjustment's (COA) decision that refused an application for minor variances with respect to the Applicant's property located at 40 Harwood Road (Subject Property). The Applicant proposed to alter the existing two-storey detached house to include a rear two-storey addition with ground floor deck and a part third storey addition with a rear terrace. The proposal also included removing the detached garage and replacing it with a front parking pad.
2. The Subject Property is located on Harwood Road, which is south of Manor East Road and east of Mount Pleasant Road.

MATTERS IN ISSUE

3. The Applicant amended the proposal and requests the approval of the following variances from the TLAB (Attachment 1 to this decision):

1. Chapter 10.10.40.10.(1)(A), By-law 569-2013

The maximum permitted height of a building is 9.0 m.

The height of the detached dwelling will be 9.87 m.

2. Chapter 10.10.40.40.(1)(A), By-law 569-2013

The maximum permitted floor space index is 0.6 times the area of the lot (170.4 m²).

The floor space index will be 0.77 times the area of the lot (218.27 m²).

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

The maximum permitted height of all front and rear main walls is 7.0 m.

The height of the front and rear exterior main wall will be 9.32 m.

4. Chapter 10.5.80.10.(3), By-law 569-2013

A parking space may not be located in the front yard or side yard abutting a street.

The parking spot will be located partially in the front yard and partially on public property.

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

A minimum of one parking space is to be provided for the detached house.

In this case, a parking space will not be provided as required.

**Decision of Toronto Local Appeal Body Panel Member: S. Talukder
TLAB Case File Number: 18 239925 S45 22 TLAB**

6. Section 4(5)(B), By-law 438-86

A minimum of one parking space is to be provided.

In this case, a parking space will not be provided as required.

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

The maximum permitted residential gross floor area is 0.6 times the area of the lot (170.4 m²).

The residential gross floor area of the building will be 0.77 times the area of the lot (218.27 m²).

8. Chapter 6(3) Part IV 1(E), By-law 438-86

Motor vehicle parking on the portion of the lot between the front lot line and front wall of the building is not permitted.

In this case, the parking space is partially in the front yard and partially on public property.

9. Section 4(2)(A), Former City of Toronto Zoning By-law 438-86

The maximum height of the detached house is 9 m.

The proposed height is 9.87 m.

4. The COA decision did not include Variance # 9; however, the Zoning By-Law Notice dated June 25, 2018 mentions this variance which is the same variance as Variance # 1, but under By-law 438-86. The Applicant also amended the variance for FSI from 0.8 to 0.77 at appeal.
5. The Applicant proposed the following conditions to be associated with any approval of the variances:

Conditions of Approval

1. The proposed dwelling shall be constructed substantially in accordance with the Site Plan and the Elevations prepared by Diamond and Schmitt Architects, amended on November 29, 2018 filed as Appendix J of Exhibit 2 (Mr. David McKay's witness statement) at the hearing and attached to this decision as Attachment 2.
2. Privacy panels of frosted glass at a minimum of 1.8 m high shall be installed on the north and south side of the rear third floor terrace, as shown on the North, South, and West Elevations.
3. The bottom 2/3 of the second floor windows on the South Elevation shall be frosted, and the hinge for the easterly second floor window on the South Elevation shall be located on the east side of that window.

JURISDICTION

Provincial Policy – S. 3

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

Minor Variance – S. 45(1)

7. In considering the applications for variances from the Zoning By-laws, the TLAB Panel must be satisfied that the applications meet all of the four tests under s. 45(1) of the Act. The tests are whether the variances:
 - maintain the general intent and purpose of the Official Plan;
 - maintain the general intent and purpose of the Zoning By-laws;
 - are desirable for the appropriate development or use of the land; and
 - are minor.

EVIDENCE

David McKay

8. The Applicant called Mr. David A. McKay, a Registered Professional Planner, who I accepted as qualified to give professional land use planning opinion evidence.
9. Mr. McKay testified that the Subject Property is in the Mount Pleasant East neighbourhood. The Subject Property is in an area designated as “Neighbourhood” under the OP. The Subject Property is in the R zone under the By-law 569-2013 and R2 under By-Law 438-86.
10. For the purposes of evaluating the application, he defined the neighbourhood as being the area bounded by Cleveland Street on the east, Mount Pleasant Road on the west, Hillsdale Avenue East on the north and by Davisville Road on the south. In determining this neighbourhood, he considered the purpose of the mixed-use area along Mount Pleasant Road, which residents would walk to, similar block patterns, lot configuration and size, building types, the zoning of the lands and proximity to the Subject Property. He did not consider the properties zoned as Commercial Residential in evaluating development criteria under OP 4.1.5. He further noted that under OPA 320, the area to be evaluated for variances is the “geographic area”. He believed that the neighbourhood can be appropriately described as the geographic area.
11. Mr. McKay also considered a smaller area, which was closer to the Subject Property, as his “Immediate Study Area” for further detailed analysis. This area is bounded by Manor Road East in the north, Mount Pleasant Avenue on the west, Millwood Road in the south and by Forman Avenue in the east. The Immediate Study Area has 244 lots and has a lot area within the range of 139 m² to 586 m², with an average of 280 m². The FSI range for this area is between 0.31 to 0.95 times the lot area, with the average at 0.63 times the area of the lot. A detailed analysis of FSI on the Immediate Study Area was provided, as this analysis of this performance

standard requires GIS/CAD measurement and visual assessment of each property, which is not possible to undertake for the whole neighbourhood.

12. Mr. McKay reviewed photographs of the neighbourhood and testified that this neighbourhood consists of one, two and three storey detached and semi-detached houses. The third storeys are usually partial storeys which are built into the roofline. The neighbourhood is a stable residential area and is experiencing reinvestment in the form of renovations, additions or new builds. Various architectural styles were noticed in the neighbourhood – house with front gables, flat and pitched roofs with dormers and Mansard style rooflines. This neighbourhood has partially landscaped front yards with the majority of the properties having front parking pads or integral garages, as they have narrow side yards. Mr. McKay reviewed his list of COA decisions for the last 10 years that he complied and noted that 81 COA decisions that approved variances in the neighbourhood were similar to the requested variances. He opined that these approvals demonstrate that the neighbourhood is stable but not static.
13. Mr. McKay noted that the proposal for a parking pad partially in the front yard and partially in the city boulevard satisfies the OP policies (such as 3.1.2.2 and 4.1.5). The parking pad will have concrete slabs at the location of the car tires and soft landscaping between to blend into the overall front yard landscaping. The front parking is required because the mutual right-of-way laneway shared with 38 Harwood Road that provides access to the back of the property for rear garage is 2.12 m wide and too narrow for modern cars. This front parking space respects the existing character of the neighbourhood, as the parking space between the main wall and the property line is a common feature in the neighbourhood. The parking space proposal meets the intent of the zoning by-law by providing a parking space at the front which does not create any adverse impact on the streetscape.
14. With respect to height, Mr. McKay noted that the maximum height provision in the zoning by-law ensures that the massing and scale of each house is generally consistent fits with the surrounding area and prevents adverse shadowing and overlook impacts. The restriction on main wall height allows the control of scale and massing of a building.
15. He opined that the proposed dwelling is consistent with the massing and street proportions of the neighbourhood (OP 3.1.2.3a and 4.1.5c). When compared to the adjacent properties and other properties in the neighbourhood, the increase of 0.87 m from the zoning by-law threshold will not cause a visual impact on the streetscape. The proposed height would be similar to the height of adjacent houses when measured to the top of the roof peak.
16. He noted that there are 25 approved variances in the neighbourhood for an increase in building height. For example, some buildings on Belsize Drive and the building on 28 Harwood Road have a range of heights between 9.25m to 10m. Many of the approved building height increases are along Manor Road East (such as 282, 209 and 358 Manor Road East).
17. Mr. McKay explained that the height increase is associated with the partial third storey addition and that partial third storey additions are common in the

neighbourhood. The roof deck is setback from the north edge by 0.64m and south edge by 0.86m of the proposed building. These setbacks result in a reduced overlook. The proposed screening using landscaping will also reduce overlook. Mr. McKay believed that these measures result in a built form that does not create any discernable impacts when viewed from the street or cause adverse impacts on the immediate adjacent properties.

18. The height of 9.32m of the rear main wall relates to the uppermost dormer portion of the third floor. The majority of the rear main wall satisfies the by-law requirement. The zoning by-law does not take into consideration the setbacks incorporated in the design of the deck but considers the rear wall as a continuous wall. The variance for rear main wall height is required because the dormer allows for an entry to the roof deck. This increase in height does not increase the bulk or massing of the building, as it is only limited to the style of the roof. The slope of the roof is lessened to follow a more traditional style to reduce visual impacts of massing from the street. This proposal is comparable to 20 variances approved in the neighbourhood, which includes approval of 10m main wall height at 213 Belsize Drive. The main wall height variance is a new performance standard since 2013 and was not regulated in the former by-law. As such, some dwellings in the neighbourhood may have wall heights that do not comply with the current standard.
19. He also noted that the proposal provided for adequate privacy and limited impact of shadowing (OP 3.1.23d and e). The second-floor bedroom window in the south is to the east (towards the street) and will be frosted. To limit the impact on privacy, the roof deck will have a setback of 2.92m from the edge of the roof and landscaping will be used to create privacy screening that reduces overlook on the neighbours to the north. The building length is less than 17m, which is the maximum length permitted by the zoning by-law. This further reduces any undue loss of light beyond what is expected in an urban location.
20. Mr. McKay referred to OP 4.1.5(c) and noted that this policy does not specifically refer to density as a consideration, but how density is deployed on the property. He noted that there are 111 properties in the Immediate Study Area with FSI greater than 0.6 and 22 properties with an FSI greater or equal to 0.8. There are 70 approved variances for FSI above the permitted 0.6. Examples of properties of FSI greater than 0.6 include 26 Harwood Road (0.612 FSI) and 454 Millwood Road (0.86 FSI). Mr. McKay opined that the proposed FSI meets the general intent and the purpose of the zoning by-law as the massing for the proposed building is located in the middle of the building which does not overpower the streetscape and does not result in any adverse shadow impact or overlook.
21. Mr. McKay prepared a shadow study for the proposal in response to the neighbours concerns about the impact of shadowing of the proposed development. He opined that some level of shadowing is expected in a dense area in this neighbourhood and that what is permitted “as of right” in the zoning by-laws is deemed to be compatible under the OP (under policy 4.1.8). He used this basis as the analysis for his shadow study using the City of Toronto guideline for a shadow study.
22. Mr. McKay modelled the existing building, the proposed building and “as of right” massing of the building (under the zoning by-law). The “as of right” structure had a

maximum height of 9m, main wall height of 7m and FSI of 0.69 as per the minimum standards set out in the zoning by-law. Mr. McKay focused on impacts of shadowing for March 21 and summarized that most of the shadow of the proposed building falls within the shadow cast by the “as of right” building. In the morning before 11.18 a.m., most of the shadow falls onto the back of the building on the north of the Subject Property, which is 42 Harwood Road. Most of the shadow after 11.18 a.m. falls on the roof of this building and clears the back deck of the building by 3.18 p.m. There is some minor impact on the property at 44 Harwood Road but no impact on properties south of the Subject Property. A similar analysis was done for June 21, September 21, and December 21, which showed that the shadow of the proposed dwelling mostly coincides with the shadow of the as of right dwelling. He opined that the impact of the shadows meets the test for adequate limitation of shadows and does not create an adverse impact of a planning nature, indicating that the variances requested are minor.

23. Based on the above testimony, Mr. McKay opined that the variances requested meet the four tests set out in the Act.
24. On cross examination by Mr. Al Kivi, Mr. McKay was asked about the discrepancy of 0.60x FSI requirement in the issued zoning notice and Mr. McKay’s assertion that the FSI for as of right dwelling should be 0.69x. Mr. McKay stated that he cannot comment on the reason for the zoning examiner using 0.60x FSI. Mr. McKay based his study on the zoning by-law that allows a renovation to have an FSI extended to 0.69x FSI.

Al Kivi

25. Mr. Al Kivi on behalf of the South Eglinton Ratepayers and Residents Association (SERRA) testified at the hearing. SERRA opposed the requests for variances for building height, main wall height and FSI. SERRA did not have any opposition towards the proposed parking space.
26. Mr. Kivi prepared a shadow study method based on the City of Toronto guideline and used the City of Mississauga guideline for evaluating his shadow study (Mississauga Guideline). Mr. Kivi used Mississauga’s evaluation method as it provides a framework to evaluate the study instead of relying on opinion evidence of professional planners. The Mississauga Guideline institutes a line of impact assessment measured at 7.5m from the rear wall of the properties adjacent to the Subject Property, creating a no impact zone. This no impact zone can be considered as the private outdoor amenity space. Incremental shadowing should not exceed for more than an hour for a specific adjacent dwelling in this no impact zone. Prolonged shadowing in the no impact zone implies that the shadow has detrimental impact and is therefore not appropriate. He noted that for March 21, the private amenity space is covered by incremental shadowing at 11.18 a.m. and almost fully by 1.18 p.m., which decreases after 2.18 p.m. or later, resulting in a shadow impact for 4 consecutive hours. He also noted that the shadow remains in the no impact zone for 42 Harwood Road on June 21st for about 5 consecutive hours. Based on his evaluation of the study, Mr. Kivi stated that the proposed development will have an unacceptable level of shadowing on the adjacent 42 Harwood Road for long periods.

27. Mr. Kivi did not model an “as of right” building and its shadow impact, as he believed that the application deals with the proposed dwelling and not a notional as of right building.
28. On cross examination, Mr. Kivi agreed that the Mississauga Guideline is a guideline for buildings with heights greater than 10.7m. He also agreed that he did not include all time points by hour as required by this guideline.
29. Mr. Kivi produced a rendering of the backyard and back terrace of the proposed dwelling to emphasize the issue of overlook from the terrace onto the neighbouring property at 42 Harwood Road. He proposed that there is a privacy concern as a person on the terrace will be able to look over onto the neighbouring property’s backyard. The rendering did not include any back windows of the properties or the privacy screen at the terrace. He was not concerned with the overlook from the back windows into the backyard but he believed that the overlook from the terrace represented an adverse effect. On cross-examination, he did not agree that the inseting and separation of the terrace from the rear end of the proposed building by approximately 9.5ft would prevent a direct overlook into the neighbour’s backyard and would provide mitigation to overlook. He stated that the elevated deck and the Juliette balcony on the new houses at the south side of Harwood Road are acceptable. He distinguished these structures from a terrace, as a terrace can be used for parties that can cause disturbances in the neighbourhood.
30. Mr. Kivi disagreed with Mr. McKay’s description of the neighbourhood, which he considered to be too broad. Mr. Kivi delineated the study area as being the street-block area that surrounds the subject property based on OPA 320. The block is bounded by Manor Road East at the north and Belsize Drive at the south. This study area has 22 houses with a mix of detached and semi-detached houses. These houses are on similar lot sizes, with some properties renovated by additions or by new redevelopment.
31. Mr. Kivi noted that there are two new developments in the study area with integral garages and roof heights that are tall. He stated that the proposal should be only compared with renovations in the neighbourhood and not with new builds as the proposal is a renovation in an undersized lot. The average roof height of the properties on the west side of Harwood Road is 8.5m and the average height to the eaves is 6.2m. He used MPAC data to determine the average FSI for these properties to be 0.47 while Mr. McKay’s data showed an average FSI of 0.57. Both of these numbers are significantly lower than the FSI of the proposed dwelling, which will be the highest FSI in this street block.
32. Mr. Kivi produced several diagrams that consisted of the two-dimensional proposed dwelling superimposed onto the 3D photograph of current dwellings on Harwood Road. A person when viewing the proposed building at the street level will perceive the building to be tall because the building’s roof structure, while the current house on the Subject Property did not look very tall because of its hipped roof. Therefore, even though the height of the proposed dwelling is 1.04 m taller than the current building, the perceived height from the street level will actually be more, at a viewed height of 1.17m. He believed that the roof design and the large dormers of the proposed dwelling do not fit with the houses in the neighbourhood as they have

hipped roofs. On cross-examination, Mr. Kivi was informed that the proposed dwelling also has a hipped roof (sloped roof), which was not apparent in Mr. Kivi's figures because he had superimposed a two-dimensional figure of the dwelling onto a 3D photograph. He mentioned that he scientifically and mathematically manipulated the height of the proposed dwelling in 2D form to account for the proposed dwelling's roof. He also agreed that the roof of the proposed building will be approximately 1m higher than the adjacent buildings (38 and 42 Harwood).

Steven Lamb

33. Mr. Steven Lamb, the owner of the property at 38 Harwood Road testified about his concerns about the proposed building, which if approved, will be the first three-storey building with a roof top terrace in his immediate neighbourhood (as described below). This proposed dwelling will also have the largest FSI in Harwood Road. He stated that these features are not in keeping with the existing houses in his neighbourhood. He did not express any concerns about the parking space as there is limited parking in the area. He submitted that the proposal fails three of the four tests for minor variance as it does not meet the general intent and purposes of the OP and zoning by-laws, and that the variances requested are not minor. Approval of the proposal will result in undesirable precedents in his neighbourhood and allow for large overbuilt houses.

34. Mr. Lamb did not agree with Mr. McKay's characterization of the neighbourhood and defined his immediate neighbourhood as Harwood Road bounded by Manor Road East at the north and Belsize Drive at the south, and the first block of Tilson. This area is a small community in a quiet street. Manor Road East and Belize Drive experience a significant amount of traffic whereas Harwood Road, being a local road, does not have significant traffic flow. He described his neighbourhood as a mature stable community but not static, as there has been renovations in the neighbourhood, including modest additions that fits with the neighbourhood. He acknowledged that redevelopments are usually larger than the original dwelling. The two new builds (26 and 28 Harwood) with integral garages are out of character from the rest of the houses on the street. He submitted that since these two houses are closer to Belsize Drive, they have taken up more of the characteristics of properties on Belsize Drive. He acknowledged that due to the integral garage, the massing of these two houses look like three-storey houses. He distinguished Belsize Drive, which has a broad open park space separating the east-bound and west-bound lanes, and is therefore wide. It can accommodate larger sized homes.

35. Mr. Lamb submitted that houses with large FSI in Mr. McKay's neighbourhood fall in areas with thoroughfare roads, such as Manor Road East and Belsize Drive, as these streets can accommodate larger houses or in small and irregular shaped lots. The Subject Property does not fit any of these categories as it is on a small street with a regular lot. As such, many of the examples shown by Mr. McKay are not relevant comparators for the proposed building. In addition, houses with integral garages should also not be compared with the proposal.

36. Mr. Lamb testified that the proposed building does not fit harmoniously in the existing streetscape. When viewing the houses from the street, the rooftops of the houses form the shape of rolling hills. The roof of the proposed building will create

discordance as its roof is different from those of the adjacent buildings. On cross examination, he agreed that the broader neighbourhood contains a variety of roof style and three storey buildings.

37. He was concerned about the terrace which would create issues of overlook, loss of privacy, noise and other adverse impacts. He submitted that because of these issues, the proposal did not meet the general intent and purpose of the Davisville Amendment of the zoning by-law. Mr. Lamb submitted that the variances requested are not minor. As an example, he noted that the FSI of 0.77x requested is 28.33% greater than the minimum FSI of 0.6x, a percentage increase that is not minor in nature.
38. Mr. Lamb requested that in the event the proposed variances are approved by the TLAB, a condition be imposed on the Applicant to address the effect this development will have on the chimneys on adjacent properties, even though it's not a planning issue but a building permit issue. Mr. Lamb may not be able to use his chimneys due to non-compliance with fire and other safety codes resulting from the height of the proposed development. He stated that this is an adverse impact of the proposed development.

Tracy Hamilton

39. Ms. Tracy Hamilton, owner of property located at 42 Harwood testified about her concerns about the shadow impact on her property. A person on the third-floor terrace will be able to look over into her deck and backyard in the property. Further, she will receive less sunlight as the proposed building will block sunlight from her property until around 2.18 p.m. She testified that the three-storey rectangular "prison" did not fit with the characteristics of Harwood Road, which is a small street. When one house is changed in this small street, it has significant impacts on the other properties.
40. During cross-examination, the Applicant's counsel proposed a privacy screen of 1.8m, which Ms. Hamilton agreed was a better option than the previously requested 1.52m tall screen.

City of Toronto

41. The City of Toronto did not call any witnesses. In its written submissions, the City echoed the concerns of the residents. It stated that Mr. McKay's description of the neighbourhood and evaluation of the proposal with this neighbourhood diminished the negative impacts on Harwood Road. Harwood Road is a non "through-street" in an interior neighbourhood with mostly modest two storey homes with hipped roof designs. This street is to be treated differently than larger streets. The massing of the proposed building offends OP policies (such as 3.1.2.3) because the building would be the only third-storey dwelling along Harwood Road and the massing of the dormer and the steep slope of the roof are disproportionate to the roof lines of the nearby homes. The FSI of this proposed house will be the largest in Harwood Road.

ANALYSIS, FINDINGS, REASONS

42. The Applicants seeks the approval of a modified FSI of 0.77x instead of 0.8x, which was requested at the COA. As the change in the variance requested is minor, I have determined that no further notice is required pursuant to s. 45(18.1.1) of the Act.
43. The proposed development on the Subject Property does not lead to any PPS and Growth Plan considerations, as these are high level and broad policies dealing with development in established, built-up areas and for the better use of developed land.
44. A proper delineation of the neighbourhood is necessary to compare and evaluate the proposed dwelling with the physical characteristics of this neighbourhood. The City, SERRA and the residents considered Mr. McKay's description of the neighbourhood as being too broad. They presented that Harwood Road, bounded by Manor Road East and Belsize Drive form its own small neighbourhood because this street is a small, quiet and non "through-fare" street. This street does not experience much traffic and has mostly two-storey houses with hipped roofs. Though Harwood Road is a small street and does not directly connect to a major street, it is linked to two major streets, Mount Pleasant Road and Bayview Avenue through busy streets such as Belsize Drive and Manor Road East Drive. Harwood Street is close to Mount Pleasant Road, which is within a few minutes of unimpeded walking. This street is not physically separated from the rest of the Mount Pleasant East neighbourhood by any geographical or other barriers, but is easily accessible by a person walking or driving around in the area.
45. Mr. Kivi relied on OPA 320 to define his neighbourhood. Policy 4.1.5 in OPA 320 clearly defines that the physical character of the geographic neighbourhood includes both the physical characteristics of the entire geographic area in proximity of the proposed development (broader context) and the street block (immediate context). Mr. Kivi only chose the immediate context and did not consider the broader context. In addition, OPA 320 is relevant but not determinative. If OPA 320 was applicable to this application, a requirement for analysis at the broader context level of neighbourhood would be required.
46. Mr. McKay's description of the neighbourhood and the use of an immediate study area for FSI analysis is helpful. He considered a broad geographic area by considering lot configuration, size and building types, zoning, distance residents will normally walk and the proximity to the Subject Area. If this description of the neighbourhood is too broad, it would have been helpful if the City had called its city planner as a witness to provide an in-depth analysis of the neighbourhood instead of relying only on the fact that Harwood Road is a street in the interior of the neighbourhood.
47. The comparison of the shadow studies prepared by Mr. McKay and Mr. Kivi show discrepancies between these two studies. Mr. Kivi relied on the Mississauga Guideline to evaluate the impact of shadows; however, he did not include all the time intervals as required in the City of Toronto Guideline or the Mississauga Guideline. He also did not include shadow effects of ancillary structures in the rear yard of the properties, which was his focus area. In comparison, Mr. McKay's shadow study shows more pronounced shadowing on the adjacent properties in the north and has

more accurate rendering of the buildings and ancillary structures. As such, I accept Mr. McKay's shadow study to be more reliable.

48. The shadow impact of the as-of-right building is helpful because it shows that impact of shadows created by a structure that would not require any variations under the zoning by-law. This would imply the building is as-of-right compliant with the OP as per policy 4.1.8, which states that the zoning by-laws will contain numerical values for performance standards that will ensure that new development will be compatible with the physical character of the neighbourhood. The proposed dwellings shadow and the shadow of the as-of-right dwelling mostly overlap, with the proposed dwelling's shadow sometimes extending beyond the shadow imposed by the as-of-right dwelling.
49. Mr. Kivi's submission is that a renovation on an under-sized lot should be compared with renovated dwellings in the study area rather than new dwellings. This proposition is without any merit. Policy 4.1.5 in the OP clearly indicates that a proposal must reinforce the existing physical character of the neighbourhood. Therefore, comparison should be made with the properties in the neighbourhood broadly and not a sub-set consisting of renovated dwellings.
50. Ms. Hamilton and Mr. Lamb have genuine concerns about the proposed dwelling related to overlook, privacy and shadowing on 42 Harwood, and the adverse effect of a three-storey building with a terrace in a small street such as Harwood.
51. The residents and the City are concerned about the construction of a three-storey building with a rear elevated terrace. However, the OP or the by-laws do not prohibit a three-storey building or an elevated terrace on Harwood Road. Rather, the by-laws restrict the height of a building. The proposed height of the building is 0.87m higher than the zoning by-law maximum threshold. If constructed, this building will be about 1m higher than the adjacent buildings, a height difference that is not likely to be considered a marked change in the roofline when view from the street. This proposal would result in a building with the greatest height on Harwood, which by itself does not have an implication in the planning context. There are several houses near the Subject Property with heights in the range between 9.25 m to 10 m (in Belsize Drive and Manor Road East). For example, the new building at 28 Harwood Road has a height of 9.27m.
52. The proposal also requires a variance for rear main wall height, which is at 9.32m, whereas the By-Law 569-2013 only permits 7m. The difference of 2.32m is significant. However, this variance request is limited to the uppermost dormer portion and the rest of the rear wall satisfies the by-law requirement. When taken in context of the partial third storey and the sloping hipped roof, this variance does not have an adverse increase in massing of the building.
53. There is concern about the high FSI of the building. As Mr. Lamb stated, the requested FSI is 28.33% greater than what is allowed by the by-laws, which he believes is not minor. However, the test for minor is not a valuation of percentage increase but whether the variance (i.e. proposed building) will have an unacceptable adverse effect on the neighbouring properties. One concern this that a building with large FSI with a terrace will have privacy, overlook and shadowing issues. As Mr.

McKay's shadow study indicates, the shadow of the proposed building mostly overlaps with the shadow of the as-of-right" building envelope. This implies that should the Applicant choose to construct a dwelling that has as-of-right configuration, which would not require variances of performance standards related to massing, they would be able to build a dwelling with similar shadow impact as the proposed dwelling. The Applicant attempted to further mitigate this by proposing a building with a length less than what is permitted by the by-laws, and also to include frosted windows on the south side of the building that overlook the property at 38 Harwood Road. In addition, the terrace will be constructed with several mitigation measures which are setbacks from the front and sides of the edges of the proposed building, a privacy screen of 1.8 m height and roof landscaping. It is not likely that a person of average height can interfere with the privacy of neighbours by looking out into the neighbouring properties over the privacy screen from a position that is moderately setback from the edge of the building.

54. The parties did not have any concerns with the parking pad. Nevertheless, the parking pad requires approval of variances. I accept Mr. McKay's and Mr. Lamb's testimonies that parking is very limited in the neighbourhood and parking pads are common. As a garage in the rear of the Subject Property is not a feasible option, the parking pad is a good measure to satisfy the by-law requirement of having one parking space for each property.
55. Based on the reasons above, I am satisfied that the variances individually and cumulatively satisfy the four tests and are approved. I strongly encourage that the Applicant engage with the neighbours, Mr. Lamb and Ms. Hamilton, to address their concerns on non-compliance issues related to their chimneys, which they may face after the construction of the proposed building.

DECISION AND ORDER

56. The applications for variances and the conditions as listed in Attachment 1 are approved.

X 

S. Talukder
Panel Chair, Toronto Local Appeal Body
Signed by: Shaheynoor Talukder

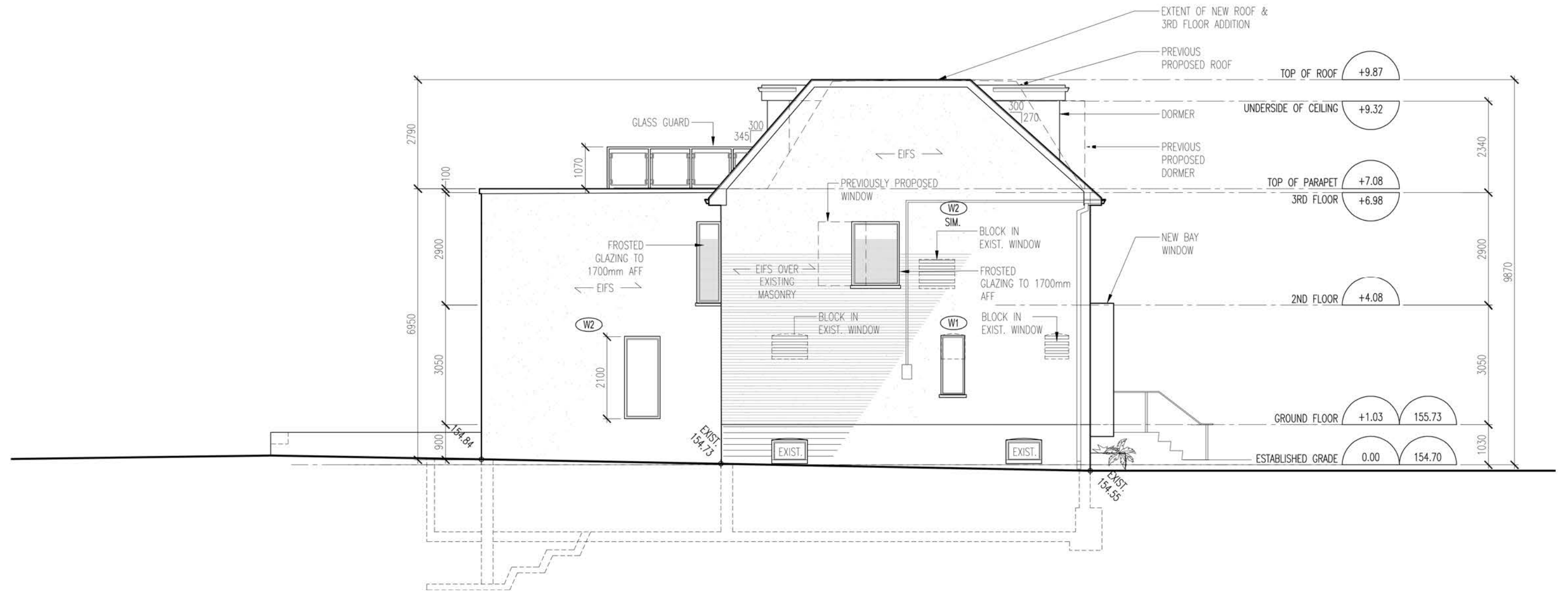
**Attachment 1
List of Variances**

1. Chapter 10.10.40.10.(1)(A), By-law 569-2013
The maximum permitted height of a building is 9.0 m.
The height of the detached dwelling will be 9.87 m.
2. Chapter 10.10.40.40.(1)(A), By-law 569-2013
The maximum permitted floor space index is 0.6 times the area of the lot (170.4 m²).
The floor space index will be 0.77 times the area of the lot (218.27 m²).
3. Chapter 10.10.40.10.(2)(A)(ii), By-law 569-2013
The maximum permitted height of all front and rear main walls is 7.0 m.
The height of the front and rear exterior main wall will be 9.32 m.
4. Chapter 10.5.80.10.(3), By-law 569-2013
A parking space may not be located in the front yard or side yard abutting a street.
The parking spot will be located partially in the front yard and partially on public property.
5. Chapter 200.5.10.1.(1), By-law 569-2013
A minimum of one parking space is to be provided for the detached house.
In this case, a parking space will not be provided as required.
6. Section 4(5)(B), By-law 438-86
A minimum of one parking space is to be provided.
In this case, a parking space will not be provided as required.
7. Section 6(3) Part I 1, By-law 438-86
The maximum permitted residential gross floor area is 0.6 times the area of the lot (170.4 m²).
The residential gross floor area of the building will be 0.77 times the area of the lot (218.27 m²).
8. Chapter 6(3) Part IV 1(E), By-law 438-86
Motor vehicle parking on the portion of the lot between the front lot line and front wall of the building is not permitted.
In this case, the parking space is partially in the front yard and partially on public property.
9. Section 4(2)(A), Former City of Toronto Zoning By-law 438-86
The maximum height of the detached house is 9 m.
The proposed height is 9.87 m.

Conditions of Approval

Decision of Toronto Local Appeal Body Panel Member: S. Talukder
TLAB Case File Number: 18 239925 S45 22 TLAB

1. The proposed dwelling shall be constructed substantially in accordance with the Site Plan and the Elevations prepared by Diamond and Schmitt Architects, amended on November 29, 2018 filed as Appendix J of Exhibit 2 (Mr. David McKay's witness statement) at the hearing and attached to this decision as **Attachment 2**.
2. Privacy panels of frosted glass at a minimum of 1.8 m high shall be installed on the north and south side of the rear third floor terrace, as shown on the North, South, and West Elevations.
3. The bottom 2/3 of the second floor windows on the South Elevation shall be frosted, and the hinge for the easterly second floor window on the South Elevation shall be located on the east side of that window.

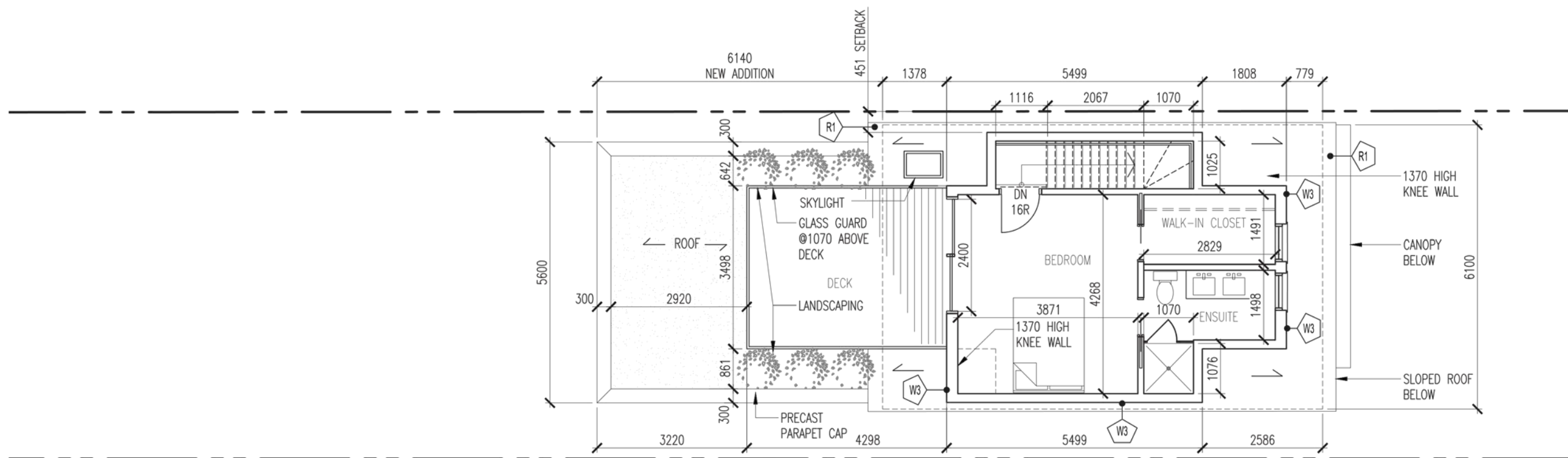


40 HARWOOD ROAD
TORONTO, ON NOV 29, 2018

Diamond and Schmitt Architects
384 Adelaide Street West, Suite 100, Toronto, ON Canada

SOUTH ELEVATION
1:100

DWG7.0



40HARWOOD ROAD
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384Adelaide Street West, Suite 100, Toronto, ON Canada

3RD FLOOR PLAN
1:100

DWG5.0

