Toronto Local Appeal Body

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REVIEW REQUEST ORDER

Review Issue Date: Tuesday, November 19, 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): AMIR VALI

Applicant: GLENN RUBINOFF

Property Address/Description: 521 HILLSDALE AVE E

Committee of Adjustment Case File Number: 18 155619 STE 22 MV (A0476/18TEY)

TLAB Case File Number: 19 120855 S45 15 TLAB

Decision Order Date: Tuesday, October 08, 2019

DECISION DELIVERED BY Ian James LORD

REVIEW REQUEST NATURE AND RULE COMPLIANCE TO INITIATE

This matter involves the request to review (Review/Request) a Decision and Order of the Toronto Local Appeal Body (TLAB) issued by Member S. Makuch on October 8, 2019 (Decision) refusing for the property address, above, an appeal by the Appellant.

The Request was submitted via counsel, Jennifer Meader dated on November 6, 2019, and supported by an Affidavit of a Registered Professional Planner, David Riley sworn November 5, 2019.

There were no other Party or Participant submissions on the Review; City Staff were not present on the appeal of the original relief requested; that relief apparently changed before the TLAB; however, the Decision is silent on the revisions.

The matter is considered under the Rules of the TLAB in force prior to March 6, 2019, given that the request for seven or more variances anteceded the new TLAB Rules promulgated on that date.

The variances originally as requested were to allow the construction of a new two-storey detached dwelling with integral garage. The Decision does not recite the variances in any detail; however, both the Applicant's Disclosure documentation and, more recently, Mr. Riley's affidavit lists them as:

a) An integral garage;
b) The size and location of the rear deck;
c) Front yard landscaped and soft landscaped open space;
d) Maximum permitted floor space index
e) Maximum height of the building and side exterior walls; and
f) Maximum building length.

The variances as originally requested as set out in the Notice of Decision of the Committee of Adjustment (COA) are identified in **Attachment A**, hereto. Revisions had occurred; however, the Decision as stated records no history of the matter. City Staff, although cognizant of revisions, determined not to write any report on the Application.

The Request was filed in a timely fashion and served in accordance with Rule 31 as it then existed.

BACKGROUND

The Hearing consumed one day and the TLAB Member heard from two witnesses: Mr. David Riley, R.P.P. on behalf of the Applicant/Appellant, and Mr. Al Kivi, on behalf of the South Eglinton Ratepayers and Residents Association (SERRA).

I have reviewed carefully the Request (23 paragraphs, five authorities), the Decision, the extensive filings on the TLAB website including the support materials filed by or on behalf of the witnesses, and the November 5, 2019 Affidavit supplied in support of the Request.

I have also attended on the site and the surrounding area.

JURISDICTION

Below are the TLAB Rules applicable to a request for review:

> "**31.4** A Party requesting a review shall do so in writing by way an Affidavit which provides:
>
> a) the reasons for the request;
>
> b) the grounds for the request;
>
> c) any new evidence supporting the request; and
>
> d) any applicable Rules or law supporting the request.
>
> **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

Having regard to Rule 31.7, above, the Applicant in the Request specifically cites as a basis for consideration paragraphs 31.7 b) and c). The Request is sufficiently clear as to associated allegations so as to permit each of these to be considered in turn. There are overlaps in the stated grounds.

At the outset, it is appropriate once again to state the circumstances surrounding the purpose and application of Rule 31 as it above appears. These comments are general propositions to be kept in the mind of the reviewer so as to ensure that the purpose of the Rule is not redrafted to something different than its public interest objective: to enable a sober second consideration to a decision of the TLAB on any of the grounds recited by the Rule.

In reviewing the circumstances of these alleged grounds, it is incumbent upon the reviewer to pay close regard to the Decision and the foundations for decisions upon which a Member can rely. The TLAB generally employs a template format to the delivery of its decisions, designed to ensure that the Member is prompted to review, describe and state, in a logical and deliberative manner, the relevant considerations employed in reaching the outcome.

A TLAB decision is to be respected not just for the preparation antecedent a formal Hearing in the receipt and review of filings and the mandatory site attendance, but for the conduct of the Hearing, the receipt and recording of the viva-voce evidence and the deliberative consideration given thereto, as inherent in decision writing. The premise of this deliberation is that TLAB decisions can have a profound effect on any, or all, of the affairs of: individuals, corporations, the City and the public interest.

A Review Request right is not afforded as an opportunity to re-litigate or re-argue a point that was made out but was not favourably received, in the Decision, affecting a Party

Fundamental to assessing, for Review purposes, the assertions made in the Request is the need to give the Decision a fair and liberal interpretation and construction consistent with its role. A decision must project a determination on matters put to it in a fair, deliberative and reasonable manner, as can be best expressed using clear language. Members' expressions will differ in that regard and what is delivered by one may not be suitable for another. It is often said that decision writing does not require a punctilious review and recital of every fact or kernel of evidence or that every stop on the road to a conclusion must be wrapped in detailed support.

On the other hand, a decision must reflect a suitable basis for its conclusions taking into consideration relevant considerations, discarding the irrelevant and applying the law and policy made germane to the tribunals' mandate, including its own deliberations.

It is with these considerations in mind that I have read and reread the Member's Decision

There are two principle 'grounds' and supporting elements advanced in the Request:

1. Error of Law: affording the SERRA representative both expert witness and advocate status.
2. Violation of natural justice and procedural fairness for;
    a. the failure to provided reasons for the decision in respect of the 'major issue' of an integral garage or in respect of any of the other multiple variances sought.
    b. For failure to treat the subject application with consistency, or to distinguish same.

I address each of these in turn.

A.Error of Law: affording the SERRA representative both expert witness and advocate status.

The Request and the support affidavit purport to supply an extract, apparently from the Digital Audio Recording of the Hearing, whereby the Member ascribes a deference to evidence heard from a qualified professional witness over lay commentary:

> "But you should know that only the opinion evidence of an expert is really relied on in a serious way…".

It then complains the SERRA representative, a non-expert, was given full party privileges and then that his opinion evidence, on the essential issue of the prevalence of integral garages in the neighbourhood, was accepted and applied contrary to the expert testimony on the appeal. Further, that the Member unfairly abandoned his own expressed respect for the common law principle of weighing testimony favouring the expert, without notice or an opportunity to address the propriety of such a decision (Request, paragraph 14,15,16).

The objection is threefold:

a). Mr. Kivi was not qualified as an expert witness in land use planning, as was Mr. Riley;

b). Mr. Kivi was afforded the right to both conduct a case as a Party and give viva-voce opinion evidence on land use planning matters (Witness Statement and testimony) which was procedurally unjust (Request, paragraph 12); and

c). the weight afforded the SERRA opinion evidence prevailed, without notice, over that of the planner and was only revealed in the Decision, on the matter of the interpretation and application of the City Official Plan on prevailing character (error of law, Request, paragraph 12, 13).

I accept the assertion in the Request that the Member unequivocally found, on the 'key consideration' ("major issue", Decision, page 2 of 4) as to "whether Hillsdale Ave. East is a street in which "integral garages comprise part of the prevailing character …" (Decision, pages 2,3 of 4) in full favour with Mr. Kivi's evidence:

> "Mr. Riley, however, did not give persuasive evidence that integral garages were part of the prevailing character of Hillsdale Ave East while Mr. Kivi's evidence was that integral garages were not part of the prevailing character of Hillsdale Avenue. I concur" (Decision, page 3 of 4).

I also accept that the SERRA witness was never qualified to give expert testimony on land use planning matters. I find the Member was consistent on the definition of the weight preference to be given an expert on matters within their discipline and field of expertise, by study or experience. The description the Member gave Mr. Kivi suggests he was not to be so qualified.

The TLAB has, time and again, been called upon to recognize 'local knowledge experts'. While not recognized in the Rules then applicable to the Hearing, it is clear that the SERRA witness did demonstrate knowledge on the subject matter of integral garages within the 'Davisville Community', and the Member so found.

Mr. Kivi clearly gave evidence on land use planning matters and his Witness Statement is unequivocally demonstrative of that intention. Whether counsel for the Applicant made sufficient objection to that intent or not or was misled by the Member's commentary, quoted, there was a clear indication from the Member that he was alert to the distinction. The point is likely moot however: a citizen is not precluded from having opinions including on matters of land use planning. It is for the Member, the gatekeeper of qualifications, credibility assessment, and the weighing of opinions to sort distinctions in the evidence.

I find no ground established on the issue of 'qualifications'.

It is asserted that it was procedurally unjust for a witness to be afforded both the privilege of representation and also to give expert testimony and then argue. There is a kernel of concern here that was subsequently addressed by the TLAB in the Rule revisions effected post March 6, 2019. Prior to that date, a qualified expert was not entitled to pursue both roles. Clearly, the independence of a Registered Professional Planner or other qualified expert, has been found to be materially compromised by bias when acting both as an advocate and an independent, detached witness. The latter is required to attest to independence under the Rules of the TLAB - and those of other tribunals.

Only Mr. Riley attested to this standard as to an expert witness with its attendant duties. Mr. Kivi did neither; not under the guise of filing an Expert Witness Statement or the requisite Attestation Form, both required by the Rules for qualified experts.

In my view, these are indicia of an important distinction and worthy of being applied or distinguished, with reasons, in concluding a disposition on the issues.

In my view, it is not open to an individual to avoid these criterion of education, experience and professional discipline review and then assume the exact role of opinion commentator on exactly the same issues, policy and statutory tests. To do so would subvert the accreditation deservedly afforded to persons who by education or experience, or both, earn the respect and right to provide opinion evaluation and application.

That said, the TLAB is aware there are 'local knowledge experts' who by dedication and experience are alert to local issues, relevant considerations and who are entitled to express opinions on criteria and merit. That is the prerogative of an individual who has complied with the Rules and the law of evidence. Indeed, the TLAB has amended its Rules, post March 6, 2019. These now permit the recognition of lay citizens and permit them to represent a Party or Participant with an interest in a subject matter before the Tribunal, and also to ask questions and to give evidence, opinion and factual.

This latter recognition was not formally in effect for the subject Hearing. It does not extend to the formal attributes of a counsel for a Party, including the right to cross examine and to make argument. Nevertheless, the TLAB had developed a practice of providing leniency to the application of the Rules in the interest not just of Hearing from engaged citizenry, but to gather before it all relevant considerations in the decision making process.

At the end of the day, matters of procedures are in the control of the Member. I am not prepared to find that in this circumstance that there was any error in the Member extending procedural courtesies to the SERRA representative to fully participate in the Hearing. The Member may well have felt that the deviations from normal procedures was necessary or important to have from the two parties their distinct differences drawn into stark relief. Only the trier of fact can make that decision.

To do so does not necessarily amount to a declining of jurisdiction to then evaluate the discordant distinctions and resolve them upon a proper application of evaluation, reasons and the weighing of the evidence.

I find no injustice arising from procedural error.

The matter of weight given to the opinion evidence, without notice, is also a matter of discretion to be afforded to the Member. That discretion is not, however, unrestricted. Discretion must be exercised with due regard to the evidence, be described, cannot be perverse; it is not unbridled or unfettered as that is anathema to the civil system of justice premised on reason, factual circumstances and the Rule of Law.

As a matter of principle, it is open for the Member to accept lay citizen evidence over that of a qualified practicing professional in circumstances where the justification of that decision is clearly articulated, or is the result of the correction of a factual error or is otherwise justified in law.

I find no error arising from the fact of the acceptance of one opinion over another in proper circumstances, even as between lay and expert opinion evidence. I am not convinced the Member was under any obligation to advise of the intention to place reliance on the lay citizen opinion. The issue of the sufficiency of reasons is addressed further, below as to the proviso or caveat that a support base is important.

B. Violation of natural justice and procedural fairness for: a. The failure to provided reasons for the decision in respect of the 'major issue' of an integral garage or in respect of any of the other multiple variances sought, and b. For failure to treat the subject application with consistency, or distinguish same.

The TLAB has acknowledged that its very constitution was premised on a series of expressed objectives: to have decisions on City residents made by City residents; to afford close access to site and project assessments, policy application and principled consideration, aided by mandated site attendances; and to provide timely decisions having provided a full, and fair hearing opportunity for those affected by its decisions to access, contribute and participate.

The common law adds a series of constraints as to what constitutes the TLAB role, including defining limits of jurisdiction, the obligation to distinguish between the relevant and the irrelevant, standards of fairness, legality and expression.

The latter factor, the expression of reasons, is asserted in the Request to be entirely deficient in the Decision. The obligation is to provide and communicate the reasons not so much why the 'winner won', but why the 'loser lost'. This attitudinal

expression by the judiciary reflects the need for growth in the evolution of, in this case, administrative law: to afford an adequate, replicable and rationale basis as to how the decision was reached, and why, and to afford the public a measure of confidence, whether in agreement or disagreement, that a formal and proper evaluation was given and made of the materials and of the opinions provided.

To do less is to risk concern for the exercise of unbridled discretion but, in my view, more importantly, it would fail to recognize the obligation on a trier of facts and opinions to communicate to the Parties and participants the appreciation of their contribution and its employment.

The subject Decision is four pages in length. It selects and addresses one issue out of several separate variance requests on a subject application of high economic value and private investment enterprise. The 'Analysis Findings Reasons' component of the template is concluded in three short and arguably repetitive paragraphs.

These paragraphs can be summarized by excerpts that state the following:

1. "…on Mr. Kivi's evidence, my site visit and the Planning Report recommending the prohibition of integral garages…an integral garage should not be granted."
2. "…although OPA 320 does apply in this case because it came into force before the hearing commenced, I do not have to address it, as the variance fails on the prohibition of integral garages…"
3. "Based on the Planning Report recommending the prohibition, integral garages should only be permitted on streets where 'integral garages comprise part of the prevailing character" of the street. The general intent and purpose of the prohibiting bylaw is to prevent integral garages unless they are already part of the prevailing character of the street."

The 'Planning Report' referred to is a City Staff Report dated September 25, 2017, published antecedent the enactment by City Council of the "Davisville Zoning Bylaw' which, among other things prohibits the introduction of integral garages in an area of the City, including the subject property.

Although referenced in all three paragraphs, the Planning Report is not further elaborated upon but was the subject of the filings and evidence of the two witnesses.

The Planning Report is not part of the Davisville Zoning By-law, the Official Plan, any accompanying Guideline or even a policy statement.

In my view, the Planning Report is background information but not determinative of the intent and purpose of the Davisville Zoning Bylaw. The Council language is a prohibition on integral garages for lots at the exact frontage of the subject property, or smaller. The prohibition does not extend to lots with larger frontages.

The statute, the *Planning Act*, affords the right to persons to apply for and to address variances to a zoning bylaw, even the complete elimination of a provision.

It is instructive, in reviewing the Planning Report to note that, in contrast to the three excerpted provisions above recited:

1. The Planning Report expressly contemplates variance applications to permit integral garages:

> p.3 "The proposed zoning by-law amendment to remove the as-of-right permission for integral garages **will help** to prevent new buildings that are not contextually appropriate for this neighbourhood, in compliance with in effect as well as new Official Plan policies for *Neighbourhoods*. While the 'no integral garage' provision will apply to all Neighbourhood properties in Davisville Village, **integral garages comprise part of the prevailing character for some streets within the study area.** In these instances, **applicants can seek a minor variance to allow an integral garage which may be supportable provided the proposed building and landscaping are well-designed and all other variances are acceptable".** (emphasis added)

2. The Planning Report specifically incorporated consideration of the policies of OPA 320, then under appeal, but fully in effect for the consideration of the Application:

> p.7 "Most relevant to Davisville Village and the issue of integral garages, **OPA 320 adds a new development criterion** to Policy 5, **to ensure that the prevailing location, design and elevation relative to grade of driveways and garages are considered in evaluating how a proposed development respects and reinforces the physical character of the neighbourhood.** OPA 320 also adds a new policy to Section 4.1 Policy 5 **that provides direction on how to delineate a geographic neighbourhood and instructs that when reviewing new development within Neighbourhoods, the contextual analyses should take into consideration the existing physical character of the properties in the same block that also face the same street as the development site, then the existing character of a nearby larger neighbourhood area should also be taken into consideration. Ensuring that weight is given to both consideration of the surrounding properties on the same street and block as the development site but also of a wider area within the neighbourhood, would allow a better understanding of the prevailing neighbourhood character to be taken into account in the review of development projects in established** neighbourhoods…". (emphasis added)

3. The Planning Report provides discrete evaluative criteria suggesting a methodology for the evaluation of applications within the Davisville Village for the provision of integral garages:

> p.15-16 "Minor Variance Applications. **In instances where houses with front integral garages and taller building heights**

conform with Official Plan policies and are part of the prevailing character, and do not result in any adverse impacts, a minor variance may be appropriate to allow an integral garage. The following principles will help to ensure that new buildings are well designed with ample space for front yard landscaping, including large growing shade trees: - keep the eaves/cornice line generally in line with the prevailing street wall height of the street; - keep the height of the main entrance and front door to a maximum of 1.2 metres above established grade; - add articulation (i.e. bay windows, front porch, peaks and dormers) to the main front wall to break up the massing and scale of a building to avoid the appearance of a 3-storey building; - utilize existing curb cuts particularly when mutual driveways are present; - minimize curb cut widths and locate them strategically to optimize on-street parking viability; and - maximize front yard landscaping by keeping driveway area to a minimum and consolidating driveways and walkways.

The purpose of a Review Request is not to re-argue the consideration of these matters. They are instructive though to the assessment of the challenge to the Decision that it lacks reasons, fails to discuss the evidence on 'substantial elements of area character', and fails to address parallel case authority presented on the same or similar issues.

The Expert Witness Statement of Mr. Riley performs an analysis of area character; it is disputed by Mr. Kivi. The Member conducted a site visit; this Member conducted a site visit and found some 16 integral garages within a high iron distance from the subject property in the Immediate Area on both sides of the same street.

Nothing is discussed, weighed, or evaluated in the Decision.

The Decision provides no consideration of the evidence, no evaluation, no explanation as to its weight or the reasons, therefore. The Decision acknowledges the relevance of OPA 320 but avoids its consideration based on the zoning prohibition, in direct contradiction and fettering the statutory assessment criteria relevant to the Application. No further explanation is provided amounting to a declining of jurisdiction.

It is instructive to review the Official Plan provision now in effect against the Member's comment:

2. "…although OPA 320 does apply in this case because it came into force before the hearing commenced, I do not have to address it, as the variance fails on the prohibition of integral garages…"(Decision, p.3 of 4)

OPA 320 is now part of the Official Plan and specifically section 4.1.5, referenced in the Staff Report now states as follows:

"5. **Development in established Neighbourhoods will respect and reinforce the existing physical character of each geographic neighbourhood**, including in particular:
a) patterns of streets, blocks and lanes, parks and public building sites;

b) prevailing size and configuration of lots;

c) prevailing heights, massing, scale, density and dwelling type of nearby residential properties;

d) prevailing building type(s);

e) prevailing location, design and elevations relative to the grade of driveways and garages;

f) prevailing setbacks of buildings from the street or streets;

g) prevailing patterns of rear and side yard setbacks and landscaped open space;

h) continuation of special landscape or built-form features that contribute to the unique physical character of the geographic neighbourhood; and

i) conservation of heritage buildings, structures and landscapes.

The geographic neighbourhood for the purposes of this policy will be delineated by considering the context within the Neighbourhood in proximity to a proposed development, including: zoning; prevailing dwelling type and scale; lot size and configuration; street pattern; pedestrian connectivity; and natural and human-made dividing features.

Lots fronting onto a major street shown on Map 3 and designated Neighbourhoods are to be distinguished from lots in the interior of the block adjacent to that street in accordance with Policy 6 in order to recognize the potential for a more intense form of development along major streets to the extent permitted by this Plan.

The physical character of the geographic neighbourhood includes both the physical characteristics of the entire geographic area in proximity to the proposed development (the broader context) and the physical characteristics of the properties that face the same street as the proposed development in the same block and the block opposite the proposed development (the immediate context).

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. The determination of material consistency for the purposes of this policy will be limited to consideration of the physical characteristics listed in this policy. **In determining whether a proposed development in a Neighbourhood is materially consistent with the physical character of nearby properties, only the physical character of properties within the geographic neighbourhood in which the proposed development is to be located will be considered.** Any impacts (such as overview, shadowing, traffic generation, etc.) of adjacent, more intensive development in another land use designation, but not merely its presence or physical characteristics, may also be considered when assessing the appropriateness of the proposed development.

Lots fronting onto a major street, and flanking lots to the depth of the fronting lots, are often situated in geographic neighbourhoods distinguishable from those located in the interior of the Neighbourhood due to characteristics such as:

- different lot configurations;
- better access to public transit;
- adjacency to developments with varying heights, massing and scale; or
- direct exposure to greater volumes of traffic on adjacent and nearby streets.

In those neighbourhoods, such factors may be taken into account in the consideration of a more intense form of development on such lots to the extent permitted by this Plan. The prevailing building type and physical character of a geographic neighbourhood will be determined by the most frequently occurring form of development in that neighbourhood.

Some Neighbourhoods will have more than one prevailing building type or physical character. The prevailing building type or physical character in one geographic neighbourhood will not be considered when determining the prevailing building type or physical character in another geographic neighbourhood.

While prevailing will mean most frequently occurring for purposes of this policy, this Plan recognizes that some geographic neighbourhoods contain a mix of physical characters. In such cases, the direction to respect and reinforce the prevailing physical character will not preclude development whose physical characteristics are not the most frequently occurring but do exist in substantial numbers within the geographic neighbourhood, provided that the physical characteristics of the proposed development are materially consistent with the physical character of the geographic neighbourhood and already have a significant presence on properties located in the immediate context or abutting the same street in the immediately adjacent block(s) within the geographic neighbourhood." (emphasis added)

I extract the policy because I find it does not support a total prohibition of integral garages: as a land use, integral garages are not mentioned. Rather, the policy sets out assessment criteria for defined elements of area character and provides direction as to the manner those criteria are to be approached.

The Member appears to have accepted the zoning prohibition of integral garages must conform to the Official Plan and therefore the assessment criteria applicable to development applications instituted by the requested variance permission do not apply and need not be evaluated. Alternatively, that integral garages are a defining element of area character and must be prevailing to consider the Application to provide another. Neither interpretation is satisfactorily explained; the support reasoning for the finding is entirely absent.

In my view to so find on either approach is an error of law. It essentially negates both the right to bring and the obligation to evaluate a variance application, a very issue and approach provided for and considered in the much vaulted Planning Report.

I find, in the extract from the Decision above quoted, not only a failure to give reasons as to the analysis of the evidence in support of the Application, but a refusal to do so on circular reasoning: namely, integral garages are not part of the prevailing character; integral garages are prohibited; there is no need to consider criteria including the assessment of the prevailing character.

The provisions of the Planning Report and Zoning Bylaw are cited for the prohibition, but they are not cited at all for the directions identified by Staff, as was argued in the Witness Statements, that are to be afforded Application assessments.

The Decision is also inconsistent in concluding Official Plan conformity and that "the remaining variances would result in a well landscaped and designed building," and thereafter failing to address any of the aspects of those variances or provide any reason or rational for their refusal, beyond the resistance to an integral garage.

It is patently clear as well, from the Witness Statement of Mr. Kivi and the Expert Witness Statement of Mr. Riley that each had differing views on the other variances, despite an acknowledgement, alleged on agreement, as to the integral garage variance being a main preoccupation of the opposition to the Application.

Those views are left unresolved in any clear, forthright or frank manner; the variances, apart from the integral garage, appear to be supported, but they are refused.

These distinctions were obliged to be addressed and resolved; there is not even a summary recognition or evaluation.

I agree that no reasons, whatsoever, are provided for dismissing these other variances apparently accepted and then summarily dismissed.

The Request states that the Member had the benefit of this Member's decision in *401 Balloil Street* but failed to acknowledge any consistencies or its existence despite being raised in argument. The Decision does not provide to the Appellant any rationale for inconsistent treatment or even grounds to distinguish the approach, discussion, findings or result; a vacuum for reconciliation exists.

The Request identified that consistency in approach can be of value in the evolution of principles of administrative law. I have agreed with that proposition and found elsewhere an obligation on the Members to address similar circumstances when called to their attention. This includes the right to distinguish the reasoning or apply the same, as felt appropriate in the circumstances. What the citizen is entitled to is some recognition; not to expect that such circumstances be ignored. To do so engenders perplexity, distain and frustration. No Member is obliged to follow the reasoning of another, as in the application of precedent, *stare decisis,* as found in the superior courts, but comments and reasons are warranted, especially with similar fact subject matter for properties located in the same general area and subject to the same development considerations.

I find in favour of the Request that the four pages of the Decision are entirely inadequate to express any rationale that supports, in a replicable manner, the reasons as to how the disposition was reached.

I find that natural justice and procedural fairness was not demonstrated in the Decision on matters of disclosure, the failure to provide reasons, the fact of inconsistent considerations not explained and in misdirecting and approach to the relevance to OPA 320. I find that the Request on these matters raise grounds that are sufficient to permit the review to succeed.

However, I am unable to conclude that these challenges, apart from amounting to threshold acceptance that these identified grounds have been met, can support a conclusive reversal of the Decision or a different finding on any subset of the variances.

This Member simply did not hear the evidence and the Decision is not helpful to the detailed consideration necessary for their determination. On the basis of the filed record, there are outstanding disputes that may or may not have been resolved with modifications to the Application as they relate to the variances listed in **Attachment A**.

The record provided to me and referenced is simply not clear either in the Review Request or in the Decision to make any final determination.

In my view, the matter must be remitted to a new Hearing.

As the reviewer, I did not hear the evidence and prudence dictates that, in this case, a review of the digital recording is not warranted. It is sufficient that some of the deficiencies alleged in the Request have sufficient merit to support certain of the relief requested.

DIRECTION

I am satisfied that the Decision fails in its essential purpose of applying promulgated law and policy in a manner that communicates the Decision is premised and fully supported on relevant considerations, approach and evidence.

I am not in a position of adjudicating on the merits or otherwise of the Application as that requires a Hearing process where the Parties and Participants have a full opportunity to address all relevant considerations and the Member demonstrates consideration of the same. In my view, this cannot turn exclusively on perceptions of any one particular attribute, i.e., the prohibition of integral garages, in the absence of a full and replicable consideration of policy, criteria and the application and consideration of generally accepted planning principles to all the variances sought.

While this may have occurred in the Member's own deliberations, it is simply not transmitted in the Decision and therefore is not present.

DECISION AND ORDER

The Request for Review is granted. The Supervisor is directed to set the matter down for a new, entirely *de novo* Hearing, before a different Member.

In the interests of the Parties and Participants who now have familiarity, a date for a one-day sitting on an expedited basis is to be canvassed by Staff. The new Hearing shall provide a period of time, at least thirty (30) calendar days of Notice in advance of the Hearing, for the final filing of any additional documentation.

The Decision is cancelled

X 

Ian Lord

Panel Chair, Toronto Local Appeal Body

Signed by: Ian Lord

ATTACHMENT A

REQUESTED VARIANCE(S) TO THE ZONING BY-LAW:

1. Chapter 900.2.10.(930)(C), By-law 569-2013 and Section 2.(C), By-law 1426-2017 A vehicle entrance through the front main wall of a residential building, other than an ancillary building, is not permitted.

   The new two-storey detached dwelling will include a vehicle entrance through the front main wall.

2. Chapter 10.5.50.10.(1)(B), By-law 569-2013 A minimum of 50% (21.8 m 2) of the front yard must be landscaping.
   In this case, 39% (17.2 m 2) of the front yard will be landscaping.
3. Chapter 10.5.50.10.(1)(D), By-law 569-2013 A minimum of 75% (16.4 m²) of the required front yard landscaped open space must be maintained as soft landscaping.
   In this case, 69.7% (15.2 m²) of the required front yard landscaped open space will be maintained soft landscaping. A0476/18TEY 2
4. Chapter 10.10.40.40.(1)(A), By-law 569-2013 The maximum permitted floor space index of a detached dwelling is 0.6 times the area of the lot (200.34 m²).
   The new two-storey detached dwelling will have a floor space index of 0.644 times the area of the lot (215.06 m²).
5. Chapter 10.10.40.10.(2)(B)(ii), By-law 569-2013 The maximum permitted height of all side exterior main walls facing a side lot line is 7.0 m.
   The new two-storey detached dwelling will have a side exterior main wall height of 8.6 m facing the west side lot line and 7.3 m facing the east side lot line.
6. Chapter 10.10.40.30.(1)(A), By-law 569-2013 The maximum permitted depth of a detached dwelling is 17.0 m.
   The new two-storey detached dwelling will have a depth of 17.64 m, on the first floor only (the second storey will comply).
7. Chapter 10.10.40.10.(1)(A), By-law 569-2013 The maximum permitted height of a building or structure is 9.0 m.
   The new two-storey detached dwelling will have a height of 9.3 m