

# DECISION AND ORDER

**Decision Issue Date** Monday, November 11, 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): SARVEN CICEKIAN

Applicant: ALI GOUDARZI

Property Address/Description: 610 SOUDAN AVE

Committee of Adjustment Case File Number: 18 159008 STE 22 MV

**TLAB Case File Number: 18 246242 S45 22 TLAB**

**Hearing date:** Thursday, March 14, 2019

Thursday, May 7, 2019

Friday, May 29, 2019

**DECISION DELIVERED BY S. GOPIKRISHNA**

## APPEARANCES

Name	Role	Representative
Ali Goudarzi	Applicant	
Romina Mosik	Owner	
Sarven Cicekian	Appellant	Christopher Tanzola
City of Toronto	Party	Marc Hardiejowski/Aderinsola Abimbola
Rayburn Ho	Party	
Joan Pilz	Party	Robert Brown
Al Kivi	Party	
Michael Goldberg	Expert Witness	

## INTRODUCTION AND BACKGROUND

Sarven Cicekian is the owner of 610 Soudan Ave., located in Ward 12(St. Paul) of the City of Toronto. He applied to the Committee of Adjustment (COA) to build a new two-storey detached dwelling with an integral garage, rear ground floor deck, and a rear basement walkout. The COA heard the application on October 3, 2018 , and rejected the application in its entirety. On October 22, 2018,, Mr. Cicekian appealed the COA's decision to the Toronto Local Appeal Body (TLAB), which scheduling a Hearing on 14 March, 7 May, and 29 May, 2019.

## MATTERS IN ISSUE

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

**1. Chapter 900.2.10.930(D)(ii), By-law 569-2013**

The minimum required side yard setback for a platform without main walls attached to the rear main wall of a residential building is 1.8 m. The west side yard setback of the rear ground floor deck will be 1.01 m.

**2. 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 height of the detached dwelling will be 9.38 m.

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

The maximum permitted height of all exterior main walls facing a side lot line is 7.0 m. The height of the east and west side mails walls will be 7.69 m.

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

The maximum permitted building depth for a detached dwelling is 17.0 m. The detached dwelling will have a building depth of 18.0 m.

**5. 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 (208.9 m<sup>2</sup> ). The floor space index will be 0.63 times the area of the lot (219.0 m<sup>2</sup> ).

**6. Chapter 900.2.10.930(C), By-law 569-2013**

A vehicle entrance through the front main wall of a residential building, other than an ancillary building, is not permitted. In this case, the integral garage will be in the front main wall of the residential dwelling.

**1. . Section 4(2)(a), By-law 438-86**

The maximum permitted height of a building or structure is 9.0 m. The height of the detached dwelling will be 9.38 m.

## **JURISDICTION**

### **Provincial Policy – S. 3**

A decision of the Toronto Local Appeal Body ('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)**

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**

At the Hearings held on March 14, 2019, May 7, 2019, and May 29, 2019, the Appellant was represented by Mr. Christopher Tanzola, a lawyer, and Mr. Michael Goldberg, a planner. The City of Toronto elected to be a Party in opposition to the Appeal, and was represented by Ms. Aderinsola Abimbola and Mr. Marc Hardiejowski, both of whom are lawyers. It may be noted that the City did not call any witness. Ms. Joan Pilz, the neighbour next door at 608 Soudan elected to be a Party in opposition to the Appeal, and was represented by Mr. Robert Brown. Mr. Al Kivi, also appeared in opposition to the Appeal on behalf of the South Eglinton Residents Ratepayers (SERRA), as a Party.

Before reciting the evidence provided during the Hearing, it is important to note that there were late submissions by multiple Parties. While various Parties drew my attention to late submissions by others, there was no formal Motion put forward to exclude late submissions. I asked the Parties if there was any advantage to attending a Mediation session arranged by the TLAB, and was informed that there was no prospect of a Settlement because the key difference between the Appellants, and the Opposition was the the integral garage, which the Appellants were not prepared to compromise on. It is also important to note that more than one Party submitted appendices to their Witness Statements

When opening statements were being made, Ms. Abimbola, Counsel for the City, stated that the City would not call any witnesses, and would restrict their questions to the integral garage.

Mr. Goldberg was sworn in, and recognized as an expert in the area of land use planning. Mr. Goldberg said that his Study Area is in the "general location" east of Cleveland Street, extending easterly to Bayview Avenue, north of Manor Road, and south to Eglinton Avenue East. This Study Area forms part of the Davisville Village Zoning Study Area. The subject site is located on the north side of Soudan Avenue,

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three lots west of Bayview Avenue. The planning reason for selecting the boundaries of the Study Area as specified, is that this is the neighbourhood, that people living at the subject site will experience on a day-to-day or weekly basis in their regular comings and goings of daily and weekly life on foot, by bicycling, or by car.

Mr. Goldberg said that the purpose of selecting a Study Area was to enable a planning evaluation of the Subject Application, and see how it corresponded to the requirements of the Official Plan, whose overall intent was to ensure that new development should respect, and reinforce the existing physical character of the neighbourhood.

The Study Area is designated "Neighbourhoods" in the City's Official Plan, and is governed by the following By-Laws: The City of Toronto's former By-Law 438-86, the City wide harmonized By-Law 569-2013, and the Davisville Zoning Amendments 1425-2017, and 1426-2017, which specifically pertain to integral garages in the Davisville community. Mr. Goldberg recited the variances, and specifically commented on the Davisville By-Laws 1425-2017 and 1426-2017.

Mr. Goldberg discussed the Davisville By-Law Amendments at some length. He said that front facing integral garages were permitted in the Davisville Village area, prior to November 2017. On November 7, 2017, City Council enacted By-laws 1425-2017 and 1426-2017, which removed the as-of-right permission for integral private garages, if vehicle access to the garage is located in a wall of the building facing the front lot line. Mr. Goldberg said that while it was "clear" to him that while By-laws 1425-2017 and 1426-2017 removed the "as-of-right" permission of front facing integral garages, the intention was to ensure that there was a thoughtful consideration of relevant factors before including the integral garage, as opposed to a wholesale prohibition of integral garage. Mr. Goldberg asserted, that while these By-law Amendments prevented an as-of-right permission of a front facing integral garage, a landowner who wished to include one in his/her building plans, would have to rely on a public minor variance process, which enables a review of the proposal in relation to the City OP, the criteria mentioned above, and the other planning evaluation measures, necessary when considering a minor variance application, through which a decision regarding the integral garage may be arrived at.

Mr. Goldberg then provided a photo tour of the community, and spoke to what he found to some of the recurring community feature, including integral garages.

He said that most of the Study Area consisted of a narrow lot frontage area, of lots with widths between 6 m – 9 m. The north/south streets of Mann Avenue and Hoyle Avenue contained lots between 8 – 11 m. He said that in areas with narrow widths, including this Study Area, the houses were commonly built with small building setbacks on either one, or both sides of the dwelling, and that this factor contributed to, the feel and character a tightly knit urban residential area. The tight knit urban factor also meant that it was expected that residents would be able to look into their adjacent neighbours' rear yard-the intrinsic overlook from one property to another arising from the tightly knit urban character of the Study Area is characteristic of this Study Area.

The dwellings in the community, according to Mr. Goldberg, consisted of original vintage dwellings, built in early 1900's, which had 1, 2 or 3 storeys. Examples of the reinvestment experienced in the Study Area over the last few decades manifest

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themselves in the form of additions, replacement dwellings, and infill redevelopment. The replacement dwellings commonly have different architectural expressions, which, when compared to the original vintage dwellings, “ are larger, higher, wider, and longer, compared to the original vintage dwellings”. It is common for the replacement dwellings to have front facing integral garages, of either below grade or at grade. These front facing integral garages commonly replaced driveways that led from the front to rear of the property ,where detached rear garages used to exist

The common design, of the replacement dwellings in the Study Area, as illustrated through Mr. Goldberg’s photographic tour, included an at-grade, or below grade, front facing, integral garage, with a driveway leading from the street to the garage, and 2 living levels above the garage level. According to Mr. Goldberg, this design solution was a common feature in this neighbourhood, though it was not unique, because it was utilized throughout the City of Toronto, particularly in neighbourhoods with a narrow lot frontage character like the Study Area. Mr. Goldberg opined that the reason for this replacement dwelling design’s becoming commonplace, is because, it allowed for all the main living level rooms (kitchen, living room, dining room, family room and powder room) to be on one level, without losing significant main living floor space to a garage, if it is located on the main living level. He noted that the above described dwelling vernacular, with two living levels above the garage, produced a main building wall height and overall height very similar to the subject proposal, and added that such examples were well represented in the Study Area and form a part of the mixed style of buildings in, and character of, the Study Area.

Mr. Goldberg then referred to a chart of COA decisions dating back to 2000 (approximately 18 years), and noted that the minor variances being sought in the subject application, are within the numeric range of other approvals, already present the Study Area. He noted that the main building wall height was not controlled in By-law 438-86, so the replacement or renovated dwellings constructed prior to 2013 would not have required variances for main building wall height. He said that the Subject Site is currently occupied by a small two-storey single detached dwelling, with a rear paved parking pad, and an asphalt shared driveway along the west side yard of the lot. The existing dwelling is typical of original vintage dwellings, because it is smaller and shorter in length, when compared to the neighbouring lots with additions, or replacement dwellings. He said that because the existing house was endowed with a large/generous rear yard of approximately 32 m (105ft.), there was scope to build a bigger house, without any adverse unacceptable impact on the neighbouring houses. Mr. Goldberg said that the Subject Site sloped down very gently from north to south, and added that there was no physical feature, or terrain, that constrained the proposal, with the exception of the existing tree on the public boulevard that would be retained, while another tree in the rear yard would be removed.in accordance with City Urban Forestry conditions.

]Mr. Goldberg then discussed the compatibility between the proposal, and the higher level Provincial Policies. He said that while this application was a local planning matter, which did not bring rise to Provincial policy implications, it was also important to note that the proposal would permit modest intensification within the built up area, while providing for more efficient and compact use of an existing site and infrastructure, both of which were provincial objectives.

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Based on this reasoning, Mr. Goldberg concluded that the proposal was consistent with higher level Provincial Policies.

Mr. Goldberg next discussed the compatibility between the proposal and the Official Plan. He spoke to Policy 2.3.1, and discussed how the proposal satisfied the criterion of "respecting" what existed in the community. He said that the proposal satisfied Policy 3.1.2.1 because it represented a good fit, with both its existing and planned context, by virtue of being a single detached dwelling in a community of single detached dwellings.. He added that the OP supported the notion that contemporary design could be designed to fit the existing context, even if did not control architectural style

With respect to Policy 4.1.5, Mr. Goldberg said that the planning concept of "respect and reinforce" does not imply sameness, but recognizes the need of the proposal to co-exist with other buildings, both in terms of general character elements, and scale. He then said that the proposal satisfied Section 4.1.5 by virtue of the overall building height seeking but a 0.37 m difference from what is of right. He emphasized that while the height contributes to the massing and scale of the dwelling, the difference is moderate, and is in keeping with the heights found in other replacement dwellings in the Study Area

Mr. Goldberg then added that the main building wall height standard of By-law 569-2013 remained under appeal, and was therefore subject to potential elimination, or change. However, he added that in any event, the numeric extent of the relief sought from the main building wall height standard was not a large variance (0.69m), and the proposed main building wall height is very similar to many of the replacement dwellings in the neighbourhood.

Discussing the massing and scale of the dwelling, Mr. Goldberg said that the 3-dimensional elements of the proposal's height, setbacks and length/depth were similar to many other dwellings in the neighbourhood, and added that its length/depth did not extend beyond the rear building wall of the adjacent dwelling at 614 Soudan Avenue .The proposal did not request any front yard setback variance, nor, any form of landscaped open space variance , including front yard landscaped open space. Mr. Goldberg emphasized the fact that the revised Site Plan would now preserve the City street tree, which contributed to the character of the streetscape. Based on this discussion, Mr. Goldberg concluded that the subject proposal conformed with the provisions of Section 4.1.5 of the City OP.

He then spoke to Section 4.1.8, and said that Zoning by-laws contained numeric site standards, for matters such as building type and height, density, lot sizes, lot depths, lot frontages, parking, building setbacks from lot lines, landscaped open space and other performance standard to ensure that new development would be compatible with the physical character of established residential Neighbourhoods.

Mr. Goldberg then explained how planners interpreted compatibility. He said that the planning concept of "compatible" meant creating a building project that was not necessarily the same as, or, not necessarily even similar to, yet is capable of co-existing in harmony with its immediate and broader area environment. He then

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referred to the subject Study Area as being a very good example of such compatibility where notwithstanding considerable differences between dwellings, and built forms, the buildings could co-exist in harmony, throughout the Study Area from property to property, without creating adverse planning impacts or incompatibilities.

Based on this evidence, Mr. Goldberg concluded that the proposal satisfied the test of compatibility with the Official Plan.

Mr. Goldberg then briefly explained the Clergy Principle, followed by why the Principle should be applied in this case. As a “precaution”, Mr. Goldberg briefly discussed the compatibility of the proposal with OPA 320, and concluded that the proposal would satisfy the new OP( i.e. formerly called OPA 320)- this evidence is not recited here for reasons cited in the Analysis and Reasons Section of this Decision.

Mr. Goldberg then discussed the compatibility between the proposal and the Zoning By-Laws. He said that it was necessary for the proposal to comply with Zoning By-Laws 569-2013, 438-86 as well as By-Laws 1425-2017 and 1426-2017, which specifically discuss integral garages in the Davisville Area.

Mr. Goldberg listed the performance standards for each of the variances, followed by a discussion of how each variance in the proposal, satisfied the corresponding performance standard. Much of this evidence is not recited because it was not challenged by the opposition. It is important to point out that on the matter of the length variance, Mr. Goldberg said that some of the older dwellings are less than 17 m in length, and that there is an undulating feel to the rear yard walls, which is reflected in the present configuration of backyards, where the neighbours at 608, and 614 Soudan, have rear walls that extend beyond the existing rear wall. Mr. Goldberg emphasized the fact that the requested length would not create any adverse impacts, compared to what was of right.

Addressing the issue of the narrowed driveway, Mr. Goldberg said that the existing curb cut and shared driveway would to be utilized by the new proposal, and that the existing curb cut width is an appropriate width for a single car driveway. The existing curb cut width is an appropriate width for a single car driveway, recognizing the function of a driveway and that a standard parking space in the City by-laws is 2.6 m wide. He added that the proposed driveway, while narrower than other driveways in the neighbourhood, would be adequate for the ingress, and egress of a single car, without adverse impact on the neighbourhood.

Mr. Goldberg then referred to a chart with COA decisions from the last 10 years in his Study Area, to demonstrate that variances, similar to the ones requested by the Appellants, had been granted numerous times, without any significant impact on the neighbourhood.

In relation to the Minor Variance Criteria, as set out in the Davisville Village Zoning Study, Mr. Goldberg discussed how the subject proposal satisfied the criteria specific to integral garages, as listed in the Davisville Final Report, which formed the basis of By-

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laws 1425-2017, and 1426-2017. By way of editorial comment, it is important to note that Mr. Goldberg insisted that the criteria discussed in the aforementioned report to assess the addition of an integral garage, at best represented a "guideline" that could be used as a tool in the planning evaluation of the subject application. He explicitly disagreed with the characterization of the criteria as constituting a "three part test", as suggested by Mr. Kivi in his submissions.

Mr. Golberg then discussed how the proposal satisfied the recommendations put forward by the Staff Report with respect to integral garages, governed by the Davisville By-Laws.

Mr. Goldberg then referenced the Decision respecting 401 Balliol, also located in the Davisville community, and drew my attention to the similarities between the proposal at 610 Soudan, and the house with an integral garage, approved at 401 Balliol..

Mr. Goldberg then discussed how the proposal satisfied the test of minor. He said that the order of magnitude of the variances being requested is numerically minor, and that the variances, both individually and cumulatively, did not give rise to adverse planning impacts, and therefore satisfied the test of minor

Lastly, Mr. Goldberg spoke to the test of appropriate development. He said that the subject proposal represented reinvestment on the property, with a new single detached dwelling, which more fully utilized the zoning permissions, and the capability of the site. He said that the size, scale and standards, applied to this proposal were appropriate, and that such reinvestment was compatible, would result in a dwelling that would fit with the neighbourhood, and would contribute to the ongoing stability of the neighbourhood for grade related, low rise dwellings. Mr. Goldberg emphasized that the City did not consider the impact to be significant, or adversarial, since no Staff Report had been issued. He said that in his experience, the City would issue a Staff Report only if there was a serious concern; the lack of such a report was to be interpreted as no objection from the City. On the basis of the reinvestment, and the lack of any adversarial impacts being identified, Mr. Goldberg concluded that the proposal satisfied the test of appropriate development.

Based on this discussion, Mr. Goldberg concluded that the Appeal should be allowed. He then recommended Conditions to be imposed on the approval, including building in substantial compliance with the Plans, and Elevations, and Forestry Conditions.

Mr. Kivi's cross examination of Mr. Goldberg began with the latter's being asked about his opinion on the TLAB decisions respecting 401Balliol and 46 Banff. Mr. Goldberg replied that he was the planner representing the appellant regarding 401 Balliol, and was in agreement with the reasoning of the Decision in 401 Balliol, because the Panel Chair had followed Mr. Goldberg's reasoning to formulate his decision. He also pointed out that 46 Banff was outside his study area, and reiterated his disagreement with the "three prong test" for integral garages, as formulated in decision respecting 46 Banff, and cited by Mr. Kivi in his submissions. Mr. Kivi noted out that Member Makuch of the TLAB had heard 393 Balliol, and that an agreement had been worked out between the



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Parties to use a carport solution, and asked why the same solution could not be applied to 610 Soudan, to which Mr. Goldberg that a carport was not his client's preference.

Mr. Kivi then asked Mr. Goldberg if Balliol and Soudan Streets resembled each other, to which the latter said that there were vintage and replacement houses on both. There was a discussion of the percentage of non-integral garages versus integral garages, and the answer was that 71% had non-integral garages, and 29% had integral garages. Mr. Kivi asked Mr. Goldberg if non-integral garages were the prevailing type, to which the latter disagreed, and said that the determination of prevailing house-type could not be made on the basis of the parking solutions alone. This exchange was followed by a discussion of how planners delineated geographic neighbourhoods- Mr. Kivi's specific question was that if a street such as Cleveland, which had been specifically zoned for integral houses, could be included in a geographic neighbourhood, "because it could influence what the prevailing type was", to which Mr. Kivi said that he would include Cleveland as a geographic neighbourhood, because it was part of the community. Mr. Kivi again brought up the issue of the neighbourhood, as defined in 46 Banff by Mr. David Riley, the planner on the file, who defined an area consisting of three streets going north south, and three streets going east west, to which Mr. Goldberg disagreed again. Mr. Goldberg was then asked about the Clergy Principle, and its application to OPA 320. Mr. Goldberg provided a history, and an overview of the implications of the Clergy Principle, and said that it had been a consistent presence in the planning landscape of the Province of Ontario since 1997. Mr. Kivi then referred Mr. Goldberg to Member Makuch's decision on the applicability of OPA 320 in his decision respecting 10 Lake Promenade, to which Mr. Goldberg distinguished between the fact bases of the cases, and concluded that it would be appropriate to apply the former Official Policy to decision making in this case.

Mr. Hardiejowski, who represented the City of Toronto, cross examined Mr. Goldberg next. He asked Mr. Goldberg about the validity of the latter's inference that the City staff had no issues with the proposal on the basis of their not issuing a Staff Report, to which Mr. Goldberg said that the conclusion was based on his many years of familiarity with how City staff reacted to applications. When Mr. Hardiejowski insisted on seeing a document issued by the City which supported Mr. Goldberg's theory, Mr. Goldberg said that "he would leave it with the TLAB Member." Mr. Hardiejowski then asked Mr. Goldberg if in the discussion of Policy 3.1.2, what did he mean by "existing" context, to which Mr. Goldberg said that he meant what was of right. The next question asked Mr. Goldberg to confirm that as of 2017, there was no "as of right" to build an integral garage in the Davisville Area, which was confirmed. However, Mr. Goldberg also clarified that there was no "prohibition to build an integral garage before 2017". In response to the next question regarding an explanation of homeowners "may build an integral garage, as stated in the by-law", Mr. Goldberg explained that the "may" meant an approval from the COA. Mr. Goldberg also agreed that 50% of the houses on the north side of Soudan had integral garages, but disagreed with the suggestion that on the south side, that there were no integral garages amongst an eclectic mix of garages,. In resolving the issue over how many integral garages existed, it emerged that there was no definition of integral garage in the Zoning By-Law, and that the expression could refer to a garage that was attached to a house, with or without, a living level above the house. Mr. Goldberg also disagreed with Mr. Hardiejowski's suggestion that the integral garages occurred in "patterns", and said that there was no established pattern to the

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distribution, and that the integral garages existed in groups of twos, threes or four houses together.

Ms. Pilz, the neighbour at 608 Soudan asked a few questions of clarification of Mr. Goldberg. This exchange is not reported in detail because the questions reestablished information elicited through exchanges between Messrs. Goldberg, Kivi and Hardiejowski.

Mr. Kivi then presented his evidence on behalf of SERRA. He began with a delineation of the area represented by SERRA, which extends from Yonge St in the West to Bayview on the East, Eglinton on the North, to the houses on the southern side of Merton Street, two streets below Davisville Ave. He spoke about the history of the community, and the importance of the Glebe Manor Estate. Mr. Kivi then explained the importance of the Clergy Principle, and how the Decision issued by Member Makuch on 10 Lake Promenade Blvd. on a Motion about the applicability of OPA 320 to applications filed before the LPAT Decision released its decision on OPA 320 in December 2018. Mr. Kivi relied on this Decision to define his Geographic Neighbourhood; the Neighbourhood consists of a single block of Soudan on the north side between Bayview and Mann Avenues, while multiple blocks of Soudan Street are used on the South Side. Mr. Kivi then systematically listed the parking solutions for the houses in his geographic neighbourhood e.g. 604 Soudan has an attached garage on Mann Ave, while 606 Soudan has an attached garage on Soudan Ave, 614 Soudan has an integral garage with a reverse sloping driveway, while 616 Soudan has a parking pad. Mr. Kivi concluded that given the diversity of functioning, parking solutions throughout the community, there did not appear to be a strong reason for the Appellant to insist on an integral garage.

Mr. Kivi also stated that “prevailing” is defined in the OPA as 51%, or more, which meant that integral garages did not constitute the prevailing character on the street.

Mr. Kivi also pointed out that the integral garage request had effectively resulted in an increase to the height of the building, which he thought unnecessary, given that an alternative parking solution to the integral garage could be found. Mr. Kivi also objected to the height of the proposed building on the ground of a “downward sloping gradient, from Mann Ave. to Soudan Ave”. According to Mr. Kivi, 608 and 610 Soudan “sit on the crest of a small hill, and there was an upward gradient of 1 m from Mann Ave. to 608 Soudan, a downward gradient of 0.6 m from 610 Soudan to 614 and 616 Soudan, and a further downward gradient from 616 Soudan to Bayview Ave”. As a result, the height of the proposed dwelling, in conjunction with the gradients, would make the proposed house “tower” over its neighbours.

Mr. Kivi then illustrated the alleged mismatch between the houses through juxtaposing a two dimensional picture of the proposal on a photograph of the neighbouring houses, and illustrated the lack of alignment through trying to align each floor of the proposal with the corresponding floor of the existing neighbouring houses, and concluded that each floor of the proposal was considerably higher than the corresponding floor of the neighbours.

Mr. Kivi also discussed a shadow study that he simulated using the City of Mississauga's guidelines for shadow studies, and concluded that the shadow cast by the built form of the proposed house on its neighbours constituted unacceptable adverse impact. He said that the City of Mississauga required shadow studies for all buildings higher than 10 m, under which the proposal would qualify, because the height was 10.7 m.

Mr. Kivi was cross examined by Mr. Tanzola, who asked him if he had taken the pictures used to demonstrate the alleged lack of fit between the proposal, and its neighbours.. When it emerged that Mr. Kivi had not taken the pictures, but had instead relied on Google Earth pictures, Mr. Kivi apologized profusely for the "mishap". Mr. Tanzola asked Mr. Kivi if the contents of the By-laws 1245-2017 and 1244-2017 effectively set up a new test, in addition to the 4 tests specified in Section 45.1, to which Mr. Kivi agreed that there was no fifth test, but the specifications were very important. Mr. Tanzola then asked Mr. Kivi that while he had suggested that there was a difference between driveways with positive, and reverse slopes, if he was aware that Mr. Lord's Decisions on 401 Balliol, concluded that there was no such distinction for planning purposes, to which Mr. Kivi re-explained his perspective in positive versus reverse slope driveways, and concluded that they were different. The next question focused on how Mr. Kivi's interpretation of the Geographic Neighbourhood had changed from the time of the Committee of Adjustment ( where it had spanned multiple streets) to the time of the TLAB Hearing, where it had reduced to just one half of the street, to which Mr. Kivi said that his interpretation of the expression had changed to focus on the immediate neighbourhood. Mr. Tanzola then highlighted the fact that the revised witness statement from Mr. Kivi had interpreted the geographic neighbourhood differently from the previous discussions, resulting in a third interpretation, to which Mr. Kivi agreed, and said that he was trying to facilitate a side by side analysis with that of Mr. Goldberg, whose Witness Statement, he already had access to, as a result of disclosure. Mr. Tanzola asked Mr. Kivi if a reverse slope integral garage complied with the Davisville By-law, and the answer was "no". The next question was about compliance between the City of Toronto by-law, and the reverse slope garages, to which the reply was again in the negative.

Mr. Tanzola pointed out that while parking pad solutions, and integral garages had to be approved through the same COA process, only 6% of the existing parking solutions were parking pads at the back, but 43% consisted of integral garages, notwithstanding that the former was Mr. Kivi's preferred solution. Based on this, Mr. Tanzola said the Mr. Goldberg was "correct, when he suggested that there was a variety of parking solutions in the community, including integral garages" and concluded that there was no preference for the parking pad solution proposed by Mr. Mr. Kivi.

In response to Mr. Tanzola's questions about the shadow studies and why they should be preferred over the prescribed methodology in Toronto, Mr. Kivi explained how shadow studies were conducted in Mississauga, but could not explain how their methodology was superior to the City of Toronto's prescribed methodology. There was no explicit explanation provided in reply to a question about why shadow studies were needed for buildings less than four storeys tall, as is the practice in the City of Toronto.

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Likewise, there was no reasoning provided to explain why shadows cast by a building, higher than 10 metres, were significant enough to trigger a shadow study

Ms. Pilz, the neighbour at 608 Soudan Ave, was the last witness to testify. She spoke about raising her family in this community, and being a long time resident of the community. She expressed concern that the tree in the front of the house, would be cut down, and said that many of the neighbours were concerned about the tree.

She complained about how "jarring" the neighbouring house would seem, the shadowing impact when completed, compared to her house, and the loss of a mutual driveway. Her requests were

- Depth of the proposed house be reduced to 17 m
- Deck Setback to be increased to bylaw requirement
- Continued use of the driveway to be maintained

During the course of Mr. Tanzola's cross-examination, it emerged that Ms. Pilz would still be able to access her driveway comfortably, and drive her car without discomfort into her garage. The difference between the existing situation, and the future would be that she has more room to manoeuvre her car ( a Subaru Expedition), and use the neighbour's property, however fleetingly, to complete the task of driving out of the parking spot. It was also demonstrated that her house had not been developed to fill the full construction envelope; and that while the shadow of the proposal next door may have seemed large, compared to Ms. Pilz's house, the shadow of the proposed building was comparable to the building envelope as of right. When Ms. Pilz took umbrage at her house being described as being "underdeveloped", Mr. Tanzola apologized for any inadvertently hurting Ms. Pilz's feelings by using the word , and clarified that this was a planning expression used to describe a property where the building hadn't utilized the entire, as-of-right allowable building envelope.

Lastly, there were written submissions made by Mr. Robert Brown after the completion of the Hearing, to which Mr. Tanzola filed a written submission where he disagreed with Mr. Brown's conclusions. The contents of the submissions are not repeated here since they largely overlap with the conclusions of Mr. Kivi. Other conclusions put forward by Mr. Brown are not supported by the cross examination, since he did not cross examine Mr. Goldberg, and Ms. Pilz ( Mr. Goldberg's client) did not challenge Mr. Goldberg's interpretation of the Official Policy.

However, it is important to note that Mr. Brown suggested that integral garages were "prohibited" in the Davisville Area, and supported the suggestion through providing a dictionary definition of "prohibited". He also asked that Mr. Kivi be recognized as a "Local Knowledge Expert", to which Mr. Tanzola objected, stating that the term has no specific meaning. In his submission, Mr. Tanzola also pointed out that the Davisville By-Law did not explicitly "prohibit" integral garages, and that this conclusion was supported by the reasoning of Mr. Ian James Lord, Chair of the TLAB, in the Decision respecting 401 Balliol.

## **ANALYSIS, FINDINGS, REASONS**

I start by making a finding on the issue of classifying Mr. Kivi as a Local Knowledge Expert, as per the post Hearing submission of Mr. Brown, who represented

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Ms. Pilz at the Hearing. The request of recognizing Witnesses as Experts, should take place before the commencement of the Hearing, or the commencement of Witness-in-question's evidence, at the latest- this process would enable opposing Parties to ask questions of the Witness in question, where appropriate, assess the skills of the individual, and satisfy themselves that the individual has the requisite expertise and knowledge, to be designated an Expert, or challenge their qualification, where appropriate. I believe that trying to classify, or reclassify a Witness after the conclusion of the Hearing, raises serious procedural concerns, because the other Parties have not been provided a fair opportunity to support or oppose the Witness' recognition as an Expert, or the equivalent thereof. For this procedural reason, I refuse the request to have Mr. Kivi recognized as a Local Knowledge Expert.

The next question to be answered is what conclusion, if any, can be drawn from the absence of a staff report, respecting the Subject Property. Mr. Goldberg's conclusion about the absence of a specific staff report may be paraphrased as the colloquial "no news means good news", while Both Messrs. Kivi, and Hardiejowski insisted that a specific document from the City, concluding that no report was tantamount to having no objections, needed to be produced, in support of Mr. Goldberg's conclusion. In his closing, Mr. Hardiejowski specifically requested me not to make a finding on how to interpret the absence of a Staff Report on this property. I find it easy to agree to his request, because I cannot understand the what, how or why of inferences arising out of a non-existent document.

Both Mr. Goldberg, and Mr. Kivi spent considerable time discussing the Clergy Principle, and the merits of applying the same in this case, in order to determine whether OPA 320, or the former OP ought to be applied. Rather than come to a finding about the Clergy Principle, and then apply the results of that finding to determine which Official Plan should apply, my approach advocates an analysis of the evidence of each Party, on the basis of their preferred Official Plan, and see what conclusions, if any, can be drawn. In other words, I am prepared to analyze the evidence of the Appellants through the lens of the former OP, and the evidence of Mr. Kivi through the lens of the new OP( formerly OPA 320). A decision about the Clergy Principle, would have to be made only if the analysis of the Appellants' evidence through the former OP supported the conclusion that the proposal was consistent with the intention of the OP, while the analysis of the opposition's evidence through the new OP supported the conclusion that the proposal should not be approved. Should the Appellants' proposal fail the former OP, there is no need to delve into the Opposition's evidence, because the onus is on the Appellants, without reference to the Clergy Principle. On the other hand, if the Appellants' evidence satisfies the former OP, but the Opposition cannot demonstrate their evidence helps demonstrate lack of compliance between the proposal, and the new OP, one can conclude that the evidence favours the Appellants, without reference to the Clergy Principle.

I note that the process above does not suggest a new methodology, but rearranges the steps required to make a decision such that the question of determining the applicability of the Clergy Principle is left to the very last; the question about the applicability needs to be made only when an analysis of the evidence of each Party, viewed through the lens of their specific OP, supports their conclusion, about the OP.

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The reason for my preferring the “Bottom Up” methodology described above, is that it allows one to be sensitive to the uniqueness of each Neighbourhood, with specific reference to the various Geographic Neighbourhood constituting the Neighbourhood, and make decisions on the characteristics of what would best fit, and reinforce the stability of the Neighbourhood. This approach provides maximal flexibility to each Party to choose the former, or the newer OP, and argue their case on the basis of their preferred OP. I distinguish this approach as being different from the “Top-Down” approach of the Clergy Principle, which places more emphasis on the history of an application, and when it was filed, rather than the Neighbourhood context. I strongly emphasize The existing curb cut width is an appropriate width for a single car driveway, recognizing the function of a driveway and that a standard parking space in the City by-laws is 2.6 m wide that the reasoning above does not question the Clergy Principle, but demonstrates that a decision about compatibility of the proposal with the OP can be arrived at, without discussing the applicability of the Clergy Principle.

The City, it may be reiterated, called no Witnesses, and restricted their opposition to the integral garage. Since the determination of a Geographic Neighbourhood is important in the OPA 320, I examine the Geographic Neighbourhood(s) provided by Mr. Kivi. As noted by Mr. Tanzola, and commented by Mr. Kivi, the Geographic Neighbourhood seems to have evolved over a period of time- my analysis focuses on the Geographic Neighbourhood provided by Mr. Kivi to the TLAB- namely, the 41 houses, with 6 houses ( nos 616-604 on the north side of Soudan, and the 35 houses on the south side of Soudan). The reason provided by Mr. Kivi for the choice of 6 houses on the north, and 35 on the south is that the northern block, consisting of 6 houses is formed due to Mann St intersecting with Soudan Avenue, while the southern block of 35 houses, is undisturbed between Bayview Ave., and Cleveland Street. The Official Plan states that:

*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*

The Geographic Neighbourhood consisting of 6 houses on the North, and 35 houses on the South, is the consequence of interpreting the Geographic Neighbourhood to be a block on either side of the road; the implicit assumption is that a block is bounded by two streets, In the case of Soudan, we have two streets, Mann and Hoyle, intersect the street on the north, without symmetric streets intersections on the south. This interesting asymmetry of intersections with small streets is found on Soudan all the way between Bayview Ave., and Mt. Pleasant Ave, with nine different street intersections on the north, but only two intersections ( Forman and Cleveland) on the south.

However, I note that no evidence was provided in support the implicit assumption that a block is bounded by two consecutive streets. Even if the premise that two consecutive streets constitute a block is accepted, there is no discussion of whether the streets in question are comparable e.g. by length, traffic, or any other variable. The Opposition’s decision to exclude the houses on the north of Soudan, and west of Mann, is difficult to understand, when from a pedestrian connectivity perspective, there is no appreciable difference between the north and south sides of Soudan. I conclude that not taking into account the asymmetric street pattern on the north and south, the symmetric pedestrian

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arrangements on both sides of Soudan, and the unsupported assumption that a block is circumscribed by two streets, cast enough doubt about the compatibility of the Geographic Neighbourhood, as defined by the Opposition, that it needs to be refused.

Since acceptance of the Geographic Neighbourhood is crucial to the analysis of the opposition's evidence on the Official Plan, and how the proposal does not uphold the intent of the new OP, I conclude that I would not have to delve further into their analysis, because of my earlier finding, and disagreement with the one of the most important parameters of analysis, namely, the choice of the Geographic Neighbourhood.

Mr. Goldberg discussed the compatibility between the proposal, and the higher level Provincial Policies. I agree with his conclusion that while this application does not rise to Provincial policy implications, because of its granularity, it is also important to note that the proposal would permit modest intensification within the built up area, while providing for more efficient and compact use of an existing site and infrastructure, both of which were provincial objectives.

I agree with Mr. Goldberg's analysis of how the proposal is consistent with, and upholds the intent and purpose of the former OP. I find that the Study Area that Mr. Goldberg chose, is adequate, and sufficient enough to capture the residents' experience of their community.

He spoke to Policies 2.3.1, 3.1.2, 4.1.5 and 4.1.8, and explained how the proposal was consistent with these policies. After analyzing his evidence, I am convinced that the proposal will contribute to an evolving, but stable community. While Mr. Goldberg spoke briefly to the compatibility between the proposal and the new OP ( i.e. the former OPA 320), my analysis focuses on the OP, because this was clearly the Appellant's preferred choice.

On the basis of the above analysis, I conclude that the proposal satisfies the test of upholding the intent, and purpose of the Official Plan.

In the context of the discussion of compatibility with the Zoning By-Laws, it is important that the property is governed by the City Wide By-Law 569-2013, former Toronto By-Law 438-86, and the corresponding Davisville By-Laws 1425-2017 and 1426-2017.

While the Appellants argued that there was no blanket ban on integral garages, and that the "guidelines" set forth in the Staff Report had to be satisfied for an integral garage to be allowed, the Opposition was vehement in their submissions about "prohibition" of integral garages. After reading the Davisville By-Laws, and the Staff Report, I conclude that while integral garages are no longer as-of-right, they are not completely prohibited- the key learning from the Staff Report is that a set of guidelines need to be followed by residents of the Davisville community, interested in incorporating an integral garage into the design of their house. I add that not prescribing a given feature, such as an integral garage, or preventing residents from having the feature as-of-right, is not tantamount to proscribing the feature in question; the reason is best explained by the colloquialism about there being many shades of grey between black and white.

I follow the reasoning of 401 Balliol to conclude that the methodologies that need to be fulfilled by an integral garage, as discussed in the Davisville By-Laws are closer to a

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recommendation, rather than a separate test. Given this conclusion, no weight is assigned to the evidence of the opposition with respect to the interaction of the Zoning By-Laws and the Integral Garage. On other variances, I note that Mr. Goldberg thoroughly explained how the requested variances satisfy the corresponding performance standards, and that there was no questioning from the opposition, except the length of the building. I was satisfied by Mr. Goldberg's explanation about how the impact of the requested 18 length of the house, would be comparable to the allowable 17 m length.

Based on this evidence, I conclude that the proposal satisfies the test of upholding the intent of the By-Laws.

On the matter of test of being minor, Mr. Kivi brought forward pictures where a 2 D mock up of the proposal was juxtaposed on a 3 D photograph to demonstrate how the proposal was not proportionate to other buildings, and would tower over the neighbours, resulting in the privacy of the latter being impacted. The cross examination demonstrated that the pictures had not been taken by Mr. Kivi, as originally claimed, but were exported from Google pictures. While this may be accepted as a genuine mistake, it is important to note that the pictures are not assigned any weight because there is an inherent distortion when 2 D and 3 D items are juxtaposed on each other, contradicting the principle of an apples to apples comparison.

No weight is assigned to the shadow studies submitted by the opposition since no explanation was provided about why a shadow is needed for a building with less than four floors, as specified by the City of Toronto. While I respect the fact that the City of Mississauga recommends shadow studies for buildings higher than 10 metres, there was no explanation provided of how the idea of having shadow studies for buildings higher than 10 m better serves the public interest than a shadow study only if the building is higher than 4 floors.

Of the Witnesses who provided evidence, I paid close attention to the concerns expressed by Ms. Pilz, because she is the next door neighbour at 608 Soudan, who would be impacted significantly by the approval of the proposal next door. I listened very closely to her evidence of Ms. Pilz, and her concerns about the length of the house, and ability to park at the back of the house- I concluded that the impact on her driveway is minimal, and that she can pull in, and pull out of the parking, located at the back of the house. The extra 1 m length of the house next door may change the shape, and duration of the shadows, but will not result in any new, unacceptable adverse impacts on her family, nor will the change significantly diminish the quality of their life. Her concerns about the removal of the tree in front of the Subject Property were allayed by the Appellant's agreeing to retain the tree in question. From the perspective of the test of appropriate development, I am satisfied that the impact of the proposal on her property, does not rise to the level of unacceptable adverse impact. I agree with Mr. Goldberg that the proposal will not result in unacceptable adverse impacts on its neighbours, either by way of privacy or shadows. The proposal therefore satisfies the test of minor.

Lastly, I discuss the test of appropriate development. The opposition did not specifically address the question other than suggesting that there would be unacceptable adverse impact.. I prefer the evidence of Mr. Goldberg on this matter, because the proposed



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house reinforces the existing character of the neighbourhood, and makes optimal use of the space available on the Subject Lot

Given the above discussion, I conclude that the proposal satisfies all the 4 tests under Section 45.1, and consequently allow the Appeal.

The Appellants recommended two standard conditions, related to building in substantial compliance with the submitted plans, and elevations, and fulfilling forestry conditions. Both are standard conditions, and may be imposed on the approval.

I therefore find that the appeal should be allowed in its entirety, and approve all the variances requested by the Appellant, subject to conditions pertaining to forestry, and building in substantial compliance. I have used the language suggested by the Appellants in their submissions to frame the conditions.

The first condition is that Construction take place in substantial accordance with the Site Plans, and Elevations submitted to the TLAB, prepared by Ali Shakeri F&A Associates Ltd, and date stamped December 7, 2018 (reissued for TLAB1), and November 30, 2018 (issued for TLAB1).

The second condition is reproduced from the Forestry Report, with a list of generic conditions of approval, dated September 26, 2018. While Mr. Goldberg refers to Conditions No 1, and 2, I have decided to include all three conditions. To state the obvious, the third condition about what needs to be done, if there are no existing street trees, becomes redundant, if there are existing street trees. The language is as follows:

- 1) Submission of a complete application for permit to injure or remove privately owned trees under Municipal Code Chapter 813 Article III, Private Tree Protection.
- 2) Submission of a complete application for permit to injure or remove City owned trees under Municipal Code Chapter 813 Article II, Trees on City Streets.
- 3) Where there are no existing street trees, the owner shall submit a payment in lieu of planting one street tree on the City road allowance abutting each of the sites involved in the application or elsewhere in the community if there is no space. The current cost of planting a tree is \$583.00, subject to changes.

I take this opportunity to commend Mr. Kivi on his efforts to disseminate information about planning in the community, and his enthusiasm for community education. I sincerely hope that his hard work will bear fruit through a heightened appreciation of planning principles, and an elevated level of discourse about planning, in the community at large.

## **DECISION AND ORDER**

1. The Appeal respecting 610 Soudan Ave. is allowed in its entirety, and the Decision of the Committee of Adjustment dated October 3, 2018, is set aside.
2. The following variances are approved:

**1. Chapter 900.2.10.930(D)(ii), By-law 569-2013**

The minimum required side yard setback for a platform without main walls attached to the rear main wall of a residential building is 1.8 m. The west side yard setback of the rear ground floor deck will be 1.01 m.

**2. 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 height of the detached dwelling will be 9.38 m.

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

The maximum permitted height of all exterior main walls facing a side lot line is 7.0 m. The height of the east and west side main walls will be 7.69 m.

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

The maximum permitted building depth for a detached dwelling is 17.0 m. The detached dwelling will have a building depth of 18.0 m.

**5. 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 (208.9 m<sup>2</sup>). The floor space index will be 0.63 times the area of the lot (219.0 m<sup>2</sup>).

**6. Chapter 900.2.10.930(C), By-law 569-2013**

A vehicle entrance through the front main wall of a residential building, other than an ancillary building, is not permitted. In this case, the integral garage will be in the front main wall of the residential dwelling.

**1. Section 4(2)(a), By-law 438-86**

The maximum permitted height of a building or structure is 9.0 m. The height of the detached dwelling will be 9.38 m.

**3. No other variances are approved.**

**4. The following condition is imposed on the approval:**

1) Construction take place in substantial accordance with the Site Plans, and Elevations submitted to the TLAB, prepared by Ali Shakeri F&A Ltd, , and date stamped December 7, 2018 (reissued for TLAB1), and November 30, 2018 (issued for TLAB1).

2) Submission of a complete application for permit to injure or remove privately owned trees under Municipal Code Chapter 813 Article III, Private Tree Protection.

3) Submission of a complete application for permit to injure or remove City owned trees under Municipal Code Chapter 813 Article II, Trees on City Streets.

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4) Where there are no existing street trees, the owner shall submit a payment in lieu of planting one street tree on the City road allowance abutting each of the sites involved in the application or elsewhere in the community if there is no space. The current cost of planting a tree is \$583.00, subject to changes.

So orders the Toronto Local Appeal Body

X



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S. Gopikrishna  
Panel Chair, Toronto Local Appeal Body