

# DECISION AND ORDER

**Decision Issue Date**      Wednesday, October 28, 2020

PROCEEDING COMMENCED UNDER Section 53, subsection 53(19), and Section 45(12), subsection 45(1) of the *Planning Act*, R.S.O. 1990, c. P.13, as amended (the "Act")

Appellant(s): ABDUR ROUF

Applicant: JOHN BENCZKOWSKI

Property Address/Description: 8 MIDBURN AVE

Committee of Adjustment Case File: 18 132201 STE 31 CO, 18 132209 STE 31 MV, 18 132216 STE 31 MV

**TLAB Case File Number: 18 239516 S53 31 TLAB, 18 239517 S45 31 TLAB, 18 239518 S45 31 TLAB**

**Hearing dates:      Thursday, September 19, 2019 and Friday, October 25, 2019**

**DECISION DELIVERED BY J. TASSIOPOULOS**

## APPEARANCES

NAME	ROLE	REPRESENTATIVE
JOHN BENCZKOWSKI	APPLICANT	
ABDUR ROUF	APPELLANT/OWNER	JOHN BENCZKOWSKI AMBER STEWART
CITY OF TORONTO	PARTY (TLAB)	MARC HARDIEJOWSKI
CITY OF TORONTO	PARTY (TLAB)	ROMAN IVANOV
JULIUS DE RUYTER	EXPERT WITNESS	
EUNICE HONG	PARTICIPANT	

<b>HYEON SOOK HONG</b>	<b>PARTICIPANT</b>
<b>SHARON SMITH</b>	<b>PARTICIPANT</b>
<b>EMILY MOLSON WEINMANN</b>	<b>PARTICIPANT</b>
<b>MELISSA VERGE</b>	<b>PARTICIPANT</b>

## **INTRODUCTION**

This is an appeal to the Toronto Local Appeal Body (TLAB) from a decision of the Committee of Adjustment (COA) on Thursday September 20, 2018 being the refusal of the consent application to create two lots at 8 Midburn Avenue and the refusal of the variances requested for the proposed two new residences upon the two lots created by that consent (subject property). As a result of the refusal, the Applicant appealed the decision to the TLAB, whose Hearing date was originally set for July 4 and 5, 2019 but due to significant changes to the proposed building elevations and site plan, the Hearing was adjourned and the Appellant was asked to recirculate the updated plans to the neighbourhood and new Hearing dates were set for September 19 and October 25, 2019.

During both Hearing dates the Appellant was represented by counsel, Amber Stewart. The City of Toronto, as a Party to the matter, was represented by counsel, Roman Ivanov. The following people requested Participant status at the Hearing: Eunice Hong, Hyeon Sook Hong, Sharon Smith, Emily Molson Weinmann and Melissa Verge, but did not appear or present evidence at the Hearing. The expert witnesses, John Benczkowski and Julius De Ruyter, were also in attendance. The Participants were not present on the first day of the Hearing but were present on Day 2, October 25, 2019.

I disclosed to those in attendance that I had visited the site and the surrounding neighbourhood, in preparation for the Hearing.

## **BACKGROUND**

The site is located on the north side of Midburn Avenue and east of Dawes Road, west of Dentonia Park and approximately 500 metres north of Danforth Avenue. The property flanks residential dwellings to the east and west and backs onto a townhouse complex at 88 Goodwood Park Court, to the north. It is designated Neighbourhoods in the Official Plan and zoned Residential Detached RD pursuant to City of Toronto By-law 569-2013. The proposal is to sever the lot, demolish the one-storey single detached dwelling, and to construct two new two-storey single detached dwellings, one on each new lot created. Given that the appeal includes a consent application for the subject

property, we must first determine if the severance sought is appropriate prior to considering the 6 variances to Zoning By-law 569-2013, to permit the proposed development on the resulting parts.

Prior to commencing the Hearing, Ms. Stewart submitted an Affidavit with proof of circulation of the revised site plan and elevations for 8 Midburn Avenue, that were the subject of the Hearing adjournment on July 4, 2019. Ms. Stewart mentioned that the materials were circulated with an explanatory letter on August 12, 2019, which was more than 30 days in advance of the Hearing date. The affidavit and attached materials was reviewed and received by the Chair and was entered as an exhibit (Exhibit #1). She further explained that she was not contacted by those that were circulated the materials.

## **MATTERS IN ISSUE**

Given the *de novo* nature of the TLAB Hearing, is the consent to sever the property, sought by the Appellant / Owner supportable? This must be established in principle before considering the variances also being sought for the resulting lots.

Given the *de novo* nature of the TLAB Hearing, if the consent is indeed supportable, are the variances sought by the Appellant / Owner, for the two resulting parts, acceptable under applicable policy and statutory tests, below?

The foregoing consideration includes whether the proposed revised plans address potential impact to the surrounding neighbourhood and sensitively address the potential impact of the two proposed single-detached residential dwellings to the neighbouring dwellings?

## **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').

### **Consent – S. 53**

TLAB must be satisfied that a plan of subdivision is not necessary for the orderly development of the municipality pursuant to s. 53(1) of the Act and that the application for consent to sever meets the criteria set out in s. 51(24) of the Act. These criteria require that " regard shall be had, among other matters, to the health, safety, convenience, accessibility for persons with disabilities and welfare of the present and future inhabitants of the municipality and to,

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- (a) the effect of development of the proposed subdivision on matters of provincial interest as referred to in section 2 of the *Planning Act*;
- (b) whether the proposed subdivision is premature or in the public interest;
- (c) whether the plan conforms to the official plan and adjacent plans of subdivision, if any;
- (d) the suitability of the land for the purposes for which it is to be subdivided;
  - (d.1) if any affordable housing units are being proposed, the suitability of the proposed units for affordable housing;
- (e) the number, width, location and proposed grades and elevations of highways, and the adequacy of them, and the highways linking the highways in the proposed subdivision with the established highway system in the vicinity and the adequacy of them;
- (f) the dimensions and shapes of the proposed lots;
- (g) the restrictions or proposed restrictions, if any, on the land proposed to be subdivided or the buildings and structures proposed to be erected on it and the restrictions, if any, on adjoining land;
- (h) conservation of natural resources and flood control;
- (i) the adequacy of utilities and municipal services;
- (j) the adequacy of school sites;
- (k) the area of land, if any, within the proposed subdivision that, exclusive of highways, is to be conveyed or dedicated for public purposes;
- (l) the extent to which the plan's design optimizes the available supply, means of supplying, efficient use and conservation of energy; and
- (m) the interrelationship between the design of the proposed plan of subdivision and site plan control matters relating to any development on the land, if the land is also located within a site plan control area designated under subsection 41 (2) of this Act or subsection 114 (2) of the City of Toronto Act, 2006. 1994, c. 23, s. 30; 2001, c. 32, s. 31 (2); 2006, c. 23, s. 22 (3, 4); 2016, c. 25, Sched. 4, s. 8 (2).

## **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**

### **Hearing Day 1 – August 16, 2019**

Ms. Amber Stewart provided a brief introduction to the appeal noting that the City's concern was centred around lot size and configuration but that they are part of the existing condition of the block and that when considering the application, it should be considered with respect to the Official Plan as a whole and not just specific sections. She further noted that in addition to section 4.1.5 of the Official Plan, relating to built form policies and the need for new development to fit harmoniously within this context, section 4.1.8 needs to be considered because it speaks to the intent of the Zoning By-law and zoning standards to ensure that new development is compatible with the existing physical character of the neighbourhood. Ms. Stewart went on to explain that the changes to the elevations were a response to the concerns of residents, the City's comments and Mr. Julius De Ruyter's expert witness statement. Given the existing lot size and configuration, she added that the Appellant had made significant effort in submitting plans that addressed these concerns and in particular the integral garage and 'lower scaled' form of dwelling. She concluded that the City had not submitted any response with respect to the revised plans and elevations that were circulated on August 12, 2019.

Mr. Roman Ivanov explained that the City's position on the proposal had not changed from the original witness statement that was filed earlier in the process and that there was still an issue with the severance and the variances sought. He concurred that the Official Plan should be read in its entirety in coming to a decision. He noted that what should be focused on is the application before the TLAB and not what exists currently and that it is the proposal that is being evaluated. He agreed that the City had not commented on the revised plans because fundamentally their position had not changed with respect to the overdevelopment of the lot. Furthermore, he explained that he had expressed his concern regarding the parking pad to Ms. Stewart informally and that she was aware of the City's position on the revised plans and elevations.

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Following the brief introductions, Ms. Stewart called upon Mr. John Benczkowski as an expert witness and he was affirmed. Prior to proceeding, Ms. Stewart entered Exhibits (Exhibits 1, 2, and 3). I qualified Mr. Benczkowski to provide evidence opinion on land use planning based on the planning experience outline in his witness statement and signed acknowledgement of expert’s duty (Exhibit 3). He has also appeared before TLAB and had previously been qualified an ‘Expert Witness’.

Mr. Benczkowski began by explaining that previous to the COA hearing, City Planning staff had expressed concern with the proposed building rear yard setbacks but not the consent to sever the lot. The rear yard setback of 4.2m was proposed to address staff comments and the drawings were revised to reflect this change. He explained that City Planning did not submit a report opposing the proposed application at the COA. Following the refusal of the application by the COA he was retained by the Appellant to appear as an Expert Witness for the appeal to TLAB.

Mr. Benczkowski gave a synopsis of the site and surrounding context noting the drop in grade between the subject property and the adjacent townhouse complex to the north and went on to describe the existing condition and survey of the subject property. He noted that lots on the north side of Midburn Avenue had varying lot depths, frontages and lot configurations. There was no prevailing or consistent lot pattern (e.g., eight different lot depths within the thirteen lots on the north side) and that this “eclectic nature was limited to the north side of Midburn Avenue”(Hearing excerpt).

Mr. Benczkowski went on to explain the consent application: to sever the property into two lots to allow the construction of two two-storey dwellings with front yard pad parking contained within the property line; that the lot frontage for the resulting lots would be 6.09m, which was greater than the zoning requirement of a minimum 6.0m. Following this description, the variances sought for each lot were described (Exhibit 1):

<b>By-law Standard</b>	<b>Part 1 (West Lot)</b>	<b>Part 2 (East Lot)</b>
Front yard setback (5.1 m required)	4.22 m	4.22 m
Lot area (185 m2 required)	149.1 m2	149.2 m2
Lot coverage (35% permitted)	54%	54%
Floor space index (0.75 x permitted)	1.05 x	1.05 x
Rear yard setback (7.5 m required)	4.2 m	4.2 m
Side yard setback (0.6 m required)	East 0.45 m	West 0.45 m
Front yard soft landscaping (75% required)	34%	34%
Parking space may not be located in the front yard	Front yard parking pad proposed	Front yard parking pad proposed

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Turning to the Official Plan, Mr. Benczkowski explained that he had considered the application both prior to OPA 320 and afterward in determining the study area boundary. Mr. Ivanov objected to this noting that Mr. Benczkowski did not refer to OPA 320 and only did in his reply to the City’s expert witness statement. He explained that although Mr. Benczkowski was given the City’s position on OPA 320, the City was not aware of Mr. Benczkowski’s opinion as it did not appear in his witness statement. Ms. Stewart countered that if this was not permitted then Mr. De Ruyter should not be permitted to speak to the massing and form of the revised plans since the City did not share their position in reply to the revised plans.

I ruled that given that OPA 320 was in force, I would allow for Mr. Benczkowski to provide his opinion and conversely Mr. De Ruyter would also be allowed to provide opinion on the revised plans and elevations.

Mr. Benczkowski provided his study area review, photo documentation and neighbourhood character description surrounding the subject property, noting there is some redevelopment in the area but most of the newer redevelopment was occurring further south. He explained that a lot frontage map was not prepared as part of these materials as the two resulting lots complied with the zoning minimum lot frontage requirements. Focusing on the north side of Midburn Avenue, he explained of the varied nature of lot depths, frontages and lot configurations. He noted moving west to east that there were five lots that were shallower than the proposed lots for the subject property and moving further east, the lot depths varied. Moving to his photobook he noted the aerial of the area surrounding the subject property and noted the shallow lots that were adjacent and to the west. He also noted that the decks of the townhouses to the north are above the grade of the subject property and that overlook from the proposed dwellings would not be an issue. He described how the streetscape along the north side had varied architectural styles, that the dwellings were eclectic in design, and that this continued onto the south side of Midburn Avenue; there was no consistent built form.

Turning to his lot area study map Mr. Benczkowski provided a breakdown of the range of lot areas, for comparison with the proposed lot areas for Part 1 and Part 2 of 149.1m<sup>2</sup> and 149.2m<sup>2</sup> respectively, and noted the following (Exhibit #3):

<b>Lot Areas in Study Area</b>		
<b>Lot Area Range (sq.m)</b>	<b>Total Number of Lots</b>	<b>Percentage of Lots in Study Area</b>
< 185.0	9	8.91%
185.81 – 298.29	51	50.50%
➤ 298.65	41	40.59%
<b>TOTAL</b>	<b>101</b>	<b>100%</b>

He pointed out that the north side of Midburn Avenue is a departure with respect to the lot patterning in the rest of the study area and that they were irregular and inconsistent.

He went on to present a plan of Midburn Avenue indicating the existing dwellings with front yard parking and noted that nine of the twenty six lots on the street, or 34.6%, included front yard parking and that the proposed were not introducing a new condition.

Presenting his "Prevailing Front + Rear Yard Setbacks" plan for the north side of Midburn Avenue, he indicated that the proposed front yard setback was well within or greater than those found on other lots when measured to the main front wall. He further explained that the proposed dwelling rear yard setback when comparing the shallow lots from 2A to 8 Midburn Avenue, was greater than the average of all of them.

Mr. Benczkowski noted that the proposal was consistent with the policies of the PPS as it will provide an additional dwelling which will make efficient use of the land and infrastructure in the settlement area, could add to efficient use of nearby transit support, and the proposed new dwellings would add to the mix and range of residential dwellings in the area. The proposal also conformed to the Growth Plan because it is located in a built up area and adds to the density and mix of housing in the area.

Turning to the Official Plan, he explained that the consent and variance applications were in conformity with the Official Plan pre and post OPA 320. The property is designated *Neighbourhoods* in the Official Plan. He advised that sections 2.3.1 and 3.2.1 note the expectation of change over time and that infill development must respect and reinforce existing conditions and that the proposal was providing this through the addition of a detached residential dwelling within the empty portion of the lot. Moving to section 4.1.5, Mr. Benczkowski compared this section pre and post OPA 320 noting that the most significant change was the addition of the word 'prevailing' and a description of what constitutes a geographic neighbourhood. Focusing on section 4.1.5 b., c., f. and g., he explained that the lot size and configuration was an existing condition of the subject property and that there was no prevailing size and configuration of lots along Midburn Avenue on the north side as there are 6 different lot depths and configurations. The lots on the south side are mostly rectangular in shape and much deeper than the lots on the north side. He opined that the proposed lots would respect and reinforce the lot pattern on the north side of Midburn Avenue and that there was no singular size or shape or pattern.

He went on to note that there was no prevailing character in terms of form, height and size, as there was a mix of styles and built form all along Midburn Avenue. The dwelling heights of 7.2m make the buildings compatible with the existing heights of nearby residential properties and their two-storey dwelling form and orientation to the street are consistent with these properties. In terms of the dwelling setbacks he mentioned that all of them were varied and the front yard setbacks "look and feel", were different along the street and the proposed front yard setback variances would fit within the street. Finally, looking at prevailing patterns of side and rear yard setbacks, he explained that the existing condition displayed minimal side yards between dwellings



and that the proposed are consistent in this regard and that their rear yard setbacks were greater than the average rear yard setbacks of the shallow lots on the north side of Midburn Avenue. He concluded that 'prevailing' is difficult to assess along Midburn Avenue as there are so many variations of lots sizes and lot configurations and that the proposed dwellings do respect and reinforce the existing built form character of the neighbourhood and meet the requirements of section 4.1 of the Official Plan.

Looking at the built form policies of section 3.1.2.3, Mr. Benczkowski explained that impact is not about creating no impact but to ensure the impact is acceptable given the sites' physical context. Given that the variety of lot sizes and configurations on the north side of Midburn Avenue in relation to the proposal, it was his opinion that the policies of this section were met. He went on to explain that the proposed dwellings, their setbacks, height and frontages will all be compatible with the physical character of the residential neighbourhood and the consent and the proposed variances both individually and cumulatively meet the general intent and purpose of the Official Plan.

With respect to the Zoning By-law 569-2013, he noted the property is zoned as Residential and its intent and purpose is to ensure compatible built form and that there are no unacceptable adverse impacts on the adjacent properties. He went on to note that the term 'compatible' does not mean that everything must be the same but that two dwellings could be different yet still be compatible. Turning to the variances he explained that:

- The front yard setbacks of the proposed dwellings are in line with the existing dwelling to the east and the front of the covered porch for the existing dwelling to the west. The proposed building will maintain the street edge on Midburn Avenue.
- The lot area is consistent with the pattern of narrow and shallower lots within the overall neighbourhood area and can accommodate the proposed dwellings and that the intent and purpose of lot area is maintained.
- The lot coverage intent is to ensure that the buildings coverage allows for adequate space on the lot for outdoor uses and that the existing shallow lot triggers the variances for the rear and sideyard and noted that the proposed building length is 16.0m which is 1.0m less than the maximum length permitted by the Zoning By-law.
- The proposed floor space index will present a massing that is compatible with the built form found on the street and it is reasonable that on a shallow and narrower lot the floor space index (FSI) will be increased in order to accommodate a reasonable dwelling on a smaller lot.
- The rear yard setback is to ensure there isn't encroachment into the rear yard of neighbouring properties and that the proposed dwellings provide a deeper rear yard and are in line with the rear of the adjacent building to the east.

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- The sideyard setback is to ensure appropriate spatial separation, access and maintenance and the 0.45m requested for the interior side yard adds up to 0.9m allowing for access and maintenance; the exterior sideyards, adjacent to neighbouring dwellings are consistent with existing conditions in the neighbourhood.
- With respect to the parking pad and front yard landscape, because the area of the pad is not permitted and cannot be removed from the calculation for soft landscaping, a variance is required. If the parking pad was permitted as per typical driveways and excluded in the calculation for soft landscaping, the zoning requirement would have been met. As a condition of approval, he proposed that permeable pavers be used for the driveway portions. In addition, he mentioned that approximately 34.6% of the lots (9 lots) on Midburn Avenue have parking in front of the front wall of their dwellings.

Mr. Benczkowski concluded that given these reasons, the intent and purpose of the Zoning By-law is maintained by the proposed dwellings.

Turning to whether the proposal was minor in nature, Mr. Benczkowski noted that the test was not whether there was no impact at all but rather whether that impact is acceptable and that some impacts in this context are acceptable; he further noted that planning or staff reports were not issued regarding the current proposal. He explained that the perception of lot area and lot coverage are not perceived from the street and the proposed dwellings do not create privacy or overlook impacts on the adjacent properties. In his opinion the coverage was not an overdevelopment of the lot and that it permits the creation of two functional dwellings. FSI should be acceptable as the proposed dwellings are very modest in size (1,691 square feet) and is achieved without seeking a variance for height. The rear yard variance is a result of the existing shallow lot and that combined with meeting the zoning height requirements, is acceptable and not perceivable from the street. The sideyard setback is minor because it only applies to interior sideyard of the proposed dwellings. Although parking pads are proposed the remainder of the proposed lots are landscaped and is a similar condition found on neighbouring lots. He concluded the variances were minor in nature and that even if a single dwelling was proposed for the subject property, similar variances would most likely be required, especially with respect to the rear yard setback.

Regarding whether the proposal was desirable for the appropriate development or use of the land, Mr. Benczkowski, explained that the proposal for two dwellings on an underutilized parcel will provide a modest form of intensification that fits into the character of the neighbourhood. The proposed dwellings and lot configuration are in keeping with the surrounding area and consistent with the neighbourhood do not create adverse impacts to neighbours and is not an overdevelopment of the site when considered in its context. He concluded that in his opinion the proposed dwellings are appropriate and desirable and will result in a development that is compatible for Midburn Avenue and the greater neighbourhood..

Mr. Benczkowski, then turned to the criteria set out in section 51(24) of the *Planning Act* with respect to the consent and spoke to the criteria applicable to the proposal indicating that 51(24) (a), (c), (d), (f), (h), (j) and (l) were all applicable. He explained that those criteria were met by the proposal and in his opinion it had appropriate regard for section 51(24) and should be approved.

Ms. Stewart asked Mr. Benczkowski about the conditions of approval including the requirement for permeable pavers and that the proposed building be constructed substantially in accordance with the site plan and elevations provided in Exhibit 1. He confirmed that these conditions should be part of the approval as well as the standard consent conditions. Mr. Benczkowski concluded that the variances sought both individually and cumulatively met the four tests of the *Planning Act*, represented good planning and recommended that the appeal be allowed subject to the conditions indicated.

Mr. Ivanov began his cross examination of Mr. Benczkowski by asking him how many site visits he performed and whether he walked or drove through the neighbourhood. Mr. Benczkowski answered that he had travelled to the subject property and surrounding study area numerous times and that he had both walked and drove around the neighbourhood over the course of those visits. Mr. Ivanov asked if many of the images in the witness statement were captured from Google street view and Mr. Benczkowski confirmed some of the images were from Google because of the wider angle of the views and because they showed a greater range of adjacent lots.

Mr. Ivanov then turned to the Official Plan policies and asked, looking at policy 2.3.1.1 that existing physical character refers to what exists in the neighbourhood today and Mr. Benczkowski agreed. He then asked if the built form policies in chapter 3 apply to all new development in the City and specifically that policies 3.1.2.2 and 3.1.2.3 require an evaluation of the existing and planned context, to which Mr. Benczkowski agreed. Mr. Ivanov asked that when considering harmonious fit of built form would one not only look at similar built form but also the neighbourhood as a whole? Mr. Benczkowski agreed and noted that the purpose of the photo book was to show the array of built form.

Turning to policy 4.1.5, as amended by OPA 320, Mr. Ivanov asked if existing context referred to the whole neighbourhood being part of the analysis and not just examples of approvals that were similar and that when assessing physical character, all properties must be assessed not just new development? Mr. Benczkowski agreed.

Counsel then referred to the lot frontage analysis provided by Mr. Benczkowski and asked him if the frontages for 121 to 131 Dawes Road were in the range of what was being proposed? Mr. Benczkowski said they were but that in terms of perception the 5.33m frontage of 131 Dawes Road might be noticeably narrower. Mr. Ivanov then asked if the lots along with 62, 70 and 72 Dentonia Park Avenue were also in the range but deeper than those proposed? Mr. Benczkowski confirmed they were. Mr. Ivanov also noted that 1,7 and 9 Midburn Avenue were also in the range and deeper lots than

those proposed and Mr. Benczkowski agreed but noted that they were lots on the south side of the street whereas the existing lots on the north side did not share this same depth and therefore were not the same situation. Mr. Ivanov continued to point to the same condition on Rosevear Avenue at which point Mr. Benczkowski explained that it wasn't enough to only look at the frontage and depth of the lot but also the lot area as the depth of the lot is not perceptible from the street. Mr. Ivanov asked Mr. Benczkowski to go through his property table and identify lots that had the same or similar lot area to that proposed and he indicated lots 2B, 4 and 4A Midburn Avenue and 50, 52 and 54 Avonlea Boulevard; Mr. Ivanov pointed out that the lots referred to on Midburn Avenue all had wider frontages than the proposal, and Mr. Benczkowski concurred. Mr. Ivanov then pointed out that only 9 of the 101 lots in Mr. Benczkowski's study area were less than the required lot area of 185 square metres and it was not typical of the physical character in the area. Mr. Benczkowski responded that although the neighbourhood as a whole did meet or exceed the minimum lot area, the unique lot sizes and patterns along Midburn Avenue was also unique in relation to the rest of the neighbourhood area.

Mr. Ivanov asked if FSI suggests building density and massing and that a higher FSI could suggest additional height? Mr. Benczkowski explained that it wasn't necessarily true because FSI can take many elements into account such as excluding integral garages from the FSI calculation. Mr. Ivanov then noted that an FSI analysis had not been provided in his witness statement and Mr. Benczkowski explained that he did not have the data from the City regarding FSI; the only information he had was from COA approvals.

Moving to lot coverage Mr. Ivanov asked if the variances for 54% and 55% lot coverage for the resulting lots, where 35% is permitted, would be outliers in the neighbourhood? Mr. Benczkowski explained he did not have data on lot coverage for the study area to determine if that was the case. Mr. Ivanov suggested that a dwelling with high FSI and lot coverage on the smallest lots in the neighbourhood could not be considered an appropriately sized building. Mr. Benczkowski disagreed, noting that the existing lot fabric influences these figures and if a new single dwelling was proposed for the existing lot, in order to be functional, it would require similar front and rear yard setbacks. Mr. Ivanov noted that without an analysis of lot coverage and FSI in order to rank where the proposal landed in the neighbourhood, did he still believe the proposal was appropriately sized? Mr. Benczkowski confirmed that he did.

Turning to the variance for the parking pad, Mr. Benczkowski was asked if he was aware of provisions with respect to Chapter 918, *Parking On Residential Front Yards And Boulevards* (Exhibit #4) of the Toronto Municipal Code and the section of parking in front yards? The planner explained he was aware but could not provide verbatim its content. He mentioned that he was familiar with applying this for obtaining front yard parking and for a curb cut but not for new development.

Ms. Stewart interjected at this point concerned with the line of questioning by Mr. Ivanov and explained that if the suggestion was that a license was required to permit

parking, then it was not the case because when a variance is granted for parking in the front yard there is no requirement to apply for a license under Chapter 918. Mr. Ivanov clarified and asked if the variance were to be refused would the Appellant then need to obtain a license for front yard parking and Ms. Stewart agreed that if the variance was refused they would need to do that.

Mr. Ivanov then asked if any application had been made under Chapter 918 to obtain a permit or if City Transportation or Engineering services had been consulted regarding the parking pad, as it was not in the original application? Mr. Benczkowski said he had not but would have expected them to comment on the revised plans when submitted to the plans examiner at the City. Mr. Ivanov asked if the properties with front yard parking, identified in the witness statement, had applied for a permit through Chapter 918. Mr. Benczkowski answered that he didn't know if they had a license but what was in the witness statement is what was present on the street. When asked if the parking pad dimension complied with Chapter 918 requirements, he explained that the parking space requirement in the City of Toronto was 2.6m by 5.6m but that he didn't know if it they exactly complied with Chapter 918.

Mr. Ivanov referred to the dimensions noted in Chapter 918 indicating that the length must be between 5.3m and 5.9m (section 918-10 D.)? Mr. Benczkowski noted the space was 5.6m in length and a portion of the space at the first level was behind the front wall. Mr. Ivanov then pointed to the requirement for lots with a width of between 5.5 metres and 7.61 metres the maximum width was 2.2m (section 918-10 C. 3. a.)? Mr. Benczkowski mentioned the width proposed was 2.6m and that, in his experience, if the variance is approved then a permit through Chapter 918 would not be required.

Mr. Ivanov turned to policy 3.1.2.2 of the Official Plan referring to minimizing impact of parking on the street, asking if the 2 proposed driveways would have an impact? Mr. Benczkowski explained there would only be the addition of one more driveway and curb cut as one already existed on the lot. Mr. Ivanov then asked with the exception of removing the integral garage, if the interior floor plan had remained the same? It was confirmed there were some additional minor changes but that the layout was generally the same with the exception of the basement now being below grade and adjustments to accommodate the parking space.

Mr. Ivanov asked if there could be a basement rental unit and Mr. Benczkowski explained that building code would not permit a basement unit due to the access being restricted from the narrow sideyards and access to the rear yard.

Ms. Stewart began her re-examination by asking for clarification if 4 Midburn Avenue should also be indicated as a lot area with less than 185 square metres (in brown) on the Lot Area Study Map? Mr. Benczkowski indicated it should be and then he was asked whether the proposed parking pad in this application was identified as requiring a variance and he confirmed that it was.

This concluded the evidence of this witness.

I noted my expectation that Participants would have attended this Hearing date as there was some concern expressed about potential overlook and shadowing from the proposed dwellings, in letters submitted. In their absence, I asked Mr. Benczkowski for his opinion on these concerns. Beginning with the overlook concern he explained that the townhouse complex to the north would have deck areas that were essentially at the level of the second storey of the proposed dwellings and that in combination with a rear privacy fence, overlook would not occur. He added that the relationship between the proposed and existing buildings was to the wall face and not clear glazing and not a privacy issue.

This concluded Hearing Day 1.

### **Hearing Day 2 – October 25, 2019**

Following brief introductions, Mr. Ivanov mentioned that Chapter 918 of the Toronto Municipal Code, *Parking On Residential Front Yards And Boulevards* had not been assigned an exhibit number. It was assigned Exhibit #4. Mr. Ivanov then called upon Mr. Julius De Ruyter as an expert witness in land use planning. He was sworn. Mr. Ivanov asked Mr. De Ruyter to provide a synopsis of his planning experience and he indicated that he had been a practicing Planner for over forty years, is a Registered Professional Planner with both the Ontario Professional Planners Institute and the Canadian Institute of Planners and currently operates his own practice for over six years. He has appeared before TLAB and similar tribunals in the past. Having noted his land use planning experience, outlined verbally and in his witness statement (Exhibit #5), his signed acknowledgement of expert's duty, I qualified Mr. De Ruyter to provide professional opinion evidence in the area of land use planning.

Mr. De Ruyter went on to explain that he had accepted the retainer from the City after he had visited the site and background materials and felt that he could provide an opinion that was not supportive of the consent and variances sought because the proposed lot frontage, shallow lot depth and lot area was not a good candidate for severance; further, that the proposed building variances on the resultant lots were not appropriate. He explained that since his submission of the witness statement in December 10, 2018 the proposed plans had been revised but that the envelope of the plan hadn't changed. The only changes were the removal of the integral garage, the basement being located below grade which reduced FSI and massing, and the introduction of a flat roof in place of the previous hipped roof.

Mr. De Ruyter went on to describe the variances sought by the appellant and noted that there were no staff reports at the COA Hearing with respect to the proposal. The exception was from Urban Forestry which did not request conditions other than a tree be planted on the resultant lots should the consent be approved.

He described the surrounding area and context noting that there is some reinvestment and infill change, that the neighbourhood was essentially a low density

residential neighbourhood and that it is desirable because of its close proximity to transit. Looking at Midburn Avenue and the shallow lots on the north side he noted that the lots to the west become shallower but that they are also wider in frontage to compensate for that. Relying on City of Toronto data he created a table for the study area which was defined by 500 properties. He noted the period of construction in the neighbourhood mostly taking place between 1910 and 1930 and that little happened until the 1970's; most new development occurred after 2010. Looking at Midburn Avenue he explained there was "a real mix of lot configurations, lot frontages, lot depths and all the house styles vary quite significantly on Midburn Avenue, it's quite an eclectic mix" (excerpt from Hearing). He noted that the lot depths on the south side were deeper than the north side and that a range of heights from one storey to two and one half storey buildings were present. Mr. De Ruyter then referred to his photo study of Midburn Avenue noting that:

- 4 Midburn was a shallower lot but noted it is wider lot frontage at 9.3m;
- 6 Midburn was an identical adjacent lot to the subject property and that if this proposal was approved it could result in a similar proposal on this lot based on expectations and precedent;
- 8 Midburn was an underutilized lot and that it was unusual that only part of the lot was built upon; and,
- 10 Midburn was a two storey building with what appears to be two front yard parking spaces and although there is an integral garage, it appears parking is at the front.

He continued to describe the north side of Midburn Avenue and indicated that many of the lots were wider in frontage and that some were also deeper than the subject property. He described south side as having a variety of lot frontages and depths and very deep lots as high as 51m with a variety of building heights.

Beyond Midburn Avenue, Mr. De Ruyter provided an overview of the surrounding area and of particular interest was the view from the townhouse complex to the north of the subject property that indicated the difference in grade.

Mr. De Ruyter then proceeded to describe the property data from the City of Toronto that he had analyzed and noted that the only adjustments he made to the data was to remove columns that were not pertinent for the study and added an FSI column that was based on taking the above grade GFA and dividing it by the lot size to produce the floor space index. He explained that his larger study area was defined by 538 properties and that a separate more specific assessment was also made of Midburn Avenue. He went on to explain that the rationale for the study area was, based on a review of previous TLAB decisions, what somebody experiences where they live, where they walk and be experienced on a daily basis. He used a 500m radius or approximately 5-minute walk from the subject property as a starting basis and then refined the edges slightly to arrive at the neighbourhood envelope (Exhibit #5, p.64). He

included the areas west of Dawes Road because he felt that Dawes Road was not a significant physical barrier and that the inclusion was more indicative of a neighbourhood noting that making the study area too small may not provide enough information and that the inclusion provided enough information for analysis.

He noted his analysis relied on the City data and the resulting tables and mapping that he prepared were based on that data. Mr. De Ruyter began with the review of FSI and mentioned that the existing permission of 0.75x lot area is quite generous and unique to this area and in his review the vast majority of the lots have an FSI that is less than 0.75x. He further mentioned that in the past 10 years, of the 27 properties with variance application approval, through the COA, 17 of those had sought FSI variances ranging from 0.79x and 0.97x and the average was 0.87x. The exception to this was the OMB approved FSI of 1.07x for 4 Midburn Avenue. Turning to Midburn Avenue specifically, Mr. De Ruyter mentioned there was a range of small to large FSI's and that when he averaged both sides of Midburn Avenue the average FSI was 0.38x. He explained the analysis of the data for the surrounding neighbourhood and Midburn Avenue, suggested that an FSI of 1.05x, requested, is not consistent with the neighbourhood FSI.

With respect to the variance for coverage of 54% and 55% for the proposed lots, Mr. De Ruyter noted that given the COA approvals for variances in the neighbourhood, of the 27 properties, 19 sought lot coverage variances ranging from 36% to 51% and the average was 40.2%. Looking at Midburn Avenue the highest lot coverage was 41% and therefore looking at both the larger neighbourhood and the immediate street, the variances sought in the appeal were higher due to the lot being both shallower and narrow.

Mr. De Ruyter then turned to the rear yard setback variance and noted that on the site plan not only was the rear yard setback very low but the rear yard is further impacted by the proposed rear deck, deck steps and basement stairwell. These result in a very small rear yard unlike what he has ever seen before and for these reasons the rear yard setback "is not appropriate in the context of the site and the response in terms of the built form makes it difficult for the rear yard to work" (excerpt from Hearing).

With respect to the front yard setback, Mr. De Ruyter mentioned that while proposed front yard setback, and the recessed portion of the house, allows for a by-law compliant parking pad, the cantilevered elevation is not typically found on the street. Although it allows for the front face of the buildings to be in line with that of the neighbouring lot he suggested that using the Zoning By-laws' averaging provision for front yard setback would have been a better response and be staggered rather than what is proposed. He explained that overall this was an overdevelopment of the lot and that more than the front yard setback, he was most concerned with the rear yard setback because it limited rear yard room and amenity space.

Speaking to the parking proposed, Mr. De Ruyter mentioned that based on his analysis on Midburn Avenue, the front yard parking in the current proposal is preferable



to an integral garage that was indicated in the previous proposal. In terms of what is found on the street, integral garages are not common on the street and the parking pad allows for a much better elevation. The removal of the garage also allowed the height of the dwelling to be reduced from 3 to 2 storeys.

Mr. Ivanov asked if in the analysis of the COA applications in the neighbourhood, any of them involved a variance to permit a parking pad? Mr. De Ruyter mentioned that none of the 27 properties he reviewed had a variance for parking pads but there were 3 on Midburn Avenue that had received parking licenses for parking pads. There were others, as well, on other surrounding streets, but they were not part of his analysis.

Speaking of other consent applications in the neighbourhood, Mr. De Ruyter mentioned that none of the others were shallow lots with the lowest depth being 30.0m and that they were standard depth lots. The severance for 49 Goodwood Court was the only one similar and in the range of the proposal because the lots were 6.16m and 6.25m wide, however, they were 34 to 35 metres in depth. He went on to explain that with respect to lot areas in the neighbourhood, there were other shallow lots present where the lots were 26.0m or less, but that they were typically wider in frontage and that generally, when narrower, the lots were deeper. He noted that on Midburn Avenue there were very few lots that were as shallow as the proposed and that they had a wider lot frontage. He noted that the existing subject property itself was 297m<sup>2</sup> which was not the largest lot on the street.

Mr. De Ruyter concluded with his FSI analysis noting that the requested 1.05x for each of the proposed dwellings exceed the permitted .75x FSI and exceeded the average of .38x FSI on Midburn Avenue. When asked by Mr. Ivanov where the revised proposal would be in the neighbourhood range for GFA, Mr. De Ruyter noted it would be in the higher range for both the neighbourhood and the immediate street. He also noted that recent COA approvals were as high as .89x FSI and that this was preferable but still much less than the 1.05x FSI requested.

Turning to the PPS and the Growth Plan Mr. De Ruyter mentioned that there was nothing inconsistent in the proposal with respect to these policy document and because of their high level they did not have a specific bearing on this application. He noted that section 53(12) of the *Planning Act* with respect to the Consent application criteria outlined section 51(24) were relevant and in particular section 51(24) b), c) and f) noting that:

- the proposed consent is **not** in the public interest;
- the consent does **not** conform with the City of Toronto Official Plan;
- the proposed consent does **not** conform with the adjacent plans of subdivision;
- given the shallow depth of the Subject Property, it was not demonstrated that suitable dwellings could be constructed on the newly created lots that would be compatible with the surrounding neighbourhood and the proposed consent is premature; and,

- the dimensions and shape of the lots are **not** consistent with the lotting fabric in this neighbourhood and, particularly, this street. (Exhibit #5)

With respect to the Official Plan Mr. De Ruyter stated that the cornerstone policy is to ensure that new development respects the physical character of the area and that it reinforces the stability of the neighbourhood. In his opinion, the proposal did not respect the physical character of the area because the dwellings proposed are too large for the lots, are overly long creating very small rear yards and the recessed portion on the front elevations is not found anywhere else on the street. Speaking to policies 4.1.5 b), c), e) and f) of the Official Plan, he reiterated that the lots are not similar in size and in particular on Midburn Avenue and even with the uniqueness of the north side of the street the proposed lots are very shallow and their lot frontage and lot area cannot be compared to anything of the street and will be the smallest lots on it.

With respect to height, massing and scale he explained that the 1.05x FSI is not consistent with what is in the area, in recent COA approvals and the immediate street. In considering the prevailing pattern of sideyards and rear yards, Mr. De Ruyter was not concerned with the proposed sideyard setbacks but was very concerned with the rear yard setback. Within that setback there was also a deck, stairs, and a basement stairwell that together, created an unusually small rear yard for the proposed dwellings and was not appropriate. He noted the front yard setback that was appropriate with the 10 Midburn Avenue setback but not 6 Midburn Avenue and that the best tool to use for front yard setback was the averaging provision of the Zoning By-law. He concluded that for these reasons the proposal was not consistent with the general intent and purpose of the Official Plan.

Turning to the Zoning By-Law standards, Mr. De Ruyter referenced policy 4.1.8 of the Official Plan which indicated the purpose of the Zoning By-law was to ensure compatibility, which doesn't mean same as or similar to, but has to be able to co-exist in harmony. The proposed dwellings are a built form that doesn't exist on the street and that the building length and lot coverage will destabilize the street.

He explained that in his analysis every zoning measure has been exceeded by the proposal and that suggests overdevelopment of the lot, therefore, the general intent and purpose of the Zoning By-laws is not being maintained.

With respect to whether the proposal is desirable for the appropriate development or use of the land, he reiterated that it was not because the building depth of 16.0m is too large for the shallow depth of the property but that it creates a constrained rear and front yard and is an overdevelopment of the property. With respect to the requested variance being minor he explained that this refers to adverse impacts of a planning nature including shadowing, privacy, overlook, and noise and how they are addressed. He found that the proposed development does not create any adverse impacts except for the rear yard which although it may not impact the neighbouring properties it will affect the future home owners of the proposed dwellings.

**Decision of Toronto Local Appeal Body Panel Member: J. TASSIOPOULOS**  
**TLAB Case File Number: 18 239516 S53 31 TLAB,**  
**18 239517 S45 31 TLAB,**  
**18 239518 S45 31 TLAB**

Mr. De Ruyter concluded by providing a summary of his evidence noting that the consent did not comply with the provisions outlined in section 51(24) of the *Planning Act*, the Official Plan, and the Zoning By-Laws as it creates lots that are inconsistent with the neighbourhood. The lot fabric would not respect and reinforce the character of the neighbourhood. He opined that it was not consistent with other approvals that have been granted in the past, doesn't represent good planning, is not in the public interest and TLAB should not grant provisional consent.

In terms of the variances sought, he stated they do not meet the four tests of the *Planning Act*, the scale of the variances are significant, and it will create buildings incompatible with the neighbourhood. The variances sought "do not fall within the range, numerically or characteristically of what has been approved in the neighbourhood or what exists in the neighbourhood" (Hearing excerpt).

Mr. Ivanov asked, if the variance for a parking pad is granted, was the condition for permeable pavers by Mr. Benczkowski appropriate and Mr. De Ruyter said it was an appropriate recommendation.

Ms. Stewart began her cross-examination by asking Mr. De Ruyter if he agreed that the policy objectives of both the PPS and the Growth Plan have to be implemented through the Official Plan and that intensification is encouraged on a different scale other than just intensification in growth areas. Mr. De Ruyter agreed that although Neighbourhoods in the Official Plan are not targeted for intensification they are expected to change over time and intensification is therefore permitted. She further asked if the proposal provides for the provincial policy objective of additional housing supply, that regeneration in the neighbourhood has occurred at a slower pace and that it was a desirable objective in this neighbourhood to provide additional housing supply where it can be accommodated. He concurred, noting it was a desirable objective in all neighbourhoods.

Ms. Stewart then asked with respect to section 51(24) of the *Planning Act*:

*(c) whether the plan conforms to the official plan and adjacent plans of subdivision, if any;*

whether this asks that the Plan consider where the property is located and to adjacent lands of subdivision? He agreed but explained that he looked at Midburn Avenue and the surrounding area but not any plans of subdivision outside of his study area. Looking at the Midburn Avenue lots she asked if the pocket of the lots on the north side of the street was atypical and he agreed that it was unique as per his evidence.

Ms. Stewart then asked if the townhouse block to the north could be considered an adjacent plan of subdivision and he explained he wasn't sure if they were a result of a plan of subdivision. Ms. Stewart noted that the townhouses were individually defined lots and asked if this would only be possible through a plan of subdivision or consent? He agreed. She further asked if he looked at the lot pattern on City maps and Mr. De

Ruyter responded that he had not and that he did not look into the history of the townhouses to the north of the subject property. Ms. Stewart directed Mr. De Ruyter to *map.toronto.ca* to show the lot configurations of the properties north of the subject site (Exhibit #6), noting that each one of the townhouse lots have a key lot pattern that provides an address onto Dawes Road. She asked if he concurred that the lot lines on the mapping would have been done through plan of subdivision? He explained that he had not reviewed these lots but concurred that the inclusion on the City mapping would suggest it was done through a plan of subdivision or consent. She then asked if he acknowledged that it “is a pocket of infill development that has atypical and unique block configurations that’s an adjacent plan” (Hearing excerpt). Mr. De Ruyter agreed but explained that he was relating the proposal to the primarily low density dwellings in the surrounding neighbourhood and that the townhouses unit, for that reason, were not part of this assessment.

Turning to the Official Plan, Ms. Stewart asked with respect to his excluding of the townhouses in his assessment whether a neighbourhood can have a variety of uses and differences and if the townhouses are a permitted in the *Neighbourhoods* designation. Mr. De Ruyter agreed they were permitted and that they were part of the neighbourhood, but he did not include them in his property data in the assessment of lot characteristics because a townhouse is very different from a single detached lot in evaluating the proposal. She then asked with respect to the built form policies of 3.1.2, if his concern with the ‘modern’ design was with respect to introducing them amongst the traditional style houses? He was not, but stated in this instance it was not appropriate and was different with what was found on Midburn Avenue. Directing him to the side bar on *Exterior Design – Character, Scale and Appearance*, she asked if he agreed that it suggested a contemporary design could fit as long as form, size, scale and materials were addressed? He agreed.

Looking at 4 Midburn Avenue, she asked if that wasn’t a design that was also unlike what was found in the rest of the neighbourhood but that ‘fits’ and exists in the neighbourhood? Mr. De Ruyter agreed. Referring to a TLAB decision for 46 Banff Road by Member Yao (a decision which was under review at the time of this Hearing), Ms. Stewart referred to a dwelling at 57 Banff Road (Exhibit # 8) as an example of a recessed portion similar to the proposal parking pad. Mr. De Ruyter disagreed and noted that it was a carport and that there was no habitable space cantilevered over it.

She asked if he agreed that there was no uniformity of architectural style or built form on Midburn Avenue? Mr. De Ruyter agreed. She proceeded to describe the adjacent properties along Midburn Avenue, noting the variety of architectural styles and features as well as housing types and asked if the Official Plan requires that consideration be given to the specific site context where the policies are applied, and he agreed that there is no prevailing character on Midburn Avenue or ‘sameness’, however, one still needs to consider compatibility. She continued if that meant that there is room to introduce unique architectural design? Mr. De Ruyter responded that he would not suggest that but given the lack of ‘sameness’, there could be something different.

Looking at chapter 3 of the Official Plan again she asked if the policy to ‘fit harmoniously’ was akin to ‘compatibility’ and ‘co-existing in harmony’ is assessed by determining planning impacts and how they are addressed; that there is room for new development to cause some impacts as long they are not adverse? Mr. De Ruyter agreed. She went on to ask if the policies ask for “adequate light and privacy” and Mr. De Ruyter responded that there will always be impacts of shadowing but what needs to be considered is whether it is adverse and if that impact has been mitigated.

Referring to chapter 4 of the Official Plan and the development criteria outlined, she suggested that in addition to policy 4.1.5, the policies that follow through to 4.1.10 should also be considered? Mr. De Ruyter agreed noting that not all of the policies were applicable to the proposal. In particular she asked if policy 4.1.8 indicates “that the intent of zoning by-laws and their performance standards is to ensure new development is compatible with the physical character of established neighbourhoods..” and “...if something is permitted as of right in the Zoning By-law then it is by definition supposed to be compatible” (Hearing excerpt). Mr. De Ruyter agreed to a point but noted that “zoning standards are intended to create compatibility, but it doesn’t mean all zoning standards inherently are compatible.” He further explained that the test is to look at the general intent and purpose and not just specific regulations. Mr. De Ruyter disagreed with the suggestion that since the proposed lot frontage meets the Zoning By-law requirement and is permitted, it is therefore also in conformity with the Official Plan. He noted that the criteria in 51(24) of the *Planning Act* must also be considered when assessing the proposal. More that just the lot frontage has to be reviewed and that the overall lot configuration must be considered. He went on to explain that although the proposed 6.0m frontage is permitted for the neighbourhood area, it doesn’t mean that it is appropriate for the lots on Midburn Avenue.

Ms. Stewart then began a review of the lot data in Mr. De Ruyter’s witness statement and asked of the 27 lots on Midburn Avenue how many different frontages were present? He explained that he had not counted them but that the most frequent frontage was 12.19m on eight lots while all the others varied. When it was pointed out there were other lots with similar frontages to the proposal (e.g. 1, 7, and 9 Midburn Avenue), Mr. De Ruyter pointed out that they were also deeper lots than the proposal. When asked if one could perceive depth from the street, he answered that not typically when dwellings take up the majority of the lot frontages. Ms. Stewart went through the frontages on Midburn Avenue and confirmed with Mr. De Ruyter that 4 lots were indistinguishable, and 1 lot was similar in frontage to the proposal. However, he reiterated that all of those lots were deeper and that the shallow lots had wider frontages. Ms. Stewart then pointed out that in his witness statement the shallow lot depth property data (Exhibit #5) there were examples on Rosevear Avenue of lots that were both narrower in frontage and shallower in depth. Asking whether lot depth and area generate the size of a house, Mr. De Ruyter agreed but maintained that a shallow lot depth with the size of dwelling proposed results in multiple “pinch points” requiring variances.

Looking at the Google Maps street view of 12 to 18 Rosevear Avenue (Exhibit #7), Ms. Stewart asked if what was being proposed for 8 Midburn Avenue was similar to these dwellings? Mr. De Ruyter noted that broadly, they would be similar but that their FSI is .8x as opposed to the 1.05x of the proposed lots. Ms. Stewart then asked if the 34 shallow lots identified in Mr. De Ruyter's data and mapping were all shallower in depth? He mentioned that they were all 26.0m or less but that most of them were shallower. She asked if the 7 lots that were identified with shallow depth and 6.1m or less in frontage is not represented in the neighbourhood? He responded that although they are found in the overall neighbourhood, they were not found on Midburn Avenue.

Ms. Stewart proceeded to policy 4.1.5 of the Official Plan asking Mr. De Ruyter if the 'respect and reinforce' in this policy does not mean 'replicate', that there is no hierarchy of importance in the criteria and that the character of a neighbourhood is made up of all the elements referred to and not any single element? He agreed. Referring to the Official Plan prior to OPA 320, policy 4.1.5 b), she mentioned that the word 'prevailing' is not found and there is no requirement or direction to complete a mathematical analysis to determine the percentage of lot sizes, and that this version of the Official Plan did not include any reference to density or FSI? He again agreed.

She then asked that even with the addition of the word 'prevailing' in OPA 320, a planning analysis could not just be reduced to a mathematical exercise and that a qualitative assessment would need to be done with respect to neighbourhood character? He agreed.

With respect to the prevailing physical character in a neighbourhood, Ms. Stewart confirmed with Mr. De Ruyter that there were a mix of physical characters in the neighbourhood referring to policy 4.1.5 that states:

*"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."*

She confirmed with Mr. De Ruyter if this meant that one must look at "whether there is a significant presence of that characteristic in the neighbourhood as a whole and in the immediate context" and that it doesn't need to be prevailing but can be less than prevailing? He agreed. She then asked him if a proposed development is materially consistent with the physical character then it does not mean consistent or the same, but allows it to be different and still fit? He agreed.

Ms. Stewart then turned to the concern with lot area coverage and asked whether a four bedroom house is typical for a new house? Mr. De Ruyter said they were not on

lots of this size and would require a larger or deeper lot. When asked if coverage could be reduced by introducing a third floor, Mr. De Ruyter mentioned that it would take care of coverage but may create massing issues and how it would be perceived from the street. He explained that if the coverage had been reduced it could resolve the issues of FSI, and front and rear yard setbacks.

With respect to the length of the proposed building Mr. De Ruyter was asked if the 16.0m length was less than what the Zoning By-law would allow? He indicated that on the shallow depth lot it was a problem, but it would not be on a conventional lot depth.

For the front yard setback Ms. Stewart noted that the proposed dwellings were in line with the front wall of 10 Midburn Avenue and the large covered porch for 6 Midburn Avenue. Asked whether the massing of the porch on 6 Midburn Avenue would be perceived from the street, Mr. De Ruyter answered that the massing would be perceived but that the front yard setback averaging provision was a preferable tool to determine the setback rather than perception because it addressed the context. Ms. Stewart asked if the purpose of the averaging was to create some form of pattern along the street frontage and Mr. De Ruyter agreed. She then pointed out that if one was to consider the front yard setbacks and pattern on the north side of Midburn Avenue the 6.04m setback to the main front wall of 6 Midburn Avenue, would be an outlier. Mr. De Ruyter agreed but noted it was an existing condition and that assessing the setback is not appropriate and a planning approach would be to average the front yard setback of the adjacent lots, which he explained is approximately 5.1m.

In pointing to an image of 6 Midburn Avenue, from Mr. De Ruyter's photo study (Exhibit #5), Ms. Stewart suggested that the porch was almost the entire width of dwelling. Its porch brick pillars and that the roof above which was designed and continued into the main roof, gave the impression of building massing closer to the street than the 6.04m setback to the main front wall, would suggest. She asked if it would not be perceived as having a smaller setback of approximately 4.0m because of the covered porch massing? Mr. De Ruyter responded that, conversely, if the proposed dwellings are considered where should their setback be measured to? He stated that the setback for 6 Midburn Avenue was to the main wall. Ms. Stewart suggested that in driving by, it would be perceived as a shorter front yard setback.

The rear yard setback was then reviewed, and Ms. Stewart asked if the impact of the smaller rear yard was internal to the site; namely, the condition would be subject to the market where if someone does not like the condition then they wouldn't buy it; Mr. De Ruyter agreed. She asked if a 4.0m rear yard was not typical for dwellings such as townhouses and he responded that it wasn't just the rear yard setback but the encroachment of the deck, access to the basement and stairs projecting into the rear yard. Ms. Stewart pointed to 4 Midburn Avenue rear yard setbacks and asked if the reduced setbacks were characteristic of the Midburn block and Mr. De Ruyter clarified that it was, for the shallow depth lots on 2A to 4 Midburn Avenue. Ms. Stewart then mentioned that with respect to the rear yard setback the Applicant suggested that the

basement access stairs be removed, that the deck width be reduced by 1.0m and that the deck stairs come from the side of the deck, in order to address the concern with useable amenity space; Mr. De Ruyter noted that these changes were an improvement.

Ms. Stewart asked if front yard parking is part of the character of the neighbourhood and if the proposed front yard parking pad is appropriate for this neighbourhood? He agreed.

When asked about the use of averages in his analysis and that averaging may not be the best way to assess lot coverage and FSI, Mr. De Ruyter explained that he considered more than the average. In addition to the average 40.2% lot coverage he considered lot coverage in the immediate area that the lots on the neighbouring properties (6 and 10 Midburn Avenue) which had some of the highest lot coverages 41% and 39%, which were considered as they were similar; that is why he suggested 40% would be a more appropriate lot coverage. With respect to FSI he looked at the average of .87x, the range (between .79x and .97x), and other nearby development. That is why he felt that , .89x was an appropriate density. He agreed that the averages do not tell the “whole story” and that a qualitative analysis would also need to be made.

At the conclusion of the cross-examination, the Chair asked Mr. De Ruyter if there was a concern regarding overlook, from the proposed dwellings, to the townhouses to the north because of the change in grade. He indicated that there wouldn't be undue impact with regard to overlook because the proposed dwelling decks were low and that most likely a privacy fence would be provided at the rear of the lots that would further address overlook.

Mr. Ivanov did not have any follow-up questions for Mr. De Ruyter.

As per the first day of the Hearing, none of the Participants listed appeared before the TLAB to speak to the consent and variances sought in this matter.

## **ANALYSIS, FINDINGS, REASONS**

### **A. CONSENT**

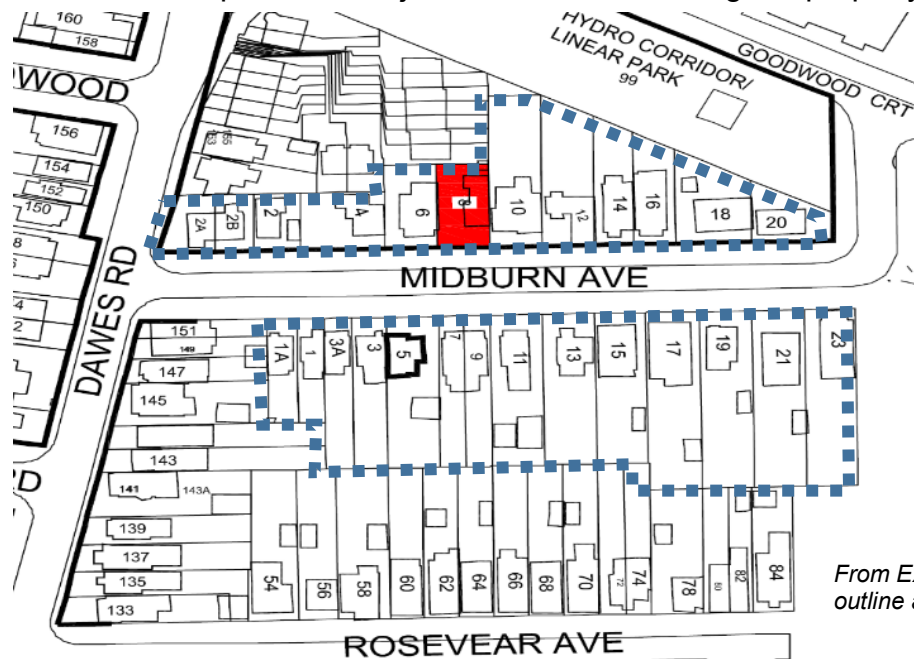
Before considering the requested variances for the proposed dwellings lots I must first turn my attention to the requested consent to sever the lot of the subject property. In considering the consent criteria as outlined in section 51(24) of the *Planning Act* I find that the proposed severance meets these criteria and responds to the existing lot condition. Furthermore, the frontages proposed for Parts 1 and 2, 6.12m and 6.1m respectively are greater than the minimum required by the Zoning By-law (6.0m). Having visited the street and the neighbourhood I noted several lots with similar frontages and this was indicated in the evidence from both Mr. Benczkowski and Mr. De Ruyter in their study area analyses.



I prefer the more thorough analysis and greater radius of Mr. De Ruyter's study area as I deemed it to have a greater range of information and was appropriately measured to take in an approximately 5-minute neighbourhood walk. From the study area and data analysis I was able to gather additional insight as to whether similar lots were present in the neighbourhood and in proximity to the subject property.

In Mr. De Ruyter's evidence and in cross-examination he confirmed that there were 34 shallow lots identified and that they similar lot depths of 26.0m or less with 7 of the lots with 6.1m frontages or less. Although these were not occurring on Midburn Avenue, they did occur in the neighbourhood and they were an indication or illustration that a functional residential dwelling could indeed be realized on the resulting lots from the severing of the subject property. There were even lots indicated on Rosevear Avenue, that were both narrower in frontage and shallower in depth with front yard parking. Furthermore, in reviewing the Shallow-Depth Lots mapping (Exhibit #5) I noted that generally the majority of these lots were found in groupings of five or more lots on (i.e., Rosevear Avenue, Avonlea Boulevard and Dentonia Park Avenue) which could be considered with the grouping of shallow lots on the north side of Midburn Avenue. These groupings are dispersed in the neighbourhood and suggest that shallow lots are not uncommon but are typically found in groupings of lots. In addition, given the uniqueness of Midburn Avenue and the existing condition of the lot, that the Appellant needs to address, I find that the consent sought is appropriate and that the resulting lots are present in the neighbourhood.

Although I agree with Mr. De Ruyter that the dimensions of the proposed lots resulting from the severance are found in the greater neighbourhood and not Midburn Avenue, I was hard pressed to find other streets in the neighbourhood that include the range and variety of lot shapes, configurations, widths and depths and abutted townhouse complexes on adjacent lots. In reviewing the property characteristics on



From Exhibit #5 - blue dashed outline added for emphasis

Midburn Avenue, in Mr. De Ruyter's witness statement, table in paragraph 10.2 (Exhibit #5), what is evident is the wide range of lot areas and configuration ranging from a lot area as low as 153.60 m<sup>2</sup> to 647.53 m<sup>2</sup> that there is no prevailing lot pattern. This is further demonstrated by the excerpt above that I have outlined in a blue dashed line.

There was an assertion being made by Mr. De Ruyter that because the resulting lots would be both shallow in depth and narrow that could not appropriately accommodate a residential dwelling because it either needed to be a conventional depth of 30m or the resulting lot needed to have a wider frontage. Existing examples of similar lots in the neighbourhood illustrate that a functional dwelling can be built on lots 6.1m in width or less and 26.0m in depth or less. Furthermore, the appropriateness of the proposed dwelling's deployment of built form and massing on the resultant lots must be specifically considered. Ultimately, the built form response to these severed lots and the resulting lot variances sought, and not just the specific metric of lot area must be assessed to determine appropriateness.

Given these reasons and having considered the evidence and the consent criteria in section 51 (24) of the *Planning Act*, I find that that the proposed severance is suitable for the purpose of constructing residential dwellings and that the dimensions of the proposed lots could accommodate residential dwellings if the appropriate setbacks and built form policies applied to the resulting lots with areas of 149.1m<sup>2</sup> (Part 1) and 149.2m<sup>2</sup> (Part 2) and 6.12m and 6.11m frontages, respectively.

## **B. VARIANCES**

Turning to the proposed residential dwellings for the resulting Parts 1 and 2, I find that the proposed built form and the variances, cumulatively, suggest an overdevelopment of the resulting modestly sized lots. During the Hearing Mr. De Ruyter gave evidence on how the proposed variances individually and cumulatively were an overdevelopment of the resulting lots. Mr. Benczkowski indicated that the resulting dwelling and variances were due to the existing condition of a shallow lot. What was missing in both instances was opinion evidence on what would constitute an appropriate fit for dwelling size and form on these particular lots. This would be an evaluation made within this particular context of the existing lot and not just a reliance on figures, data, and averages or selectively picking Zoning By-law requirements where a variance is not being sought.

The suggestion made during the Hearing that the proposed buildings are only 16.0m in length whereas the Zoning By-law permits 17.0m, is irrelevant. The appeal is dealing with a shallow lot depth and that building length is generally applied to conventional depth lots of 30.0m. We are either dealing with a unique location, context and lot size or we are not. If it is indeed unique and atypical as was ascribed to by both expert witnesses then we must consider the application of responses that are unique and specific to these lots. Ms. Stewart put it succinctly during the Hearing, stating "when we are evaluating particular aspects of the variances it is most relevant to look at how the

**Decision of Toronto Local Appeal Body Panel Member: J. TASSIOPOULOS**  
**TLAB Case File Number: 18 239516 S53 31 TLAB,**  
**18 239517 S45 31 TLAB,**  
**18 239518 S45 31 TLAB**

built form has been deployed and how that has been accommodated on lots that are shallower in depth” (excerpt from Hearing).

Before I consider each of the variances sought it is important to (albeit approximately) illustrate an elevation comparison of what was proposed in the original appeal and what was proposed in the revised plans circulated on August 12, 2019, and this is indicated in the following:



*Part 2 Front Elevation – Previous  
Height 8.5m to the top of roof.*

*Part 2 Front Elevation – August 12, 2019  
Height 7.15m to top of flat roof.*

It is important to illustrate how different the elevations are from each other. Their overall architectural and physical character are distinct from each other and the revised elevation provides a more sensitive massing towards the street; the elimination of the integral garage results in a better streetscape elevation.

During her closing argument, Ms. Stewart indicated that if the variances required further adjustment based on my assessment of the proposed dwelling, that it would be preferred if possible that those variances be adjusted rather than refused. In my consideration of the variances sought and this indication, there are adjustments to the rear yard setback variance that consequently also adjust the lot coverage and FSI. I have indicated an approximation for lot coverage and FSI based on the drawings

submitted (Exhibit #1) and they identified in the variances listed in **Schedule 'B'**. With respect to the variances sought, my findings are as follows:

### **1. Front Yard Setback**

The proposed front yard setback is 4.22m for both lots where 5.1m is required. Having reviewed the analysis provided by Mr. Benczkowski in his Prevailing Front + Rear Yard Setbacks (Exhibit #3), I find that the general existing setbacks on the north side of Midburn Avenue are similar or closer than what is being proposed the exception of 6 Midburn Avenue which is technically setback 6.04m. Having visited the site I found that the covered porch on 6 Midburn had a distinct massing and appears closer to the street and I agree with Mr. Benczkowski that what will be perceived along the street is the porch face and roof and not the main front wall behind it. Mr. De Ruyter mentioned that averaging the setback between the two neighbouring lots would be a better approach and I would tend to agree in other instances but in this particular instance the suggestion of using a 5.1m setback will actually place the proposed dwellings further behind the porch frontage and will not create a transitional stepping of the facades that such setback averaging is supposed to provide. For these reasons I find that the front yard variance should be allowed.

### **2. Lot Area**

The lot area for Parts 1 and 2 are 149.1m<sup>2</sup> and 149.2m<sup>2</sup> respectively, whereas 185m<sup>2</sup> is required. As noted in the review of the consent, I find that the resulting lots are appropriate for the provision of residential dwellings. The resulting lot area of the severed lots is a condition of the shallow lots that although found in other parts of the neighbourhood are also present along the north side of Midburn Avenue. There are examples of similarly sized lots and lesser in the neighbourhood that can accommodate a residential dwelling. For these reasons and those discussed under the consent, the reduced lot area should be allowed.

### **3. Rear Yard Setback**

The proposed rear yard setback is 4.2m for both lots. Having reviewed the site plan it is this variance that is of most concern. Mr. Benczkowski mentioned that the reduced rear yard setback was a result of the shallow lot condition. I disagree with this assessment as the reason for the reduced setback is a result of the building length. There was no other explanation or rationale given for the proposed setback other than it was greater than the existing building condition and that dwellings further west (2, 2B, 4, and 4A Midburn Avenue) had a lower setback. The OMB approval of 4 Midburn Avenue cannot be ignored with respect to the rear yard setback because although it is a shallower lot than those proposed it is indeed wider. The lot shape and the relationship to the neighbouring properties is different from the proposed in terms of its immediate context. From the review of aerials and mapping presented during the Hearing, I was able to determine that although the rear yard setback 4 Midburn Avenue was shorter than the proposal, the relationship to the building to the north and the rear elevation to rear elevation, or separation distance, appeared greater than the proposed dwellings for 8 Midburn Avenue. The context with the adjacent property to the north is different for the proposed dwellings as the separation distance is closer and building orientation is

different. I prefer Mr. De Ruyter's evidence with respect to the rear yard and agree that the combination of a reduced rear yard setback with a deck and stairs encroaching into the rear yard along with the basement access stairwell, effectively reduces the useable amenity space. Furthermore, the use of the averaging provision for the rear yard setback could have been used to determine setback or at the very least aligning the setback with the neighbouring lot on 6 Midburn Avenue. The suggestion that the current setback is now greater than the existing condition is not a valid comparison as the setback is to a single-storey building that only takes up half, or east side, of the lot. The proposed dwellings will be two storeys in height and cover the majority of the lot widths. Mr. De Ruyter mentioned that although he did not feel there was impact to neighbouring properties, he did say it would impact future home owners. Although Ms. Stewart suggested this would be an internal impact and that the market would decide if this condition was acceptable, I disagree and feel that it would not meet the test of being desirable for the appropriate development or use of the land. Understanding that Ms. Stewart mentioned that her client was willing to remove the basement access stairs, reduce the deck width by 1.0m and relocate the deck stairs to the side of the deck a further adjustment to the rear yard setback should also be provided. Having reviewed the evidence and the context of the proposed dwellings in relation to the immediately adjacent buildings and townhouse complex to the north, it is required that the rear yard setback be increased to 5.49m. This will bring it in line with the rear elevation of 6 Midburn Avenue, provide more useable amenity space and could ensure that future development on similar shallow lots, if any, consider context and adjacent properties for determination of rear yard setbacks. The rear yard setback variance to 5.49m will be approved for both Parts 1 and Part 2

#### **4. Lot Coverage**

The proposed lot coverage for both Parts 1 and 2 is 54% whereas the maximum coverage permitted is 35%. In his evidence, Mr. Benczkowski said the intent of lot coverage is to ensure building coverage allows for adequate space on the lot for outdoor uses. The small rear yard that is further encumbered by the proposed deck impacts outdoor uses. Mr. De Ruyter suggested that an appropriate lot coverage would be 40% based on his analysis of COA approvals, the average coverage in the neighbourhood and the adjacent properties. Based on the shallow nature of the proposed subject properties, in this instance, trying to apply averages or even what occurs most frequently will be skewed due to this variety and range lots sizes and buildings types, especially on Midburn Avenue. This should not be relied upon to determine appropriateness. Looking at the lots themselves within their context, I find the proposed front yard and side yard setbacks to be appropriate in this instance and are minor in nature. Given the required increase of the rear yard setback to 5.49m, stated above, the lot coverage area would be reduced from 81.31m<sup>2</sup> to 74.8m<sup>2</sup> resulting in a lot coverage of 50%. The lot coverage variance of 50% will be approved for both Parts 1 and Part 2.

#### **5. Floor Space Index**

The proposed FSI for both Parts 1 and 2 is 1.05x whereas 0.75x is permitted. The FSI has been reduced significantly from the original proposal but I find in favour of Mr. De

Ruyter's evidence, based on his analysis of FSI for the neighbourhood that the proposed FSI was still too high and indicated an overdevelopment of the lots. He provided COA approvals that ranged from 0.79x to 0.97x FSI and noted that the exception was 4 Midburn Avenue's 1.07x FSI approved by the OMB. Noting that Midburn Avenue had an average FSI of 0.38x he supported an FSI that reflected the COA range and suggested 0.9x FSI would be more appropriate. As already mentioned, because of the range of lot sizes, frontages and depths on Midburn Avenue, the averages are easily skewed. Looking at the range of FSI approved by the COA provides a more pertinent analysis and reflects the variances sought by new development. Given the increased recommended rear setback of 5.49m and based on the 5.05m width of the proposed dwellings it will result in a reduction of 6.51m<sup>2</sup> of lot coverage and over two storeys would result in a 13.02m<sup>2</sup> reduction in floor space. The FSI would be reduced from 1.05x (157.12m<sup>2</sup>) to 0.97x (144.1m<sup>2</sup>). The FSI of 0.97x will be approved for both Parts 1 and Part 2.

#### **6. Side Yard Setback**

The proposed interior side yard setback is 0.45m for both Parts 1 and 2 whereas 0.6m is required. Neither of the expert witnesses expressed a concern with this minor reduction between the proposed dwellings and both noted was a condition found in the neighbourhood. It should be noted that the required external side yard setback of 0.6m has been provided where adjacent to the neighbouring buildings. Mr. Benczkowski during his evidence noted that the combined interior sideyard would amount to 0.90m and that it would be sufficient to allow for access and maintenance. To ensure access, a condition that prohibits any mechanical units, utilities, or structures from being placed between the lots that may impede access between the new buildings. With this condition and for these reasons, the sideyard setback of 0.45m is approved.

#### **7. Front Yard Soft Landscaping & Parking Space**

The variance for the front yard landscaping is triggered by the introduction of the parking pad which unlike the previous proposal that included a driveway and integral garage is not excluded from the front yard soft landscaping calculation. During the Hearing it was proposed by Mr. Benczkowski that a condition be included requiring permeable pavers for the parking pad and walkway, as an appropriate response to address the variance. With respect to the parking space in the front yard there was evidence given by both expert witnesses and neither expressed a concern as it was a common condition in the neighbourhood and on Midburn Avenue, in particular. Mr. De Ruyter noted that the proposal to recess part of the building to accommodate the space was not typical for the neighbourhood but agreed that the proposed parking pad was preferable to the previous proposal for an integral garage. Although concern was expressed by Mr. Ivanov regarding the requirements of Chapter 918 of the Toronto Municipal Code with respect to a license being required to permit front yard parking the explanation, that this would only be required if the variance was not granted was clarified during the Hearing. Given that both expert witnesses found the parking pad was an improvement over the original proposal and that front yard parking is a common condition, which I also noticed during my site visit and given that there is no impact on street parking as it is not permitted, I find that the front yard parking pad is appropriate

along with the condition that it be constructed of permeable pavers. For these reasons the reduced front yard soft landscaping and parking space in the front yard shall be allowed.

For these reasons the TLAB is satisfied that the proposed severance meets the criteria found in subsection 51(24) of the Act and that pursuant to subsection 53(1) of the same Act, a plan of subdivision is not necessary for the proposed land division. The TLAB is also satisfied that the variances, with the revisions and conditions suggested, meet the statutory tests found in subsection 45(1) of the Act in that they maintain the general intent of the Official Plan and the Zoning By-law, they are desirable for the appropriate development of the land, and that they are minor.

## **DECISION AND ORDER**

The appeal of the Committee of Adjustment decision dated September 20, 2018, is allowed, in part. The consent is allowed, and shall be in accordance with the survey submitted, **Attachment 1**, subject to the standard consent conditions as outlined in the attached **Schedule 'A'**.

The variances for both Part 1 and Part 2 are approved, in part, and are outlined in the revised variances and conditions in **Schedule 'B'**.

Given the revisions to the variances, there are no approved plans attached to this decision and order.

If difficulties arise in the implementation of this decision and order, the TLAB may be spoken to on Notice to the Parties.

X



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John Tassiopoulos  
Panel Chair, Toronto Local Appeal Body  
Signed by: John Tassiopoulos

**Schedule 'A': Standard Consent Conditions**

- (1) Confirmation of payment of outstanding taxes to the satisfaction of Revenue Services Division, Finance Department.
- (2) Municipal numbers for the subject lots indicated on the applicable Registered Plan of Survey shall be assigned to the satisfaction of Survey and Mapping Services, Technical Services.
- (3) Prior to the issuance of a building permit, the applicant shall satisfy all conditions concerning City owned trees, to the satisfaction of the Director, Parks, Forestry & Recreation, Urban Forestry Services.
- (4) Where no street trees exist, the owner shall provide payment in an amount to cover the cost of planting a street tree abutting each new lot created, to the satisfaction of the General Manager, Parks, Forestry and Recreation.
- (5) Two copies of the registered reference plan of survey integrated with the Ontario Coordinate System and listing the Parts and their respective areas, shall be filed with City Surveyor, Survey & Mapping, and Technical Services.
- (6) Three copies of the registered reference plan of survey satisfying the requirements of the City Surveyor, shall be filed with the Committee of Adjustment.
- (7) Within ONE YEAR of the date of the giving of this notice of decision, the applicant shall comply with the above-noted conditions and prepare for electronic submission to the Deputy Secretary-Treasurer, the Certificate of Official, Form 2 or 4, O. Reg. 197/96, referencing either subsection 50(3) or (5) or subsection 53(42) of the Planning Act, as it pertains to the conveyed land and/or consent transaction.



## Schedule 'B': Variances and Conditions

### 8 Midburn Avenue – Part 1

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

**1. Chapter 10.5.40.70(1)(B), By-law 569-2013**

The minimum required front yard setback is 5.1 m.  
The front yard setback will be 4.22 m.

**2. Chapter 10.20.30.10.(1)(A), By-law 569-2013**

The minimum required lot area is 185.0 m<sup>2</sup>.  
The lot area will be 149.1 m<sup>2</sup>

**3. Chapter 10.20.30.40.(1)(A), By-law 569-2013**

The maximum permitted lot coverage is 35% of the lot area (52.22 m<sup>2</sup>).  
The lot coverage will be **50%** of the lot area (**74.8 m<sup>2</sup>**).

**4. Chapter 10.20.40.40.(1)(A), By-law 569-2013**

The maximum permitted floor space index is 0.75 times the area of the lot (111.9 m<sup>2</sup>).  
The floor space index will be **0.97** times the area of the lot (**144.1 m<sup>2</sup>**).

**5. Chapter 10.20.40.70.(2)(A), By-law 569-2013**

The minimum required rear yard setback is 7.5 m.  
The rear yard setback will be **5.49 m**.

**6. Chapter 10.20.40.70.(3)(A), By-law 569-2013**

The minimum required side yard setback is 0.6 m.  
The east side yard setback is 0.45 m.

**7. Chapter 10.5.50.10.(1), By-law 569-2013**

On a lot with a detached house, a minimum of 75 percent of the front yard must be soft landscaping (22.43m<sup>2</sup>).  
The proposed front yard soft landscaping area is 34% (10.2 m<sup>2</sup>).

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

A parking space may not be located in a front yard.

The proposed parking spot is located in the front yard.

#### REQUIRED CONDITIONS:

- a. The parking pad and walkway shall be constructed of permeable unit pavers.
- b. The rear yard deck be reduced by 1.0m in width and the deck stairs be located to the side of the deck.

- c. The basement access stairwell be removed from the plans.
- d. The placing of mechanical units, utilities, or other structures in the interior side yard, is prohibited.
- e. The Applicant provide a copy of this Decision to City Transportation Services for their records regarding front yard parking.

## **8 MIDBURN AVENUE – PART 2**

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

#### **1. Chapter 10.5.40.70(1)(B), By-law 569-2013**

The minimum required front yard setback is 5.1 m.  
The front yard setback will be 4.22 m.

#### **2. Chapter 10.20.30.10.(1)(A), By-law 569-2013**

The minimum required lot area is 185.0 m<sup>2</sup>.  
The lot area will be 149.2 m<sup>2</sup>

#### **3. Chapter 10.20.30.40.(1)(A), By-law 569-2013**

The maximum permitted lot coverage is 35% of the lot area (52.22 m<sup>2</sup>).  
The lot coverage will be **50%** of the lot area (**74.8 m<sup>2</sup>**).

#### **4. Chapter 10.20.40.40.(1)(A), By-law 569-2013**

The maximum permitted floor space index is 0.75 times the area of the lot (111.9 m<sup>2</sup>).  
The floor space index will be **0.97** times the area of the lot (**144.1 m<sup>2</sup>**).

#### **5. Chapter 10.20.40.70.(2)(A), By-law 569-2013**

The minimum required rear yard setback is 7.5 m.  
The rear yard setback will be **5.49 m**.

#### **6. Chapter 10.20.40.70.(3)(A), By-law 569-2013**

The minimum required side yard setback is 0.6 m.  
The west side yard setback is 0.45 m.

#### **7. Chapter 10.5.50.10.(1), By-law 569-2013**

On a lot with a detached house, a minimum of 75 percent of the front yard must be soft landscaping (22.43m<sup>2</sup>).  
The proposed front yard soft landscaping area is 34% (10.2 m<sup>2</sup>).

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

A parking space may not be located in a front yard.  
The proposed parking spot is located in the front yard.

**REQUIRED CONDITIONS:**

- a. The parking pad and walkway shall be constructed of permeable unit pavers.
- b. The rear yard deck be reduced by 1.0m in width and the deck stairs be located to the side of the deck.
- c. The basement access stairwell be removed from the plans.
- d. The placing of mechanical units, utilities, or other structures in the interior side yard, is prohibited.
- e. The Applicant provide a copy of this Decision to City Transportation Services for their records regarding front yard parking.

**ATTACHMENT 1 - DRAFT PLAN OF SURVEY**

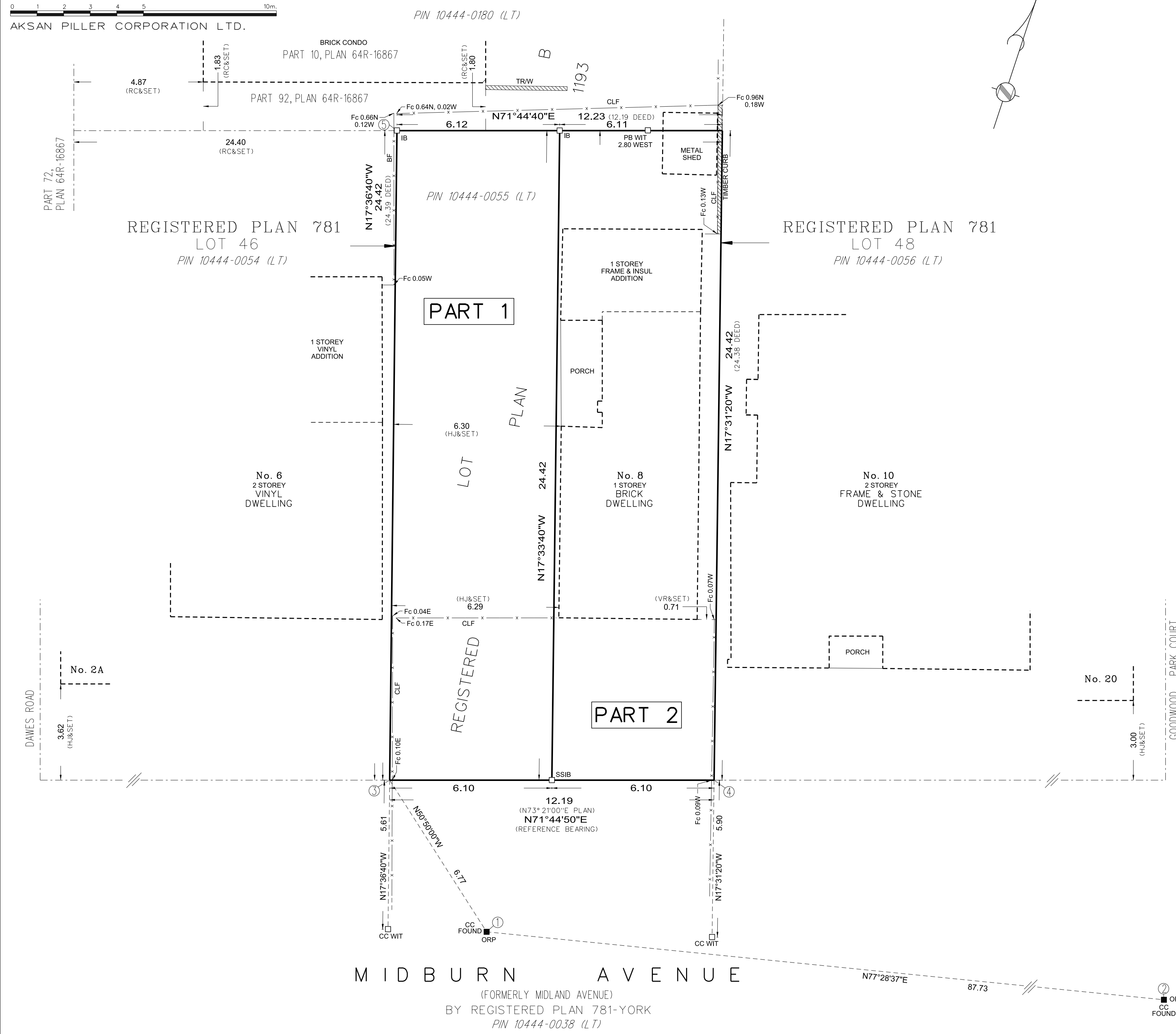
PLAN OF SURVEY OF  
PART OF LOT B  
REGISTERED PLAN 1193  
CITY OF TORONTO

METRIC: DISTANCES AND COORDINATES SHOWN ON THIS PLAN ARE IN METRES AND CAN BE CONVERTED TO FEET BY DIVIDING BY 0.3048

SCALE 1 : 100



AKSAN PILLER CORPORATION LTD.



I REQUIRE THIS PLAN TO BE DEPOSITED UNDER THE LAND TITLES ACT.

**PLAN 66R-**

RECEIVED AND DEPOSITED:

DATE: \_\_\_\_\_

**DRAFT**

DATE: \_\_\_\_\_

ANNA AKSAN  
Ontario Land Surveyor

REPRESENTATIVE FOR LAND REGISTRAR  
FOR THE LAND TITLES DIVISION OF THE  
TORONTO REGISTRY OFFICE No. 66

**SCHEDULE**

PART	PART OF LOT	PLAN	ALL OF PIN	AREA (m <sup>2</sup> .)
1	B	1193	PIN 10444-0055 (LT)	149.1
2				149.2

- LEGEND:**
- DENOTES SURVEY MONUMENT FOUND
  - DENOTES SURVEY MONUMENT PLANTED
  - IB DENOTES IRON BAR
  - SSIB DENOTES STANDARD IRON BAR
  - CC DENOTES SHORT STANDARD IRON BAR
  - CP DENOTES CUT CROSS
  - WIT DENOTES CONCRETE PIN
  - O/U DENOTES WITNESS MONUMENT
  - N DENOTES ORIGIN UNKNOWN
  - S DENOTES NORTH
  - E DENOTES SOUTH
  - W DENOTES EAST
  - Fc. DENOTES WEST
  - Fc. DENOTES FENCE
  - CLF DENOTES CHAIN LINK FENCE
  - BF DENOTES BOARD FENCE
  - TS DENOTES TRAFFIC SIGN
  - MH DENOTES MANHOLE
  - TR/W DENOTES TIMBER RETAINING WALL
  - DEED DENOTES INST. No. TB410407
  - PLAN DENOTES REGISTERED PLAN 1193-YORK
  - HJ DENOTES HOLDING & JONES LIMITED, O.L.S. (July 7, 1992)
  - VR DENOTES VALDEK RAIEND LTD., O.L.S. (April 24, 1981)
  - RC DENOTES RABIDEAU & CZERWINSKI, O.L.S. (Dec. 13, 2000)
  - ORP DENOTES OBSERVED REFERENCE POINT

**BEARING NOTE:**  
BEARINGS ARE MTM GRID, DERIVED FROM GNSS OBSERVATIONS, USING A REAL TIME KINEMATIC SERVICE, ON MONUMENTS 1 & 2, SHOWN HEREON, HAVING A BEARING OF N77°28'37"E. AND ARE REFERRED TO THE CENTRAL MERIDIAN OF UTM ZONE 10 (79°30' WEST LONGITUDE) NAD83 (CSRS) (1997.0).

**NOTES:**  
DISTANCES ARE GROUND AND CAN BE CONVERTED TO GRID BY MULTIPLYING BY THE COMBINED SCALE FACTOR OF 0.9999.

POINT ID	NORTHING	EASTING
1 ORP	4839397.77	321214.16
2 ORP	4839416.79	321299.80
3	4839402.04	321208.91
4	4839405.86	321220.49
5	4839425.32	321201.52

COORDINATES CANNOT, IN THEMSELVES, BE USED TO RE-ESTABLISH CORNERS OR BOUNDARIES SHOWN ON THIS PLAN.

OBSERVED REFERENCE POINTS (ORPs) ARE DERIVED FROM GPS OBSERVATIONS USING REAL TIME KINEMATIC (RTK) SERVICE, MTM ZONE 10, NAD 83 (CSRS) (1997.0). COORDINATES ARE TO URBAN ACCURACY AS IN SEC. 14 (2), O.REG. 216/10.

FEBRUARY 15, 2018.

DATE

*Anna Aksan*  
ANNA AKSAN  
Ontario Land Surveyor

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CALC.: KM DRAWN: KZ CHECKED: HP  
REFERENCE No. : 18-20-12520-RPLAN

MIDBURN AVENUE  
(FORMERLY MIDLAND AVENUE)  
BY REGISTERED PLAN 781-YORK  
PIN 10444-0038 (LT)