

DECISION AND ORDER

Decision Issue Date Monday, November 09, 2020

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

Appellant(s): PINNACLE INTERNATIONAL SHEPPARD LANDS INC

Applicant: BOUSFIELDS INC

Property Address/Description: 3260 SHEPPARD AVE E

Committee of Adjustment Case File: 18 254742 ESC 40 MV (A0343/18SC)

TLAB Case File Number: 19 243364 S45 22 TLAB

Hearing date: Wednesday, March 11, 2020

DECISION DELIVERED BY Ian James LORD

APPEARANCES

| NAME | ROLE | REPRESENTATIVE |
|-------------------|-------------|----------------|
| BOUSFIELDS INC | Applicant | |
| JEAN FAI-JIN LEE | Participant | |
| NAOMI ELLEN PEARD | Participant | |
| JANET NUNNO | Participant | |
| LUIGI NUNNO | Participant | |
| CEHUNT DUONG | Participant | |
| DANIELLE REESOR | Participant | |

| | | |
|-------------------------------------|------------------------|-----------------------|
| PINNACLE INTERNATIONAL SHEPP | Appellant/Owner | ANDREW JEANRIE |
| CLAYTON CHEN | Party (TLAB) | |
| JOSHUA BUTCHER | Expert Witness | |
| NIXON CHAN | Expert Witness | |

INTRODUCTION AND BACKGROUND

This matter involves the refusal by the Scarborough Panel of the City of Toronto (City) Committee of Adjustment (COA) in respect of multiple variances generally applicable to site specific zoning previously permitting a project (Project) at 3260 Sheppard Avenue East (subject property), in the former City of Scarborough.

The development revisions, the planning for which began in earnest in 2017, includes the requested variances. It is to consist of two (2) point towers each of thirty (30) stories in height, an eleven storey mid-rise building and a row of transitional row housing along the north limit of the subject property (Proposal).

The subject property is located on the north side of Sheppard Avenue, a designated 'Mixed Use and 'Avenue' policy area in the City Official Plan (OP), situated mid-way between Victoria Park Avenue and Warden Avenue, to the east. A special area secondary plan is also in effect.

The subject property at the time of the initial sitting (March 11, 2020) of the Toronto Local Appeal Body (TLAB) was essentially flat and vacant, subject to some construction structures and a sales pavilion, formally the site of a motor vehicle sales office.

Following completion of a secondary planning process, the subject property was site specifically zoned in By-law 1002-2014 by the City. The Project was styled and promoted as ‘targeting senior citizens’, a development consisting of a west condominium tower, an east rental tower, lower rise accommodation, a ‘community centre’, a seniors’ centre, and associated amenity and servicing elements, including retail at grade on the Sheppard Avenue frontage.

The requested variances from the historical site specific zoning are listed as identified on **Attachment A** hereto. It is these variances that were before the COA.

I advised that I had visited the subject property and surrounding residential area to the north and south, commercial uses to the east and west and generally read the pre-filled materials but the evidence heard is fundamental to the Hearing.

A number of Parties and Participants were present at the opening day of this sitting.

Mr. Jeanrie identified himself as counsel for the owner (Pinnacle); he was present with his clients' representative, as well as its planner (Mr. Butcher) and transportation consultant (Mr. Chan).

Mr. Chen identified himself as the citizen Party opposing the variances and Representative of several other of the Participants (unnamed).

Apart from the two Parties, no other person rose to be identified. The City was not present.

I requested advice as to whether there were any preliminary matters and the preference for opening remarks.

Motion for Censure

Prior to the commencement of the sitting, the TLAB had been apprised and copied on email exchanges between the Parties. These followed a request by the Applicant for an extended sitting given the materials filed and the number of Participants and potential witnesses. All exchanges were complete, including Reply Witness Statements. The TLAB had unilaterally set a second day of Hearings without consultation with the Parties.

Regrettably, the second date selected could not be accommodated by the Applicant's planning witness. Rather than requesting, by Motion or otherwise, an alternate date, counsel for the Applicant sought and received permission from Pinnacle to retain a second planner, from the same firm, as a back-stop, should reply evidence be required.

In the meantime, the TLAB responded by cancelling the second sitting date and, on canvass, set May 27, 2020 as a second day, if required.

On advising Mr. Chen of this intention as to a substitute witness, an additional series of email exchanges took place. In the result, immediately prior to the first day of sitting, Mr. Chen filed a formal Motion and affidavit (Exhibit 1) that had not been read prior to the sitting but which was allowed to be fully argued, despite the late and changed circumstances.

Mr. Chen sought the following relief:

- a) A written sanction of the Applicant's counsel for filings and correspondence post February 27, 2020 when details of the extended sitting were evolving;
- b) A finding of prejudice "as a factor for further consideration" should an award of costs be sought;
- c) Recognition of an alert or caution as to potential prejudice in the event that further actions and unanswered concerns are not addressed.

In respect of the second matter, Mr. Chen referenced language used in the email exchange by Mr. Jeanrie which he, Mr. Chen, considered to be a personal attack made all the more egregious by being publically posted on the TLAB website.

Mr. Chen sought these sanctions for conduct arising out of the difficulties set in train by: the TLAB date selection; the Applicant's supplementary filing of reply evidence after the dates set in the Notice of Hearing; and claimed inappropriate personal references by counsel in responding correspondence identifying the actions taken to accommodate the initial extension date.

Mr. Jeanrie responded by describing the action and reactions in email correspondence. He felt that no Rule or Motion was required to have available a substitute reply witness. He had immediately reached out to explain his intention. Upon objection from Mr. Chen, he further wrote to explain the purpose of reply evidence and objected that his email of February 14, 2020 was being considered untimely, or a 'personal attack'. Rather, it was a 'blunt response' to an allegation against a suggested attempt to 'hide' the Applicant's planner and to provide full and timely disclosure of a response to an inconvenient Hearing date. His correspondence of February 27, 2020, he explained, was to further explain the rationale for a 'second planner'.

Counsel objected to the Motion content. He argued the matters in issue are the variances sought and not the email chain. Those exchanges were said to have no bearing on the variances and should not be a factor in any future consideration.

Having heard fully from both Parties and having achieved their consent to a scheduled second Hearing day, if required, for May 25, 2020 without the need for a substitute reply planner, the Motion became effectively resolved.

I Ruled that there would be no sanction and that the matter of a witness substitution had been avoided.

In this regard, it should be re-iterated that any consultation undertaken by the TLAB as to Hearing scheduling is a courtesy and is neither a right in the Parties nor should it be an expectation. In this case, the initial second day rescheduling had taken place without consultation and had proven inconvenient. The attempt by the Applicant to deal with that circumstance took a direction that led to miscommunication and some umbrage. The TLAB regrets its role in that circumstance but cannot find either prejudice or anything approaching misconduct. As explained orally, the TLAB attempts to resolve matters consensually and in this case found an alternate second Hearing day accepted on consent.

The addition of or the substitution of an expert witness requires the leave of the TLAB and would normally require a form of Motion. In this case, neither circumstance, strictly speaking, was sought: reply coverage by an alternate witness from the same office was a matter sought to be addressed in a timely and appropriate manner.

A related concern, the posting of communications addressed to the TLAB, is a civic responsibility and a public process that is required of the Tribunal. Parties and

Participants are admonished in multiple sources that theirs is the responsibility to not provide any communications that offend the principles of the common law or privilege or personal or protected information. The TLAB process is open, transparent, public and entirely electronic.

Further, that while the *Rules of Practice and Procedure* (Rules) of the TLAB address many matters, they may not be prescriptive in all, such as the need to reply and respond to matters that a Party considers to be in their best interests. The TLAB encourages disclosure and settlement of issues; it abhors ‘trial by ambush’. It is, therefore, responsible conduct on a Party to provide timely disclosure of an issue that may be of concern. In this case, I find that the exchanges between the Parties were in that vein with a view to being constructive. Provided they are conducted with civility, and I so find in this instance on the part of both Parties, they are to be encouraged.

The Rules provide for a ‘costs’ award consideration as an entirely separate and distinct matter.

As both Parties were also prepared to proceed, the Ruling concluded with the direction that the Applicant start and be responsible to address the policy and statutory support basis for the requested variances.

Opening Remarks

With that disposition, Mr. Jeanrie provided opening remarks that were helpful to explain the extensive ‘history’ of the subject property and its acquisition by Pinnacle from a receiver for the previous owner, City Corp, in 2017.

He suggested that in the eleven (11) variances sought identified on **Attachment A**), there is no change: in use; unit generation count; or number of storeys sought. This comment respecting no ‘change of use’ was likely made in reference to the fact that the earlier site specific zoning approval had been in respect of the target market for senior citizens. This target market was accompanied by certain specific use entitlements sought and achieved by City Corp, inclusive of a ‘community centre’, a seniors beds centre and a ‘wellness centre, all being uses specified in the ‘seniors’ format offering: all 806 then proposed units were intended to be target marketed to seniors.

He identified the revised and proposed target market to be to the general demographics, including seniors, all under condominium ownership. He noted one variance, that the visitor’s parking space variance is proposed such that 40 of these spaces be released as ‘flex spaces’. However, that while variances were sought for parking and landscaped open space, the totals provided were not being reduced from the earlier approval.

With respect to ‘amenity space’, he identified a requested reduction of required space to the standards ‘now in effect’ across the City.

He identified that other variances sought a ‘tweak’ (town house heights, east tower height and angular plane relief) and the correction of technical oversights in the site specific or referenced zoning instruments.

In Variance 11, he identified, as well, one requested amendment: a clause reference error (to Clause VI, not IV) asking its correction as a matter not requiring further relief under section 45 (18.1.1) of the *Planning Act*.

Mr. Chen condensed his opening statement by requesting that consideration be given to the last paragraph of Staff’s comments in the final 2014 Staff Report approving development on the subject property. This paragraph reads as follows (Exhibit 2, Tab 25 p.588, **Conclusion**):

“This development proposal will be a significant step in the urbanization of a stretch of Sheppard Avenue East that has been identified by City Council for intensification. It represents an appropriate massing and built form, as well as a street network, that is very much aligned with what had been contemplated through the course of the Sheppard/Avenue Study and implementing by-laws. The applicant has responded to key concerns, built form and otherwise, raised by residents, city staff and the Design Review Panel. **The proposed seniors-oriented uses will be able to be enjoyed by the surrounding community and will help to create round the clock activation of the site. By pursuing Tier Two of the Toronto Green Standard and LEED Gold certification, the applicant is helping the City address several of the sustainability initiatives identified in the Official Plan.** City planning recommends that City Council approve the proposed zoning by-law amendment and that the Chief Planner approve the draft plan of subdivision.” (emphasis added)

Two particular elements of this extract (bolded) were identified by Mr. Chen as of particular concern: the deletion, in the Proposal, of the seniors uses foundation from the Project; and the potential for the denigration of the environmental standard set for the Project: Tier Two Toronto Green Standard/LEED Gold certification.

COVID-19 Suspension Period

The scheduled second Hearing date was not accessed as intended. On or about March 16, 2020, by Provincial Order, emergency measures were instituted to address the implications of a spreading global pandemic. As a result, the Government of Ontario passed an Emergency Order (Ontario Regulation 73/20) under the *Emergency Management and Civil Protection Act*. This Order was retroactive to March 16, 2020, and, in effect, resulted in the TLAB suspending previously scheduled hearing events. The TLAB formally suspended all in-person Hearings for a Suspension Period commencing March 16 through August 14, 2020. Thereafter, some virtual Hearings commenced with limited in-person oral Hearings convened in October, 2020.

In the interim, the TLAB communicated that the Applicant was requested to address several matters arising from the testimony of its first witness, nearly completed in chief on DAY 1 of the appeal. Advice was subsequently received by the TLAB as to revised conditions of variance approval that would be sought in conjunction with the responses to the matters raised. The Parties also advised the TLAB of a proposed settlement and requested a Written Hearing for its consideration. On the direction set on DAY 1 for the return of the witness and in expectation of the receipt of Oral evidence, this request was declined. The Parties were advised that the matter would be scheduled for a one day Hearing for which the TLAB Rule for Settlement Hearings, and its attendant notice, would be expected to be followed.

The date set for DAY 2 was October 27, 2020.

MATTERS IN ISSUE

It remained for the evidence to determine support for the eleven (11) variances listed in **Attachment A** and their challenge. TLAB Hearing is *de novo* and all variances are placed equally in issue. As well, the Applicant had accepted undertakings for response and had tendered further revisions to the language of the variances together with new proposed conditions. No Minutes of Settlement apart from Email advice were filed or distributed prior to the DAY 2 sitting, contrary to the expectations of the Rule.

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 for the Greater Golden Horseshoe for the subject area ('Growth Plan').

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

DAY 1.

Pinnacle's counsel, Mr. Jeanrie, called Joshua Butcher to provide expert opinion evidence in the discipline of land use planning. Mr. Butcher was questioned by Mr. Chen. He responded that he is a 'candidate' member for the Ontario Professional Planners Institute and is bound by its Code of Practice. He had provided the TLAB's attestation Form as to his duty to the Tribunal (**Exhibit 4**). He has been qualified as an expert in the field of planning before the Local Planning Appeal Tribunal (LPAT) and the TLAB. Although he had no experience with residential projects in Scarborough, he was admitted to give opinion evidence as a professional planner.

Mr. Butcher described his history and that of the Bousfield's planning firm with the subject property. This involved twelve (12) years with 'City Corp', and a 2018 retainer following Pinnacles' acquisition, by which time Pinnacle had submitted its revised development scheme for the Project.

Those submissions had included aspects related to zoning, site plan approval and a refined plan of subdivision to create the access roads. He noted that the plan of subdivision is draft approved with an executed agreement, but not registered. The site plan application has had its review completed and Mr. Butcher advised that Staff were in a position to issue a 'Notice of Approval for 'Stage 1'', subject to the final disposition of the variance requests.

He advised that Stage 1 engages the two high rise towers, associated access and the parking garage. Stage 2 is the mid-rise building and Stage 3 relates to the row homes at the north limit of the subject property. He noted that the configuration and sequence had 'not changed' with the change in ownership. In some of the documentation, these Stages are correspondingly referred to as 'Phases'.

Neither the site plan application conditions nor the plan of subdivision materials were referenced extensively in evidence before the TLAB; nor was an alleged section 37 agreement under the *Planning Act*. The representations were to the effect that these instruments were in suspension, pending the result of the variance Application.

Mr. Butcher had accepted carriage of the variance Application (filed November 9, 2018) generated by the Pinnacle Proposal, with revisions to the earlier site specific approvals achieved by City Corp prior to entering receivership. His Document Book and Expert Witness Statement were accepted as **Exhibits 2 and 3** respectively. The Document Book is accompanied and supplemented by separate compilations for 'Exhibits', 'Photographs' and a 'Shadow Study'.

The recent planning history including the subject property was reviewed in some detail and in the documentary record (Exhibit 2):

- a. Sheppard-Warden Area Site and Specific-Area Policy; Sheppard Avenue East 'Avenue' Study (January 2011) (Avenue Study)

- b. By-law No. 128-2012 Enacting OPA 143, adding for Sheppard Avenue East a secondary plan, SASP 373 (OPA 143)
- c. Former City of Scarborough Sullivan Community Zoning By-law No. 10717 (Sullivan By-law)
- d. Area-Specific Avenues Zoning By-law No. 129-2012, amending Sullivan Community Zoning By-law No. 10717 (Area Zoning)
- e. Site Specific Zoning By-law No. 1002-2014 (Site Specific Zoning)

In summary, following the Avenue Study of 2011, the City adopted instruments to encourage and guide the redevelopment of the Sheppard East corridor, including OPA 143 and the Area Zoning, in 2012. The subject property is in a 'Mixed Use' area with a broad range of permitted uses although tall buildings were not permitted as-of-right and specific 'amenity space' provisions applied. In a parallel process, City Corp sought and received for the subject property, City Council support for the Project, comprehensively designed and to be marketed to the seniors demographic. The Site Specific Zoning was said to provide for an intended phased development of 805 dwelling units in two (2) thirty (30) storey towers (93 m tall west, condominium units; 89 m tall east tower, rental units), an eleven (11) storey mid-rise and row of three storey (3) town homes; it included a range of new permitted seniors related uses and associated 'amenity space' standards. The site specific use additions (Exception 41, Schedule C) included: 'community centre'; 'retirement home'; 'wellness centre', with associated minimum size standards.

On November 8, 2018, the Bousfield's firm filed the Proposal's variance Application as identified in **Attachment A**. That 'evolution' included, as Mr. Butcher said, the covering correspondence, a City request for deferral and consultation, an Open House held October 17, 2019 with 12 attendees (on 131 invitations) and a resultant Staff Report, all as detailed in Exhibit 3, paragraphs 9-19.

The Proposal, as reflected with the requested variances, is further described in Mr. Butcher's Photo Book, **Exhibit 5**, p.14, by renderings and in Exhibit 3, paragraphs 20-29. He described it as 'little changed' in the massing, permitted uses and the physical form from that of the City Corp Project. **Exhibit 6**, a further Document Exhibit Book at page 12 provides a rendering of the ground floor plan layout with Stage/Phase 1 consisting of 604 dwelling units and 819 square meters of retail commercial space. None of this is sought to be varied in respect of gross floor area or density. He elaborated that despite the references to 'phases', the Proposal is to be built out all together as the 'zoning' does not call for phasing. Parking, described in Exhibit 6, Table 1, page 21, is maintained as initially planned to be built out at 782 spaces with 18 additional spaces, separately accessed, below the row houses. The Proposal now contemplates 796 dwelling units over the subject property with 176 in the mid-rise phase and 16 town house units.

It is noteworthy that his site description included advice that 3220 Sheppard Avenue East, a smaller site adjacent the subject property to the west, is under construction as a sixty-six (66) metre tall residential building of 18 stories. The Proposal contemplates two 93 m tall, thirty storey towers, as described. Across Sheppard, to the south, is an existing seventeen (17) storey residential building. Adjacent that, to the

west, is Palmdale Boulevard which is intended to be extended northward into the subject property, including a signalized intersection.

Mr. Butcher supported each variance (**Attachment A**) as meeting the policy and statutory tests, above enumerated. His oral evidence on each is briefly summarized; he provided diligent references to his Expert Witness Statement, Exhibit 3:

V-1. Amenity Space. The Proposal seeks approval to adopt a minimum standard of 4.0 square metres/unit for 'amenity space' (whereas the By-law requirement is 6.5 square metres/unit), distributed as follows: indoor (minimum 2.0 square metres/unit (whereas the By-law prescribes 4.0 square metres/unit)); outdoor adjacency space to indoor amenity space (minimum of 40 square metres); and, 'outdoor amenity space' (minimum 2.0 square metres/unit with a minimum 0.5 square metres/unit (whereas the Site Specific By-law prescribes 1.5 square metres/unit) 'located on the roof of the base building' (whereas the By-law prescribes this outdoor amenity space location to be 'within the base of the building fronting onto Sheppard Avenue East').

These latter 'outdoor' spaces in the Proposal are depicted in Exhibit 6 as rooftop terrace locations, the largest component of which was described as an 'outdoor swimming pool' area between the twin towers on the roof of the sixth level (see also: Exhibit 2,), accessible from the seventh floor.

Mr. Butcher described the reduction in required amenity space to be 'in line with City requirements' across the municipality; the reduction was said to be supported as being an appropriate amount in accord with 'longstanding City wide standards'. The variance would reduce the Site Specific Zoning standard volunteered by City Corp and enacted by By-law 1002-2014.

Through various calculations, he suggested that, based on the Proposal's current unit count, there would be under the proposed reduced standard, an increase in outdoor amenity space. As well, there would be a reduction to indoor amenity space, roughly proportionate to the 'community centre' space use allowed for City Corp, and specified under the Site Specific Zoning, at a minimum size permission of 1900 square metres.

Independent of the numbers analysis, the reduction in indoor amenity space was described as follows: "The difference is all in the loss of the 'community centre'." The 'community centre' was entitled to be counted toward 'amenity space'.

This variance is discussed in Exhibit 3, paragraphs 72-86, and in Mr. Butcher's Reply Witness Statement, **Exhibit 8** at paragraphs 15-24.

In his Reply, Exhibit 8, para.18, Mr. Butcher asserted, ostensibly to Mr. Chen, but also in his evidence in chief that a zoning by-law cannot 'require' the provision of any of the uses identified, but that there are other ways for the City to have secured specific uses or services such as a 'community centre'. He opined this could have occurred through a section 37 agreement under the *Planning Act*. He advised that the then City Staff and Council, while initially providing for a 'community centre' with a space minimum, had declined to set it in place at the time in those other instruments as a

requirement of City Corp, or as a condition of development approval through any device available.

Indeed, in concluding his opinion on Official Plan and zoning intent and purpose conformity tests, he stated that the current City Staff did not require the larger amount of 'amenity space' or indicate that there was anything in the seniors marketing aim that was special. The change to an all condominium built form of development as proposed, apparently with 'no special services of a demographic perspective', was not challenged by Staff in reporting on the variances.

He said that there were no general or site specific policies regarding 'amenity space' that were referenced and no conditions requested by the current Staff reviewers associated with this variance.

Mr. Butcher acknowledged that the drafting of this variance could be improved with a condition of approval securing the delivery of the expected '2 and 2' square metres/unit of indoor and outdoor amenity space. He provided an **undertaking** to provide for 'amenity space' to be further delineated as a condition:

UT 1a – draft language for a Condition respecting Variance 1;

UT 1b – and provide revised language for Variance 1.

V-2, 7. Building Setback. Mr. Butcher described this variance sought in the two separate zoning instruments orally and in Exhibit 3, paragraphs 87-100 and his Reply, Exhibit 8, pages 27-8. Namely, that the reduction from 3 to 2 metres setback from the proposed 20 metre right-of-way for Silver Maple Gate has always been part of the original application and is unchanged by the Proposal.

In his Reply, he had provided a cross section of the right-of-way demonstrating ample clearance for a sidewalk and street landscaping. He styled this request a drafting oversight, an 'administrative error', overlooked in both by-laws but with no physical change proposed and reflective of the original design, site plan and plan of subdivision.

He did reference the City Staff Report in Exhibit 2, Tab 9, page 52, to relay a suggested **Condition** that construction proceed in accordance with Plan A-200, the site plan drawing, Figure 1 dated September 13, 2019, attached to the Staff Report.

He left the matter, in oral evidence, without a clear recommendation.

V-3. Angular Plane (Internal). The planner described how the built form design encroached on the angular plane taken from the south side of the new, east/west internal street. The piercing of the angular plane was caused by the location of an elevator mechanical penthouse for the mid-rise building. This is depicted in Drawing A301B by IBI Consultants dated October 12, 2018.

The penetration through the angular plane was described as 'limited' with the majority of the mechanical penthouse 'compliant with OPA 143' and within the protected envelop. He reviewed the shadow study, **Exhibit 7**, and concluded that the extent of

the incremental shadow attributable to this infraction is acceptable and adequately limited by this minor encroachment, on an otherwise compliant comprehensive development.

V-4. Building Height. In referencing the perspective drawing, Exhibit 6, page 19, Mr. Butcher explained his understanding of the rationale for the modestly different heights of the tower buildings. He understood the east tower, fixed at 30 storeys and 89 metres reflected its original intent as a market rental building with lower dwelling unit ceilings, resulting in lower construction costs. The request to move that building to match the west tower at 93 metres in height would, he said, add no additional gross floor area or units but permit an all condominium approach with nine (9) foot ceilings, in two mirror image buildings. He opined that the height change was insignificant, barely perceptible from the ground and that Staff raised no design issue. He said that the increase would continue to meet the exterior angular plane (Exhibit 2, page 20) with only minor incremental shadowing and none during the summer solstice period.

He said there was no 'strategic reason' to maintain the lower height and that the change would provide for more desirable dwelling units.

V-5. Parking. The planner supported the variance of the residential and non-residential visitor parking ratio to 0.15 spaces/unit to free up the supply of 40 'flex' spaces for allocation 'by the future condominium corporation', as demand and circumstances warrant.

He said the variance would result in no change to the overall supply of a minimum of 800 parking spaces required by the zoning by-law.

Mr. Butcher volunteered that he would be happy with a **Condition** requiring the provision of these 40 spaces within the overall required supply of 800 spaces; users might include existing unit owners, commercial space users or additional visitor parking.

When asked to explain a reference I had read in the filings to 905 parking spaces, he undertook to look for the reference and report on his conclusions.

UT 2: - draft language of a Condition related to Variance 5 and report on and explain any reference to 905 parking spaces total.

V-6. LEED. Mr. Butcher described this issue from his understanding but professed no particular expertise, all as detailed in his Witness Statement, paragraphs 150-159 and his Reply, Exhibit 8, paragraphs 32-36.

The variance request would relax, read release, the project from the LEED Gold certification standard in favour of the more current updated City environmental standard, the Toronto Green Standards, Tier 1 and 2.

He stated that LEED has four levels of standard whereas the City updated Green Standards are in its third version (May, 2018) of updated two-tier standards.

He relayed that in discussions with the City, Pinnacle had bargained that neither the City Green Standard Version 1, applicable in 2014 nor the By-law requirement of Version 1, Tiers 1 and 2 be made applicable. Rather, that the Proposal be released from the commitment to meet the requirements of any LEED registration, described as the lowest required LEED category (consisting of owners documentation only – ‘paperwork’), in favour of it meeting Toronto Green Standards Version 2, Tiers 1 and 2.

The planner was unable to articulate the substantive nature of the request beyond relaying Staff’s apparent concurrence with the revision.

Mr. Butcher stated that compliance review is part of the final Site Plan Approval process which is, as stated above, in suspension. Namely, he had advised that City Staff are in agreement with the conversion and are prepared to issue a Notice of Approval, subject to the variances disposition of the TLAB.

He was of the view that the variance would have no undue impact.

He agreed that the wording of the variance as framed was ambiguous and ‘various’. He provided an **undertaking** and **Condition** to provide for more proper referencing:

UT 3a – revised language for Variance 6;

UT 3b – (and) draft Condition language, for clarity as to the standard and the Tier.

V-8. Angular Plane, (Exterior). The second angular plane established by performance standard 312 in the Area Zoning springs at a 45 degree angle onto the subject property from its north lot line. Despite a 10 m building setback (from the north lot line), the roof eaves (only) of the proposed townhouse units penetrate this plane on the Site Plan currently proposed. The Site Plan is attached to the COA Decision and is found throughout the materials accepted as Exhibits.

Mr. Butcher stated that the mass of the buildings clearly comply and that Planning Staff of the City ‘agree’. The townhouse units, he stated, respond to the Official Plan, Sullivan By-law and the Area Zoning by providing a transition between the low-rise ‘Neighbourhoods’ and ‘Mixed Use’ designations.

He foresaw no undue impact from the ‘minor’ eaves encroachment. He acknowledged that, technically, the twin towers also penetrated this plane but considered the standard applicable only to the townhomes, despite the use of the word “buildings”.

V-9. Building Height, Townhouses. This variance to performance standard 332 is discussed in the planners Expert Witness Statement, Exhibit 3, paragraphs 172-180 and in Exhibit 8. He supported the reduction in height of the finished floor grade “to maintain a consistent first floor height,” without further elaboration. Parking is depressed below the rear yard decks. He explained that the

variance was suitable to maintain privacy and an 'at grade' relationship that was neither too high nor too low. The units themselves were said to be 'large, three storey and proposed at 12.5 m in height'. They do not have a minimum frontage standard.

Mr. Butcher was unable to comment on a City sponsored storm water management project proposed in the vicinity of the rear yards of the westerly proposed townhomes.

He acknowledged that the traffic access, parking, visitor spaces and egress movements were not readily apparent from the drawings referenced.

UT 4 – as a component of Variance 9, to review townhouse parking access, visitor and resident spaces, movements and their configuration and the advisability of instituting a minimum frontage requirement for the townhouse units.

UT 5 – (and) to inquire into the storm water management project being undertaken by the City in the vicinity and to advise on its implications, if any, for the Proposal or the need to revise the variances, add a condition, modify the Site Plan or any agreement or otherwise.

V – 10. Step backs. This variance to performance standard 325 is addressed in paragraphs 182-194 of Exhibit 3 and was again said to fall out of a drafting error in the Sullivan By-law and a contradictory provision in the Site Specific Zoning. The latter requires a 1 metre step back in building dimensions above sixteen (16) m, adjacent the east lot lines.

Mr. Butcher explained that from inception the Project and Proposal has reflected a continuous four (4) storey podium (Exhibit 2, Tab 25), and step back above. To accomplish this and avoid conflict, it is necessary to eliminate performance standard 325 which sets a one and one-half (1.5) m step back at a twenty (20) m height line, adjacent the east lot lines.

In his view, the Site Specific By-law should have clearly provide for a one (1) m step back above sixteen (16) m. for the building closest the east lot line.

He agreed that the drafting of the variance as set out on **Attachment A** did not accomplish the objective.

He considered in oral testimony a redrafted Variance 10 along the lines of:

“Despite performance standard 325, at a height of sixteen (16) m above grade, the building on the east lot line shall be set back one (1) m.”

Or he felt any equivalent approach is appropriate.

UT 6 – revised language for Variance 10.

In his view, the Proposal as conceived with the four storey podium presented an appropriate built form, massing and step back. He felt that the drafting was an administrative error, was minor, and its correction will result in a consistent street wall without impacts.

V -11. Landscaping. Mr. Butcher reviewed the location of various landscaped components on a site drawing (Exhibit 6, page 25) and discussed the subject in Exhibit 3 at paragraphs 159-209. In his view, the patch work of open space contributions was a derivative of making the Project, now the Proposal, accessible. He felt the by-law standard of 50% soft landscaping required for all lands not covered by building or parking was unrealistic in an urban setting requiring new public and private access roads. He understood the standard to have been introduced to implement the Avenue Study but could not opine on how it was derived.

He felt that the variance was triggered by an 'administrative error' in drafting the Site Specific Zoning. On the same basis as earlier explanations, he noted the Project design had not materially changed with the Proposal and an amendment should have been processed. While the language reflects the site plan 'phases' in which landscaped open space is to be accessible, he expressed concern only that the standard does not account for land dedicated, for example, for public roads.

His evidence was to the effect that the Applicant was not asking for a credit for public roads but an acknowledgement that it is desirable to have the buildings frame the public streets and that landscaped open space, to the standard contemplated, was not being proposed and never had been. He noted that the by-law as drafted applies to non-building areas without recognition of access routes. He described the Project and Proposal componentry and the importance of its review to date to accommodate appropriate storm water management practices, being a signature role of landscaped open space. The Proposal includes a 'green roof', of 645 square metres, designed to accommodate infiltration; it is not part of the 'soft landscaping'. He advised that the Proposal accommodates landscaped open space and storm water management to the satisfaction of the City's Engineering Services Division.

In reference to street design and boulevard landscaping (on the public right-of-way), he was of the opinion an attractive public realm was being created within the intent and purpose of the Official Plan and the applicable Sullivan By-law and the Site Specific Zoning.

He advised that the multiple access points accentuated by soft landscaping was suitable and desirable "for this type of development" and in a manner that is consistent with what has been proposed throughout, with no reduction.

He noted that the percentage numbers in the proposed variance came from a site plans examination by the City Buildings Department, based on the Proposal's phases therein, which it assumed for purposes of phased issuance of building permits and the requirements to be met for the phase.

The Site Specific Zoning to date has not referenced phasing and, as earlier stated, project construction is intended to be continuous. He agreed that the phraseology of the requested Variance 11 was questionable.

UT 7 – to consider if the language to Variance 11 can be clarified.

Mr. Butcher did not comment on his counsel's advice in Opening Remarks that a self-evident technical reference change is required to the title of Variance 11; namely, that it should read:

“11. Section 4, CLAUSE VI, By-law 129-2012, Landscaping”

This change was requested by counsel to be made pursuant to section 45 (18.1.1) of the *Planning Act* - to not require any further Notice.

At the conclusion of Mr. Butcher's examination-in-chief after a long first day, the TLAB directed that any proposed responses to the undertakings given be circulated in draft upon their availability. Further, that the witness would return on the rescheduled date to, first, respond to the undertakings, provide any concluding summary and then be subject to questioning. Cross examination had not commenced.

DAY 2.

This sitting occupied almost one full day on October 27, 2020. In addition to the return of Mr. Butcher to respond to undertakings and to complete his opinion evidence, I heard from Mr. N. Chan, a transportation engineer on behalf of the Applicant, Mr. C. Chen a party in opposition and two local area residents, Luigi Nunno and Cehunt Duong.

In addition, I heard closing submissions from Mr. Jeanrie.

At the outset, Mr. Jeanrie advised of a settlement between his client and the Party, Mr. C. Chen, on terms to be spoken to by Mr. Butcher.

The following exhibits were pre-filed:

Exhibit 9, schedule of undertaking responses;

Exhibit 9a, chart comprising a complete list of requested revised variances with proposed conditions;

Exhibit 10, revised cross-section of site angular planes;

Exhibit 11, black lined chart version of Exhibit 9a received by the TLAB on October 26, 2020;

Exhibit 12, Complete List of Requested Variances, and proposed Conditions;

Exhibit 13, Memorandum detail of a parking analysis, visitor parking spaces, prepared by Mr. N. Chan (subject to proof).

Witness: Mr. J. Butcher

Mr. Butcher summarized the settlement consisting of three elements: the elimination and abandonment of two variances: Variance 3 on Appendix A, the angular plane encroached upon by the mechanical mid-rise penthouse and elevator; and Variance 8, the elimination of the angular plane intersection with the townhouse eaves. The third component was an undocumented agreement that his client, the Applicant, would undertake regular window washing on adjacent homes to the north, during the construction of the Proposal.

He explained that the angular plane variances eliminated were due to a reduction in the floor heights of the townhouse units and a reconfigured elevator component of the mechanical penthouse, thereby avoiding encroachments.

In responding to the undertakings, Mr. Butcher indicated that he had had follow up discussions with the Building and Planning Department Staff (unidentified). He had compiled what he described as agreed language and Conditions that would be desirable and reflect the Proposal: this is the basis for the revisions, discussed in turn. While there was the suggestion that the revised language provided was on consent, there is nothing by way of acknowledgement or filing from the City.

Variance 1, UT 1a) and b. Amenity Space

With reference to his Document Book, Exhibit 2, page 2021, Mr. Butcher confirmed that the reduction requested in "amenity space" is to bring it in line with the prevailing City standard for multiple unit developments in its current By-law 569-2013. He felt no Condition would be required 'as the terms of any condition are addressed in the revised wording', Exhibit 12.

Exhibit 12 is included as **Attachment B**, hereto.

As he had indicated in chief, the existing 'amenity space' standard was added in 2014 with the Site Specific Zoning of the Project as a condominium and rental building targeted to seniors. That standard, at 6.5 square meters/unit, exceeded the standard set in By-law 569-2013 of 4.0 square meters/unit, enacted earlier.

He advised that the revision would yield a loss in 'amenity space' of approximately 2000 square meters, assuming the 800 dwelling units allowed. He noted that the proposed reduction resulted from extensive discussions between the owner and City staff who had also apparently agreed that no variance would be required. This with respect to dealing with the uses eligible and including that indicated as 'amenity space', or otherwise permitted in Site Specific Zoning (By-law 1002-2014). Further, he advised that City staff were apparently satisfied to process the Applicant's site plan approval application as being in compliance with zoning - even though the Site Specific Zoning

specified minimum space allocations for three distinct permitted uses relevant to the Project theme:

- A. 'community center', 1900 m² minimum;
- B. 'retirement home/beds', 1000 m² minimum;
- C. 'wellness center', 1000 m² minimum.

None of these spaces were advised as being contemplated in the Proposal; he repeated earlier evidence that the proposed reduction in 'amenity space' (2000 square metres) was approximately equivalent to the intended loss of the 'community centre' (1900 square metres).

He acknowledged to me, that site plan approval (SPA) does not deal with issues of height, density or use. However, he suggested that SPA would only be processed if the use is aligned with the requirements of the zoning bylaw. In this regard, he suggested, again, that the above listed uses were not "required", but were only "permitted" uses as part of the Project that was envisaged and approved in 2014.

He acknowledged not being a part of the client's discussion with the Buildings Department and that no communications or correspondence from the Building's Department were included in the Filed materials in this regard.

Mr. Jeanrie re-advised that had City Council wished to secure the above noted list of uses in the Proposal, it could have chosen to do so. Further, that it is difficult to read a zoning by-law as "requiring" that something must be built. He said, paraphrased: 'it is dangerous to put in the mind of Council that it can 'require' anything. It could have been done here in the Project, but it (the City) had not secured these uses. If the Council had made a deal for a specific project, it could have secured provision of these uses here, namely in the subdivision plan, section 37 Agreement, or otherwise. Instead, there is staff support. And Buildings could not issue a building permit where there is a use that is not permitted.'

In effect, the planner said that zoning enforcement, whether it be angular planes or the provision of permitted units, is a matter for the Chief Building Official.

Mr. Jeanrie was of the view that it is the client who takes the risk that if there are uses that continue to be identified in the Site Specific Zoning that are 'required', no permit would be issued.

I indicated there would be an opportunity for submissions; the witness' evidence should continue.

With reference to the subject property Site Specific Zoning, Mr. Butcher agreed that he equated the 'community centre', as defined and permitted for the Project, as 'amenity

space'. He repeated his earlier advice that the reduction proposed in the Variance requested for the Proposal amounted to the space equivalent of the 'community centre' as a regulated, and that that use would not be present in the Proposal.

He, too, was of the view that the Site Specific Zoning did not set a 'requirement' that such a use be provided.

He noted that the total space occupied in the three above listed uses, almost 4000 square meters, amounts to approximately 6.9% of the entire Project. It is also equates to the full 'indoor amenity space' requirement of the Project. It is, he said, the same percentage space as that of the current Proposal, in terms of gross floor area; these uses would remain listed as permitted but not provided.

Mr. Butcher provided a list of other uses for 'amenity space', including those earlier identified, mentioning an art centre, 'outdoor swimming pool', gymnasium and fitness center.

In terms of the locational direction proposed in the revised Variance 1, Attachment B, he advised that the referenced 0.5 m² per unit of outdoor 'amenity space' amounts to approximately 390 m². The locational direction provided for that space, he said, is between the twin towers on the podium roof, above the sixth floor level with access from the seventh floor. He said the actual space in between the towers, Exhibit 2, Tab 10, page 66, is 392 m², consisting primarily of an 'outdoor swimming pool'.

He acknowledged he had no responsibility for the 'outdoor swimming pool' feature, that it cannot be used in the winter and transitional months and that if it had been an 'indoor swimming pool', it would be counted as 'indoor amenity space'.

Exhibit 9 contains no additional elaboration on the source of drafting or other explanatory content regarding this recommended redraft without a Condition.

Mr. Butcher confirmed to me, on inquiry, that the proposed Variance 1 directs 1/4 of the requested 'outdoor amenity space', nominally to consist of an 'outdoor swimming pool', above the sixth floor level of the podium and between the towers.

When asked why no Condition was being proposed to secure the recreation facility, an 'outdoor swimming pool', he indicated that the proposed 'outdoor amenity space' at the rate specified is in the variance proposed to the Site Specific Zoning and its location language requires it to be shown on the plans. He added that a 'community centre' also remains as a regulated permitted use, but it, apparently, is not required to be shown on the plans. A 'community centre' is not intended to be provided and an outdoor swimming pool is intended to be shown on the plans, but is not otherwise intended to be secured.

Variance 2, Setback – Silver Maple Gate.

Mr. Butcher relayed that there was no undertaking or proposed revised wording or condition respecting this variance request, and it remains unchanged.

Variance 3, (performance standard 317A, Angular Plane, Mechanical Penthouse.

Mr. Butcher repeated the advice that this variance is abandoned.

Variance 4, UT 8 (new), Building Height.

Mr. Butcher advised that his discussions with the zoning examiner has suggested additional language to clarify that the Proposal not be seen to offend performance standard 129 that provides for height and coverage requirements for mechanical penthouse. He explained that the Proposal and his drawings, Exhibit 2, page 79 and Exhibit 10, show that the angular planes are no longer penetrated. He is satisfied that the language added and consisting of the words: “excluding roof top mechanical penthouses and structures and a pertinences for green roofs” is accepted and adequately avoids the potential for conflict - as a worthy clarification. The revised wording is set out on Exhibit 11 and 12 and is repeated as renumbered Variance 3 on Attachment B.

Variance 5, UT 2, Parking.

Mr. Butcher repeated the purpose of this variance is to reduce the blended rate for the residential visitor and non-residential visitor parking space requirement, to achieve a better allocation overall, of parking spaces. While ‘not intending to reduce the total number of parking spaces on the site...(it would) ...provide flexibility in the allocation of those spaces’ (Exhibit 9).

The reduction is from 0.2 to 0.15 combined visitor spaces for residential and non-residential uses per dwelling unit; it sets a different and reduced standard between the Project and the Proposal.

He observed that the visitor parking space standard reduction would reduce the number of dedicated spaces by 40 to a proposed dedicated total of 119 spaces, down from the 159 spaces generated by the higher standard in the Site Specific Zoning. He indicated that a Condition is proposed to be added to acknowledge the continuing requirement to provide a minimum of 800 parking spaces. This Condition, shown on Exhibit 11 and 12, and repeated in renumbered Variance 4 on Attachment B, would, in his view, effectively retain the minimum 800 parking space requirement set for the Project and the Proposal.

He noted that Exhibit 6, page 21 presented a table wherein the number of required parking spaces for residential dwelling units, set at 796 units, would require the provision of 641 parking spaces. At the blended rate proposed, 119 visitor spaces would be required leaving, when totalled, a shortfall from the proposed 800 space minimum, of 40 spaces. He said these 40 spaces would continue to be constructed in the garage

and would be 'flexible use' spaces, available on demand to condominium unit owners or for residential or non-residential visitor parking.

He recommended the Condition in the wording proposed in Exhibit 12 and as Shown on Attachment B as renumbered Variance 4.

Out of completeness, Mr. Butcher volunteered that although he was directed to search for a reference to 905 total parking spaces, he was unsuccessful in identifying that exact number. He did acknowledge that the various iterations of the site plan over time show the range 907 to 977 total parking spaces contemplated. He indicated the current site plan shows a garage containing 934 spaces, as of July 4, 2019. In that context, he was supportive of creating the flexibility of having 40 spaces allocable on demand and not specified. He had no issue with specifying their location be constructed in the parking garage and that it would be desirable to add language that accommodated that as well as for the potential that some of the garage may be constructed in phases, to protect against a strict Building Department/building permit interpretation.

Mr. Butcher confirmed that the total gross floor of the Proposal is 74,631 m². Further, that the Project was site specific approved at 5.2 times the lot area in accordance with Schedule 1, By-law 1002-2014, or 74,630 m² (Exhibit 2 page 548, tab 22 page 388).

That is, between 2014 and to date, there is no change to the building size on measures in gross floor area (gfa) or floor space index (fsi).

Variance 6, UT 3a), 3b: LEED.

Mr. Butcher described the rewording of this matter and its proposed condition as having been derived in discussions with staff now using "typical staff language." He understood the application of the environmental standard to be the administrative prerogative of the Energy Efficiency Office, a part of the City Planning Department. Nothing further was added by way of explanation or opinion.

Variance 7, Building Setback, Southwest corner rounding.

Mr. Butcher described there was no change proposed to this wording, no Condition in respect of it, or undertaking requested. Nothing further was added and the requested variance remains unchanged.

Variance 8, Townhouse Angular Plane.

Mr. Butcher reiterated that this variance was part of the settlement discussion and is abandoned.

Variance 9, Building Height (UT4, 5), Townhouses.

Mr. Butcher explained the variance requested refers to the finished first floor height of the townhouse units and has no effect on townhouse parking. He said the parking spaces meet the City requirements of 2.56 m (width) x 5.6 m (length) and a 6 m wide drive aisle, two way. He relied upon Mr. N Chan for the conclusion that all spaces were accessible (Exhibit 9).

He felt all the parking spaces provided needed to meet that standard and the finish floor height has no impact on that obligation.

He saw no reason to establish a minimum frontage standard for the town houses (“unnecessary”) but acknowledged that the Proposal has very limited regulations and only in respect of the rear yard angular plane, a 10 metre rear yard setback and a 3 metre front yard setback from the proposed street.

He acknowledged that the proposed height limit of 12 m, the density (gfa or fsi), lot size, lot coverage, rear yard setback and lot frontage are all not specified in the Proposal, the Site Specific Zoning or the proposed variances.

While he saw no need to include such regulations, Mr. Butcher was frank in his response to my inquiry to acknowledge that he had no example that he could point to of any such unregulated townhouse project.

With respect to the identified inquiry as to a proximate Storm Water Management project, he said he had called the City’s engineering services Manager for the area, responsible for City infrastructure projects. He determined verbally there were no projects envisaged and no revisions were required to accommodate the same.

Mr. Butcher proposed no revisions to address townhouse building height or any further regulation to guide the townhouse project. He pointed to no SPA or subdivision passages addressing the townhouse component of the Proposal.

Variance 10, UT 6, Step Back, Podium.

Mr. Butcher confirmed that the proposal contemplates the continuation of a 1 m step back at the 16 m height limit of the ‘four storey’ podium. The step back is said to encircle both the Project and the Proposal. This building step back is in addition to the property line setback on the easterly limit to accommodate a private drive access. The revision recognizes the continuation of the provision in the Site Specific Zoning and is designed to eliminate the potential ambiguity of a different and conflicting provision, Performance standard 325, in By-law 10717, the Sullivan By-law.

There is no change in gfa as a result of this correction as the proposal conforms to the Site Specific Zoning, By-law 1002–2014. The suggested revised variance wording is set out on Exhibit 12, Attachment B, as renumbered Variance 8.

Variance 11, UT 7, Landscaping.

Mr. Butcher had undertaken to clarify the wording of this condition and correct the clause reference. He noted that landscaping, the provision of 350 m² of soft landscaping, is required to be provided in percentage amounts applicable to the site plan phases. He noted that the amount of landscape open space is not changed by the variance between the Project and the Proposal. He repeated that the 50% standard for landscape space is not possible in an urban site, such as that proposed, requiring access routes, but added nothing more. He supported the revised wording on Exhibit 12, Appendix B shown as renumbered Variance 9, as both clarifying the language and 'stating that is what the plans show'.

By way of summary evidence, Mr. Butcher introduced revisions to the Provincial Policy Statement 2020 and Growth Plan, 2020. He indicated he had reviewed these to the effect that no revisions changed his opinions and that appropriate regard has been given to consistency with the policies as well as to conformity to the Growth Plan – all being evident through his review.

He felt that the now nine requested variances constituted supportable revisions to the Project and constituted good planning with appropriate regard to the statute, Provincial policy, official plan and the tests set up for variances.

He recommended the complete list on Exhibit 12, Attachment B, and that the variances be approved with the Conditions identified. Namely: the minimum requirement of 800 parking spaces; and the obligation to construct to the Green Plan standard expressed in the revised wording with the proposed Condition attached to renumbered Variance 5, shown on Exhibit 12 and Attachment B.

Witness: Mr. N. Chan

The next witness, Mr. N. Chan was accepted as an expert in transportation engineering. He has been a professional engineer for 25 years and is the manager within his firm. He professes a Professional Charter Operations Engineer designation and said he had significant experience with similar size and types of projects. Mr. Chan introduced his witness statement and CV, **Exhibit 14** and took authorship of Exhibit 13, being his analysis of visitor parking rates suggested as applicable to the subject property Proposal.

In describing Exhibit 13, by the use of comparative residential buildings from survey work within his firm and the application of visitor parking standards generated for non-residential uses, he was of the view that in a worst case scenario, the Proposal would require 96 parking spaces for resident and non-residential visitors. With an additional eight spaces required for the retail use proper, he foresaw a total demand of 104 spaces. He said this was well under the supply proposed of 119 spaces that is requested to be required by virtue of the reduction in the rate standard from 0.2 to 0.15 visitor parking spaces per unit.

He advised that he saw merit in confining the supply of residential and non-residential visitor parking to 119 spaces. This provided 40 “flex spaces” in addition to the proposed visitor spaces and the required residential parking standard. He agreed on the appropriateness of specifying a total minimum supply at 800 parking spaces. This results in no net derogation from the parking supply standard set as applicable to the subject lands under the Site Specific Zoning.

Curiously, he made no reference to the actual supply of parking spaces contemplated for the Proposal, currently around 934 spaces.

On questions from me, he acknowledged that he had done only some of the comparable residential survey work used, that the survey results were for residential and not mixed use buildings as is the Proposal, and that the project sizes of the comparables range between 70 and 214 units, markedly less than the 800 units proposed. He did say that all of the projects examined were in the same Class 4 locational parking standards district used by the City.

He supported the potential for floater parking spaces.

Witness: Luigi Nunno

Participant Luigi Nunno was affirmed and his Participants Statement entered as **Exhibit 15**. He described himself as a nearby resident of the subject lands since 1986. He indicated that he was generally supportive of the agreement and reduction in variances sought by the Proposal. He described his outstanding concerns with visitor parking and the potential for overflow to their street if the calculations were in error. He further lamented on the change in the site character departing from a proposed seniors’ oriented project with the loss of a publically accessible ‘community center’. He felt that change meant more units, and more density with resultant traffic and infrastructure loading.

Witness: Cehunt Duong

Mr. Cehunt Duong, also a local resident, since 2018, described the neighbourhood as having an aging population that had expressed support, he understood, for the previously represented ‘community centre’.

In the main, he appreciated the settlement undertakings by the owner to ensure a clean and presentable development image for the site, especially the revisions proposed by eliminating original variances three and eight, angular plane encroachments.

Witness: Clayton Chen

Mr. Clayton Chen, again a neighbouring resident, expressed appreciation for the Applicant having addressed his concerns in the ‘settlement’ reached. He advised they had reached an agreement by limiting the angular plane encroachments. He said the Applicant is taking steps to be a good neighbour and to provide security measures and

assurances. He said the site has been vacant for 14 years and has presented a risk to residents. He said with the Applicant being ready to continue with building and with the elimination of impacts, he asked if the settlement terms could be granted immediately.

Argument: Mr. Andrew Jeanrie

In closing submissions, Mr. Jeanrie suggested that the “big picture be emphasized”. In that regard, he said that in the Proposal there is no increase in density or unit count, no minimization of the parking standard and the fact that the overall height was not being increased by the Proposal suggested that the big picture remains unchanged.

He acknowledge there were ‘tweaks’ to the zoning by-law in ‘administrative areas’ (to address ‘programming’ differences) with no requirement for marketing to a demographic group. He acknowledged there were some ‘technical’ variances proposed.

He wished to focus on two of the variances:

1. “amenity space”. He noted the change proposed is to the minimum, not the maximum and that the three uses above specified (‘community centre’, retirement beds, wellness centre), even if they are required, are not being changed. However, he continued his submission that these uses were permitted but not required.

Further, that by the terms used for ‘amenity space’, he indicated that the owner would have a ‘credit’, for ‘amenity space’, at least in respect of the provision of a ‘community centre’ use, no longer proposed. He implied the decision to not provide that space alone accounts for the desired reduction in required ‘amenity space’.

He urged that the proposal will increase outdoor amenity space (Exhibit 2, page 192). To demonstrate this, he said that the Project has mandated 1.5 m² per unit ‘outdoor amenity space’ to be in the base of the tower. He termed this “sloppy drafting”, but submitted that the intent is clear, namely: to ensure 1.5 m² of amenity space occurs outdoors.

He urged that the revisions contemplate the provision of 2.0 square metres per unit of ‘outdoor amenity space’ (not 1.5), and that the difference between the two is equivalent to the ‘outdoor amenity space’ between the towers, above the sixth floor level: the ‘outdoor swimming pool’.

He urged that equivalent space, the difference, be considered an increase in ‘outdoor amenity space’. He noted that neither seniors’ ‘retirement beds’ space nor ‘wellness centre’ space was identified under Site Specific Zoning as being a “credit” as ‘amenity space’.

Mr. Jeanrie was also of the view, in an arguably unfounded evidentiary submission, that a ‘community centre’ use generated a higher visitor parking relationship and that its

removal further reduces concerns for the provision of visitor parking for the uses as a whole.

He urged that the matter of interpretation of the use 'requirements' be left to the Planning and Building Departments' and the responsibility of the Chief Building Official, who is responsible "for the interpretation of zoning." He noted that if his interpretation was wrong not even a conditional permit could be issued. He repeated his earlier submission that it is his client that bears the risk.

He submitted that, overall, a 'community centre' in the Site Specific Zoning was given a credit as against amenity space, if the use was provided. Further, that the Proposal is to not provide a 'community centre' use on the basis that there is no reason why the Proposal's 'residents should be required to bear the (financial) burden of additional 'amenity space' over those requirements applicable in the rest of Toronto.

2. Parking. On the second issue of visitor parking supply, he argued that a 'community centre' use would trigger a higher visitor ratio attendance than commercial uses. He urged that Mr. Chan's worst case scenario usage in support of the flexibility of 40 floater spaces be adopted. He acknowledged that the 40 floating spaces could be sold to residents and not available for 'flexibility' purposes, but that the starting principle should be: 'There is too much visitor parking in the Proposal'. He urged that the only question in respect to this variance was whether the standard requested is appropriate for this Proposal.

He asked that the TLAB consider the support given to Mr. Butcher's letter to Planning Staff (dated July 31, 2019), the lack of continuing objection and the opinion evidence that the four tests have been met independently and has a whole. He asked that weight be given to the absence of change in the 'Big Picture items' and to the community satisfaction resulting from the settlement, based on an open discussion approach.

He urged approval in the form substantially settled in Exhibit 12, Appendix B.

ANALYSIS, FINDINGS, REASONS

The variances sought here are in pursuit of the Proposal.

I find, as requested by Mr. Jeanrie, that the modifications proposed by the Applicant/Appellant to the requested variances, including the requested Conditions, are, for the purposes of section 45 (18. 1.1) of the *Planning Act*, to be of a nature as to not require additional notice or circulation.

I am urged to find that, in the 'Big Picture', the Proposal is very similar to the Project. By applying built form measures this is true and I can accept Mr. Jeanrie's physical characterization as being generally accurate.

The Proposal, in its overview, also constitutes a revamping of the Project approved by Council in 2014 in a number of significant ways.

Mr. Butcher's firm has had involvement in the public presentation of the Proposal and the Project for some 14 years. He was frank to identify those elements of the proposal that constitute a departure from the Project approved by Council. These elements include the following:

1. An abandonment of the concept theme focussed on providing accommodation and services to a target seniors market. This is mollified somewhat by the suggestion that 'seniors' will be eligible to acquire units in the Proposal as it is to be an open public solicitation.
2. Revisions to the Project that reflect the Proposal's need or desire for a more contemporary and beneficial offering consistent with the new owners vision and including the following elements:
 - a) the elimination of a seniors rental building and it's conversion to an all condominium form of tenure;
 - b) a corresponding height adjustment to the east tower to facilitating a marketing attraction to accommodate the condominium built form;
 - c) the decision not to provide use features of the project including a community center, retirement home/beds and a wellness center;
 - d) a reduction in total amenity space so as not to burden the condominium corporation with the added construction costs and maintenance expenses;
 - e) the elimination of LEED certification and documentation intended to the 'Gold' standard;
 - f) the confirmation of a much-reduced soft landscaping standard.

The Proposal also seeks, by variance approval, adjustments to the Site Specific Zoning (By-law 1002–2014), to accommodate certain of these objectives: a reduction in the volume of required 'amenity space'; an alteration and application of different performance standards that are less onerous respecting visitor and non-residential parking; a height allowance resulting in near mirror image high rise towers, unlike any nearby equivalency, to 93m and 30 stories; recognition of the landscape plan.

I accept without reservation that there are a number of 'technical' variance requests arising from ambiguity or conflict in drafting, also termed by Mr. Butcher as administrative "drafting errors", in the permissions granted to the Project in 2014. The extent to which his Firm might have identified these earlier is not relevant; it is sufficient

that the Proposal is asking for them to be addressed now in furtherance of its objectives.

The TLAB is generally sympathetic to variance requests that do no more than recognize and maintain an existing circumstance. In this case, while the site is vacant, the Project as approved in 2014 carries with it today a semblance of an existing circumstance, albeit notional.

The TLAB has limited jurisdiction over requests to vary a by-law on matters not remitted to it on a variance application and appeal. In particular, the decision of the Applicant to abandon a seniors' target development is a matter that it is free to pursue as is the conversion to an all condominium form of tenure. The choice of how to pursue the implications of that decision insofar as needed zoning revisions were concerned, also lay with the Applicant. That choice, of course, included the pursuit of a zoning by-law amendment, or a variance application.

I was afforded no insight as to the decision making rationale of the Applicant/Appellant and make no assumptions in that regard. Rather, the TLAB is presented with an appeal and is asked to assist in a fundamental conversion of a substantial Project sanctioned by Council; this, through asserted interpretations taken of the Site Specific Zoning and its variance, supportive of changing significant components of the character ('programming') of the Project.

It was City Council that accepted and, by Site Specific Zoning, created a series of permissions to allow for the Project that would deliver a comprehensively designed senior's life style development of significant scale. As described, the Project permission granted in By-law 1002–2014 authorized two 30 story buildings, one to accommodate condominium and one to reflect the rental form of tenure, an 11 story condominium tower, townhouses and permissions to include a 'community centre', retirement home/beds and a wellness centre.

The TLAB cannot help but take notice that in the planning of the day, and to date, this form of lifestyle community reflected support in provincial and local planning policy for diversification, to respond to local community needs, to provide variety in dwelling types and to seize opportunities to build complete communities.

On the subject property, the Project received Council approval in the light of this diversity of uses and a built form that, on the evidence presented, is dramatically distinct in theme and larger than anything seen in the vicinity.

In the absence of any evidence to the contrary, the Council approval of the Project was in the context of providing for uses and offerings to seniors. That offering, by location, constituted a unique and identifiable, novel and theretofore unavailable diversity and range of residential dwelling units and tenure offerings, consistent with policy objectives of the province and the City.

This description is expressed in the Final Planning Staff Report dated May 28, 2014, Exhibit 2, p. 712 (see: p. 581ff). Staff's recommendation to Council, notably its reliance in support of an application "targeted to seniors", is referenced multiple times identifying the intention to provide "life-lease residential units in addition to a public 'community centre'."

It was the City Council that saw and approved the totality of the Project, said today as intended to be continued from a 'Big Picture' built form perspective only, by the Proposal. In reshaping and eliminating the seniors target market with its associated attributes provided for in the Site Specific Zoning, City Council has not been afforded any consideration of the modifications proposed to its earlier approval.

Through the variance application process, the Applicant seeks to retain the Big Picture elements of height, density, built form, unit count and design componentry bargained by City Corp., but strip away, through interpretation or relaxation, Project elements and their requirements above listed, attached to the prior 'target market'.

Any ability for Council to consider whether it's earlier approval, in all its attributes, including height, density and scale, was averted or avoided in the choice to proceed by way of variance.

In my view, it is not responsive or entirely satisfactory to this observation by saying that the elements of the Proposal are as-of right and the identified list of variances were extensively canvassed with a multitude of City Staff. Further, that the Proposal was the subject of a 'supportive' City Planning Staff Report accepting the opinion expressed in the Bousfield's letter of July 31, 2019 and its later supplement.

There was no evidence presented that Council has ever been presented any element of the Proposal, as might have been available by way of the SPA application, a revised *Planning Act* s.37 Agreement, or altered subdivision agreement. There is no Council position on whether it would have afforded support to the Applicant's acknowledgement that a 'mixed use, multi-phased development is no longer targeted to seniors' ((Exhibit 2, p.581).

In the past, this Member has said that planning is nothing if it turns a blind eye to the future. This was said in the context of the potential for the decisions of the TLAB to constitute a precedent that might encourage future applications. By the same token, planning is nothing if it turns a blind eye to the past.

While it is not open to me to question the business determination to abandon the target market for a seniors' development or conversion to condominium tenure, it is equally not open to me to stand in the shoes of Council to assess the merits of the Proposal, as can now be contrasted with the Project.

That said, it is clear that the route chosen to pursue variances, removed from the

Council any decision-making capability insofar as the variances can be seen to detract from the approval of the Project which Council addressed in specific detail in 2014. Variance applications are considered by the COA in the first instance and the TLAB in the second, not the municipal council.

Still, in the circumstances of variances requested to alter the terms of a Site Specific Zoning, it is not for the TLAB to turn a blind eye to that instrument in consideration of the statutory test as to its “general intent and purpose.”

I find that By-law 1002-2014 was the product of a very significant and extensive land-use planning process involving an ‘Avenue Study’, secondary plan (OPA 173), an Area Specific Avenues Zoning by-law amendment and Site Specific Zoning permission applicable to the subject property. In no sense was the Project considered in isolation from its target marketing intention to seniors.

Mr. Butcher acknowledges this fact in his Expert Witness Statement, para.67, where he states: “By-law 1002-2014 was adopted in direct response to City Core’s proposal to construct...marketed to seniors demographics”.

The point is made even more cogently in the lengthy Staff Report of May 24, 2014, Exhibit 2, p.564:

“Amenity Space/ Senior's Services

A prominent feature of the proposed development is the array of amenities and services geared towards seniors that are proposed to be provided to both residents and the general public. These services respond to the direction in the Official Plan for new developments to provide a range of housing and the provision of shared, multi-use facilities. It is important to note, however, that the proposed community centre, retirement home and medical office facilities were not components of the development that were required by the City. The applicant proposed them to support their target market. *City staff support the premise of these facilities and are of the opinion that securing their provision was warranted. The proposed draft zoning bylaw therefore sets out a minimum size requirement for each of the proposed facilities”* (p.582-3, emphasis added).

Indeed, the listed uses were added to By-law 1002-2014, through exception 41, as described in Mr. Butcher’s Reply Witness Statement, para.17, with the earlier specified minimum size regulations.

I find that a starting point for the consideration of the Proposal to be a requirement of Council for the Project to provide the listed facilities, services and matters so identified at their minimum sizes. While the intent of the Proposal is, apparently, not to provide these uses, it would be inappropriate of me to sanction, directly or indirectly, that latter intention by addressing those three uses, repeated by Mr. Butcher at para 17:

‘Community centre’, minimum 1900 square meters;

Retirement home, minimum 30 bed sitting rooms;

Wellness centre and medical offices, minimum 1100 square meters.

The total space is 4000 square meters (Special Use Space).

These three uses are not before me; however, I disagree that the intent of By-law 1002-2014 was to merely ‘permit’ these spaces. The Site Specific Zoning, the associated plans, and gross floor area approved at the very least clearly accommodated the expectation they be provided for the Project to proceed, on building permit issuance.

In that the Proposal intends to abandon the provision of this Special Use Space yet retain the overall approved gross floor area of the Project, an unanswered question arises as to what now is intended for this space, given the unit count remains relatively fixed?

It is instructive to note that at no time were any of the three listed permitted uses described as intended as part of the Proposal. No explanation was given as to what the plans for the Project showed relative to these uses. Similarly, nothing was said about the Proposal and its allocation of the space equivalent, if any, apart from the acknowledgement that a ‘community centre’ was not intended to be provided. Presumably, the Project contemplated space allocation of some 4000 square meters of Special Use Space and included the gross floor area for these uses; the same total gross floor area continues to be requested for the Proposal, but it is silent as to how the space equivalent is to be used.

No explanation was provided as to why the requested reduction in ‘amenity space’ (2,000 square metres) did not get reflected in a density reduction, namely, a corresponding reduction in gross floor area. Alternatively, how the space freed up by a lessening of the ‘amenity space’ standard, 2000 square meters (by the requested standard reduction from 6.5 to 4.0 square meters/unit), was to be employed - possibly as larger units?

Equally, a comparative rendering of the Project to the Proposal, Exhibit 6, p.19, and Variance 10 on Appendix A, suggests that two additional floors have been added to the four storey podium in the Proposal, for which no accounting was evident in the evidence. What is the explanation?

Even if the Applicant’s planner had said that there is no obligation to build to the maximum permitted gfa, it would be of cold comfort. The Application on appeal contemplates the continuation of the full gfa of the Project, if not more.

Despite the paucity of adequate evidence, I will require as a Condition of any approval that the Chief Building Official certify the gross floor area of the Proposal does not exceed 74,630 square meters.

I find that these questions and more are matters that Council might have been asked to assess, but was not given the opportunity. I do note again that in the one area, 'amenity space', the Proposal does seek a reduced responsibility for space provision – but again, with no explanation in the evidence as to how that reduction would be accommodated if the Proposal is built to its full space permission of 74,360 square metres.

I find that variances to the Site Specific Zoning permission need to be considered in the context of the general intent and purpose of that instrument. The Project was to deliver use permission of a scale, purpose, built form and componentry, including specific regulatory tailoring that the Council supported.

There is clearly no request to vary By-law 1002-2014 by deleting the above listed uses; they remain an integral component of the Site Specific Zoning.

To deprive Council of these considerations is to place on the TLAB a responsibility and an obligation to examine the variances requested within the context of the general intent and purpose of the original zoning approval, not divorced from it. By the same token, that discipline of remembering the past, as enshrined in the Site Specific Zoning for the subject property provides but a basis for the TLAB to start to perform its duty to address the appeal matters on their merit, in accord with applicable policy and the statutory tests.

In this regard, I adopt and accept the language employed in *Berkeley Parliament Inc. v. Toronto (City)* 4 O.M.B.R. 199 (2018):

79. Put another way, the subsequent "tweaking" of a development in the planning processes, through minor variances, should not be seen to denigrate the original efforts of the parties or the ultimate result of the planning processes that led to the eventual endorsement of what was then considered a final version of the development in 2015. To the contrary, they are an extension of that process arising from a subsequent change in circumstances, such that the ultimate form of the development, with the additional variances, can be considered to be the result of the entire process, from beginning to end, inclusive of those additional variances that meet the four tests.

The COA had the same burden involved by the Application: the appropriateness of varying the Site Specific Zoning. I am to have regard to the decision of the COA and the materials before it. The COA refused all of the variances in the application with only perfunctory reasons.

While the TLAB lab sits on appeal from the COA, it does not sit in appeal of the COA decision. The task of the TLAB is to consider the Application as a matter of first instance to be determined on the above noted policy and statutory tests.

In my view, it is not for the TLAB to adjudicate on the route chosen by the Applicant. Rather it must simply deal with the requests made in the Application within the context in which they are found. This was also expressed in *Berkeley Parliament*, by Members T. Hodgins and D.L. Lanthier at paragraph 71, as follows:

“...that the Applicant is nevertheless permitted by law to apply for the variances, and in doing so, the variances are to be considered upon the evidence as it now exists, and in the context of what now exists, including such changes that have occurred since the earlier form of the development was first approved....”

The Applicant, through Mr. Butcher, suggests that the City has had ample involvement in the conversion of the seniors target market project to a proposal of an all condominium nature in which seniors may or may not be purchasers. This advice is premised upon what was said to be an extensive period of engagement by the Applicant with City staff in his various departments including Planning and Buildings. Indeed, Mr. Butcher himself has had discussions with Planning staff and they in turn with other departments, so it is said. These discussions and their results were not made part of the record but are manifest in two Staff Reports from the Planning Department that address various aspects of the Proposal.

There is no discussion of any significance therein that relates to the changed character of the offering of the Proposal vis-à-vis the Project.

It is true that the Proposal needs, for implementation, subsequent City approvals by virtue of the suspended applications for Site Plan Approval and plan of subdivision/condominium approvals. In this regard it is worth noting that some potential for a future Council engagement exists, subject to delegated approval functions remaining with staff. However, none of this was described and none of this is specifically germane to the evaluation and determination of the Application.

Rather, the Applicant asserts that it is the Applicant that bears the risk. Presumably, the risk raised is whether the Chief Building Official will ask the question concerning the location of the Special Use Space minimums and reduced ‘amenity space’ of 2000 square meters, set out in By-law 1002-2014, for which no variance has been sought respecting gross floor area.

This is coupled with a variance revision request that one quarter of all of the Proposals ‘outdoor amenity space’ of 1600 square meters (i.e., 390 square meters), be directed to the roof between the condominium towers - to be developed as an ‘outdoor swimming pool’.

I note another comment from *Berkeley Parliament Inc.*, in respect of that part of the matter before it requesting a reduction in required ‘amenity space’:

“59. The Owner in support of the amenity area variances, focused on the relative numbers in a generic manner and did not provide any relevant or helpful evidence on the qualitative aspects of the amenity space to be provided, or such

things as: how many users such space can accommodate based on its design and features; the relative success of other projects with similar amounts of amenity space; or an analysis or rationale justifying the reduced amount of space being requested, including the proximity of easily accessible public amenity areas such as parks in the neighbourhood that might affect the need for the required quantity of amenity space”.

I find that the evidence provided herein, including the oral evidence and a rereading of the filings and Exhibits, yields a similar circumstance to the observation above in *Berkeley*.

In my view, as in *Berkeley*, it is not an adequate or sufficient response to say the standard for ‘amenity space’, or any other variance rational, is simply to bring the proposal into conformity with the current standards of By-law 569-2013, applicable elsewhere in the City. The surrounding circumstances need to be considered.

Mr. Bucher agreed and acknowledged that By-law 569-2013 does not apply to the subject property.

I am cognizant of the above considerations because the planning process is an integrated whole knitting together complex approvals of policy, site-specific instruments and institutionalized approval authorities. In the words of Chief Justice Rand in *Roncarelli v. Duplessey*, (SCC) “there is always a perspective within which a statute operates”.

In this instance, that perspective is framed by the relatively recent history within which the subject property is found.

Were I to find that that history governed any attempt to change the essential character of the Project by way of a variance application, I might be compelled to do as the COA did and dismiss the variances sought - absolute. However, as above adopted, the Applicant has a statutory right to pursue the relief as owner and that consideration is not to turn entirely on issues such as a directional change that are not squarely requested as variances. Nor is it the duty of the TLAB to add problems where its process has been properly engaged; rather, its’ duty is to address the appeal elements within the perspective within which the statute operates, including addressing the requested variances both individually and cumulatively.

Indeed, this was the express offering provided by Mr. Butcher. His engagement in the matter before the TLAB, included the determination to proceed (or at least continue) with the variance route.

In DAY 1, the Applicant/Appellant provided thorough planning evidence in support of the 11 variances sought to the Site Specific Zoning. These variances and the application of policy and statutory tests were articulated in his evidence and through the extensive

expert witness statement of Mr. Butcher, Exhibit 2, Document Record, photo book, shadow study and 'Exhibit Book'.

Despite this, some of this evidence on certain variances was unconvincing or even unsupported; for others he acknowledged multiple deficiencies in drafting which he sought to correct on DAY 2. He admitted the need for certain selective Conditions and returned with them, evidenced by the above noted requested undertakings being both of an explanatory and drafting nature.

In DAY 2, the primary evidence, again from Mr. Butcher, involved the responses to undertakings and the proposed drafting of the revisions as demonstrated in Exhibit 11, including the settlement corrections and proffered Conditions.

I accept the advice of counsel that Variances 3 and 8 in Attachment A have been abandoned. I find that the explanation for a reduction in height to 12 m for the town house block and the modification to the scale of the mechanical equipment space of the mid- rise tower has appropriately addressed the former encroachments on angular planes. As such, modifications shown on the cross-section plan for the Proposal, Exhibit 10, properly eliminates the need for these variances. I will make that Plan, Exhibit 10, a component of any approval granted and a replacement to file materials such as found in the Exhibit Book (Exhibit 6), in section drawings at pages 13, 15, 18 and 22.

I deal with each of the schedule of variances in the sequence considered by the COA, Appendix A.

For ease of description, I adopt Mr. Butcher's categories for descriptive purposes found in his Expert Witness Statement at para. 3, namely:

- i). CATEGORY 1: administrative errors and omissions from By-law 1002-2014;
- ii). CATEGORY 2: design and program refinements, arising from the switch to condominium plans from seniors residences; and

- iii). CATEGORY 3: technical matters, to newer City standards

Variance 1. Amenity Space (Category 2 and 3 rationale)

The Site Specific Zoning established a higher 'amenity space' requirement as part of a comprehensive assessment of the Project. The Project was more than its notional seniors target market: it benefitted from site specific permissions, heights, density, landscaping and other regulations that permitted a development of a scale, massing, density and unit count that was distinct, unprecedented and encouraged in the location of the subject lands and for its seniors target market attributes.

The 'Big Picture' items are sought to be maintained in the Proposal; however, the same number of residents of the Proposal (by unit count) are to have reduced 'amenity space'. From the total proposed in the Project of (approximately) 5200 square meters of 'amenity space', only 3200 square meters in the Proposal would result if this Variance 1 is approved. The 'outdoor amenity space', half of the total 'amenity space', is to be 'outdoors'. The Proposal would consume 25% of this outdoor space (almost 400 square meters) relegated to an 'outdoor swimming pool' recreational use, on the podium between the towers. It would be usable only for some 25% of the year.

I find this variance request, and its rationale or lack thereof, is neither minor nor desirable nor within the general intent and purpose of the Site Specific Zoning. Its two rationales, apparently, are that the 'seniors target market' component having been abandoned mitigates against having to provide space for seniors usage: a 'community centre' and, perhaps, a seniors retirement home beds and wellness/medical centre. It is also said supportable to make the Proposal eligible to the current general 'amenity space' standard of By-law 569-2013.

Respectfully, that latter By-law was enacted at the time of the Site Specific Zoning; its application was open to be applied for through Council as the Proposal was advanced. By-law 569-2013 by the planners acknowledgement does not apply to the subject site and there is no policy ground or evidence advanced that supports the 'updating' of different standards in the case of the Site Specific Zoning (see: *Berkeley, infra*).

There was no evidence presented to support the quantum of lost space proposed by virtue of a changed 'target market' decision, or otherwise. While reference was made to the intent not to provide a 'community centre' (1900 square meters of 'credit towards' 'amenity space' in the Site Specific Zoning), it is the Applicant's submission that this space was never 'required' to be provided in the first place. Second, the Applicant's counsel raised the somewhat rhetorical question as to why this developer, and the resultant condominium corporation, should be burdened by carrying an excess of 'amenity space' beyond contemporary obligations under other zoning.

I find that the evidence of the Applicant is not persuasive for the reasons identified in *Berkeley*, para. 59, above quoted.

Also, as stated above, the TLAB is not required by this variance to interpret the Site Specific Zoning as to use obligations; still less am I able to weigh inferential economic considerations. In plain terms, the Project and the Proposal are argued to be the same on the Big Picture terms, at least in scale, height and density; however, relief in the provision of 'amenity space' to serve this same development has not been satisfactorily demonstrated.

I am even less sanguine and receptive as to the Applicant's argument that there is an increase in 'outdoor amenity space'. The minimum requirement of 2.0 square metres/unit is proposed to remain the same.

Common sense can give notice to the lack in utility of an 'outdoor swimming pool' on the sixth floor roof - as being of extremely limited use to the unchanged number of Big Picture residents. I will not condone that suggestion but require instead that adequate indoor 'amenity space' be available to provide for an 'indoor swimming pool'.

I will not approve this variance as requested. Instead, I make a hopefully constructive suggestion by a variance, with an incentive Condition, as to how a required amount of 'amenity space' can be made more appropriate in the longer term public interest, namely of the future inhabitants of the Proposal.

I will allow some reduction in total 'amenity space' but require that some of it be appropriately positioned, in location, use and scale in the podium as exclusive use 'indoor amenity space', accessible and useful to all residents on a year round basis. If the 'suggestion' meets with disfavour, Variance 1 will be refused and the decision of the COA confirmed.

Variance 2. Setback, Silver Maple Gate (Category 1 and 3 rationale)

I accept Mr. Butcher's evidence that this variance arises through a drafting oversight and that the plans for the Proposal continue to reflect the intended approval of the Project. I have analogized this variance to the recognition of an existing circumstance and am content that an appropriate planning process and consideration has been given such that the request should be approved. I also accept his proposed Condition referable under 'Evidence', in DAY 1, above.

Variance 3. Angular Plan, Mechanical Penthouse (Category 2 and 3 rationale)

The Applicant has withdrawn this request for a variance.

Variance 4. Building Height, East Tower (Category 2 rationale)

The Applicant seeks the advantage of a permission for increased height on the east tower for the marketing purpose of greater floor to ceiling heights in the condominium units from a converted residential building.

It is the planner's evidence that conversion may occur 'as-of-right' and there will be no increase in unit count or gross floor area. The similar height proposed to that of the west tower will provide a similar image of built form and streetscape presentation. The shadow study, Exhibit 7, indicated minimal incremental impact and the settlement terms have removed any local objections.

City Staff have raised no issues and the planning opinion evidence supports this variance.

The TLAB in the past has eschewed 'mirror image' buildings. While such new construction products may have beneficial hard and soft cost implications, at least at the neighbourhood scale they rarely contribute to an enhancement streetscape presence. The evidence on the application of the tests weighs more heavily that this variance should be approved without the need for any condition.

Variance 5. Parking (Category 2 and 3 rationale)

The Applicant supports a reduction on the Site Specific By-law requirement for combined residential and non-residential visitor parking. It is argued that the effect of this reduction from 0.2 spaces/unit to 0.15 spaces/unit is 40 vehicle parking spaces. Further, that because of a proposed Condition to fix minimum total parking to 800 units, there will be no net loss in parking spaces, all located in the garage.

This request is within the context of meeting resident and visitor parking space generation and indeed, the Proposal has a contemplated parking supply far in excess of the proposed minimum, i.e., greater than 930 spaces total.

It was said that the 'freed up' 40 spaces could be flexibly allocated on a demand basis to parking demands, however generated.

Mr. N. Chan appeared to support a comparative survey analysis, Exhibit 13, in which he opined that the space demand generated by even his highest usage comparable did not rise to a demand ratio of 0.15 parking spaces/unit for visitor parking.

Mr. Jeanrie submitted that the Chan study, the 'flex spaces' (which he admitted could be sold and not made available) and the intended much larger supply, all made the higher standard superfluous.

I continue to express concern as to the weight attributable to the late arrival of Exhibit 13. The comparable surveys referenced therein were not mixed use buildings, did not approach the scale of the Proposal and were not all conducted by the witness. As well, it applies a standard extracted from By-law 569-2013 that is not applicable to the subject property.

Moreover, neither the variance nor the proposed Condition deals with the location of the 'flex spaces' or the fact that the overall minimum number of parking spaces may have to be constructed in phases.

Mr. Butcher agreed that further revisions could be made to reflect both these latter two matters.

The concerns of the Participant witnesses for protecting limited street parking, expressed by Mssrs. Nunno and Duong, are somewhat mitigated by the distance separation between their dwellings and the commercial component of the Proposal, said to be the generator of non-residential visitor parking.

The direct evidence on the application of the tests weighs more heavily in favour of approving this flexibility option with appropriately modified language and Conditions.

Variance 6. LEED (Category 3 rationale)

Mr. Butcher described this variance as having been negotiated by the client arising from the passage of time and the existence of 'updated' City standards. He noted the LEED reference registration was more descriptive and documentary than a construction standard and effectively redundant to the newer City Green Standards.

Mr. Butcher's Witness Statement, Reply Witness Statement, evidence and Undertaking responses added very little if anything as to the applicable tests and as to why this variance is appropriate. He noted it is administered by the Planning Department, if revised.

I find that a technical update to this current standard that arises with the apparent support of Planning Staff is worthy of support despite the absence of a graphic explanation as to the compliance of the change with applicable policy and tests. Were the City or supported opposition, to suggest otherwise, the circumstances might differ. There is no suggestion of any adverse impact or disbenefit to the public interest.

Variance 7. Setback, Building, Corner Rounding (Category 1 rationale)

I accept Mr. Butcher's evidence that this variance arises through a drafting oversight and that the plans for the Proposal continue to reflect the intended approval of the Project. I have analogized this variance to the recognition of an existing circumstance and am content that an appropriate planning process and consideration has been given such that the request should be approved. I also accept his proposed Condition referable under 'Evidence', in DAY 1, above.

Variance 8. Angular Plane, Townhouses (Category 2 and 3 rationale).

The Applicant has withdrawn this request for a variance.

Variance 9. Building Height, Townhouses (Category 1 and 3 rationale).

Mr. Butcher supported this variance as expressed in his Expert Witness Statement. He provided the opinion it would set an appropriate main floor height.

With the advice of Mr. Chan, he advised the TLAB as to the adequacy and compliance of egress, access and sufficiency of parking spaces, one per unit for the proposed Townhouse. He said that provision was unrelated to finished floor height. He expressed no concern for the failure of the Site Specific Zoning from providing any performance standards for the Townhouse units, apart from a 10 m rear yard setback, a 3 m road setback and respect for the rear yard angular plane.

He acknowledged never encountering a circumstance where townhouse units had no regulations on such matters as height, gfa/fsi, landscaped open space, lot area or otherwise.

The townhouses were variously described as being up to 17 in number, three stories and of heights mentioned at 10 and 12 meters.

I find the variance requested as appropriate on the evidence of the witness Butcher. By the same token, I find the absence of regulatory requirements on the Townhouse units to be unsuited to the application of principles of good community planning. I will modify this variance to add standards consistent with townhouse development. So varied, this variance should be approved.

Variance 10. Step back, Podium (Category 1 and 3 rationale).

Mr. Butcher advised that a step back of 1 meter at the 20 meter height level on the east building face had always been a component of the podium design for the Project and the Proposal. Confusion had arisen by virtue of a conflicting step back, performance standard 325 of the Sullivan By-law; it was not adequately addressed in the Site Specific Zoning.

I accept Mr. Butcher's evidence that this variance arises through a drafting oversight and that the plans for the Proposal continue to reflect the intended approval of the Project. I have analogized this variance to the recognition of an existing circumstance and am content that an appropriate planning process and consideration has been given such that the request should be approved without the need for any condition.

Variance 11. Landscaping (Category 1 and 3 rationale).

As above related, Mr. Butcher supported this variance on the policy and tests required.

Regrettably, his explanation added little more than the fact attestation that the percentages indicated 'reflect the plans' that had begun with the Project and are continued by the Proposal.

In my view, the reduced landscaping obligation of the Project reflects another example of the concessions in the approval granted by Council of the Big Picture items bargained by City Core. The Proposal seeks clarification to recognize those reduced standards.

Landscaping is another component of the Proposal that is to be provided in phases (or Stages) as the build out occurs. Apparently, the SPA process recognizes the Phases referenced in the variance language. Like Variance 5, parking, I will modify this variance to ensure building permit issuance is not impeded by a failure of the applicable zoning to provide for phases in the provision of soft landscaping.

I accept Mr. Butcher's evidence that this variance arises through a drafting oversight and that the plans for the Proposal continue to reflect the intended approval of the Project. I have analogized this variance to the recognition of an existing circumstance and am content that an appropriate planning process and consideration has been given such that the request should be approved with the benefit of a Condition to recognize phased delivery.

Based on all of the foregoing considerations, the settlement and appeal can be appropriately decided. The variances detailed and the applied conditions, below, can individually and collectively modify the Project and address the Proposal with a finding of compliance with the Provincial Policy Statement, in conformity with the Growth Plan and the applicable four tests.

DECISION AND ORDER

The appeal is allowed in part,

The variances identified in **Schedule 1** are approved subject to the following Conditions:

Conditions of Variance Approval

1. The approval of Variance 1 on **Schedule 1** specific to 'indoor amenity space' located between the towers in the uppermost level of the base building is to provide only for the allocation and provision of some or all of the uses listed. If site plan approval for the design and provision of this space is not obtained **by July 15, 2021** as a pre-condition to building permit issuance for the Proposal, and maintained thereafter, or such further extension thereof as is allowed by the TLAB, this Schedule 1, Variance 1 approval expires and the appeal in respect of Variance 1, 'amenity space', is dismissed and the decision of the Committee of Adjustment thereon is confirmed.
2. Despite all applicable parking rates, a minimum of 800 parking spaces must be provided and maintained within the parking garage on the subject property.
3. The provision of 'amenity space', 'vehicle parking spaces' supply, 'landscaping' and total gross floor area may be phased commensurate with site plan approval for the Proposal's development and for purposes of building permit issuance, provided provision is otherwise retained and demonstrable for full by-law compliance.
4. All buildings shall be constructed and maintained to both Tier 1 and Tier 2 performance measures of the Toronto Green Standards Version 2 in effect on November 1, 2020, to the satisfaction of the Chief Planner and Executive Director, City Planning Department.
5. No townhouse unit shall be constructed that does not have a front lot line width of 6.0 m, a maximum main front wall height of 12 m and compliance with all other provision required of the Site Specific By-law 1002-2014, as amended by this decision. Each townhouse unit shall have at least one vehicle parking space 2.6 m wide by 5.6 m long and be accessible by a 6.0 m wide two way access/egress aisle.
6. The plan identified as Exhibit 10 is attached hereto as **Schedule 2**.
7. Construction shall be in substantial compliance with:
 - a. **Schedule 2**; and in accordance with Plan A-200, the site drawing, Figure 1 dated September 13, 2019, attached to the City Planning Staff Report (Exhibit 2, Tab 9, p.52) in respect of Variances 2 and 6 on Schedule 1 hereto;
 - b. the architectural drawings for the Proposal dated January 2020 prepared by IBI Group and Bousfields Inc., found at Tab 10 in the

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Applicant's Exhibit Book (Exhibit 6), pages 11-16, save and except as expressly otherwise specified by this decision;

- c. a total gross floor area for the Proposal not to exceed 74,630 square metres.

8. **Schedules 1 and 2** form an integral part of this decision and order.

If difficulties arise in the implementation of this decision, the TLAB may be spoken to.

X



Ian Lord

Panel Chair, Toronto Local Appeal Body

Signed by: Ian Lord

Schedule 1.

Approved Variances:

1. Performance Standard 128A, Amenity Space (By-law 1002-2014)

Amenity space is provided at a minimum rate of 4.5 m² per unit, of which, a minimum of 2.5 m² per unit will be provided as indoor amenity space and a minimum of 2.0 m² per unit will be provided as outdoor amenity space. Of the required minimum 2.0 m² per unit of outdoor amenity space, a minimum of 40 m² of outdoor amenity space will be directly accessible from the indoor amenity spaces. A minimum of 0.5 m² per unit of indoor amenity space will be located in the uppermost level of the base building in between the east and west towers in habitable space fronting onto Sheppard Avenue East. Such indoor space may be used only for the purposes of a community centre, recreation centre, a wellness centre, library, atrium, computer and technology room, classroom, arts centre, conference room, music room, fitness centre, gymnasium, yoga room, theatre, indoor swimming pool and change rooms, or any of them, and shall be accessible year round for the residents of the of the subject property.

Whereas the Zoning By-law requires that amenity space be provided at a minimum rate of 6.5 m² per unit, of which, a minimum of 4.0 m² per unit shall be provided as indoor amenity space, a minimum of 40 m² of outdoor amenity space shall be directly accessible with the indoor amenity spaces, and a minimum of 1.5 m² shall be provided as outdoor amenity space within the base of the building fronting onto Sheppard Avenue East.

2. Performance Standard 310A, Setback (By-law 1002-2014)

The proposed minimum building setback is 2.0 m from Silver Maple Gate and the southwest corner rounding at Sheppard Avenue East.

Whereas the Zoning By-law requires a minimum building setback of 3.0 metres from all streets.

3. Performance Standard 405A, Building Height (By-law 1002-2014)

The proposal is to have a maximum height of 93 m and 30-storeys for the east tower fronting on Sheppard Avenue East, excluding roof top mechanical penthouses and structures and appurtenances for green roofs.

Whereas the Zoning By-law requires that the height of the east tower shall not exceed 89.0 m and 30-storeys.

4. Performance Standard 451A, Parking (By-law 1002-2014)

The proposed vehicle parking supply for both residential visitors and non-residential uses will be provided at a rate of 0.15 parking spaces per dwelling unit.

Whereas the Zoning By-law requires vehicle parking to be provided at a minimum rate of 0.2 parking spaces per dwelling unit for both visitors and non-residential uses.

5. Exception 42(1)(b), LEED (By-law 1002-2014)

The proposal is to construct and maintain the development to Tier 1 and Tier 2 performance measures of the Toronto Green Standards Version 2 in effect on November 1, 2020 and to not obtain LEED registration and certification documentation.

Whereas the By-law requires the owner to provide the City with documentation of LEED registration and certification.

6. Performance Standard 308, Setback (By-law 10717)

The proposed minimum building setback is 2.0 m from the southwest corner rounding.

Whereas the Zoning By-law requires minimum building setback is 3.0 metres.

7. Performance Standard 332, Building Height (By-law 10717)

The proposed finished floor of the dwelling units on the first floor of the townhouses will be located a minimum of 0.2 m above the average finished grade measured at the street line.

Whereas the Zoning By-law requires that the finished first floor of the dwelling units shall be located a minimum of 0.60 m above the average finished grade measured at the street line and a maximum of 0.90 m above average finished grade measured at the street line.

8. Performance Standard 325, Step backs (By-law 10717)

Performance standard 325 of By-law 10717 shall not apply and the proposal shall be required to only conform with performance standard 316A of site-specific By-law 1002-2014 regarding the additional setback of 1 m for that portion of the building above a height of 16 m closest to the east lot line(s).

Whereas the By-law requires a minimum of 1.5 metre additional setback for the portion of a building above 20.0 m in height closest to the wall below 20.0 m in height closest to the east lot line(s).

9. Section 4, CLAUSE VI, By-law 129-2012, Landscaping

The proposed soft landscaping on the lot for the lands designated in Schedule 'A' as "CR" that are not covered by permitted buildings, structure or parking, is 6.09% for Phase 1 and 20.21% for Phase 2, such phasing to be substantially in accordance with drawings A100 and A200, prepared by IBI Group, issued on July 12, 2019.

Whereas the By-law requires all lands designated in Schedule 'A' as "CR" that are not covered by permitted buildings, structure or parking, shall be used for landscaping, 50% of which shall be soft landscaping.

Schedule 2

(IBI plan entitled South-North Section , Drawing A301b, filed as Exhibit 10)

Attachment A

(Requested Variance(s) to the Zoning By-law – pages 1-3 of Committee of Adjustment decision Notice dated October 17, 2019.)

Attachment B

(Complete list of Requested Variances (including Revised Language & Proposed Conditions of Approval) filed by Applicant and received by TLAB October 26, 2020, Exhibit 12 to Hearing)

APPENDIX A

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

Zoning By-law No. 1002-2014:

1. Performance Standard 128A, Amenity Space

The proposed amenity space is provided at a minimum rate of 4.0 m² per unit, of which, a minimum of 2.0 m² per unit will be provided as indoor amenity space, a minimum of 40 m² of outdoor amenity space will be directly accessible with the indoor amenity spaces, and a minimum of 0.5 m² per unit of outdoor amenity space will be located on the roof of the base building. Whereas the Zoning By-law requires that amenity space be provided at a minimum rate of 6.5 m² per unit, of which, a minimum of 4.0 m² per unit shall be provided as indoor amenity space, 40 m² of outdoor amenity space shall be directly accessible with the indoor amenity spaces, and 1.5 m² per unit shall be provided as outdoor amenity space within the base of the building fronting onto Sheppard Avenue East.

2. Performance Standard 310A, Setback

The proposed minimum building setback is 2.0 m from Silver Maple Gate and the southwest corner rounding at Sheppard Avenue East.

Whereas the Zoning By-law requires a minimum building setback of 3.0 metres from all streets.

3. Performance Standard 317A, Angular Plane

The proposal is to have a 5.0 m mechanical penthouse encroachment into the 45-degree angular plane measured from a height of 16.0 metres taken from the north lot line abutting Cherry Blossom Gardens. The portion of the building that may project beyond the 45-degree angular plane is limited to a maximum height of 5.0 metres, a maximum depth of 5.2 metres, and maximum length of 7.0 metres as shown on, and shall be substantially accordance with, the attached A209 and A301b drawings.

Whereas the Zoning By-law requires that buildings, including the mechanical penthouse, facing a street that forms the north lot line shall not exceed a 45-degree angular plane taken from a height equal to 80% of the width of the street right-of-way.

4. Performance Standard 405A, Building Height

The proposal is to have a maximum height of 93 m and 30-storeys for the east tower fronting on Sheppard Avenue East.

Whereas the Zoning By-law requires that the height of the east tower shall not exceed 89.0 m and 30-storeys.

5. Performance Standard 451A, Parking

The proposed vehicle parking supply for both residential visitors and non-residential uses will be provided at a rate of 0.15 parking spaces per dwelling unit.

Whereas the Zoning By-law requires vehicle parking to be provided at a minimum rate of 0.2 parking spaces per dwelling unit for both visitors and non-residential uses.

6. Exception 42(1)(b), LEED

The proposal is to construct the buildings to Toronto Green Standards Tier 2 standards and not obtain LEED registration and certification documentation. Whereas the By-law requires the owner to provide the City with documentation of LEED registration and certification.

Zoning By-law No. 10717:

7. Performance Standard 308, Setback

The proposed minimum building setback is 2.0 m from the southwest corner rounding. Whereas the Zoning By-law requires minimum building setback is 3.0 metres.

8. Performance Standard 312, Angular Plane

The proposed eaves of the townhouses may encroach into the 45-degree angular plane taken from the lot line of the abutting "S" Zone as shown on, and shall be substantially in accordance with, the attached A301b drawing. Whereas the Zoning By-law requires that buildings shall not exceed a 45-degree angular plane from the lot line of abutting "S", "T" and "M" Zones.

9. Performance Standard 332, Building Height

The proposed finished floor of the dwelling units on the first floor of the townhouses will be located a minimum of 0.2 m above the average finished grade measured at the street line. Whereas the Zoning By-law requires that the finished first floor of the dwelling units shall be located a minimum of 0.60 m above the average finished grade measured at the street line and a maximum of 0.90 m above average finished grade measured at the street line.

10. Performance Standard 325, Stepbacks

The proposal is setback an additional 1.0 m above a height of 20.0 m from the portion of the building closest to the wall below 20.0 m in height closest to the east lot line(s). Whereas the By-law requires a minimum 1.5 metre additional setback for the portion of a building above 20.0 m in height closest to the wall below 20.0 in height closest to the east lot line(s).

Zoning By-law No. 129-2012:

11. Section 4, CLAUSE IV, By-law 129-2012, Landscaping

The proposed soft landscaping for Phase 1 is 6.09% and for Phase 2 is 20.21%. Whereas the By-law requires all lands not covered by buildings or parking shall be a minimum of 50% soft landscaping.

Complete List of Requested Variances

Including Revised Language & Proposed Conditions of Approval

3260 Sheppard Avenue East

TLAB Case Number: 19 243364 S45 22 TLAB

Prepared by Joshua Butcher (October 23, 2020)

1. Performance Standard 128A, Amenity Space (By-law 1002-2014)

The proposed amenity space is provided at a minimum rate of 4.0 m² per unit, of which, a minimum of 2.0 m² per unit will be provided as indoor amenity space and a minimum of 2.0 m² per unit will be provided as outdoor amenity space. Of the required minimum 2.0 m² per unit of outdoor amenity space, a minimum of 40 m² of outdoor amenity space will be directly accessible from the indoor amenity spaces and a minimum of 0.5 m² per unit of outdoor amenity space will be located on the roof of the base building in between the east and west towers fronting onto Sheppard Avenue East.

Whereas the Zoning By-law requires that amenity space be provided at a minimum rate of 6.5 m² per unit, of which, a minimum of 4.0 m² per unit shall be provided as indoor amenity space, a minimum of 40 m² of outdoor amenity space shall be directly accessible with the indoor amenity spaces, and a minimum of 1.5 m² shall be provided as outdoor amenity space within the base of the building fronting onto Sheppard Avenue East.

2. Performance Standard 310A, Setback (By-law 1002-2014)

The proposed minimum building setback is 2.0 m from Silver Maple Gate and the southwest corner rounding at Sheppard Avenue East.

Whereas the Zoning By-law requires a minimum building setback of 3.0 metres from all streets.

3. Performance Standard 405A, Building Height (By-law 1002-2014)

The proposal is to have a maximum height of 93 m and 30-storeys for the east tower fronting on Sheppard Avenue East, excluding roof top mechanical penthouses and structures and appurtenances for green roofs.

Whereas the Zoning By-law requires that the height of the east tower shall not exceed 89.0 m and 30-storeys, excluding roof top mechanical penthouses and structures and appurtenances for green roofs.

4. Performance Standard 451A, Parking (By-law 1002-2014)

The proposed vehicle parking supply for both residential visitors and non-residential uses will be provided at a rate of 0.15 parking spaces per dwelling unit.

Whereas the Zoning By-law requires vehicle parking to be provided at a minimum rate of 0.2 parking spaces per dwelling unit for both visitors and non-residential uses.

Proposed Condition: Notwithstanding the applicable parking rates, a minimum of 800 parking spaces must be provided and maintained on the property.

5. Exception 42(1)(b), LEED (By-law 1002-2014)

The proposal is to construct and maintain the development to Tier 1 and Tier 2 performance measures of the Toronto Green Standards Version 2 and to not obtain LEED registration and certification documentation.

Whereas the By-law requires the owner to construct and maintain the development to Tier 1 and Tier 2 performance measures of the Toronto Green Standards Version 1, as adopted by Toronto City Council in October 2009, and to provide the City with documentation of LEED registration and certification.

Proposed Condition: The proposed buildings shall be constructed and maintained to both Tier 1 and Tier 2 performance measures of the Toronto Green Standards Version 2 to the satisfaction of the Chief Planner and Executive Director, City Planning.

6. Performance Standard 308, Setback (By-law 10717)

The proposed minimum building setback is 2.0 m from the southwest corner rounding.

Whereas the Zoning By-law requires minimum building setback is 3.0 metres.

7. Performance Standard 332, Building Height (By-law 10717)

The proposed finished floor of the dwelling units on the first floor of the townhouses will be located a minimum of 0.2 m above the average finished grade measured at the street line.

Whereas the Zoning By-law requires that the finished first floor of the dwelling units shall be located a minimum of 0.60 m above the average finished grade measured at the street line and a maximum of 0.90 m above average finished grade measured at the street line.

8. Performance Standard 325, Stepbacks (By-law 10717)

Performance standard 325 of By-law 10717 shall not apply and the proposal shall be required to only conform with performance standard 316A of site-specific By-law 1002-2014 regarding the additional setback for that portion of the building above a height of 16 m closest to the east lot line(s).

9. Section 4, CLAUSE VI, By-law 129-2012, Landscaping (By-law 129-2012)

The proposed soft landscaping on the lot for the lands designated in Schedule 'A' as "CR" that are not covered by permitted buildings, structure or parking, is 6.09% for Phase 1 and 20.21% for Phase 2, such phasing to be substantially in accordance with drawings A100 and A200, prepared by IBI Group, issued on July 12, 2019.

Whereas the By-law requires all lands designated in Schedule 'A' as "CR" that are not covered by permitted buildings, structure or parking, shall be used for landscaping, 50% of which shall be soft landscaping.