

DECISION AND ORDER

Decision Issue Date Thursday, August 27, 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): BABAK HAJI GHASSEMI

Applicant: ALAVI SEYED MOEINEDDIN

Property Address/Description: 139 HILLHURST BLVD

Committee of Adjustment Case File: 19 108286 NNY 08 MV (A0053/19NY)

TLAB Case File Number: 19 136202 S45 08 TLAB

Hearing dates: December 17 and 19, 2019, and January 22 and 23, 2020

DECISION DELIVERED BY S. KARMALI

APPEARANCES

NAME	ROLE	REPRESENTATIVE
SEYED MOEINEDDIN ALAVI	Owner	
BABAK HAJI GHASSEMI	Appellant	MARTIN MAZIERSKI
SARAH VAIDYANATHAN	Party (TLAB)	ROBERT KLOTZ
LYN FELDMAN	Party (TLAB)	ROBERT KLOTZ
CITY OF TORONTO	Party (TLAB)	ADERINSOLA ABIMBOLA
FRANCO ROMANO	EXPERT WITNESS	
YISHAN LIU	EXPERT WITNESS	
HAROLD SMITH	EXPERT WITNESS	

INTRODUCTION & BACKGROUND

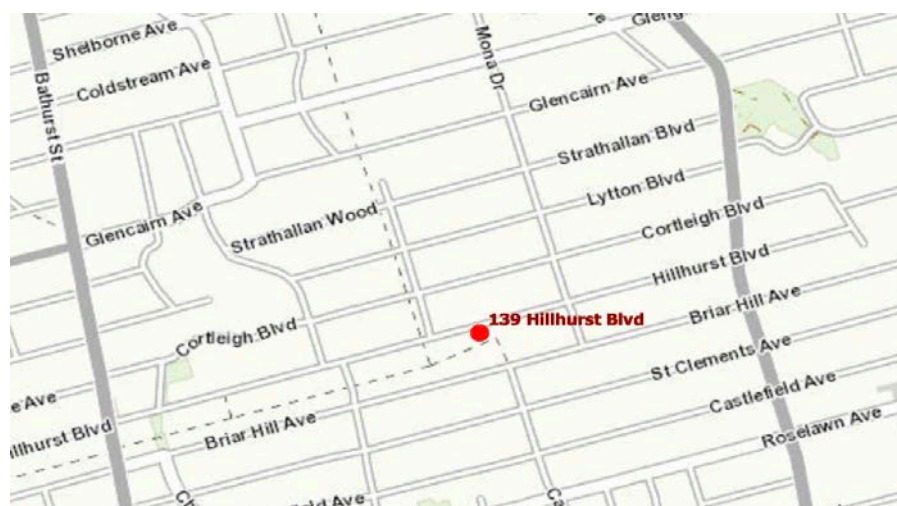
[1] Mr. Seyed Alavi is the Owner of 139 Hillhurst Boulevard (the ‘subject property’). This property is designated *Neighbourhoods* in the City of Toronto (City) Official Plan. The subject property occupies a place in a stately and well-appointed residential low scale and low rise neighbourhood. Mr. Alavi proposes to build a new detached dwelling on the subject land, which is the stated purpose of his development application¹.

[2] The subject property is zoned Residential Detached, with a zoning label of (f9.0; d0.35) (x961) under Zoning By-Law 569-2013 (New By-Law), as amended. Under Zoning By-Law 438-86 (Old By-Law), as amended, the property is zoned R1 Z0.35. The property has an existing Floor Space Index (fsi) value of approximately 0.57 to 0.58 times the lot area following a 1993 Committee of Adjustment variance approval, which allowed for a third floor rear dormer addition.²

[3] The area is bounded by the major arterial roads of Bathurst Street to the west, Avenue Road to the east, Lawrence Avenue West to the north, and Eglinton Avenue West to the south. More specifically, the subject property is bounded by the part collector roads of Glencarin Avenue and Glengrove Avenue West to the north and Roselawn Avenue to the south.

[4] The subject property is located on the south side of Hillhurst Boulevard and is indicated by the red point in Figure 1 and Figure 2. Furthermore, the north-south bold line, depicted in Figure 2, that cuts through Hillhurst Boulevard and Cortleigh Boulevard is a zoning boundary line that separated the former City of North York (left) from the former City of Toronto (right).

Figure 1: Extract of City of Toronto Zoning Map – Aerial Street View (other streets)



¹ Application here refers to the 2019 Committee of Adjustment original application. Amended Application refers to the revised Proposal before the TLAB.

² The application communicates an existing lot frontage of 10.16 metres and the existing lot area of 411.65 square metres. The applicant had written that the permission standards within in the Old By-Law and New By-Law “do not allow for a reasonable design”.

Figure 2: Extract of City of Toronto Zoning Map – Aerial Street View
(neighbourhood streets, lots and zoning labels)



[5] On January 24, 2019, the Owner, through his authorized agent, Mr. Babak Ghassemi, submitted a 2019 Committee of Adjustment (COA) Application with an accompanying Zoning By-Law Notice, which was issued on December 3, 2018, by a City zoning examiner. This Notice identified six unsatisfied performance standards under the New By-Law and one unsatisfied performance standard under the Old By-Law. The requested variances to the performance standards are identified in Table A below.

[6] On March 12, 2019, the City's Community Planning North York District issued a Staff Report, which recommended that the COA refuse the application because of particular concerns with the building height, number of storeys, and floor space index. The City's Assistant Planner, Ms. Yishan Liu, who authored the Staff Report, referred to development criterion 4.1.5(c) of the City's Official Plan to inform her recommendation to the COA.

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[7] On March 21, 2019, the City’s North York COA Panel heard and considered the application.³

[8] Ms. Sarah Vaidyanathan and Mr. Robert Klotz, the adjacent neighbours of the subject property, as well as Mr. Smith, a neighbour directly to the north of the subject property, attended and presented at the COA hearing to oppose the application.⁴

[9] During the COA hearing, and based on the application’s minutes indicated by COA staff, it seems that several amendments had been made to the application by Mr. Ghassemi. The built form variances requested for building length and building height were reduced. As well, the variances for building depth and area of each platform above the second storey were removed. It would seem the proposed floor space index was a variance request that the COA had modified on *its own* before it rendered its decision.

Table A: Before the COA - Performance Standards, Requested Variances and Variance Decision

	Type of Variance Requested to the Zoning By-Law	Performance Standard (expressed as permitted maximums)	Proposed Variance (as indicated on the Public Hearing Notice)	COA Decision⁵
<i>City-Wide Zoning By-Law 569-2013</i>				
1	Building Length	17.00 m	18.51 m	17.75 m (Amended by the Owner’s agent before the COA)
2	Building Depth	19.00 m	19.26 m	Removed at the request of the Owner’s agent
3	Building Height	7.20 m	10.30 m	10.00 m

³ I am aware that Exhibit 1, Tab 2-4, page 78 of 314 states that on March 21, 2019, the day of the COA hearing, Mr. Ghassemi provided a revision of some variances to the COA panel, as reflected in a set of attached plans. He stated that these plans were given to the COA panel on March 21, 2019 but had not been publicly posted.

⁴ Exhibit 9 at Tab 9 reveals that there is written communication from area neighbours who opposed the application as well as at least one neighbour who supported the application. The same exhibit reveals that a Mr. Robert Brown spoke in opposition to the Application at the COA hearing. Of more relevance to this *de novo* hearing, Mr. Brown attended the TLAB proceeding and indicated he would not be participating. He clarified on the record that he is an observer. He stated that outside of the hearing room he is an advisor to Mr. Klotz and Mr. Smith.

⁵ I refer to Exhibit 9, Tab 8 and Tab 9. Tab 8 is the COA’s Notice of Decision. Tab 9 is the Application Minutes of the COA for the subject property. Tab 9 also indicates the documents the COA had before it made its decision, including the amendments to the Application by Mr. Ghassemi.

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				(Amended by the Owner's agent before the COA)
4	Number of Storeys	Two (2)	Three (3)	Three (3)
5	Area of Each Platform Above the Second Storey	4.00 m ²	17.14 m ²	Removed at the request of the Owner's agent
6	Floor Space Index	0.35 times the lot area	0.838 times the lot area	0.6 times the lot area (Amended by the COA)
<i>Former Toronto Zoning By-Law 438-86</i>				
7	Building Height	10.00 m	10.43 m	10.13 m

[10] On April 5, 2019, Mr. Ghassemi, submitted a Notice of Appeal to the TLAB.⁶ Among his reasons and grounds for appeal, Mr. Ghassemi indicated that the COA's decision did not explain the effect that the written and oral submissions made at the hearing had on its decision. He wrote that "[t]hese omissions are contrary to the requirements of the Planning Act and that the COA's decision amounted to a 'generic conclusion.'"

[11] Mr. Ghassemi, in his Applicant Disclosure in Exhibit 1 Tab 2-7 page 78 of 314, stated the variances for which he seeks approval from the TLAB are indicated in Table B below.

*Table B: Performance Standards and Proposed Variances
for the TLAB to Have Considered at the time of the Notice of Appeal*

	Type of Variance Requested to the Zoning By-Law	Performance Standard and Proposed Variance
<i>City-Wide Zoning By-Law 569-2013</i>		
1	Building Length	The maximum permitted building length is 17.00 metres. The proposed building length is 17.75 metres.
2	Building Height	The maximum permitted building height is 7.20 metres for a flat or shallow roof. The proposed building height is 10.00 metres
3	Number of Storeys	The maximum number of storeys permitted is two (2). The proposed number of storeys is three (3).

⁶ Exhibit 1, Tab 2-1 at page 67 of 314.

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4	Floor Space Index	The maximum permitted floor space index is 0.35 times the lot area. The proposed floor space index is 0.838 times the lot area
<i>Former Toronto Zoning By-Law 438-86</i>		
5	Building Height	The maximum permitted building height is 10.00 metres. The proposed building height is 10.13 metres.

[12] On October 11, 2019, the same City zoning examiner who provided the first Zoning By-Law Notice, had issued a second Zoning By-Law Notice. The unsatisfied performance standards identified in this second Notice are generally stated below in Table C.

Table C: Zoning Examiner's Second Notice – October 11, 2019

	Type of Variance Requested to the Zoning By-Law	Performance Standard and Proposed Variance
<i>City-Wide Zoning By-Law 569-2013</i>		
1	Area of Each Platform at or above the Second Storey	The permitted maximum area of each platform at or above the second storey of a detached house is 4.0 square metres. The proposed rear balcony at or above the second storey is 5.07 square metres.
2	Floor Space Index	The permitted maximum floor space index is 0.35 times the area of the lot. The proposed floor space index is 0.7233 times the area of the lot.
3	Height of All Side Exterior Main Walls Facing a Side Lot Line	The permitted maximum height of all side exterior main walls facing a side lot line is 7.5 metres. The proposed height of the side exterior main walls facing a side lot line is 10 metres.
<i>Former Toronto Zoning By-Law 438-86</i>		
4	Height	The maximum permitted height is 10m. The proposed height is 10.13m.

[13] However, on November 28, 2019, according to the Appellant's disclosure, the same City zoning examiner issued another Zoning By-Law Notice, the third notice, which revealed a change in the proposed fsi value from 0.7233 times the lot area to 0.776 times the lot area.⁷ This third notice, marked as Exhibit 6, indicates the revised performance standards and proposed variances for the TLAB to consider as the Amended Application or the Proposal, as shown in Table D below.

[14] Before I continue to the matters in issue, it is necessary to explain who the parties were before me. Mr. Martin Mazierski is the authorized representative for Mr. Ghassemi. He arranged for Mr. Franco Romano to be a candidate expert witness to be qualified by the TLAB in land use planning. Ms. Aderinsola Abimbola is the authorized representative for the Toronto City Council in this matter to oppose the variances requested in the COA Application. Ms. Abimbola arranged for Ms. Liu to be a candidate expert witness to be qualified by the TLAB in land use planning. Mr. Klotz is the formal authorized representative for Ms. Lynn Feldman, who elected party status and who is Mr. Klotz's spouse. Mr. Klotz⁸ arranged for Mr. Harold Smith⁹ to be a candidate expert witness to be qualified in architecture by the TLAB. I understood that Mr. Klotz also represented Ms. Sarah Vaidyanathan.

[15] I indicated to those in attendance that I visited the subject property to familiarize myself with the immediate and geographic neighbourhood. I also reviewed the online pre-filings.

MATTERS IN ISSUE

[16] Do the variances identified in Table D, below, meet the applicable policy considerations and legal tests of the *Planning Act*?

⁷ This change was as a result of an interpretive difference in the calculation of the fsi for the proposed new development. Part of the interpretation had to do with whether the below grade gross floor area is counted or discounted in the fsi calculation. It would appear that the Zoning Examiner changed his mind.

⁸ I asked Mr. Klotz what his role is in the TLAB proceeding. He stated that he is the legal representative for Ms. Feldman and Ms. Sarah Vaidyanathan. He further stated that he would try his best to be an advocate and not sound as though he is a witness given his proximity to the matter in question. Mr. Mazierski and Ms. Abimbola did not take issue with Mr. Klotz's role. I do not need to consider whether Mr. Klotz, in his role as legal representative, is a disinterested party in this proceeding. Mr. Klotz is bound by his profession's code, the *Rules of Professional Conduct*. It is for him to have exercised his own judgement to decide whether his duty to avoid a conflict of interest owing to this matter was at any point in time compromised. With respect to ensuring the proper administration of justice, the record of this proceeding reveals that Mr. Klotz tried to refrain from expressing his own personal opinions on the merits of his clients' case and endeavoured to continue as an advocate.

⁹ I do, however, in this Decision and Order, consider and briefly discuss how appropriate it is to qualify Mr. Smith, who one could posit is not a disinterested party and who, at the same, time is sought to be qualified as a local area expert witness with professional knowledge and experience in architecture. Exhibit 1, Tab 2-3, page 71 of 314, indicates Mr. Smith is an interested party.

Table D: Third Zoning Examiner's Notice¹⁰ which is the Amended Application

	Type of Variance Requested to the Zoning By-Law	Performance Standard and Proposed Variance
<i>City-Wide Zoning By-Law 569-2013</i>		
1	Area of Each Platform at or above the Second Storey	The permitted maximum area of each platform at or above the second storey of a detached house is 4.0 square metres. The proposed rear balcony at or above the second storey is 5.07 square metres.
2	Floor Space Index	The permitted maximum floor space index is 0.35 times the area of the lot. The proposed floor space index is 0.776 times the area of the lot.
3	Height of All Side Exterior Main Walls Facing a Side Lot Line	The permitted maximum height of all side exterior main walls facing a side lot line is 7.5 metres. The proposed height of the side exterior main walls facing a side lot line is 10 metres.
<i>Former Toronto Zoning By-Law 438-86</i>		
4	Height	The maximum permitted height is 10m. The proposed height is 10.13m.

[17] Does the amended application require further notice under the *Planning Act*?

JURISDICTION

Provincial Policy – S. 3

[18] 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)

[19] 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.

¹⁰ The creation dates of the Zoning Notice, the Proposal before me, seem to be different in the online filings. The City's Exhibit 8 page 28 of 45, shows a creation date of November 4, 2019 whereas the Appellant's Exhibit 6 page 1 of 2, shows a creation date of November 28, 2019. It might have been the case that Ms. Liu had preliminary access to the revised Zoning Notice since she was able to make revisionary comments to her witness statement, which the TLAB received on November 15, 2019.

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.

Rules

[20] The original notice of hearing (Form 2) was issued by TLAB staff on April 25, 2019. Accordingly, the Rules of Practice and Procedure adopted in 2017 apply.

EVIDENCE

[21] The following items were tendered for me to mark as exhibits. I accepted them and marked them as follows:

- Exhibit 1: Appellant's Disclosure
- Exhibit 2: Appellant's Additional Disclosure of Zoning By-Laws
- Exhibit 3: Mr. Romano's Expert Witness Duty Form and Statement
- Exhibit 4: Mr. Romano's Photographs
- Exhibit 5: Mr. Romano's Revised Expert Witness Statement
- Exhibit 6: Appellant's Third Zoning Notice – the Proposal
- Exhibit 7: Ms. Liu's Expert Witness Duty Form and Statement
- Exhibit 8: Ms. Liu's Revised Expert Witness Statement and Other Documents
- Exhibit 9: City of Toronto's Document Disclosure Book
- Exhibit 10: City of Toronto's Copy of 1993 Committee of Adjustment Decision
- Exhibit 11: Mr. Smith's Expert Witness Statement
- Exhibit 12: Mr. Smith's Expert Visual Witness Statement Part 1
- Exhibit 13: Mr. Smith's Expert Visual Witness Statement Part 2
- Exhibit 14: Sun and Shadow Impact Study
- Exhibit 15A: Mr. Smith's Expert Witness Duty Form
- Exhibit 15B: Mr. Smith's Expert Witness Statement

[22] This was a multiple day proceeding. I appreciated that the legal representatives were also cooperative by sharing an estimated amount of time they would need to examine each witness.

[23] The first hearing day consisted of all opening statements, direct examination of Mr. Romano, and the beginning of his cross-examination by Ms. Abimbola.

[24] The second hearing day consisted of continued cross-examination of Mr. Romano by Ms. Abimbola, and, then, further cross-examination of Mr. Romano by Mr. Klotz.

[25] The third hearing day consisted of continued cross-examination of Mr. Romano by Mr. Klotz and the direct examination of Ms. Liu by Ms. Abimbola.

[26] The fourth day, which did not span the allotment for a full hearing day, consisted of cross-examination of Ms. Liu by Mr. Mazierski, the re-examination of Ms. Liu by Ms. Abimbola, the testimonies and questioning of Ms. Feldman and Ms. Vaidyanathan, and the direct, cross-examination and re-examination of Mr. Smith.

[27] All of the Parties consented to the schedule management of these aforementioned hearing days, including the days to submit closing submissions. The TLAB received the last closing submission on March 9, 2020.

[28] Below, I have thoroughly stated the key points of consideration, in view of the requested variances, and as they apply to the policy considerations and legal tests to determine the matter.

[29] **Mr. Franco Romano, Expert Witness for the Appellant**

Mr. Mazierski called Mr. Romano to the stand. Mr. Romano completed and signed Form 6 and Form 14. Mr. Romano stated that he received a Bachelor of Applied Arts degree in Urban and Regional Planning from Ryerson University in 1989. He is a Registered Professional Planner, a member of the Ontario Professional Planners Institute and a Member of the Canadian Institute of Planners. Mr. Romano has previously been qualified as a land-use planner before the TLAB.

The beginning of his planning experience started in 1989, according to his curriculum vitae. He worked as an assistant planner in the City of Vaughan and a Senior Planner in the City of Toronto. He is the principal of Action Planning Consultants, where he is responsible for providing a complete range of community planning to a variety of public and private sector clients, including municipalities, residents, neighbourhood groups and all parties within the land development industry (Exhibit 3, page 5 of 48). He stated he had represented different parties at COA hearings and appeal hearings for more than thirty years.

Mr. Klotz asked some questions of Mr. Romano's qualifications. Among them, he wondered whether land use planning includes design features. Mr. Romano said, yes. Mr. Klotz asked whether land-use planning extends to shade studies. Mr. Romano said yes, and that he could be involved with the inputs of what goes into a shadow study but not the generation of the study.

I qualified Mr. Romano to provide the TLAB with expert opinion evidence in land use planning for this matter.

Direct Examination

Mr. Romano described the location of the subject property. He stated the property is on the south side of Hillhurst Boulevard and is generally located south of Glencairn Avenue between Bathurst Street and Avenue road. He said the current structure on the property is a detached residential building lot with a three-storey detached dwelling on it. Mr. Romano stated that Hillhurst Boulevard is a local road that runs east and west within the former City of Toronto.

Mr. Romano indicated that current subject property is developed with a three-storey dwelling on a lot having dimensions of 10.16 metres of lot frontage, 40.52 metres of lot depth, and 411.65 square metres of lot area. He opined that the front yards of properties along Hillhurst Boulevard have mature landscaping, with trees, tight to modest side yards, and, in some cases, wider side yards that provide a servicing function, for example, driveways.

He defined his neighbourhood study area, which is bounded by Bathurst Street, Avenue Road, Strathallan Boulevard, and St. Clements Avenue. He acknowledged that the neighbourhood consists of a larger area within which a person would experience the neighbourhood (Exhibit 3, page 18 of 48).

Mr. Romano referred to page 40 of 48 of Exhibit 3, his neighbourhood context map, to point out zoning lines. He indicated that the subject site is “less than a stone’s throw away” from the former municipality of North York. Proudfoot Avenue is the first intersection to the west of the subject site and runs north from Hillhurst Boulevard. Mr. Romano stated that just west of Proudfoot Avenue is where the former North York and former Toronto boundaries “run through the blocks” – they are not delineated by a road or some other natural feature.

Mr. Romano explained that the performance standards under both by-laws are a little different. He opined that lot coverage is what we see on the outside of the building and is generally the footprint of the building over lot area. He contrasted lot coverage from fsi. FSI, he said, is what happens inside of the building. He stated there is no variance being requested for lot coverage. He added that fsi is a value determined by interpreting the interior space of a building. He noted that the architect interprets in fsi one way. He also noted that the zoning examiner might provide different interpretations with the same set of plans. Mr. Romano stated that the calculation of a fsi value is an approximation.

He opined that if we gave that same set of plans to three different City zoning examiners, we would come back with, in all likelihood, three different numbers, especially if the examiners give us a square metre calculation with the fsi value. He further opined that it is difficult to know why one zoning examiner includes certain aspects and why another zoning examiner excludes certain aspects. Mr. Romano stated that in his experience, the fsi value is not always calculated or interpreted the same by these zoning examiners.

I asked Mr. Romano where he obtained his data to develop his neighbourhood context map. He referred, in part, to the data prepared by the Toronto City Planning SIPA

Research and Information (see page 41 of 48 of Exhibit 3). Mr. Romano indicated that he received this information shortly after he was retained. He opined that while it is a good dataset, it is an incomplete data set, in one respect, because it does not calculate fsi. He stated, however, this is the best available information known to him regarding the existing values of data. Mr. Romano communicated that he uses some of this data as inputs for lot frontage, lot area if there is a regular lot configuration. He highlighted that the data is vulnerable to challenge. On this point, he provided the example of 203 Hillhurst Boulevard, purportedly built-in 1940, and having a fsi value of 0.3 times the lot area. Mr. Romano shared that he obtained building permit information for 203 Hillhurst Boulevard, which seemed to indicate a fsi value of 1.07 times the lot area and a floor area of 624.95 square metres.

Mr. Romano stated that he does not see an average fsi when he walked through the neighbourhood. He said that an average is a mathematical construct that has little to no value in planning evaluation. He said that what he sees are fsi values above the requirement of 0.35.

I asked Mr. Romano for his expert opinion on what floor area over lot area means. He said that this equation is a proxy of fsi, but it is not a pure fsi calculation. He said in some instances, it is an understated value, and in other cases, it is an overstated value.

Mr. Romano testified that regardless of the data set one uses here, there is a variety occurring throughout the neighbourhood, and throughout the block, or even on the same block of the subject property.

I asked Mr. Romano what massing and scaling means in his expert opinion. He said that massing is three dimensional, which is a construct of height, width, length and depth. It is what would be seen on the outside. He said that scaling is as close to height as you are going to get in terms of planning information, i.e., low scale, low rise, mid-scale. He said this is a low scale neighbourhood in which building heights are one to three stories.

Mr. Romano opined that as a Registered Professional Planner (RPP), he is obligated to look at the totality of the project and its potential effects, which include the views from the street, the front stoop, along the side, and in the backyard. He stated that this obligation extends beyond subjective perception to objective, professional evaluation.

Mr. Romano opined that what someone perceives in terms of massing may be more subjective than objective. He acknowledged that he is before the TLAB to provide an objective perspective, which includes what one sees but which is divested of subjectivity. He indicated that he obtains and examines facts and provides an opinion on whether the proposal represents either good or bad planning.

Mr. Romano referred to his decision summary table at page 34 to 39 Exhibit 3. He said that this table is a table of fact-based activities within the neighbourhood based on COA decision information. He said that this table is structured such that the streets are grouped together. Based on this table, which indicates gfa/fsi, setbacks, length, depth, height, and main wall height, Mr. Romano opined that the neighbourhood is active for

regeneration. He said this includes new builds, additions, replacements, and improvements. He testified that what is being replaced is a similar building type, a detached residential building. The decision summary table, he said, reveals that no two properties are alike and that there are differences in that the numbers associated with each application are typically different in some way, shape or form. He stated that, as an RPP, he is not looking for the exact same thing to be structured on the subject site.

Mr. Romano then referred to Exhibit 4, a collection of his forty-two photographs of homes in the subject area. Before he started to opine about the photographs in the context of the proposed development, he pointed out that the references at the top of the pages in this marked exhibit are renderings that were done before the City zoning examiner issued Zoning By-Law Notices on October 11, 2019, and, then, on November 28, 2019. He indicated that the rectangular lot pattern is not being altered. This type of pattern is found throughout the neighbourhood. He shared that there are also odd-shaped lot patterns that have a bit of a swoop on curvilinear streets like Alexandra Wood.

Mr. Romano referred to Exhibit 4, Photograph 2, which illustrates 137 Hillhurst Boulevard. He testified that this home has a hybrid roof; a portion of it is flat, and a portion of it is sloped, with a wall that goes from grade to the roof. He alluded to Photographs 5, 6 and 7 and commented that 141 Hillhurst Boulevard is a three-storey building with flat roof design, with the third floor running from front to back, with little articulation. It occupies much of the footprint of the lot.

He commented on Photographs 8 and 9, which show 143 Hillhurst Boulevard and 145 Hillhurst Boulevard. He pointed out that these photographs show an original build next to a new build, with the new build at 145 Hillhurst Boulevard having two levels of living space above the integral garage.

He testified that while there is some continuity in terms of building placement and where the wall is placed, there are differences in terms of rooflines, setbacks, wall treatment. He pointed out that there are differences in terms of roof typology; there are flat roofs, sloped roofs, and some combination of the two. Mr. Romano confirmed that the proposed roof type for the Proposal is a sloped roof. He added that, in terms of height reference lines, where there are windows, doors, and roofs, there is some undulation.

He commented on Photograph 11 of 175 Hillhurst Boulevard, which is a property within the former City of North York zoning boundary. He said there is similar characterization in terms of those features, and elements continue even though we have crossed this imaginary boundary from former Toronto to former North York. He further commented here that the slope terminates in a substantive flat roof component, and that this flat roof component is larger than what is being proposed on the subject property.

He stated that 154 Hillhurst Boulevard has a fsi value of 0.676, 205 Hillhurst Boulevard has a fsi value of 0.69, 217 Hillhurst Boulevard has a fsi value of 0.6, and 219 Hillhurst Boulevard has a fsi value of 0.62. He also stated that 216 Hillhurst Boulevard, 185 Cortleigh Boulevard, 327 Cortleigh Boulevard, 404 Briar Hill Avenue, and 537 Briar Hill Avenue are examples of buildings which show a variation of reference lines.

Mr. Romano testified that the neighbourhood does not have a homogeneity to it or a prevailing character. He further testified that the characteristics are varied, which forms the prevailing physical character in the neighbourhood. He said that the trend over the last decade has been that buildings tend to occupy more of the building envelope that the zoning by-laws allow as of right, including the permitted width, depth, length, and height. Over and above these permissions, there are variance decisions indicated in the decision summary table. Mr. Romano concluded his walk-through Exhibit 4 by stating that the form of regeneration does not need to be a replica. Rather, he said, there is still individuality in terms of design, parking solutions, and other needs.

He said the third floor component of the proposed building had been reduced and articulated to incorporate not only a sloped roof portion but to occupy a smaller portion of the building footprint. As it concerns the proposed height, Mr. Romano stated that there was no wall height performance standard prior to 2013, which means that there could be some higher wall heights for which a variance was not mandated. He opined that the ten metres of height being requested is to the top of the parapet with varying lower side and rear heights of 7.2 metres, 8.39 metres, and 9.69 metres.

Provincial Policies

Mr. Romano stated that the Proposal is consistent with the 2014 Provincial Policy Statement and the Delineated Built Up Area policies of the 2017 Growth Plan. He added that the proposed new detached residential home would contribute to the mix and range of housing, optimize the use of the land, and achieve the efficient use of existing infrastructure. He pointed to Exhibit 1 (at pages 121 of 322 and 183 of 322) for me to see specific policy references.

Official Plan

Mr. Romano testified that the Proposal conforms to and maintains the general intent and purpose of the Toronto Official Plan. He stated that the Official Plan recognizes that change within neighbourhoods will occur over time and that such change should respect and reinforce the existing physical character of the neighbourhood. He repeated that neighbourhoods policies do not require replication of existing physical character, but instead that new development, including redevelopment, should fit the general physical patterns. He communicated that the Official Plan could not take away a zoning by-law permission.

He opined about the Official Plan in detail. He pointed to Section 4.1 of the Official Plan and stated that the general physical character of this neighbourhood would endure with the Amended Application. He pointed to the healthy neighbourhoods and urban structure policies in Section 2.3.1 to state that Proposal respects and reinforces the existing physical character of the area and stability of the neighbourhood. He stated that some physical change will occur over time and that it cannot be that the Proposal is pigeonholed into one block but must be viewed in the context of the neighbourhood area. He pointed to Section 3.1.2 to opine that the Proposal satisfies the built form policies of building siting, servicing, and design matters, and fits within the planned context, which contemplates what could occur on the site. He pointed out that Section 3.1.2.3 to state

that there is no link here to the numeric measurement inside the building of fsi or gfa. He discussed Section 3.1.2.3(b) to state that the Proposal is designed to fit harmoniously into the planned context and will limit its impact on neighbourhood streets and properties by incorporating exterior design elements, in form and scale, to influence the character, scale, and appearance of the development. Some of these design elements include landscaping and driveway access. Further, he opined about Section 3.1.2.3(c) to state that the Proposal creates appropriate transitions in scale to neighbouring existing and/or planned buildings for the purpose of achieving the objectives of the Official Plan. Referring to Section 3.2.1, he indicated that the existing stock of housing would be maintained.

Mr. Romano elaborated on Section 4.1.5 of the Official Plan, as amended. He referred to Exhibit 3, beginning at page 19 of 48 and Exhibit 5 beginning at 9 of 35. He stated that with respect to the prevailing size and configuration of the lots, lot frontages are not uniform. He said they vary, ranging in lot frontage from 7.3 metres to 45.7 metres. This criterion is not applicable because the lot size and configuration is not being altered.

Mr. Romano opined about Section 4.1.8 and said if the zoning by-law permits the Proposal, it is compatible with the neighbourhood. He further opined that zoning by-laws would contain numerical site standards for matters such as type, height, depths, etc., and any other performance standard to ensure new development will be compatible with the physical character of established residential neighbourhoods. The OP does not take away zoning as-of-right permissions. Compatible does not mean the same, but co-existing in harmony with.

Mr. Romano then discussed the prevailing heights, massing, scale and density and dwelling type of nearby residential properties with respect to the Amended Application. He said that residential properties in the neighbourhood vary in height from one to three storeys. He stated that the proposed three-storey building height conforms. Concerning massing and scaling, he said that the massing at the front and central portion of the lot, as well as the low-rise scaling, conforms and is within the parameters established by the applicable planning instruments. In terms of density, he indicated that the proposed fsi is similar and compatible with the existing fsi in all of its numeric and deployment considerations. He provided that along Hillhurst Boulevard, there is a fsi range from 0.21x to 0.92x, with a percentage exceeding the maximum permitted fsi of 0.35x, including the existing dwelling.

Mr. Romano opined that the proposed building type is detached residential, which is the prevailing building type in the area.

He discussed various parking solutions in the area, such as on-site, covered spaces, and detached or integral garages in an above or below grade format. He opined that more recent construction typically includes an integral garage. He testified that the Proposal conforms with an above-grade driveway and integral garage.

Mr. Romano stated that the dwelling's front wall would continue a good, strong undulating front wall alignment along Hillhurst Boulevard. He stated that the prevailing rear yard setbacks are modest to large, and the proposal maintains an open amenity space in the large rear yard. He further stated that the prevailing pattern of the side yard setbacks is that they are up to modest. He opined that the Proposal maintains modestly sized side yards and provides for adequate separation as well as landscaping.

Mr. Romano opined that Official Plan Amendment 320 still requires a balanced consideration of the physical character and recognizes that neighbourhoods could have more than one prevailing physical character in whole or in part. He testified that the Proposal respects and reinforces the physical characteristics of the neighbourhood and smaller geographic areas as they currently exist. He further testified that the Proposal represents a site development that is materially consistent with the neighbourhood study area as well as being well-represented on properties in the immediate physical context.

Zoning By-Laws

Mr. Romano stated that the Proposal meets the general intent and purpose of both Zoning By-laws, 569-2013 and 438-86, both individually and cumulatively.

Mr. Romano stated that the overall general intent and purpose of these by-laws is to achieve an orderly, compatible form of low-rise residential. He testified that these By-Laws create certainty and, at the same time, provide permission. He opined that the Proposal would achieve a detached residential, conventional form of low scale detached residential dwelling in a manner that is appropriately sited, designed, and sized to respect and reinforce and be compatible with the physical area context.

i. Platform

Mr. Romano stated that the purpose of regulating platforms at or above the second storey is to minimize the extent of overlook, privacy and noise concerns. He testified that the platform is off of the proposed master bedroom and would not be used as an entertainment space. He further testified that the platform is set back from the building envelope, as indicated in the amended plans. He opined that the platform variance request would not generate adverse impacts. The platform variance request would satisfy the intent of the platform performance standard.

ii. Floor Space Index

Mr. Romano stated that the proposed fsi meets the general intent and purpose of By-Law 569-2013 to ensure that the floor area of the dwelling is appropriate for the lot. He opined that the floor area is reasonably deployed on the lot in a manner that is anticipated to be occupied by a low-rise residential building. He further opined that the proposed development would not occupy a substantial amount of the lot. On this point, he stated that the building is shorter, and there are some compensating differences.

iii. Main Wall Height & Overall Height

Mr. Romano stated that the main wall height performance standard is intended to minimize the extent to which buildings rise to create inappropriate upper levels. He opined the main wall height would accommodate a third-floor living area with no roof above it. He further opined that there is a varied wall treatment on both sides of the building. He testified that the proposed main wall height variance meets the general intent and purpose of By-Law 569-2013. Furthermore, he stated that this performance standard is under appeal and not yet in force.

He stated that the measure of height is intended to achieve a low-rise building. He testified that proposed height treatment would be varied. There is a 0.13 metre excess in the front of the building, whereas the back of the building has a lower measure of height. There is a proposed dominant sloped roof with flat roof elements, including step backs for the partial third-storey portion, which minimizes the height and mitigates associated impacts.

Minor in Nature

Mr. Romano testified that the Proposal would create no unacceptable adverse impacts. He further testified that the order of magnitude of the variance requests is reasonable and maintains compatible detached residential land use. He stated that the proposed building is reasonable and to be anticipated in the redevelopment of the subject site in the context of an urban neighbourhood. He further testified that the Proposal would not cause any unacceptable adverse impacts such as shadowing, privacy, or overlook or any related to site development features. He reviewed the sun-shadow drawings that had been disclosed to the TLAB. He stated that these drawings illustrate a reasonable level of shadow, which does not rise to an unacceptable adverse impact. Mr. Romano stated that the proper comparison in a shadow study should start by looking at what the zoning by-law would allow as-of-right and, then, overlaying this with a proposed development.

Desirable for the Appropriate Development or Use of Building

Mr. Romano opined that the Proposal is desirable for the appropriate use and development of the land. He said the Proposal would achieve reasonable, appropriate, and compatible site design and built form features that are within the planning and public interest. He also said that the Proposal would contribute to the mix of housing choices in the neighbourhood in a manner that reflects and reinforces the physical character.

Cross-Examination

Ms. Abimbola asked Mr. Romano more than seventy questions in cross-examination. She was strategic in her questioning. She asked Mr. Romano to elaborate, if possible, on why he believes there is a trend that buildings tend to occupy more of the building envelope. Mr. Romano stated that it is by his observation as an RPP to be able to know the level of change generally occurring and in the few projects he has worked on in Hillhurst Boulevard, Cortleigh Boulevard, and Alexander Wood.

Ms. Abimbola pressed Mr. Romano about the larger frontages in the former City of North York boundary along Hillhurst Boulevard as distinguishable from the frontages in the former City of Toronto boundary on the same street. Mr. Romano said that they are not larger than the base zoning by-law. He said that the zoning boundary lines go through blocks and do not denote neighbourhoods.

Ms. Abimbola asked Mr. Romano about Section 4.1.5 of the Official Plan and whether he has a reason not to accept this policy. Mr. Romano stated that he accepts that development criteria inform the Official Plan and that the two contexts (of broader and immediate), in this case, are not different. He pointed to 107 Hillhurst Boulevard, which he said has a total gfa over lot area value of 0.71x, 118 Hillhurst Boulevard which he said has a value of 0.82x, 145 Hillhurst Boulevard which he said has a value of 0.683x, and 179 Hillhurst Boulevard which he said has a value of 0.92x.

Ms. Abimbola asked Mr. Romano if he would agree that basements are excluded in the calculation of fsi. Mr. Romano said a zoning examiner decides if some or all parts that are in between the basement and the first floor are counted. He said there might be an interpretation issue in terms of what is counted and what is not counted. He further said that receiving different zoning notices is a circumstance that does occur.

Ms. Abimbola asked Mr. Romano why the data he obtained from the City (at Exhibit 3 page 44 of 48) seems to show a value of 0.77x. In contrast, the subject property had a gfa/fsi value of 0.57x based on a 1993 Committee of Adjustment decision which allowed a third storey dormer addition. Mr. Romano said he does not know why there is a difference in the data from the City and remarked that values of 0.57x and 0.77x are different, but they are not significantly different in context.

Ms. Abimbola asked Mr. Romano whether a layperson might perceive this development, if it occurs, as a four-storey home. Mr. Romano said that it is a subjective perspective, and the proposed development would not be a four-storey home.

In challenging Mr. Romano about OPA 320, Ms. Abimbola asked him whether numbers are important in determining what 'prevailing' means. Mr. Romano said numbers are not a determinative consideration and that the test is not whether the specific intent and purpose of the Official Plan are met. It is whether the general intent and purpose are met, which is not a test for strict interpretation. He elaborated that his immediate context is contained in the Photographs in Exhibit 4.

Mr. Klotz also challenged Mr. Romano's understanding of 'immediate context.' He asked Mr. Romano what the extent of his definition of immediate context is. Mr. Romano replied that he evaluates the Official Plan and does not believe there is a significant difference between the immediate and broader context as it relates to zoning boundary lines. He said there is nothing in the Official Plan that communicates he must stop between the zoning boundary lines of the former municipalities. Mr. Romano elaborated that the immediate context is not defined in a strict sense. He stated that the immediate context refers to the street and segments of the street in question. He further stated that the Official Plan must be viewed in its entirety. He noted that the Official Plan has conflicts within itself.

Mr. Klotz asked Mr. Romano whether he sees the neighbourhood character specifically as a 'north Toronto character.' Mr. Romano said he had not encountered this term. He said he views the neighbourhood area as a development construction of the early 1990s. Mr. Romano also stated that today there is no common architectural style in the neighbourhood.

Mr. Klotz asked Mr. Romano whether he noticed an abrupt change in the lot size of homes along Hillhurst Boulevard on both sides of the zoning boundary lines. Mr. Romano said that lot size is one feature of analysis, but a complete analysis must be wholesome when understanding the character of the neighbourhood.

Mr. Klotz proposed to Mr. Romano an abstract question about blocks for him to consider and answer. Mr. Klotz said to consider a street, which is a mile long, broken up by ten streets on one side, and a block on the other side. He asked Mr. Romano how this would be characterized from a planning perspective. Mr. Romano said that there would be ten blocks on one side and a block face on the opposite side, which is the entire block face on that opposite side. Mr. Romano stated that one needs to reasonably consider everything that is within the localized surrounding context on the same street.

Mr. Klotz asked Mr. Romano whether he considers the proposed fsi a high fsi. Mr. Romano said that fsi is an imperfect measurement and not determinative of mass.

Re-examination

Among his questions, Mr. Mazierski asked Mr. Romano in redirect whether Mr. Klotz has attempted to offer a strict interpretation of what the immediate context means as it relates to the Proposal. Mr. Romano stated that the interpretation of immediate context is not intended to be a strict one because the test (one of the four tests) concerns the general intent and purpose of the Official Plan.

[30] Ms. Yishan Liu, Expert Witness for the City of Toronto

Ms. Abimbola called Ms. Liu to the stand. She was sworn in. Ms. Liu stated that she received her Bachelor of Environmental Studies from the University of Waterloo in 2016. In terms of work experience, she stated that she was an application technician with the Toronto and East York Committee of Adjustment between June 2016 and October 2017. She was later promoted to an assistant planner with Community Planning in North York until March 2019. Since April 2019, Ms. Liu has been a planner with Community Planning, where she works on applications such as rezoning, Official Plan amendments, and complex variance and consent applications. She indicated that she expects to be a Registered Professional Planner by March 2020. She acknowledged her duties to provide evidence as per her Form 6. She stated that she had been qualified before the Body to testify in October 2018.

I qualified Ms. Liu to provide expert opinion evidence in land use planning. She said she visited the site in March, June, and in September because she was dealing with other applications in the neighbourhood.

Direct Examination

Ms. Liu testified as to how she prepared for the hearing. She opined that the focus of her evidence would be about the Official Plan and Zoning By-Laws in view of the Proposal. She opined that the Proposal, particularly the floor space index and sidewall height, does not satisfy any of the legal tests under the *Planning Act*. I note that in Ms. Liu's original witness statement, Exhibit 7, on page 5 of 45, she opposed the variance request for building height. Her revised witness statement, Exhibit 8 on 9 of 45, seems to make it clear that she would not provide evidence to oppose the building height variance request in the Proposal. She maintained that while there is not a number of storeys variance, the Proposal retains the appearance of a flat roof dwelling.

Ms. Liu opined that the broader neighbourhood of the subject site is bounded by Lytton Boulevard to the north, St. Clements Avenue to the south, Avenue Road to the east, and Alexandra Wood and Caldwell Road to the west. She said she analyzed approximately 622 lots found in this study area of hers. She testified that this neighbourhood, the most notable distinction between the various zones found within this broader area is minimum lot frontage and density requirements (Exhibit 8, page 10 of 45). She stated that the majority of lots within this area follow a consistent lot pattern of rectangular-shaped lots.

She opined that within this area, there are four distinct character areas. She stated that the first character consists of all lots west of Proudfoot Avenue and north of Hillhurst Boulevard. She testified that the homes in this first character area contain larger lots. She said that this area is part of the Glenwood neighbourhood. She stated that the second character consists of lots east of Proudfoot Avenue and north of Hillhurst Boulevard. She testified that the zoning label of this area is RD (f15.0; d0.35) under Zoning By-Law 569-2013 and R1 Z0.35 under Zoning By-Law 438-86. She said that this area is part of the Lytton Park neighbourhood. She stated that the third character comprises of all lots on Hillhurst Boulevard between Proudfoot Avenue and Mona Drive. She opined that this third character area is the immediate context of the subject property and is zoned RD (f9.0; d0.35) under Zoning By-Law 560-2013 and R1 Z0.35 under Zoning By-Law 438-96. She said that the lots in his third character area are located within the Lytton Park neighbourhood and borders the Allenby neighbourhood to the south and Glenwood neighbourhood to the west. She testified that lots are smaller than the first two character areas to the west, north and east. She stated that the lots in this third character area are generally larger than the lots to the south, where the subject property is. Finally, Ms. Liu stated that the fourth character area consists of all of the lots south of Briar Hill Avenue, which comprise the northern portion of the Allenby Neighbourhood. This fourth character area she said is zoned either RD(f9.0; d0.6) or RD(f7.5; d0.6) under Zoning By-Law 569-2013 and R1 Z0.6 under Zoning By-Law 438-86. She testified that this area has narrower frontages, smaller lots, and higher permissible densities (Exhibit 8, page 10 of 45).

Ms. Liu continued to describe the broader neighbourhood as one with two-storey detached dwellings as the most common built form. She stated that where there is a third storey dwelling, it is always contained within a pitched roofline. She opined that these types of three-storey dwellings have the appearance and massing of two-storey dwellings.

Ms. Liu defined fsi as a ratio of the gfa to the lot area and provides a measure for the scale of a building. She clarified the fsi value of the Proposal. She indicated that the first version of the revised Zoning Notice showed a fsi value of 0.723x. She said that this value was a typo and that the Zoning Examiner had intended the fsi value above the basement and garage level to be 0.73x. She added that this examiner had not included the excess floor area from the garage level. Ms. Liu opined that since the garage is considered the first floor because it is closest to the established grade, its floor area is included in the overall gfa calculation. She added that Zoning By-Law 569-2013 allows for up to 19.2 square metres of garage space to be excluded from the gfa provided a standard 3.2 metre wide by 6-metre deep garage. Her opinion is that any garage in excess of the standard garage area is to be included in the overall gfa, which results in a fsi of 0.776x, not 0.723x. She testified that the subject property was approved in 1993, at Committee, for an increased gfa of 0.58 times area of lot to accommodate a third storey dormer (Exhibit 10).

Ms. Liu also elucidated the sidewall height variance request calculation. She said that sidewall height is measured from eaves to grade, and dormers are not necessarily included in this measurement. She indicated that the roof would be fifty-two percent sloped and forty-eight percent flat. She stated that the sloped roof area is limited to the east side and rear of the roof, which resulted in a sidewall height variance for the west side wall, where there is a sloped roof component. She stated that while the third storey variance has been eliminated, the proposed sidewall height would be akin to allowing the originally proposed three-storey flat roof dwelling.

Provincial Policies

Ms. Liu testified that the Proposal does not conflict with the Provincial Policy Statement and the Growth Plan. She also stated that these provincial policies are not particularly relevant to the Proposal before the TLAB.

Official Plan

Ms. Liu opined that the proposed sidewall height and floor space index do not respect and reinforce the existing prevailing heights, massing and scale of the broader and immediate neighbourhood and its physical character. She referenced that no changes to the physical character of the neighbourhood should be made through the variance process that is out of keeping with this established residential neighbourhood.

She stated the subject property is designated *Neighbourhoods*, which she said are physically stable areas made up of low rise and low-density residential. She also opined about the following Official Plan policy sections in respect of the Proposal: Section 2.3.1 (healthy neighbourhoods), Section 3.1.2 (built form policies), Section 4.1.5 (development criteria), and Section 4.1.8 (purpose of zoning by-laws).

She said that Section 2.3.1 considers Neighbourhoods to be physically stable areas, and development within these areas would respect and reinforce the existing physical character of buildings, streetscapes, and open space patterns.

She said that Section 3.1.2 envisions that new development would need to fit in, respecting and improving the character of the surrounding area. She pointed to Section 3.1.2.1, which states that new development would be located and organized to fit within its existing or planned context.

She also opined about Official Plan Amendment (OPA) 320, which was in force when the application to the Committee was submitted. She testified that the incorporation of the adjective “prevailing” to additional development criteria suggests that a quantitative assessment of physical characteristics should be undertaken to understand a neighbourhood’s character in addition to the qualitative assessment. She opined that new development must respect and reinforce the prevailing or most frequently occurring physical characteristics, i.e., what truly prevails. She stated that the immediate context would be considered of greater relevance in cases of significant difference between the broader and immediate contexts (Exhibit 8, page 12 of 45).

She discussed Section 4.1.5 of the Official Plan, as modified by OPA 320. She specifically identified criterion (c), which states that development in neighbourhoods will respect and reinforce the physical character of the neighbourhood, including respecting prevailing heights, massing, scale, density and dwelling type of nearby residential properties.

She said that the Proposal would have a raised basement level with an integral garage. The garage level would be the first floor, in her opinion. She said, the Proposal if approved, would have the appearance of a four-storey dwelling, which further deviates from the two-storey character of the neighbourhood. She contrasted the Proposal with 141 Hillhurst Boulevard (Photograph 6 of Exhibit 4), which she opined is not a flat roof dwelling because there is a ridge, and, further, there is no integral garage, all of which lessens the massing effect.

The proposed sidewall height would be the tallest sidewall height in the broader neighbourhood and in the immediate context, which, combined with the design of the dwelling would be noticeably out-of-keeping with the height, massing and scale of nearby properties.

Ms. Liu reviewed over two hundred variance applications within her neighbourhood study area. She indicated that out of about one hundred and forty variance applications that have requested a variance for fsi increase, just eight had received approval for a fsi increase of more than 0.7 times the lot area, seven of which, she said, are in the RD (f9.0; d0.6) and RD (f7.5; d.0.6), which permit an as-of-right density of up to 0.6x. She indicated there is only one, within the RD (f15.0; d0.35) zone, on 239 Cortleigh Boulevard, which was approved at 0.77x and had a sloped roof on all sides (Exhibit 8, Tab 5). She pointed out that City Planning objected to that property’s proposal. Ms. Liu did mention that a fsi value of 0.68 times the lot area was approved for 145 Hillhurst Boulevard and that City Planning Staff was opposed to it. In this latter case, the lot area is 408.76 square metres with a permitted density value of 0.35x.

Zoning By-Laws

Ms. Liu opined that the variance requests for sidewall height and fsi do not meet the general intent and purpose of Zoning By-Law 569-2013. She said that the general intent and purpose of zoning by-laws is to regulate the use of the land to ensure that development fits on a given site and fits within the surrounding context. In addition, she said that reducing the impact on adjacent properties forms part of this intent and purpose.

She opined further that fsi provisions are indicated in the zoning by-law to regulate the size of the structure to ensure a consistent mass and scale. Ms. Liu said that the former North York Zoning By-Law (By-Law 7625) controlled density through limitations on storeys and coverage. The former City of Toronto Zoning By-Law (By-Law 438-86) controlled density through limitations on height and fsi. She said there is a trend for a fsi value for under 0.6 times the lot area in the immediate context, and that fsi approvals in the larger neighbourhood are fairly and generally consistent with being under 0.7 times the lot area. She testified that a proposed fsi variance request 'severely exceeds' the standard of recent approvals granting fsi on Hillhurst Boulevard.

She read from her revised statement that building height provisions look to ensure compatibility between the heights of adjacent properties to mitigate issues of shadowing, overlook, and privacy. Ms. Liu specified that overall building height provisions are devised in part to regulate the size of structures and maintain a consistent pattern of development. She articulated that the sidewall height provision was created to prevent technically pitched roof dwellings so that the sidewall heights are shorter than overall building heights. She acknowledged that the sidewall height provision in the City-wide Zoning By-Law is under appeal and opined that the regulation is acceptable in intent and in principle.

Ms. Liu read the definition of a flat or shallow roof. She said it is a roof with a slope of less than 1.0 vertical units for every 4.0 horizontal units, a 25 percent slope, for more than 50 percent of the total horizontal roof area. She opined that the intent of the 50 percent flat roof area was so that mansard and gambrel roofs with steep side slopes but with relatively flat upper slopes would be considered pitched roofs. She said the applicant increased the pitched roof area of the Proposal so that 48 percent is flat and 52 percent is sloped. She added that the sloped roof area is limited to the east side and rear of the roof, which has caused a sidewall height variance for the west side wall, where there is no sloped roof component.

She opined that the Proposal advances a technically pitched roof but retains the appearance and impact of a three-storey flat roof dwelling. The elevated appearance, she said, creates a box-like effect that can make the home appear taller and more massive from the street than other designs. She said this is why the zoning by-law has taller height permission for a pitched roof house in comparison to a flat roof house.

She said that the requests for sidewall height and floor space index variances are of a scale that does not exist in the neighbourhood and is not compatible with the physical character on both Hillhurst Boulevard and within the broader context.

Desirable for the Appropriate Development and/or Use of the Land

She acknowledged that the subject property currently exceeds both the lot frontage and lot area requirements of the zoning by-law. Ms. Liu asserted that the Proposal is not desirable. She said the Proposal, specifically the proposed density/fsi and building height, are not appropriately sized for the subject lot. She recognized that there are redevelopment and reinvestment that occur in the neighbourhood without needing variances.

Minor

Ms. Liu opined that the requested variances are not minor in nature. She said that approving the variances would introduce the first three-storey flat roof dwelling in the neighbourhood. The Proposal, if approved, would establish a precedent for destabilizing the character and pattern of the neighbourhood.

Ms. Abimbola asked Ms. Liu about the sidewall height for 145 Hillhurst Boulevard. Ms. Liu said that the sidewall height of this property is very different (8.5 metres) from the ten metres being proposed at 139 Hillhurst Boulevard (Exhibit 4, Photograph 10).

Ms. Abimbola asked Ms. Liu whether more often than not, as suggested by Mr. Romano, that the Zoning Notices are generally inconsistent. Ms. Liu said that she did not think the majority of times the Zoning Notices are inconsistent. Planners, when they get the notices, and they want to provide a recommendation, do double-check the examiner's work. She said that she might encounter mistakes if there is an issue with interpretation, but there is always a zoning manager, and any applicant can take it to the manager if they disagree with any sort of interpretation.

Cross-Examination

Mr. Mazierski cross-examined Ms. Liu by referring to several items contained in various exhibits, including the property survey, the 1993 COA decision, the revised plans, the arklab shadow study, and the decision sampling summary.

At the beginning of his questioning, Mr. Mazierski asked Ms. Liu whether there is more pressure in this specific neighbourhood to oppose the application. Ms. Liu said she does not deal directly with neighbours. She added that if we consider two neighbourhood contexts with density permission of 0.6x, one is lower in scale than the other, it could be that she might view a 0.7x in a 0.6x as not okay, and the other as acceptable.

Mr. Mazierski asked Ms. Liu how many applications she deals with per month. Ms. Liu stated that it depends on the month, volume, type of application. She said she does physical site visits for most properties, and she uses the street view function on Google.

Mr. Mazierski asked her, would you agree the homes to each side of the subject property are three stories tall? Ms. Liu agreed with this but said these homes did present themselves as two-storey homes and were developed in the proximate context on a much lower scale than the proposal before us today.

Mr. Mazierski asked Ms. Liu what the errors were made by the zoning examiner. Ms. Liu said the first was a small typo in the fsi, which moved it from 0.723x to 0.733x, and then the examiner missed the garage excess, which increased the fsi from 0.733x to 0.776x.

Mr. Mazierski asked Ms. Liu why the as-of-right fsi permission is 0.35 times the lot area, which is based on a 1986 standard. Ms. Liu said the zoning by-law team had an opportunity to update it but chose not to. Instead, the City chose to distinguish between lots to the north and the surrounding sites.

Mr. Mazierski asked Ms. Liu if she would agree that the two highest fsi approvals up to 0.68 times the lot area are the most recent approvals. Ms. Liu said that staff were opposed to them, and admitted that once they are approved, they make up the character but are not constitutive of prevailing.

Mr. Mazierski asked Ms. Liu to acknowledge that there needs to be a sufficient slope to be classified as either a sloped or flat roof. Ms. Liu stated that a ten percent slope would not be considered a sloped roof. She said that while this is technically not a flat roof, it comes very close to it.

Mr. Mazierski asked Ms. Liu whether the drafters of the zoning by-law would share her view that the number of storeys is three because of the wall height. Ms. Liu said the drafters have already put in a sidewall height provision. Mr. Mazierski, then, asked about how 145 Hillhurst Boulevard presents itself in terms of numbers of stories. Ms. Liu said that this home is a two-storey flat roof dwelling but presents as a three-storey building because it is over an integral garage.

Ms. Mazierski asked Ms. Liu when looking at the massing of a house, should one look beyond fsi value. Ms. Liu agreed and said if you look at the massing of the proposed home, it will represent a higher fsi because of the void area. She said she appreciated the applicant's efforts to revise the application.

Mr. Mazierski asked Ms. Liu whether she recalls Mr. Romano's emphasis on the total floor area and the basement floor area. Ms. Liu said Mr. Romano should have placed greater emphasis on the above-ground floor area rather than the total floor area to calculate fsi. She, at one point, indicated that Mr. Romano's neighbourhood context map was based on the equation of total gfa divided by lot area. She said his map should have been based on the equation of above ground gfa divided by lot area, which would have been accurate of fsi in the neighbourhood.

Mr. Mazierski asked Ms. Liu about her earlier four-part characterization of her neighbourhood study area. Ms. Liu said that 9 metres is the base frontage on both sides of Hillhurst Boulevard in the immediate context and in consideration of the delineated zoning. She said the presence (and absence) of a sidewalk is a relevant definition of the geographic neighbourhood.

Re-Examination

Ms. Abimbola asked Ms. Liu whether 145 Hillhurst Boulevard and 154 Hillhurst Boulevard were decisions made in 2014 and 2015, respectively, and prior to OPA 320? Ms. Liu confirmed this and stated that OPA 320 introduced more specificity to development criteria such as “prevailing” to height mass and scale, as well as the word ‘density’ (Exhibit 8, paragraph 49). These were decided prior to OPA 320 – prior to the ‘prevailing’ addition to understanding the character of the neighbourhood.

[31] **Ms. Lyn Feldman, Party, Mr. Klotz’s Witness**

Ms. Feldman was affirmed. She also confirmed that she is married to Mr. Klotz. She indicated she has been living at 137 Hillhurst Boulevard for at least twenty-five years. She characterized her block as a “jewel of a block.” She is opposed to the Proposal because of the height, scale, and massing, which, she said, would cause impacts related to shadowing, privacy and views, particularly on the west side of her property. She said that the streetscape reflects a “North Toronto vintage.”

[32] **Ms. Sarah Vaidyanathan, Party, Mr. Klotz’s Witness**

Ms. Vaidyanathan was affirmed. She said she has been living at 141 Hillhurst Boulevard for four years. She said that the Proposal is large in terms of mass and scale and that, if it were approved, would impact her privacy significantly because of the position of the windows.

Mr. Mazierski cross-examined Ms. Vaidyanathan. He asked her what window(s) she is concerned about. She said the window on the side of her house. She also said that the sidewall height would impact her privacy. The Proposal, she said, could create higher floors at different levels, which could mean that the neighbours at 139 Hillhurst Boulevard could see through her windows look down and look in.

Right after Ms. Vaidyanathan’s testimony, Mr. Mazierski requested that Mr. Romano be allowed to testify again. Ms. Abimbola objected, citing the strong possibility of case-splitting. I indicated that I have already heard Mr. Romano testify and ruled against the request to recall Mr. Romano.

[33] **Mr. Harold Smith, Party, Mr. Klotz’s Witness**

Mr. Smith has lived at his home, across the street from the subject property, since 1979. He completed his Bachelor of Architecture from the University of Toronto in 1970 and had been a registered architect with the Ontario Association of Architects between 1973 and 2015. He completed an Acknowledgement of Expert’s Duty Form (Exhibit 15A). He said he knows how to create and interpret architectural drawings. He has reviewed the plans for the Proposal. He was present at the COA Hearing. He said he qualified as an expert witness at an Ontario Municipal Board hearing in 1989 in relation to a private matter at 179 Hillhurst Boulevard. He appeared at the OMB in 2015 to address concerns about a matter at 154 Hillhurst Boulevard (Exhibit 15B).

Direct Examination

Mr. Klotz asked for Mr. Smith to be qualified as a 'local knowledge expert' based on Mr. Smith's extensive fieldwork, architectural eye, and long experience and exposure of living in the neighbourhood area. Mr. Mazierski pointed out that he would address what a 'local knowledge expert' is allowed to speak to in his closing submissions, including any objections in law about this.

I provisionally qualified Mr. Smith at the hearing as 'local knowledge expert.' This expertise, which includes an architectural perspective, could assist in the assessment and evaluation of the Proposal. Mr. Smith indicated to me that some of the charts in his visual witness statement were prepared by Mr. Robert Brown. He also indicated that the sun shadow study was prepared by Mr. Al Kivi.

Mr. Smith viewed the immediate context as between Proudfoot Avenue and Mona Drive. The lot frontage sizes are clustered around an average of 10.06 metres. The scale is generally uniform along Hillhurst Boulevard. Mr. Smith said that scale includes floor heights, window heights, and window sizes. He testified that a greater floor to ceiling height would tend toward a greater window height and, possibly, size. Mr. Smith said that there are two-storey and three-storey dwellings that form part of the immediate context's character. He indicated that the immediate context has a median fsi value of 0.42 times the lot area. The architecture, he said, is generally indicative of 1930s residential-style, materials and building technology.

Much of the discussion from Mr. Smith was focused on the impacts of the proposed structure. He referred to Exhibit 13 at page 7 of 23 to discuss privacy impacts. He said the proposed balcony would enjoy a commanding view of the adjoining neighbours' yards. He referred to Exhibit 13 at page 20 of 23 to discuss the sloped roof. He said the top is planned to be flat with curved sides. He added that if the balcony complied with the zoning by-law, it would be less intrusive. Mr. Smith also referred to the same exhibit on page 12 of 23 to state the density values in the immediate context.

Cross-Examination

Mr. Mazierski said he does not have a lot of questions to examine Mr. Smith. He asked Mr. Smith whether it would be hard to be unbiased by giving an opinion on the Proposal. Mr. Smith admitted that he is in a conflict of interest.

Mr. Mazierski referred Mr. Smith to Exhibit 7 at page 24 of 45. He asked whether 154 Hillhurst Boulevard is a flat roof. Mr. Smith admitted that this is technically a sloped roof even though the top looks flat, and the sides are flared out like a mansard roof. Mr. Smith added this is an outlier on the block and said it detracts from the prevailing physical character of the neighbourhood.

Mr. Mazierski asked Mr. Smith to acknowledge that he is going by his own feelings when it concerns heights. Mr. Smith said he is not. He said he measured sidewall heights of homes in the area using his own brick method. He admitted that the City knows better about how it measures and calculates these heights.

Mr. Mazierski referred Mr. Smith to Exhibit 12 at page 22 of 26. He asked Mr. Smith whether he had made this side-by-side comparison. Mr. Smith agreed. Mr. Mazierski, then, asked him whether he would agree there is nothing in the Proposal that indicates a variance is being sought for front door height. Mr. Smith admitted that he is not talking about variances. Rather, he said, he is looking at the prevailing physical character, which includes door height, window height, roof slope, and detailing.

Mr. Mazierski asked Mr. Smith to verify that there is nothing in the zoning by-laws about front door height and front window height. Mr. Smith admitted that is correct, and said that these by-laws do not govern building proportions with the exception of length, height, gfa, fsi and there is nothing else that micromanages these proportions apart from the zoning by-law.

Mr. Mazierski challenged the shadow study Mr. Smith relied on. Mr. Mazierski pointed out that the methodology in Exhibit 14 at page 3 of 13 uses an evaluation method as proposed by the City of Mississauga. Mr. Mazierski produced copies of shadow study guides for Toronto and Mississauga. He then asked Mr. Smith whether the provisions in these documents apply in this case. Mr. Smith said he would agree that they do not apply but that, on the other hand, there needs to be a standard to assess adequate sunlight. Mr. Smith added that adjacent neighbours are entitled to a high standard of amelioration of a negative effect caused by the approval of a variance. Mr. Mazierski, then, asked Mr. Smith whether he is going by a personal feeling. Mr. Smith agreed, it is a feeling, not a standard. When referred to the Mississauga and Toronto standards, Mr. Mazierski asked whether both of those policy guides deal with larger proposals. Mr. Smith agreed. Mr. Mazierski said he does not need to enter these guides as an exhibit because he is satisfied with Mr. Smith's answer.

Re-Examination

Mr. Klotz asked Mr. Smith how characteristics such as doors height and windows are relevant to this Proposal and, if they are, how are they relevant. Mr. Smith said the fsi is one of the prevailing characteristics. The average density is based on city statistics, which we understand, are problematic. However, Mr. Smith said the average fsi hovers around the 0.42x median, not 0.70x, and the median is the prevailing characteristic.

[34] Closing Submissions in Writing

At the end of the hearing, the representatives for the Parties agreed that each representative would file one main closing submission by February 28, 2020, as well as a limited reply, inclusive of case law, within two weeks, i.e., by March 13, 2020.

After the hearing, it was later consented to by the Parties, in electronic correspondence, that closing submissions would be due on March 03, 2020, and the limited reply due on March 09, 2020.

ANALYSIS, FINDINGS, REASONS

[35] This was a *de novo* hearing for a contentious variance matter, which had spanned four days.

[36] There was competing expert opinion evidence on the merits of the appeal. Ms. Liu challenged the proposed fsi value and side exterior main wall height. Mr. Smith took issue with all of the proposed four variances. Ms. Feldman and Ms. Vaidyanathan, the adjacent property owners, shared their lay perspectives on some impacts that would result if the Proposal was approved.

[37] In order for this appeal to be allowed, in its entirety, and for the variances to be granted, each variance request must meet the policy considerations and legal tests prescribed under the *Planning Act*, I must be satisfied that the four tests prescribed under Section 45(1) of the *Act* are satisfactorily met, individually and cumulatively.

[38] Before concluding, I want to express my appreciation of the legal representatives in this matter who were courteous and accommodating of each other and their respective calls. Ms. Abimbola ought to be recognized for her good-natured provision of technical assistance to Mr. Klotz throughout the hearing.

[39] I have four variances properly before me to decide on, as identified in Table D above.

[40] I make no specific findings on the City Zoning Examiner's notices.

[41] A number of variances have been removed or reduced in value since the original application was filed to the COA. I find that the variances which comprise the Proposal represent a minor amendment to the application. Under Section 45 (18.1.1) of the *Act*, I exempt the changes from the requirement that further notice is given. A finding of minor under subsection (18.1.1) is not equivalent to a finding of minor under section 45(1) to be clear.

[42] I have carefully considered the extent of the oral evidence, the written evidence, as well as the written argument provided by the legal representatives. I discuss the treatment of Mr. Smith's evidence below.

[43] Mr. Smith lives just across the street from the subject property. I provisionally qualified him as a local knowledge expert for this proceeding. He admitted that he is not a land-use planner. He provided some of his evidence from an architectural standpoint. Mr. Smith signed Form 6 – the Acknowledgement of Expert's Duty – and attested to the provision of fair, objective and non-partisan evidence. At the same time, he indicated that he knows he is in an apparent conflict of interest in this matter as an expert and as a proximate party.

[44] Mr. Smith is a retired architect and has been an involved party in previous land use matters in respect of development on Hillhurst Boulevard. Although there were some moments where he admitted to relying on his personal feelings about the proposed development, I found him to be candid and professional when he spoke about architectural design in view of the proposed development, including his opinion on the architectural plans the applicant had submitted.

[45] I recognize Mr. Smith as a local knowledge expert for this proceeding. While he is compromised by virtue of his conflict of interest, this should not mean his evidence is to be entirely disregarded. Rather, I admit his evidence and discount it to the extent that he has a personal (proximate) interest in the outcome of this matter. I do not consider, in this case, that his evidence is to be afforded more evidentiary weight than the evidence I heard from either Mr. Romano or Ms. Liu.

[46] Both qualified land use planning experts, Mr. Romano and Ms. Liu, provided me with persuasive evidence, albeit in varying degrees, which I identify below.

[47] While I accept that the proposed variances are consistent with the Provincial Policy Statement and conform to the Growth Plan, the result, however, is that not all of the variances that make up the Proposal satisfy the legal tests. Accordingly, for reasons I set out below, the appeal is allowed in part.

[48] I prefer Ms. Liu's slightly tighter study area, which she referred to as her broader context.

[49] I generally prefer Mr. Romano's evidence that the requested variance for the area of each platform at or above the second storey, under Zoning By-Law 569-2013, individually and cumulatively meets the four tests prescribed under the *Act*. I find this variance, in this case, can stand on its own, separate from the built form nature of the variances of the New By-Law, which are integral to the purpose of the Proposal as it were at the COA and as it is before me. I also did not hear any compelling evidence of impact that countered this request for variance approval. I am satisfied that this variance meets the general intent and purpose of the Official Plan, the New Zoning By-Law is desirable and appropriate for the development and use of the land and is minor in nature.

[50] Furthermore, this is a Section 45(1) appeal, not a Section 45(2) appeal, as indicated by the appellant. I make no findings on whether the existing home has an existing legal non-conforming peak. Mr. Romano said in his evidence that there is a 0.13 metre excess in the front of the building, whereas the back of the building has a lower measure of height. I note that overall building height under the Old By-Law and New By-Law have different calculation methodologies. I also note there is no corresponding building height provision for me to consider under the New By-Law for this Proposal. I did not hear any compelling evidence of impact that countered this request for variance approval. I accept Mr. Romano's opinion evidence that the requested variance for overall building height under Zoning By-Law 438-86, individually and cumulatively meet the four tests prescribed under the *Act*.

[51] Ms. Liu is a relatively new land-use planner who I found to be adept. I prefer her evidence that the variance for side exterior main wall height (under the New By-Law, and a performance standard which I recognize may still be under appeal), and the variance for fsi (also under the New By-Law), individually and cumulatively fail to meet any of the four prescribed tests.

i. Side Exterior Main Wall Height (New By-Law)

There exists a harmonious regulatory relationship between overall building height and side (main) wall heights.

Ms. Liu said that the sidewall height restriction of 7.5 metres is intended to prevent the development of technically pitched roof dwellings but which actually have a flat roof appearance of impact.

Mr. Romano said that one small portion of the west side wall is proposed to be 10.0 metres. This would mean the height of this wall would be approximately the same as the maximum permitted building height under the New By-Law, whereas the sidewall height performance standard was intended to ensure the sidewall was shorter than the overall building height.

The degree of what this shortness means is informed, on the one end, by the difference of intended restriction being 2.5 metres between the overall height and sidewall height, which is neither an insignificant value nor an insignificant potential impact.

Furthermore, it was argued that permitting this variance would result in a three-storey flat roof dwelling. While I agree that the by-laws would seem to allow for third storey development for a technically pitched roof dwelling, and provided other regulations have been met, an analysis of the data proffered in evidence reveals that a sidewall height of 10.0 metres (and there around) does not exist in any substantial number within the geographic neighbourhood. Even in the immediate context, Mr. Romano's decision summary table shows that 154 Hillhurst Boulevard was approved at 8.33 metres, which still leaves a differential of 1.67 metres between the overall height (if it is 10.0 metres) and the sidewall height. In view of the Proposal, a differential of 0.13 metres (10.13 metres of building height less 10.0 metres of sidewall height) does not seem reasonable where there is a technically pitched roof to be clear. I do not find that the general intent and purpose of the Official Plan, as amended, and the New By-Law are maintained.

Additionally, a sidewall height of this magnitude, at this time, is neither desirable nor appropriate. I cannot accept that this variance request resonates with the public interest, in part because the adjacent neighbours are not at all supportive of this variance, but in greater part, because the scale that would result from the proposed sidewall height is one that does not substantially exist in the broader and immediate context. Concerning the test of minor, while Mr. Romano said that there would be step backs incorporated into the design elements, this variance, which stirs the appearance of a flat roof dwelling, would seem to limit views and privacy and create shadowing that on a spectrum of impact tend toward unacceptability. I make no findings of the status of legal non-conforming sidewall heights in the neighbourhood.

ii. Floor Space Index (New By-Law)

Where they are indicated, residential density values move from 0.6x to 0.35x as one travels north of Eglinton Avenue and west of Avenue Road. The RD Zone of Hillhurst Boulevard shows that one part, from 103 Hillhurst Boulevard to 168 Hillhurst Boulevard, regulates density at 0.35, the performance standard. The other part to the west, which falls under the former City of North York area, does not directly limit density or fsi through

Mr. Romano is a very experienced professional land use planner. He was qualified by the Ontario Municipal Board in July 2015 to provide expert land use planning opinion evidence in support of the revised variance requests for 154 Hillhurst Boulevard. One of those requests (or settlement figures) was for a fsi value of 0.6769 times the lot area with a corresponding gfa of 420.17 square metres.

I heard Mr. Romano state that 0.77x represents the appropriate fsi value currently existing at the subject property for 139 Hillhurst Boulevard. Mr. Romano stated the existing lot area is 411.65 square metres. He calculated the 0.77x using a fsi calculation of total gfa divided by lot area category, which seems to include a floor area of the basement. This could mean the existing gfa is approximately 316.97 square metres.

It would appear that the City Zoning By-Law 569-2013, as amended, and at 10.5.40.40(5)(B), provides a fsi calculation which seems to favour subtracting the floor area of the basement in the present case:

Floor Space Index Calculation

In the Residential Zone category, the floor space index:

- (B) for a residential building, other than an apartment building, is the result of the gross floor area, plus the area of an attic described in regulation 10.5.40.40(1) and subject to regulation 10.5.40.40(2) **minus the areas** listed in regulation 10.5.40.40(3), divided by the area of the lot; [my emphasis]

I accept Ms. Liu's fsi calculation for a residential building that divides the above gfa by the lot area and excludes the floor area of the basement. This would appear to be the method of calculation the City's zoning examiner eventually decided to use.

Ms. Liu stated the subject property has an existing lot area of 406.40 square metres, an existing gfa of approximately 236.22 square metres, and an existing fsi value of about 0.57 times the lot area.

It was open to the appellant to have summoned the zoning examiner to provide an explanation of his different calculations. The testimony of such summonsed witness would have been of assistance to this Member but not determinative of this Matter.

At the other end and going forward, I remark, in this obiter paragraph, that it could be very helpful for the City's Zoning Examiners to provide a clear breakdown of their fsi calculation, where applicable, to ensure transparent and consistent application. This, in turn, could help land-use planners and others view and understand City zoning data better.

Moving forward, the applicant signed and made the original application in January 2019. The application, including its modifications, is, therefore, subject to the general intent and purpose of the Toronto Official Plan, as amended by OPA 320, which has strengthened Neighbourhood policies, in part, by adding the words “prevailing” and “density.”

The broader and immediate context comprise the geographic neighbourhood. I find that the broader context, according to Ms. Liu, contains a mix of physical characters. While I do not find her immediate context delineation to be ‘rigid,’ Ms. Liu seemed to favour a plain reading of the policy text in Section 4.1.5 of the Official Plan. However, I understood and accept from her evidence that her opinion of this section and of other sections she had spoken about was provided in the context of having read the Plan as a whole.

I also accept that there is a significant difference between the broader and immediate context and that the immediate context ought to be given greater relevance in assessment and evaluation. I reject the assertion that the proposed variance for fsi is of such a value enjoyed by a significant presence, of resultant mass and scale, in the immediate context or on the north side block of Hillhurst Boulevard contained within the former City of Toronto zoning boundary. I, therefore, agree with Ms. Liu that the most frequently occurring fsi range, in this context, is 0.6x and below. I confirm that I accept her study area. I also accept that there exist only three lots, which have a fsi value of 0.76x and greater, one on Briar Hill Avenue, one on St. Clements Avenue, and one on Cortleigh Boulevard. In the immediate context, there is 145 Hillhurst Boulevard (lot area: 408.76 square metres, gfa: 277.95 square metres) and 154 Hillhurst Boulevard (lot area: 620.80 square metres, gfa: 420.17 square metres) which were both built based on a fsi value of 0.68x times the lot area and sidewall heights of 8.5 metres and 8.33 metres respectively. I agree that the immediate context has an average frontage of 10 to 11 metres, whereas the frontage west of Proudfoot Avenue jumps to 15.3 metres.

I tend to agree that there is a need for the City to review the zoning standard for density in this immediate context and, perhaps, in other proximate areas where the density value is 0.35x. I have observed that fsi values, although considered reasonable, are being approved above this current maximum standard. This ambiguity does little to preserve the integrity of the general intent and purpose of the zoning by-laws.

There is no doubt that regeneration is occurring in the geographic neighbourhood. I agree with Mr. Romano that this regeneration typically results in residential buildings that occupy more space. However, I do not find that the proposed fsi is materially consistent with the physical character of both contexts in all of its numeric and deployment considerations. FSI is not an unreliable indicator of density. I agree it could be made better. Furthermore, density is now a criterion to consider when evaluating development. This must be taken seriously considering that strong support was voiced to strengthen Section 4.1.5 in the last five-year review of the Official Plan.

In disposing of this appeal, below, the appellant is encouraged to demonstrate that he can develop a sensitive and modest deployment of mass, scale and built form that is in keeping with both the character and context of Hillhurst Boulevard between Proudfoot Avenue and Mona Drive.

I wish to thank counsel and the witnesses for their civility throughout.

This Decision and Order is not to be read or relied on as limiting design features of new development or redevelopment projects.

DECISION AND ORDER

[52] The TLAB orders that the appeal is allowed in part, and that:

1. The variance to Zoning By-law No. 438-86, as listed in Attachment A, is authorized.
2. The variance to Zoning By-law No. 569-2013, as listed in Attachment B, is authorized, contingent upon the relevant provision of this By-law coming into force and effect.
3. The remaining variances of the Proposal, of fsi and sidewall height, are expressly not authorized.
4. There are no approved plans attached to this Decision and Order.
5. If there are any difficulties experienced in the interpretation or application of this Decision and Order, the TLAB may be spoken to.

X



Sean Karmali
Panel Chair, Toronto Local Appeal Body

ATTACHMENT A: VARIANCE TO ZONING BY-LAW NO. 438-86

Type of Variance Requested to the Zoning By-Law	Performance Standard and Proposed Variance
<i>Former Toronto Zoning By-Law 438-86</i>	
Height 4(2)	The maximum permitted height is 10m. The proposed height is 10.13m.

ATTACHMENT B: VARIANCE TO ZONING BY-LAW NO. 569-2013

Type of Variance Requested to the Zoning By-Law	Performance Standard and Proposed Variance
<i>City-Wide Zoning By-Law 569-2013</i>	
Area of Each Platform at or above the Second Storey 10.20.40.50.(1)	The permitted maximum area of each platform at or above the second storey of a detached house is 4.0 square metres. The proposed rear balcony at or above the second storey is 5.07 square metres.