

DECISION AND ORDER

Decision Issue Date Tuesday, August 04, 2020

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

Appellant(s): RCS DEVELOPMENTS INC

Applicant: STUDIO K ARCHITECTS INC

Property Address/Description: 54 WESTHAMPTON DR

Committee of Adjustment Case File: 18 267276 WET 01 MV (A0919/18EYK)

TLAB Case File Number: 19 125032 S45 01 TLAB

Hearing dates: Friday, September 13, 2019

DECISION DELIVERED BY JOHN TASSIOPOULOS

APPEARANCES

NAME	ROLE	REPRESENTATIVE
RCS DEVELOPMENTS INC	OWNER/ APPELLANT	CHRISTINA KAPELOS RITCHIE KETCHESON HART & BIGGART LLP
SAEID KOHRANGI	OWNER	
STUDIO K ARCHITECTS INC	APPLICANT	
CITY OF TORONTO	PARTY	ADERINSOLA ABIMBOLA CITY OF TORONTO
FRANCO ROMANO	EXPERT WITNESS	
ALLISON SMITH	EXPERT WITNESS	
LUDOVICO POMPILI	PARTICIPANT	

INTRODUCTION

This is an appeal to the Toronto Local Appeal Body (TLAB) from a decision of the Committee of Adjustment (COA) on February 21, 2019 being a refusal of variances to permit the construction of a new triplex dwelling at 54 Westhampton Drive (subject property). As a result of the refusal, the Applicant appealed the decision to the TLAB, whose Hearing date was set for August 16, 2019. The Hearing did not conclude on that date and it was agreed to by the Parties present that it be adjourned and reconvened on September 13, 2019 in order to hear the planning evidence from the City of Toronto's expert witness, Allison Smith.

During both Hearing dates the Appellant was represented by counsel, Christina Kapelos. The City of Toronto, as a Party to the matter, was represented by counsel, Aderinsola Abimbola. Prior to the August 16, 2019 Hearing a Motion was made to grant Mr. Ludovico Pompili Participant status at the hearing and to represent residents on Westhampton Drive. The Motion included approximately 41 residents with 18 separate addresses indicated; all on Westhampton Drive. Mr. Ludovico Pompili was granted Participant status for the Hearing and appeared on behalf of the Residents who were signatories to the Motion. Mr. Pompili only appeared and made a presentation on Day 1 of the hearing, August 16, 2019. The expert witnesses, Franco Romano and Allison Smith, and numerous Westhampton Drive residents were also in attendance on both dates were.

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

BACKGROUND

The site is located on the north side of Westhampton Drive and west of Islington Avenue. The site is flanking residential dwellings to the east and west and backs onto Monogram Place, a road to the north. It is designated Neighbourhoods in the Official Plan and zoned Residential Multiple (RM) pursuant to City of Toronto By-law 569-2013. The proposal is to demolish the one-storey single detached dwelling and to construct a new triplex on the subject property which would require 3 variances to By-law 569-2013 to permit the proposed development.

Prior to commencing the Hearing, I noted that I would give Mr. Pompili a chance to provide the Parties with a copy of his witness statement he had prepared for presentation at the Hearing since the turnaround time to submit the statement was compressed. He proceeded to provide the statement to both Ms. Kapelos and Ms. Abimbola. At this point Ms. Kapelos mentioned that revised plans had been submitted for the appeal to TLAB on August 14, 2019 and asked that the TLAB consider these drawings with respect to the appeal and that these plans be considered for the approval of the variances sought. In addition, Ms. Kapelos noted that a supplemental document disclosure would be submitted because there were policy changes since the original document disclosure was submitted (e.g., OPA 320) and that these were updates including the revised zoning and plans as well as the July 16, 2019 resolution to

Council regarding the “missing middle” which Mr. Romano would speak to in his evidence. Ms. Abimbola mentioned that the concern she had was that she was not aware what Mr. Romano would be speaking to with respect to the “missing middle” since a supplemental witness statement was not submitted. Ms. Kapelos explained that it was a continuation of City staff report documents submitted and that Ms. Abimbola would have the opportunity to cross-examine Mr. Romano with respect to his evidence. I allowed for this as long as it was deemed to be a continuation of documents already submitted.

I noted that I would provide a short recess for Parties to consider the statement submitted from Mr. Pompili and for review of the updated plans by the Parties and Participant. Prior to this recess, Ms. Kapelos described the updated plans, received by the TLAB on August 14, 2020, and compared them to the plans submitted to the TLAB on April 23, 2019, as part of the document disclosure. She explained that in both those plans and the revised plans, the Appellant no longer required a height variance as the design had been revised to a gabled roof building that has a height 9.22m. She then proceeded to point out that the updated plans added stairs and an entrance to the front façade and removed a sunken patio; waste storage areas were indicated on the site plan to address City comments, and that the building was now correctly identified as 2 storeys in height. I considered these changes in light of whether the revised plans necessitated a recirculation of Notice with the new plans as per Section 45 (18.1) of the *Planning Act*. Having determined that the changes were not substantive, and that Ms. Abimbola also concurred that the revisions were not substantive, the revised plans were accepted and would be those referenced during the Hearing.

MATTERS IN ISSUE

Given the *de novo* nature of the TLAB Hearing, are the variances sought by the Appellant / Owner supportable?

Are the variances sought with respect to the standard lot frontage and lot area appropriate given that the subject property is zoned RM and R3 which permits a range of residential dwelling types including triplexes?

Although triplexes are a permitted use on the subject property, should this type residential tenure or dwelling type be encouraged by variances when there are no other explicit examples of triplexes present along Westhampton Drive?

Do the proposed revised plans address potential impact to the surrounding neighbourhood and sensitively address the potential impact of the triplex residential dwelling?

Is the proposed variance to permit a parking space in the front yard an exception or is it consistent with the parking relationships found on Westhampton and in the neighbourhood?

JURISDICTION

Provincial Policy – S. 3

A decision of the Toronto Local Appeal Body (TLAB) must be consistent with the 2014 Provincial Policy Statement ('PPS') and conform to the Growth Plan for the Greater Golden Horseshoe for the subject area ('Growth Plan').

Variance – S. 45(1)

In considering the applications for variances from the Zoning By-laws, the TLAB Panel must be satisfied that the applications meet all of the four tests under s. 45(1) of the Act.

The tests are whether the variances:

- maintain the general intent and purpose of the Official Plan;
- maintain the general intent and purpose of the Zoning By-laws;
- are desirable for the appropriate development or use of the land; and
- are minor.

EVIDENCE

Hearing Day 1 – August 16, 2019

Ms. Christina Kapelos provided a brief introduction to the variances. She noted that it was important to recognize what was not being sought including variances for a type of dwelling that is not permitted in the zoning, setbacks or height. She urged that the evidence provided would indicate how the site is appropriate for a triplex. She further explained that there was no change in the lot fabric or parking supply proposed and that the proposed parking space in the front yard is a common parking condition in the neighbourhood. She concluded that the variances sought will be compatible in the context of the subject property and that it is in keeping with introducing modest density, or the "missing middle" in the form of triplexes, in zones that permit such dwellings.

Following this introduction Mr. Franco Romano was affirmed. Having noted the land use planning experience outlined in his witness statement, his signed acknowledgement of expert's duty (Exhibit 1), and that he has appeared before TLAB on numerous occasions and been qualified an 'Expert Witness', I qualified Mr. Romano to provide professional opinion evidence in the area of land use planning.

Mr. Romano confirmed that he had been retained by the Appellant / Owner shortly after the COA had refused the application on February 21, 2019. Upon review of the background material and a site visit he agreed to a retainer from the Appellant/Owner in March 2019. Mr. Romano then provided an overview of the proposal indicating: that it was to accommodate a triplex that is a permitted use; that the variances were to deal with lot frontage and lot area; that there was no alteration to the site; that the proposed building was designed to resemble a two storey detached

dwelling form and; that the footprint of the dwelling fit within “all of the performance standards of where a building could be constructed on the property” (Hearing excerpt). The curb cut will remain in its current location to provide driveway access to the parking at the front and rear; this does not trigger a variance with respect to landscaping and does not impact the existing street tree. He explained that a study of the elevations and plans indicates a building that is smaller than what is permitted by the zoning for a detached dwelling or what would be anticipated for a triplex.

Mr. Romano went on to describe three requested variances (Exhibit 3) to the Zoning By-Law:

1. Section 900.6.10(B), By-law 569-2013

The minimum required lot frontage for a triplex is 16.5 m.
The lot frontage is **12.8 m**.

2. Section 900.6.10(A), By-law 569-2013

The minimum required lot area for a triplex is 610 m².
The lot area is **488.06 m²**.

3. Section 10.5.80.10.(3), By-law 569-2013

A parking space may not be located in a front yard or side yard abutting a street.
The proposed parking space is located in a front yard.

Referring to the RM zone, and the zoning map excerpt (Exhibit 1), he explained the RM zoning applies to Westhampton Drive and that it permits up to three dwelling units without conditions and therefore a variance is not being sought to permit a triplex. He went on to explain that south of Westhampton Drive the zoning category is RD and permits as-of-right secondary suites without the requirement of providing a parking space. Furthermore, he noted that the zoning provisions for establishing a triplex minimum lot frontage and lot area are meant “to ensure that the site can accommodate a triplex in a functional and physical form that is in keeping with the surrounding area” (Hearing recording excerpt). Further, that the proposal and proposed variances accomplish that.

His summary opinion was that both lot frontage and lot area variances meet all four tests of Section 45 (1) of the Planning Act with respect to an appropriately sized lot that can accommodate the proposed triplex and that the proposed parking location variance accommodates onsite parking in a manner that reflects the existing neighbourhood condition where front yard parking is common. In addition, he noted that the proposed building form respects and reinforces the physical character of the neighbourhood, is good planning and the variances should be approved.

Mr. Romano proceeded to provide a description of the neighbourhood and site, noting that it is predominantly residential with low-rise detached residential dwellings and that they can contain single or multiple units. He explained that the geographic neighbourhood area surrounding the site included the residential RD zoned areas to the south and connects to Westhampton Drive. He indicated that his neighbourhood study

area was bounded by Monogram Place to the north, Dixon Road to the south, and Islington and Kipling Avenues representing the east and west extent, respectively.

He described the siting of buildings on the lots generally having a consistent front yard setback with varied driveway relationships, some leading to a garage near the front and some to parking in the rear or to a detached garage in the rear of the lot. He explained that backyards and their composition vary in terms of features, accessory structures, and landscaping coverage. He noted that the proposal locates two parking spaces at the rear and still meets the landscape minimums required for the lot and that it fits within the rear yard condition found along Westhampton Drive and the broader neighbourhood.

Turning to his photographic survey of the neighbourhood, Mr. Romano provided numerous examples of front yard parking or double width driveways that are wider than the garage along Westhampton Drive with both one and two storey dwellings and indicated their locations with respect to the subject property. He indicated that driveways widened beyond the width of the carport. A garage at the front of the house would be considered front yard parking because the added driveway space does not lead to a parking spot. He concluded that front yard parking was a present condition and part of the physical character found along Westhampton Drive and the adjacent neighbourhood area. He stated that a similar condition was being sought in the variance.

Mr. Romano turned to the plans that were submitted to COA for a triplex that are different from the revised plans, as it was a three storey building with a flat roof and a height of 12.6m, where 11.0m was permitted. He explained that the new plans no longer require the variance for height previously sought but that the other three variances sought were still required. In terms of City comments received for the application, he noted: the condition from Urban Forestry; that Transportation Services reviewed the proposal as a traffic planning variance and had no objection to the front yard space and parking in the rear because it was within private property; the planning comments, with respect to the original proposal, recommended refusal because there were no other triplexes present on Westhampton Drive and would not be consistent with the established character of the neighbourhood (Exhibit 2, Vol.2).

Mr. Romano took exception to the planning refusal recommendation noting that it was a "superficial review" of the application: triplexes are permitted on Westhampton Drive and "just because that number of units, in a residential building, may not exist within the neighbourhood it doesn't mean that it could not exist and respect and reinforce the physical character of the neighbourhood, because the number of units in the building itself contributes very little if at all to the physical character of the site design and the building"(Hearing excerpts). He explained that the proposal before the TLAB respected and reinforced the physical character of the neighbourhood and that the accommodation of three dwelling units was appropriate. Furthermore, he explained that there are other uses that are permitted as-of-right in the Zoning By-law that do not exist in the neighbourhood presently but it doesn't mean that they should not be permitted.

Mr. Romano mentioned that the letters of objection appeared to be concerned with the form of the original triplex proposal, not the number of units, while others perceived the neighbourhood as a predominantly single detached dwelling units and that it only allows for one unit; however, this is not the case because secondary suites are permitted. Moreover, the proposal is in an RM zone where multiple units are permitted. He noted that the concern with the form of a three storey building is no longer applicable in the current proposal as it is 2 storeys in height and that this form is permitted. With respect to concerns over parking overflow, he mentioned that all parking required would be accommodated on the subject property.

Mr. Romano reviewed applicable Provincial policies in the Provincial Policy Statement (PPS) and the Growth Plan for the Greater Golden Horseshoe (GP). He explained that the proposal met the requirements of the PPS with respect to intensification in settlement areas, including the range and mix of housing implemented through the Official Plan. With respect to the GP, he turned to the 2019 GP (Exhibit 3), explaining that the proposal supports the principle of housing options, housing unit variety and a complete community. In addition, the objective of the intensification of existing settlement areas and providing it within a compact form is achieved by the proposal; it was not in conflict with either the 2017 or 2019 GP.

He followed this review with the Official Plan (OP) and the updates from OPA 320. He stated that there is no policy that requires replication of what exists in the neighbourhood in order to respect or reinforce the character or that the property will remain static, referring to Section 2.3.3.1 of the OP. Turning to the built form policies in Section 3.1.2, he mentioned that the proposal meets the requirements because: the building is oriented toward the street with entrances and windows overlooking the street; it preserves the existing tree; it uses the existing curb cut; it limits the parking between the building and the street with one space; and, finally, the massing of the building is designed as a detached building with appropriate setbacks that do not create undue shadow impacts. Speaking to Section 3.2.1, he explained that the proposal contributes to the range of housing type and tenure desired in the OP quoting that "...new housing supply will be encouraged through intensification and infill that is consistent with this Plan." Furthermore, Mr. Romano indicated that Section 4.1.1 notes that *Neighbourhoods* are made up of a variety of lower scale residential buildings including triplexes and therefore the proposal is in conformity with this policy.

Mr. Romano then brought up OPA 418 and the "Second Units" report of March 9, 2018 (Exhibit 1) noting that previously buildings needed to be five years old prior to a secondary suite being permitted and that the new provisions allow them to be created within a brand new house. He said that Section 3.2.1.10 of the OP reinforces that second units should be encouraged. He went on to describe that the proposal is in keeping with the description of second units in the report as it "contains three units within a primary low-rise residential building...and is not intended to be a severable dwelling unit." (Hearing excerpt). Furthermore, he noted that the Council resolution of July 16, 2019 (Exhibit 2, Vol.1), provided direction to staff to expand housing options in Toronto regarding the "missing middle", in the areas designated as Neighbourhoods in the OP.

Returning to his review of the OP he noted that the proposal meets the criteria set out in Section 4.1.5 noting that “the proposal has a height, mass, scale, density, and dwelling type that fits within the prevailing height, mass, scale, and dwelling type of nearby residential properties” and that it conforms with all of the development criteria noted in that section.

With respect to Section 4.1.8 which speaks to the Zoning By-law, Mr. Romano pointed out that the proposal has substantial zoning compliance and that lot frontage and lot area variances sought “relate to the functionality of the residential building that’s being proposed on the property...” and the “site design and other characteristics that clearly demonstrate that the functionality of the lot size is appropriate for the triplex” (Hearing excerpt). Given this evidence he concluded that the proposal met the test of maintaining the general intent and purpose of the Official Plan.

He explained that in terms of maintaining the general intent and purpose of the Zoning By-law, the proposal “achieves a low-rise conventional form of residential site design and built form that fits in well with the sites physical context.” With respect to the variances for lot frontage and lot area, he explained that the proposed building type in the proposal can be appropriately accommodated by the lot frontage and lot area of the subject site. The proposal does not seek any other variances for the proposed triplex building; it is being designed with a detached residential character and therefore the intent and purpose of the Zoning By-law is maintained. With respect to the front yard parking space he maintained that the intent of the by-law was to provide “adequate context suitable parking” and that front yard parking was common place in the neighbourhood, was an existing condition, and that the proposal maintains the parking in an appropriate manner and meets the intent of minimizing parking in the front yard.

Noting that building setbacks are greater than what is required for detached buildings, that the proposed triplex is a low scale residential form, that it will contribute to rental housing stock while maintaining the physical character of the neighbourhood with no adverse impacts, he concluded the proposal is desirable for the appropriate development or use of the land.

He indicated that the magnitude of the variances being sought reflected the existing conditions of the lot and that the front yard parking space variance is to accommodate one space in a context suitable manner. For these reasons the variances being sought were appropriate and minor in nature.

Mr. Romano concluded that the proposal does not create any adverse impacts and that the proposed triplex has been “designed to fit functionally, appropriately, and sensitively on this lot based on the lot size that currently exists and that is what we look to when we look at lot frontage and lot area performance standards associated with this permitted building type” (Hearing excerpt). He recommended that the three variances be approved subject to conditions of being built substantially in accordance with the site plan and elevations of the August 16, 2019 plans and subject to the condition of Urban Forestry.

Mr. Romano was then cross-examined by Ms. Abimbola and was asked if a two storey dwelling could be built on the subject site without any variances and Mr. Romano indicated it was possible but there could also be other variances sought, to construct such a dwelling, as well. Ms. Abimbola then asked if the existing Westhampton Drive lot frontages were all by-law compliant and Mr. Romano answered that in physical form they were but was not sure of whether they were in terms of number of units internally. When asked about the RD zoning of the neighbourhood area to the south and whether the type of dwelling permitted was single detached, Mr. Romano noted again that it was in physical form but that both RM and RD zones permit more than one unit within each residential dwelling. Turning to the front yard parking, Ms. Abimbola asked if there were any variances for front yard parking on Westhampton Drive under ZBL 569-2013? He confirmed that none were identified in his research request; however, he further explained that the search only went back to 2013 but was not relevant because it would only indicate a matching of variances, not a test.

She then asked, referring to his photo for 52 Westhampton Drive (Exhibit 1), if the proposed triplex would be located between two single storey buildings and he confirmed that there would be a two storey building proposed next to one storey. She then asked if he agreed that there were no targets set out by the City with respect to triplex dwellings and Mr. Romano answered that he wasn't aware of targets for triplexes - or any other types of dwellings.

Ms. Abimbola asked if OPA 320 sought to strengthen neighbourhood policies by introducing the term "prevailing" in Section 4.1.5 of the OP? Mr. Romano disagreed stating that the use of prevailing did not exclusively mean most frequently occurring because one looks at various aspects and not just a mathematical calculation. Ms. Abimbola turned to section 4.1.5 of the OP and noted that it states:

"The prevailing building type and physical character of a geographic neighbourhood will be determined by the most frequently occurring form of development in that neighbourhood."

Mr. Romano noted that there was more to determining prevailing in section 4.1.5 and quoted that *"In determining whether a proposed development in a Neighbourhood is materially consistent with the physical character of nearby properties, only the physical character of properties within the geographic neighbourhood in which the proposed development is to be located will be considered."* He opined that the term prevailing must be read in the full context of Section 4.1.5, that it looks at prevailing conditions or material consistency and not just replication, and that prevailing does not mean that if something did not exist previously that it shall not exist in the context of this policy because the OP cannot contradict what is permitted as-of-right in the Zoning By-Law.

Ms. Abimbola asked that with respect to Westhampton Drive specifically being comprised of single detached dwellings, couldn't there be one or two units in the buildings? Mr. Romano replied that there was no way of knowing how many units were present because it had no relation to the physical form; the zoning permission allows up

to three units. He was not aware of how many units were in each of the houses on Westhampton Drive.

Ms. Abimbola challenged Mr. Romano's assertion in his witness statement that the zoning by-law permits a triplex (Exhibit 1, 6a) noting that it does permit a triplex but on a specific sized lot that the proposal did not have. Mr. Romano disagreed and noted that the zoning (RM (u3)(x.18) does not have these conditions and that exception 18 is not a condition but rather lists performance standards for lot frontage, lot area, permitted height of 11.0m, larger lot coverage of 35% and no floor space index. He suggested that these exceptions anticipated a larger triplex building and form on the lot and what was being proposed as a triplex within a detached residential physical form that is suitable to the existing lot size. Ms. Abimbola mentioned that the triplex may be permitted but a triplex could not be built as of right, as the subject property was an undersized lot. Mr. Romano said that although the variances are necessary they were not needed as the lot exists and it is lawful and that in his opinion you could build the triplex as of right and that the exceptions for lot frontage and lot area were performance standards and not conditions.

Ms. Abimbola then asked about the parking space in the front yard and asked how many vehicles could be accommodated in the front yard and Mr. Romano answered one vehicle. Pointing to the aerial in his witness statement (Exhibit 1), she mentioned that the rear yard conditions are typically open space but Mr. Romano noted that the rear yards were varied in purpose and some had a combination of open space and accessory structures.

He was asked if the introduction of a triplex, with three separate units, is something that isn't currently present in the neighbourhood? Mr. Romano said it wasn't possible to confirm whether there were others without entering each home to determine the number of units. He reiterated that externally the proposal and site design reflect what is present on the street and in the neighbourhood. He also mentioned that the number of units was irrelevant since none of the variances were for the number of units. He further explained that the introduction of a triplex does not compromise the stability of the neighbourhood and pointed to past variances on the street that were approved and did not impact the stability of the neighbourhood.

Ms. Abimbola turned to the Etobicoke Zoning Code (Exhibit 5) noting that in the past it required, in Section 340-30D(1), that a triplex dwelling have a minimum lot area of 465 square metres and that this was increased in the new Zoning By-law 569-2013 to 610 square metres; that the required lot frontage was increased from 15.0m to 16.5m; and these apply to the neighbourhood today. Mr. Romano explained that these increases were not specific to this neighbourhood and were applied throughout the City for triplexes.

Ms. Abimbola noted that based on the requirement for triplex lot size and lot frontage, the proposal would introduce the first undersized lot on Westhampton Drive based on the requirements for the triplex dwelling type. Mr. Romano did not concur and

opined that under the exception provisions the required lot frontage is indicated as 16.5m but that other provisions of the By-law indicate that 12.8m is a lawful lot frontage.

Ms. Abimbola noted that there was only one variance application previously sought on Westhampton, for 73 Westhampton Drive, and that it was not like the proposal for 54 Westhampton in terms of the variances (Exhibit 5). Mr. Romano responded that 73 Westhampton Drive is a larger, detached dwelling unit with a physical form and with a floor space index (FSI) of 0.53. He described that example as the only one with that mass and scale on the street, that a reduced front yard setback brought it closer to the street and that these were not similar variances to those proposed for the subject property. He agreed that the variances for 73 Westhampton Drive were the first of their kind in the neighbourhood just as the current proposal was also the first of its kind.

Ms. Abimbola asked if the policies regarding intensification and range and variety of housing, indicated in both the PPS and the GP, could be met through dwelling types other than the triplex, such as providing secondary units, and Mr. Romano agreed. She then asked if he agreed that the OP did not support that a new physical character should be introduced that does not already previously exist; he disagreed and referred to Section 4.1.5 of the OP:

“Proposed development within a Neighbourhood will be materially consistent with the prevailing physical character of properties in both the broader and immediate contexts.”

Mr. Romano noted that materially consistent does not mean exactly the same as or required replicating what exists. It permits the introduction of a building that may not be the same as but is materially consistent with what exists. In his opinion, the proposal introduced something that already exists and that it was materially consistent with what exists in substantial numbers in the area.

Ms. Abimbola then referenced section 4.1.5 of the OP, that states:

“No changes will be made through rezoning, minor variance, consent or other public action that are out of keeping with the overall physical character of the entire Neighbourhood .

She concluded by asking whether “no changes” meant zero changes and Mr. Romano responded that although it says no changes, it is also referring to the overall physical character of the entire neighbourhood.

Mr. Pompili who was granted Participant status at the Hearing was given the opportunity to ask questions with regard to clarifications but not to cross-examine Mr. Romano. Mr. Pompili asked if Mr. Romano could clarify the difference between a policy statement, Official Plan and Zoning By-law. Mr. Romano explained that a policy statement was to be interpreted and was not a regulation or statute and that one could achieve good planning and meet the general intent and purpose of the OP without meeting all the policy requirements. Whereas, a Zoning By-law is a regulation or a law

and he noted that the interpretation of the By-law sometimes varies depending on the reviewer.

Mr. Pompili then asked what defined a dwelling unit and whether a second dwelling unit could be accommodated in a garage. Mr. Romano responded that a dwelling unit would be self-contained and include a kitchen and bathroom and that a secondary suite could be provided in a garage but it would need to respect and reinforce the physical character of the neighbourhood.

Mr. Pompili asked why there were zoning designations for both RM and RD in the neighbourhood and why they were not just zoned as RD. Mr. Romano explained that the employment land uses to the north may have resulted in a different level of development intensity; in the existing case, it was developed as low-rise residential, a result of the original developer of the properties.

Mr. Pompili concluded by asking if the lot sizes when a subdivision is created are determined by density and built form and whether the bungalows on the north side of Westhampton Drive may have been developed to act as a buffer between the employment uses to the north and larger lots to the south. Mr. Romano disagreed with that assertion.

Hearing Day 2 – September 13, 2019

The second day of the hearing began with the City calling their expert planning witness, Ms. Allison Smith, who was affirmed. Ms. Abimbola noted that this was the first time Ms. Smith was giving evidence at the TLAB. She proceeded to speak to her background education including a Master's Degree in Urban Planning and her previous work experience as an Urban Designer and Planner. Ms. Smith mentioned that she was currently employed as an Assistant Planner in Community Planning at the City of Toronto and that she was involved in the review of development applications, planning recommendations to Council and Committees and pre-application consultation advice to potential applicants. Mr. Smith confirmed signing the Acknowledgement of Expert's duty (Exhibit 6) and understood her duty to the TLAB. I asked Ms. Smith to provide some additional detail regarding her planning experience and she proceeded to elaborate on her experience and the range of duties related to her role at the City. She mentioned that prior to this role she was employed at the MBTW Group as an urban designer and intern Planner which included the preparation of planning rationale reports and due diligence research with respect to development applications. Given Mr. Smith's description and my review of her Curriculum Vitae, I qualified her to provide professional opinion evidence in the area of land use planning.

Prior to proceeding, Ms. Kapelos asked Ms. Smith if she was a Registered Professional Planner or member of the Canadian Institute of Planners. In both instances she responded that she was not, but was eligible. Ms. Kapelos did not object to Ms. Smith being qualified to provide evidence in land use planning but mentioned she reserved the right to make submissions in her closing remarks with respect to the weight of evidence that should be given to Ms. Smith's testimony.

Ms. Smith explained that in preparation for the Hearing she had reviewed the application and material considered by the COA, past COA decisions, reviewed planning policies and legislation including the OP and applicable zoning by-laws, conducted a site visit of the area and took a photographic survey. She directed the preparation of a lot study, the document disclosure and the visual exhibits relating to her analysis and evidence. Given this review she concluded that the requested variances of the application, individually and collectively, failed to respect and reinforce the existing physical character of the neighbourhood.

Ms. Smith then provided a brief overview of the history of the application and noted that Community Planning on Feb. 11, 2019 had recommended refusal, the COA refused the application at the February 21, 2019 Hearing; 26 letters in opposition were received. She proceeded to provide an overview of the site and surrounding context and noted the property was designated as *Neighbourhoods* and Section 4.1 of the OP *“that physical changes to Neighbourhoods must be sensitive, gradual and generally ‘fit’ the existing physical character of each geographic neighbourhood.”*

Ms. Smith disagreed with Mr. Romano’s assertion that triplexes are permitted as of right in the RM zone, noting that they are not permitted outright in that there are requirements regarding lot dimensions, as per zoning exception RM18, which provides site specific provisions to permit a triplex in this zone, including minimum lot area of 610 square metres and a minimum lot frontage of 16.5 metres. This is required to *“ensure that the lot can accommodate a triplex in its given context”* (Hearing excerpt).

Moving onto her description of her study area she explained that it specifically included the lots within zoning category, RM (u3) (x18) under City of Toronto Zoning By-law No. 569-2013, meaning the lots fronting onto Westhampton Drive and 1 Springwood Drive that does not front onto Westhampton but shares their zoning. The study area consisted of a total of 108 properties. She further explained that the residential area to the south, zoned Residential Detached (RD) was not included in the study area as it was a different zoning than the subject property; Westhampton Drive consisted of single-detached dwellings, and she did consider this area in her analysis.

Ms. Smith noted that 100 of the 108 lots in the study area - or 92.5% - were rectangular shaped lots with lot frontages ranging from 12.8 metres to 14.02 metres, and lot areas ranging from 462.19 square metres to 537.58 square metres. She went on to note that *“none of these rectangular lots have the frontage or area to permit a triplex as of right, which represents 92.5% of the lots in the study area”* (Hearing excerpt). She pointed out that there were six large corner lots but that they resulted from having to accommodate setbacks of corner lot conditions, but that even these lots would not be able to meet the required lot frontage and lot size required for a triplex.

Ms. Smith mentioned that the study area was composed of only single detached dwellings, 106 (98.1%) of which were one storey single-detached dwellings and two (1.9%) that were two-storey single-detached dwellings. She indicated that even with these two-storey dwellings present, the prevailing character of the study area was one storey single-detached dwellings with attached garages, car ports or rear detached

garages and there were no triplexes to be found on Westhampton Drive or in the surrounding area. She explained that the only other previous variance application was for 73 Westhampton Drive to permit an FSI of 0.54 times the area of the lot, whereas the maximum permitted FSI was 0.45 times the area of the lot, and to permit a front yard setback of 7.68 metres, whereas the minimum required front yard setback is 9.29 metres.

Turning to the PPS and the GP policies, Ms. Smith stated that they had been taken into consideration and that because they are implemented through the OP and that the subject site was not located within an area designated for intensification in the OP, but is designated *Neighbourhoods* in the OP, it is those latter policies should apply to the property.

Ms. Smith then proceeded to review the application with respect to the four tests as set out in Section 45 (1) of the *Planning Act*. With respect to the Official Plan she noted that *“a key objective of the Official Plan is to ensure that new development respects and reinforces the existing physical character of the area, thereby reinforcing the stability of the neighbourhood.”* She explained that the proposed application was unique and was the first of its kind by introducing a new dwelling type that does not exist in the area. She further noted that Section 4.1.8 states:

“Zoning by-laws contain numerical site standards for matters such as building type and height, density, lot sizes, lot depths, lot frontages, parking, building setbacks from lot lines, landscaped open space and other performance standards to ensure that new development will be compatible with the physical character of established residential Neighbourhoods.”

She explained that these standards are meant to ensure compatibility with the existing physical character and that the proposal was a large departure from these standards. She identified that the proposed lot frontage and area is not compatible with the physical character of the neighbourhood of Westhampton Drive. Furthermore, the proposal for a triplex on an undersized lot did not respect or reinforce the prevailing dwelling type in the neighbourhood as per OP policy 4.1.5 (c); moreover, the location of two parking spaces in the rear yard was “inconsistent with the prevailing open space character of rear yards in the study area.” For these reasons, in her opinion the proposal did not maintain the general intent and purpose of the Official Plan.

Ms. Smith explained that the proposal did not maintain the general intent and purpose of the Zoning By-law because it did not comply with the minimum lot frontage and lot area: it was deficient in a lot area, was too small to accommodate three dwelling units, and exceeded the scale and intensity of development contemplated in the Zoning By-law for the lot size. With respect to the front yard parking variance, she noted there have been no variances sought in the neighbourhood to permit a parking space in the front yard as all of them have a carport, attached garage, or rear detached garage with legal parking spaces behind the main wall of the dwelling. She concluded that the City’s comprehensive review of the Zoning By-law in 2013 increased the lot frontage by 1.5m and the lot area by 145 square metres from the previous requirements of the Etobicoke

Zoning Code Section 340-30, indicating the City's intent to only permit triplexes on larger lots.

Ms. Smith opined that the proposal was not desirable for the appropriate development or use of the land noting that the lot was undersized for the development of a triplex and it would result in the overdevelopment of the lot and a unit density that is not in keeping with the physical character on a size of lot that was not contemplated by the Zoning By-law. "The development of a triplex cannot be accommodated without introducing new characteristics to this neighbourhood." She explained that three times the number of residential units on an undersized lot could lead to potential negative impacts with respect to waste production, parking spaces in the rear, and altering the open space character. She said as a Planner it would be irresponsible to support an application with such adverse impacts and was concerned that since all lots in the neighbourhood were of a similar size, this proposal could be repeated "with triplexes on every substandard lot, which could potentially destabilize the neighbourhood."

Ms. Smith noted that the application was not minor in nature either quantitatively or qualitatively because it proposed three dwelling units on a lot that is equivalent in size to the single detached lots in the neighbourhood and would lead to three times the residential unit density of any other equivalent sized lot in the area. The parking in the rear yard reduces private amenity space and there was a potential that each unit could generate two cars each leading to six cars being parked on the property and impact open space and amenity area for the lot. She concluded by reiterating that the introduction of a triplex on a "substandard lot for this dwelling type" could create adverse impacts to the neighbourhood by introducing a new development standard.

Following Ms. Smith's evidence, Ms. Abimbola asked for her opinion on Mr. Romano's discussion surrounding secondary units in his evidence and Ms. Smith stated that it was irrelevant because the proposal was not for a single detached dwelling with a secondary suite and that a secondary suite had to be subordinate to a primary unit and the application was proposing three separate units.

Ms. Smith was asked to provide her opinion on the meaning of "materially consistent" and she explained that Section 4.1.5 says that being materially consistent relates to physical characteristics "meaning substantially similar in a way that doesn't introduce new physical characteristics" (Hearing excerpt). She asked rhetorically, how the introduction of a triplex could be materially consistent if that dwelling type did not exist in the neighbourhood?

Ms. Smith concluded that the appeal to the COA decision should be dismissed because it did not satisfy the four tests under section 45(1) of the Planning Act, did not respect and reinforce the physical character of the neighbourhood and did not represent good planning.

Ms. Kapelos began her cross-examination of Ms. Smith by asking whether the OP was to be liberally construed and Ms. Smith said she did not agree with the term liberally. Ms. Kapelos clarified that in reviewing the intent and purpose of the OP, one is

not “cherry picking” policies, and Ms. Smith agreed the OP had to be reviewed in its entirety. Ms. Kapelos then quoted OP policy 3.2.1.1:

“A full range of housing, in terms of form, tenure and affordability, across the City and within neighbourhoods, will be provided and maintained to meet the current and future needs of residents. A full range of housing includes: ownership and rental housing, affordable and mid-range rental and ownership housing, social housing, shared and/or congregate-living housing arrangements...”

and asked if the proposal augmented the full range of housing in terms of tenure? Ms. Smith agreed but qualified that by saying that the City designates areas for intensification and that this area wasn’t designated as such but that areas such as Centres, Avenues and other RM zones, where triplexes would be permitted as-of-right, are where rental housing needs could be met.

Ms. Kapelos moved on to Built Form, OP policy 3.1.2.1, noting: *“New development will be located and organized to fit with its existing and/or planned context”* and asked if planned context meant what is permitted and not necessarily what is existing, and Ms. Smith concurred. When she was further asked if a triplex, by law, was permitted on the site without conditions she agreed but noted it was still subject to minimum lot frontages and lot sizes.

Ms. Kapelos asked whether policy 4.1.5, which states in its introduction: *“Development in established Neighbourhoods will respect and reinforce the existing physical character of each geographic neighbourhood...”* does not require replication but rather needs to respect and reinforce the physical character and Ms. Smith agreed. When further asked if the number of units inside a building was not a “discernable physical feature” Ms. Smith disagreed noting that the policy also spoke to ‘dwelling type’ and that could mean single detached, a duplex, triplex and did not mean number of units and that it is a physical character. Ms. Smith mentioned that it wasn’t the form of the proposal but rather the intensity of the use.

Ms. Kapelos asked if performance standards in the zoning by-law ensure functionality of the site, to avoid overdevelopment and avoid adverse impacts to neighbouring sites; Ms. Smith agreed. Ms. Kapelos followed that since there was no concern with the form of the proposal, *“isn’t the real issue whether this site can accommodate the proposed triplex vis-à-vis...you used the word- ‘deficiency’, of these performance standards”* (Hearing excerpt). Ms. Smith stated that it was more than performance standards and the built form, and that it had to do with the intensity and impact of use. Ms. Kapelos directed her to policy 4.1.8 of the OP with respect to performance standards, a policy also referenced by Ms. Smith in her evidence (p.14), and asked if the test, when dealing with performance standards, was whether the new development was *“compatible with the physical character of the neighbourhood and that compatibility was to ensure harmonious fit with the surrounding context”* and Ms. Smith agreed. Ms. Kapelos asked, given this, was the purpose and intent of performance standards to keep out permitted uses? Ms. Smith replied that it would depend on

context and application and that performance standards ensure that a use can function on the property without adverse impacts to the surrounding neighbourhood.

Ms. Kapelos asked that when looking at the size of the building proposed in relation to lot area and lot frontage, wasn't the proposed building "*smaller than the largest two storey detached single home that could be built on that site*" (Hearing excerpt) and Ms. Smith agreed. Ms. Kapelos asked then, what was the unacceptable adverse impact, of not having the additional 3.7m width for the depth of the lot? Again Ms. Smith noted that it was the intensity of the use on a much smaller property and that there could be additional visual impacts with respect to the increased number of waste receptacles that a triplex would require. When Ms. Kapelos mentioned that the site plan indicated the location of the waste bins, Ms. Smith said that it was difficult to control how residents may use the property. Ms. Kapelos explained that could be the case for any dwelling on Westhampton Drive, but Ms. Smith contended that it would still be less intensive in use and that there would be three times as many people using the proposed site. When asked whether she was aware of how many persons per dwelling there was on the north side of Westhampton Drive, Ms. Smith explained that she didn't know. Ms. Kapelos said that this was because the number of people occupying each unit on Westhampton Drive was unknown, and Ms. Smith concurred. When Ms. Kapelos asked how many houses on Westhampton Drive had secondary suites, a unit for rent or what each homes' occupancy was, Ms. Smith acknowledged she didn't know but that she did know that each house still had less than three units.

There were questions posed to Ms. Smith regarding the proposed parking on site and that a variance was only required for the front yard parking space. Ms. Smith explained that although the parking in the rear did not require a variance, it altered the prevailing landscaped open space pattern mentioned in OP policy 4.1.5 and that if the front yard parking was used, as it was in the rest of the neighbourhood, it could add up to four vehicles in the front yard. She did however agree that parking on the driveway in front of residences was a common condition in the neighbourhood.

Ms. Kapelos pointed out that the Etobicoke Zoning Code excerpt (Exhibit 5) was for the Town of Mimico and that this subject property was not in Mimico, which Ms. Smith confirmed.

Ms. Kapelos asked Ms. Smith to elaborate as to whether only one storey single detached dwellings should be permitted on Westhampton Drive and Ms. Smith explained that the prevailing character was one storey in height and that only single detached dwellings should be permitted but did not need to be one storey dwellings. Ms. Smith agreed that, from a built form perspective, the proposal was a two storey detached residential **building** (her emphasis).

Ms. Kapelos asked Ms. Smith why her study area did not go beyond Westhampton Drive and include the area to the south. Ms. Smith explained that the area to the south was considered in her analysis but was not part of the study area because it was zoned differently, and she didn't feel it was relevant to this application. Ms. Kapelos asked if

zoning was only one feature reviewed when considering the geographic neighbourhood and Ms. Smith agreed.

Ms. Abimbola followed up and asked Ms. Smith what the OP stated about development in established neighbourhoods and Ms. Smith reiterated that it was to respect and reinforce the existing and prevailing physical character. Ms. Abimbola referred to Ms. Kapelos's comment about a three unit dwelling not being discernable from the street and asked Ms. Smith where the word 'discernable' appeared in policy 4.1.5 and Ms. Smith confirmed she wasn't aware of it in the policy.

Ms. Abimbola then asked Ms. Smith to compare the impact of the variances granted for Westhampton Drive and those being sought for 54 Westhampton. Ms. Smith explained that 73 Westhampton Drive was a single detached dwelling that requested an increased FSI and a reduction in front yard setback but otherwise met the provisions of the by-law and *"it fits within the neighbourhood, it's a single detached dwelling and in my opinion respects and reinforces what is currently existing there and hasn't caused any instability to the area"*. In contrast she stated that 54 Westhampton Drive is a different dwelling type from what exists in the area as there are no other existing triplexes and none of the dwellings have three units and *"it is proposed on a size of lot which was not contemplated to have this many units"* and that the intensity of the residential use and *"the intensity of three times as many residents living on that substandard lot"*.

Following Ms. Smith's evidence, Mr. Ludovico Pompili appeared as a Participant and was sworn in. He provided a statement with respect to and in opposition to the application on behalf of numerous residents on Westhampton Drive. He explained that he had over 40 years of experience in the development industry and that his presentation would be general in nature and would express the concerns of Westhampton Drive residents.

Mr. Pompili presented that Westhampton Drive was planned in the original subdivision as a buffer between the lands to the north and the lands to the south and that it accounted for the difference in zoning; it was because of affordability that they were developed as single detached bungalows. Ms. Kapelos at this point objected to Mr. Pompili's direction noting that he was acting as an expert witness when he was supposed to be giving a Participants statement. Mr. Pompili noted he was just trying to describe the history of the neighbourhood. Ms. Abimbola disagreed with Ms. Kapelos and noted that as a representative he was speaking on behalf of residents who have knowledge of the history of the area. Ms. Kapelos was fine with the presentation of residents concerns but wanted to make sure that Mr. Pompili wasn't giving planning evidence. I agreed to let Mr. Pompili have some leeway in providing background and context but that he should concentrate on speaking to the neighbourhood and the concerns of the residents being represented.

Mr. Pompili then moved on to describing the residents concerns noting that they had purchased their homes based on them being single family and single storey bungalows and that is what they wanted to be maintained. He explained that regardless of the zoning permitting multiple units, such buildings have not been built since the beginning of the development and that residents wanted the neighbourhood to remain as it was.

He went on to explain that there was a general concern with, respect to density, which residents felt impacts traffic, land use and the intensive use of the site with a triplex. He gave an example hypothetically of a potential outdoor gathering / barbecue that could occur on the subject property speculating it could be composed of twelve residents and their guests and would impact neighbouring properties. He further suggested it would be congested, there would be noise and excessive parking and traffic. He mentioned that residents indicated to him that there were only 5 houses with secondary suites rented on Westhampton Drive. Mr. Pompili also mentioned that the driveway proposed along with the front yard parking space could lead to as many as four cars parked on the driveway and that space, whereas most of the properties on Westhampton Drive have a car in a carport and another on a driveway.

Mr. Pompili mentioned there was also a concern on the impacts to servicing and maintenance as currently the properties have single detached dwellings and the proposal for a triplex introduces three times the impact to infrastructure on this property. He went on to explain that resident felt the proposal was beyond the scope of the OP and the Zoning By-law and that it was out character for the area, would set a precedent, and lead to more triplexes.

Following the statement, Ms. Kapelos referred to Mr. Pompili's concern about precedent and offered that each application that was brought forward to the City was evaluated on its own planning merits and what it was seeking for its site and was not based on what has happened in the past. Mr. Pompili noted he was aware of that.

Ms. Kapelos then asked whether residents were actually not concerned about the built form but rather that there may be three families living in the triplex and not one. Mr. Pompili replied that it had to do with the use, function of the lot, and the street. Ms. Kapelos clarified that the parking sought was to provide required parking and it was not to reduce parking on the site and he indicated he was aware of that.

Ms. Abimbola did not have any questions for Mr. Pompili.

In oral argument, Ms. Kapelos and Ms. Abimbola, summarized their perspectives on the evidence presented by the expert witnesses. During her closing argument, Ms. Kapelos submitted that, in the decision, I give greater weight to the evidence provided by Mr. Romano over Ms. Smith's evidence because of his over thirty years of planning experience and his being a Registered Professional Planner. During Ms. Abimbola's closing, she addressed the request to place more weight on Mr. Romano's evidence and noted that there was no case law presented to suggest that more weight should be

given based on experience. She did however provide an excerpt from the OMB decision by R. Rossi, PL110272 (November 14, 2011) which stated:

“...the Board assigned little weight to the Counsel’s submission on his experience as somehow being a factor in limiting the weight the Board could give to the City planner’s professional evidence and opinion. Both planners proffered opinions and evidence that the Board considered in the context of the test for desirability.”

Ms. Kapelos did not address this decision in her reply. A copy of the decision was provided during the Hearing and submitted to the TLAB file following the Hearing.

ANALYSIS, FINDINGS, REASONS

To address Ms. Kapelos’s submission that I place greater weight on the evidence of Mr. Romano over Ms. Smith’s, I also note both planners provided opinion and evidence that I considered with respect to the variances sought and that is what I am considering in the analysis of the application and the reason for my decision. The experience of the expert witness is indeed of some consequence but what is relevant is the thoroughness and, importantly, the persuasiveness of the evidence presented. No Expert Witness appearing before the TLAB should assume getting a “pass” on their evidence because of their extensive or previous experience. Each Hearing should consider the evidence based on the specific context of the application or proposal brought forward to the TLAB and the persuasiveness of that evidence.

Some obvious conundrums must be addressed in the application and evidence presented. The most relevant is that while the Zoning By-law’s RM zone does permit for triplexes, the comprehensive review leading to Zoning By-Law 569-2013 introduced City-wide performance standards for triplexes that included a minimum lot frontage of 16.5m. and a lot area of 610m². The subject property has a 12.8m frontage and a lot area of 488.06 m². The minimums for lot frontage and area would result in a triplex lot that is a minimum 16.5m x 37.0m in size while the existing lot is approximately 12.8m x 38.13 in size. Given that these performance standards, according to the evidence provided from both expert witnesses, is to ensure functionality, one needs to consider how the proposal has addressed this difference in frontage and lot area with respect to accommodating a triplex on the property.

For clarity, it is important to note that the plans submitted to the TLAB, both as part of the document disclosure on April 23, 2019 and the updated drawings submitted on August 14, 2019, are very different from those submitted and refused by the COA on February 21, 2019. The most obvious is the change in building form, architectural style height, and massing. For comparative purposes I have copied the front façade from the original submission, and placed the revised front façade plans next to it, as indicated below:



Front Elevation (12.56m height)
COA February 21, 2019 Plans



Front Elevation (9.11m height)
August 16, 2019 Plans

When considering the impact of the proposed building and the variances to lot frontage and lot area sought, the resulting form as presented must be considered carefully. The revised building plans and elevations have the appearance and form of a two storey detached building with a front yard parking pad and driveway. Nothing outwardly suggests that the building contains three residential units. The same can be said of the other detached dwellings two storey residential dwellings along Westhampton Drive. Mr. Romano presented evidence that the number of units are not discernible in their external appearance and that the physical character of the revised proposal is of a modest two storey detached residential dwelling with a hipped roof, which is more compatible than the original three storey proposal which had the appearance, massing and height of a purpose built triplex. Furthermore as Mr. Romano explained *“the number of units in the building itself contributes very little if at all to the physical character of the site design and the building”* and that the proposed two storey height and form is permitted and appropriate to the neighbourhood.

Ms. Smith’s evidence centred on the lot size and the intensity of the use that a triplex would introduce with regard to ‘fit’. There was some suggestion that the triplex dwelling type itself should be considered a physical characteristic and that the unit density was therefore not in keeping with the physical character of the area. I am not convinced that dwelling type indicates physical characteristics as outlined in policy 4.1.5. The

introduction of a triplex that has been designed with the physical characteristics or form, massing, and scale of a two storey detached dwelling is very different in physical character from a three storey purpose built triplex. Ms. Smith appeared to equate dwelling type with physical character and indicated that introducing triplexes could not be materially consistent if that dwelling type did not exist in the neighbourhood. However, when she was asked to define materially consistent in terms of physical character she explained that it meant *“substantially similar in a way that doesn’t introduce new physical characteristics”*. The reference to physical characteristics in OP policy 4.1.5 predominantly refers to the physical characteristics in terms of form and scale and not type. In reviewing the proposal elevations and dimensions, I agree that it introduces a new dwelling type, but it does not introduce new physical characteristics.

When I further consider other OP policies cited during the Hearing, and relevant to this proposal, such as:

- policy 3.2.1: *“A full range of housing, in terms of form, tenure and affordability, across the City and within neighbourhoods, will be provided and maintained to meet the current and future needs of residents”*;
- policy 4.1.8, referenced by both Mr. Romano and Ms. Smith, regarding Zoning By-law performance standards *“to ensure that new development will be compatible with the physical character of established residential Neighbourhoods”*; and
- policy 3.1.2 noting: *“New development will be located and organized to fit with its existing and/or planned context”*.

Mr. Romano’s position and reference of these OP policies in addition to the policies of 4.1.5 are a more comprehensive and persuasive interpretation.

In comparison, Ms. Smith characterized the variances for 73 Westhampton Drive, the only other recent variance application for the street, as meeting the provisions of the by-law. In her opinion, the variance to increase FSI and reduce the front yard setback fit within the neighbourhood as a single detached dwelling, respected and reinforced the neighbourhood, and did not destabilize the area, while the application for 54 Westhampton was introducing a triplex dwelling type that did not exist in the area on *“a size of lot which was not contemplated to have this many units”*. This reasoning does not hold as the proposed building for 54 Westhampton is actually a more modest physical form (Exhibit 4, tab 6) and does not require any variances with respect to its building footprint size or setbacks. It is also on a smaller lot width than 73 Westhampton and according to her own lot study, on a more common lot width on Westhampton Drive. If the variances sought for 73 Westhampton Drive respect and reinforce the physical character of the neighbourhood then one would be hard-pressed to suggest that a smaller physical built form, on a more common lot frontage on the street, and with no variances associated with that form (i.e., setbacks, height, coverage, and FSI) that it does not ‘fit’ or fits less within the neighbourhood or is more destabilizing. During cross-examination, Ms. Smith also agreed that the building

proposed was “*smaller than the largest two storey detached single home that could be built on that site.*” Therefore, if the application has the physical form of a two storey detached residential dwelling that does not seek any associated variances with respect to that form then it would suggest that it fits within the building envelope parameters of that lot, is in keeping with existing neighbourhood built form, and also respects and reinforces the physical character of the neighbourhood; the number of dwellings within the proposed triplex has no adverse impact on that character because they have been incorporated into a compatible physical form. The general intent and purpose of the Official Plan is maintained.

With respect to maintaining the intent and purpose of the zoning by-law, the zoning (RM (u3)(x.18) clearly indicates that a triplex is permitted as of right in this zone with exceptions. Mr. Romano contended that exception 18, regarding lot frontage and lot area, was a performance standard rather than a condition and that it was employed to ensure functionality of a “purpose built” triplex. Mr. Romano explained that the proposal was a triplex within a two storey detached residential physical form that is suitable and functional for the existing lot size. He explained that the site design demonstrates that the proposed building could be appropriately accommodated by the lot frontage and lot area of the existing lot. During cross-examination Mr. Romano pointed out that although the exception provisions indicate a 16.5m lot frontage, other provisions in the By-law indicate that 12.8m is a lawful lot frontage.

Although Ms. Smith agreed that performance standards ensured the functionality of a lot, she disagreed that triplexes were permitted as of right. She noted additional requirements regarding lot dimensions in zoning exception RM18, provides site specific provisions to permit a triplex in this zone and to accommodate a triplex in its given context. She contended that the property was deficient in lot area and frontage, was too small to accommodate three dwelling units, and exceeded the scale and intensity contemplated for the lot size. She indicated that the existing lot was substandard for the accommodation of triplexes and would lead to an overdevelopment of the lot. Both Ms. Smith’s evidence and Ms. Abimbola’s remarks refer to the City’s comprehensive review that resulted in the current 569-2013 Zoning By-law, increased triplex lot frontage and lot area requirements from the previous requirements of the Etobicoke Zoning Code. They both suggested that this indicated the City’s intent to only permit triplexes on larger lots. During cross-examination Ms. Smith mentioned that although performance standards were not meant to keep out permitted uses they were meant to ensure that a use could function without adverse impacts to the surrounding neighbourhood. She agreed that the size of the building proposed in relation to lot area and lot frontage was smaller than the largest two storey detached dwelling that could be built on that site. She noted that the issue was the intensity of the use on a much smaller lot.

Mr. Romano presented more convincing evidence. He has rightly pointed out that the zoning permits a triplex and that the purpose of the performance standard exceptions are to ensure functionality, to which Ms. Smith also concurred. Reviewing the proposal’s revised plans and site plan, it appears that the building has been scaled to accommodate not only its given context but to also provide for parking requirements

of the triplex. Although the lot does not have the dimensions noted in the exceptions the proposal is commensurate with the existing legal lot and results in a physical form that is smaller than what is permitted for a two storey detached dwelling on the property.

The assertion by both Ms. Smith and Ms. Abimbola that the comprehensive review of the Zoning By-law in 2013 indicated the City's intent to only permit triplexes on larger lots, appears a bit of a stretch. As pointed out in the evidence, the performance standards were applied for all RM zones City-wide. Although the intent was to provide for a lot size that ensures the functionality of a triplex on the lot, it cannot be assumed that this blanket approach considered the unique context of every RM zone in the City. Furthermore, if it indeed was the intent of the City during the comprehensive review of the zoning by-law to only permit larger triplex lots that met these performance standards, the zoning permissions for Westhampton Drive would have also been revised and updated to reflect this intent. The increases to lot frontage and area brought on by the performance standard exceptions are the very reason that the Applicant is seeking variances to the exceptions.

Given that Westhampton Drive has always been zoned to permit a range of residential uses including triplexes, the imposition of performance standards to exclude a permitted use does not reflect the purpose and intent of the zoning by-law. The proposal has addressed the existing site dimensions with a built form mass and scale that is relative to the existing lot while ensuring functionality, meeting the parking requirement on site and in doing so meets the intent and purpose of the zoning by-law.

With respect to the variance sought for the proposed parking space located in the front yard, my site visit to the neighbourhood and the photographs provided by Mr. Romano and Ms. Smith indicate that what is sought is a common condition that can be found on many properties along Westhampton Drive. Although dwellings have driveways that lead to a garage or carport, in many instances the driveways had been widened to accommodate vehicles essentially in the front yard. Mr. Romano's photographic survey of the study area presented cars parked in front of the houses and some with widened parking widths to accommodate multiple vehicles. Ms. Smith's evidence suggested that up to four vehicles could be parked in the front of the proposed building if it was used the same way it was in the rest of the neighbourhood. Since a similar condition already exists in the neighbourhood, which Ms. Smith agreed there was, then this variance on this particular lot would not likely adversely impact the surrounding neighbourhood. Furthermore, having consulted the site plan for the proposal there is at most enough width to park two vehicles in front of the house, one on the parking pad and one in the driveway which would block access to parking in the rear yard. Mr. Romano provided evidence that the intent of the by-law was to provide adequate context suitable parking, that front yard parking was common place in the neighbourhood and was an existing condition, that the proposal maintains the parking in an appropriate manner and it meets the intent of minimizing parking in the front yard.

With respect to the variances being desirable for the appropriate development or use of the land, the sensitivity of the current proposal is able to accommodate three dwelling units in a two-storey detached dwelling form. The proposal does not require

variances in height, depth, length, setbacks, coverage or FSI, which suggests that the visual and physical impact of the proposed development will be modest or negligible and is not an overdevelopment of the lot. The variances sought will allow for a triplex that is scaled to the existing lot and is of a scale that will be compatible with the physical character of residential dwellings in the neighbourhood.

During the Hearing Mr. Pompili expressed the concern by residents that they wanted to maintain Westhampton Drive as it currently exists, but as I have explained earlier in my analysis, the proposal is a permitted use in this zone and the revised plans are more modest and more compatible with the existing single detached dwellings on Westhampton Drive. It will have a modest two storey physical form and more modest in size than the existing two storey single detached dwellings at 73 and 89 Westhampton Drive. There was also some concern with respect to the intensity of the use because three dwelling units were proposed and the tenure type (e.g., apartment rental) was seen as undesirable. I would reiterate that the triplex is a permitted use in this zone and that the housing policies in Section 3.2 of the Official Plan state that:

"a full range of housing, in terms of form, tenure and affordability, across the City and within neighbourhoods, will be provided and maintained to meet the current and future needs of residents."

With respect to the concern that allowing the appeal would result in setting a precedent and lead to a destabilization of the neighbourhood by the introduction of more triplexes, I would note that this decision is specific to the lot in question located at 54 Westhampton Drive and the site plan and elevations submitted in this application and reviewed in the context of the current Official Plan policies and Zoning By-law requirements present at the time of this decision. Each application in the future will be reviewed and assessed based on their own planning merits and in the context of the neighbourhood, policy and zoning requirements at that time.

Given that the variance sought are for performance standards that are triggered by the existing lot condition and not permitted use, as it triplex use is permitted, that the front yard parking variance accommodates one space in a context suitable manner and that there are no other variances are sought for the proposed triplex with respect to setbacks, lot coverage, height, FSI or landscape, I find the variances to be appropriate and minor in nature.

For the reasons stated above, I find that the proposed application meets all of the four tests under s. 45(1) of the Act and will allow the appeal.

DECISION AND ORDER

The appeal of the Committee of Adjustment decision dated February 21, 2019, is allowed. The following variances are authorized subject to the conditions listed below:

1. Section 900.6.10(B), By-law 569-2013

The minimum required lot frontage for a triplex is 16.5 m.
The lot frontage is **12.8 m**.

2. Section 900.6.10(A), By-law 569-2013

The minimum required lot area for a triplex is 610 m².
The lot area is **488.06 m²**.

3. Section 10.5.80.10.(3), By-law 569-2013

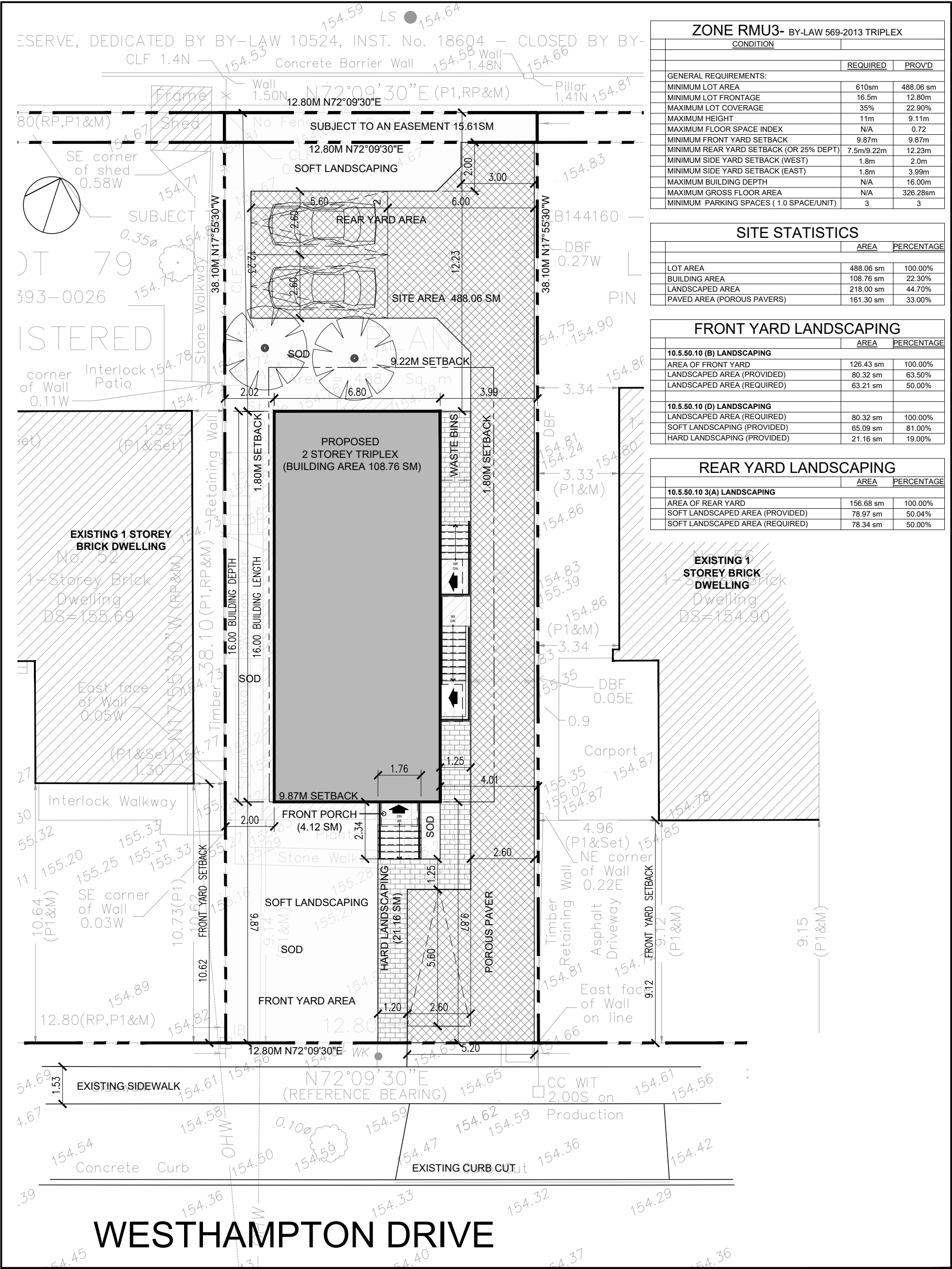
A parking space may not be located in a front yard or side yard abutting a street.
The proposed parking space is located in a front yard.

Required Conditions

- a. The proposed residential building shall be constructed substantially in accordance with the Site Plan and Elevations (Drawings SP-1, A05, A06, A07, and A08) prepared by Studio K architects, dated August 16, 2019, found in the Appellants Exhibit 4, tab 6, and attached as **Attachment 1** to this Decision. Any variance(s) that may appear on these plans but are not listed in the written decision are NOT authorized.
- b. Submission of a complete application for a permit to injure or remove a City and Privately-owned tree(s), as per City of Toronto Municipal Code Chapter 813, Trees Article II and III, to the satisfaction of Urban Forestry.

X

John Tassiopoulos
Panel Chair, Toronto Local Appeal Body



ZONE RMU3- BY-LAW 569-2013 TRIPLEX		
CONDITION	REQUIRED	PROV'D
GENERAL REQUIREMENTS:		
MINIMUM LOT AREA	610sm	488.06 sm
MINIMUM LOT FRONTAGE	16.5m	12.80m
MAXIMUM LOT COVERAGE	35%	22.90%
MAXIMUM HEIGHT	11m	9.11m
MAXIMUM FLOOR SPACE INDEX	N/A	0.72
MINIMUM FRONT YARD SETBACK	9.87m	9.87m
MINIMUM REAR YARD SETBACK (OR 25% DEPT)	7.5m/9.22m	12.23m
MINIMUM SIDE YARD SETBACK (WEST)	1.8m	2.0m
MINIMUM SIDE YARD SETBACK (EAST)	1.8m	3.99m
MAXIMUM BUILDING DEPTH	N/A	16.00m
MAXIMUM GROSS FLOOR AREA	N/A	326.28sm
MINIMUM PARKING SPACES (1.0 SPACE/UNIT)	3	3

SITE STATISTICS		
	AREA	PERCENTAGE
LOT AREA	488.06 sm	100.00%
BUILDING AREA	108.76 sm	22.30%
LANDSCAPED AREA	218.00 sm	44.70%
PAVED AREA (POROUS PAVERS)	161.30 sm	33.00%

FRONT YARD LANDSCAPING		
	AREA	PERCENTAGE
10.5.50.10 (B) LANDSCAPING		
AREA OF FRONT YARD	126.43 sm	100.00%
LANDSCAPED AREA (PROVIDED)	80.32 sm	63.50%
LANDSCAPED AREA (REQUIRED)	63.21 sm	50.00%
10.5.50.10 (D) LANDSCAPING		
LANDSCAPED AREA (REQUIRED)	80.32 sm	100.00%
SOFT LANDSCAPING (PROVIDED)	65.09 sm	81.00%
HARD LANDSCAPING (PROVIDED)	21.16 sm	19.00%

REAR YARD LANDSCAPING		
	AREA	PERCENTAGE
10.5.50.10 3(A) LANDSCAPING		
AREA OF REAR YARD	156.68 sm	100.00%
SOFT LANDSCAPED AREA (PROVIDED)	78.97 sm	50.04%
SOFT LANDSCAPED AREA (REQUIRED)	78.34 sm	50.00%

studio K architects

3950 14TH AVENUE, SUITE 205
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TEL. 416-554-7751

Architecture
B.I.M.
Master Planning
Interior Design

Issued For: TLAB SUBMISSION

Date: AUGUST 16 2019

Scale 1:150

CHK MK

Project Title
54 WESTHAMPTON DR TRIPLEX
54 WESTHAMPTON DRIVE,
ETOBICOKE, ONTARIO, M9R 16
FOR: KEVIN SHARPE

Project Number
18-008

Drawing Number
SP-1



PROPOSED SOUTH ELEVATION

studio K

architects

Architecture

B.I.M.

Master Planning

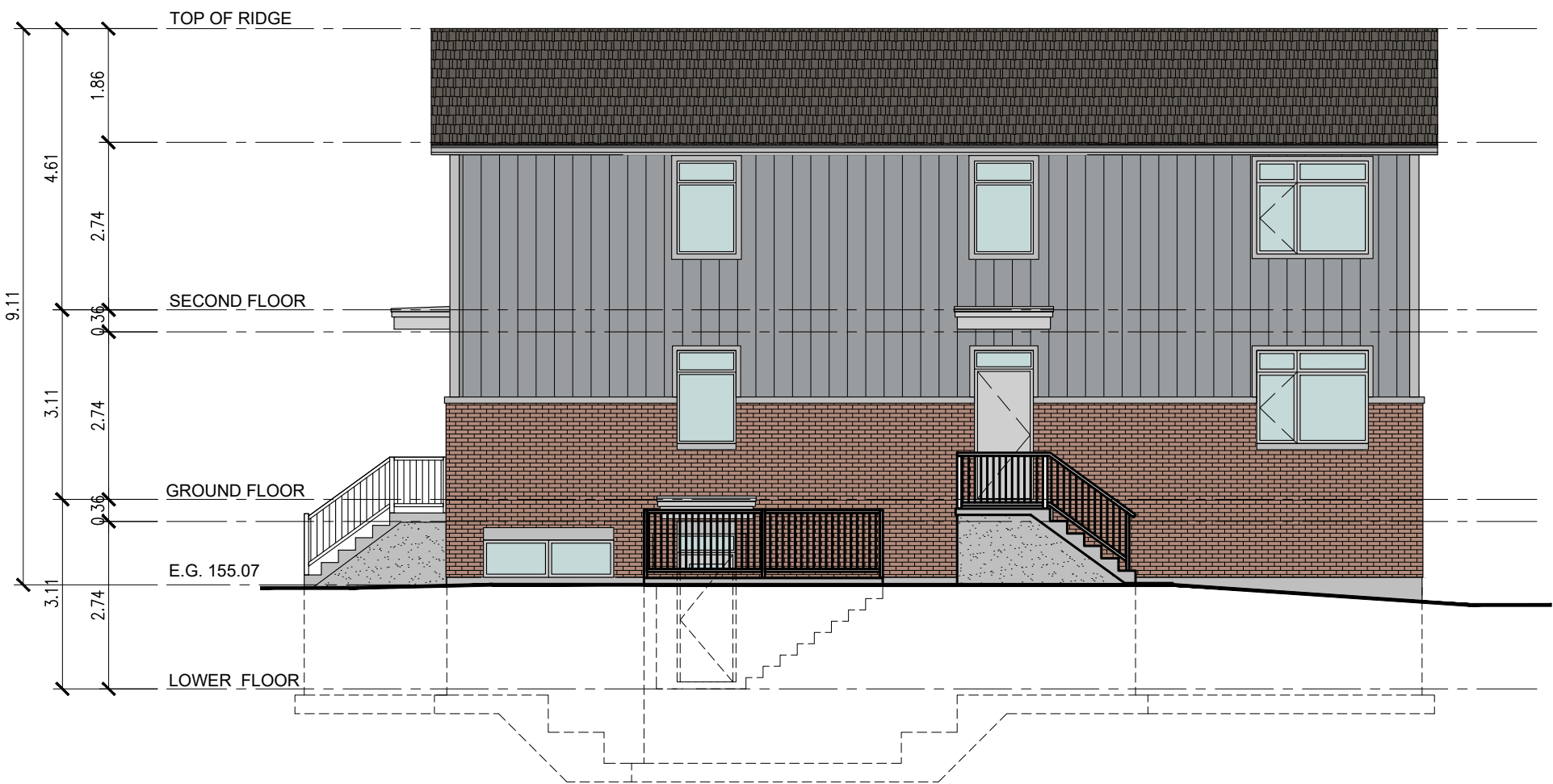
Interior Design

3950 14TH AVENUE, SUITE 205

MARKHAM, ONTARIO,CANADA, L3R 0A9

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		Sheet Title PROPOSED ELEVATIONS	Project Title 54 WESTHAMPTON DR TRIPLEX 54 WESTHAMPTON DRIVE, ETOBICOKE, ONTARIO, M9R 16 FOR: KEVIN SHARPE
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Date:	AUGUST 16 2019		Drawing Number A05



PROPOSED EAST ELEVATION

<div><div><div>studio K architects</div><div>3950 14TH AVENUE, SUITE 205 MARKHAM, ONTARIO,CANADA, L3R 0A9 TEL. 416-554-7751</div></div><div><div>Architecture B.I.M. Master Planning Interior Design</div></div></div>			Sheet Title PROPOSED ELEVATIONS	Project Title 54 WESTHAMPTON DR TRIPLEX 54 WESTHAMPTON DRIVE, ETOBICOKE, ONTARIO, M9R 16 FOR: KEVIN SHARPE
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PROPOSED NORTH ELEVATION

studio K

architects

Architecture
B.I.M.
Master Planning
Interior Design

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		Sheet Title PROPOSED ELEVATIONS	Project Title 54 WESTHAMPTON DR TRIPLEX 54 WESTHAMPTON DRIVE, ETOBICOKE, ONTARIO, M9R 16 FOR: KEVIN SHARPE
Issued For:	TLAB SUBMISSION	Scale 1:100 CHK MK	Project Number 18-008
Date:	AUGUST 16 2019		Drawing Number A07



PROPOSED WEST ELEVATION

<div><div><div>studio Karchitects</div><div>3950 14TH AVENUE, SUITE 205 MARKHAM, ONTARIO,CANADA, L3R 0A9 TEL. 416-554-7751</div></div><div><div>Architecture B.I.M. Master Planning Interior Design</div></div></div>			Sheet Title PROPOSED ELEVATIONS	Project Title 54 WESTHAMPTON DR TRIPLEX 54 WESTHAMPTON DRIVE, ETOBICOKE, ONTARIO, M9R 16 FOR: KEVIN SHARPE
	Issued For: TLAB SUBMISSION		Scale 1:100 CHK MK	Project Number 18-008 Drawing Number A08
Date: AUGUST 16 2019				