Toronto Local Appeal Body

40 Orchard View Blvd, Suite 211
Toronto, Ontario M4R 1B9

Telephone: 416-392-4697
Fax: 416-696-4307
Email: tlab@toronto.ca
Website: www.toronto.ca/tlab

DECISION AND ORDER

Decision Issue Date Monday, August 17, 2020

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

Appellant(s): NAVID RIAHIDEHKORDI

Applicant: ALI SHAKERI

Property Address/Description: 26 CAREY RD

Committee of Adjustment Case File: 18 225810 STE 22 MV

TLAB Case File Number: 19 148425 S45 12 TLAB

Hearing dates: Friday, September 13, 2020

Wednesday, February 26, 2020

Thursday, February 27, 2020

Tuesday, March 10, 2020

DECISION DELIVERED BY S. GOPIKRISHNA

APPEARANCES

Name	Role	Representative
Ali Shakeri	Applicant	
Navid Riahidehkordi	Owner/Appellant	Amber Stewart
City of Toronto	Party	Jason Davidson
Eamond Fowley	Party	
Glen Leslie	Party	

Al Kivi	Party
Alan Young	Expert Witness
Jonathan Benczkowski	Expert Witness

INTRODUCTION AND BACKGROUND

Navid Riahidehkordi is the owner of 26 Carey Road, located in Ward 12, of the City of Toronto. He applied for variances to the Committee of Adjustment (COA) to construct a new two-storey, detached dwelling, with an integral garage. The COA heard the application on April 17, 2019, and refused the Application.

On May 2, 2019, Mr. Riahidehkordi appealed the COA's decision to the Toronto Local Appeal Body (TLAB), which scheduled a Hearing on September 13, 2019. The City of Toronto, Glen Leslie and Eamond Fowley and the South Eglinton Residents and Ratepayers Association (SERRA), elected to be Parties, while a number of other community members, elected to be Participants.

MATTERS IN ISSUE

By-Law 569-2013

1. Chapter 10.10.40.40, By-law 569-2013
The maximum permitted floor space index is 0.6 times the area of the lot (216.5 m2).
The new two-storey detached dwelling will have a floor space index of 0.7 times the area of the lot (252.6 m2).

2. Chapter 10.10.40.10, By-law 569-2013
The maximum permitted building height is 9.0 m.
The new two-storey detached dwelling will have a height of 9.5 m.

3. Chapter 900.2.10.931, By-law 569-2013
A vehicle entrance through the front main wall of a residential building is not permitted. The new two-storey detached dwelling will have an integral garage that will be located in the front main wall.

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').

Minor Variance – S. 45(1)

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

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

EVIDENCE

The Appeal respecting 26 Carey Rd was heard on September 13, 2019, February 26, 2020, February 27, 2020 and March 10, 2020. The Appellant was represented by Ms. Amber Stewart, a lawyer, and Mr. Jonathan Benczkowski, a land use planner. The City was represented by Mr. Jason Davidson, a lawyer, and Mr. Alan Young, a land use planner, and Mr. Al Kivi, a local resident represented the South Eglinton Residents and Ratepayers Association. (SERRA); Messrs. Fowley and Parker represented themselves.The Appellants presented their case first, followed by the City, SERRA, Mr. Leslie and Mr. Fowley, in that order.

At the beginning of the Hearing, Ms. Stewart advised me that the height variance, under the former City of Toronto By-Law 438-86 was being withdrawn, because it had become redundant. By way of an editorial note, the height variance with respect to By-Law 438-86 is not recited in the Matters in Issue Section.

Mr. Benczkowski was sworn in, and recognized as an Expert Witness in the area of land use planning. Mr. Benczkowski said that he had been retained after the original application had been refused by the COA, and added that he urged the Appellants, to apply for a Zoning Variance Review when he was retained. He said that as a result of the Zoning Review, “minor changes” were made to the plans, including ” the interior floor plans, the removal of a rear bay window projection, and the reduction of a rear deck” to comply with the zoning.

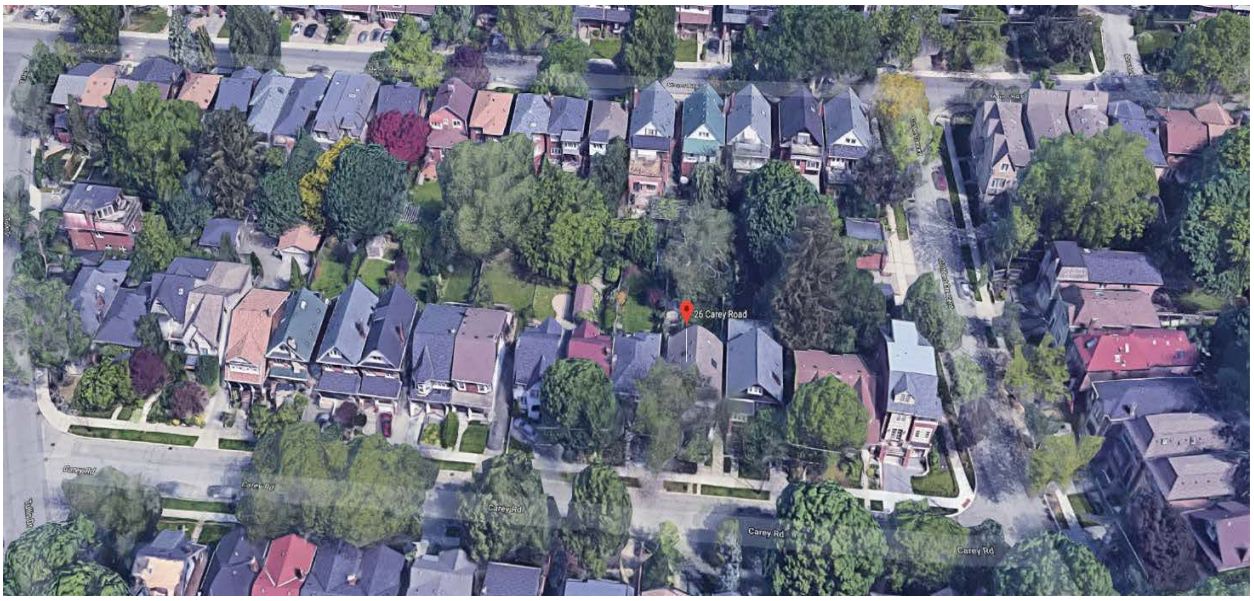
Mr. Benczkowski described the Subject Property, and said that it is located on the north side of Carey Road, in the Davisville Village Neighbourhood, in a larger community referred to as “Glebe Manor West”. He said that the site is east of Yonge Street, north of Davisville Avenue, and south of Eglinton Avenue East, and that the rectangular lot on which the property is located is currently occupied by a 3 storey detached brick dwelling. This property has two mutual rights of way, shared with the neighbours on both sides.

The eastern portion of the site has a mutual right of way, with No. 28 Carey Road, which is 1.93m in total width, and extends 20.42m to the rear of the property. No. 26 Carey Road owns 0.88m of the width of this right of way, with the remaining 1.05m belonging

to No. 28 Carey Road. The western portion of the site has a mutual right of way with No. 24 Carey Road , which is 2.49m in width and extends 24.38m to the rear of the property. No. 26 Carey Road owns 1.27m of this right of way, with the remaining 1.22m belonging to No. 24 Carey Road. Parking is presently located along the western side of the lot on a gravel driveway. According to Mr. Benczkowski, "Vehicles currently park on the municipal boulevard in an unlicensed parking spot, and "this type of front yard parking arrangement is common in the neighbourhood, which has a variety of parking solutions".

Mr. Benczkowski reiterated that the purpose of the application is to construct a new two-storey, four bedroom dwelling with an integral garage, and recited the variances, as described in the "**Matters in Issue**" Section.

Mr. Benczkowski spoke to the Neighbourhood Context, and said that the Study Area chosen by him was bounded by Manor Road East to the north, Belsize Drive to the south, Servington Crescent to the east, and Tullis Drive to the west. He emphasized that he chose this Study Area because "it generally reflected what residents of the area would experience in their day-to-day lives". He also noted that his Study Area was consistent with the approach set out in OPA 320, "with an emphasis on Zoning, and built form".



AERIAL PHOTOGRAPH OF CAREY RD WITH SUBJECT PROPERTY MARKED IN RED

Describing how the residents experience the Study Area chosen by him, Mr. Benczkowski said that commercial shopping centres, and shops, could be found to the west, along Yonge Street, while "additional amenity space" could be found within the Glebe Manor Square West . Mr. Benczkowski said that the Study Area reflected the geographical prominence of the Church of the Transfiguration, which lay to the east of the Subject property. Mr. Benczkowski noted how the street network of the Study Area was "unique" because various streets radiated towards the Southeast, and the

Southwest, from the Church. He pointed out that north-south streets are curvilinear, and follow the contour of Servington Crescent.

Mr. Benczkowski said that he had also "reviewed" sites close to the Subject Property, including the immediate block of Carey Road, as well as the adjacent blocks of Tullis Drive to the west, and Cuthbert Crescent to the east. Mr. Benczkowski said that Carey Road is a short street that contains no more than 29 dwellings – 18 on the north side, and 11 on the south side. The north side contains 16 detached dwellings and a pair of semi-detached dwellings., while the south side contains 11 detached dwellings. Mr. Benczkowski then said that that because of the limited number of dwellings on Carey Road, he found it appropriate to include the adjacent streets of Tullis Drive to the west, and Cuthbert Crescent to the east, "because Carey St. dead ended" into these streets, as a consequence of which "the two adjacent streets significantly contributed to the immediate context of the Subject Property"

Mr. Benczkowski expanded on how the Cuthbert and Tullis were part of the Immediate Context, because if one stood in the front yard of the Subject property, it was easy to tell that Cuthbert Crescent is only 4 dwellings to the east, where dwellings with integral garage(s), and two floors of living area above, can be found . Mr. Benczkowski concluded that the short stretch of Carey Road, with the adjacent blocks on Tullis Drive, and Cuthbert Crescent, constituted the immediate context of the Subject Property.

He said that the Study area is comprised of a mix of semi-detached and detached, two-storey and three storey dwellings. The neighbourhood is characterized by tight side yard setbacks, creating a densely packed urban environment, and that newer replacement dwellings, which are scattered throughout the study area, are often larger, and taller than the pre-existing dwellings. He added that some of the newer dwellings include an integral garage, with two floors of living space above the garage.

Mr. Benczkowski said that the proposed built form of the dwelling, with two floors of living space above the garage, is found throughout the neighbourhood, in close proximity to the Subject Property. He said that the houses at 19 and 15 Carey Road, across the street, have dwellings with two functional storeys above an integral garage. In addition, there is a dwelling at 32 Carey Road, 4 houses to the east of the Subject property with an integral garage, containing 3 floors of living area above the garage..

Mr. Benczkowski described the project's compatibility with the Provincial Policy Statement 2014 (PPS), and the Growth Plan for the Greater Golden Horseshoe (2019) (Growth Plan, 2019).

He said that a key objective of the PPS is that municipalities should accommodate growth through intensification, and opined on how the replacement of a single dwelling, with a larger, single dwelling is a "modest form of intensification", because it allows for a more efficient and compact use of land within the urban area. He also asserted that the proposal facilitated the regeneration of an older dwelling, in an established neighbourhood, which is consistent with the objectives of the PPS.

Mr. Benczkowski also added that the proposal was compatible with the Growth Plan, because of the focus on intensification, and the property's contributing to the "achievement of complete communities with a mix of housing options to accommodate households of different sizes at all stages of life".

Mr. Benczkowski pointed out that the application was filed on September 14, 2018, before OPA 320 was approved. He said that although the application was submitted before the passing of OPA 320, it is important to address the context of this OPA.

Mr. Benczkowski discussed the compatibility between the proposal, and the new OP (i.e. OPA 320).He said that the proposal respects, and reinforces the physical character of the neighbourhood, which includes a variety of architectural forms, including new replacement dwellings, with integral garages, that have become part of the fabric of the neighbourhood. He recited the Built Form Sections 3.1.2 (1), and 3.1.2.(3), which emphasize that new development should fit with its existing and planned context, and that adverse impact be limited on adjacent streets and properties. He interpreted these to mean that while a given proposal may have an impact on the neighbourhood , the Policy requires assurances that the impacts of new development is acceptable.

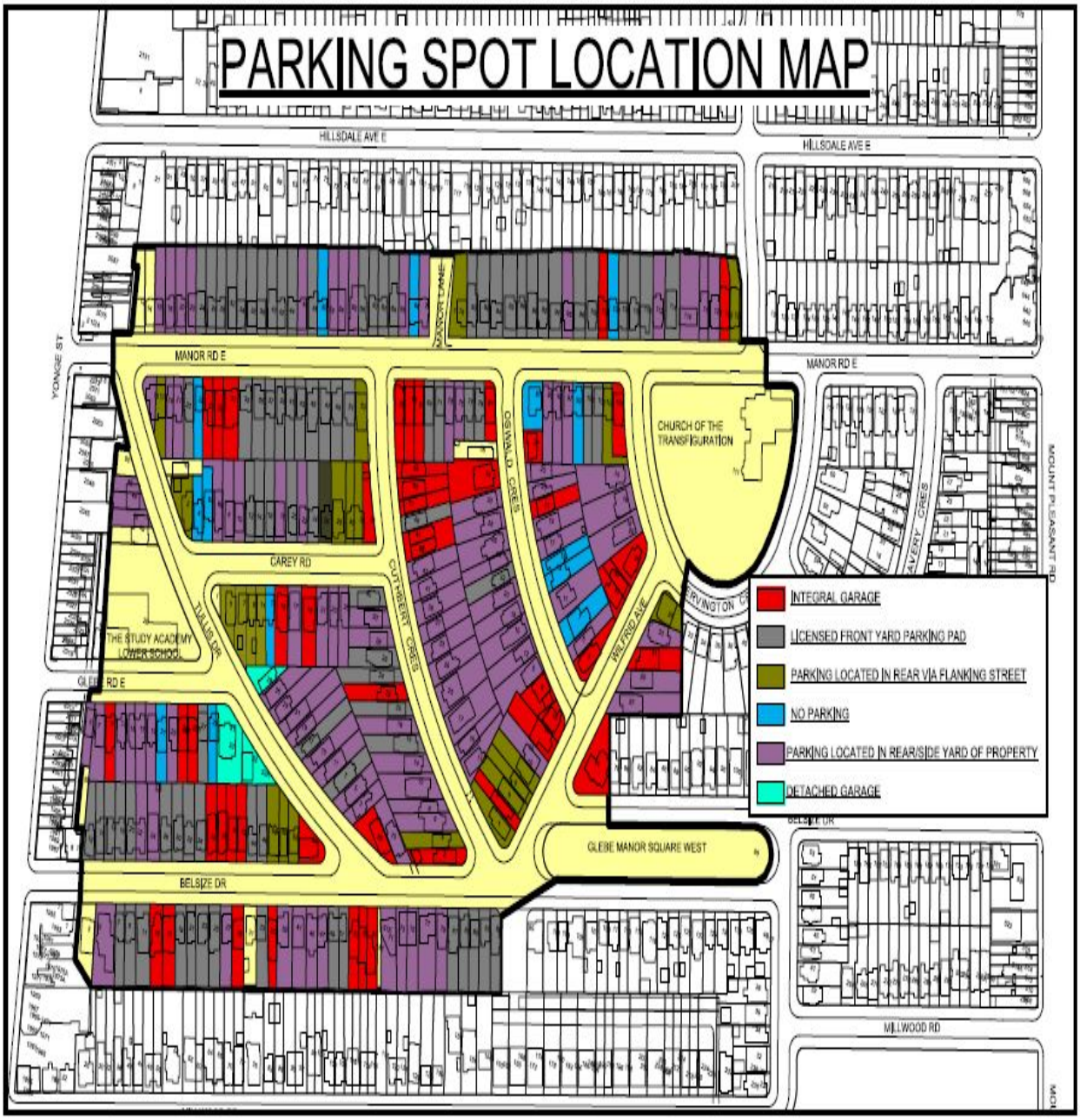
Mr. Benczkowski then discussed the development criteria for Neighbourhoods in Section 4.1 (5), and said that the proposed development met the intent of the OP to respect, and reinforce the existing physical character of the neighbourhood. Mr. Benczkowski emphasized that although OPA 320 introduced the concept of "prevailing" within the criteria used for establishing compatibility with the neighbourhood, the inclusion of this term "did not reduce planning to a numbers game". He opined that the qualitative aspects of a proposal must be assessed, "in their totality", within the character of the neighbourhood as a whole.

Applying Policy 4.1 (5)(c) (i.e. prevailing heights, massing, scale, density and dwelling type of nearby residential properties) to the proposal, Mr. Benczkowski asserted that the prevailing characteristic in this neighbourhood, in terms of heights, massing, scale and density, is "mixed", and spans a considerable range, from a numerical perspective . He demonstrated that In terms of the range of approved variances, culled from COA decisions over a ten year period, almost all applications dealing with replacement dwellings required an FSI/GFA variance. He specifically demonstrated that within the Study Area, in the past 10 years, 30 properties have been granted approval by the COA, or the former OMB. He demonstrated that of the highlighted thirty properties, "only seven applications did not request an FSI variance", and said that of the twenty properties that requested relief for FSI , "only two applications were below the 0.7 X FSI requested for the subject property". He added that the FSI approvals ranged between 0.65 X and 1.05 X, and opined "that the scale and height of the proposal is very modest relative to other replacement dwellings in the neighbourhood, including in the immediate context of the Subject Property", and concluded that the proposal is part of the prevailing character in the neighbourhood.

Mr. Benczkowski then spoke about the applicability of 4.1.5(e) (grade of driveways

and garages) to the proposal, and said that most properties in this neighbourhood provide on-site parking.

.



PARKING STUDY MAP OF APPELLANT'S GEOGRAPHIC NEIGHBOURHOOD

Mr. Benczkowski spoke to the details of a Study, regarding the availability of parking spaces, within the Study Area, as illustrated above. He identified six categories of parking solutions identified (i.e. integral garage, licensed front yard parking pad, parking located in rear via flanking street, no parking, parking located in rear/side yard of the property, detached garage) in the geographic neighbourhood, out of which five types of solutions are located along Carey Road. He concluded that there was no single

parking solution “prevailed” in the community, because none of the parking solutions met the test of “prevailing”, as defined in the OPA 320, and that the parking solutions in the community are “eclectic”.

Mr. Benczkowski asserted that the “proposal was materially consistent , with the prevailing physical character of properties”, both in “the immediate block of the Subject Property, and the broader geographic neighbourhood”. Through a photo tour, he demonstrated that the built form of Carey Road exhibits a mix of built forms, including the type/style proposed for 26 Carey Road.

Lastly, he noted that “OPA 320 did not modify policy 4.1.(8) of the OP”, which he said was “ a policy recognition that the Zoning By-law standards are intended to ensure compatibility of a new development ,with the physical character of established residential Neighbourhoods”. He interpreted the proposal’s “substantial compliance with the zoning standards” to be “an indication that the proposal is compatible with the physical character of this neighbourhood”, before demonstrating how “two things can be different, but compatible”.

Based on this evidence, Mr. Benczkowski concluded that the proposal was consistent with the Official Policy

Mr. Benczkowski then discussed the compatibility of the proposal with Zoning By-Laws 569-2013, and the Davisville By-Law.

Commenting on the height and FSI variances, Mr. Benczkowski said that the general intent and purpose of the building height provision is to “create a compatible built form as it relates to height”, and that the general intent and purpose “of the density standard is to ensure buildings within that designated zone, are all compatible in scale and massing”. He pointed out that FSI is only one zoning standard “that controls massing, and it must be considered relative to the other built form standards such as height, side and rear yard setbacks, and length/depth”. He opined that the dwelling will present as “relatively modest” in size when compared to other replacement dwellings, within the neighbourhood”. Using the COA decision table, he demonstrated that the requested increase in FSI is, from a numerical perspective, on the lower end of approvals within the Study Area.

Mr. Benczkowski asserted that since “the request for an increase in FSI is not related to a built form request, which regulates the size of a dwelling , the general intent and purpose of the Zoning By-law is maintained”..

Discussing the Davisville By-Laws, Mr. Benczkowski referred to the background Staff Report from the City’s Planning Department, which states that “*The proposed zoning provisions for the Davisville Village neighbourhood will help to protect its existing physical character by further regulating features of new houses that have significant impacts on the quality of the streetscape and rear yard privacy*.

He noted that there was a concern among the residents, that replacement dwellings with integral garages may not be contextually appropriate; but added that the Staff Report had concluded that while Integral Garages were no longer “as-of-right”, they had to align with prescribed guidelines to be considered appropriate. In the case of the Subject Property, he noted, that integral garages are already present on Carey Road,” as well as, “mere steps away along Cuthbert Crescent”. He noted that the proposed dwelling would “only further contribute to the existing built fabric, where there are existing dwellings, with integral garages”, as a part of the “existing built form of the neighbourhood”.

Mr. Benczkowski discussed how the proposed rear deck had been reduced in size, to be compliant with the zoning provision, in response to the noted concern in the Staff Report, about raised decks creating ‘deck walls’.

Based on this evidence, Mr. Benczkowski concluded that the proposal was compatible with both By-Laws 569-2013, and 438-86, and the Davisville By-Law.

Mr. Benczkowski then addressed how the proposal satisfied the test of minor. He said that the requested variances are within the range of other variances in the neighbourhood, as evidenced in the examples he had shown on the COA approvals chart. He reiterated that the variances requested for FSI, and Building Height, are not related to requests to push the building into the side yard setbacks, the front yard setbacks, or the rear yard setbacks.

He asserted that any impacts, resulting from shadowing, as a result of the “modest” request to increase the dwelling height, as well as the FSI, would not constitute undue adverse impacts, and concluded that the proposal met the test of minor.

Lastly, Mr. Benczkowski addressed the test of appropriate development. He said that the proposal provides “ a modest sized replacement dwelling, with four adequately sized bedrooms”. He stated that the proposal will allow for a “functional family home for the owners”, and that “the requested variances will result in a development, that is compatible with the surrounding area, which has an array of architectural styles and built forms” ,that are “similar to the proposed dwelling”.

On the basis of this evidence, Mr. Benczkowski concluded that the proposal satisfied all 4 tests under Section 45.(1) of the Planning Act, and recommended that the Appeal be allowed. He then recommended that the conditions be imposed on the approval of the proposal:

I. That construction occur substantially in accordance with the Revised Site Plan and Elevations;

II. The submission of a complete application for a permit to injure or remove a City owned tree(s), as per City of Toronto Municipal Code Chapter 813, Trees Article II Trees on City Streets.

I asked Mr. Benczkowski to give me an example of how "prevailing" converted to percentages, in a community where there were three types of houses. He replied that if the percentages of the three types were 60: 20:20, then the housing type that constituted 60% of the houses was clearly the prevailing type. He added if there was a "40:40:20 split", then there was "no prevailing type". I then asked Mr. Benczkowski to "devise a test" through which one could determine when a prevailing type could be established on the basis of available numerical data, and when it could not be established. Mr. Benczkowski said that if one particular type of house constituted more than 51% of the houses in a given neighbourhood, then it was clearly the "prevailing" type. He added that in a neighbourhood, where no particular type of house constitutes more than 50% of the houses, there is "no prevailing type".

Mr. Benczkowski was then cross examined by Mr. Davidson, the lawyer for the City. Mr. Davidson asked Mr. Benczkoswki to confirm that there would be only one family who would be living at the Subject Property, if it were approved, and that the existing house had been inhabited by a single family. Mr. Benczkowski replied "yes" to the first part, and said that he did not know the answer to the second part. Mr. Benczkowski agreed with Mr. Davidson that the Subject Property did not lie in an area which had been identified by the City that could be intensified. The next question from Mr. Davidson asked Mr. Benczkowski if he was aware of Mr. Young had included Mt. Pleasant Road in his Study Area, because the latter was experienced on a daily basis; Mr. Benczkowski agreed that Mt. Pleasant Road was part of the local resident's experience, and that he was aware that it had been included in Mr. Young's neighbouhood. The next question focused on how many fewer homes with integral garages were included in Mr. Young's Study Area, as compared to the Appellant's neighbouhood, to which Mr. Benczkowski said that he did not know the answer.

Mr. Davidson then asked Mr. Benczkowski to confirm that while was no soft landscaping variance had been requested, notwithstanding the Zoning Notice's stating that such a variance may be required, to which Mr. Benczkowski agreed. Mr.Benczkowski added that the question about the inclusion of a retaining wall, had morphed into a difference of opinion about the need for a variance respecting soft landscaping. He emphasized that the Zoning Inspector's "job did not extend to making decisions about the need for retaining walls". Mr. Davidson asked Mr. Benczkowski if he had seen "many cars parked outside" on the street, when he went to take pictures, to which the latter replied that he had gone in the morning, as opposed to the evening, when the parking situation "may have been different"

Mr. Davidson then asked Mr. Benczkowski to confirm that OPA 320 required that more weight be given to the concept of an "immediate context", to which Mr. Benczkowski agreed. However, he did not agree that the immediate context should be restricted to the street on which the property stood, because of the use of the word "proximate", and said that other streets could be included, where appropriate.

In response to a question about why he had included Cuthbert Crescent, and Tullis Dr. in the Immediate Context, Mr. Benczkowski said that Carey Street was a short street, with just 29 houses, and the "average Toronto street had approximately 30 houses on

both sides of the road". He said that he had tried to "model" the average Toronto street, by including the nearby streets to make the comparison reasonable. Mr. Davidson and Mr. Benczkowski disagreed on the quantification of the term "prevailing". Mr. Benczkowski said that the OP required 51% of the dwellings to demonstrate a common quality, to meet the definition of "prevailing", but insisted that the determination could not be reduced to a "numbers game", and said that a qualitative analysis of the neighbourhoods was important. . Mr. Davidson and Mr. Benczkowski agreed that while that there are three houses (34, 15 and 19 Carey) with integral garages on Carey Rd, all had been approved before the Davisville By-Law was passed. Mr. Benczkowski confirmed for Mr. Davidson that 54 Belsize Ave, 56 Cuthbert, and 3 Oswald, had entrances from the side of the house as opposed to the front of the house..

In the discussion about the synonymy of the terms "not permitted" and "prohibited", . Benczkowski vigorously argued that the two didn't mean the same, and said that Integral Garages were not prohibited in Davisville Village , even if they are not permitted as of right. Mr. Davidson asked if the extra height variance was triggered by the integral garage, to which Mr. Benczkowski disagreed, and said that the variance would have been requested "even if the Integral Garage hadn't been requested". Mr. Davidson read out from the Staff Report, dated September 25, 2017, which expressed concerns with "tall replacement houses with integral garages, and raised front entrances", to which Mr. Benczkowski said that the "raised front entrance" description did not apply to 26 Carey.

Mr. Davidson then pointed out language in the OP that refers to the need for roofs lining up, and asked If a more gradual transition was possible by having cornices line up. Mr. Benczkowski talked about the practical difficulty of doing this because of the changes in topology on the street and said that the heights were comparable with the "two storey on one side", and the "four storey on the other", and that such transition is unachievable.

Mr. Kivi then cross examined Mr. Benczkowski on behalf of SERRA.

Mr. Kivi asked Mr. Benczkowski to confirm that there are six "ways" of establishing a geographic neighbourhood based on the definition provided in Section 4.1(5)of the OP, to which the latter agreed. After Mr. Benczkowski agreed with Mr. Kivi's question that there were six ways of establishing the geographic neighbourhood, including street pattern, Mr. Kivi asked how the analysis using six ways (or variables) would change when the streets are curvilinear. Mr. Benczkowski said that irrespective of the type of the shape of the plot, the analysis would not change in any way. When Mr. Kivi asked how the inclusion of streets with varying lengths were mutually consistent for analysis purposes, "in contradiction of the six "ways" principle" Mr. Benczkowski disagreed with the premise of the question, and said that the length of streets was not an important factor, when examining a geographic neighbourhood.

The next question focused on the expression "prevailing heights of all buildings in the immediate context", and how it was to be interpreted- was it "prevailing heights of all buildings in the last 10 years approved by the COA", or was it "prevailing heights of all

buildings" to which Mr. Benczkowski's answer was it referred to heights of all buildings, without reference to any time frame. Mr. Kivi then asked how reasonable was the "extrapolation" of no more than 30 COA decisions, issued over a 10 year period, to make decisions about FSIs, heights and integral garages in a community with 300 or more houses. Mr. Benczkowski said that he had driven" up and down" the streets to get a feel for the community, advised against reducing planning to a numbers game, before asserting that the sample chosen by him was adequate for decision making purposes.

Mr. Kivi next asked Mr. Benczkowski to comment on how the new build at 3 Carey could be considered to be proportionate to its neighbours, at a height of 10.35 m, to which Mr. Benczkowski distinguished this from the case at 26 Carey, where a height of 9.5 m was being requested.

Mr. Kivi next asked Mr. Benczkowski to "match" the 11 design principles enunciated in the Davisville By-Laws' Staff Report, with the six principles of "neighbourhoods", to which the latter questioned the premise behind "matching" the OP and the Davisville By-Law Amendment . Mr. Benczkowski added that the By-Law was being broken into smaller components for comprehension purposes, and ease of application; however, a proposal did not have to satisfy all 11 principles to be compatible with the Davisville By-Law. He concluded that the 11 design principles in the Davis By-Laws, and the 6 "ways" of defining a geographical neighbourhood, are mere guidelines, and that one should not use a check-box approach, nor should they look for mutual equivalences.

Messrs. Benczkowski and Kivi agreed that there were three houses with integral garage homes , and five different parking solutions on Carey.; however, their conclusions about what can be built at the Subject Property on the basis of what already exists on the street were diametrically opposite .Mr. Kivi pointed to the statistics provided by the Appellant, and insisted that one could conclude that since no "prevailing" feature had been established, the proposal was not consistent with the Official Plan. Mr. Benczkowski interpreted the existence of three houses with integral garages, as being adequate grounds to demonstrate that the proposal was consistent with what exists in the community today, and consequently," consistent with the Official Plan".

The next Expert Witness to present was Mr. Allan Young, who was qualified as a land planning expert. He testified on behalf of the City of Toronto.

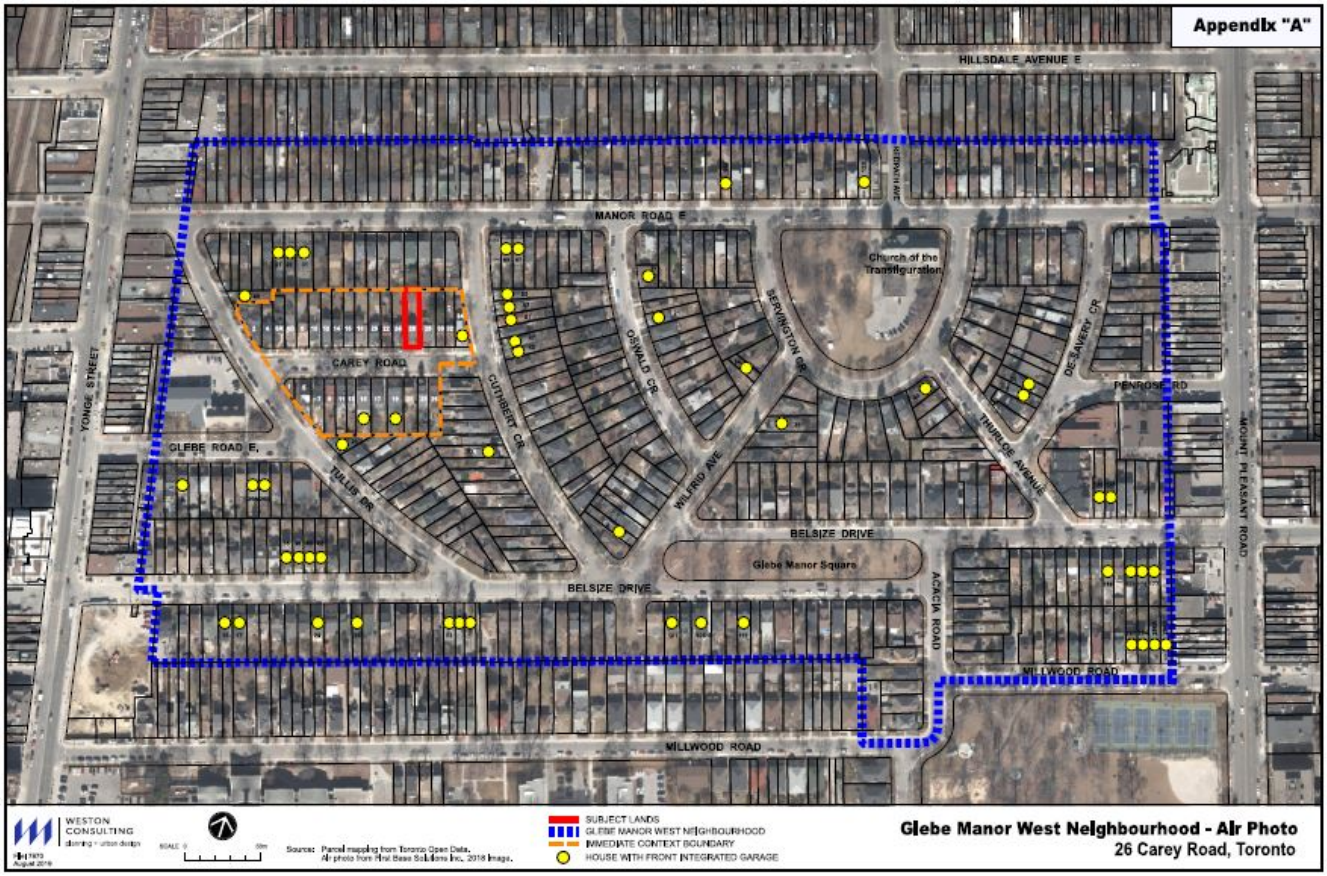
Mr. Young said that he understood that the revised Plans and Elevations, dated August 9, 2019, to be the most recent plans, and that his comments were based on these plans. He said that the Appellants proposed to redevelop the existing house, for a new 2-storey detached dwelling with an "exposed" 1.5-car basement garage, which is 54% of the length of the front wall of the proposed house. He opined that the proposed basement garage would effectively create a 3-storey appearance on the front of the dwelling, although the basement does not count as a storey, from a zoning point-of-view. He added that there would be a "2.6-m angled driveway, leading from a widened curb cut to the garage, which has a 4.27-m wide door".

Mr. Young said that the Subject Property is designated Neighbourhoods in the Official Plan and zoned "R d(0.6)(x931)" by By-law 569-2013. As a result of Exception 931, a vehicle entrance through the front main wall of the houses is not permitted in this area.

Mr. Young recited the variances, as reproduced in the "Matters in Issue" Section., and added that Zoning Notice had also pointed out that sufficient information was not available to determine whether the front yard landscaping regulations of By-law 569-2013 were met- A minimum of 50% of the front yard must be landscaping, and 75% of that must be soft landscaping.

Mr. Young next described the neighbourhood in which the Subject Property is located. He said that it is located in a largely residential neighbourhood on a "quiet, local street", one block south of Manor Road East, which is a collector road connecting Yonge Street, Mount Pleasant Road, and Bayview Ave. He said that the Subject lands are located in the western portion of the "Glebe Manor" estate, a high-quality residential subdivision, which was developed by the Dovercourt Land, Building and Savings Co. Ltd. in the early 20th century on lands that formed part of a "Clergy Reserve". He added that many of the original houses remain intact in this neighbourhood, and that parking, "where provided" is accommodated in the rear, on side yard driveways, or widened mutual driveways.

CITY OF TORORNTO'S GEOGRAPHIC NEIGHBOURHOOD



Mr. Young then spoke about the geographical importance of the Church of the Transfiguration, in this Neighbourhood. He said that the Church is at the "summit of a

prominent hill, from where the land slopes down in all directions"; Servington Crescent is a short curvilinear street, which follows the contour of the base of the hill. Oswald Crescent, and Cuthbert Crescent, are both curvilinear roads, whose contours parallel Servington Crescent, bound by Manor Rd. East on the north, and Belsize Drive in the south. Carey Road is a short road that is bound by Cuthbert Crescent on the east, and Tullis Dr. on the west. Tullis Drive is at the "bottom of the slope, and appears to follow the path of a former watercourse".

Mr. Young also drew attention to another characteristic in this neighbourhood, namely both interior lots, and corner lots, can be accessed from flanking streets. . He identified eight corners, where there are one, or more interior lots, that either have direct access to a flanking street, or right-of-way access to a flanking street, which he said, "eliminates the need for a front yard driveway".

Mr. Young defined the "neighbourhood" as the area, west of Mount Pleasant Road, but excluding the mixed-use lots, on Yonge Street and Mount Pleasant Road. He referred to this as "Glebe Manor West", within which there are 450 properties, almost all of which are detached houses.

Mr. Young said that based on his fieldwork in Glebe Manor West, 53 properties (12% of the 450) have detached dwellings, with front integral garages. Of the 53 houses, 13 had applied for required variances that were approved by the COA, between 2010, and 2018 (the time of this application to the COA). Four of the 53 houses referred to previously, had variances that were refused by the COA, but which were appealed to, and then approved by the former Ontario Municipal Board.

Mr. Young then described the case histories of 116 Belsize Dr. and 148 Manor Road East. At the former location, the COA's refusal of a house with an integral garage was upheld by the OMB, while at 148 Manor Road East. SERRA had appealed the COA's approval of a house, with an integral garage to the former OMB, and settled the case with the Applicant, resulting in the replacement of the garage by a parking pad in the front yard.

Mr. Young then spoke about the immediate context, which he defined "as two block faces" of Carey Road, with 18 houses on the north side, and 11 on the south side, for a total of 29 houses. He said that the dwellings are detached dwellings, except for two pairs of semi-detached dwellings. He added that five of the houses have been built since 2000, replacing the original houses on the original lots, while a sixth house, is under construction, at 5 Carey Road. The rest of the houses have not been replaced, and dated back to the 1910s and the 1920s.

Through a photo-tour of the community, Mr. Young drew attention to "some interesting examples of houses with detached garages", such as the house at 34 Carey, which has a detached garage that can be accessed from Cuthbert Crescent. He said that in 2015, a garage was added at the basement level, at the front of the house at 34 Carey to provide barrier-free access to the house. Mr. Young said that a lot access variance had

to be obtained, because By-law 569-2013 requires a corner lot to have its access from the flanking street.

Mr. Young then pointed out that “Glebe Manor West” is part of the Davisville Village, and consequently governed by the Davisville Village By-Law, before referring to the City Staff report, dated September 25, 2017, wherein the following concerns were expressed about integral garages:

(a) The inclusion of a ground-level garage, which typically pushes up the overall building, and main floor heights and, being at eye level, becomes the most prominent feature of the house (p. 13);
(b) Front integral garages are not consistent with the predominant character of Davisville Village (p. 13); and
(c) New driveways and steps to high main entrances reduce the opportunity for soft landscaping, street tree planting and storm water infiltration in front yards (pp. 13, 14).

Mr. Young said that the “Final Report recommended Zoning by-law amendments to “prohibit” front integral garages in Davisville Village, and to discourage variances for front yard landscaping requirements “

According to Mr. Young, since By-law 1426-2017 (the applicable Davisville By-Law), was enacted on December 8, 2017, “there appeared” to be no minor variance applications, apart from the Subject application, to allow a front integrated garage, in the Glebe Manor West neighbourhood. He added that the two current construction projects in the neighbourhood, at 5 Carey Road and 54 Servington Crescent, are both corner lots where the Zoning By-Law allows that vehicular access be from the flanking street. Mr. Young interpreted allowing vehicular access from the flanking street to mean that front integral garages are “forbidden” on corner lots.

Mr. Young next discussed the applicability of the PPS (2014) and the Growth Plan (2017). He said that Policy 1.7.1 of the PPS did not support the proposal because it is “not well designed, and does not respect the character of the neighbourhood”. He also stated that the Growth Plan “did not provide any direction” for the subject application.

Mr. Young pointed out he would offer evidence about the previously amended OP, and would differentiate between the two, where appropriate. He then said that the Subject Property continues to be designated as General Neighbourhoods”, and is located within the Yonge-Eglinton Secondary Plan.

Mr. Young then spoke about the applicability of the Built Form Policies, and recited Section 3.1.2.1:

“*New development will be located and organized to fit with its existing and/or planned context. It will frame and support adjacent streets, parks and open spaces to improve the safety, pedestrian interest and casual views to these spaces from the development by*

b) locating main building entrances so that they are clearly visible and directly accessible from the public sidewalk;
c) providing ground floor uses that have views into and, where possible access to, adjacent streets, parks and open spaces; and
d) preserving existing mature trees wherever possible and incorporating them into landscaping designs" (3.1.2.1).

Mr. Young said that the proposal at 26 Carey did not fulfill item (b) above, because the revised Site Plan did not provide an adequate connection to the public sidewalk. He discussed how stepping stones on the driveway are dangerous, when iced over, and concluded that a paved walkway would be a preferred solution, from an accessibility standpoint. He then said that the proposal was not compatible with (c) above, because the main floor is elevated relative to the public sidewalk, which in turn, is the consequence of the insertion of the basement garage. With respect to item (d) above, he said that the revised design, may result in the preservation of the existing mature street tree, but comments would need to be obtained from Urban Forestry.

Mr. Young also relied on Policies 3.1.2.2 to discuss his preference for the existing right-of-way, and a parking pad. By way of an editorial comment, this evidence is not recited because it is not relevant to the proposal in front of me, which requests for the approval of an integral garage, to the exclusion of other parking solutions.

Mr. Young then spoke about policies pertinent to development in Neighbourhoods, and recited relevant explanatory texts from both the former OP, and the new OPA 320. He said that OPA 320 required the application of the development criteria at two levels: the "geographic neighbourhood" and, within that, the "block face".

He recited the definition of the term "geographic neighbourhood" from OPA 320.

"*The geographic neighbourhood for the purposes of this policy will be delineated by considering the context within the Neighbourhood in proximity to a proposed development, including: zoning; prevailing dwelling type and scale; lot size and configuration; street pattern; pedestrian connectivity; and natural and human-made dividing features."*

He said that the Glebe Manor West neighbourhood , referred to earlier in his testimony satisfied the definition of the "geographic neighbourhood" . He then discussed the "immediate context" to include (1) the block face in which a proposed development is located and (2) the block face on the opposite side of the street, as set out in the following extract:

"*The physical character of the geographic neighbourhood includes both the physical characteristics of the entire geographic area in proximity to the proposed development (the broader context) and the physical characteristics of the properties that face the same street as the proposed development in the same block and the block opposite the proposed development (the immediate context). Proposed development within a*

Neighbourhood will be materially consistent with the prevailing physical character of properties in both the broader and immediate contexts. In instances of significant difference between these two contexts, the immediate context will be considered to be of greater relevance. The determination of material consistency for the purposes of this policy will be limited to consideration of the physical characteristics listed in this policy".

Mr. Young then discussed how OPA 320 also focused on the importance of the "prevailing" features in the immediate context, and the neighbourhood for decision making purposes. He then established that the definition of "prevailing" is the "*most frequently occurring",* and said that since "only 12% of the properties in the neighbourhood, and 10% of the properties in the immediate context, have front integrated garages, they are not part of the prevailing character of either area". He opined that concluding "otherwise would be to subvert both the defined, and the generally understood meaning of the word "prevailing"".

Mr. Young then discussed, what in his perspective, were the important applications of the Davisville Village By-Law, enacted by City Council, which he argued, "prohibited" front integral garages. He said that enactment of such a By-Law, notwithstanding the presence of such garages in Davisville Village, "provides a clear indication that front integrated garages were considered to be problematic, from the standpoint of respecting and reinforcing the physical character of Davisville Village" . He added that "the lack of such garages continues to be one of the special built form features that characterize the broader area (Davisville Village), the neighbourhood (Glebe Manor West) and the immediate context area for the subject application (Carey Road) " .He opined that the continuation of the building of integral garages at the front of the house, in the absence of any special justifying circumstances, would "erode the physical character of the area", and is not in keeping with the general intent of the Official Plan, and OPA 320. .

Based on the aforementioned observations , Mr. Young presented his conclusions about the proposal, and how it corresponded to the four statutory tests under Section 45.1:

He said that, the requested variances did not meet the four tests of the Planning Act because:

1. The proposal is not in keeping with the intent of the Official Plan, which is to respect and reinforce the special built form features of Toronto's neighbourhoods. There is no justification for permitting a front integral garage in this location, given the small minority of properties in both the Glebe Manor West neighbourhood, and the Carey Road immediate context which have been developed with a front integrated garage.

2. The proposal is not within the intent of the Zoning By-law, which specifically prohibits front integral garages in this area, by extending the prohibition which previously applied only to narrow lots and lots with flanking street and public lane access, to other properties. He noted that there are no special reasons, distinctive to this property, which would suggest that the prohibition should be lifted.

3. The proposal is not desirable for the appropriate development of the property because the incorporation of the front integral garage leads to a building height which requires a height variance in an area where the height maximum was “deliberately” set lower than the general maximum. The design also results in a main floor which is significantly elevated above grade compared with the existing houses on Carey Road, the result of which is not in keeping with the direction of the Official Plan

4. The proposal is not minor because of the visual impact of an additional garage-based housing design is adverse to the streetscape of Carey Road, and considering that, if approved, this would be the first such approval in the Glebe Manor West neighbourhood.

He also added that “it is at best premature to grant the requested variances, in isolation from a variance relating to landscaping or soft landscaping, the need for which has not yet been determined”.

I asked Mr. Young to consider a scenario where in a neighbourhood with three different kinds of houses, and asked him what would the percentages of each type have to be relative to each other, for a “prevailing type” to be established. Mr. Young replied that the “prevailing” type was “what reinforced the neighbourhood” by virtue of being the “most frequently occurring”, and added that in a neighbourhood with a 40:30:30 split, there was no “prevailing” type. However, in a neighbourhood where one type of house constituted 51% or more, of the total number of houses in the neighbourhood, “there would be no question that it was the prevailing type”. When I asked if the housing type that constituted 40% of the sample size was the “most frequently occurring”, and could consequently be considered the prevailing type, Mr. Young thought for a few moments and said “that it is a judgment call”.

Ms. Stewart cross examined Mr. Young on behalf of the Appellant. When she asked Mr. Young for a clarification of what he meant by “intensification” , he said that it could mean either density in terms of GFA, or number of units on a given plot of land. Ms. Stewart then asked if rebuilding a bigger house on an existing plot of land in an urban setting, could be considered intensification , by virtue of its “efficient” use of existing land, when compared to the alternative option of buying a larger portion in the middle of the countryside to construct the same house. Mr. Young said that it may be seen as intensification in a theoretical sense, but not in a “useful” sense.

The next few questions focused on whether the expression “not permitted” in the context of “integral garages are not permitted”, is synonymous with “prohibited”. Mr. Young vociferously insisted that “practically speaking” , “not permitted” is synonymous with “prohibited”. When Mr. Young said that an integral garage with an entrance facing the flanking street “could happen” on a corner lot, facing a street, but with the garage entrance on a flanking lot, Ms. Stewart said that the “flanking street was no different from the main street on which a house stood, if both had significant traffic”. Mr. Young insisted that irrespective of the importance of the adjacent streets, the By-Law permitted

an integral garage, on a side wall , but did not allow an integral garage on the main front wall, as of right.

Various policies in the OP were discussed next; and Mr. Young agreed with Ms. Stewart that Section 2.3.1 could be interpreted to mean that something that already existed in the community, cannot result in erosion of character of the community. He disagreed with Ms. Stewart when she asked that if a given development was consistent with Section 4.1.8 of the OP, did it not automatically mean that the development in question was compatible with the existing context of the community.

The definition of "prevailing" was debated next; Ms. Stewart referred to the Collins Dictionary said that the word meant "most frequent, noticeable, predominant" , and asked Mr. Young if he agreed with the definition. Mr. Young responded by saying that while he agreed with the definition in a generic way, he would not apply that definition, when interpreting the OP, because the latter defined "prevailing" to be the "most frequently occurring". Ms. Stewart next asked Mr. Young if on the basis of something being "noticeable" and therefore "prevailing", would he consider "34 Carey, 10 Carey, and 45 Cuthbert to stick out" and therefore "prevail", to which Mr. Young disagreed, by repeating how the OP defined "prevailing" as being the most frequently occurring. Ms. Stewart then asked Mr. Young to confirm that 19 Carey had been approved, "notwithstanding it's not being the most frequently occurring", to which Mr. Young said that "anything that does not fit the provided version of prevailing, waters the essence down".

Ms. Stewart asked Mr. Young if a house with an FSI of 0.6 X Lot Size, would be "approvable" in a neighbourhood where all the houses had an FSI of 0.4 X Lot Size", notwithstanding the By-Laws allowing a house with a 0.6 FSI " as of right". Mr. Young's answer was that he would have "trouble" recommending a house with an FSI of 0.6 X, in a community where the FSI was 0.4 X Lot Size, even if it is as of right under the Zoning By-Laws. He said that he would certainly refuse a house with an FSI of 0.7X Lot Size, as was proposed on the Subject Property, in a community where the average FSI of houses was closer to 0.4X, notwithstanding the Zoning permitting houses up to an FSI of 0.6 X, as of right. When Ms. Stewart asked Mr. Young to confirm that "many properties with an FSI of 0.7 X, or more, had been approved by the COA," in the last 10 years in the neighbourhood, the latter said that if he had to do a density study, he would consider all homes, instead of just looking at homes approved in the last 10 years. Ms. Stewart asked Mr. Young about why he had not submitted a density study, to which the latter spoke about his retainer, which "did not leave enough time for preparing a density study". Ms. Stewart suggested that a density study had not been submitted because "walking up and down the street would result in the conclusion that many houses had been built to the maximum density permitted by the By-Law".

The next Witness to testify was Mr. Al Kivi on behalf of SERRA (South Eglinton Ratepayers and Residents Association). By way of editorial comment, this description is not recited because it is consistent with the descriptions of Messrs. Benczkowski and Young. Mr. Kivi discussed his involvement in some of the other Appeals in this area, before the TLAB, including 393 Balliol, 610 Soudan,521 Hillsdale and 401 Balliol, but stated that these cases lay outside SERRA's Study area for 26 Carey Rd.

Mr. Kivi said that since the matters before the TLAB are “local” in nature, and do not directly affect provincial interest; and added that the PPS (2014) and Growth Plan (2017), are “less relevant than the Official Policy” for this proposal. Mr. Kivi discussed how OPA 320 was referred to as being “admissible, relevant but not determinative” until Member Makuch’s Decision respecting 10 Lake Promenade., admitted OPA 320 into evidence, and made the latter determinative.

Mr. Kivi spoke about the change to Section 4.1.(5) as a result of OPA 320, and how it emphasized the importance of what was “prevailing” in the neighbourhood. He said that the addition of the qualification of **‘**prevailing**’** in item 4.1.(5)(c) is important, as it determines that all of the nearby properties (both existing and recently approved) must be considered for decision making purposes .He opined that in the past, planning evidence often focused on the “largest variance that had been approved, rather than the prevailing character (as with the average height)”, and advised that the new policy direction should work to eliminate the approval of variances that ask for “significantly more than what exists in the community”. He eschewed the “ratcheting up” of variances, “driven by the most recent tribunal decisions”. He also said that Item (c) also includes a specific policy with respect to Floor Space Index, as a result of which the prevailing density is now determinative, and a new item (e), which provided policy directions for driveways and garages. He noted that that this policy direction does not mention ‘parking’ but instead mentions “driveway/garages”, and added that the term ‘driveway/garage solution’ replaces ‘parking solution’ that is “commonly used in planning policy discussions”.

Mr. Kivi recited the six characteristics stated in OPA 320 to define a geographic neighbourhood, before speaking to the importance of the “immediate context”.
He spoke to the selection of his Neighbourhood, and the “Immediate Context”. Mr. Kivi said the long streets of Manor Road and Belsize Drive., which are 1.5 kms long , running east to west, joining Yonge Street to Bayview Avenue, were excluded because of their length. Mr. Kivi also spoke to the exclusion of Wilfrid Ave. because of “variations in lot sizes and configurations”, and Glebe Road East, because of its being a “short street” with residential dwellings only on the south side of the street. He said that SERRA chose “the immediate context area (Carey Road) as the Study area”, and concluded that all the other streets failed the conformity test, as required in the Official Plan’s “context “test. He added that SERRA’s Immediate Context also included 34 Carey Road, a house at the intersection of Carey Rd and Cuthbert Crescent, notwithstanding the fact that the garage opened onto Cuthbert Crescent, while the house physically faced Carey Road.

Mr. Kivi provided statistics about “new”, and “vintage” homes, on Carey Road, and said that of the 30 homes considered to be the “immediate context”, 23 were vintage, detached homes, 4 were vintage, semi-detached homes, while 3 were new detached homes. He defined “new builds” to be dwellings, demolished prior to development. New builds were identified through “visual inspection, and other records, where available”. ‘Vintage’ homes are those dwellings that exist as originally built and usually retain the original façade

Mr. Kivi next spoke to the various driveway/garage solutions that existed within his Study Area.
:

- Parking Pads (carports have been included in this grouping)
- Positive Slope Driveway (with a garage behind the front wall)
- Ancillary Garages (other garages accessible with at-grade driveway).

He said that each driveway/garage solution has different attributes for location, design and elevations. According to Mr. Kivi, when the dwellings were originally built, the most common driveway/ garage solution was a rear yard garage, and occasionally an ancillary garage, opening onto a flanking street. He said that of the 30 houses on the street, 18 houses had rear driveway/garages, 3 had positive slope driveways, 7 had parking pads, and 2 had no parking. He said that the prevailing (most common) driveway/garage solution in the study area is the 'Rear yard' solution , or a garage or a parking pad in the rear, and added that Parking Pads are the second most common driveway/garage solution. He emphasized that the driveway/garage solution, including a positive slope driveway, and an at-grade garage, are not common on the street.

Mr. Kivi advised that the new, amended OP policy 4.1.5 (e) required garages with reverse slope driveways, to be considered separately, from garages with positive slope driveways. He then said that positive slope driveways with integral garages, represent only 10% of the existing driveway/garage solutions, and that the proposal did not match the prevailing type of parking solution on the street.

Mr. Kivi next addressed the relationship between the proposal and the Official Plan. He pointed out that the subject site is identified as *Residential* in in the Yonge-Eglinton Secondary Plan – Chapter 21.

Mr. Kivi recited Official Plan Policy 3.1.2.(3), and said that the proposed development introduces exterior design elements with "unusual form, scale, proportion, pattern and materials". He asserted that the proposed dwelling will have a roof height, and a front wall box window height, that is significantly taller than its abutting neighbours. According to Mr. Kivi, "this creates a distortion in terms of the scale and proportion between these properties. He added that the height of the building, which when combined with the front-wall box window height, does not provide appropriate an appropriate transition in scale with nearby properties".

Mr. Kivi recited Policy 4.1.5 of the OP, and provided information about the roof heights of existing houses on the street, on the basis of techniques devised by him to utilize information from the City's Open Data Information Portal. He said that the average heights of twelve houses on the north of the street was 8.3 m, while the height of the 12 houses on the south of Carey Road was 7.9 m. Mr. Kivi then added that while the average height of the three new detached dwellings on Carey Road was 9.3 m , the average height of the 23 vintage detached dwellings was 8.1 m, and the average height of the four vintage semi-detached houses was 7.5 m.

Speaking to the proposal at 26 Carey Rd. Mr. Kivi said that the roof height of the proposed dwelling does not conform to criterion (c) of Policy 4.1(5) because the proposed building height of 9.5m exceeds the required height by 0.5m. Mr. Kivi said that SERRA had raised the issue of front yard landscaping in their letter of concern, sent to the COA, in advance of the hearing. He said that "while the location of the driveway has changed, the Zoning Notice suggests that there may be additional variances for front yard landscaping".

Mr. Kivi summarized his conclusions on the compatibility between the Official Plan, and the proposed dwelling, and concluded that the latter does not conform to either the Neighbourhood Policies 4.1.5 (c),(e) and (g), or Policy 4.1.8 of the OP. It therefore did not conform to the general intent and purpose of the Official Plan.

Mr. Kivi next spoke to the Davisville Village By-Law, and recited the 11 guidelines stated in the Staff Report accompanying the Davisville By Law Zoning Amendment, and applied each of the guidelines to the proposal, followed by an explanation of how the proposal did not confirm to the guideline. By way of editorial comment, the entire argument, is reproduced from Mr. Kivi's Witness Statement, without any commentary:

• **Ensure a more predictable built form –** The integral garage with a positive slope driveway, is not yet a common or prevailing feature in this street-block. Only three dwellings in the Immediate Context have integral garages with positive slope driveways. The proposed at-grade integral garage would not be consistent with the 'prevailing' location, design and elevations, relative to the grade of 'driveways and garages' .

• **Respect and reinforce the existing built form, scale and street proportion –** The proposed dwelling is situated in between vintage dwellings that" appear to have been built within the height bylaws, at the time of construction". The proposed dwelling "significantly" exceeds the existing height bylaws for roof height, and will be out of scale when compared to its abutting neighbours. Mr. Kivi also opined that the mansard style roof in the proposed dwelling accentuates the mass of the building.

• **Preserve the quality of the neighbourhood streetscape -**The proposed dwelling does not match the cornice lines (horizontal lines) of the nearby properties and accentuates the streetscape problems that "the new bylaw was designed to correct".

• **Protect front yard soft landscaping, including large growing shade trees –** The introduction of the integral garage design will result in two driveways, the original mutual driveway (to be maintained) and the new private driveway. The new driveway will reduce the front yard landscaping and will impact the large growing shade tree that currently exists on this site.

• **Promote more desirable front entrances and main living spaces –** The design of the dwelling requires two sets of stairs – the exterior set of stairs with 6 risers, and an

interior set of stairs with 5 risers. This attribute will decrease the accessibility of main living spaces, which would be an adverse condition, for disabled or older persons entering the house.

• **Ensure that front entrances and main windows are the most prominent features –** The garage door (whether open or closed) will become the most prominent feature of the dwelling. While a garage door is a desirable feature at service stations and auto body shops, it is not a desirable feature in a residential dwelling.

• **Reinforce a consistent street wall height –** The street wall height will be significantly increased with the integral garage, and will be exacerbated with the front-facing box windows that will have a height of 8.6m measured from the garage threshold.

• **Maintain and improve the management of storm water runoff –** Storm water runoff is a current concern for many residents who live adjacent to properties with integral garages. The key element is the loss of soft landscaping in the front yard that will not be available to catch storm water during torrential rains.

• **Encourage more desirable forms of providing parking –** The front-facing integral garage requires a partial private driveway that is less desirable as it reduces front yard landscaping area.

• **Enhance pedestrian safety and comfort –** the positive slope garage may encourage the owner and visitors to park their car in front of the garage with the result that car is not fully on private property. This means that sight lines will not be maintained for street pedestrians and visitors to adjacent properties. This will compromise pedestrian safety.

- **Protect the existing supply of on-street parking –** the proposed new integral garage will require a private driveway to access the garage. The driveway layout has been modified slightly to jog away from the city tree that is located in front of the building This would require the legalization of the existing curb cut reducing the available supply of on-street parking locations.

Mr. Kivi summarized his conclusions by saying that when the requested variances “are outside” the intent of the Davisville Village By-law because they result in a development, that provides for a dwelling with a negative impact on the abutting neighbours, and the nearby properties. He concluded that the general intent and purpose intents of the city-wide Zoning By-law 569-2013, which are to regulate performance standards, that are not met by the proposal.

Based on his conclusions that the proposal introduced a building form that was not the prevalent form, concerns about soft-landscaping, storm water management, Mr. Kivi concluded that the proposal did not satisfy the tests of minor, and appropriate development. He added that the variances for the integral garage are not “permitted, and therefore cannot be minor”.

Mr. Kivi concluded that the proposal did not meet any of the four tests, and should therefore be refused.

Mr. Kivi was then cross examined by Ms. Stewart. After reviewing a number of cases in which SERRA had opposed the granting of variances to build integral garages in Davisville Village, Ms. Stewart asked Mr. Kivi if SERRA was determined to oppose all applications for integral garages. Mr. Kivi said that commenting on applications for new houses in the Davisville Area, was the bread and butter of SERRA, because the objective appeared in the Letters Patent of SERRA, and that they participated "vigorously in such exercises", as opposed to "having picnics in parks".

In her next question, Ms. Stewart asked Mr. Kivi to confirm that Mr. Benczkowski had provided evidence about OPA 320, as well as the former OP, to which the latter said that he did not remember Mr. Benczkowski's giving evidence about the OP. However, Mr. Kivi added that OP could apply since the application to the COA was made before December 7, 2018, which is when OPA 320 became operative. Mr. Kivi next agreed with Ms. Stewart's observations on the changing topography of Carey Street, by saying that it was a unique feature of Carey Street, and agreed with Ms. Stewart that the topography impacted the built form.

Ms. Stewart next complimented Mr. Kivi on the "cool things that he did with data analysis" before posing a series of questions, about the information provided by him regarding the heights of the buildings. After ascertaining the source of the raw data , used to determine the heights, (namely the City's Open Data Portal), Ms. Stewart asked Mr. Kivi if he had "altered" the data, to which Mr. Kivi said that he had "manipulated" the data, but had not altered the data. Ms. Stewart then drew attention to perceived anomalies, such as the replacement house at 5 Carey seeming bigger than what it seemed on the ground, or 9 Carey Road being much taller than what was represented in Mr. Kivi's renditions,. The latter's answers were that he couldn't remember how 5 Carey "originally looked", and that 9 Carey Rd. " a poster child for bad design, and not part of the community character". ".

After a series of questions about how the building height had been measured, Mr. Kivi conceded that the actual heights could be taller, because they had not been actually measured, and reiterated that the information about the heights was merely meant to be "instructive".

The next Witness to speak was Mr. Glen Leslie, who lives at 24 Carey Rd. He said that he had lived at 24 Carey Road for ten years, and was a Home Inspector by profession. Mr. Leslie conceded that while his house was a "dwarf" from a height perspective, he was nevertheless concerned that the proposal would overshadow his house. He said that the development would impact sunlight, and privacy in his backyard. He then spoke to how a "parking pad" solution was possible at the Subject Site. He also expressed concerns about the tree on the property, and said that it was the Appellants' responsibility to have the tree cut down, since they knew that it was "diseased". Lastly, Mr. Leslie spoke to his concerns about storm water management, and the position of

the two downspouts, on the wall of 26 Carey Road, facing his property. He spoke about a “bad experience” that he had had in December 2019, when the water pipe in the basement of the house at 26 Carey burst, as a result of which his basement got flooded. In this context, he also commented that the mansard roof design that had been proposed at 24 Carey Road, was problematic, because it had a tendency to “give away”, resulting in water damage inside the house. Mr. Leslie cited the example of 21 Carey Road,” which had been constructed with a mansard roof two years ago”, but had to be repaired within two years of its being installed, resulting in major inconvenience for the residents.

Through the cross examination, Ms. Stewart established that the tree that was referenced by Mr. Leslie, was a City tree, which had to be cut down by the City, and not by her client. She spoke to the flooding and the two downspouts on the side of the house, and said that while the front downspout would drain onto the road, and theback downspout towards the back, the downspouts could be moved such that it was on the backside of the house, and drained into the backyard.

The last Witness to testify was Mr. Eamon Fowley, who lived at 28 Carey Road. Mr. Fowley complained about the loss of privacy in his back yard, which he had converted into a “beautiful garden” that had “won awards in competitions, and had been featured in various magazines”. Mr. Fowley said that the proposed deck at the back of the Subject Property, would not merely provide overlook, but would “destroy” his privacy in the backyard. He was also concerned about how the ice would fall off the side walls of the new build at 26 Carey Road, onto his property, and the impact that it could have on somebody walking out of the side- door, as his grandchildren frequently did.

During the cross examination, Ms. Stewart pointed out that “as things stand now”, Mr. Fowley’s house casts shadows on the back yard of 26 Carey, to which the latter said that he had discussed this with the previous resident of 26 Carey, who had “assured” him that there were no complaints about the shadowing. Ms. Stewart suggested that she could ask for a condition to be imposed about the installation of “privacy screens” on the deck, such that Mr. Fowley’s privacy was protected. Mr. Fowley then expressed concerns about how the privacy screens may be removed when the house was sold, to which Ms. Stewart said that the screens could be installed on a permanent basis, irrespective of the ownership. Mr. Fowley said that he was not sure that these measures would address his issues with privacy.

ANALYSIS, FINDINGS, REASONS

Before addressing the planning issues, I think that it would be important to address the “etymological” questions related to specific terms and phrases, such as “prevailing” and “not permitted, as of right” that arose during the three day Hearing. I believe that the determination of the answers to these questions is important to the final outcome of this Decision.

One of the questions canvassed was whether the phrase “not permitted” (as stated in the Davisvlle By-Law), is synonymous with “prohibited”, as interpreted by the Opposition. The City’s position was that “in practical terms”, “not permitted” is tantamount to “prohibited” while the Appellant’s position was that while integral garages are no longer “as of right” in Davisville Village, applications can still be approved for variances to incorporate integral garages into the design of a new house, as long as the variances satisfy the four tests under Section 45(1) of the OP.

I believe that the City of Toronto’s intention behind introducing the Davisville Village By-Law is best reflected in the following excerpt from the “Issue Background” Section on Page 3 of the document “***Davisville Village Zoning Study City-Initiated Zoning Amendment – Final Report***”:

However, it has become apparent that the as-of-right permission for integral garages on lots with widths of 7.6 metres or greater, generally results in houses, that are less in keeping with the character of the area. ***The proposed zoning by-law amendment to remove the as-of-right permission for integral garages will help to prevent new buildings that are not contextually appropriate for this neighbourhood, in compliance with in effect as well as new Official Plan policies for Neighbourhoods****. While the 'no integral garage' provision will apply to all Neighbourhood properties in Davisville Village, integral garages comprise part of the prevailing character for some streets within the study area.* ***In these instances, applicants can seek a minor variance to allow an integral garage which may be supportable provided the proposed building and landscaping are well-designed and all other variances are acceptable***.

The excerpt, with special reference to the bolded, and italicized sentences above makes it crystal-clear that while there is no as-of- right permission for integral garages, applicants can seek variances for an integral garage, which can be approved by the COA or the TLAB, where appropriate. While I agree with the City that while from a Zoning perspective, “not permitted” may equal “prohibited”, what the By-Law states is that integral garages are “ not permitted ***as of right***”, which is not synonymous with “prohibited”, because of the qualifier “***as of right***”. The Opposition did not address the question about how the qualifier “ as of right” modifies “not permitted”, and whether or not it equals “prohibited”.

As such, I disagree with the interpretation that “not permitted” equals “prohibited” because it reduces the meanings of words to a zero sum game, where there are only two possible outcomes, such that disproving one outcome automatically results in the alternative outcome being upheld. I see the relationship between the words “permitted” and “prohibited”, best expressed by the colloquialism about the relationship between the colours black and white, separated by numerous shades of grey.

I find that while it is no longer possible to build an integral garage as of right, under the Davisville By-Law, there is no wholescale prohibition on integral garages. An applicant can apply to the COA, or the TLAB, as the case may be, for the approval of a variance to include an integral garage in the design of a house.

The other “etymological” issue is the interpretation of the word “prevailing”. OPA 320 defines prevailing to be “as the most frequently occurring”- the City, and Party SERRA , are in agreement with this definition. However, the Appellant referred to the Collins dictionary, defined “prevailing” as being “most frequent, noticeable, predominant”, and dwelt on the “noticeable” and “predominant” interpretations, rather than “frequent”. I may have been prevailed upon to accept their interpretation, but for the concern that this perspective ignores the issue of replicability of the building in question in the community. I note that OPA 320 discusses how important establishment of the “prevailing” type, because of the impact it has on the planned context of the neighbourhood- in other words, the prevailing type cannot have a negative impact on the community, when replicated.

As an example, can we interpret the Church of Transfiguration’s physically “prevailing” over the geographical neighbourhood of interest to this proposal, to mean that the buildings the size of the Church can be replicated throughout the neighbourhood? Determining the “predominant” type to be the “prevailing”, and replicating the same, becomes the harbinger of destabilization, when not its usher.

In light of a clear definition being provided by OPA 320, and the concerns expressed with following the Appellant’s interpretation, I find that “prevailing” is to be interpreted as the “most frequently occurring”; from a statistical perspective, the “ prevailing” type is the equivalent of the “mode” of a given data set.

It may be noted that a neighbourhood can have more than one prevailing pattern, just as a given data set can have multiple “modes”, as is stated in Policy 4.1.(5):

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. Some Neighbourhoods will have more than one prevailing building type or physical character

In other words, in the hypothetical neighbourhood proffered to me in evidence with a 40:30:30 split between three types of houses, the type constituting 40% of the houses would be held to be the “prevailing type” since it is the most frequently occurring. In the context of a hypothetical neighbourhood with a 40:40:20 split between three types of houses, then both the types constituting 40% of the houses would be held to be the “prevailing type(s)”.

I asked both the City and the Appellant a question about how to establish the prevailing type in a neighbourhood with three types of houses, and was informed that 51% was the threshold for “prevailing”. I disagree with the conclusion because it confuses a “simple majority” (held to be either 51% or 50% + 1, depending on the scenario) with the “most frequently occurring type”, as elucidated above.

Having found that “not permitted” is not synonymous with “prohibited”, and that “prevailing” is to be interpreted as the “most frequently occurring”, I begin by analyzing the compatibility of the proposal with higher level Provincial Policies.

On the question of compatibility between the proposal and the Provincial Policies, the Appellant submitted that there was conformity between their proposal and the Policies, because of the emphasis on “intensification”, which they defined as making more efficient use of existing space. The City, while not agreeing with the Appellant on the definition of “intensification”, claimed that the proposal was not consistent with Section 1.7.1 of the PPS, and that the Growth Plan provided no direction on the acceptability of the proposal. I note that the lack of consistency between the proposal and Section 1.7.1 of the PPS was asserted, but not explained. I prefer the Appellants’ evidence to the Opposition’s incomplete explanation, and find that the proposal is consistent with the PPS (2014), and the Growth Plan (2017), as a result of the focus on intensification..

I take this opportunity to establish some important principles for the determination of this matter.

1) While the Parties were in unanimous agreement that the former OP was applicable given the date of the original application to the COA, they chose to focus their evidence on OPA 320, with no more than a modicum of evidence with respect to the former OP. The Clergy Principle, was acknowledged, but not expanded on, and I emphasize that the Parties did not ask me to choose between the former OP and OPA 320. As such, the information provided to me about the compatibility of the proposal with the former OP is so modest, that it is insufficient to come to a reasonable and replicable conclusion. Focusing on OPA 320 allows for an apples-to-apples comparison between the evidence of the Parties, as well as providing me with sufficient information on the basis of which supportable conclusions can be drawn.

I find that OPA 320 will have to relied upon on for the purposes of determining if the variances maintain the general intent and purpose of the Official Plan.

2) It is trite law to state that the burden of proof, or the onus, lies with the Appellant/Applicant.

3) The character of a neighbourhood includes all the buildings, irrespective of when they were built, as opposed to a subset of the buildings, such as new builds, or replacement dwellings.

4) The TLAB’s mandate is restricted to making decisions on variances in front of the tribunal, as opposed to making decisions on the admissibility of other variances that the Opposition claims should be included.

The Appellants’ reasoning for the choice of their Study Area was that it reflected “how residents experience their community”. While the basis for the choice is sound, the cross examination by the City’s lawyer, Mr. Davidson, established that the Appellant’s Study Area, does not include Mt. Pleasant Ave., notwithstanding the Appellant’s agreement about the significant role it plays in the lives of the local residents. The Appellants did not explain why their geographical neighbourhood stops abruptly on Manor Road, at the Church of Transfiguration, though Manor Road continues to Mt. Pleasant. During the course of my Site visit, I also noticed that the neighbourhood to the east of the Church is similar to the neighbourhood to the west, and am consequently

confused about why the portion of Manor Road to the east of the Church was excluded in the geographic neighbourhood. Even if the City's allegation about the" Appellant choosing a Study Area because it has a higher than average concentration of integral garages" is discounted, the basis for their choice of a Study Area, and the actual Study Area chosen, are not mutually consistent, because it does not explain the exclusion of Mt. Pleasant Ave. In contrast, the City's neighbourhood goes from Yonge Street to Mt. Pleasant Ave, and excludes only the properties fronting on both roads; I prefer the latter to the former, and find the City's neighbourhood as being appropriate neighbourhood for reference; an illustration of this geographic neighbourhood may be found on Page 13 of this Decision.

The concern about the lack of compatibility between theory, and practice, in the Appellant's position is exacerbated when their reasoning behind the selection of the "immediate context" is examined.

The Appellant asserts, without any proof, that the average Toronto Street has "30 houses on each side of the street", and that as a consequence, the adjacent street of Cuthbert Crescent needs to be included in the immediate context to ensure that there are 60 houses to analyze. I question the premise that a Toronto street has an average of 60 houses because it is an unproven assertion; I am also unclear about why the Appellant focuses on an "average street in Toronto" to the exclusion of an "average street in Davisville Village", because how central the character of the latter is to the determination of this matter. The relevance between "an average street in Toronto" ,which homogenizes streets from throughout the 416 area, with a street in Davisville Village, has not been demonstrated.

On the question of the appropriateness and acceptability of the Appellant's choice of including neighbouring streets, such as Cuthbert and Tullis in the immediate context, I believe that the question of when to include other parts of the geographic neighbourhood, other than the immediate block, is clearly addressed by Policy 4.1 (5) in OPA 320:

"*While prevailing will mean most frequently occurring for purposes of this policy, this Plan recognizes that some geographic neighbourhoods contain a mix of physical characters. In such* ***cases, the direction to respect and reinforce the prevailing physical character will not preclude development whose physical characteristics are not the most frequently occurring but do exist in substantial numbers within the geographic neighbourhood,*** *provided that the physical characteristics of the proposed development are materially consistent with the physical character of the geographic neighbourhood and already* ***have a significant presence on properties located in the immediate context or abutting the same street in the immediately adjacent block(s) within the geographic neighbourhood****".*

The paragraph above is fairly self-explanatory and does not require further interpretation- since the expression "substantial numbers" suggests enumerability, I counted the total number of houses, and the number of houses on Carey Road, Tullis Drive, and Cuthbert Crescent, on the basis of the Parking Study Map submitted by the

Appellants (reproduced on Page 7 of this Decision) – the results are presented in the following table:

Street name	Total number of houses	Number of houses with integral garages	Percentage of houses with integral garages
Carey Rd	29	3	10.3%
Tullis Drive	13	1	7.6%
Cuthbert Crescent	31	5	16.2%
All the above streets taken together	73	9	12.31%

On none of the aforementioned streets, or a combination thereof, do we find “substantial numbers” of houses with integral garages, as can be seen from the numbers and percentages above. Cuthbert Crescent, which has the highest numbers and percentages of houses with integral garages, has 5 houses with integral garages, out of 31 houses, or less than 20%of the houses. Should Cuthbert Crescent and Carey Road be considered together (as seems to be the Appellant’s preference), I find that 8 out of 44 houses (or less than 20%) have integral garages. When integral garages on all the three streets are counted, the percentage of houses with integral garages is a mere 15%; I find that none of these numbers or percentages is “ significant”, irrespective of which combination or permutation is taken. While I agree with the Appellant once can notice four houses with integral garages on Cuthbert Crescent, from the front yard of the Subject Property, mere noticeability does not meet the threshold of “significant numbers” as stated in the language of Policy 4.1.(5)

As a result, I find that I cannot agree with the Appellant about the inclusion of neighbouring streets in the immediate context, notwithstanding their “proximity” to the Subject property. Consequently, I find that the “immediate context” chosen by the Appellant must be refused, both on the basis of the qualitative reasoning stated earlier, and the quantitative reasoning that follows the qualitative reasoning.

The Parties, in opposition, selected the 29 houses on Carey (though SERRA included a corner house for a total of 30 houses) as their Immediate Context– this methodology literally applies the definition of the Immediate Context as defined in the OPA, on the basis of which I accept the two sides of Carey Road, as being the immediate context.

My concerns about the Appellant’s conclusions about their Study are furthered by their stating that there is no “prevailing solution” in terms of parking solutions, as explained below:

The immediate context to reiterate, consists of the north and south side of Carey Rd: Based on the map provided on Page 7 of this Decision, I find that there are 3 integral garages, 9 houses with parking in the rear side of the property, 9 houses with parking located in the rear via flanking street, 5 houses with licensed front yard parking, 3 houses with no parking, for a total of 29 houses, not counting 26 Carey Road. Thus, houses with parking the rear side of the property, and houses with parking located in the rear via flanking street are the prevailing types. Thus, prevailing types of parking solutions can be identified on Carey Road, based on a perusal of the Appellant's very own study, as demonstrated in the previous paragraph. This conclusion also fortifies my concerns, and reasons for not accepting the Appellant's conclusions about the immediate context, and the alleged lack of a prevailing type within the immediate context.

As such, I find it difficult to believe that any Study Area, including geographical neighbourhoods, or immediate contexts, cannot have a prevailing type, given that dwellings can be quantified, and that a given neighbourhood can have more than one prevailing type. I note that establishing the eclecticism of the neighbourhood , and the prevailing type within a neighbourhood are different, because while the former is independent of numbers, the latter is dependent on a numerical count of various types found within the area of interest.

On the basis of the aforementioned conclusions, I analyze the three variances on which a Decision has to be made. I recite the variances below:

1. Chapter 10.10.40.40, By-law 569-2013
The maximum permitted floor space index is 0.6 times the area of the lot (216.5 m2).
The new two-storey detached dwelling will have a floor space index of 0.7 times the area of the lot (252.6 m2).

2. Chapter 10.10.40.10, By-law 569-2013
The maximum permitted building height is 9.0 m.
The new two-storey detached dwelling will have a height of 9.5 m.

3. Chapter 900.2.10.931, By-law 569-2013
A vehicle entrance through the front main wall of a residential building is not permitted.
The new two-storey detached dwelling will have an integral garage that will be located in the front main wall

I reiterate that the height variance, under By-Law 438-86, was removed by the Appellant, at the beginning of the Hearing.

I find that the three variances refer to height, density, and an integral garage, are mutually exclusive, for reasons discussed below.

1) Density, or FSI of a house, is the Gross Floor Area, divided by the area of the Subject Plot. Neither variable is related to the height in this case because gross floor area

measurements are independent of height. So, the variances respecting FSI, and height are independent of each other.

2) I would like to dwell briefly on Mr. Benczkowski's answer to a question from Mr. Davidson, the lawyer for the City, during cross-examination. When asked if the integral garage had contributed to the need for a height variance, Mr. Benczkowski's answer was "height variance would have been there even if there was no integral garage**".**

3) The variances respecting density, and the integral garage, are mutually exclusive, because Mr. Benczkowski's Witness Statement states "Given that the request for an increase in FSI is not related to a built form request that regulates the size of a dwelling the general intent and purpose of the Zoning By-law is maintained". Further, in cross examination, Mr. Benczkowski reiterated that the FSI variance is the consequence of the size of the plot, from which I conclude the FSI is not related to the integral garage.

I now analyze the variance respecting the integral garage.

In the immediate context (i.e. Carey Road bounded by Tullis and Cuthbert Crescent) , there is agreement among the Parties, that on a road with thirty houses, there exist only three houses with integral garages. As concluded earlier, the prevailing types of houses on Carey Road are houses with parking the rear side of the property, or houses with parking located in the rear via flanking street. The proposal for an integral garage is not consistent with either of the prevailing types of parking solutions, and in fact, constitutes the smallest group on the street, from a numbers perspective. This means that the proposal fails Section 4.1.(5) because of the latter's emphasis on the "prevailing type", in addition to Policy 3.1.2 which states that" *New development will be located and organized to fit with its existing and/or planned context*". In this context, not only are houses with integral garages not the prevailing type, they are the smallest numerical group. A building type that is present in such sparse numbers does not fit the planned context, and fails Section 3.1.2 of OPA 320.

I find that the variance respecting the integral garage does not maintain the intent and purpose of the Official Plan, and consequently fails the test respecting the Official Plan.

The Appellant highlighted the fact that the Davisiville By-Law stated that the general intent , and purpose of the By-Law "is to preserve the neighbourhood feel of Davisville Village". They also stated that "the By-Law stated that in some instances, the replacement dwellings, with integral garages, may be contextually appropriate", and presented Carey Road and Cuthbert Crescent as an example of such a context because houses with integral garages are already present.

I disagree with their reasoning because the issue of contextual appropriateness should consider how the proposal relates to the prevailing type in a given context as opposed to merely being present. This perspective is consistent with the earlier discussion about the importance of the "prevailing type", and its importance in the planned context of a community.

Secondly, I note the explanation of the intent and purpose of the Davisville Village By-Law Amendment includes the criterion "**Encourage more desirable forms of providing parking"** as one of eleven criteria. While I don't disagree with the Appellant' s description of these criteria as "guidelines", I point out that an integral garage is the single, most important element of the proposal before me, and find that the criterion respecting "desirable" forms of parking is highly relevant to the proposal, and needs to be looked at carefully, to determine how the proposal maintains the intent and purpose of the Zoning By-Law.

Consequently, I find that variance respecting the integral garage, is not consistent with the intent and the purpose of the Davisville Zoning By-Law amendment, and therefore fails the test respecting the maintenance of the intent and purpose of the Zoning By-Law.

The test of whether the variance in question satisfies the test of minor, is strongly influenced by the impact that it would have on the existing, and planned context. In the existing context, there are only three houses with integral garages on Carey Rd.-not only is their presence is not substantial, integral garages constitute the smallest percentage of parking solutions on Carey Rd, as stated earlier in this Section. The impact of approving a variance that detracts from the established prevailing type on Carey Rd cannot be considered to be minor. Consequently, I find that the variance respecting the integral garage is not minor.

When considering if the integral garage meets the test of appropriate development, I reiterate that the "desirability" of the parking solution has not been demonstrated. I interpret "desirability" of a given parking solution as being consequential to the preservation, and furthering public interest, which is an important component of establishing compatibility with the appropriateness of the development. This concern is exacerbated by the consideration that 26 Carey, if approved for an integral garage, would be the first house approved for an integral garage on the north side of Carey; I note that the situation at 26 Carey Rd is distinguishable from 34 Carey Road, which has an integral garage, but is at the intersection of two streets, such that the entrance to the house and the integral garage front onto different streets. As a result of these concerns, I find that the variance for an integral garage does not satisfy the test of appropriate development.

I refuse the variance for the integral garage because it does not satisfy any of the four tests under Section 45(1)

I now examine the height variance. As noted earlier in this Section, this variance is held to be independent of the variance respecting the integral garage, for the purposes of making a Decision. In case the Appellant's evidence was making a rhetorical point about the height variance being independent from the variance respecting the integral garage, I note that the refusal of the variance for the integral garage results in an automatic refusal of the height variance.

The Appellants have provided no information about the heights of buildings, save for 9 Carey, whose height is 10.35 m. The only other height related information, albeit of a qualitative nature, that I have before me is that the neighbouring house at 24 Carey is a "dwarf", as stated by Mr. Leslie, the resident, and that the proposed dwelling is a taller house, on the crest of a hill. Mr. Kivi estimated heights of various buildings, on the basis of some inventive calisthenics, with data obtained from the City's Open Data Information Portal. While Mr. Kivi deserves to be complemented on his ingenuity with extraction of information through analyzing the data, he himself stated during cross examination that the results are meant to be "instructional", and admitted to their lack of accuracy. Consequently, I have insufficient information to apply Section 4.1.(5) (c) of OPA 320, c) ***prevailing heights, massing, scale, density and dwelling type of nearby residential properties",*** to the proposal. In the absence of appropriate information, I err on the side of caution, and find that the height variance does not satisfy OPA 320.

The Zoning By-Law allows residents to build up to 9 m as of height under the new By-Law 569-2013. Mr. Leslie expressed the concerns about the impact of a taller house, on the crest of a hill, besides his house at 24 Leslie. While Mr. Benczkowski stated that "*The intention of the variance respecting height is to create a compatible built form as it relates to height*", he acknowledged in cross-examination that there will be a visible mismatch in the cornice lines, which contradicts the stated performance standard for height variances. The mismatch between the cornice lines, will also result in a noticeable, if not glaring change to the streetscape. I therefore conclude that the height variance does not satisfy the test of meeting the purpose and intent of the By-Law.

As a result of the mismatch of the cornice lines, acknowledged by all the Parties, and the unacceptable adverse impact on the streetscape, I find does not satisfy the test of minor.

In cross examination, when Mr. Kivi asked Mr. Benczkowski to choose what the appropriate comparator for compatibility, between the prevailing heights of all houses in the neighbourhood, and the prevailing heights of the subset of replacement houses in the neighbourhood, Mr. Benczkowski chose the former. However, in evidence, he merely asserted that the height of the building was compatible with the prevailing height of buildings in the community, and relied only on the heights of the replacement buildings in the neighbourhood (listed in the COA decision table) to request for the approval of the height variance. There is no evidence to demonstrate that the requested height would be appropriate for development in the immediate context as a whole, and is consequently refused.

Based on this discussion, I find that the height variance does not satisfy any of the four tests under Section 45.1, and needs to be refused.

Before addressing the density variance, I reproduce the following excerpt from their Witness Statement:

In this neighbourhood, the prevailing characteristic in terms of heights, massing, scale and density is mixed.. Original dwellings are either semi-detached 2 storey or detached 2 storey dwellings.. In terms of the range of approved variances over a ten year period, almost all replacement dwellings required an FSI/GFA variance. Within the study area in the past 10 years, 30 properties have been granted approval at the Committee of Adjustment/OMB. Of those thirty, only seven applications did not request an FSI variance. Of the twenty properties have requested relief for FSI only two applications were below the 0.7 requested for the subject property. FSI approvals ranged from 0.65 to 1.05.

The above paragraph argues that any replacement house will be larger than the original house, and consequently requires variances respecting FSI,. The Appellant then applies this conclusion to the proposal at 26 Carey to justify the density variance; while I don't doubt that "what is good for the goose is good for the gander", I am not convinced that it is tantamount to a good planning rationale.

At the risk of belabouring a conclusion stated and restated many times in this Decision, I note how the paucity of appropriate numerical information precludes my arriving at a supportable decision regarding how the density variance satisfies OPA 320. As stated on the previous page, Section 4.1.5 (c) emphasizes the relationship between the Subject Property, and the "prevailing" density. The Appellant's decision to focus only on the 30 properties who applied for variances, effectively excludes the vast majority of more than 300 houses in the neighbourhood; any decision made on this subset of houses runs the risk of ignoring the character of the immediate context, and neighbourhood, as a whole. Consequently, there is insufficient information to determine if the proposal satisfies Section 4.1.5 of the OPA 320. I therefore err on the side of caution, and find that the density variance does not satisfy OPA 320.

On the topic of the test respecting the Zoning By-Laws, the Appellants argued that the density variance met the purpose and intent of the By-Law, "*because it was not triggered by any of the variances*", and was a function of the size of the lot. There is no information about how the proposal is consistent with the FSI performance standard of the By-Law, which is to ensure compatibility of development with the surrounding area, a concern that is sharpened by the neighbour's concerns regarding their privacy. I also have a profound philosophical disagreement with the Appellant's assertion that "*replacement dwellings are part of the prevailing characteristic of the neighbourhood, and the proposed density fits within that prevailing character".* Besides the fact that there is no data to support this assertion, I reiterate my earlier stated concern that the Appellant has chosen to look solely at replacement dwellings, to the exclusion of the former dwellings, which are the majority on the street. When Mr. Young pointed out that there was no numerical information about the density of houses in the neighbourhood, Ms. Stewart decried the former's lack of a Study on densities in the neighbourhood. I fail to understand why the Opposition has to put forward a density map, where the onus of demonstrating that the proposal satisfies the four tests lies with the Appellant.

Consequently, I find that the density variance does not satisfy the test respecting Zoning By-Laws.

The proposal does not fulfill the test respecting “minor” because of concerns expressed by the neighbour about overlook and privacy. In the absence of information about how the proposed density corresponds to the densities of other houses, it is difficult to come to an evidence based decision on the test of minor. I therefore err on the side of caution, and find that the density variance does not satisfy the test of minor.

The test of appropriate development is not satisfied by the density variance because the proposal makes an assertion about “fit” solely with the replacement dwellings, as opposed to the planned context of the immediate context, of the neighbourhood.

I also consider the scenario where the three variances are considered together, in contrast to the earlier discussion where they were considered separately.

The three variances, taken together, result in a built form, which is not consistent with the prevailing heights, density and dwelling type of nearby residential properties in the immediate context, as emphasized in Section 4.1.(5) of OPA 320. The Appellant has provided no information about the prevailing height and density of houses in the immediate context to arrive at a supportable conclusion; however, it has been demonstrated that house with an integral garage is not the prevailing type of dwelling in the immediate context. It is difficult to see how a building type that is not the “prevailing” type of dwelling, can fit within the planned context, as stated in Section 3.1.2 of OPA 320. I therefore find that the proposal does not maintain the intent and purpose of OPA 320.

The intent and purpose of the Davisville By-Law Amendment is to “*Ensure a more predictable built form that is contextually appropriate and compatible with the existing physical character of the neighbourhood*”. When I consider the immediate context of Carey Road, bounded between Tullis and Cuthbert Crescent , the proposal presents quite a few challenges including changes to the streetscape on the north face of the road, mismatch of cornice lines between adjacent houses, and a built form that is not the prevailing type. As a result of these concerns, I find that the proposal does maintain the intent and purpose of the Davisville By-Law Amendment, and Zoning By-Law 569-2013.

The three variances, if approved, result in a house that is not the prevailing type, and will be the first of its kind on the north face of the road, fronting exclusively onto Carey Road. The situation at 26 Carey Road is to be distinguished from the house with an integral garage at 34 Carey Road, because the latter is at the intersection of two roads, such that the main entrance, and the integral garage face different roads. As a result, I find that the proposal fails the test of minor.

Lastly, the Appellant discussed how the variances, and the proposal compares to the replacement houses with integral garages in the neighbourhood. The character of the immediate context, and the neighbourhood, in general, is shaped by the sum total of the houses included in the area of interest, as opposed to a small subset, such as replacement houses. There is insufficient information about how the proposal relates to the immediate context, which is reinforced by the concern that what is proposed is not

the prevailing type. I therefore find that the three variances taken together, fail the test of appropriate development.

I therefore find that none of the variances requested by the Appellant satisfy any of the tests under Section 45.1 of the Planning Act, and refuse all of them as a consequence.

Before presenting the final DOrder, I acknowledge the sheer length of this Decision, and take this opportunity to state that the length has been influenced by the volume of evidence that had to be considered to come to a conclusion. I believe that reciting the wealth of evidence merely does justice to the hard work of the Parties, and illustrate what I had to ponder about to formulate my Decision.

I find that Appeal respecting 26 Carey Rd needs to be refused, and herewith confirm the decision of the Committee of Adjustment, dated April 17, 2019,.

DECISION AND ORDER

1. The Appeal respecting 26 Carey Road is refused in its entirety, and the decision of the Committee of Adjustment respecting 26 Carey Road, dated April 17, 2019, is confirmed. All the variances are refused.

   So orders the Toronto Local Appeal Body

S. Gopikrishna
Panel Chair, Toronto Local Appeal Body