

# DECISION

**Decision Issue Date** Thursday, November 19, 2020

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

Appellant(s): MICHELE GONSALVES

Applicant: ARC DESIGN GROUP

Property Address/Description: 16 ANSON AVE

Committee of Adjustment Case File: 19 155522 ESC 20 MV (A0137/19SC)

**TLAB Case File Number: 19 219581 S45 20 TLAB**

**Hearing date:** Wednesday, Jan 8, 2020, Monday, Nov 2, 2020, Thursday, November 05, 2020

## DECISION DELIVERED BY T. YAO

NAME	ROLE	REPRESENTATIVE
Michele Gonsalves	Appellant	
Shake Nur and Shila Islam	Parties/Owners	Andy Margaritis
Julius De Ruyter	Expert witness	
City of Toronto	Party	Jason Davidson
Christian Chan	Expert Witness	
Colleen T. Rumball	Party	
Janet May	Party	
Robert Brown	Expert Witness	

**INTRODUCTION**

Shake Nur and Shila Islam (the owners) wish to demolish their house and construct a new one on their 100 by 162 foot lot. To do so they request the variances shown in Table 1 below. The property is located in the Cliffcrest community<sup>1</sup>, which is also subject to the Cliffcrest zoning by-law, one of

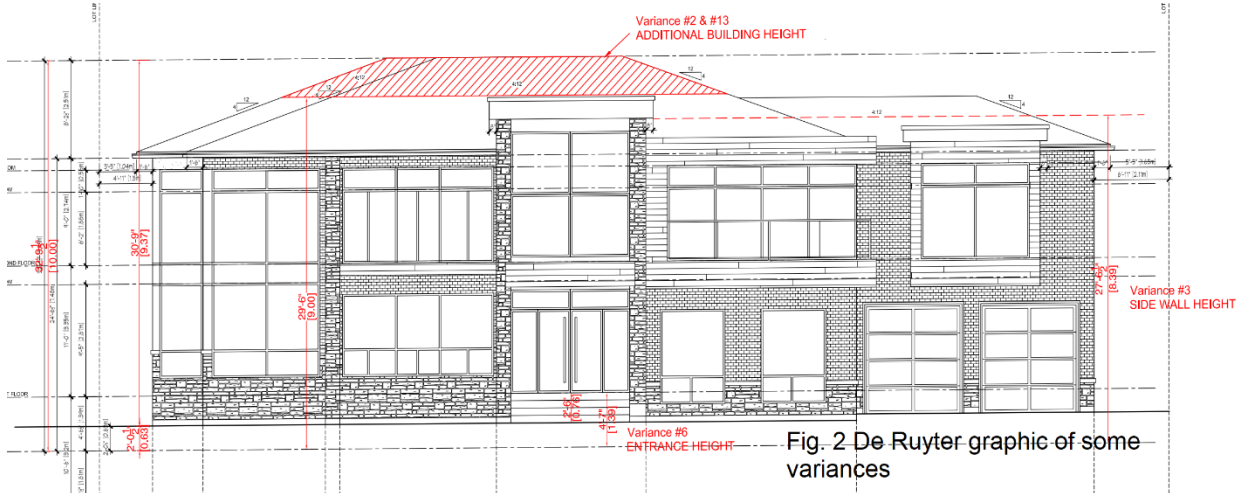
On August 22, 2019, the Committee of Adjustment granted the variances; Michele Goncalves appealed and so this matter came to the TLAB.

<b>Table1. Variances sought for 16 Anson Ave</b>			
		Required	Proposed
<b>Variances from Zoning By-law 569-2013</b>			
1	Height of rear deck above the ground	1.2 m	3.19 m
2	Building height	9 m	10 m
3	Height of side main walls	7 m	8.39 m
4	Building length	17 m	21.04 m
5	Building depth	19 m	21.04 m
6	Height of bottom of front door	1.2 m	1.39 m
7	Front yard landscaping		deleted <sup>2</sup>
8	Lot coverage		deleted
9	Landscaping for circular driveway		deleted
10	No. of front platforms	1	2

<sup>1</sup> From CN tracks to Lake Ontario; Brimley to Bellamy

<sup>2</sup> Certain of the variances are deleted because the owners amended their plans after the appeal was filed. I found these were minor within the meaning of s 45(18.1.1) of the *Planning Act* in any case the question of proper notice of an amended application is moot in view of my refusal.

Table1. Variances sought for 16 Anson Ave			
11	Front platform	4.0 m <sup>2</sup>	7.32 m <sup>2</sup>
12	Rear platform	4.0 m <sup>2</sup>	21.31 m <sup>2</sup>
13	Floor area index	0.4 times the lot area	0.48 times the lot area
Variances from Scarborough Zoning By-law 9396 (Cliffcrest Community)			
14	Building height	9 m	10 m



Mr. De Ruyter, the owners' planner, produced the above front elevation of the propose building that shows some of the variances in red. Please see Fig. 2, above.

## MATTERS IN ISSUE

The variances must be consistent with and conform to higher level Provincial Policies. However, I did not find these were helpful in deciding this case, in that issues such as major infrastructure investments, air and water quality, agricultural land and climate change were not involved.

S. 45 of the *Planning Act* requires that the variances must individually and cumulatively:

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

- be minor.

The most relevant policy of the Official Plan (OP) of the City of Toronto is par. 4.1.5:

5. Development in established Neighbourhoods will respect and reinforce the existing physical character of each geographic neighbourhood, including in particular:

...  
( c) **prevailing heights, massing**, scale, **density** and dwelling type of nearby residential properties; (my bold)

Therefore, my decision hinges on the application of this policy to the most significant variance, which in my opinion is the Floor Space Index (FSI), the amount of Gross Floor Area per lot area. This is typically stated as a decimal number less than 1.00 and is multiplied by the lot area. I also considered that this variance was combined with height, depth and main wall variances as well as platform variances.

## EVIDENCE

The following persons gave planning evidence: Mr. De Ruyter, Mr. Chan and Mr. Brown, and I qualified all three as able to give opinion evidence in the area of land use planning. The Islam family's planner was Mr. De Ruyter, the City's planner was Mr. Chan, and Ms. Rumball's planner was Mr. Brown. I also heard from Ms. Goncalves, Ms. Rumball and Ms. May, neighbours who gave evidence on their own behalves.

## ANALYSIS, FINDINGS, REASONS

### Overview

This is a neighbourhood in transition, in which older homes are being torn down and replaced with "replacement" homes at much higher densities. The owners argue that the same FSI that other replacement homes received (in the range of 0.5) should apply to their proposal. The City and the neighbours argue that this produces an overly large house. In particular, they rely on paragraph 4.1.5 of the Official Plan as an instrument to evaluate the owners' argument. They argue that since a majority of homes in the neighbourhood are not redeveloped, and are lower than 0.5 density, under the rules in paragraph 4.1.5, the owners cannot establish that their proposal respects and reinforces the prevailing heights, massing or density.

### The proposal

The owners seek additional building height, building length and Floor Space Index (FSI). There is **no** request for side yard variances, but otherwise the house is

higher and longer than permitted. In addition, the owner requests two **front** balconies, and an extremely large **rear** first floor deck plus an overlarge rear second floor deck.

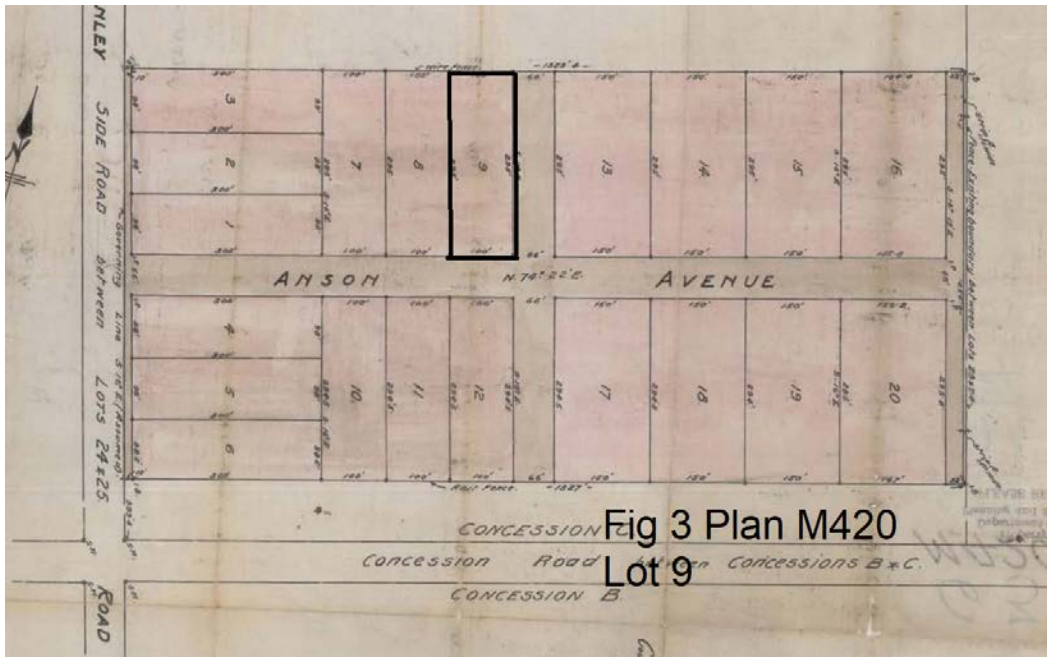


Fig 3 Plan M420  
Lot 9

### Lotting history

In 1916, 16 Anson was created as Lot 9 of Plan M420 (Fig 3, above), a lot 100 feet wide and 262 feet deep with frontage on Anson. MacDuff Crescent, the street to the north, was not yet created. The Anson frontages from left to right were, 300 ft., 100s (including #16), then a 66 foot right of way then 150 feet frontages, until the last lot at 165 feet. Plainly the lots envisioned septic systems. Today all the lots **except for Lot 9** (the subject lot) have been further subdivided, generally into 50-foot lots. The 165-foot-wide lot was subdivided into 37.5-foot lots. Lot 9 was vacant until a modest house was built in 1945, one of the first post WW2 houses on Anson. That house, with what looks like several additions, is the one proposed to be demolished.

Plan M420 also created two new roads, Anson (east west) and Nicolan (north south). Anson is of course now a fully built street as is the south branch of Nicolan Crescent. However, Nicolan's north branch remains unopened, and today is used by school children to get to Anson Park Public School. Numbers 16 and 18 stand on either side of this pathway and indeed the existence of this large buffer is an argument by the owners that there is little physical impact of this development.

In 1961, the then owner of 16 Anson severed off the rear 100 feet to create two new lots on MacDuff Crescent. (Fig 4, in which Lot 9, hatched, not drawn to scale.) One

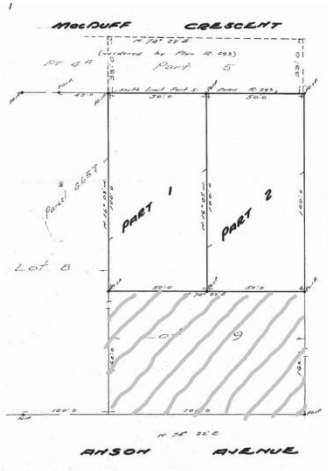


Fig 4. 1961 lotting

of these new lots now belongs to Ms. Goncalves, who together with Ms. Rumball, at 18 Anson, has appealed the decision to grant the variances.

### Physical Character of Anson

In Figure 5 I have divided Anson into quadrants and marked replacement homes with an “R”, together with the FSIs. The latter are from all three planners’ materials.

**Northwest: 8 lots**, not including the subject. One (#12 Anson) is redeveloped at 0.37, still below the By-law. The remainder have FSIs in the low to mid 0.20 range.

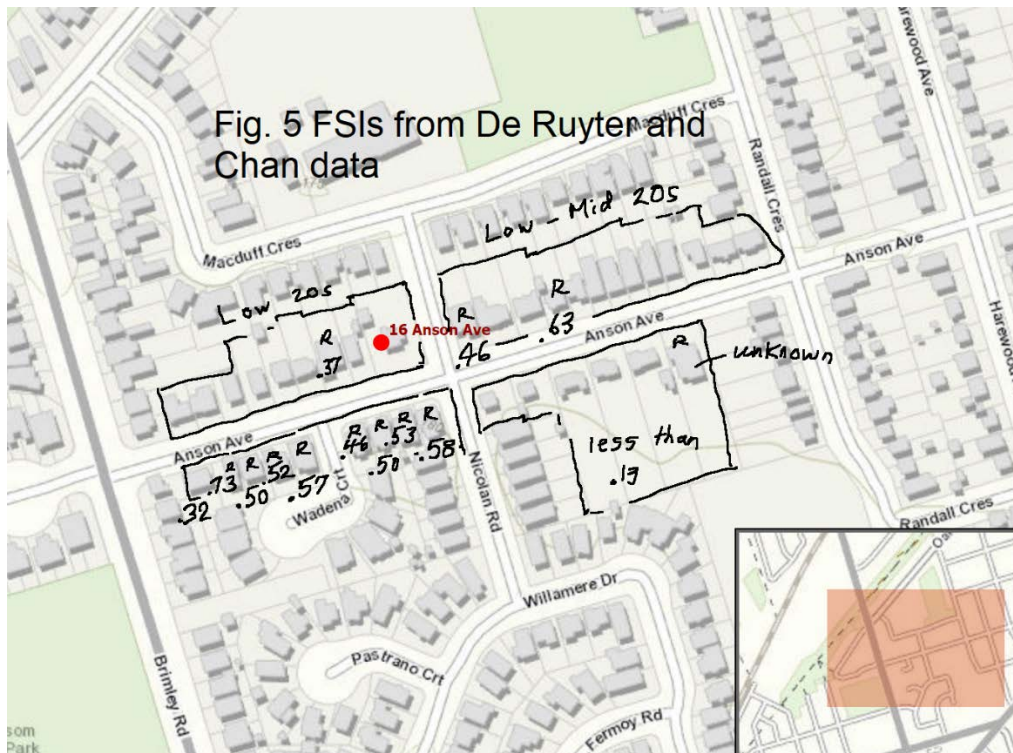


Fig. 5 FSIs from De Ruyter and Chan data

**Northeast: 13 lots**, with two redeveloped. The redeveloped properties include #18, owned by objector Theresa Rumball (FSI 0.46) and #26 Anson (FSI 0.63). The non-redeveloped or older properties are typically bungalows with densities in the 0.20 range.

**Southwest: 9 lots** all but 1A Anson (0.32) are redeveloped. FSIs averaging 0.56. The highest FSI is #1 Anson, at 0.70 and the lowest are Numbers 3 and 11 at 0.50. Number 17 (Part 6 on a 6-lot consent application in 2012) has an FSI of 0.58.

**Southeast: 6 lots**, only one, 35 Anson (easternmost) is redeveloped. The remaining 5 lots have very low FSIs in the range of 0.13. The un-redeveloped houses have interesting and attractive architectural styles. Of note are the four very deep properties: #s 25, 29, 31 and 35<sup>3</sup> (2048 m<sup>2</sup>, or .51 acre). For comparison, the subject property is 1505 m<sup>2</sup>, which is 73% of #35 Anson's area.

### **“Most frequently”**

To sum up, we have 36 lots<sup>4</sup>, of which 11 have FSIs exceeding the by-law limit of 0.40 and 25 do not. Mr. De Ruyter (the owner's planner) theory of the case concentrated on land use impacts, making the following arguments:

- Any oversized development will be compatible with neighbouring lots because of the “generous side yards” and building-to-building distances (25.9 m (83 feet) to 29 MacDuff and 7.27 m (24 ft) to 14 Anson;
- The previous point is also supported by the unopened road allowance, which provides a 22.1 m distance to Ms. Rumball;
- Ms. Rumball's admission that she will not be overshadowed;
- The long east west span of roof trusses (approximately 87 feet) requires a higher roof because of geometry;
- 6 properties<sup>5</sup> (I count eight) have obtained an FSI variance “between .46 and .73 with an average of .59”;
- On this basis, the proposed FSI of 0.48 is “clearly consistent”.

I disagree with Mr. De Ruyter. Paragraph 4.1.5 of the Official Plan says, “Development . . . is to respect and reinforce the existing physical characteristic of each geographic neighbourhood, including in particular . . . prevailing. . . density. . . .” “Prevailing density” is determined as the **most frequently occurring** and this includes older properties.

For the broader context of this geographic neighbourhood, I count 517<sup>6</sup> properties of which 5 are above 0.40, Therefore, for either the immediate or broader context, there are insufficient properties with .40 or greater FSIs to form a prevailing characteristic and therefore the proposed 0.48 FSI does not respect and reinforce this existing physical characteristic for each geographic neighbourhood.

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<sup>3</sup> I marked #35 FSI “unknown” because the data does not seem to have been updated.

<sup>4</sup> Mr. Chan's “Immediate Context” has 37 lots, one more than me, because he includes the subject property, and I do not.

<sup>5</sup> Mr. De Ruyter's Paragraph 42.

<sup>6</sup> Mr. Chan's broader area was Brimley to McCowan, Oakridge to St Clair/Kingston Rd He stated 537 properties in his study area, but his and my totals are so close I see no consequences for the main conclusions.

Although this is sufficient to allow the appeal, if I am incorrect, I wish to consider Mr. Chan's and Mr. Brown's other evidence on the Cliffcrest zoning provision (actually a formula) used to calculate the FSI.

### Intent of the zoning by-law

This formula<sup>7</sup> converts a lot area into an FSI and is contained in Exception 1462 of By-law 569-2013. Figure 6 is copied from Mr. Brown's witness statement and shows each Anson address's actual Gross Floor Area compared to what is sought for 16 Anson<sup>8</sup>.

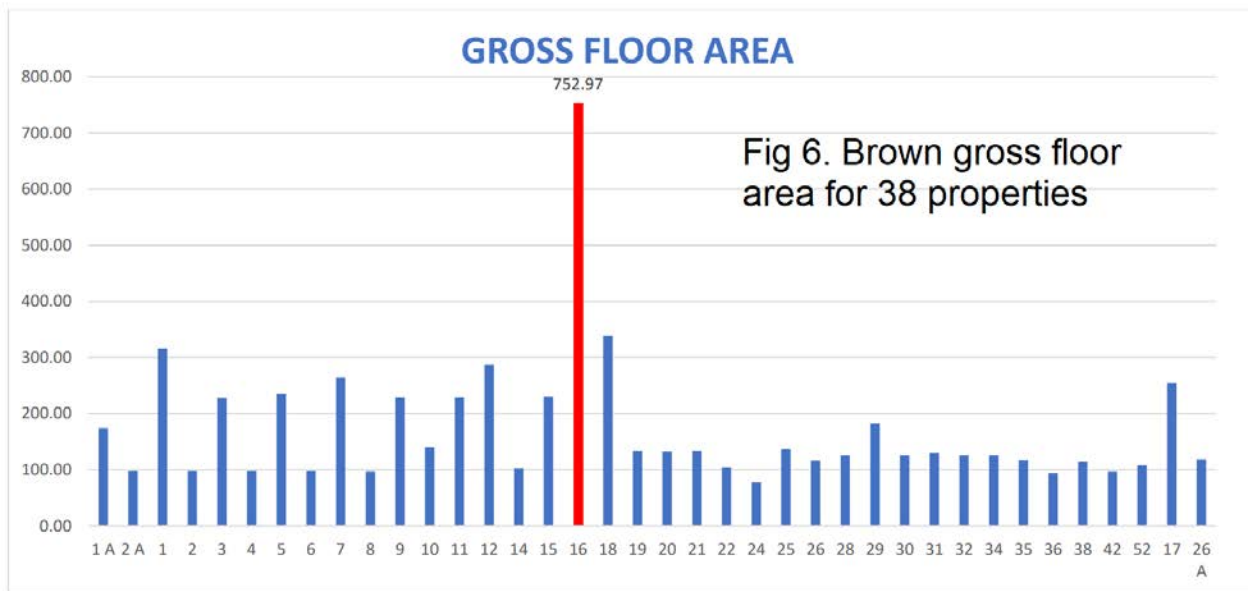


Figure 6 shows three ranges of FSI:

- low blue bars, which depict **older** homes (for example, most of the addresses on the right half);
- intermediate blue bars depicting **redeveloped** homes, e.g. #s 1, 3, 5 Anson, including #s 18 and 17;
- the central red bar, **subject site**, with the proposed gross floor area of 753 m<sup>2</sup>.

<sup>7</sup> Exception 1462 reads: "The maximum floor space index for a lot with a dwelling unit in a permitted building type is: (i) the lesser of 0.6 times the lot area or 204 square metres, if the lot area is less than 408 square metres; (ii) the lesser of 0.5 times the lot area or 279 square metres, if the lot area is 408 square metres to 697 square metres; and (iii) 0.4 times the lot area if the lot area is more than 697 square metres."

<sup>8</sup> Mr. Brown has included 52 Anson, which I did not use in my immediate context as it is on the other side of Randall Crescent.

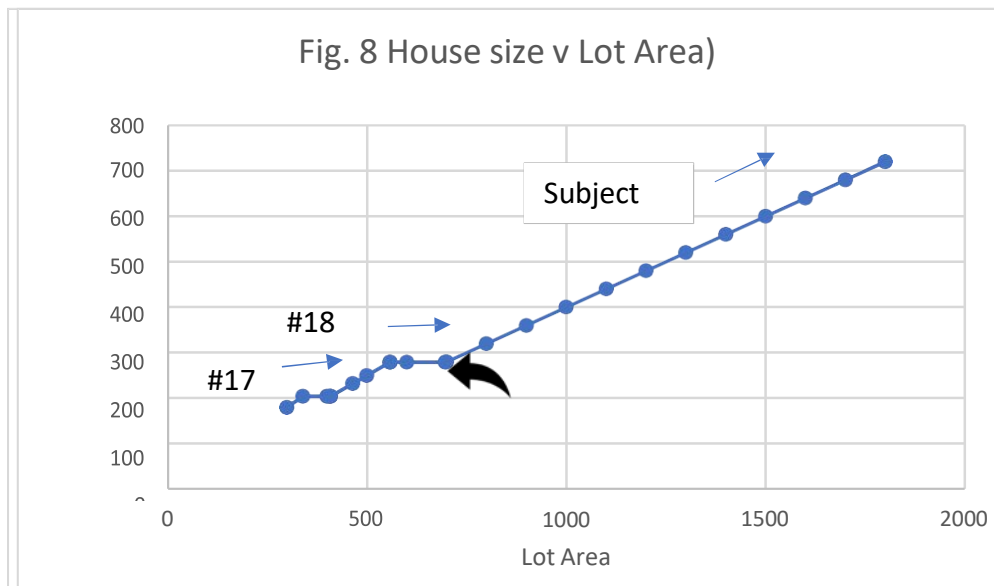


I have provided more detail for the three largest FSIs in Table 7. The requested Gross Floor Area for the Islam property would be more than twice the next largest house, #18 Anson, and 2.8 times larger than the next largest house, #17 Anson.

<b>Table 7 GFAs as granted by the Committee of Adjustment</b>				
	Lot Area	Permitted GFA	FSI (Proposed or as built)	GFA
16 Anson; Subject lot	1505 m <sup>2</sup>	.4 (602 m <sup>2</sup> )	.48	722.4 m <sup>2</sup> (7776 sq ft) proposed
17 Anson	446 m <sup>2</sup>	.5 (223 m <sup>2</sup> )	.572	255 m <sup>2</sup> (2745 sq ft) actual
18 Anson	737 m <sup>2</sup>	.4 (295 m <sup>2</sup> )	.46	339.1 m <sup>2</sup> (3650 sq ft) actual

In Figure 8 I charted the formula in Exception 1462 to show that it is not completely linear. It allows **higher** FSIs for smaller (408 m<sup>2</sup>) and mid sized lots (408 to 697 m<sup>2</sup>), but **limits** larger (. 697 m<sup>2</sup>) lots to a **lower** ratio. Thus, the smallest set of lots may have an FSI of 0.6; the mid sized may have 0.5, but the largest are limited to 0.40.

The formula also places “caps” on the smaller sets (please see footnote 7, previous page) but not for lots larger than an inflection point (heavy arrow) of 697 m<sup>2</sup>. The size 697 m<sup>2</sup> translates to a lot of 50 x 150 feet, a not untypical large lot in this neighbourhood. The three largest FSI properties are also depicted on the Figure 8 as #17, #18, and “Subject”.



Mr. Chan and Mr. Brown conclude that it is inappropriate to apply a 0.50 FSI ratio from small/medium lots to one of 1505 m<sup>2</sup>. I agree. I find the intent of the zoning by-law is to strive for a medium sized house for lots in the lower ranges, which would be virtually all lots in the broader context, and all but five lots on Anson. Lots greater than 697 m<sup>2</sup> are expected to have so much legally available GFA that a reasonable house size can be built within the 0.40 ratio. A similar sliding scale exists for side lot lines in other parts of Toronto. This allows narrower lots to get away with tight side yards but does not give this advantage to wider lots.

Although the applied-for 0.48 FSI for the subject site seems superficially similar to the 0.46 authorized by the Committee of Adjustment for 18 Anson, the resulting houses are, in my view, disproportionately different in that a house of the 7,000 sq ft size range greatly exceeds every other house in the neighbourhood.

The variances must meet the four test individually and “cumulatively”. . Even though the adverse impacts of shadowing are probably minor, I do not see the massing of 722 m<sup>2</sup> house (602 m<sup>2</sup> permitted), meeting the “cumulative” test, when accompanied by concurrent building length, height, and side wall variances.

I find that this does not maintain the intent of the zoning by-law, which is to reserve the larger FSI ratios for the smaller and midsized lots. Finally, I do not see that the plucking out of an FSI ratio from COA decisions with respect to smaller lots is desirable for the appropriate development of the land.

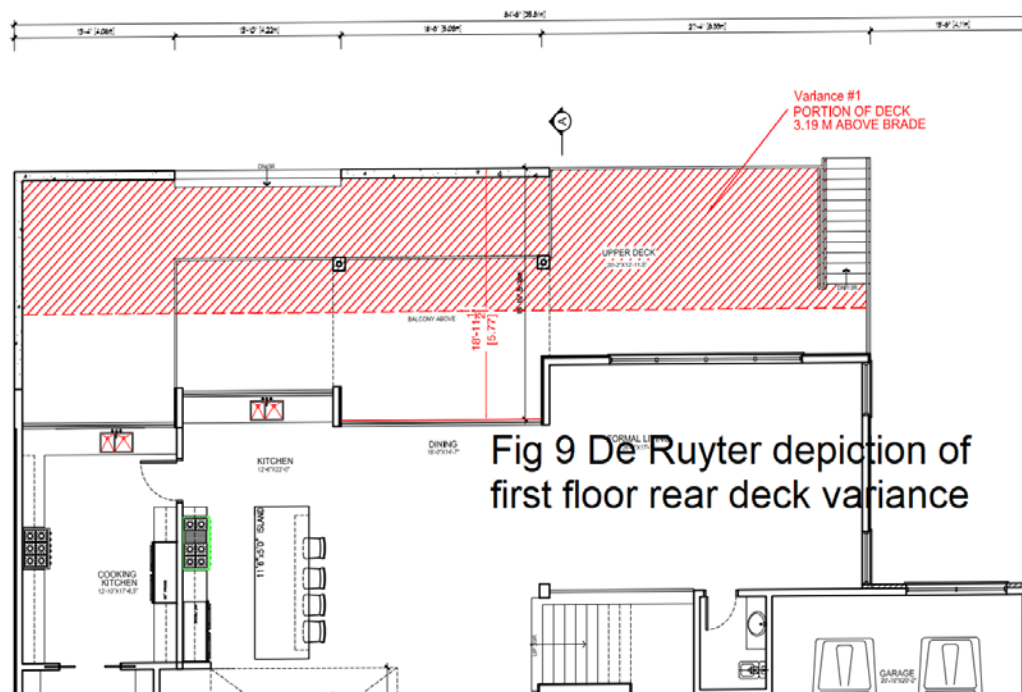
### **Rear decks**

There are two rear decks, one at the first floor level and one on the second floor. According to Mr. De Ruyter, the lower one is governed by a complex formula, in which the portion within 2.5 m of the rear wall may be any height, whereas parts farther from the rear wall can only be 1.2 m above the ground.<sup>9</sup> The part that needs a variance is shown shaded in red on Figure 9 below.

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<sup>9</sup>

Decision of Toronto Local Appeal Body Panel Member: T. YAO  
TLAB Case File Number: 19 219581 S45 20 TLAB



The rear wall's location already exceeds the 17 m building length. Thus Mr. Chan argued that the effect of the two variances (deck height and excessively length) worked together to increase the privacy and overlook implications. Because of the sloping rear yard, its 3.19 m (10.5 feet ) height will appear to be similar to a second storey deck.

Mr. De Ruyter's reply was that the nearest neighbour supports the granting of this variance, there are large building to building distances, and there are a row of conifers separating the deck from #29 MacDuff Cres. In rejecting this justification, I rely on the requirement that the variances must cumulatively meet the four tests. While this first floor rear platform 's height may be argued to be excused, I agree with Mr. Chan that its size, height and placement together render it not minor, nor in keeping with the intent of the zoning by-law, despite 14 Anson's consent. Mr. Chan also stated that he could find no other decisions where similar variances were sought, both as to the number and extent of the variances.

The same can be said of the second floor rear platform, which is about four times the permitted size and also subject to the placement of the rear wall farther back from the street.

Finally, I will mention the main wall heights. Mr. De Ruyter's position was that this was caused by the topography. I could not understand this and invited Mr. Margaritis to explain this in his submissions. I did not find his explanation convincing. However, there is some support for Mr. De Ruyter in Mr. Chan's evidence:

So, the proposed height and side wall heights, **although affected by the change in grade**, . . .do not carry out the intent of the bylaw, which is to carry out a maximum height and wall height, which is to provide for a maximum height for a two-story building with a peaked or hipped roof.

Despite Mr. De Ruyter's and Mr. Chan's evidence, in my view this variance is more a result of the owners' preference for 11 foot first floor to second floor level and the 9 foot second floor level. In any case this is only one variance among many.

I find that the variances cumulatively do not maintain the intent of the zoning by-law, are not minor or desirable for the appropriate development of the land.

### ORDER

The appeals are allowed, the decision of the Committee of Adjustment is set aside and the variances are not authorized.



X

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Ted Yao  
Panel Chair, Toronto Local Appeal Body