

DECISION AND ORDER

Decision Issue Date Monday, January 18, 2021

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

Appellant(s): 1362882 ONTARIO LTD

Applicant: HICKS DESIGN STUDIO

Property Address/Description: 1 LAKE CRES

Committee of Adjustment Case File: 19 143904 WET 03 MV

TLAB Case File Number: 19 248474 S45 03 TLAB

Hearing date: Tuesday, October 20, 2020
Thursday, November 26, 2020

DECISION DELIVERED BY Ian James LORD

APPEARANCES

Name	Role	Representative
Hicks Design Studio	Applicant	
1362882 Ontario Ltd	Owner/Appellant	Amber Stewart
David Engel	Party	
Anastasia Jakubasz	Party	
David McKay	Expert Witness	
William Hicks	Expert Witness	
Robert Brown	Expert Witness	
Michael Spaziani	Expert Witness	
Anne Thorburn	Participant	

Name	Role	Representative
Patricia Clarkson	Participant	
Sonya Elliott	Participant	
James Elliott	Participant	
Mary Jane Benedetti	Participant	

INTRODUCTION AND BACKGROUND

This matter involves the owners' intention to construct a single detached residential dwelling at 1 Lake Crescent (subject property) in the former Long Branch community, now the City of Toronto (City). It arises from the refusal by a panel of the City Committee of Adjustment (COA) refusing nine (9) variances required to deliver the project as before the COA.

By Decision issued March 5, 2020, I dealt with a Motion brought by the Applicant/Appellant for an extended sitting to accommodate the number of Parties and Participants who elected status. I considered the request and, in that Decision, set special instructions to assist in moving the appeal to a timely disposition. In effect, the Motion Decision constituted a procedural order for the progress of the matter, then originally scheduled for March 17, 2020.

In the interval between the Motion date and the proposed Hearing Date, the Province of Ontario and other jurisdictions commenced responses to an international pandemic known as COVID-19.

To encapsulate, between March 12, 2020 and August 14, 2020 the Toronto Local Appeal Body (TLAB) cancelled all in-person Hearings (Suspension Period).

This matter was rescheduled to be heard October 20, 2020 with the procedural directions above established. Hearing appointments are considered peremptory.

By Notice sent October 14, 2020, the TLAB advised the Parties that the scheduled Hearing would be conducted electronically, namely via a virtual Hearing, to which objections would be considered, despite short notice.

On October 15, 2020, the Applicant/Appellant provided covering correspondence, a revised list of requested variances and proposed conditions; it referenced a topographical plan and provided site context visuals.

On October 16, 2020, Mr. David Engel and Ms. Anastasia Jakubasz filed Motion materials and supporting affidavits requesting, among other things, a postponement of the scheduled October 20, 2020 Hearing 'until such time as the matter could be heard orally or dealt with in writing'. Mr. Engel's affidavit was sworn October 18, 2020

attesting to a lack of resources to participate in a virtual Hearing; Ms. Jakubasz's affidavit was sworn October 16, 2020. In the latter case, the Party indicated the inability to provide equipment or conduct a virtual Hearing given unreliable Internet access.

On October 19, 2020, the TLAB was also electronically provided by the same two Parties, together with other Participants, a written response to the correspondence of Ms. Stewart, counsel for the Applicant/Appellant, of October 15, 2020.

These latter materials from both sources primarily address issues in the Hearing proper, not the Motion for a postponement. The Applicant/Appellant responded to the Notice of Motion on October 19, 2020 setting out an argument to effectively repudiate the technical difficulties argued by the moving Parties, given the extensive and sophisticated filings and methodology that they had used to date.

The response to Motion argued a concern for precedent in further delay insofar as it would freeze the matter from moving forward in a manner prejudicial to the Applicant/Appellant. Ms. Stewart noted that the subject property was vacant, vandalized and in disrepair. She noted that participation could occur via telephone, if computer access became unavailable. Relief was requested from the late filing of a responding support affidavit.

The matter was formally convened by way of a virtual WEBEX format Hearing on October 20, 2020. The following persons were present: for the Applicant/Appellant, Ms. Amber Stewart, counsel; Mr. David McKay, planner; Mr. William Hicks, architect; and Mr. Michael Spaziani, urban designer. Mr. Barry Horosko was present to audit the proceeding as he had been former counsel to the Applicant/Appellant, Dr. To, at the COA. Dr. To was also present on his own behalf and for the numbered company.

The following Participants were present: Mr. James Elliott; Ms. Sonia Elliott; Mr. Anthony Thorburn and Ms. Mary Jane Benedetti.

Ms. Jakubasz was present as was Mr. Robert Brown, an intended witness to be called by the Parties.

Mr. David Engel, a Party, reportedly was intermittently available as a Party via telephone communication.

In summary, the Applicant/Appellant, Parties and Participants, were present and represented.

On the matter of the Motion for postponement, Ms. Stewart indicated her clients desire to proceed orally with evidence. She indicated no concerns with the virtual Hearing method. Mr. Brown, appearing on behalf of Mr. Engel and Ms. Jakubasz indicated they would accommodate the request to proceed on the limited basis advanced. For those persons whose communication capability malfunctioned or was dropped, it was noted that an oral recording should be available through the TLAB.

I made the Ruling that the virtual Hearing would proceed, that oral evidence in-chief only would be heard that day and that the recording should be available should there be concerns for resumption at an extended sitting.

Ms. Jakubasz expressed a desire to defer opening remarks.

In accordance with the earlier Decision, Ms. Stewart confined herself to brief opening remarks. She summarized that the Application had commenced in 2012; it was then interrupted by a requirement that her client acquire additional water-front lands, originally thought part of the acquisition. She also indicated that in the interim, following the COA decision, a settlement had been reached with the opposing neighbour, at 5 Lake Crescent, The settlement involved revised plans and variances which had resolved both the impact concerns of the neighbour, Mr. John Scheffer, and those of the City's Urban Forestry Department - by ensuring the preservation of a specific tree.

Ms. Stewart framed and addressed what she felt to be the five outstanding issues to which the other Parties and Participants had identified and responded to, in the above noted October correspondence exchange.

In accordance with the Ruling, Ms. Stewart tendered Mr. David McKay, planner and Mr. Michael Spaziani, urban designer, with the added intent of reserving for reply evidence Mr. William Hicks, architect. Having reserved cross examination and questioning to a later time, it was apparent that a continuation had to be scheduled.

The matter was heard virtually; Day 2 concluded on November 26, 2020.

MATTERS IN ISSUE

On October 15, 2020, Ms. Stewart filed on behalf of the Applicant/Appellant, a revised list of requested variances, now 10 in number. The **"Revised List of Variances and Conditions"** is attached as **Schedule 1** to this decision and order. The Parties and Participants in opposition maintain objection to each of the variances premised on the overall mass, scale and position of the proposed residence and its impact upon the neighborhood. The objections relate to how far the variances have and continue to exceed the zoning bylaw and its intention.

The cumulative impact of the variances is said to result in an overall mass of the proposed dwelling that is not in keeping with the scale and character of the immediate neighbourhood, contrary to the applicable tests.

JURISDICTION

Provincial Policy – S. 3

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

Variance – S. 45(1)

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

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

EVIDENCE

As described, Miss Stewart called two witnesses: David McKay; Michael Spaziani.

DAY 1

David McKay was qualified to give expert opinion evidence in respect of land-use planning. He had been retained through the COA process, but did not speak, and had signed the Acknowledgement of Expert's Duty, Form 4.

The TLAB accepted Mr. McKay as having no conflict of interest having been retained prior to the COA.

Ms. Stewart filed the following materials entered as Exhibits:

- Ex. 1** Applicants combined document book;
- Ex. 2** Expert Witness Statement of David McKay, dated January 23, 2020;
- Ex. 3** Responding Expert Witness Statement of David McKay;
- Ex. 4** Expert Witness Statement of Michael Spaziani, received March 2, 2020 signed February 21, 2020;
- Ex. 5** Visual presentation by Michael Spaziani dated October 16, 2020;
- Ex. 6** Expert Witness Statement of William Hicks;

Ex. 7 Revised list of variances and conditions filed October 15, 2020 (**Schedule 1**);

Ex. 8 Current editions of the Provincial Policy Statement and the Growth Plan, 2020.

Mr. McKay indicated that he had not spoken before the COA despite an earlier retainer. He also advised that Mr. Hicks had dealt entirely with the TRCA aspects of the application. Mr. McKay was engaged in the revisions to the applications post the COA consideration and anticipatory of a settlement with Mr. Scheffer, the next-door neighbour at 5 Lake Crescent.

Mr. McKay described the characteristics of the lot which he found to be seminal to the application on appeal. Following the land assembly described by Ms. Stewart, Mr. McKay identified the lot area as being 2627 m². However, due to the influence on the subject property of the TRCA regulated “erosion hazard” line, for the purposes of zoning the new mandated lot area was constrained to 1,122.6 m².

It is this aspect that he asserted was one of three fundamental components to his evidence on the variances sought.

The lot was further described as having 82.2 m frontage on Lake Crescent. These site characteristics were amplified by referenced in Exhibit 1, Tabs 8 to 14 and the photographic exhibits at tab 4. Additional frontage arguably existed on a lakefront public park

It is instructive in summarizing Mr. McKay’s evidence to understand the emphasis he placed on the technical reduction of lot area and associated variances due to the TRCA erosion hazard line, the second fundamental component, identified as the front yard setback now required under By-law 569-2013 and the third element, the calculation of established grade.

He stated that it is the effect of these lines, the required setback, reduced lot area for zoning purposes and the delineation of ‘grade’ at a point 12.84 m back from the front lot line with the street that, he said, affected the number and character of the variances sought.

Although the subject property is subject to being surveyed and, as well, the issuance of a TRCA fill permit process, he said it is the constraints imposed by the zoning definitions and the TRCA hazard line that necessitated the variances.

He advised that following settlement discussions with the one abutting neighbour after the COA refusal, the Application plans were revised in December 2019.

He advised that both the TRCA and City planning staff had performed detailed reviews of these plans, established their conditions and now support the variances described on the **Schedule 1**.

The planner detailed the plan revisions and their reasons on the settlement insofar as they related to the matter before the COA:

Variance 1: reduction in requested floor space index from 1.11x lot area to 0.88x lot area (reduced building size);

Variance 2: reduction in requested minimum front yard setback from 5.13m to 5.12m (measurement correction);

Variance 3: reduction in in requested maximum building length from 20.29m to 18.73m (reduced building size and side yard setback);

Variance 4: maximum height of main front entrance, no change from 2.18m requested;

Variance 5: reduction in requested maximum height of all exterior main side walls from 9.08m to 8.26m (reduced floor to ceiling heights);

Variance 6: reduction in requested permitted building height from 11.78m to 10.95m (reduced floor to ceiling heights);

Variance 7: reduction in proposed area of covered main pedestrian entry from 10.38 sq. m. to 8.4 sq. m.; and reduction in proposed area of second floor lake platform from 69.95 sq. m. to 59.9 sq. m.; and reduction in proposed area of third floor lake platform from 9.98 sq. m. to 8.6 sq. m.; (all in respect of design reductions);

Variance 8: reduction in the maximum number of platforms above second storey on a side, from 6 to 2 (design and compliance/deletion);

Variance 9: shoreline hazard limit setback, no change from 0m requested.

The reconsideration of the Application resulting from the proposed changes identified a missed variance:

Variance 10: requested building setback from the hazard limit on an adjacent lot of 7.5m from that required of 10m (applicable building location unchanged).

In his view, each of these revisions were less than or equal to the original proposal and did not necessitate recirculation pursuant to section 45 (18.1.1) of the *Planning Act*. There was no disagreement on this point and it was ultimately accepted.

In addition to that summary, by reference to the support found in the staff reports of May 30, 2019 and October, 2019 repeating the conditions found on **Schedule 1**, together with the satisfaction of other public agencies, TRCA and Urban Forestry, he was able to advise of no outstanding public interest concerns.

He explained that the definition of 'established grade' is set at a setback of 12.4 m from the front lot line. The combination of the lot sloping from the road to Lake Ontario together with the reduced lot area for zoning purposes influenced and created the need for Variances 1, 2, 3, 4, 5, 6, 7, 8 and 9, *supra*.

He said that the point defined for established grade meant the grade of the lot at the street line was 1- 2m above established grade; further, that the definition of the first floor, being that closest to established grade, meant the proposed basement and walk out, the lowest level of the house, is considered the 'first floor' and is included in the floor space index (FSI/fsi) calculation.

Mr. McKay's evidence can further be summarized as it relates to the central thesis of causation created by the zoning definitions and site conditions. Namely, the effective lot size and the grade definition under the 'new' zoning by-law drive the scale and need of the required variances. As a consequence, measurements of height, gross floor area and related zoning performance standards are governed by the 'technical' conclusion as to the identification of the first floor.

As stated, in order to satisfy the concerns of Urban Forestry to preserve a red maple, the house design, following the COA decision, was revised in several ways: a reduction in gross floor area; the elimination of one parking garage bay; the elimination of 'third floor' space; and a modest reconfiguration of the building on the lot. The Applicant/Appellant undertook these referenced design modifications, including a reduction in the floor to ceiling height, with the revised plans reflected in the variances on **Schedule 1**, now forming the appeal.

As a further example, he stated that the pedestrian entrance to the main floor by the zoning interpretation was considered to be into the second story. Despite the fact that the front entrance porch would sit at grade on the street frontage, 'platform' size relief is required, as above described, due to the calculation of grade, back 12.4 m from the front lot line.

He noted that the wraparound deck proposed, which would normally be constituted as part of the first floor and not a 'platform' for zoning purposes, is caught by the second-floor regulation on limited platform space. He considered the variance for its size to be technical, despite the redesign from a 69.55 m² to 59.9 m² on a maximum 4 sq. m standard, all as resulting from the basement being deemed the first story.

He noted that the fourth floor platform had been removed and that the scale of the third-floor platform has been reduced from 9.98 m² to 8.6 sq. m; the reduction in house size was affected by eliminating the use of an area under the roof as loft prayer space - resulting in the fsi reduction.

With respect to the front yard setback, he noted there was only one house to assist in measuring and applying the zoning by-law's 'averaging' requirement, to adjacent properties.

He noted a 1 cm reduction, from 5.13m to 5.12 m, based on the averaging principal calculation correction. While the zoning by-law requires a 12.84 m setback, he said the existing home is at 6.28 m. He supported this reduction as being appropriate given the existing condition, the landscape treatment proposed and the effect of the erosion hazard line which, when respected, eliminates any reasonable or practical building envelope for the lot, for zoning purposes.

He noted no change to the shoreline hazard line as defined. The reduction in setback from 10 m to 0 m is supported by the TRCA, as is the more recent Plans Examiners identification of a setback of 7.5 m (versus 10 m required), applicable to the adjacent property at 5 Lake Crescent.

With respect to building length, Variance 3, he noted that the building length variance of 18.73 m (versus 17m required) simply applies to three triangles of building on the site plan and relates to the building design. This variance too has been reduced with the redesign and creates no massing condition affecting the neighbour.

Finally, with respect to Variance 1, he noted a change in the fsi/gfa is a shrinkage from the initial request a 1.11 times lot area to 0.88 times the lot area. He said this was a result of the space reduction in the redesign of the plan and to respond to concerns expressed by Urban Forestry. That reduction totaled to 281.31 m².

He emphasized that the fsi is based on the lot area for zoning purposes (he used 1269.41 m²) which, in this case, includes the entirety of the basement space identified as the first story. If this inclusion were not the case, he said, the variance increase would be from 0.4 times the area to 0.55 times the lot area, a measurement consistent with study area character, variance approvals overtime and existing built form conditions along the lakefront properties.

He acknowledged that the proposal contemplates a large two-story dwelling articulated by design features in the façade but that is entirely appropriate, in his view, from the public realm. He said that the basement space (first floor) is not observable from the street and that the building's proposed articulation and fenestration breaks up the front façade: a presentation further appropriately screened by mature trees.

He repeated that the definition of establish grade sets the subject property at 1.5 m underground at its front elevation thereby exaggerating the relief required and triggering several of the variances. He described this as a completely arbitrary increase from the perspective of the appearance of the built form proposed. With respect to the platforms and their relief requested arising from the definitions, he was of the view that the purpose of the regulations is to protect from unwanted overlook and to assist in maintaining privacy. These goals are not offended in his view, by the requested variances: the platforms are at grade or present no issue overlook, as they relate to the views of Lake Ontario. He noted the only neighbour affected is satisfied by the plan revisions.

Mr. McKay presented photographic visuals of lakefront 'platforms' along Lakeshore Boulevard, which he suggested reflect similar area character attributes as that

proposed. He was of the view that larger decks and larger buildings are expected on larger lots with lake frontage.

In the planner's opinion, the site and zoning constraints identified as relevant to this unique site and the variances required for relief should be permitted to facilitate an intended use of the subject property, for residential purposes.

In his review of the immediate and geographic neighborhood, he noted the subject property to be located within a planned community (Crescent Point). He noted the broader neighbourhood to consist of one and two-story detached dwellings with a variety of sizes, design styles and age of construction differences. He emphasized examples of the larger buildings and built forms on the lakefront - as opposed to the interior lots - and said that the proposal would be compatible in built form, in relation to comparables on the lakefront.

In the immediate context, he described eight frontages on Lake Crescent and the variety in their lot sizes, types and in floor areas. He noted their character as being single detached with fsi's that run between 0.18 times lot area and 0.53 times lot area, there being no prevalent characteristic.

He looked at 31 lots in the broader Lakeshore area affected by the TRCA hazard limit. There, densities range from 0.1 times to 1.03 times lot area. He said that these examples are existing, they are appropriate and they are compatible: the subject property proposal would replicate these examples. He felt that it in terms of built form and the Official Plan, including the neighbourhood policies, the proposal would be introduced into a stable but not static residential environment in a manner that 'fits', in a compatible sense with the official plan policy considerations in 4.1.5 c), related to heights, massing, scale and density; and d), privacy and setbacks.

He was of the view that the proposal on the irregular size and shape of the subject property can coexist with the diversity shown in the neighborhood; in his view, its visual impact is reasonable and within the range of existing conditions and approvals on the normal walk test. He felt the height of the proposal was reasonable and comparable and not out of place in the context of the existing neighbors. The proposal is for a two-story building up with attractive massing that can co-exist without impact. He felt the setback from the street line proposed is typical and, based on an average and did not create a unique precedent that was inappropriate or unreasonable.

He concluded that there would be no impacts on the public realm. He supported the advice from Michael's Spaziani, to follow, that the proposed massing against street proportions was appropriate, that this large lot can take a larger house and that the setbacks are reasonable. With respect to actual grade, he felt there would be no shadow impacts and no privacy or overlook concerns. He felt the platforms were appropriate for Lake views and they had no effect on the public realm.

With respect to concerns expressed by the neighbours as to the effect on their views, Mr. McKay adopted Mr. Spaziani's evidence on the proposal constituting good urban design but advised that there were no applicable Official Plan policies dealing with

protected views. He noted that the proposal is for a larger house that would reduce some views but not to the extent of it being a planning concern. He felt there would be no impact on views from the park of the lake and that the tree screening currently in place was being preserved. As such, he was of the opinion that the proposal and the variances were in conformity with the Official Plan, consistent with the Provincial Policy Statement, and optimized and conformed to the Growth Plan and its infrastructure policies relevant to hazard lands all in a manner consistent with fully addressing the technical studies necessary to meet urban design standards.

For the reasons described in his Witness Statement, Supplementary Witness Statement and his oral evidence, he felt all the variances, individually and collectively, met the statutory tests and that the appeal should be allowed on the terms of Exhibit 7.

Cross examination and questions were deferred.

(On DAY 2, Mr. McKay added his view that the proposal would not dominate even at its scale and that there were no comparable lots to this unique site that could constitute the basis of a concern for precedent. He introduced an updated landscape plan and endorsed its acceptance reflecting the modifications in Exhibit 7:

Ex. 9: Updated Site Plan and Landscape Plan prepared by Daniel O'Brien, Landscape Architect dated November, 2020.

On Day 2 there was no cross-examination or questions of Mr. McKay.)

Continuing with Day 1, Mr. Michael Spaziani was qualified to give expert opinion evidence in respect of urban design. His architectural practice was described as 'a blend of the real and theoretical with the public interest at heart focused on public and private balance respectful of the public realm'. He had been retained in February 2020 in response to earlier concerns expressed by opposing Parties that the project architect, Mr. William Hicks, would have had a conflict of interest. Mr. Spaziani had signed an Acknowledgement of Expert's Duty, Form 4; he was admitted without challenge and by reference to Exhibit 4 and 5, he provided opinion evidence on the proposal for the subject property.

In approaching urban design in the context of architecture for the subject property, he said the starting point was to examine whether: the project was in the right place; it demonstrated the correct approach to its context; the policy and built form respected design elements; and impacts on shadows, overview and prevailing character helped to inform his opinion of the proposal.

Upon his retainer in February 2020 he embarked on this type of review using the City property database, aerial photographs and survey data to generate a three dimensional view to achieve an experience and sense of place.

To achieve this, he examined the mix and scale of lots on Island View, across from the subject property, and from the public realm on Lake Crescent and as present in the

public park. As with Mr. McKay, he saw one and a half two-story detached residential built form buildings with variable lot sizes and larger lots on Lake Ontario.

He examined Island View in detail and 'tested' the fsi on a typical lot. He noted that the built forms of housing were not parallel to the street but demonstrated a unique characteristic that they were staggered ('saw tooth') relative one to the other.

He observed that this setback pattern is included in the subject property proposal by facade treatment and step backs.

He examined the landscape zones and noted the front views of the subject property were being retained in character with landscape and open space features being an important component of the proposed design. In terms of materiality, he noted Dr. Engel's property, at the corner, to be at important visual location and reflective of the Frank Lloyd Wright school of residential architectural distinction. In contrast, he noted that number 1535 consisted of almost 4 stories in height whereas number 723 Island View consisted of a small bungalow.

In terms of urban design, he described the zoning by-law as a blunt instrument of control assuming a grid pattern whereas the character of the street wall alignment in the immediate vicinity is not that and that it is critical to consider if equality is required. The subject property is not within the traditional grid pattern and the placement and articulation of the proposal on the subject property adapts itself, in his view, to the facets of Island View.

He advised that the built form of the subject property proposed a basement walkout, accommodated by the grade differential from Lake Crescent to Lake Ontario. As a consequence, being dictated by the zoning by-law to be the floor closest to grade, the basement is identified as the first floor. He said this prompted a three-story building description by definition whereas the reality from the public realm it is two stories. He described an 'apparent interest' in the by-law to control compatibility, to reduce overview, to maintain privacy and to control building length/depth for purposes of avoiding impacts of shadowing and massing. However, he stated that the subject property and its lot configuration as employed by the proposal does not constitute something that is 'different' from the purpose of the controls, insofar as it could be said to reduce compatibility. No impacts were demonstrable.

In his opinion, by reference to the Exhibit 1, tab 26, updated renderings, he opined that there is no strong public presence experienced by the proposal that constituted a conflict with by-law prescriptions that were meant for a different context.

He accepted that the proposal constituted a large building both in appearance and, by virtue of the fsi description including the size of the basement space. For this, however, he said there would be no visual impact and consequently no public interest offended in maintaining and in allowing the basement space to contribute to and be described in the fsi measure.

He was of the opinion that the proposal reflected the legacy frontages and building pattern of large lot, spaces and the presence of retained landscaping. He suggested the proposal would be a “building set in its landscape”, articulated so as not to create a continuous Street wall. Together with retained mature and enhanced landscaping, he said these design elements constituted an important reflection of the neighbourhood and its pattern.

He observed that one access driveway and a two car garage to be typical building features. He observed that the oblique view of the project rather than a flat “head on” rendering would be more representative of the public experience where “the building will unfold to you as a series of recesses in a compatible manner”.

Through the representative drawings, he examined the “view gap”: from Island View; from Lake Crescent, from the property of Dr. Engel to the park on the lakefront.

He said that the view corridors will be maintained and not jeopardized with some small gap reductions. Through the use of visual graphics of his 3-D model, he identified view planes and dimensioned reductions. He said there would be no beneficial effect in further reducing the proposed home's size, as a basis to complement views or augment the gap affect, given the presence of mature trees. He believed the progressive increase in views depicted in the modelling would continue. Further, that the impact of the mass of the two-story house form, being broken down by design and the one-storey portico and garage features, reflected in appropriate scale. He noted that the angle of approach, the box front window, the one-story porch, the stepbacks and the main wall height repose at 6.1 m - all contribute to be a reasonable expression of massing removing any visual perception of an overbearing front wall.

In summary, he supported what he called successful architectural elements whereby the home revealed itself in stages and was individualized and reflective of the use and form of adjacent properties. He noted that 70% of the lot would remain in landscape open space, a high percentage not different from the properties on island View.

He noted that the views from the park were unaffected - of the City skyline. Further, that insofar as much of the subject property constituted useable land, it would remain visible but private, permanently being retained and protected by TRCA approvals.

On DAY 2, he added his view that the proposal should not be set back from the street to the By-law standard of 12.84m as that is not the pattern on the streets and it would not constitute good urban design. He emphasized that in the case of a 2m elevation drop on the lot towards Lake Ontario, the fsi measure could not be an accurate reflection of massing as it had no measurable urban design impact from the public realm. He presented photography to demonstrate current view angles, including **Ex. 10**, Photograph, northwesterly view from the Lake Crescent park along the lake front and subject property shoreline (his ‘Park 5B’).

In questioning by Dr. Engel only, Mr. Spaziani reiterated his opinion from the photographic evidence that the proposal would not constitute a negative impact on Lake

Crescent or the park and its access. He acknowledged that there would, by virtue of the house, be some reduction in sky view lighting filtered through the existing mature trees.

He agreed that the public realm is the primary concern and that it is the public realm that was the focus of his examination.

DAY 2

This day proceeded 'virtually' with all aforementioned persons listed present, except for Mr. Robert Brown who was reportedly ill and had expressed regrets to the Parties. His evidence was agreed to be stood down in the manner later described via a Ruling.

Apart from as above noted, the Tribunal heard from Dr. David Engel (Party), Ms. Anastasia Jacubasz (Party), Mr. James Elliot (Participant) and Luke Vitali, a local owner who had not elected any Hearing status. Participants Mary Jane Benedetti and Anne Thorburn elected not to speak.

There was no reply evidence.

Dr. David Engel, a 25 year resident located across the street from the subject property, gave evidence and observed that the proposal still 'had not come to terms' with the zoning by-law permissions whereby a building of '4565 sq. ft. is permitted'.

Despite this, he referred to Ex. 1, Tab 22, p.16 referencing the image showing, in red, the shape of the 'buildable area' on the lot, taking into consideration the TRCA 'hazard line and zoning setback requirements.

From this he developed a series of statistical measures demonstrating, in his view, the "excessive variances" sought that cannot be considered minor:

- a) 10% of the proposals design footprint falls within the lawful buildable footprint and 90% of the project, excluding decks (92% excluding the garage) is "illegal";
- b) 48% of the lawful buildable area is not used;
- c) There are no examples of front yard setback reductions as sought and the proposal is a 60% reduction on the minimum permitted;

While acknowledging that the approval of a variance of the 10m setback requirement from the TRCA hazard line creates the need for multiple other variances, he suggested that the proposal is an example 'of the overreach of the design and the confidence of the designer'. In his view, the design is inappropriate and contrary to the Official Plan, section 3.5 with the variances requested being numerically excessive, both individually and collectively.

He said that at 11,500 sq. ft. 'there would be no hardship with a smaller house'.

Dr. Engel had filed a brief Witness Statement including the following summary of his position:

Although the present owner of 1 Lake Crescent has allowed the house to fall into a state of disrepair, at approximately 3,000 square feet, it still harmonizes with the prevailing neighbourhood character. The proposed **house design** would not. The majority of homes in our neighbourhood are essentially unchanged from the fifties. In summary, the variances requested are not minor and would be **detrimental to the character** of our neighbourhood (emphasis added).

Under cross-examination, he acknowledged that the Applicant/Appellant had made improvements to the proposal but that his opposition remained unaltered. He stated: “I have no problem with anything within the terms of the By-law, only those aspects that are outside the by-law are problematic to me”. Later, he stated: “Minor variances are understandable but any building east of the existing residence is over-the-top excessive.”

He was adamant that his views of the lake would be diminished.

Ms. Anastasia Jacubasz, a 38 year resident on Island View gave evidence on the basis of a local knowledge expert. She described the proposal as not being “respectful of the immediate neighbours.”

Ms. Jacubasz had prepared and filed a Witness Statement and a very respectable volume of exhibits and materials, including an extensive photographic record of the immediate area. She had prepared and filed a highly detailed response to Mr. McKay’s responding Expert Witness Statement and had filed other responses, materials and commentaries.

Her amplification of the project as not being ‘respectful’ was augmented by her submission that it would be “out of keeping with the scale and character of the neighbourhood as not being justified or desirable.”

She was of the opinion that the proposal was an overreach in terms of fsi, would destabilize community values and constitute a permanent alteration to the unique character of the residential enclave.

While disavowing the suggested ‘issues’ refined by Ms. Stewart, she addressed the following additional opinions:

- a) Landscaping and preservation of trees is meritorious but does not serve to mitigate the variances or compensate for the mass of the proposed residence;
- b) Views are not specifically sought to be preserved but the rather the goal is to prevent an undesirable structure having an adverse effect on the character of the immediate area;
- c) An fsi of 0.88x lot area, double the by-law maximum, is a critical indicator of overbuilding of a “massive” structure whose scale and proportions far exceed the by-law, are not respectful of the

- neighbourhood patterns and character, and are destabilizing, especially to the immediate neighbourhood 'within sight';
- d) The immediate neighbourhood has an isolated presence for which referenced comparative examples on the Lakeshore are not relevant;
 - e) The elements that are characteristic of the immediate area not respected: modest, two storey homes, setbacks, and occupied frontages. She noted the distinctions between the proposal and 10 Lake Crescent, and eschewed any rationale that 'executive housing' is not part of the local character;
 - f) She disavowed calling the proposal 'intensification' under the Provincial Policy Statements and Growth Plan as a rationale, citing subject areas not met: climate change objectives; compact redevelopment, local conditions and affordability;
 - g) The proposal will have significant impact and disregards the Official Plan.

Under cross-examination she acknowledged:

- h) The landscape plan, Exhibit 9 is desirable;
- i) While there were improvements made, including a reduced fsi and better views for the closest neighbour, the proposed house would continue to have a "very significant presence" that only a 'full and accurate reality of the perception of space' can replicate;
- j) Housing in the immediate context is not uniform in sizes, type, setbacks, side yards, frontages; staggered and 'saw-tooth' building locations are an accurate description as is the propensity to build new housing that is larger than the original;
- k) The proposed building on the subject property "does not impede my personal views";
- l) There is a correlation between lot width and width of the residence and 1 Lake Crescent would present a larger lot frontage "but a larger building width is not a necessary conclusion";
- m) An unfamiliarity as to whether the zoning regulations in By-law 569-2013 respecting fsi, established grade, and the TCRA hazard limit are new to the area, post 2013.

Mr. James Elliot, a resident on Island View Boulevard spoke objecting to the mass of the proposed structure from a street view perspective. His remarks were augmented by use of the front façade line drawing found in Ex.1, Tab 14, being a two dimensioned street elevation rendering.

He described the proposal as a character change, increasing the existing residence from 68 feet of frontage to 130 feet with greater than 30 feet in height 'above grade' – an increase in massing of 185% beyond existing. He analogized the proposal to a street mass of three (3) of the existing homes.

He defined mass as "the street frontage length x height".

He also identified a requested height increase of 15%, an fsi increment requested of 2.2x the by-law permission and a further variance to the front yard setback. In his view, these requests did not reflect the intent of the Official Plan that change be “sensitive, gradual and fit”.

He supported Ms. Jacubasz’s assertion that Lakeshore Road properties with large setbacks were by no means similar to the current proposal, where height, fsi and setback relief are all being requested simultaneously.

Mr. Elliot challenged the Applicant/Appellants efforts at community consultation calling then exclusive to one neighbour, reactive, and disrespectful of neighbours time.

He felt that 130 feet of building frontage would be most significant to pedestrians using and appreciating the park which, he felt, spring and summer coloured renderings of landscaping did little to ameliorate.

He introduced:

Ex. 11, four photographs showing site views from Island View and Lake Crescent, to the park.

He suggested from observational experience that lake views will become, over time, severely impeded by immediate neighbours building ‘privacy walls’ and protective landscaping having the effect of reducing public views.

He suggested that scale and majority of the variances should be dealt with through a rezoning where a more thorough and deliberate set of investigations, public consultation and planning considerations could be applied.

Mr. Elliot was cross examined by Ms. Stewart and he provided the following responses admissions:

- a) The loss of views to the lake is a recurring theme he had experienced and is contrary to the Applicant/Appellant’s view that a ‘significant view of the lake’ is maintained.
- b) The frontage of the subject property looks longer than all the others, the landscaping is appropriate and the side yard setbacks equal or exceed those common in the immediate vicinity;
- c) Less than 40% of the lot frontage is occupied by building whereas most houses in the immediate vicinity occupy greater than 40% of lot width, as viewed from the street;
- d) The major inadequacy of the evaluation process to date was the community consultation; although all views had had the opportunity of being presented;
- e) He was not aware in detail of the consideration given sequentially to the redevelopment of 6 Lake Crescent referenced in his Participant’s Witness Statement, including an approved fsi variance to 0.49x lot area v. the proposal at 0.244x lot area, over its total lot area;

- f) He would expect in the case of redevelopment that an applicant would apply for a larger home.

Ex. 12, Participant Witness Statement of David Elliot.

Mr. Luke Vitali, an owner of nearby lots on Island View Blvd suggested only a small minority of residents were opposed to the project on appeal.

Ms. Jacobasz interjected to state that a lack of participation is not an endorsement (of any position) and the objective is to give careful consideration to the requests.

There was no reply evidence and the materials filed by the proposed witness, architect William Hicks, is not further considered.

In Submissions, briefly summarized, **Ms. Stewart** urged a decision be made on the evidence noting that that of Mssrs. McKay and Spaziani went unchallenged.

She reviewed the Witness Statement of Robert Brown noting the essential absence of any opinion expressed by him as well as a total failure to address the revisions to the Application, post the COA decision. She noted that he is not a qualified land use planner.

Ex. 13, Witness Statement of Robert Brown.

She noted the assessments made by Planning Staff, Urban Forestry and the TRCA and their satisfaction with the variances and conditions contained in Ex.7, subject to the Ex. 9.

She asked that weight be attributed to the Decision of TLAB Member Yao in *5 Pine Crescent*. Member Yao gave weight to existing site conditions as factors contributing to the requested relief from the City's comprehensive harmonized zoning By-law 569-2013, in circumstances due to required setbacks from an environmental feature, a ravine, as opposed to Lake Ontario. She urged acceptance of an effective fsi density of 0.244x entire site area, less the basement, a calculation not in evidence.

She urged that the perceived height of the proposed residence will be 2 storeys that will appear less than the by-law standard with relief only required at the lake side where no other buildings are present.

She urged the undisputed conclusion that any replacement house would require variances, that there was present independent professional opinion evidence that good urban design standards were employed. In the immediate area, she noted that it was agreed that there is no uniformity in lot size, building configuration, setbacks, unit types or house sizes.

She reminded the panel that there was no policy support or legal proposition of a 'right to a view'. In any event, she urged there was no evidence of any direct impact meeting the standard of an 'undue adverse impact', or equivalent.

She said the absence of consultation was a critique that on the evidence was neither fair nor warranted.

Dr. Engel submitted a brief summary view disagreeing generally with Ms. Stewart while acknowledging that 'architectural design' is not an issue.

His position on both Mssrs. McKay and Spaziani was to the effect that the proposal is the wrong house for this location: "If zoning by-laws were written with respect to the view from the street, they would have been written as such. Namely, unless there is something more than personal views, variances from the by-law should be denied."

Ms. Jacobasz submitted that she had given the proposal both fair and measured consideration in light of her understanding of design and the policies in place, including endorsements to exceed by-law maximums.

She felt an 11,000 sq. ft. + house to be "not close to 'modest'." She eschewed the philosophy that 'bigger is better' as a rationale to offset the fact that the community is the most directly involved. She rejected the suggestion that there was no impact, holding instead that the proposal was not appropriate "and damaging to the spirit and intent of area character protected by the zoning by-law and Official Plan."

Ms. Stewart replied by stating that assertions of impact require a demonstration of the substantive nature of the impact; here, she said, there are no discernable impacts of a traditional land use planning nature or that a smaller home could affect.

I thanked the spokespersons for their candour, diligence in preparation and attendance, and the commitment and civility they had all demonstrated throughout the two Hearing days.

In order to not deprive the Party, Dr. David Engel of the benefit of his further evidence deferred through the illness of Mr. Robert Brown, following submissions, I made the following Ruling:

"Ruling: Following the submission of evidence and submissions, on the consent of the Parties and in recognition that the evidence of Mr. Robert Brown (beyond a review of his Witness Statement) was not heard due to illness and incapacity to participate, this matter is adjourned on the following terms: Robert Brown shall have until December 7, 2020 to provide further particulars to the Parties and the TLAB by way of written evidence, for consideration, provided such evidence is within the context of his existing Witness Statement (Exhibit 13); further, that any references therein are applicable only to existing filings and Hearing Exhibits. No new file materials or exhibit submissions, that have not been previously disclosed, will be permitted. The Parties will have until December 11, 2020 to provide submissions on any further contribution provided by Mr. Robert Brown."

The Hearing was adjourned.

On December 07, 2020, the TLAB was in receipt of a 12 page document consisting of nine pages of 'speaking notes', in 20 paragraphs, from Mr. Robert Brown.

Ms. Stewart provided a 'Response to Submissions of Robert G. Brown' that was filed with the TLAB on December 11, 2020.

These are included as **Exhibits 14 and 15**, respectively, to the Hearing file.

It is clear from the speaking notes of Mr. Brown that they were drafted following the COA decision and refer to the 'nine variances' (para.5) as they then were.

At para. 11, Mr. Brown asserts "a very strong planning justification is needed to support the proposed built form"; there is no recognition he had informed himself of the evidence provided in the oral testimony of the Applicant.

A series of statistical measures are thoroughly expressed in comparing his observations to the then Application, the by-law and the immediate neighbourhood he selected for comparative purposes. He finds the variances unsuited to the intent and purpose of the by-law on his observations of their scale and comparative observations, generally left unspecified.

He does this with respect to the original 'Variances Requested by Waiver' without acknowledging the Zoning Review subsequently filed and exhibited.

He emphasized that the zoning shoreline setback of 10 m is mandatory and is simply not observed in the Application to vary.

In his 'Analysis' section, paras.14-18, Mr. Brown chooses excerpts and attaches fuller Official Plan references respecting policy support encouraging 'little physical change' in the Neighbourhoods designation, the need to reinforce the existing physical character of buildings and streetscapes, minimize visual barriers to public spaces along the water's edge and promote physical built forms 'designed to fit harmoniously...limit its impact...frame adjacent streets...(in) prevailing heights, massing, scale, density and dwelling types of nearby residential properties."

In regard to these policies, Mr. Brown concludes the variances sought fail to meet the intent and purpose of the Official Plan.

In turn, Ms. Stewart in Exhibit 15 suggested that Mr. Brown has again offered no substantive basis to answer the professional opinion evidence of Mssrs. McKay and Spaziani.

She pointed out (para.7) that there is nothing in the material submitted by Mr. Brown that addresses or recognizes the revised application, that acknowledges the effect of grade on the appearance of built form (para.8.b.,c.) or the 'technical inclusion of the basement in the FSI calculation' (para. 8.e.). She notes a failure in his submission to address the evidence that the standard for front yard setback is adjacent housing - or the fact that most proposed platforms are at grade and provide no overlook potential to adjacent residential dwellings (para.8.g.,h.).

She decried the failure of Mr. Brown to support his concluding advice by reference to any concrete examples of relevance, i.e., “without reference to any substantive reasons or evidence” (para.13).

ANALYSIS, FINDINGS, REASONS

At issue in this proceeding is the interpretation and application on appeal of the relevant tests to the variances sought wherein several seminal facts are not in dispute:

1. The subject property has been used for a single, detached, two-storey residential purpose for many years; a replacement unit of the same two-storey dwelling type is sought;
2. Existing improvements on the property are to be removed as being derelict, vandalized and generally supported as being eligible for redevelopment;
3. Delay in site development and mis-communication to the disadvantage and inconvenience of all concerned can reasonably be connected, in part, to title issues;
4. Provincial policy, TRCA Regulations and applicable Official Plan policies and site specific zone regulations constrain the legal lot in three material ways:
 - a. Set a shoreline protection hazard zone on the lot where development on over 50% of the lot is precluded;
 - b. Establish setback parameters further constraining the building envelop;
 - c. Due to the topographic downward slope of the lot to Lake Ontario, the application of the definition of ‘grade’ that fails to recognize actual grade at the street and generates required relief for main wall height, platforms and FSI measures that are argued to bear no practical relation to measures of prevailing heights, massing, scale and density.
5. The only professionally qualified evidence in land use planning and urban design supports a set of 10 revised variances that have served to scale back elements of the proposed built form of a much larger replacement residence.
6. The subject lands are located on Lake Ontario in a valued, prestigious and exclusive immediate residential neighbourhood that is undergoing renovation and redevelopment.

As indicated in the submissions on behalf of the Applicant, this is not a first instance consideration of lot topography having an influence on the building envelop allowed under zoning, and consequential relief required to address a redevelopment proposal.

Across Toronto there are lakefront properties, ravines, hills and geographic features or functions that generate consequences for development. Zoning by-laws, since their earliest inception, have tended to address categories and areas of development recognition or opportunity. The approach of simple zoning, to define use districts with associated performance standards, was the early norm. As opposed to more recent site specific and site plan zoning, the subject property is regulated by a zoning instrument, By-law 569-2013, that is simple and geographically sweeping.

This is not an instance of requested variances to a site specific zoning bylaw.

While the creation of zone districts may include geographic limits that take into consideration topographical or vegetative features, they are generally not designed to accommodate nuances of topography on a more refined lot by lot scale.

In the instant case, the subject lands have uniform zone regulations applied that serve to govern a wider area with differing geographic and topographical features. While the real world appreciates that property located on Lake Ontario differs from properties between Lake Crescent and Lakeshore Boulevard, zoning may not do so. The larger district, as here, demonstrates a uniformity of regulatory application while the reality of a particular site may not be recognized.

In this appeal the particulars of the lot, especially item 4, above, are argued on the one hand to cry out for relief, to enable redevelopment and neighbourhood investment. On the other hand, local residents forcefully argue not for the absolute strict application of zoning regulations, but the application of policy and neighbourhood 'fit' to deny the current proposal, preferring something else to its proposed design – generally described as being lesser in scale.

I find that the opposition is informed and not fixated on a strict application of all TRCA and zoning regulations. I also find that the Applicant has supported revisions to zoning by way of its revised variances application that is professionally supported and largely unchallenged, in terms of qualified opinion evidence on the policy and statutory tests that are applicable.

I find that Mr. Brown, retained by Dr. Engel, did not provide any lay supported or qualified planning opinion evidence to counter the expert testimony provided on behalf of the Applicant. Mr. Brown's materials, Exhibits 13 and 14, did not provide support for its generalized submissions, did not address the Application as revised, did not address the opinion evidence of Mr. McKay or Mr. Spaziani, was unable to be subjected to formal cross examination due to circumstances and failed entirely to consider the ramifications of topography and shoreline regulatory implications for the subject property.

While not confined to factual evidence and not being qualified as a land use planner, I find it inexplicable from this witness that the factor of geography, location and topography would not factor into even a lay citizen's appreciation of site conditions and their implications. No rationale or explanation was provided; indeed, the implications of the shoreline hazard protection zone and site elevation changes were not acknowledged or evaluated. The suggestion that a 10 m setback from the shoreline hazard protection limit is 'mandatory' and not being followed, is not an evaluation assessment and fails to acknowledge the support received by the Applicant from the TRCA and City for the proposed areas of encroachment.

In my view, it is not open to the TLAB to blindly follow and apply zoning regulations when their applicability is sought to be varied. It must be open to the circumstances, including the three dimensional plane, where relevant. The circumstances of a particular

property may be relevant and therefore are to be included in the assessment of merit. Often this can resolve itself into a determination on the measure or matter of the degree of change sought. Guidance is provided via the aforementioned Jurisdiction section, and applicable case law.

In this case, area residents zealously pursued their concerns. While evolving their representations in response to the factors recognized by the Applicant and never transgressing into absolute intransigence in support of any particular zoning regulation, theirs was an appreciation of 'fit', feel, compatibility and streetscape imagery, imaginative or otherwise. I find the concerns expressed unduly reliant on design preferences and an imagined definition of 'massing', without policy or regulatory support. In their evidence, I saw no desire to ignore site characteristics, but rather a simple preference or bias for something other than even the re-scaled proposal of the Applicant.

On the evidence, I categorize these challenges as apprehensions over more traditional and concrete measures of unacceptable change to policy protections, excess scale, or undue adverse impacts. Whether styled as a loss of views or perceptions of a changed streetscape, something more tangible than preferences or apprehensions is required to challenge qualified opinion evidence in this circumstance.

In addressing issues framed by Ms. Stewart in her correspondence of October 15, 2020, Mr. McKay described his central thesis with which I have substantial agreement. Namely, that the redevelopment of the subject property of necessity must deal with and respect the lakeshore hazard line limit established by TCRA.

The planner McKay said it is that line and the line that establishes the grade calculation that affects the floor area and the setbacks as measured under zoning. Moreover, I agree that on his analysis nothing could be built on the lot that was reasonable without resulting variances. The reduction in the lot size/building envelop creates an artificial environment in which the existing legal lot cannot be used for FSI calculation purposes.

Moreover, the zoning definition of grade, insofar as it established the basement level as the first floor and includes that space for the calculation of FSI was said to also create an artificial environment by numerically increasing the variance request without regard to on-site conditions. I agree and find that the cumulative relations in the variances sought have a similar origin.

In these matters I agree with the professional evidence as above recited and included in the Exhibits and pre-filed materials.

I find that, relying on the combined assessments of Mssrs. McKay and Spaziani, the proposed single detached dwelling will not have an imposing height appearance. As the grade of the lot at street-side yields an apparent building height well under zoning permission of grade if measured at that point, neighbourhood residences will not be 'dwarfed'. The physical appearance of height will be less than that available to the neighbours, as viewed from the street.

Dr. Engel suggested that if zoning ramifications were to be viewed from the street or public realm, the zoning instrument would say so. I find that while the statement is an intriguing proposition, zoning is a multi-dimensional instrument clearly addressing conformity regulations of relevance to the public and private realms of adjacencies.

I find that building articulation serves to break up the façade and agree with Mr. Spaziani that streetscape is protected by the orientation of the garages, building and bay window articulation, materials replication, a one-storey component and a replicable setback analogous to other properties in the immediate area.

I find the concerns with the balconies' relief requested, if maintained, to be purely speculative and argumentative: there is no overlook, save perhaps to boats on Lake Ontario. Most of the platforms are at grade; others have been scaled back. The Applicant's plan revisions, if ordered, will serve to curtail the scale of above actual grade platforms.

On the matter of FSI, I find that the by-law is requested to be significantly exceeded for good reason. Should the lot have conformed with others in the zone district having flat grades, the basement space would not have had to be incorporated into the calculation of FSI. If the whole of the ownership lot were to be calculated, FSI would not be a factor. The numbers reviewed in this decision are instructive to conclude that the visible floor space component of FSI, the building size that contributes to the perception of scale, massing and built form, is equal to or less than expected or permitted under zoning. Indeed, in round terms, half of the proposed floor space is not visible from the street.

The failure by many to publicly acknowledge this influence over so many efforts at evaluation is unsupportable.

The opponents are of the opinion that the resultant mass of the proposed dwelling, principally its length of on-street frontage, is overbearing, obstructive of light, air and views and detrimental to the 'dappling effect through the trees of the setting sun'.

These observations are firmly held and understandable, but they are not the product of the variances sought, beyond some aspects of the positioning of the proposed building on the lot. That positioning reflects an extension of the existing now defunct residence. The building width extension is not a variance issue in itself and I have found the degree of the variances to be appropriate on the evidence tendered, both planning and urban design. Appropriate setbacks on all yards are being maintained. Wide shallow buildings on lots are an acknowledged component of urban design.

As herein, it has often been said and it bears repeating that the Official Plan does not protect individual view planes in residential neighbourhoods. In addition, here, landscaping is to be maintained and enhanced and the neighbourhood is the recipient of investment and improvement in the value of the subject property. Some say it is an error to build the largest residence on the street, but that is an individual decision provided the principles of good community planning prevail.

I am satisfied on the evidence and for the reasons expressed here and in the Applicant's evidence that the proposal is a credible contribution to this rather exclusive neighbourhood. The proposals scale, mass and location do not offend area character.

I find that the policy and statutory tests above enunciated have been met by the variances, as revised, individually and cumulatively and in a manner fully consistent with principles of good community planning.

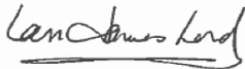
DECISION AND ORDER

The appeal is allowed. The variances listed are approved subject to the conditions both of which are listed **in Schedule 1**. It is noted that Variance 9 is actually two variances making a total of 10. Variance 10 was added without objection and I have found it not to require further Notice under section 45 (18.1.1) of the *Planning Act*.

Construction is to be substantially in accordance with the site plan and landscape plan (Exhibit 9) attached as **Schedule 2**.

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

X



Ian Lord

Panel Chair, Toronto Local Appeal Body

Signed by: Ian Lord

Schedule 1

Revised List of Variances and Conditions.

Schedule 2

**Updated Site Plan and Landscape Plan prepared by Daniel O'Brien,
Landscape Architect dated November, 2020.**

EXHIBIT

Case File Number: 19 248474 S45 03
Property Address: 1 Lake Cres.
Date Marked: October 20, 2020

1 Lake Crescent

Revised List of Variances and Conditions

1. **Section 10.20.40.40.(1), Bylaw 569-2013**
The maximum permitted floor space index is 0.4 times the lot area (508 m²).
The proposed dwelling will have a floor space index of 0.88 times the lot area (1,122.6 m²).
2. **Section 10.20.40.70.(1), By-law 569-2013**
The minimum required front yard setback is 12.84 m.
The proposed dwelling will be located 5.12 m from the front lot line.
3. **Section 10.20.40.20.(1), By-law 569-2013**
In the RD zone with a minimum required lot frontage of 18.0 m or less, the permitted maximum building length is 17 m.
The proposed building length is 18.73 m.
4. **Section 10.20.40.10.(6), By-law 569-2013**
The permitted maximum height of the main pedestrian entrance above established grade is 1.2 m.
The proposed height of the main pedestrian entrance above established grade is 2.18 m.
5. **Section 10.20.40.10.(2)(B)(ii), By-law 569-2013**
The permitted maximum height of all side exterior main walls facing a side lot line is 7 m.
The proposed height of the side exterior main walls facing a side lot line is 8.26 m.
6. **Section 10.20.40.10.(1)(A), By-law 569-2013 and Section 340-30.A.(7), Mimico Zoning By-law**
The maximum permitted height of a building is 9.5 m.
The proposed dwelling will have a height of 10.95 m.
7. **Section 10.20.40.50.(1)(B), By-law 569-2013**
The permitted maximum area of each platform at or above the second storey of a detached house is 4 m².
The proposed area of the covered main pedestrian entry at the second storey is 8.4 m².
The proposed area of the platform at the second facing the lake is 59.9 m².
The proposed area of the platform at the third storey facing the lake is 8.6 m².
8. **Section 10.20.40.50.(1)(A), By-law 569-2013**
The permitted maximum number of platforms at or above the second storey located on the side wall of a detached house is one (1).
The proposed number of platforms located on the side wall facing the lake is two (2).
9. **Section 5.10.40.70.(6) and Section 5.10.40.80.(1), By-law 569-2013**
If the Toronto and Region Conservation Authority determines that a shoreline hazard limit or a stable top-of-bank crosses a lot, a building or structure on that lot must be set back a minimum of 10 m from that shoreline hazard limit or stable top-of-bank.
The proposed building is setback zero (0) m from that shoreline hazard limit.
A building or structure may also be no closer than 10 m from a shoreline hazard limit or a stable top-of-bank not on that lot, as determined by the Toronto and Region Conservation Authority.
The proposed building is setback 7.5 m from the shoreline hazard limit on the adjacent lot.

Conditions of Approval

1. The proposed dwelling shall be built substantially in accordance with the following plans prepared by Hicks Design Studio, revision dated December 11, 2019: Site Plan (A3.0), North & South Elevation (A401), and East & West Elevations (A402).
2. All new windows and clear balconies facing the shoreline shall be constructed with bird-friendly treatments.
3. New exterior light fixtures shall be dark sky compliant.
4. New planting on the subject site and along the street frontage shall be of native species, and generally consistent with the Proposed Overall Landscape Plan dated February 2019, prepared by Daniel J. O'Brien & Associates Ltd.
5. The owner shall submit a complete application for a permit to injure City owned tree(s), as per City of Toronto Municipal Code Chapter 813, Trees Article II Trees on City Streets.
6. The owner shall submit a complete application for a permit to injure privately owned tree(s), as per City of Toronto Municipal Code Chapter 813, Trees Article III Private Tree Protection.
7. A permit shall be obtained from the Toronto and Region Conservation Authority prior to any works taking place on the property, and/or the issuance of any municipal building permits.

VEHICULAR PARKING AREA/GARAGE LAYBY TO BE NATURAL STONE SOLDIER COURSE
W/ NATURAL STONE INLAY (OPTIONAL: ASPHALT OR CONCRETE INLAY)

VEHICULAR ASPHALT ENTRY DRIVEWAY (20'-0" WIDTH) W/
NATURAL STONE SOLDIER COURSE

EXISTING TREE TO
REMAIN (TYPICAL)

LAKE
CRESCENT

CUBICAL LIMESTONE ROCKERY RETAINING
W/ LANDSCAPE GARDENS OF DECIDUOUS/
CONIFEROUS TREES, DECIDUOUS SHRUBS,
GROUNDCOVERS, PERENNIALS, AND
ORNAMENTAL GRASSES (TYPICAL)

PROPOSED
RESIDENCE

EXISTING TREE TO
REMAIN
(TYPICAL)

LIMIT OF EROSION HAZARD
(AS AGREED TO WITH TRCA)
@ 0.225m/y

TOE OF STRUCTURE

LIMIT OF FLOOD HAZARD

LIMIT OF STABLE TOP OF SLOPE
ALLOWANCE AT 2.2H:1V

WATERFRONT TOP OF BANK LINE AS EST.
BY CITY OF TORONTO @ ELEVATION 77.70M

LAKE
ONTARIO

Toronto Local Appeal Body
EXHIBIT

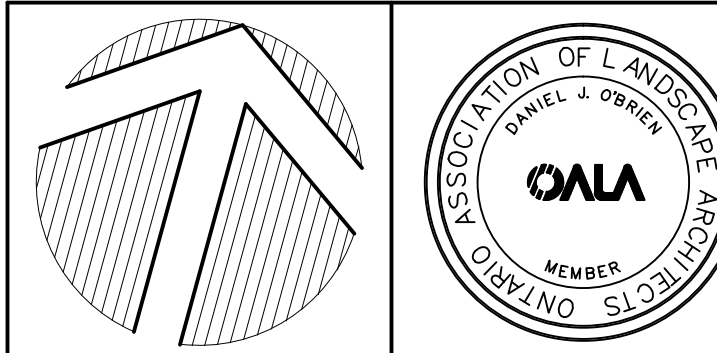
Case File Number: 19 248474 S45 03
Property Address: 1 Lake Cres.
Date Marked: November 26, 2020

ALL DRAWINGS REMAIN THE PROPERTY OF
THE LANDSCAPE ARCHITECT AND SHALL
NOT BE REPRODUCED OR REUSED WITHOUT
THE LANDSCAPE ARCHITECTS WRITTEN
PERMISSION.
THIS DRAWING SHALL NOT BE USED FOR
CONSTRUCTION OR TENDER PURPOSES
UNLESS SIGNED AND DATED BY
DANIEL J. O'BRIEN & ASSOCIATES LIMITED

DANIEL J. O'BRIEN
O.A.L.A. C.S.L.A. DATE

REVISIONS:			
DATE	NO.	ITEM	BY

PLOT DATE: NOV 16/2020



**DANIEL J. O'BRIEN
& ASSOCIATES LTD.
LANDSCAPE
ARCHITECTS**

LANDSCAPE ARCHITECTS, LANDSCAPE DESIGN,
CONSULTATION AND PROJECT MANAGEMENT

(T) 905-985-4468 (W) OBRIENASSOCIATES.CA
(E) DANIELOBRIENASSOCIATES@BELLNET.CA
(STUDIO) 798 BESSBOROUGH DRIVE,
OSHAWA, ONTARIO, L1G 4H5

PROJECT:
TO RESIDENCE
1 LAKE CRESCENT
ETOBICOKE, ONTARIO

DRAWING:
**PROPOSED OVERALL
LANDSCAPE CONCEPT PLAN**

DATE: NOV 2020	PROJECT NO:
DESIGNED: DOB	2019-02
DRAWN: RPR	
CHECKED: DOB	DRAWING NO:
SCALE: 1/8"=1'-0"	L1 OF 1