

# DECISION AND ORDER

**Decision Issue Date** Monday, March 15, 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): JUDY KIT KI SHUM

Applicant: HYPHEN STUDIO INC

Property Address/Description: 60 MEADOWVALE DRIVE

Committee of Adjustment Case File: 19 176622 WET 03 MV

**TLAB Case File Number: 20 116476 S45 03 TLAB**

**Hearing date:** Thursday, January 14, 2021, Thursday January 21, 2021 and Tuesday, February 16, 2021

**DECISION DELIVERED BY Justin Leung**

## APPEARANCES

NAME	ROLE	REPRESENTATIVE
Hyphen Studio Nnc	Applicant	
Judy Kit K Shum	Appellant	Amber Stewart
City of Toronto	Party	Michael Mahoney
Sean Flynn	Party	Ingrid Van Weer
Robert Jenkins	Participant	Andrew Watson
Carlo Crozzoli	Participant	
Suzanne Kiraly	Participant	
Andrew Watson	Participant	
Michael Green	Participant	
George Spiteri	Participant	

## INTRODUCTION

This is an appeal from a decision of the Etobicoke-York Committee of Adjustment (COA) pertaining to a request to permit six variances for 60 Meadowvale Drive (subject property).

The variances have been sought through the COA to permit the construction of a two storey detached dwelling with a parking pad.

This property is located in the Stonegate-Queensway (or termed Thompson Orchard herein) neighbourhood of the City of Toronto (City) which is situated south of Bloor Street West and bounded by Brentwood Road South to the west and Royal York East to the east. The property is located on Meadowvale Drive, south of Bloor Street West and north of Van Dusen Boulevard.

At the beginning of the Hearing, I informed all parties in attendance that I had performed a site visit of this subject property and the neighbourhood and had reviewed all materials related to this appeal but it is evidence to be heard that is of importance.

## BACKGROUND

The Application consists of the following requested variances:

- 1. Section 10.20.30.40.(1)(A), By-law 569-2013**  
The maximum permitted coverage is 33% of the lot area (84.3 m<sup>2</sup>). The proposed dwelling will cover 39% of the lot area (99.9 m<sup>2</sup>).
- 2. Section 900.3.10(18)(E), By-law 569-2013**  
The maximum permitted floor space index is 0.45 times the area of the lot (114.96 m<sup>2</sup>). The proposed dwelling will have a floor space index equal to 0.68 times the area of the lot (173 m<sup>2</sup>).
- 3. Section 900.3.10.(18)(i), By-law 569-2013**  
The minimum required side yard setback is 0.9 m and the aggregate width of both yards shall not equal less than 2.1 m. The proposed dwelling will be located 0.46 m from the north side lot line, 1.07 m from the south side lot line and will have an aggregate side yard width of 1.53 m.
- 4. Section 900.3.10(18)(A), By-law 569-2013**  
The maximum permitted height of a peaked roof dwelling is 8.5 m. The proposed peaked roof dwelling will have a height of 9 m.
- 5. Section 900.3.10.(18)(B)(ii), By-law 569-2013**  
The maximum permitted side exterior main wall height facing a side lot line is 6 m. The proposed dwelling will have a height of 7.9 m facing the south side lot line and 6.9 m facing the north side lot line.
- 6. Section 320-42.1.B(2)**  
The maximum permitted soffit height for peaked roof dwellings shall not exceed 6.5 m. The proposed soffit height for the peaked roof dwelling will be 6.9 m.

These variances were heard and refused at the January 30, 2020 COA meeting.

Subsequently, an appeal was filed by the property-owner Judy Kit Ki Shum on February 14, 2020. The TLAB scheduled a Hearing on October 20, 2020 for all relevant parties to attend. At this Hearing, it was revealed that a tentative settlement had been reached between the appellant and the City on this matter. The settlement proposal entails a series of changes to the proposal that had originally been presented to the COA. I requested that an adjournment would be appropriate to allow all the other Parties to review this Settlement proposal.

On subsequent canvass of the other Parties involved, it was found that they, while recognizing the settlement proposal which was now before the Tribunal, continued to lodge their concerns to this appeal. With such information, I determined that we would proceed with full hearings to address issues of these other parties.

As such, this matter was scheduled, on consent, for three additional Hearing dates on January 14, 2021, January 21, 2021 and March 16, 2021, respectively.

## **MATTERS IN ISSUE**

The appellant has engaged in a comprehensive discussion with the City to bring forward a settlement proposal for the TLAB to consider. While so, the other Parties to the matter, notably Sean Flynn, Robert Jenkins, Suzanne Kiraly, Andrew Watson, Michael Green and George Spitieri, continue to object to the subject proposal before the Tribunal. These Parties contend that the proposal is inappropriate, in scale and massing, for the neighbourhood in question. Furthermore, they state that it is not respectful of the 'historic' character of the Thompson Orchard neighbourhood and would, in essence, disrupt the local fabric composition.

The TLAB must assess this proposal comprehensively to determine if it constitutes good planning. In addition, the Tribunal will also have to determine if the proposal, even with the revisions proposed, and also outlined in a settlement proposal between the appellant and the City, would act to conform within the relevant planning legislation policies or not.

## **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 of 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 *Planning 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

On the first Hearing day, the Appellant's lawyer Amber Stewart, outlined that the original proposal, when presented to the COA, consisted of an integral garage and a detached dwelling which had a larger building footprint proposed. The revised proposal now before the TLAB consists of a rear facing parking pad and a scaled down building footprint for the detached dwelling. The variance requests have been revised to the following:

**1. Chapter 10.20.30.40.(1)(A), By-law 569-2013**

The maximum building coverage is 33% of the lot area (84.3 m<sup>2</sup>) The proposed building coverage is 38.85% of the lot area (99.28 m<sup>2</sup>).

**2. Section 900.3.10(18)(E), By-law 569-2013**

The maximum permitted floor space index is 0.45 times the area of the lot (114.96m<sup>2</sup>). The proposed floor space index is 0.672 times the area of the lot (171.53 m<sup>2</sup>).

**3. Section 900.3.10(18)(i), By-law 569-2013**

The minimum required side yard setback is 0.9 m and the aggregate width of both yards shall not equal less than 2.1 m. The proposed dwelling will be located 0.46 m from the north side lot line, 1.00 m from the south side lot line, and will have an aggregate side yard width of 1.46 m.

**4. Section 900.3.10(18)(B)(ii), By-law 569-2013**

The maximum permitted side exterior main wall height facing a side lot line is 6.0 m. The proposed dwelling will have a height of 6.93 m facing the south lot line and 6.93 m facing the north side lot line.

**5. Section 320-42.1.B(2)**

The maximum permitted soffit height for a peaked roof dwelling shall not exceed 6.5 m. The proposed soffit height will be 6.93 m.

This was outlined in the Minutes of Settlement document that had been provided to the TLAB previously. Ms. Stewart states that the revised proposal is now, in principle, acceptable to City staff.

In terms of continued concerns from opposing Parties, Ms. Stewart argues that they are focused on the design typology of the proposed dwelling which, in her opinion,

cannot be assessed here. Moreover, design issues are not provisioned for within the four tests for minor variance as per *Planning Act*.

Ingrid Van Weer, is a lawyer representing Party Sean Flynn. She argues that if this proposed dwelling is permitted by the TLAB, that it would be in contravention of the City Official Plan (OP) policies. She states that there have been other in-fill type houses which have been built in this neighbourhood and that have, in her opinion, been generally acceptable to residents. However, this proposal is a departure from such 'norms' and would set a dangerous precedent for other future houses to be built in the area.

Two exhibits, the *Witness Statement of Franco Romano* and the *Minutes of Settlement* between the Appellant and the City, were entered as Exhibits A and B, respectively, for the TLAB record, by Ms. Stewart.

Ms. Stewart called Franco Romano to provide testimony on this proposal. I indicated that I had reviewed Mr. Romano's curriculum vitae and was able to qualify him to provide professional opinion evidence in the field of land use planning.

Mr. Romano commenced his testimony by making note of disclosure documents submitted to the TLAB by Sean Flynn just prior to this Hearing. Those documents relate to summations by Mr. Flynn that this neighbourhood faces increased flooding issues. Mr. Romano states that this area is not within a regulated area, delineated by the Toronto and Region Conservation Authority (TRCA). He does note that Mimico Creek does run to the west of this subject property.

Mr. Romano then described, and as contained in his *Witness Statement*, the study area which he had prescribed in review for this proposal. His conclusions from this analysis are that the lot area and floor space index (FSI) for the houses within this neighbourhood are not of a homogenous nature. Mr. Romano had prescribed a study area bounded by Bloor Street West to the north, Cosmo Road to the west, Royal York Road to the east and Van Dusen Boulevard to the south. He opined that newly built homes and additions to existing homes is a common occurrence in this neighbourhood. He then, through a photograph study, showed several other in-fill houses in this area and used them as a means of comparison to the subject property.

The revised proposal no longer has an integral garage and now has a parking pad, which he states is an attempt to 'soften' overall impact of this proposed dwelling as it relates to the streetscape.

Mr. Romano also commissioned a sun-shade study. While he indicated that the City does not require such studies for low rise residential developments, he believed it would be pertinent to address issues which had been raised by some of the Parties to the matter.

The proposal has been further revised so as to make the house appear less 'boxy' in its orientation. The overall height has been reduced and the first floor height variance has been removed. In terms of the lot coverage variance, Mr. Romano

submitted that this proposed building footprint is only slightly larger than the existing dwelling on the site.

The notion, as described in disclosure documents by opposing parties, that this proposal appeared similar to a 'Costco Wholesale' store was, in Mr. Romano's opinion, without merit as this is a house being proposed with appropriate building and architectural features.

The side yard setback, as proposed, allows for an appropriate sitting for the building on the lot. This will also address privacy and sightline issues with adjacent properties.

Mr. Romano then went on to describe the two recommended conditions within the *Minutes of Settlement*, one relating to substantial conformity of the plans and the second relating to trees. In his summation, he believes both conditions are reasonable and appropriate to be applied for this matter.

Ms. Van Weer then commenced her cross-examination of Mr. Romano. Ms. Van Weer inquired if the RD 18 zoning designation for this area is specific to this neighbourhood. Mr. Romano responded that he does not agree with this assertion and believes the RD-18 zoning was devised not within a neighbourhood specific context but according to an appropriate planning analysis.

Ms. Van Weer then suggested that, to her knowledge, the City is currently undertaking a study to potentially designate this neighbourhood as a heritage district and if that should be considered when analyzing this proposal. Mr. Romano responded that he is not aware of a heritage district in effect for this area. I did indicate that the TLAB can only assess legislation and policies which were currently passed and applicable for this neighbourhood.

Ms. Van Weer then asked how many 3 storey houses are in this RD-18 zone designation area. Mr. Romano responded he does not have this information.

Ms. Van Weer noted that Official Plan Amendment 320, or OPA 320, discusses immediate and broader neighbourhood context. However, she did not see a requirement for a neighbourhood study area as per these policies. Mr. Romano responded that this is accurate, however, it has become commonplace in TLAB proceedings to prepare such neighbourhood studies for the Tribunal in its review of appeal matters.

Ms. Van Weer then further commented that OPA 320 outlines prevailing character would be that a proposed house must be similar to the majority house typology of a neighbourhood. She states that the most frequently occurring development here is tudor style cottages and asked Mr. Romano whether he agrees with that or not. Mr. Romano responded that he believes Ms. Van Weer is discussing house style which he contends is not a permitted assessment criteria for the matter at hand.

Ms. Van Weer then showed pictures of a series of houses on Clivden Avenue and asked Mr. Romano their roof type. Mr. Romano responded he is unable to answer as he cannot see the rear portion of these houses which would be necessary to conclusively determine the roof type.

She then commented that the proposed house had significant number of windows on the east and west elevations. She then inquired if this is of the prevailing neighbourhood character. Mr. Romano responded that he believes that there are other houses in the area with similar type features.

She then asked which other houses in the area would have a comparable architectural style to the subject proposal. Mr. Romano responded there is not another similar house for him to reference.

Ms. Van Weer raised concerns about the data on housing stock within Mr. Romano's study area and how it had been obtained and subsequently assessed by him. To alleviate potential issues, I requested Mr. Romano provide this pertinent information before the 2<sup>nd</sup> day of Hearings. The information would be providing expanded information on all technical standards for each house in the study area. The material currently provided only illustrates certain elements of this housing stock in question.

The 2<sup>nd</sup> Hearing day commenced with Mr. Romano asked to return to the stand to continue being cross-examined by Ms. Van Weer.

Ms. Van Weer commenced by inquiring about Mr. Romano's curriculum vitae and the clients which he had served in the past. She asked if the majority of his clients have been within the development industry and also if he had ever accepted a retainer to take a position not supporting a planning application. Mr. Romano responded that he has had a diverse group of clients in the past, including in both public and private sectors.

Ms. Van Weer then asked if the architectural style of a proposed house should be part of the calculus in assessing minor variance applications. Mr. Romano responded that he does not believe it should. However, he does contend that the 'physical character' analysis as prescribed in the OP would be applicable.

Ms. Van Weer asked to confirm that this proposal was refused by the COA. Mr. Romano commented that is accurate, however, the proposal before the TLAB now has been substantially changed.

Ms. Van Weer then transitioned to inquiring about the minor variance research information as prepared by Mr. Romano which formed part of his *Expert Witness Statement*. She asked about potential inconsistencies with the City data that was contained in Mr. Romano's documents. Mr. Romano stated that, in his opinion, there does appear to be erroneous data that has been provided to him from the City, which may be due to the City not regularly updating certain property information as it pertains to COA or building permit applications that had been sought.

Ms. Van Weer asked about this variance research information provided by Mr. Romano and, in her appraisal, it appears he has altered the City provided data. She also stated that if the data as proffered by Mr. Romano appeared to have inaccuracies, would that act to decrease its veracity. Mr. Romano responded that he has incorporated his own research information into this data to assist in his analysis of this proposal. Moreover, he indicated that variance proposals are not to be exclusively analyzed through a quantitative methodology.

Ms. Van Weer then asked about the sun-shade study provided by Mr. Romano and the techniques he used to prepare it. Mr. Romano stated that the architectural design firm, which had prepared the drawings for this proposal, were engaged by him to prepare it. He further indicated that there is publicly available software that can be used to prepare such studies and that a professional is not needed to conduct such a study.

I then inquired about the assessment criteria Mr. Romano used for this proposal which entailed defining a study area and then analyzing the house types of that area in relation to the subject proposal. Mr. Romano responded that such criteria are now a common exercise undertaken for planning appeal matters to determine the 'pulse' of a neighbourhood. I then asked about the sun-shade study and for him to elaborate on his comment that these studies can be done by non-professionals. Mr. Romano indicated that there are now several computer applications available that can allow most computer users to generate such studies without the need to hire a professional such as an engineer. This was raised as Ms. Van Weer was questioning the veracity of such a study, if it wasn't prepared by a professional engineer.

Mr. Romano was then excused.

Participant Suzanne Kiraly then made a statement to the TLAB which provided background on the original COA matter and described that there was substantial resident opposition to this proposal. She believes that the proposal is an oversized house for, in her opinion, a smaller sized lot.

Ms. Stewart then showed a Council resolution which the local Councillor instructed City staff to either defend the COA decision or to attempt to reach a settlement with the appellant. Ms. Stewart asked if she is aware of this resolution and her opinion on this. Ms. Kiraly acknowledged the document but contended that there continues to be significant local opposition to this proposal.

Ms. Stewart then showed drawings of the proposal and asked if the removal of the integral garage improved the proposal, in her opinion. Ms. Kiraly commented that the integral garage had not been an issue to her when reviewing this proposal.

Participant Andrew Watson was the next to provide comments to the TLAB. Mr. Watson stated that he is a member of the Planning Committee of the Thompson Orchard Community Association. He argued that the overall scale and size of this proposal is not appropriate. He then described that the side wall height variance has resulted in the 'boxy' appearance of the house. In terms of the revised proposal now



before the TLAB, Mr. Watson contends that it continues to not be consistent with the principles of OPA 320.

Ms. Stewart then inquired about the properties on Cosmo Road and if he believes those houses, which have decks, could have an 'overlook' feature onto properties along Meadowvale Drive. Mr. Watson acknowledged that could be possible. Ms. Stewart then presented photographic evidence of 30 Thompson Avenue. She asked if he believed the roof design for this house is materially different from the other homes on the street. Mr. Watson responded that this appears to be the case. She further inquired of Mr. Watson to compare that roof design to that of the subject proposal. Mr. Watson stated that it was his opinion the subject proposal contained a flatter roof design.

Ms. Stewart then showed the documents which Mr. Watson had presented to the TLAB showing the different iterations of the proposal from the COA to now TLAB process. She asked if those documents he showed included the drawings for the current proposal as contained in the settlement agreement. Mr. Watson responded that they did not.

Ms. Stewart then referred to Mr. Romano's *Expert Witness Statement* and directed Mr. Watson to the landscape plan showing proposed landscape treatment along Meadowvale Drive. She asked if he believed this to be a positive element of this proposal. Mr. Watson commented that having a landscape plan is preferable with a variance proposal.

It is noted that the originally scheduled 3<sup>rd</sup> day of hearing was adjusted to Tuesday, February 16, 2021, with the consent of all parties involved.

Hearing day 3 commenced with an indication that City solicitor Benjamin Baema was attending in lieu of Mr. Mahoney, as he had another previously scheduled matter to attend to on this same day.

Party Sean Flynn provided testimony to the Tribunal outlining the several iterations of the proposal from the COA to TLAB stage. In his opinion, the proposal has not substantively been changed. He referenced that 71 letters of objection have been filed on this proposal at the COA, without any corresponding letters of support. With regards to the settlement proposal which the appellant has reached with the City, Mr. Flynn contends that the proposal continues to not be an appropriate form of development for this area. Mr. Flynn presented material where he questioned the veracity of the survey which has been submitted to the TLAB by the Applicant. Ms. Stewart raised a potential issue with the presentation of such material. I indicated that it is the practice of the Tribunal to accept a stamped survey from a professional surveyor as accurate.

Mr. Flynn continued by describing that the side yard setback variance requests are also inappropriate as they reduce a building mass which could be brought closer to adjacent properties. He further commented that with the changes of the proposal as presented at the COA to the TLAB stage, that it appears the side yard setback

variances have continually been increased by the appellant/property-owner. Mr. Flynn then referenced TLAB Decision and Order for 889 Royal York Road as delivered by Member Ted Yao. He argues that this Decision is similar to the subject proposal and that its refusal should be afforded consideration by the Presiding Member.

Mr. Flynn then presented the minor variance request material, as displayed in a table format, that had been prepared by Planner Franco Romano for this proposal. This was submitted to the TLAB after the first hearing date, as requested by me. Ms. Stewart stated that this had been critiqued in detail in the previous days of hearings. I responded that these issues have been communicated at length by the various parties to these proceedings and did not find repeating previously stated arguments as relevant.

As had been discussed and agreed upon at the previous hearing day, Andrew Watson, also a participant, would be presenting on behalf of participant Robert Jenkins. This was found to be appropriate in these circumstances as Mr. Jenkins had difficulty with use of computer hardware and internet access. However, Mr. Jenkins had connected to the virtual hearing (on the WebEx portal) by telephone and would answer any questions as part of cross-examination.

Mr. Watson outlined, on behalf of Mr. Jenkins, that this proposal would act to exacerbate flooding issues that has been occurring in this area. This is argued to be due to increased impervious surface area. It is referenced that the original proposal had been refused by the COA. A video from CBC News was shown which referenced flooding of residential dwellings in Etobicoke due to heavy rainfall. It is further communicated that, in Mr. Jenkins interpretation, planning policies do require Planning staff to have consideration of potential flooding hazards when assessing applications.

Ms. Stewart inquired if Mr. Jenkins was aware of the Toronto and Region Conservation Authority (TRCA) and the role they play in stormwater protection. Mr. Jenkins responded that he is aware of the TRCA and that they work in the field of stormwater protection. Although the subject property is not within TRCA's regulated area, he contends that it is still within the Mimico Creek watershed and that there are ancillary water runoff/flooding issues for this area as well. Ms. Stewart then described the 'porous' material they were proposing for the driveway of the subject property and asked Mr. Jenkins opinion on it. Mr. Jenkins stated that such material may be suitable for a backyard or park use but didn't feel it would be sufficient for use as driveway material.

Participant Michael Green then proceeded to make presentation to the TLAB. Mr. Green had, in reviewing OPA 320, acted to delineate a 'study area' of his own to assess the broader context. With regards to Cosmo Road, and the in-fill houses situated there, Mr. Green contends that the majority were built from the mid-2000s onward. Also, he describes it as an outlier which, he argues, is not typically used to assess the broader context of this area by Planning staff. In referencing Mr. Romano's minor variance research, or COA decision, of buildings for this area, Mr. Green notes that the majority of the properties are outside of his study area or the Thompson Orchard neighbourhood. He then showed photograph of existing and in-fill houses of this neighbourhood which, he contends, have acted to reinforce the physical character of

the area. As part of his research of this study area, Mr. Green further states that he found the FSI of the houses in the area generally exist within the range of 0.45 to 0.61. This would, in his opinion, make the subject proposal's FSI request of 0.67 inconsistent with the local context.

In terms of comparing the drawings of the different iterations of this proposal, Mr. Green contends that the overall visual scale and massing does not appear to have been substantially altered.

Ms. Stewarts asked about Mr. Green's characterizations of the neighbourhood that its prevailing housing stock was two storey houses. She indicated that the subject property's current house is a bungalow to which Mr. Green did acknowledge. She then asked if it was accurate that the Thompson Orchard's area as described by Mr. Green is not currently being studied by City staff to be a heritage conservation district (HCD). Mr. Green responded that is true, however, it would not preclude that an HCD may be enacted for this area in future. Ms. Stewart then inquired if a broader delineated study area for the immediate context, beyond Meadowvale Drive, is proper for the analysis here. Mr. Green responded he does not believe so and, while respecting the professional opinion as provided by Mr. Romano, believes immediate context should be focusing on the existing housing stock along Meadowvale Drive and not adjacent streets.

Participant George Spitieri then presented to the TLAB. He is concerned about the proposal and does not feel it is appropriate for this local area context. He believes that the sunlight to his house will be adversely affected if this house were to be constructed.

As had been agreed upon at the earlier day of hearings, I reiterated that closing statements were to be submitted to me in writing. I indicated that these submissions should be received within one week from the date of this 3<sup>rd</sup> day of hearings. The hearing was then concluded.

Ms. Stewart provided written closing submissions. In her material she acts to re-iterate statements which she and expert witness Mr. Romano had presented over the three day hearings. She provided case law in the form of a Local Planning Appeal Tribunal (LPAT) decision for 27 Oriole Gardens in Toronto, Case number PL170352 issued on September 22, 2017 and TLAB decision for 62 Chester Hill Road. In describing these decisions, Ms. Stewart surmised that both decisions, as rendered, suggest design is an element which shouldn't be considered with variance applications.

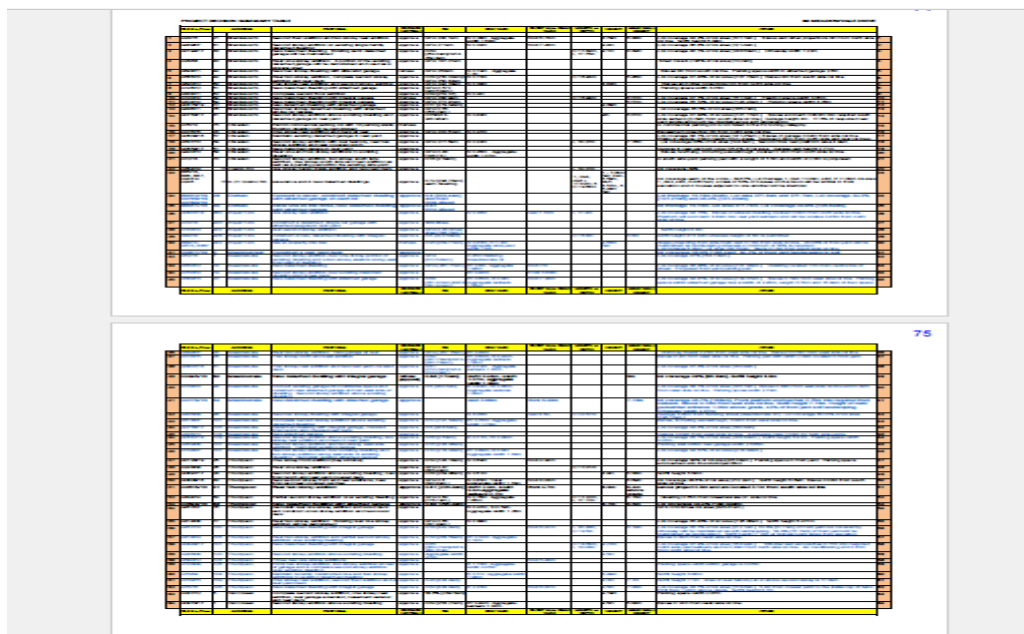
Mr. Flynn also provided written closing submissions. He again repeats his argument that the variances as proposed would not be a compatible and appropriate form of development for this neighbourhood. As had been described in the hearings as well by Mr. Jenkins, Mr. Flynn contends that this proposed dwelling will act to exacerbate flooding issues in the area. He also reviews the evidentiary material as proffered by Mr. Romano and, while recognizing his professional planning credentials, concludes that are errors in how Mr. Romano has extrapolated his data in analyzing this proposal.

No other closing submissions were provided and reply evidence was provided by Ms. Van Weer who requested clarification on zoning provisions relating to height for flat roofs. Ms. Van Weer believed that the close submission as proffered by Ms. Stewart inaccurately indicated 7.2 metres when it should be 6.0 metres in this instance. Ms. Stewart responded that there may have been a slight error, however, the overall intent of this section of the Zoning By-law was, in her opinion, was expressed correctly.

## ANALYSIS, FINDINGS, REASONS

Over the course of the 3 days of hearings, an extensive discussion was held outlining the proposal. The Parties submitted that the appellant and the local residents had participated in an engaging dialogue to try and narrow the outstanding issues in dispute and settle on a proposal which could be acceptable to all the Parties. However, this has not appeared to have been successful and the matter has now been brought before the TLAB for me to adjudicate on.

The methodological approach as presented by the expert planning witness Mr. Romano received extensive cross examination by Ms. Van Weer, the lawyer representing two of the opposing parties to the matter. Most notably, the notion of the use of a 'study area' to assess existing houses of a local community and their building characteristics and then to compare it to the subject proposal was opined upon at length by Mr. Romano and countered by Ms. Van Weer. What was the issue of contention here being whether such a methodology is the established rubric by which to assess physical characteristics of the in-fill housing for this neighbourhood, Moreover, it was advanced, by Ms. Van Weer, that the use of a study area does not appear in any requisite provincial or municipal policy documents.



The image shows two screenshots of a spreadsheet table. The top screenshot shows a table with approximately 10 columns and many rows. The bottom screenshot shows a similar table, also with approximately 10 columns and many rows. Both tables have some cells highlighted in blue, and the bottom right corner of the second screenshot has the number '75' written in blue.

Figure 1: Minor Variance study area charts from *Expert Witness Statement of Franco Romano*

To address the issue of the veracity in applying a study area to assess a proposal for an in-fill house to be located within a local community, it is relevant to look at other previous TLAB decisions. A study area methodology was also applied in the matter of 62 Chester Hill Road, presided over by TLAB member Stanley Makuch. This decision was also referencing in closing submissions by Ms. Stewart. Here, the appellant' expert planning witness Mr. David Riley of SGL Planning & Design Inc presented testimony to the Tribunal in his analysis of an in-fill house that was being proposed for a neighbourhood in the Old City of Toronto.

It is noted that here, Mr. Riley also used a study area by which to frame his planning analysis and to provide a context to the TLAB. His professional opinion was that this proposal is consistent with the four tests for minor variance and other relevant planning legislation. In the decision, it further describes the planning exercise undertaken by Mr. Riley:

“He reviewed the character of the neighbourhood, showed a number of photos, reviewed recent variances and concluded that the neighbourhood was eclectic. He noted that there were single and detached dwellings, flat and pitched roof buildings and that there was a flat roof building almost directly across the street from the subject site.”<sup>1</sup>

What is prescient in the statement above is that a study area, while not codified within the requisite planning policies the TLAB must assess matters, has become, by convention, a normative approach when assessing in-fill homes. Furthermore, it also acts to provide a reference point for the TLAB member and other parties to determine the current neighbourhood context so as to inform on how development pattern for this area will continue to evolve.

In establishing the above convention, it is necessary to assess the disclosure documents as provided for the matter at hand, most notably that which was provided by Mr. Romano.

Mr. Romano's chart, as shown in Figure 1, provides a categorical 'breakdown' of the different zoning requirements (i.e., FSI, lot coverage, build) which houses within his study area are subject to. When addressing specific variance requests such as FSI and lot coverage, Mr. Romano opined that his study area information clearly establishes that the variance requests for this subject proposal would fall within the 'range' which he had described in his *Expert Witness Statement*. Ms. Van Veer responded that, in her summation, there continues to exist discrepancies in the data as presented and that appropriate conclusions cannot be derived as a result.

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<sup>1</sup> City of Toronto (2018, August 22). Decision and Order: 62 Chester Hill Road. Retrieved from [Decision and Order \(toronto.ca\)](https://toronto.ca)

I had indicated in the Hearing that the review of the disclosure documents and oral testimony as proffered will be received by the TLAB in the spirit of good faith and in recognizing that expert witnesses, parties and participants must provide a sworn affirmation when providing testimony, as prescribed within the *Statutory Powers Procedure Act*. Testimony as provided at the hearing is to assist the presiding TLAB Member in their review of the appeal matter. However, it has been established through TLAB case law that the presiding Member can commit to additional scrutiny of the materials provided to determine if it constitutes an approach measure or 'benchmark' by which to assess the subject proposal.

I recognize that the appellant has now acted to revise their proposal to espouse 5 variance requests, which they indicate have been memorialized within a settlement proposal with the City. They further state that this settlement should be afforded due consideration by the Tribunal.

While I comprehend that a settlement proposal is now before us, I must always submit to a vigorous analysis of the proposal to ensure that the broader public interest is met.

Within this context, it is found that the information as presented in Figure 1, as respectfully submitted by Mr. Romano, presents a diverse accounting of houses for the area. This table is not confined to variances needed to facilitate construction of an in-fill house but also contains other proposals which pertain to additions and severances. The number of variance requests for each property listed are also equally diverse, which parses difficulty for me in utilizing this data to draw appropriate conclusions in relation to the subject proposal.

One of the properties which was discussed at length during the hearings, 30 Thompson Avenue, is also featured within this table. It is noted that this property also had similar variances for FSI, lot coverage and main wall height. There were a series of variances required to permit the construction of this detached dwelling. I recognize this but further accept material evidence of the opposing Parties that the subject property is a corner lot with frontage onto two streets. 30 Thompson Avenue exists as a more regularly shaped lot along one street only. The cumulative impact of the variances being sought here is demonstrably less than the subject proposal. Mr. Romano stated in the Hearings that, while he could not ascertain this to be the smallest sized lot within his own study area, it was still a relatively smaller lot in comparison to those in the adjacent area. With this, I find that the cumulative effect of these variance requests to be greater. The determination here can be applied to find that two tests for minor variance, is the proposal minor in nature and does the proposal conform to the general intent of the Zoning By-law, have not been met in this instance.

Most notably, the FSI and lot coverage variances are more significant in nature as they are connected to the regulation of building footprint within residentially zoned areas. These, coupled with the other 5 variance requests on a small, corner configured lot, constitute a potential increase in the scale and intensity of built form for this site.

I also find it necessary to comment on the sun-shade study as provided by Mr. Romano to the Tribunal. Firstly, I had inquired of Mr. Romano if a sun-shade study is required for low rise residential development. He responded that it is not a mandatory exercise but commissioned this study as, in his opinion, he has found this to be an issue of contention in other previous similar TLAB matters.

I will circumscribe that in accepting this evidence, the TLAB does recognize that a sun-shade study, while not a requirement, could provide an additional measure by which to assess the potential adverse impact of a sun and shade resulting from a proposal.

With the matter at hand, Mr. Romano explained in his testimony that there are now several software applications which are available to assist in the preparation of such studies. In researching this matter online, I did find there to be applications from different companies which are available for purchase. This is being stated herein due to cross-examination at the hearing which inquired of Mr. Romano preparing this study without assistance of a professional.

I find that that Mr. Romano has committed due diligence in the preparation of this study and submitted it as part of his disclosure documents, in accordance with *TLAB Rules*. Ms. Van Weer, while inquiring on how he prepared the study, did not elicit direct opposition to this material as presented.

In review of this, and on the material as presented, I find that the sun-shade study acts to demonstrate that the proposed dwelling's sun-shade impact would be relatively similar to that of the current house on the site. It is noted on the material that the study is based on the proposal as submitted in March 2020. The settlement proposal agreed upon between the appellant and the City was executed, in principle, in October 2020.

The study as rendered does not allow me to determine if the building footprint as shown is substantially similar to that which is prescribed in the settlement. I would have to act on the affirmed testimony of Mr. Romano who confirmed it to that effect. As such, I find that the sun-shade impact to be of a minimal concern for this proposal. While so, I do further note that the planning considerations for this proposal must be assessed comprehensively and cumulatively in an independent manner. This study would be assessed in conjunction with the other evidence entered before the TLAB to assess the adverse impacts of the proposal on neighbourhood properties and to determine if the subject proposal is able to meet the 'quantum' of relevant planning legislation and policies.

The Parties to this matter also expounded with further testimony to illustrate additional issues with the proposal. With regards to Mr. Flynn's material as it pertained to the survey as provided by the appellant, I recognize that there has been work undertaken by Mr. Flynn, in conjunction with Mr. Jenkins, to raise concerns about the property lines for 60 Meadowvale Drive. They contend that the survey as presented is not accurate and should be considered with due discretion. Another participant, Mr. Jenkins, also provided a comprehensive presentation on flooding issues he has

documented for the area and attributes it to the in-fill housing which has been occurring in the neighbourhood.

As I noted during the hearings, and will reiterate herein, it is observed that this neighbourhood has an active citizenry which is evident in the residents and local ratepayer association participation in the planning process. In recognizing that, the TLAB must also be cognizant of the established practices and procedures which act to govern its administration of appeals. Issues, such as the preparation of a proper survey or for stormwater mitigation, are generally addressed by established professional bodies and relevant trained persons. In terms of a survey, a licensed surveyor is typically engaged to prepare a survey.

The above information is pertinent to describe how, while members of public perform a vital role in the planning process, professionals of different fields are also significant in providing dispassionate and impartial technical guidance on planning applications. As such, I find that the survey submitted was provided by a licensed surveyor. In addition, this neighbourhood is not directly within a regulated area or floodplain. A rules based, factually guided process ensures planning proposal are assessed appropriately and to limit potential human bias which could be introduced surreptitiously.

With regards to the testimony of Mr. Green, he has eloquently stated how OPA 320 is to be applied to provide proper assessment criteria for this subject proposal. He provided a detailed appraisal of the established housing stock for this neighbourhood. Although the area is currently not subject to an HCD study by City staff, Mr. Green did critique the unique building characteristics of several of the houses for this neighbourhood. These features that are described, was articulated by Mr. Green as being of distinct character. With this, Mr. Green expanded that it would be reasonable to assume, with the facts as provided, that City Heritage staff may look to enact an HCD for this neighbourhood in the near future.

Mr. Green also analyzed the research methodology and material as proffered by Mr. Romano to the TLAB in a comprehensive manner. While recognizing that Mr. Romano has pursued his work on this matter diligently, Mr. Green had highlighted inconsistencies in how the study area and requisite statistics was applied to assess the subject proposal. Mr. Green provided an alternative study area with his own applied methodology to critique this subject proposal. He focused on properties with similar property dimensions along Meadowvale Drive.

Here, he incorporated in-fill houses that have been constructed in the area as part of this analytical exercise. The conclusions, and as interpreted by me here, derived from this analysis depict that this subject proposal would not share commonalities with the prevailing housing stock for the immediate context, which could act to put it in conflict with OPA 320. Even if the broader context were to also be applied, Mr. Green showed that on other streets such as on Brentwood Road South and Clivden Avenue that this proposal would not be in keeping with the current neighbourhood attributes. This assessment is significant as it demonstrates that the additional two tests for a minor variance, pertaining to whether the proposal is appropriate development for the



area and whether the proposal conforms to the general intent of the OP, have not been successfully met.

I find that the TLAB Decision and Order for 889 Royal York Road as described by Mr. Green is pertinent as that property is in close proximity to this subject property. While it is also requesting for the construction of in-fill houses on two lots, what should be noted here is that this is a consent (severance) application with related variance applications. As such, a different set of assessment criteria, especially that as it relates to subdivision of land as prescribed in the *Planning Act*, would have to be applied. However, the Decision is notable as it also describes the use of study areas to assess the merits for OPA 320. Here, Member Yao surmises that:

“To establish character, the “geographic neighbourhood” must be delineated. The Official Plan does not direct how to delineate but allows considerable flexibility. In the end, I find that differences between the two geographic neighbourhoods delineated by the two planners are not critical.”<sup>2</sup>

This statement is relevant to this subject proposal and I also find that the study areas as provided to me by the differing parties to not be diametrically opposing one another and can be assessed collectively to draw relevant conclusions for this appeal matter. As a reference point, the study area of Mr. Romano covered a larger geographic area than Mr. Green’s. Mr. Romano’s study area provided a larger sample of housing stock to analyze whereas Mr. Green acted to focus more on houses in close proximity to the subject property. While this may be the case, these two study areas provide a harmonized assessment methodology to apply to the subject proposal.

I find that the evidence that has been presented, notably that of Ms. Van Weert, Mr. Watson and Mr. Green, and their associated arguments, demonstrate a coherent and logical dialogue as to why this proposal is not an appropriate form of development for this neighbourhood. This proposal, while it has been revised on several instances and is subject to a settlement proposal with the City, continues to represent a magnitude of scale which is not in keeping with the prevailing characteristics of this area. As a corner lot, this proposed house has required the securing of several variance requests to allow for it to ‘fit’ on a lot which was not originally conceived for such a structure. The building coverage and floor space index variance requests further illustrate a scale and massing which would be unable to meet the pre-requisites as established by OPA 320. Although the City solicitor has, in their professional opinion and in consultation with other relevant City staff, found it appropriate to secure a settlement proposal here with the appellant, it is evident in the submissions brought before me that substantive opposition and concerns continue to permeate the neighbourhood. A potential approval of this proposal could result in other similar structures being constructed in this area, which could act to negatively impact the local urban fabric.

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<sup>2</sup> City of Toronto (2019, October 12). Decision and Order: 889 Royal York Road. Retrieved from [https://www.toronto.ca/wp-content/uploads/2019/10/906b-TLAB\\_19-141925-S53-03-TLAB\\_889-Royal-York-Rd\\_Decision\\_T.-Yao.pdf](https://www.toronto.ca/wp-content/uploads/2019/10/906b-TLAB_19-141925-S53-03-TLAB_889-Royal-York-Rd_Decision_T.-Yao.pdf)

Cosmo Road, and the in-fill houses located there, was referenced at several intervals during the hearings. However, I find that Cosmo Road, and the development pattern it represents, is not typical of the prevailing character and, while recognizing it as a local street, must not, based upon 'on the ground' evidence, treat it as a normative standard by which to gage other prospective in-fill construction for the broader neighbourhood.

To conclude, and to re-iterate statements as outlined previously in this document, I find that the four tests for a minor variance, as per the *Planning Act*, have not met the threshold of success. The building coverage and FSI variance requests would permit a detached dwelling which is not minor, as evident in Mr. Green's critique of the area's housing stock, and would not conform to the Zoning By-law as they permit a house footprint which is inconsistent with other existing houses in this established residential neighbourhood. In addition, the OP is not conforming with this proposal as it is found to be inappropriate, when OPA 320 is applied as an assessment 'tool'. Finally, this proposal is not an appropriate form of development as it would act to introduce a new housing type here. This house would act to disrupt the neighbourhood rhythm and present a new development pattern which is not currently indicative of the area. While the Tribunal recognizes that large urban areas, like Toronto, will continue to see development, for established neighbourhoods such development has to be done to prevent negative impact on the local urban fabric. It is the principle of orderly or 'balanced' development which ensures continued stability and vibrancy for the city and its residents.

## DECISION AND ORDER

The appeal is refused, and the Committee of Adjustment decision, dated January 30, 2020 is upheld. The variances are not authorized.

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X *Justin Leung*

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J. Leung  
Panel Chair, Toronto Local Appeal Body  
Signed by: Leung, Justin