

# DECISION AND ORDER

**Decision Issue Date** Tuesday, March 16, 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): KAMAL MATTAR

Applicant: KAMAL MATTAR

Property Address/Description: 32 TRILLER AVE

Committee of Adjustment Case File: 19 193041 STE 04 MV

**TLAB Case File Number: 19 254000 S45 04 TLAB**

**Hearing dates:** Monday, August 10, 2020, & Monday, August 24, 2020

**DECISION DELIVERED BY** S. Karmali

## APPEARANCES

Name	Role	Representative
Kamal Mattar	Applicant/Appellant/Primary Owner	
City of Toronto	Party	Marc Hardiejowski
Ryan Santiago	Expert Witness	

## INTRODUCTION & MATTERS IN ISSUE

[1] Mr. Kamal Mattar<sup>1</sup> and his family moved into 32 Triller Avenue (the 'subject property') in March 2019. He would like to alter his detached dwelling by legally constructing the following: a rear one storey and two storey addition, a second and third storey rear platform, and a basement walk-out at the rear. As part of this proposed development, Mr. Mattar would like to have a front yard parking pad on his property to use for an electric vehicle.

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<sup>1</sup> Mr. Mattar is self-represented in this matter. While there is a Form 5 – Authorized Representative form – dated November 26, 2019, which shows a Mr. Steffen Hugo as Mr. Mattar's representative, no representative was present on August 10, 2020 and August 24, 2020. I heard no information about Mr. Hugo's status as representative. On another note, Mr. Mattar did not properly file a witness statement in accordance with the Toronto Local Appeal Body's Rules of Practice and Procedure.

[2] This matter comes from the Toronto and East York Committee of Adjustment (COA) Panel, which approved the platform location variance (variance 2, below) but refused the three transportation-related variances concerning parking spaces (variances 1, 3, and 4, below)

**1. Chapter 200.5.10.1, By-law 569-2013**

A parking space on the lot is required to have a width of 2.6 m and a length of 5.6 m.

The parking space on the lot will have a width of 2.6 m and a length of 4.9 m.

**2. Chapter 10.5.40.50.(3), By-law 569-2013**

A platform located above the second storey is required to be located a minimum of 0.9 m from a lot line.

In this case, the rear second storey deck will be located 0.22 m from the south lot line and the rear third storey deck will be located 0.76 m from the north side lot line.

**3. Chapter 10.5.80.10(1), By-law 569-2013**

A parking space must be on the same lot as the use for which the parking space is required.

In this case, the front yard parking pad will not be located wholly on the lot (portion will overhang on the municipal right-of-way).

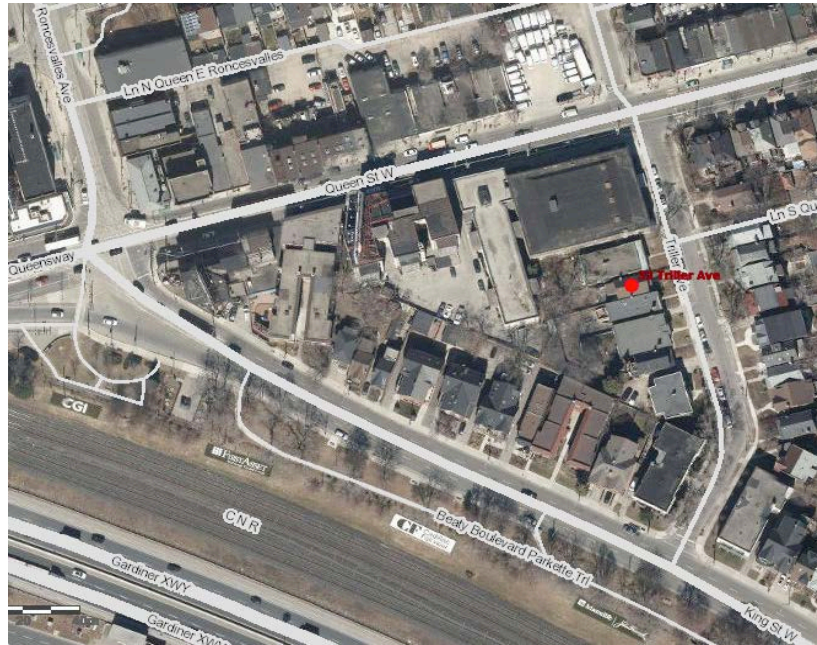
**4. Chapter 10.5.80.10(3), By-law 569-2013**

A parking space may not be in a front yard.

In this case, the parking space will be located in the front yard.

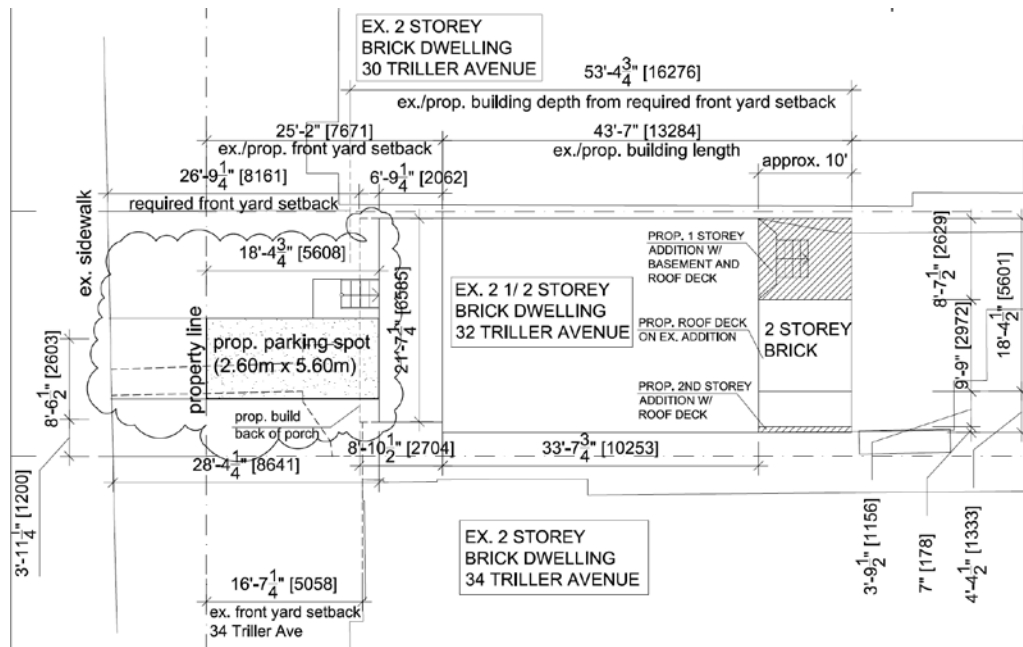
[3] The subject property is zoned Residential (d1.0)(x313) under City-wide Zoning By-law 569-2013 and is designated *Neighbourhoods* in the City's Official Plan and Land Use Map. This property is triangularly bounded by Triller Avenue to the east, Queen Street West to the northwest, and King Street West to the southeast. An aerial view is provided in Figure 1 below.

Figure 1



[4] An extract of Mr. Mattar's revised site plan is captured in Figure 2 below, which shows a proposed parking pad with dimensions of 2.60 metres wide by 5.60 metres long.<sup>2</sup>

Figure 2: Site Plan Extract (Part of Exhibit 2)



<sup>2</sup> Importantly, the revised site plan is the vehicle that seems to revise the application. That is, the location of the proposed front yard parking pad has been revised and seems to be wholly on the Appellant's property wherein no portion seems to overhang on the municipal right-of-way. The revision to the proposed parking dimensions appears to meet the width and length dimensions as shown on the revised site plan. Equally important, the revised application has not been reviewed by a zoning examiner and, accordingly, the requested variances in the revised application cannot be completely confirmed.

[5] Mr. Marc Hardiejowski represents the City. The City opposes Mr. Mattar's appeal and has elected to call Mr. Ryan Santiago and seek him qualified as an expert witness in land-use planning for this matter.

[6] I recognize that some area residents are not opposed to Mr. Mattar's proposed front yard parking development.

[7] Mr. Mattar asks that his appeal be allowed and that all of his requested variances, as part of his original application, be approved. The City, on the other hand, asks that the appeal be dismissed and the COA decision upheld. I understood this position of the City to mean that that the City had no concerns with Mr. Mattar's variance request for platform location.

## **JURISDICTION**

[8] I must be satisfied that the requested variances indicated above meet the policy and legal tests, which are outlined below.

### **[9] Provincial Policy – S. 3 of the *Planning Act***

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

### **[10] Variance – S. 45(1) of the *Planning Act***

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**

[11] Mr. Mattar and Mr. Santiago provided oral testimony. I found Mr. Santiago qualified to provide me with expert opinion evidence in land-use planning.

[12] I accepted the following tendered documents and marked them as exhibits in this order:

Exhibit 1: Applicant Disclosure (Letters) – Mr. Mattar

Exhibit 2: Architectural Drawings – Mr. Mattar

Exhibit 3: Letters of Support – Mr. Mattar

Exhibit 4: Presentation – Mr. Mattar

Exhibit 5: Document Disclosure – Mr. Santiago (City of Toronto)

Exhibit 6: Expert Witness Statement – Mr. Santiago (City of Toronto)

Exhibit 7: Summary Presentation – Mr. Santiago (City of Toronto)

[13] The entirety of the oral evidence need not be captured here. Rather, my task is to indicate the key evidentiary considerations from which to make findings and draw intelligible conclusions in my analysis, which comes later.

*Direct Examination of Mr. Mattar*

[14] Mr. Mattar was affirmed and opted to provide short testimony. He referred to a thirty-eight-slide presentation (Exhibit 4). Some of the slides in his presentation consisted of the maps identified in Mr. Santiago's previously submitted visual evidence. Mr. Mattar also referred to recommendations in a 1996 City parking study as an underlay for his proposal.

[15] Mr. Mattar described his property. He stated that he has already installed solar panels on his roof. He said his property has "a significant amount of green space," which has been "nicely landscaped."

[16] Mr. Mattar spoke about his proposed front yard parking. He said the existing space would extend in width to the right of the home's front entrance. He indicated he would preserve the two mature (Japanese) maple trees and harvest rooftop rainwater for stormwater management.

[17] Mr. Mattar referred to supporting letters for his proposed front yard parking space. These letters are from residents at 28 Triller Avenue, 30 Triller Avenue, and 34 Triller Avenue.

[18] In conducting his research, Mr. Mattar stated that he walked along Wilson Park Road, a street just east of Triller Avenue, and took several photographs. He stated that he counted twenty-eight front yard parking spots along Wilson Park Road's east side, where there is no laneway access. He noted that many of these spots could accommodate between two and three cars. He pointed these spots out in his photographs.

[19] Mr. Mattar testified that front yard parking is found on Triller Avenue's west side at 20 Triller Avenue, 22 Triller Avenue, and 34 Triller Avenue. He also pointed to a parking configuration at the Queen Street West commercial building at the northerly end of the block. He stated that front yard parking "would not be unusual on the west side of Triller Avenue."

[20] He referred to a December 2019 document titled "City of Toronto Electric Vehicle Strategy." He highlighted the section of the document on charging availability, which, he communicated, includes leveraging and exploring funding opportunities to expand charging infrastructure, developing policies and regulations and explore partnerships to expand charging infrastructure, and exploring options to integrate technologies and streamline installations.

[21] Mr. Mattar said that the revised application conforms to the neighbourhood's prevailing character because "the street already has front yard parking." He stated that in terms of the City-wide zoning by-law, there is a precedent-setting case (at 8 Springhurst Avenue) in which the TLAB approved front yard parking for (use of) an electric vehicle in Parkdale. He stated that his revised application is desirable because it would reduce the impact of greenhouse gases.

*Cross-Examination of Mr. Mattar*

[22] Mr. Hardiejowski cross-examined Mr. Mattar, who said he would answer to the best of his ability.

[23] Mr. Mattar admitted that some of the slides he used in his presentation were borrowed from Mr. Santiago (see, for example: page 14 about the study area and page 36 about research regarding on-street parking). Mr. Mattar also admitted that he had to prepare planning evidence to substantiate his case. He admitted to only using a 1996 City of Toronto Parking Study, which informed his planning analysis. He admitted to understanding the importance of filing all evidence.

[24] Mr. Mattar admitted that he did not provide an interpretation of an immediate and broader context. He explained that he captured the "actual character" of the street but not necessarily the "legal character" of the street. He stated that the City has analyzed the legality of existing parking. Mr. Mattar pointed out that there are illegal and legal front yard parking pads on Triller Avenue and on Wilson Park Road.

*Re-Examination of Mr. Mattar*

[25] Mr. Mattar wondered about the significance of Mr. Hardiejowski's questions. Mr. Mattar stated that he believes the appeal process should be friendly to residents, not just to planners and lawyers.

*Direct Examination of Mr. Santiago*

[26] Mr. Santiago was affirmed. I asked him about his education and experience. He said that this would be his first appearance in a matter at the TLAB in which his qualification is sought as an expert in land-use planning. Mr. Santiago has a graduate degree in environmental studies from York University. At the time of the hearing, Mr. Santiago was a candidate member at the Ontario Professional Planners Institute.

[27] He has worked with Toronto City Planning for more than two years. His current position is that of assistant planner. In that role, he reviewed development applications for variance, consent, site plan, and draft plan of condominium. He provided reports, which contained his recommendations about various land-use planning issues to City Council and to the Committee of Adjustment. I qualified Mr. Santiago as an expert in land-use planning matters for this proceeding.

[28] Mr. Santiago explained how he prepared for the proceeding. He reviewed the original application that was before the Committee of Adjustment. He also reviewed the revised application, in which the Appellant, Mr. Mattar, provided an updated site plan altering the location of the proposed front yard parking pad. Mr. Santiago opined that a revised zoning review was not requested as part of the revised application.

[29] Furthermore, Mr. Santiago gathered and reviewed information regarding the characteristics of the subject property and the surrounding area, including "COA approvals." He also consulted with other City staff, including Toronto Building and Transportation Services.

[30] Mr. Santiago described the subject property and surrounding context. He testified that the property to the immediate north of the site is a two-storey converted dwelling with no on-site parking. The property to the immediate south is another two-storey converted dwelling with a mutual driveway that is shared with its adjacent further south neighbour.

[31] He stated that the policies contained in the Provincial Policy Statement and Growth Plan are not particularly relevant or helpful in analyzing the revised application. He opined that this application is not inconsistent with or in direct conflict with these policies.

[32] Mr. Santiago went into some detail about the City of Toronto's Municipal Code Chapter 918, which is about parking on residential front yards and boulevards in the City. This Chapter sets out information about general provisions, restrictions, applicability and licenses. Mr. Santiago indicated that Regulation 918-5 explicitly prohibits front yard parking applications in Ward 4 Parkdale-High Park, in which the subject property is situated. He further stated that the prohibition of front yard parking applications was proposed by City Council in 2007 and enacted by by-law in 2008 and continues to exist today. He pointed out that there have been no front yard parking licenses issued by Transportation Services since 2006 and there have been no Committee of Adjustment approvals for front yard parking pads since the prohibition was enacted. Mr. Santiago was careful to also point out that the *Planning Act* does not regulate front yard parking under Chapter 918, but that the Chapter remains relevant because it indicates City Council's position and provides direction about the acceptability of front yard parking. Later, Mr.







[36] Mr. Santiago mentioned there is an active on-street parking permit issued for the subject property and that the capacity of forty-seven percent for overnight parking is “not as scarce or saturated,” meaning that it does not prevent one from acquiring an on-street permit. He said that a valid on-street parking permit means that one can park on the street at any time for any duration at any available on-street parking spot in that area.

[37] Moving to the four tests for a variance application, Mr. Santiago opined that the revised application does not satisfy the four tests as prescribed under the *Planning Act*, and that, accordingly, the appeal before the TLAB should be dismissed in its entirety.

[38] Mr. Santiago carefully went through Chapters 2, 3, and 4 of the Official Plan. Elsewhere, in his witness statement, he refers to policies 2.3.1.1, 2.3.1.5, 2.3.6, 3.1.1.5, 3.1.2.2, 4.1.5 and 4.1.8.

[39] In terms of *Neighbourhood* policies, Mr. Santiago opined that the revised application does not fit the prevailing character of the immediate and broader contexts of the geographic neighbourhood.

[40] He particularly opined about *Neighbourhood* policies 4.1.5 (e) [prevailing design relative to grade of driveways], (f) [prevailing setbacks of building from street], (g) [prevailing patterns of side yard setbacks and landscaped open space] and (h) [continuation of special landscape or built form features that contribute to neighbourhood uniqueness].

[41] Mr. Santiago defined the broader (or wider) context consisting of a total of 104 lots in the geographic neighbourhood. These homes either face Wilson Park Road or Beaty Avenue within his study area. On Wilson Park Road, Mr. Santiago stated that while there are a number of observable front yard parking spaces (at 43 percent), the front yard parking spaces at 15 to 23 Wilson Park Road have deeper front yard setbacks compared to the prevailing pattern along that street and also have more front soft landscaping to lessen the proportional impact of front yard parking spaces. These properties, according to Mr. Santiago, could not meaningfully represent the prevailing character of the neighbourhood. Similarly, on Beaty Avenue, while there are a number of observable front yard parking spaces (at 25 percent), soft yard landscaping is a prevailing feature and dominant feature for the front yards.

[42] The immediate context, as defined by Mr. Santiago, consists of 16 lots facing Triller Avenue. On either side of this street, there is generally a continuous pattern of front yard soft landscaping. Mr. Santiago indicated that the revised application, if approved, would result in loss to soft landscaping because the application would permit new 2.6 metre curb cut across the city boulevard as well as a 2.6 metre by 5.6 metre paved parking pad in the front of the home.

[43] Mr. Santiago testified that front yard parking pads are far from being a prevailing feature in the immediate and broader contexts. He opined that soft landscaping in the front yards is shown to be prevailing and is continuous in the immediate context of the subject property.

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[44] With respect to the other Official Plan policies, Mr. Santiago said that the revised application does not meet built form principles and guidelines applicable to *Neighbourhoods*. The application before the TLAB, he said, does not improve safety for pedestrians, improve attractiveness of the streetscape, minimize the width of the driveways or limit surface parking between the building's front face and the sidewalk.

[45] Mr. Santiago moved on to testify about the general intent and purpose of the zoning by-laws in light of the revised application. He said that both zoning by-laws 438-86 and 539-2013 do not permit a parking space to be located in the front yard. He further said that by-law 569-2013 contemplates a scenario where access cannot be provided at the rear of the property, a front yard parking permit could be allowed by the *City of Toronto Act*, 2006. However, he referred back to Chapter 918 of the Municipal Code to illustrate that there is no permission for front yard parking in the area of the subject property. He further said that even if there was no prohibition on front yard parking, it may not permit front yard parking given the availability of on-street parking. Mr. Santiago reiterated that the intent of the by-law is to prohibit front yard parking, in this area, and this intent is reinforced by Chapter 918 of the Municipal Code.

[46] Mr. Santiago testified that the revised application is not desirable for the appropriate development or use of the property. He understood that there are few parking solutions available to Mr. Mattar. Mr. Santiago stated that it would not be possible to have a parking solution behind the front main wall nor would it be possible to locate a legal driveway on any side of the property. Mr. Santiago said that Mr. Mattar's situation is one where the parking solution is on-street parking. To that end, Mr. Santiago said there are fifteen spaces for on-street parking on Triller Avenue and seven permits issued. He concluded that a parking pad in the front yard of the subject property would reduce soft landscaping and render the property "incongruent with the streetscape of the block."

[47] Mr. Santiago also spoke about the revised application's desirability and appropriateness in terms of the City's emerging framework for electric vehicles. He indicated in January 2020 that City Council approved the Electric Vehicle (EV) Strategy, which prioritizes expansion of publicly accessible charging stations, for example for on-street parking. He emphasized that the EV Strategy only recommends further exploration of using front yard parking permits to support EV charging. He mentioned that although another decision, 8 Springhurst Avenue allowed an appeal to construct a front yard parking pad, that decision considered "matters of climate change and electric vehicles."

[48] Mr. Santiago opined that the revised application is not minor in nature. He provided that there is a 63 per cent subscription rate for on-street parking in the study area. The loss of on-street parking would mean that other permit holders in the area looking for parking would have fewer options. Mr. Santiago mentioned that there could be a "salient risk" of reducing on-street parking spaces given the existing mutual driveways on the west side of Triller Avenue.

[49] Mr. Santiago concluded that the appeal of the Committee of Adjustment decision should be dismissed. The variances required of the revised application, he testified, do not satisfy each of the four tests under Section 45(1) of the *Planning Act*.

*Cross-Examination of Mr. Santiago*

[49] Mr. Mattar asked Mr. Santiago whether a front yard parking pad balance the needs for pedestrians and motorists in the situation. Mr. Santiago said “no”.

[50] Mr. Mattar asked Mr. Santiago whether the Official Plan prohibits driveways, front yard parking and/or curb cuts? Mr. Santiago answered that curb cuts are to be minimized according to the Official Plan, but they are not explicitly prohibited. Front yard parking, he continued, is prohibited by the zoning by-law and by the Municipal Code.

[51] Mr. Mattar put to Mr. Santiago that the word “prevailing” does not mean there is a “cut-off” or “fifty percent.” Mr. Santiago testified that the most frequently occurring would be “the plain majority”, but that in addition to the quantitative requirements to analyze prevailing character, qualitative aspects would need to be factored into the analysis.

[52] Mr. Mattar pointed out that Mr. Santiago did not differentiate his counts of alternative parking options on Wilson Park Road in terms of east side and west side. He asked Mr. Santiago whether Mr. Santiago had noticed a trend reflecting the presence of front yard parking dependent on alternative parking options such as a laneway or garage. Mr. Santiago said that his own analysis did not note the trend or pattern that Mr. Mattar seemed to be referring to.

[53] Mr. Mattar, then, asked Mr. Santiago whether Mr. Santiago is willing to comment on the pattern based on the maps and drawings that he had submitted. Mr. Mattar asked if he could ask that question and whether it could be a valid question. I allowed the question to be asked by Mr. Mattar of Mr. Santiago. Mr. Santiago said the west portion of Wilson Park Road has on-street parking and benefits from laneway access at the rear. Beaty Avenue contains on-street parking on its west portion too, but it does not have laneway access at the rear. Mr. Santiago testified that there is neither a prevalence of front yard parking on the west portion of Beaty Avenue nor a benefit of rear laneway access. Mr. Santiago indicated there is front yard parking on the east portion of Wilson Park Road and on the east portion of Beaty Avenue. He testified that neither have access to the rear laneway. Mr. Santiago, then, commented on Triller Avenue. He said that on the west portion of Triller Avenue, there are some front yard parking spaces or access by mutual driveway to off-street parking spaces. He highlighted that there are no front yard parking spaces on the east portion of Triller Avenue, a portion which benefits from a laneway at the rear.

[54] Mr. Mattar asked Mr. Santiago about the proportion of front yard parking, whether the majority of homes on the east portion of Wilson Park Road which are without access to laneway have front yard parking. To answer this, Mr. Santiago referred to Table 2 in Exhibit 6 and stated that there are twenty-eight lots on the east side of Wilson Park Road, within the study boundary, of which thirteen of them are licensed for front yard parking, which is still less than a majority. Mr. Santiago did admit that informal or observed but unlicensed front yard parking could constitute more than fifty percent of the east portion of Wilson Park Road.

[55] Do you recall how many curb cuts exist on the west portion of Triller Avenue, the six buildings in question? Mr. Santiago said there are two mutual driveways, so it stands to reason there are two curb cuts on the west portion of Triller Avenue. Mr. Mattar hesitated at first but proceeded to ask Mr. Santiago whether Mr. Santiago would concede that there were three parking pads i.e., only one was licensed and there were two driveways. Mr. Santiago said that is accurate, that is what he observed.

[56] Mr. Mattar asked Mr. Santiago whether Mr. Santiago would consider the subject home unique because it is the only house that does not have another parking option on the street. Mr. Mattar added that Mr. Santiago talked about homes on Wilson Park Road as being unique and wondered whether Mr. Santiago would accept 32 Triller Avenue as unique because it does not have alternative parking. Mr. Santiago said that he does not think the home is unique with respect to parking conditions. Mr. Santiago added that there is no parking at the rear access by a currently existing laneway and there is no front yard parking, but, he said, there is access to on-street parking. Mr. Santiago further added that there are other properties on Triller Avenue and elsewhere that have similar parking conditions to 32 Triller Avenue.

[57] Mr. Mattar asked Mr. Santiago whether Mr. Santiago has calculated what the impact on soft landscaping is quantitatively, in percentage form, and the impact of storm water management based on the dimension Mr. Mattar had submitted. Mr. Santiago admitted that he did not conduct an analysis for the calculation of front yard soft landscaping, though, he did point out, there is no variance for soft landscaping for the revised application. Mr. Santiago added that soft landscaping forms the quality of a front yard. Quality cannot be limited to storm water management only. Mr. Santiago cautioned that a variance to soft landscaping would need to be looked against the zoning by-law in a given situation. Mr. Mattar acknowledged Mr. Santiago's point and said he appreciated Mr. Santiago's response.

[58] Mr. Mattar asked Mr. Santiago what is the practical benefit of the policy proposals when they are not well-defined in the guidelines. Specifically, he asked at point would Mr. Santiago weigh the guidelines and by-laws against the parking policies back in 1996? Mr. Santiago said that it is a balance act. While policies are not "set in stone," the spirit of the zoning by-law was carried on in 2008 with Municipal Code prohibition and that spirit is now in the 2018 Neighbourhoods policy of the Official Plan. Mr. Santiago said he would not characterize the situation as overly dated. He added that policies will evolve, and similar to laneway suites, which had been initially adopted in pilot form, there could be a similar approach taken for electric vehicles, but that that would require a coordinated effort on macro and micro levels. Mr. Santiago agreed with Mr. Mattar that the issue is complex, and that the City is working on a balanced approach, before it can be thought of on an ad-hoc basis.

#### *Re-Examination of Mr. Santiago*

[59] Mr. Hardiejowski confirmed with Mr. Santiago that Mr. Santiago's expert witness statement was prepared in the context of the TLAB appeal. He also confirmed no zoning notice provided with the TLAB appeal, which is a modified application.

## ANALYSIS, FINDINGS, REASONS

[60] This is a *de novo* matter. It is for me to determine whether Mr. Mattar has successfully proven that his revised application, inclusive of all of the requested variances, satisfies the legal and policy tests outlined above. Overall, and with reasons set out below, I find Mr. Mattar has not discharged that onus. I do, however, recognize that he has straightforwardly presented his case and has challenged Mr. Santiago on some points during Mr. Santiago's cross-examination.

[61] Mr. Mattar decided to appeal his application to the TLAB. He anticipated he would need half a day for the hearing.<sup>3</sup> Not long after he submitted his appeal, Toronto City Council authorized its Solicitor to attend the TLAB hearing to support the Committee of Adjustment's decision to refuse the variances requested in respect of the subject property.

[62] I recognize that Mr. Mattar has already made efforts to support the cause of environmental sustainability. His reasons for the appeal include pursuing a carbon-neutral home. He indicated that the greatest source of carbon emissions is his gas-powered vehicle. He further indicated that his family is "ready to make the switch" to an electric vehicle and a parking pad would allow for that possibility.

[63] At the moment, on-street parking has been Mr. Mattar's parking condition. Mr. Santiago had mentioned that between King Street West and Queen Street West, Triller Avenue has an on-street parking capacity of forty-seven per cent of which fifteen spaces are provided for, and seven permits have been issued, one of which was for the subject property.

[64] To be sure, the availability of on-street parking does not resolve the current paradox. On the one hand, Mr. Mattar desires to have an electric vehicle now, a personal choice. On the other hand, the City of Toronto declared a climate emergency in 2019<sup>4</sup> to reduce greenhouse emissions: 65 per cent by 2030 and net-zero by 2050, or sooner.<sup>5</sup> The City also acknowledged that achieving said targets would require it to move towards more sustainable transportation modes, possibly including personal vehicle electrification.<sup>6</sup> In the interim, I recognize the City seems to be making charging infrastructure publicly available on account of more electric vehicle users.

[65] Still, the City of Toronto's Electric Vehicle (EV) Strategy, which was prepared by a consulting firm, acknowledges that:

Residents without access to home or workplace charging will rely on public charging infrastructure to make EVs a viable option. Public infrastructure will support EV adoption as it reduces range anxiety and increases the ability to travel further from home.<sup>7</sup>

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<sup>3</sup> TLAB Form 1, page 2.

<sup>4</sup> See TransformTO <https://www.toronto.ca/services-payments/water-environment/environmentally-friendly-city-initiatives/transformto/>

<sup>5</sup> See TransformTO Targets: <https://www.toronto.ca/services-payments/water-environment/environmentally-friendly-city-initiatives/reports-plans-policies-research/electric-vehicles/>

<sup>6</sup> Exhibit 5, page 29.

<sup>7</sup> City of Toronto's Electric Vehicle Strategy, see: <https://www.toronto.ca/wp-content/uploads/2020/02/8c46-City-of-Toronto-Electric-Vehicle-Strategy.pdf> at page 27. I located this document through a hyperlink contained in Exhibit 5.

[66] I now, briefly, turn to the case of 8 Springhurst Avenue, which was raised by both the Appellant and the City albeit for different reasons. In that case, the owner wished to construct a front yard parking pad with an external charging station for an electric vehicle. There were two variances about parking location: one under the City-wide bylaw and the other under by-law 438-86. While 8 Springhurst Avenue is similar but not identical to the facts in the matter before me, it is dissimilar on the strength of the evidence and preparation. In 8 Springhurst Avenue, the owner sought the assistance of a land-use planner and a lawyer. Importantly, the owner did not face opposition at the hearing. Mr. Mattar, on the other hand, was seriously challenged by Mr. Hardiejowski's questioning and Mr. Santiago's qualified land use planning opinion evidence. Mr. Mattar also did not properly prepare a witness statement.

[67] Mr. Hardiejowski would want me to dismiss the appeal because Mr. Mattar had not proffered proper planning evidence. While this kind of evidence is, indeed, salient it is not determinative of a hearing outcome. Still, careful preparation for a hearing is vital.

[68] I preferred the oral and written evidence of Mr. Santiago, which were carefully developed and conveyed.

[69] For Mr. Mattar's sake, I shall explain why the legal tests were not met based on the evidence he presented.

[70] Before that, I find that the revised application is consistent with the provincial policy statements and conforms to the provincial plans as set out in Section 3 of the *Planning Act*.

[71] In terms of the Official Plan Policies, the cornerstone policy (2.3.1.1) directs that neighbourhoods are to be physical stable and that development would be consistent with this and would also respect and reinforce the existing physical character of buildings, streetscapes, and open space patterns in these areas. The existing physical character of open space patterns becomes particularly relevant in Policy 4.1.5.

[72] Mr. Mattar did not seem to know that an immediate and broader context must be ascertained in an analysis and evaluation of Policy 4.1.5. in view of the revised application. On the other hand, Mr. Santiago had delineated these contexts. Front yard parking exists to a greater degree, in the broader context, on Wilson Park Road and Beaty Avenue than on Triller Avenue. It was open to Mr. Mattar to explain how the proposed front yard parking would respect and reinforce the existing physical character, and, among other things, prevailing location, design, and elevations relative to the grade of driveways and grade, as per Policy 4.1.5 (e).

[73] With regard to Policy 4.1.5 (g), there seems to be a continuous and prevailing pattern of front yard soft landscaping on both sides of Triller Avenue with the exception of the mutual driveway between 24-26 and 30 Triller Avenue and the widened driveway at 22 Triller Avenue.

[74] I have no compelling evidence that the revised application is materially consistent with the prevailing physical character of properties in the immediate and broader contexts.

[75] I heard compelling evidence from Mr. Santiago which illustrated that front yard parking is not a prevailing feature in these contexts.

[76] Additionally, I heard that the proposed front yard parking space would result in a curb cut, which, in turn, would result in a loss of on-street parking space. Mr. Santiago had indicated in his evidence that other on-street parking permit holders in the area who are looking for parking would then have fewer options. It would appear that the proposed front yard parking space for the subject property would not be located and organized in a way that minimizes curb cuts and limits surface parking between the front face of the building and the public street. I heard no compelling evidence from Mr. Mattar addressing this relevant Official Plan policy, which figures into the general intent and purpose of the Official plan.

[77] I heard Mr. Mattar state that locating and organizing a parking pad in his front yard would help reduce harmful emissions and conserve energy, which represent non-policy textual commentary items in the Official Plan at Chapter 2 (2-27). Chapter 1, 1-7, however, provides that these items (of unshaded text) are not to be afforded any independent status when interpreting the Plan (See Chapter 1, 1-7).

[78] The revised application neither maintains the general intent and purpose of the Official Plan, as amended by Official Plan Amendment 320, nor that of the City-wide Zoning By-Law.

[79] I heard Mr. Mattar, in his evidence, indicate that there is no outright ban on front yard parking in his area. In reviewing the more important performance standard, and without any need to explore the City's compilation of by-laws in this case, I believe he is partly right. The by-law, which states, "a parking space **may not** be in the front yard" (my emphasis) could be made clear to indicate that it is a clear prohibition and not simply one that sounds like that a front yard parking space is more or less not allowed.

[80] Still, Mr. Mattar could have done much more to try to establish that the general intent and purpose of the zoning by-law is maintained. He cannot simply assert there are other properties that have front yard parking. There is a well-established variance system, which involves procedure and evidence.

[81] Mr. Mattar could have prepared better. For example, he could have provided a well-documented qualitative and quantitative analysis of properties in definable immediate and broader contexts that have front yard parking. He could have then explained why there would be no adverse impacts to the loss of soft landscaping resulting from his proposed development. These are comments about preparation, not about determination.

[82] To that end, I would invite the City to work with Mr. Mattar to help him find a way to be able to park and charge his electric vehicle, should he have one now.



## DECISION AND ORDER

[83] The Appeal is dismissed. The decision of the Committee of Adjustment is upheld.

X

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Sean Karmali  
Panel Chair, Toronto Local Appeal Body