

DECISION AND ORDER

Decision Issue Date Friday, July 02, 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): SAIED MAHBOUBI

Applicant(s): SAIED MAHBOUBI

Property Address/Description: 65 LANGLEY AVENUE

Committee of Adjustment File

Number(s): 20 175124 STE 14 MV

TLAB Case File Number(s): 20 221902 S45 14 TLAB

Hearing date: June 7, 2021

DECISION DELIVERED BY JUSTIN LEUNG

APPEARANCES

Name	Role	Representative
Saied Mahboubi	Applicant/Owner/Appellant	Jamie Cole
City of Toronto	Party	Lauren Pinder
Martin Rendl	Expert Witness	
Kelly Graham	Expert Witness	
John Payne	Participant	

INTRODUCTION

This is an Appeal from a decision of the Toronto-East York Committee of Adjustment (COA) relating to a Variance for 65 Langley Avenue (subject property).

The Variance had been applied for to the COA to permit the construction of a front yard parking pad, with semi-permeable paves, for the use of a three storey detached dwelling.

This property is located in the North Riverdale neighbourhood of the City of Toronto (City) which is situated south of Riverdale Avenue and bounded by Broadview Avenue to the west and Logan Avenue to the east. The property is located on Langley Avenue, south of Riverdale Avenue and north of Victor Avenue.

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.

BACKGROUND

The Application consists of the following requested Variance:

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

A parking space may not be located in a front yard or a side yard abutting a street. The parking space will be located in the front yard.

This Variance was heard and refused at the November 4, 2020 Toronto-East York meeting.

Subsequently, an Appeal was filed on November 24, 2020 by Saied Mahboubi. The TLAB received this Appeal and scheduled a Hearing on June 7, 2021 for all relevant Parties to attend.

MATTERS IN ISSUE

The Appellant states that the intention for a front yard parking pad is to facilitate for the parking and charging of an electric vehicle (EV) which the property-owner is intending on purchasing to use. They opine that if this Variance is not permitted by the TLAB, then the potential acquisition of an EV vehicle will not be feasible as they would not be able to charge the vehicle overnight.

The City Solicitor articulated the City's position that allowing this Variance request would allow a new site condition which would be incompatible with the current neighbourhood characteristics. In addition, the allowance of this front yard parking pad would result in the potential elimination of an on-street parking space which would negatively impact the balance of parking spaces for this local area.

Here, the Tribunal must assess the subject proposal in accordance with established Planning legislation and policies, while also providing consideration of environmental related policies as the issue of EV vehicles has been proffered by the Appellant. Arguments which have been broached as they relate to climate change, and how they interface with Planning principles, would also have to be analyzed here as well.

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').

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

At the beginning of the Hearing, Jamie Cole, the legal representative for the Appellant, requested that Exhibits be entered to form part of the record for this Appeal. They were assigned as follows:

Exhibit 1- Martin Rendl Expert Witness Statement

Exhibit 2- Martin Rendl Reply to Expert Witness Statement of Kelly Graham

Exhibit 3 - Document Disclosure book 3a and 3b

Exhibit 4 – Visual Exhibit book

City solicitor Lauren Pinder then requested the following items be entered as Exhibits:

Exhibit 5- Kelly Graham Expert Witness Statement

Exhibit 6- City Document book (A, B and C)

Exhibit 7- Slides of the document book

I accepted these Exhibits and indicated they would be entered as part of this Appeal's record and also be inputted onto the City's Application Information Centre (AIC).

Mr. Cole then commenced with his opening remarks. He outlined that his client's proposal relates to mitigating the effects of climate change. The Variance request is to facilitate for the parking of an electric vehicle (EV) on a front facing parking pad. He further opines that the City's position to oppose this Variance request is counter-intuitive as this proposal would act to address climate change and is consistent with environmental policies as outlined by the City.

Mr. Cole stated that there was a previous Ontario Municipal Board (OMB, recently reorganized as the Ontario Land Tribunal) Decision for this subject property which was an Appeal of a Consent (severance) Application. At that time, the Board had been presented evidence by a Planner which outlined two proposals which the OMB could consider, either to allow a front facing parking pad or to approve the balance of the Variance requests without permitting a parking pad. The OMB subsequently issued a Decision which refused the parking pad proposal.

In terms of the current Appeal, Mr. Cole posits that there are now differing circumstances which have emerged. He argues there has been recent developments with regards to EV vehicles which has resulted in their broader availability to the public. As such, his client wants to purchase such a vehicle for use, in part to perform the role of environmental stewards. The Variance to permit a front facing parking pad would allow his client to be able to attain their goal of actually owning an EV vehicle.

Ms. Pinder then proceeded with her opening remarks. She opined that while she recognizes the arguments as posited by Mr. Cole, that the Planning and environmental policies are not mutually exclusive and both must be reviewed in an inter-related manner to one another. She argues that Planning policies such as the *Official Plan* (OP) and *Zoning By-law* must be considered, while also assessing matters relating to climate change mitigation.

Mr. Cole then requested that Mr. Rendl be called to provide expert testimony to the Tribunal. I indicated that I had reviewed Mr. Rendl's curriculum vitae and would be able to qualify him in the field of land use planning.

Mr. Rendl commenced by describing the study area he had devised to assess this proposal. The study area is approximately bounded by Withrow Avenue to the north, Broadview Avenue to the west, Logan Avenue to the east and Simpson Avenue to the south. In assessing this study area, Mr. Rendl has reached a conclusion that front facing parking pads are commonplace amongst the residential properties of this area. He then presented to the Tribunal a photobook which showed photographs of several properties of the study area. These photographs depicted residential dwellings with different configurations of front facing parking pads.

With regards to the physical character, Mr. Rendl contends that there is a consistency to the form and scale of the local streets of this study area. Mr. Rendl then referred to the site plan submitted with the Variance Application. He states that the width and depth of the proposed driveway are in compliance with the *Zoning By-law*. Furthermore, the vehicle to be parked on this pad would be contained entirely on private property and would not protrude onto the boulevard. As such, a boulevard parking permit, as per the *Municipal Code*, would not be required here. With regards to City staff, Mr. Rendl described that Transportation staff did not object to the Variance Application. Moreover, Planning staff had not provided comments on this Application which he attributes to them not having concerns with the proposal.

Mr. Rendl went on to explain that, in his opinion, due to 'lapses' in the regulatory framework as it relates to EV vehicle charging infrastructure, the Appellant here must seek a Variance to allow for the charging of the vehicle on-site.

Mr. Rendl then proceeded to analyze relevant Planning policies and how they interface with the subject proposal. He began by assessing the *Provincial Policy Statement (PPS)* and described that this policy document has specific policies relating to climate change and recognizes mitigation measures should be implemented by municipalities. With regards to the OP, he referenced Section 2.3 which, in recognizing stable residential neighbourhoods, further outlines that these neighbourhoods will not be static and can see incremental change or development. He explained that the OP does not specifically define what 'development' is. He proceeded to explain Section 4.1.5 describes the 'neighbourhood criteria' which development in such areas must afford consideration towards.

Mr. Rendl then referenced a document prepared by Expert Witness Kelly Graham which shows the parking arrangement of residential properties along Langley Avenue. Here, Mr. Rendl explains that this document shows that there is a variety of parking configurations for the residences on this street, including front facing parking pads, front facing parking with boulevard permits, illegally constructed front facing park and parking located on the rear of some properties accessed by a laneway.

Mr. Rendl then provided testimony pertaining to Chapter 918 of the *Toronto Municipal Code*. This Chapter allows for permit to be issued for residents to park their vehicle on their front yards. A permit is required as the parked vehicle would encroach onto the City boulevard. A permit issued herein would not be subject to requirement for a Variance Application. As part of his research on this issue, he found that there were 6 licensed spaces on Langley Avenue and several licenses issued for the adjacent streets as well. He also found there are some front facing parking pads in this area which were constructed without pursuing a permit.

To conform with OP policies, the front facing parking pad would be constructed with permeable pavers so as to address water runoff from the property. Mr. Rendl then presented the City's *Electric Vehicle Strategy* where he posits that the City is supportive of EV vehicle use by its residents. To facilitate for this, this Strategy does provision for at home charging stations to be installed, if necessary.

In assessing the *Zoning By-law* and how it relates to this proposal, he believes that this Variance Application would be consistent with the principles of the *Zoning By-law*. He further describes that the Zoning provisions dictate that vehicles be parked or located behind the main wall of the house. This can be interpreted that there should either be an integral garage or a detached garage on a rear facing laneway for the parking of a vehicle. However, these provisions are currently still under appeal, as part of *Zoning By-law 569-2013*, to the Local Planning Appeal Tribunal (LPAT, recently reorganized as the Ontario Land Tribunal).

In returning to describe the subject proposal, Mr. Rendl surmises that he does not believe it will create negative impact for the neighbourhood and would be consistent with the neighbourhood characteristics.

I noted at this juncture that Participant John Payne had just joined the Hearing and indicated if he had a statement to provide, he could. Mr. Payne did not respond to this request. As such, it was presumed he was attending to observe only.

Ms. Pinder then proceeded to cross-examine Mr. Rendl on his proffered evidence. She inquired if the *Zoning By-law* does not exempt EV vehicles. Mr. Rendl acknowledged this but further attributes this to outdated documents such as the *Official Plan* and *Zoning By-law* which, at the time of their drafting, had not afforded consideration for EV vehicles.

Ms. Pinder then inquired that, as part of the EV Strategy, does it not provision for off-site charging stations and for charging stations at places of employment, in lieu of having to charge an EV vehicle at a residence. Mr. Rendl acknowledged that, however, he does not believe that these alternatives would be preferable for homeowners. She then referenced the OP and specific policies within it discussing charging stations to be allocated by parking providers. Mr. Rendl responded that parking providers are related more to offices, commercial developments or multi-residential complexes. He states that it does not appear the OP discusses charging stations for individual residential properties, which he argues is a 'gap' in current Planning policies.

Ms. Pinder then asked if OP policies require, when possible, the limiting of front facing parking surfaces. Mr. Rendl stated that he believes that the subject proposal would not be in conflict with the OP policies as this proposed front facing parking pad will act to minimize the amount of parking area which would occupy the front yard of this property.

Mr. Rendl was then asked if he believed there is a difference between a parking pad and a driveway leading to a garage. He responded that there is, however, emphasized that a vehicle can still be parked on a driveway. Ms. Pinder then referenced that there is currently a moratorium on the allowance of parking pads, as promulgated by City Council. She then asked if there has only been a handful of parking pad related permits issued by the City. Mr. Rendl responded that is correct, due to the moratorium.

Ms. Pinder then described the previous OMB Decision for this property, which was for a Consent (severance). She noted there was also a related Variance request for

a front parking pad. She inquired if that Variance request is substantially similar to the current Variance before the TLAB. Mr. Rendl acknowledged this.

At this juncture of the Hearing Ms. Pinder indicated there are two additional Exhibits which she would be referencing herein. They were accepted as follows:

Exhibit 8: March 1, 2018 OMB Decision

Exhibit 9: City Electric Vehicle Strategy

She referenced Exhibit 8 which relates to *Zoning By-law 569-2013* and the specific testimony of Planner Mr. Goldberg. Citing excerpts from this OMB Decision, Ms. Pinder described Mr. Goldberg's opinion that the Zoning provisions dictated that a garage be placed behind the main wall of a dwelling is of concern when applied to smaller sized lots. Here, he opines that on smaller lots this requirement results in a house with a greater building height and the need for Variances to facilitate the construction of said house. She asked if the issues as raised here would not be relevant to the subject proposal. Mr. Rendl responded that the proposal here did not allocate for an integral garage so the previously noted excerpt would not be relevant.

I then inquired about Mr. Rendl having referenced in his *Expert Statement* that there was an additional Variance request which was needed to facilitate this proposal. Mr. Rendl responded that it was related to the previous *Zoning By-law 438-86*, which predates *Zoning By-law 569-2013*. However, it is substantially similar Variance request to current one before the TLAB. Mr. Rendl believes it is also necessary to be captured if the TLAB choose to allow this Appeal. I then described charging stations at other locations such as municipal buildings which can be used by the public. With these, I asked if his client, the Appellant, did not believe the use of such charging stations was a viable option for them. Mr. Rendl responded that they were not as his client would have to travel off-site to leave his vehicle to charge, and then go back to pick it up. A potential issue is if there was the need to leave the vehicle overnight, which is not feasible for his client.

Mr. Cole then asked Mr. Rendl asked if there is inter-connection between the OP and the City's *Electric Vehicle Strategy*. Mr. Rendl stated that the Strategy does incorporate elements of the OP and provides appropriate consideration for that policy document. Mr. Cole then requested Mr. Rendl explain the current parking arrangement for dwellings along Langley Avenue. Mr. Rendl responded that while houses may not need parking, several of the houses along Langley Avenue do allocate for it. This can be attributed to resident convenience in having immediate access to a vehicle. Mr. Cole then asked about the visual attributes of front facing parking pad, driveway leading either to garage or other parking area. Mr. Rendl commented that there is a variety of parking arrangements which have been provided for in this neighbourhood.

Ms. Pinder then requested that Kelly Graham be called before the TLAB as an Expert Witness. I stated that I had reviewed Ms. Graham's curriculum vitae and was able to qualify her in the field of land use planning.

Ms. Graham commenced by referencing a *Zoning By-law 569-2013* provision which states that a parking space cannot be located on either a front or side yard abutting a street. She further opined that she did not believe this proposal met the four tests for Variance, as per the *Planning Act*. As part of her assessment of the neighbourhood, she concluded that front facing parking pads are not of the prevailing character for this area. Ms. Graham then presented a document, as part of her *Expert Witness Statement*, which outlines parking arrangements on Langley Avenue (which had also been referenced by Mr. Rendl previously). Her analysis found that the majority of houses on this street do not have parking provided and that front facing parking pads, both licensed and unlicensed, would cumulatively represent 12 percent for the balance of properties on this street.

Ms. Graham cited that this neighbourhood is part of a City parking permit area. Currently, it has 90 percent permit issuance for on-street parking provisioning. As such, she explains that the Transportation staff's policy is to not object to front facing parking pad proposals unless 100 percent permit issuance had been achieved.

With regards to the OP, she outlines that this policy document encourages and supports active transportation, sometimes at the expense on traditional automobile use. Ms. Graham then proceeded to cite a portion of Mr. Rendl's *Expert Witness Statement*. Mr. Cole raised an objection as he contended that if Ms. Graham had specific response to Mr. Rendl's evidentiary material, that should have been done through the submission of a *Reply to Witness Statement*, as per *TLAB Rules*. I responded that this was accurate and that Ms. Graham should refrain from making direct rebuttals of Mr. Rendl's *Expert Witness Statement*.

Ms. Graham stated that, due to several active transportation options, including public transit in this neighbourhood, that a front facing parking pad for an EV vehicle is not necessary here. In addition, she argues that front facing parking pad could be a potential safety issue for pedestrians and cyclists.

Mr. Cole then proceeded to cross-examine Ms. Graham. He cited the previous OMB Decision where the Variance for the front facing parking pad had been refused. He asked if she recognized that the circumstances for the Variance request here were different as it was now relating to an EV vehicle. Ms. Graham indicated that she does not believe the circumstances are different here. She argues that neighbourhood characteristics continue to have to be assessed when reviewing Variance requests such as with this proposal. While the Appellant is proposing this parking pad for an EV vehicle, she contends that it could be used to park a conventional vehicle as well.

Mr. Cole then outlined that the count of properties he had for Langley Avenue was different from the count as presented by Ms. Graham to the TLAB. He then also asked if her analysis of the parking arrangements could be flawed. Ms. Graham responded that she used City property data, coupled with site visits, to derive the count for number of residential properties along Langley Avenue. In terms of potential erroneous data, Ms. Graham referenced her previous testimony in stating that, in her opinion, a front facing parking pad was materially different from a driveway. As such, she reached a conclusion that a front facing parking pad would not be an appropriate form of development for this neighbourhood.

I asked Ms. Graham if she was contending that the potential approval of this Variance request could result in other similar proposals on this street in future. She responded that, in review of this Appeal's materials on the Application Information Centre (AIC), that there has been correspondence from other area residents who have indicated they also want to install a front facing parking pad. As such, Ms. Graham surmises that the approval of this Variance request could result in a 'snowball effect' along this street.

In his closing remarks, Mr. Cole summarizes that in an effort to address the impacts of climate change, his client is pursuing this Variance request so that they can purchase an EV vehicle to use, thus reducing their carbon footprint. He opined that the City was effectively creating a two tier system for EV vehicle owners, with those who have a driveway who can install a charging station and those who are 'garage orphans' who would have to seek an off-site charging station to use. He then referenced a TLAB Decision for 8 Springhurst Avenue, delivered by Member Ted Yao, which was for a similar Variance request. That Decision permitted that Variance request. Here, he cites a portion of the Decision where the presiding member comments that it does not appear municipal policies have been crafted to sufficiently address the need for on-site residential charging stations.

I described to Ms. Pinder that it appears Planning staff had not commented on this Variance Application. In handling previous TLAB matters, City staff at those hearings had explained to me that if there was no Planning report, that it could be interpreted that staff do not have concerns with the proposal. Ms. Pinder responded that is the standard practice. As such, with the subject proposal, the absence of a Planning report could be interpreted as staff not having a concern. However, it could also be due to workload that they elected not to provide comments on this Application.

Ms. Pinder provided closing remarks here where she posits that, in providing for parking for an EV vehicle, would contravene municipal policies such as the OP and *Zoning By-law*. She argues that the TLAB must recognize the relevant Planning policies and legislation when assessing this proposal. The introduction of this front facing parking pad would negatively impact the on-street parking situation. While recognizing that Variances are not precedent setting, here there is potential issue with additional front facing pads proliferating along Langley Avenue if this Variance request was permitted.

She further argues that requesting permission to allow a parking pad to facilitate for an EV vehicle charging station should not be assessed independently and must afford consideration to the four tests for Variance, as per the *Planning Act*. With regards to the 8 Springhurst Avenue TLAB Decision, she notes that there is no on street parking there. In addition, there was no resident opposition tot this proposal. Also, she contends that in this neighbourhood the properties principally are comprised of front yards with hard surfacing. As such, the neighbourhood character was materially different to that of the subject property.

Ms. Pinder referenced the testimony of Ms. Graham in outlining that the City's policies are to encourage active transportation use. The allowance for a proposal of a front facing parking pad, even for an EV vehicle, would, in her summation, act to further

encourage automobile use. This would act to conflict with the City's active transportation mandate.

She then outlined a TLAB Decision for 26 Carey Road, as delivered by Member Sabnavis Gopikrishna, which had 3 Variance requests. The proposal was for a dwelling with an integral garage. This Decision analyzed if integral garages were of the prevailing character of that neighbourhood. The presiding member here found that integral garages were not of a substantial number for this local area context. With this, Ms. Pinder argues that front facing parking pads constitutes the minority for the neighbourhood in question. As such, this proposal would not respect and reinforce the prevailing character.

Mr. Cole responded that Ms. Pinder asserted that with TLAB Decisions of 8 Springhurst Avenue and 26 Carey Road, would not impact the local on street parking situation, respectively. However, as it relates to the subject proposal, he does not believe evidence has been proffered which conclusively determines that the on-street parking situation will be adversely impacted with the allowance of a front facing parking pad at this subject property. With regards to the information as presented by Ms. Graham on the parking situation on Langley Avenue, Mr. Cole contends that there may be inaccuracies in that information. As such, the assertion that front facing parking pads constitutes the minority for this street could have been derived erroneously.

With closing remarks completed, the Hearing was thus concluded.

ANALYSIS, FINDINGS, REASONS

The Appellant has provided an environmental context in explaining why their Variance request for a front facing parking pad should be allowed by the TLAB. They contend that this proposal would contribute to reducing the impacts associated with climate change. The Appellant's legal representative further argues that the City should be encouraging such initiatives as opposed to discouraging them.

The City Solicitor contends that the approval of a front facing parking pad, such as this proposal, would act to negatively impact the neighbourhood character of this area. She argues that this is an older, established residential area which was built prior to the advent of the automobile. As such, several of the houses here do not have driveways or garages. If this Variance request was permitted by the TLAB, the City opines that a cascading effect could occur where other neighbourhood properties will also attempt to obtain approval for a front facing parking pad as well. As a result, the prevailing neighbourhood character would be irreparably harmed in the process.

What was assessed comprehensively was the notion of prevailing character, as it relates to *Official Plan Amendment 320 (OPA 320)*, and if this subject proposal would be consistent with the neighbourhood characteristics or not. The analysis of the parking arrangement for Langley Avenue, as proffered by Expert Witness Kelly Graham, was assessed at length by both Parties to this matter.

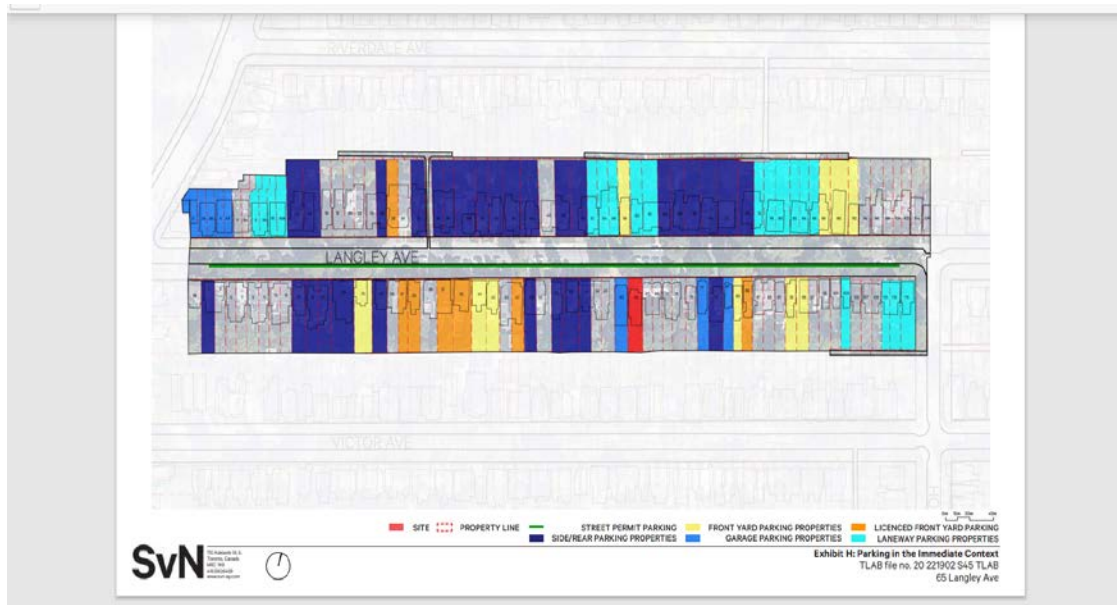


Figure 1: Parking in the Immediate Context from Expert Witness Statement of Kelly Graham

As part of Ms. Graham’s testimony to the TLAB, she expounded on the research methodology she undertook to assess the parking arrangement of residential properties along Langley Avenue. This approach comprised assessing City property data, aerial photography and site visits to determine the number of properties along this street and to then categorize them according to their different parking arrangements. It is noted that Ms. Graham’s assessment criteria focused on a stretch of Langley Avenue, bounded by Broadview Avenue to the west and Howland Road to the east. Langley Avenue does extend further east to Carlaw Avenue but Ms. Graham has elected to undertake a more localized analysis here.

The resulting data as disseminated by Ms. Graham found that the majority of properties along this stretch of Langley Avenue do not have parking provided. The next most common parking arrangement is side/rear assessed parking pads. With regards to front facing parking pads, the assessment acts to differentiate between legal and illegal parking pads. Here, it is found there is 7 legal parking pads and 7 illegal parking pads, respectively. As had been previously described in this document, this would account for a total of 12 percent for this stretch of Langley Avenue. Ms. Graham thus concludes that the front facing parking pad configuration constitutes a minority for Langley Area. In relation to OPA 320, and its requirements for new in-fill development to analyze the immediate and broader context, Ms. Graham’s *Expert Witness Statement* describes as follows:

“82. In the broader neighbourhood context, there are 82 off-street licensed front yard parking pads as listed in the Street-Index for Off-Street Parking. Throughout the broader context there are some properties with laneway parking, and others with driveways leading to rear or side yard parking. Overall, the prevailing parking condition is no private parking in any form.

83. In the immediate context along Langley Avenue between Howland Road and Broadview Avenue there are 119 lots in total. Seven out of 119 lots, or 6%, have licensed front yard parking. All were granted licenses for off-street parking prior to the enactment of Chapter 918 of the Municipal Code in 2007 (Exhibit H).

84. The prevailing condition for parking on Langley Avenue as observed from the public realm is the absence of a parking space on private property, however driveways to access rear or side yard parking spaces are somewhat common (27%).”¹

The testimony and evidentiary material, as proffered by Ms. Graham, is used as a means to critique OP policies, specifically OPA 320. This assessment was provided by Ms. Graham, which acts to support the position as advanced by the City in that this subject proposal is inconsistent with Planning policies, such as the OP and *Zoning By-law*, and as such should be refused by the TLAB. It is noted that as part of her testimony, Ms. Graham did assert that the *Zoning By-law* states that front yard parking pads are not permitted for this area’s Zone designation.

In response to this testimony, the Appellant, as advanced by their legal representative and retained Expert Witness, did act to address the testimony as proffered by Ms. Graham.

Mr. Cole, in cross examination, inquired to the assessment methodology used by Ms. Graham in reaching her Planning opinion on this Appeal matter. He asserted that there may be inaccuracies in the data that she gathered as, in referencing data he had prepared for this Appeal, found that there were some properties which appear to have been mis-identified as part of her study on parking arrangements for residential properties on a stretch of Langley Avenue. Ms. Graham stated that a fulsome analysis had been undertaken by her in analyzing this Appeal matter and that there could be some errors in her data, but that it would constitute a minor variation here. She contends that while due diligence was practiced here, that there will invariably be some minor errors which can occur. However, Ms. Graham continues to articulate her professional opinion that, based on the data as gathered by her, that this proposal would not meet the four tests for Variance, as per the Planning Act, and as such the TLAB should refuse this Appeal in its entirety.

In countenance to Ms. Graham’s testimony, Mr. Rendl presented his evidentiary material to the TLAB in support of this proposal. With regards to Ms. Graham’s contention that the *Zoning By-law* prohibits front facing parking pads, Mr. Rendl’s responded as follows:

“5. The application is to permit a front yard parking pad located entirely on private property, which is an application for relief from *Zoning By-law 569-2013*, not an application to license a front yard parking pad under Chapter 918. The requirements of Chapter 918 are not relevant to this minor variance application.

¹ Graham. K *Witness Statement of Kelly Graham*. March 2021, pp. 17-18

6. Chapter 10.5.80.10.(3) is a performance standard of Zoning By-law 569-2013 and can be varied.”²

Here, Mr. Rendl asserts that while there is a provision within the *Zoning By-law* which does not permit front facing parking pad, he explains that there is a Variance process where a property-owner can apply for a Variance which acts to seek relief from portions of the *Zoning By-law*.

Mr. Rendl also conducted his own study of parking arrangements, in the study area he has defined, and extrapolated the following data:

“The following is a summary of currently licenced (as at February 19, 2021) front yard parking spaces in my NSA:

- Langley Avenue: 6 licenced parking spaces
- Simpson Avenue: 26 licenced parking spaces
- Victor Avenue: 12 licenced parking spaces
- Riverdale Avenue: 9 licenced parking spaces
- Withrow Avenue: 30 licenced parking spaces 89.

In addition to these licenced spaces, I observed many other front yard parking spaces not listed on the City’s inventory. I expect owners created these spaces without obtaining a licence from the City by widening driveways or hard surfacing their front yards.”³

Mr. Rendl contends that front facing parking pads are currently in existence for this local area. As such, the introduction of a front facing parking pad for this subject property would not act to disrupt the neighbourhood rhythm. However, his testimony to the TLAB also discussed unlicensed front parking pads and how they act to represent the neighbourhood character as well. The Tribunal, while recognizing that such a condition does exist, must also feign caution in providing commentary which may appear to condone the construction of these front facing parking pads. The City has an established process where property-owners can obtain a legal front facing parking pad. To circumvent this process would inhibit a municipality in enacting policies and regulations which are passed as a means of protecting the overall public interest.

The testimony of Mr. Rendl does not act to conclusively dismiss the evidence as proffered by Ms. Graham as it relates to this Appeal matter. With regards to the *Toronto Municipal Code*, it was discussed during the Hearing that a permit would not be relevant to this proposal as a vehicle would not be encroaching onto the boulevard here. It is only in those instances would a permit need to be issued, at the discretion of City staff.

² Rendl, M. *Reply to Expert Witness Statement of Kelly Graham*. March 2021, pp. 5

³ Rendl, M. *Expert Witness Statement of Martin Rendl*. March 2021, pp. 13

With regards to Mr. Rendl's description that the Appellant is entitled to seek a Variance application to permit a front facing parking pad, that is not an issue of contention here. However, what must be assessed by the Tribunal is whether the proposal is appropriate in relation to the four tests for Variance, as per the *Planning Act*. While there was cross-examination by the Appellant's legal representative on the testimony of Ms. Graham, it has not acted to diminish from the overall conclusions which were reached by her. Most notably, that front facing parking pads constitute the minority for residential properties of this neighbourhood. While Mr. Rendl has countered that there are driveways (leading to garages) in this neighbourhood which can be used for vehicle parking, it is pertinent to recognize that these driveways principal intention is to service a garage. The parking of a vehicle on said driveway is an ancillary function, albeit legal one.

Here, the testimony has presented to the TLAB has demonstrated that two of the tests for Variances, 'maintain the general intent and purpose of the Official Plan'; and 'are minor', do not appear to be met here. In assessing the OP policies as they relate to this proposal, Ms. Graham's testimony has conclusively demonstrated that the tenets of OPA 320 would not be adhered to here. Her localized study of parking arrangements along a stretch of Langley Avenue, shows that the immediate context does not consist primarily of front facing parking pads. Furthermore, when assessing the broader context as well, it is noted that the majority of neighbourhood properties do not contain this condition either. As such, a potential approval of this proposal would act to contravene the principles of the OP.

This proposal would also not be seen as 'minor' as the City has delineated that, while it is a single Variance request, an approval provided by the TLAB could result in a cascading effect whereby other properties may also seek front facing parking pads as well. Although the general convention is that Variances are not precedent setting, the City has opined that there was written resident correspondence here which ascribed resident aspirations to also obtain a similar Variance if this subject proposal was approved. The Tribunal is cognizant of such statements and that decisions of adjudicative tribunals are afforded greater consideration as compared to that of a Committee of Adjustment (COA). As such, to permit this subject proposal could potentially allow other similar proposals in this neighbourhood to proceed as a result, acting to negatively affect the neighbourhood characteristics.

The issue of climate change and environmental policies figured prominently with this Appeal matter. The Appellant, again through their legal representative and Expert Witness, stressed that this proposal is a departure from the original proposal which was presented to the OMB in that they are now proposing the front facing parking pad for an EV vehicle, as opposed to a conventionally powered vehicle. The City's *Electric Vehicle Strategy* was critiqued, at length, by all Parties here.

With regards to this, Mr. Rendl opined that:

“110. Supporting the ability of residents in neighbourhoods to own electric vehicles contributes to the City’s objective to reduce greenhouse gas emissions. Unfortunately, the City’s planning instruments have not been amended or updated to support the use and ownership of electric vehicles by residents.”⁴

Mr. Rendl argues that the City has devised Strategies which articulate for increased EV vehicle usage as a means of reducing the impacts of climate change. The Appellant’s proposal should be assessed within this environmental framework by the Tribunal. Furthermore, Mr. Mendl contends that off-site charging stations are not feasible for the Appellant as it would not be suitable for overnight charging. He equates a certain level of hardship for the Appellant with the use of off-site charging facilities which would detract from them seeking to purchase an EV vehicle. This would run contrary to City directives which encourage such initiatives as a means of mitigating the detrimental effects of environmental degradation which has begun on this planet.

Ms. Graham acted to refute portions of Mr. Rendl’s testimony by stating at the Hearing that documents such as the *Electric Vehicle Strategy* are not mandated policies or legislation that were promulgated by government. As such, she asserts that these are ‘aspirational’ type documents which outline the long-term goals and objections which the City seeks to implement. However, she notes that pertinent Planning policies such as the *Official Plan* and *Zoning By-law* do not implicitly delineate provisions associated with EV vehicles. She further opined that while documents such as the aforementioned Strategy are positive initiatives undertaken by the City, the TLAB must analyze Appeal matters in accordance with prescribed polices and legislation, or also defined as ‘applicable laws.’

Here, the TLAB recognizes that environmental protection related initiatives are increasingly being pursuing by all levels of government, due to heightened awareness towards climate change and the dangers it poses to our planet. However, within this dynamic the Tribunal must also be cognizant of its mandate. The TLAB must derive its decisions as it relates to applicable laws and not to reference-type documents. The Tribunal, as part of the evidentiary material submitted, does not find initiatives such as the *Electric Vehicle Strategy* being promulgated into law. As such, an attempt to enforce it as such would be contrary to the *TLAB Rules*.

It is also noted, and as expressed by the City Solicitor, Planning policies and legislation such as the OP and *Zoning By-law* are regularly updated by the municipality to address contemporary issues. This is a standard practice in other Toronto area municipalities as well. However, it does not appear EV vehicle provisions have been conclusively disseminated into such policy documents. As such, the TLAB would not find it appropriate to afford a privileged consideration of this Strategy over the OP and *Zoning By-law*. Here, it could be found that another test for Variance, ‘maintain the general intent and purpose of the Zoning By-laws’, is not being met as the evidence

⁴ Rendl, M. *Expert Witness Statement of Martin Rendl*. March 2021, pp. 16

which has been presented to the TLAB herein demonstrates that the *Zoning By-law* has not been drafted to consider EV vehicle and related issues. As such, while a property-owner may apply for a Variance, it would be found here that the proposal is not acting to meet the principals for this area's Zone designation.

The Tribunal was also presented previous case law to assess in relation to this proposal. Most notably was the TLAB Decision for 8 Springhurst Avenue, as delivered by Member Ted Yao. This Decision pertained to two Variance requests which were to facilitate for a front parking pad, for the use of an EV vehicle. The TLAB Decision approved these Variances. However, and as was expressed during the Hearing, it should be noted that there were no opposing parties to this Appeal matter. In addition, there is no provisioned on-street parking for this street. As such, the circumstances of this Appeal are substantively different from the subject proposal. The proposal currently being assessed has an opposing Party, the City, and this subject property's street also has on-street parking. While the Hearing did not conclusively determine that one on street parking spot would be removed to facilitate for this proposal's front facing parking pad, this debate was not relevant to the Appeal matter for 8 Springhurst Avenue as there is no on street parking delineated for it.

Finally, with regards to the previous OMB Decision for this subject property which was principally related to a Consent (severance) and associated Variance Application, the Member here, while allowing the severance, did not permit the inclusion of a front facing parking pad, for a conventionally powered vehicle. The Appellant here, who was not involved with the OMB Decision previously as they are the new property-owner, is now seeking a Variance to permit a front facing parking pad, albeit for an EV vehicle. While there is variation in the proposal, the TLAB, as of general convention, must afford consideration for previously decisions of adjudicative tribunals. Here, the TLAB accepts that the OMB, the TLAB's predecessor, had partially approved a series of Variances, while not allowing Variances which would have permitted a front facing parking pad.

Whereas the TLAB does accept that changes to our society have occurred since the issuance of the OMB Decision, it is noted that Planning policies and legislation continue to be in force and effect, and have not been substantially revised to provide exceptions as they may relate to EV vehicles. In addition, the attendance of the City Solicitor, with a retained Expert Witness, to oppose this Appeal matter demonstrates that this is a matter of significance to City Council. The TLAB finds that the OMB Decision is pertinent to be assessed in relation to this subject proposal. While the Tribunal recognizes environmental issues and their potential impact on our society, it does not find that Planning polices and legislation have been amended specifically for on-site charging stations. This would run contrary to the City's *Official Plan* and *Zoning By-law*. Furthermore, it is noted that the City, as expressed in the testimony as proffered by their retained Expert Witness, is seeking alternative means, such as on street charging stations, to address EV vehicle ownership by its residents. While the effects of such initiatives are not immediate, it demonstrates the City is attempting to strike a balance between limiting front facing parking pads, which it ascribes to negatively impacting water run-off and neighbourhood character, while also provisioning for enhanced environmental infrastructure in local areas as well.

Here, the test of 'are desirable for the appropriate development or use of the land' also does not appear to be met as there is already a previous OMB Decision for this subject property which has dictated that a front facing parking pad is not seen to constitute 'good planning' and would not be a positive inclusion for this neighbourhood. While the underlying intention of the Appellant is commended, the TLAB must ensure that local areas undergo an orderly and appropriate form of development. This subject proposal would not be, as the previous OMB Decision had articulated. Although the proposal now is for an EV vehicle, the Planning policies and legislation must be weighed against this proposal, as they had by the TLAB's predecessor, the OMB.

It is noted that Mr. Rendl had, as part of his testimony, stated that he believed that an additional Variance request was necessary to facilitate for this subject proposal. In assessing the evidentiary material submitted, a City Zoning Notice had been issued on July 28, 2020 which identifies the single Variance request, as had been referenced in this documents 'Background' section. The TLAB would find it prudent to rely upon the zoning examination services of the City to determine which are the actual Variances needed in relation to a proposal. As such, the inclusion of an additional Variance request, while circumscribe to the decision which the Tribunal would be rendering in this Appeal matter, is still not seen as prudent or necessary.


With the evidentiary material as presented to the TLAB, the Tribunal prefers the arguments as presented by the City and their retained Expert Witness. Both the City Solicitor and Expert Witness have provided a comprehensive and persuasive set of arguments as to why the TLAB should not permit this Variance request. Langley Avenue exists within a historic neighbourhood, which pre-dates the advent of the automobile. As such, it has a neighbourhood character which differs from other more suburban areas of the City. This character is a unique attribute which the City seeks to preserve, as is expressed in requisite Planning policies and legislation. To permit this Variance request would conflict with City mandates on this issue.

The Appellant's legal representative and retained Expert Witness had stated that their client would experience undue hardship if a front facing parking pad, with an on-site charging station for an EV vehicle, were not permitted. However, the Tribunal does not believe that the Appellant's use of off-site charging stations would directly impact their decision to purchase an EV vehicle. There are currently other EV vehicle owners who are using these off-site charging stations without any substantive issues being reported. Furthermore, the City's initiative to further install local neighbourhood charging stations for on street charging of EV vehicles will also eventually address local residents needs when using these types of vehicles. As such, the notion of hardship is ascribed as minimal in nature here and does not adversely impact the Appellant and their desire to attain an EV vehicle.

DECISION AND ORDER

The Appeal is refused, and the Committee of Adjustment decision, November 4, 2020 is upheld. The Variance is not authorized.

X

A handwritten signature in cursive script that reads "Justin Leung". The signature is written in black ink on a light-colored background.

Justin Leung
Panel Chair, Toronto Local Appeal Body