

INTERIM DECISION AND ORDER

Decision Issue Date Tuesday, June 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): AMIR VALI

Applicant: GLENN RUBINOFF

Property Address/Description: 521 HILLSDALE AVE E ("subject site" or "subject property")

Committee of Adjustment Case File: 18 155619 STE 22 MV (A0476/18TEY)

TLAB Case File Number: 19 120855 S45 15 TLAB

Hearing date: Friday, February 14, 2020 and Monday, September 14, 2020

DECISION DELIVERED BY S. KARMALI

APPEARANCES

NAME	ROLE	REPRESENTATIVE
Glenn Rubinoff	Applicant	
Ramak Rouhifar	Co-owner	
Amir Vali	Appellant/Co-owner	Jennifer Meader
South Eglinton Ratepayers And Residents Association (SERRA)	Party	Al Kivi
David Riley	Expert Witness	

INTRODUCTION & MATTER IN ISSUE

1. The homeowner applied to the Committee of Adjustment (COA) to request variances to construct a new two-storey detached dwelling with an integral garage. His agent reduced the number and magnitude of the requests on the day of the COA public hearing. The COA refused the revised application. The homeowner filed an appeal to the Toronto Local Appeal Body (TLAB) requesting approval of the variances set out in his original application and for which prior notice to the public was made. I have reproduced these variances in the table below.

TABLE 1

Original Application/Proposal informed by Zoning Notice dated Friday, October 19, 2018 with a Zoning Certificate Review No: 18 140740 ZZC 00 ZR
<p>1. Chapter 900.2.10.(930)(C), By-law 569-2013 and Section 2.(C), By-law 1426- 2017 A vehicle entrance through the front main wall of a residential building, other than an ancillary building, is not permitted. The new two-storey detached dwelling will include a vehicle entrance through the front main wall.</p>
<p>2. Chapter 900.2.10.(930)(D), By-law 569-2013 and Section 2.(D), By-law 1426- 2017 Despite regulations 10.5.40.50(2), 10.5.40.60(1)(C) and 10.5.40.60(1)(D), a platform without main walls, such as a deck or balcony, attached to or within 0.3 m of the rear main wall of a residential building and at a height greater than 1.2 m above established grade, must comply with the following: (i) the maximum area of the platform is 4.0 m²; (ii) the minimum side yard setback of the platform is 1.8 m. In this case, the rear deck (inclusive of the landing) will have an area of 6.72 m² and will be located 0.46 m from the east side lot line.</p>
<p>3. Chapter 10.5.50.10.(1)(B), By-law 569-2013 A minimum of 50% (21.8 m²) of the front yard must be landscaping. In this case, 39% (17.2 m²) of the front yard will be landscaping.</p>
<p>4. Chapter 10.5.50.10.(1)(D), By-law 569-2013 A minimum of 75% (16.4 m²) of the required front yard landscaped open space must be maintained as soft landscaping. In this case, 69.7% (15.2 m²) of the required front yard landscaped open space will be maintained soft landscaping.</p>
<p>5. Chapter 10.10.40.40.(1)(A), By-law 569-2013 The maximum permitted floor space index of a detached dwelling is 0.6 times the area of the lot (200.34 m²). The new two-storey detached dwelling will have a floor space index of 0.692 times the area of the lot (231.03 m²).</p>
<p>6. Chapter 10.10.40.10.(2)(B)(ii), By-law 569-2013 The maximum permitted height of all side exterior main walls facing a side lot line is 7.0 m. The new two-storey detached dwelling will have a side exterior main wall height of 8.8 m facing the west side lot line and 7.8 m facing the east side lot line.</p>
<p>7. Chapter 10.10.40.30.(1)(A), By-law 569-2013 The maximum permitted depth of a detached dwelling is 17.0 m. The new two-storey detached dwelling will have a depth of 18.29 m.</p>

8. Chapter 10.10.40.10.(1)(A), By-law 569-2013

The maximum permitted height of a building or structure is 9.0 m. The new two-storey detached dwelling will have a height of 9.51 m.

1. Section 4(2)(a), By-law 438-86

The maximum permitted height is 9.0 m, as measured from the average grade at the lowest side. The new detached dwelling will have a height of 9.08 m, as measured to the midpoint of the sloped roof.

2. I am to decide whether the evidence supportive of the requested variances in Table 1 meets the legal and policy tests set out in the *Planning Act*.
3. To do this, I examine each variance sought and determine whether it was minor for both size and importance. I also examine whether the variances are desirable for the appropriate use of the property from a land-use planning and public interest point-of-view. I analyze the applicable Official Plan and Zoning By-laws for their respective general intent and purpose and consider whether the variances sought would maintain their general intent and purpose.¹
4. I visited the site and surrounding area more than once to understand the neighbourhood better and appreciate *the* sense of place.
5. For reasons set out below, I find that the variances for integral garage, building depth, floor space index [FSI], front yard landscaping, soft landscaping and the rear deck individually and cumulatively meet the legal tests. I also find that these variances are consistent with and conform to provincial policy. The remaining variance requests for sidewall height and building height are refused.

JURISDICTION

Provincial Policies

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

Variance

7. The TLAB Member in this matter must be satisfied that the application meets all the four legal tests under Section 45(1) of the *Planning Act*.

¹ *Vincent v Degasperis*, 2005 CanLII 24263 (ON SCDC) at paras 10-19.

- maintain the general intent and purpose of the Official Plan;
- maintain the general intent and purpose of the Zoning By-laws, including City-wide By-Law 569-2013 (ZBL 569-2013), Former City of Toronto By-Law 438-86 (ZBL 438-86), and Davisville Village Amending By-law 1426-2017 (ZBL 1426-2017)
- are desirable for the appropriate development or use of the land; and
- are minor.

TLAB Rules

8. The matter under the Rules of Practice and Procedure adopted in 2017.

EVIDENCE, ANALYSIS, FINDINGS & REASONS

9. I heard oral evidence over two days. The first day was held in person. I directed the second day as an electronic hearing. In writing my decision, I reviewed both days of audio recording.
10. The written evidence consisted of the following tendered items, which I accepted and marked as exhibits:
 - Exhibit 1: Combined Document Disclosure – Mr. Riley
 - Exhibit 2: Expert Witness Statement Mr. Riley
 - Exhibit 3: Map SGL Neighbourhood Boundary – Mr. Riley
 - Exhibit 4: TLAB Request for Review Decision – 521 Hillside Ave E
 - Exhibit 5: SERRA Witness Statement – Mr. Kivi
 - Exhibit 6: SERRA Visual Witness Statement – Mr. Kivi
 - Exhibit 7: SERRA Visual Witness Statement Supplementary – Mr. Kivi
 - Exhibit 8: SERRA Tutorial Fitness Test under OPA 320 – Mr. Kivi
 - Exhibit 9: SERRA Sun Shadow Study – Mr. Kivi

Witnesses

11. I swore in Mr. Riley, an experienced land use planner with professional memberships at the Ontario Professional Planners Institute and the Canadian Institute of Planners. Mr. Riley has appeared as an expert witness before the Ontario Municipal Board and the TLAB. I asked him whether he understood his evidentiary duties in this proceeding. Mr. Riley answered that he would provide opinion evidence that is fair, objective, non-partisan, related only to matters within his expertise, and would provide additional assistance to TLAB as required. I qualified Mr. Riley to provide me with expert opinion evidence in land use planning. He communicated that he reviewed all the materials filed with the TLAB, visited the subject site and surrounding area, and satisfied himself with providing a professional planning opinion in support of the proposal.

12. I affirmed Mr. Kivi, who is an active and engaged citizen and who represents the South Eglinton Ratepayers and Residents Association (SERRA) in this proceeding. Mr. Kivi is a local area resident who assists other nearby residents with planning matters, including accessing and using data to support analyses. I am aware that Mr. Kivi has, in different TLAB proceedings, provided evidence as either a lay party witness or a local knowledge expert witness. In this proceeding, he provided evidence as a lay party witness, though I am mindful his local knowledge is essential, helpful and useful. It shapes part of the public interest point-of-view.
 - A. *Whether the Application is consistent with and conforms to Provincial Policies*

13. In his professional opinion, Mr. Riley testified that the Application has regard for matters of provincial interest as set out in the *Planning Act*. Some of these matters include promoting a well-designed built form that encourages a sense of place and the appropriate location of growth and development. Mr. Riley further testified that the Application is consistent with the Provincial Policy Statement, 2014. He described that land-use patterns in settlement areas should fall within a range of uses and opportunities for intensification and redevelopment. He added that the Application is also consistent with the housing and infrastructure policies of the PPS. In terms of the Growth Plan, Mr. Riley opined that the proposed variances, if approved, would facilitate the development of a new single-detached dwelling, which he said is in line with the City's Official Plan policies, which conform to the Growth Plan. He also said the Application would support the achievement of complete communities that provide a diverse range and mix of housing to accommodate all household sizes and incomes.

14. Mr. Kivi shared that he believes the matter is local and does not directly affect any provincial interest, and should be primarily considered within the Toronto Official Plan, the Zoning By-Laws, the character of the core neighbourhood and the four legal tests.

15. I considered the relevant policies provided in evidence, and I find that the Application is consistent with the PPS. I recognize that the municipal official plan plays a vital part in implementing the PPS. Land use planning is only one of the tools to implement provincial interests.² I read the PPS in conjunction with the Growth Plan, which builds upon the policy foundation of the PPS. I find the Application conforms to the minimum policy standards in the Growth Plan, which informs decision-making about growth management and environmental protection.³

B1. The General Intent and Purpose of the Official Plan

16. In December 2015, the City of Toronto formally amended its Official Plan to strengthen and refine its *Healthy Neighbourhoods* and *Neighbourhood* policies. The Province of Ontario approved the amendment (Official Plan Amendment 320) in July 2016. Eventually, the Local Planning Appeal Tribunal granted full approval of OPA 320, with changes, and thus OPA 320 was in full effect in December 2018.

17. Mr. Riley and Mr. Kivi somewhat disagree as to which Official Plan should apply in the assessment of the application. Mr. Riley insisted the application is appropriately subject to the Official Plan before OPA 320. He did, however, undertake an Official Plan analysis which considered OPA 320 in respect of the application. Mr. Kivi posited that OPA 320 should be regarded as admissible, relevant, but not determinative. I admit evidence regarding OPA 320, although I give little weight to its importance, which I briefly explain further below.

B2. Official Plan Amendment 320, relevant though not determinative, requires that there is a delineated a broader and immediate neighbourhood context

18. Proposing a development in Toronto must be materially consistent with the prevailing physical character of properties in both the broader and immediate contexts. The broader context includes the physical characteristics of the entire geographic area in proximity to the proposed development, including zoning, prevailing dwelling type and scale, lot configuration, street pattern, pedestrian connectivity, and natural and human-made dividing features. The immediate context includes the physical characteristics of properties that face the same street as the subject property in the same block and block opposite.⁴ In this case, the Applicant has delineated these contexts.

² Provincial Policy Statement, 2014 – Preamble

³ Growth Plan for the Greater Golden Horseshoe, 2017 – Vision

⁴ Toronto Official Plan, as amended by OPA 320, Policy 4.1.5

19. Mr. Riley testified that the subject property is located on the south side of Hillsdale Avenue East in a low-density residential neighbourhood. He characterized the neighbourhood as having a mix of dwellings, i.e., single-detached, semi-detached and row. Mr. Riley included the dwellings, lots and blocks generally located east of Mount Pleasant Road, west of Bayview Avenue, south of Eglinton Avenue East and within 500 metres of the subject site in his broader context. He reasoned that properties within this context show many of the same attributes of subject dwelling's type, lot configuration, and lot size. Mr. Riley shared photographs depicting varying depths and heights along the subject block between Cleveland Street to the east and Forman Avenue to the west.
 20. Mr. Kivi's immediate context was the same as Mr. Riley's. However, Mr. Kivi analyzed the subject block in west, middle, and east segments because he said the block is very long compared to an average block in the neighbourhood. He used his broader context, which included the entire Davisville Village, to discuss decisions concerning the Davisville Village ZBL 1426-2017 and will be discussed more later in this decision.
 21. In terms of his immediate context, Mr. Kivi testified that the west segment is comprised of properties between 231 and 501 Hillsdale Avenue East on the same block and properties between 440 and 490 of the same street on the block opposite. The middle segment comprises properties between 505 and 557 Hillsdale Avenue East on the same block and properties of the same street between 494 and 560 on the block opposite. The east segment comprises properties between 563 and 619 Hillsdale Avenue East on the same block and properties on the same street between 564 and 610 on the block opposite.
 22. I find that the contexts promulgated by Mr. Riley and Mr. Kivi are not inconsistent with one another, and they are not an issue.
- B3. The Policies of the Official Plan*
23. The Official Plan provides that for any individual part to be property understood, the Plan must be read as a whole.
 24. Mr. Riley testified that the Application and each of the requested variances meets the general intent and purpose of the Official Plan Policies for healthy neighbourhoods, built form, and development criteria for neighbourhoods. Mr. Kivi testified that the Application has deficiencies with respect to built form and development criteria. He also transformed the City's development criteria for neighbourhoods into a practical visual methodology (Exhibit 8).

25. Mr. Riley pointed out that Policy 2.3.1 allows some physical change to neighbourhoods will occur over time. He recognized that OPA 320 requires all development within neighbourhoods to respect and reinforce the existing physical character of buildings, streetscapes and open space patterns of *Neighbourhoods*. He concluded that the variances would respect and reinforce this policy of the Official Plan.
26. Mr. Riley moved on to Policy 3.1.2. He could have explained how these built-form policies apply to each requested variance. Instead, he described the Policy and promised to elaborate in Policy 4 to elucidate the general intent and purpose of the Official Plan. I accepted his approach. On the other hand, Mr. Kivi pointed out that Policy 3.1.2.2 aims for vehicle parking to be located and organized to minimize impact on the property and area by consolidating and minimizing the width of driveways and curb cuts across the sidewalk. He stated that the Application proposes a private driveway and requires an approved curb cut.
27. Additionally, Mr. Kivi challenged the roof height and side wall variance requests. He said these heights would be significantly higher than the abutting properties and significantly contribute to massing. He also said the excess depth of the building would reduce adequate light on the properties to the east. He shared privacy and overlook concerns about the height, size, and side-window views of the rear deck. In keeping with his issue of massing, Mr. Kivi provided a sun shadow study, which he said demonstrated that the proposed development would result in an unacceptable level of shadowing at 523 Hillsdale Avenue East, which is just east of the subject property. Mr. Riley, on the other hand, opined that the proposed dwelling is of an appropriate scale and respects and reinforces the existing context of the subject property's surroundings and geographic neighbourhood.
28. Mr. Riley opined about Policy 4.1.1 of the Official Plan. He acknowledged that physical changes must be sensitive, gradual and fit the existing neighbourhood physical character. He stated that the proposal neither impacts patterns of streets, blocks and lanes, parks and public building sites, nor does it impact the prevailing size and configuration of lots. Mr. Kivi did not seem to object to this. Mr. Riley opined that the Proposal does have implications for Policy 4.1.5(c), which concerns prevailing heights, massing, scale, and density of nearby residential properties. He testified that density refers to a number of units while massing and scale refer to built form.

C. *Proposed Integral Garage*

29. Mr. Riley testified that there are no variances applicable to the prevailing location, design and elevations relative to the grade of driveways and garages, which is *Neighbourhoods Policy 4.1.5(e)* under OPA 320. He further testified that this criterion was introduced to address reverse sloped driveways and flooding concerns, which he said are not germane to the proposal. Mr. Kivi further mentioned that this Policy *requires* integral garages of the basement-type with reverse slope driveways to be considered separately from integral garages of the at-grade type with positive slope driveways. He reasoned that the elevations relative to the grade of the driveway would have a differentiating impact on the streetscape. To be sure, this Policy does not spell out a difference between types of integral garages whether at-grade or basement-level. Still, it does underscore location, design and elevations as vital to the assessment of neighbourhood physical character.

30. Mr. Riley showed several examples of dwellings with garages in the broader context. He opined that garages form part of the prevailing character of the geographic neighbourhood. Mr. Riley testified that integral garages exist in significant numbers. He referred to the following addresses on the Hillsdale Avenue East subject block: 505, 509, 515, 557, 583, 585, 587, and 591. I counted seventeen homes with garages on Mr. Riley's keymap.

31. Mr. Kivi, on the other hand, took a different approach. He was interested in the type of garages. He testified that the most common driveway/garage solution in the study area is a parking pad. He also said rear yard garages are the second most common, with basement integral garages in the third rank. Mr. Kivi elaborated that integral basement garages were common for new buildings between 1986 to 1996, when former ZBL 438-86 permitted them. He mentioned that at-grade integral garages became popular between 2013 and 2017 since ZBL 569-2013, he said, permitted increased roof heights.

32. He highlighted a significant difference in average building height of integral basement garages (7.52 metres) vis-à-vis at-grade integral garages (8.95 metres). Mr. Kivi estimated that 19.6 percent of dwellings (or 111 of 950 homes) in the broader context have integral garages. In this context, he said there are more at-grade integral garages than basement garages. However, in the immediate context, Mr. Kivi's analysis shows that 6 percent of dwellings (or 7 of 122 homes) have at-grade integral garages, and 7 percent of dwellings (or 9 of 122 homes) have integral basement garages.

33. In my view, there is more than a mere presence of integral garages on the subject block. There is a more significant presence in the broader context. As mentioned, the Official Plan is silent on development of a type of garage. Equally important, though less relevant, the Official Plan is silent on a type of roof for development. Yet, type of garage and type of roof are often directly related to the built form performance standard of height. This presents a challenge in reviewing built form variances individually in facilitation of a proposed development.
34. Before OPA 320, the Official Plan did not provide specific *Neighbourhood* policies related to driveways and garages. At that time, proposing to develop an integral garage could trigger adverse impacts on the neighbourhood physical character in terms of heights, massing, scale and dwelling type of nearby properties. OPA 320 replaced those terms with prevailing heights, massing, scale, density and dwelling type of nearby properties. The amendment also codified prevailing location, design and elevations relative to the grade of driveways and garages, as indicated above. The City of Toronto's Davisville Village Zoning Study Staff Report dated September 25, 2017 (2017 City Report) confirms that most relevant to Davisville Village is Policy 4.1.5(e).
35. However, unlike my colleague in the initial decision of *26 Carey Road*⁵, I find that the restrictive *Neighbourhood* policies in OPA 320, while relevant here, are not appropriate to be applied in full measure wherein the development application was initiated before the amendment's in-force date. In the review request of *610 Soudan Avenue*, my former colleague reasoned:
- During the transition between evolving policies, it has become established administrative law practice to apply the Clergy Principle to allow evidence and opinions on both Official Plan texts, while acknowledging that the evolving policy is instructive but not determinative.
36. The Clergy Principle holds that a decision-maker should not apply planning policies coming into force after an application is commenced. At the root of this principle is fairness of the situation. In the present case, I heard evidence on both Official Plan texts. I note the additional use of the word "prevailing" and its accompanying denoted meaning was only authorized in December 2018, before the application date, and shortly after the Committee of Adjustment hearing. I accept Mr. Riley's opinion that the former version of the Plan ought to apply.
37. I further accept that a vehicle entrance through the front main wall of this subject property maintains the general intent and purpose of the Official Plan, which includes respecting and reinforcing the physical character of the neighbourhood. The character illustrates there are integral garages peppered throughout the neighbourhood area.

⁵ TLAB Case File Number: 19 148425 S45 12 TLAB

38. Zoning by-laws contain numerical performance standards to ensure that new development will be compatible with the physical character of established neighbourhoods. Zoning By-Law 1426-2017, which was in force at the time of the application, is tailored to the unique character of Davisville Village in terms of the built form and lot width. The 2017 City Report generally refers to some unnamed streets in Davisville Village where integral garages (and tall building heights) form part of the prevailing character. Equally important, the Report mentions where properties conform with Official Plan policies and do not result in any adverse impacts, a variance for an integral garage *may be* appropriate. That we have an extant variance system implies that requesting a vehicle entrance through the front main wall is not prohibited absolutely.
39. Leading up to the enactment of this By-Law, the 2017 City Report reveals that some residents had raised concerns about massing related to tall overall building height, adverse shadow impacts associated with tall sidewalls, loss of greenery related to reduced front-yard landscaping, among others. Other residents, however, had shared ideas that well-designed front walls with articulation, traditional elements, and high-quality materials *can be* compatible with the older homes, and well-designed driveways with landscaping and permeable pavers can be acceptable.
40. Of note, the 2017 City Report is neither official policy nor law. In my view, the report serves as a handy guide to better understand and appreciate the purpose and intent of ZBL 1426-2017. One of those guidance points is to ensure a more predictable built form that is contextually appropriate and compatible with the existing neighbourhood's physical character. For Mr. Riley, the intent of the "no integral garage" provision is not an outright prohibition. Instead, he said, integral garages are recognized as forming part of the prevailing character for *some* streets. Mr. Riley listed dwellings with garages on streets near the subject property, including the subject street of Hillsdale Avenue. For Mr. Kivi, an at-grade integral garage is not a common or prevailing feature on this street block.
41. Mr. Kivi pointed to the eleven comments elicited under the *Purpose and Intent* of the 2017 City Report. Mr. Riley opined much less on these salient City comments. In my view, he could have done more considering the by-law's purpose and intent was predicated on preventing incompatible infill projects (i.e., demolishing and building anew) and preserving the predominant Davisville Village character. It seems to me that the City decided the removal of the as-of-right permission for integral garages in the front wall was in the public interest and, therefore, necessary. Mr. Riley opined on the City comments under *Minor Variance Applications* (design principles) in the report.

42. In discussing the *Purpose and Intent* in the report, Mr. Kivi testified that the proposed dwelling is situated on a small hill crest with a downward slope from the garage. An integral garage at the site, he said, would increase the measured and visualized height of the dwelling and would set the dwelling apart from its neighbours and would not reinforce a consistent street wall height. He also said that the proposed dwelling would result in two driveways: the existing mutual driveway and the new partial private driveway, which would reduce front yard landscaping. Additionally, the loss of soft landscaping at sites with integral garages, he said, means there is reduced availability to catch stormwater during torrential rains.
43. Proceeding from the notion that integral garages form part of the prevailing character, Mr. Riley opined about design principles, which he said are meant to provide ample space for front yard landscaping, including large growing shade trees. He testified that the nature of dwellings with integral garages, in several cases, is that the first floor is raised above the garage, and accordingly, these dwellings are taller than dwellings without garages.
44. To be sure, an ongoing concern for City Planning has been how to manage high main floors and levels of living space. Mr. Riley said the proposed home design would see that the eaves/cornice lines are below the height of the ceiling on the second floor, which he said is generally in line with the street wall height of the street. He testified that the height of the main entrance and front door is at a maximum of 1.2 metres above the established grade. This evidence, in my view, speaks to the *Purpose and Intent* point in the 2017 City Report about promoting front entrances and main living spaces at a height that reinforces the traditional neighbourhood character.
45. Mr. Riley opined that the front wall of the building would be well-articulated with a prominent large bay window, a covered porch framing, a sloped roofline that has been brought down below the ceiling height on the second storey and dormers above two windows on that storey. He further opined that these proposed design elements would break up the new home's massing and scale. Mr. Riley testified the existing driveway would be used as a driveway to the proposed dwelling and parking space in terms of curb cuts. He added that the existing curb cut is proposed to be used, and there is no widening of the curb proposed. As for maximizing front yard landscaping in developing an at-grade integral garage, Mr. Riley said there would be a porch with a small footprint and a shortened walkway from the porch to the driveway. He could have said more about keeping the driveway area to a minimum. On the other hand, I generally accept Mr. Kivi's point that design principles for new buildings are not determinative of the overall application.

46. Overall, for this requested variance, I prefer Mr. Riley's evidence. I find that the integral garage request meets the general intent and purpose of ZBL 1426-2017. I note that the *Purpose and Intent* in the 2017 City Report seems to provide context when analyzing variance requests for height and front-yard landscaping, both of which I examine below. Also noteworthy, I make no finding that at-grade integral garages comprise part of the prevailing character for Hillsdale Avenue East.
47. I do find that Mr. Riley has reasonably explained that an integral garage form for this property, which is situated in a mature Toronto urban neighbourhood, is desirable for the appropriate development and use of the land. For this test, jurisprudence provides that a public perspective ought to be explored, in addition to a planning perspective. While the City authored ZBL 1426-2017, it did not participate in this two-day proceeding. It could have opted to share a public and planning point-of-view.
48. A considerable amount of Mr. Kivi's evidence was his local knowledge of the area. His evidence can be characterized to some degree as a public point of view, which is vital. Mr. Kivi said that the existing subject property and neighbouring westward property share a mutual driveway that has been in continuous use for many years. He also said the curb cut *could* eliminate one parking spot for public use on the subject street. I did not hear or have any substantiating evidence that even if a curb cut eliminated a public use parking spot, that somehow that lost spot would be inappropriate or undesirable.
49. Mr. Riley proffered evidence from a professional land-use planning perspective. He is a Registered Professional Planner, which means that he has a primary responsibility to help define and serve the public interest. He considered the surrounding context and communicated that the proposed garage would appropriately allow for a vehicle and associated required parking space with being part of the building.
50. Is this variance request with respect to both size and importance, which includes impact, minor? Mr. Riley opined that the vehicle entrance through the front main wall would not adversely impact the subject property or neighbouring properties. Mr. Kivi mentioned that the overall development is incompatible and oversized. He alluded to his organization-initiated shadow study and testified that there would be a shadow impact on 523 Hillsdale Avenue East due to the proposed development. He added that there would be an unacceptable level of shadow on that property and that adequate light onto the property would be hampered.
51. In my view, a properly developed and defended shadow study can be constructive in appreciating the acceptability or unacceptability of adverse impacts on adequate light. In the present case, shadow impacts technically result from the proposed height, depth and floor space index variances for the development and less so on the purpose of the integral garage. I am satisfied that Mr. Riley has demonstrated that the proposed variance for an integral garage is minor.

D. Proposed Height of Side Exterior Main Walls and Overall Height

52. As mentioned above, I treat OPA 320 as relevant but not determinative in examining the general intent and purpose of the Official Plan in this case.
53. Mr. Riley reviewed the variances to height against Policy 4.1.5(c) of the Official Plan. He testified that the height variances are required to “facilitate the design of the proposed dwelling.” He further testified that the first floor would be located above the garage and that the effect would be a taller dwelling than what currently exists. He opined that the visual impact of this taller dwelling would be mitigated by roof design. I carefully reviewed the roof plan, the proposed elevation plans as well as the photobook of existing homes.
54. The exterior main wall request is 8.8 metres from the west side lot line (the side where the integral garage would be) and 7.8 metres from the east side lot line, whereas ZBL 569-2013 allows for 7.0 metres. The building height request is 9.51 metres, under ZBL 569-2013 and 9.08 metres, under ZBL 438-86.
55. Mr. Riley analyzed COA decisions where sidewall height was granted above the performance standard. In addition to others, he cited: 337 Hillside Ave. E. at 8.4 metres (the block west of the subject block), 451 Hillside at 9.69 metres, 591 Hillside Ave. E. at 8.23 metres, 717 Hillside Ave. E. at 8.16 metres (the block east of the subject block).
56. Mr. Riley analyzed COA decisions where building height was granted above the performance standards. Some of these include: 515 Hillside Ave. E. at 9.35 metres, 451 Hillside Ave. E. at 9.69 metres, 587 Hillside Ave. E. at 9.8 metres, and 424 Hillside Ave. E. at 9.9 metres.
57. Mr. Riley opined that approved increases in the neighbourhood demonstrate the character of the dwellings concerning mass and scale. He stated that variances to sidewall height and building height fall within a range of approvals along Hillside Avenue. In my view, this does not mean that the neighbourhood’s characteristics illustrate higher heights. These properties are only a subset of the total number of properties in the neighbourhood.
58. Mr. Kivi challenged Mr. Riley’s analysis. He testified that the proposed dwelling would have a roof height that is significantly higher than its abutting neighbours and would contribute to distortion in terms of scale and proportion with respect to the nearby properties. He specified that the main front wall of the proposed dwelling is about 9.22 metres, and the main rear wall is about 8.92 metres, while the mansard design increases the perceived height of the front wall to the full roof height of 9.51 metres. He opined that this does not fit with the height of all new builds averaging 8.2 metres or the builds with an integral garage and a positive slope driveway average 8.95 metres. Mr. Riley countered that some of the more contemporary dwellings in the neighbourhood have been constructed in a similar style with the first floor above the garage, which adds to the height.

59. Mr. Riley testified that “the intent” of the maximum building height performance standard is to ensure height requirements in a neighbourhood are compatible with one another in terms of massing and size. I generally accept his interpretation as forming a significant part of the purpose and intent of the zoning by-laws in question. Still, as Mr. Kivi pointed out, allowing the sidewall height and building height variances, which are directly related to one another in this case, would translate to the roof height appearing higher than when compared to the adjacent property to the east. Furthermore, the subject property sits on the crest of a hill as it is.
60. The proposed front facade *looks like* the front face of 591 Hillside Ave. E. in several ways: where and how the garage and bay window would be deployed, where and how front entrance would be located, and where and how the roof and upper windows would look like generally. I see from Mr. Riley’s COA records that 591 Hillside Ave. E. was granted a sidewall height variance of 8.23 metres. Additionally, 591 appears from the street level to have a similar building height to 587 Hillside Ave. E., which was approved for 9.8 metres, according to Mr. Riley’s COA records. I could not see that a building height variance was requested or granted for 591.
61. I appreciated that Mr. Riley said that the ridgeline would be brought down below the ceiling height on the second floor. Still, however, the massing and scale as seen from the street, in my view, would not fit harmoniously with the other nearby homes. I do not find that the proposed exterior sidewall height and building height for the subject property are compatible with massing and size. Allowing these heights would, in my view, constitute over-development on this established street which is part of the existing context. It is noteworthy for this Decision and Order that the agent for the Applicant made some efforts to reduce the sidewall height (from 8.8 metres to 8.6 metres on the west lot line and from 7.8 metres to 7.3 metres on the east lot line) and building height (from 9.51 metres to 9.3 metres ZBL 569-2013; from 9.08 metres to 8.72 metres ZBL 438-86) before the COA. Unfortunately, those amendments are not before me to consider.
62. I have said before and elsewhere that there exists a harmonious regulatory relationship between building height and sidewall heights. I am not satisfied, based on Mr. Riley’s evidence, the variance requests for sidewall height and building height meet the general intent and purpose of ZBL 438-86 and ZBL 569-2013. I agree that to allow these requests would necessarily facilitate the development of the envisioned home, but, in my view, the house would be massive and result in unreasonable privacy and overlook impacts. The requests cannot be excused from the zoning requirements.

E. Balance of Proposed Variances: Depth, FSI, Landscaping, Platform (and Side yard)

63. The requested depth is 18.29 metres, whereas the maximum depth permitted here is 17.0 metres.
64. I heard that building depth is the horizontal distance between the front yard setback and the furthest portion of the principal building's rear main wall using a perpendicular line.
65. Mr. Riley testified that characteristics of the neighbourhood include deep rear yards and varying dwelling depths. He opined that this is prevalent and that the application would respect the neighbourhood's character and not create any adverse impacts on neighbouring properties. In contrast, Mr. Kivi shared that the depth would increase the massing of the dwelling in cubic metres when combined with the increased roof height to make it one of the larger residential dwellings between 496 Hillside Ave. E. and 560 Hillside Ave. E. (both sides).
66. Mr. Riley highlighted 511 Hillside Ave. E. and 515 Hillside Ave. E., which have depths of 18.21 metres and 18.29 metres, respectively. Mr. Kivi shared that the average depth on the subject block is 14.1 metres. He further said that depth would contribute to shadow impacts to 523 Hillside Ave. E., which is a semi-detached home. He went into some detail with his sun and shadow study, though in my view, he was successfully challenged by Ms. Meader on the point of trying to interpret and explain resultant shadows professionally.
67. I accept Mr. Riley's version that the rear yards in this neighbourhood are relatively deep and that the proposal exceeds the minimum required rear yard setback in ZBL 2013-569, i.e., no variance to rear yard setback is being sought. In my view, the few single-detached homes just west of the subject property show deeper building footprints. Furthermore, given that the sidewall height and building height variances are not approved, the overall massing of the proposed dwelling would be considerably reduced. To be sure, there would be impacts to views from 523 Hillside Ave. E., though I cannot find that these would be undue adverse impacts. The residents of that property were not before me, and I have little understanding about their specific views and how those views may be impacted. I accept that the depth variance is appropriate development and minor.
68. The requested FSI is 0.692 times the lot area (231.03 square metres), whereas the zoning by-law permits an FSI of 0.6 times the area of the lot (200.34 square metres) for a detached dwelling.
69. Mr. Riley testified that increases in FSI had been approved at the following properties: 557 Hillside Ave. E. at 0.69 times the lot area, 515 Hillside Ave. E. at 0.676 times the lot area, 587 Hillside Ave. E. at 0.67 times the lot area, 591 Hillside Ave. E. at 0.77 times the lot area. Mr. Riley did not provide me with corresponding lot area increases in square metres.

70. Mr. Kivi noted that the average FSI of the subject block is 0.58 times the lot area. He further stated that while the request for 0.692 times the lot area is not large numerically, the massing is not in scale with the existing original and replacement dwellings on the block opposite. However, in his visual witness statement, he did allude to detached new builds having an average FSI value of 0.69 times the lot area. He noted that the FSI value was reduced to 0.644 times the lot area when the Applicant's agent was before the COA.
71. Mr. Riley mentioned that many of the increases to FSI on the same block and neighbouring blocks are greater than FSI being proposed for the dwelling. I accept that there does seem to be a desirable shift toward having a little more liveable space in new development and renovation projects in Toronto. With respect to this variance, I accept that the FSI value requested would be used to appropriately mass the development compatible with adjacent properties in the neighbourhood.
72. I find that the FSI value request maintains the general intent and purpose of the Official Plan, ZBL 569-2013, is desirable for the appropriate use and development of the land and is minor.
73. I move to the performance standards for landscaping. In this case, 39 percent or 17.2 square metres of the front yard is proposed to be landscaping and 69.7 per cent or 15.2 square metres of the required front yard landscaped open space is proposed to be soft landscaping. Mr. Riley pointed out that Policy 3.1.2 of the Official Plan requires new development to provide for adequate and appropriate landscaping. Mr. Riley opined on the intent of the landscaping requirements. He indicated that they exist to have regard for drainage and neighbourhood character and ensure an appropriate balance of hard and soft surfaces and amenity space.
74. Mr. Kivi raised salient concerns about reduced stormwater runoff and reduced open space for grass and vegetation. He said that recent new developments like 515 Hillside Ave. E. has not required landscaping variances.
75. I heard Mr. Riley say that these variances reflect what is currently existing, which would mean variances were not previously sought to bring the current dwelling into conformity. The Application before me is for new development with an integral garage. The 2017 City Report mentions that new buildings with integral garages are to be well-designed for ample front-yard landscaping, which includes maximizing front yard landscaping.

76. Mr. Riley said that the predominant neighbourhood character includes many properties where landscaping is less than the required minimum. He pointed out a few homes where less-than-minimum front yard landscaping has been approved along Hillsdale Ave. E: 374 (44 percent or 12.4 square metres) and 665 (37.1 percent or 15.7 square metres). As for the front yard soft landscaping, Mr. Riley pointed out: 371 (36 percent or 78.97 square metres), 397 (65 percent or 19.5 square metres), 591 (73 percent or 15.5 square metres) and 665 (48 percent or 12.0 square metres). He mentioned other homes on neighbouring streets.
77. He repeated that there would be a porch with a small footprint and a shortened walkway from the porch to the driveway. More could have been said about how a reduced front yard and open soft space is desirable from a public interest community perspective. Still, evidence from Mr. Riley was proffered enough for me to accept these variances meet the desirability and appropriateness test. I find that the proposed landscaping variances meet the general intent and purpose of the Official Plan and ZBL 569-2013. I have not heard any unreasonable corresponding impacts. I find these landscaping variances in this context are minor in nature.
78. The Appellant requests a rear deck inclusive of landing with an area of 6.72 square metres and located 0.46 metres from the east side lot line. The performance standard for maximum area is 4 square metres and 1.8 metres for minimum side yard setback of the platform.
79. The 2017 City Report highlights that a deck attached to the rear wall of the house and connected to the main living floor to access the rear yard could adversely impact adjacent properties. This Report mentions a well-designed tall rear wall deck that mitigates overlook, loss of privacy, noise and other adverse impacts can fit harmoniously into the mature neighbourhood.
80. Mr. Riley mentioned that this variance is required because of the first-floor height and the desire to have rear yard access from the first floor. He indicated the deck is small, with a larger, sunken deck located below so that impacts associated with privacy and overlook are mitigated.
81. Mr. Kivi shared a bit about the excessive height and size of the rear deck platform, which he said created concerns about loss of privacy and the ability of overlook on nearby properties. He mentioned that the deck's location would require another setback from the west lot line in the centre of the mutual driveway. I cannot rule on a hypothetical variance.

82. Mr. Riley said that with respect to this variance request, privacy issues are corrected by the fact that the east façade has no windows. With respect, I think more could be done to mitigate overlook and loss of privacy here. I take note of the fact that 523 Hillside Ave. E., the property to the east, has a rear deck with a criss-cross privacy screen to mitigate overlook from that homeowner/tenant and loss of privacy for the surrounding homeowners/tenants. The same courtesy should be afforded by the subject property's owners regardless of the approved variance to depth. There are other neighbours in the area, to be sure.
83. The requested variances for the integral garage, building depth, FSI, landscaping in the frontyard and soft landscaping, and platform individually and cumulatively meet the general intent and purpose of the applicable Official Plan and the applicable ZBLs, as described above. They also individually and cumulatively satisfy the desirable and appropriate test and the test for minor in nature.
84. I wish to thank Ms. Meader, Mr. Riley and Mr. Kivi for their civility and patience throughout.

INTERIM DECISION AND ORDER

The appeal is allowed in part as follows:

- i) The Variances from the list identified in **Attachment A** are approved;
- ii) The Plans and Elevations that accompanied the TLAB appeal are not approved but are to be modified and resubmitted in compliance with the approved variances. The Owner has within six (6) months of the date of this Interim Decision to provide me with Revised Plans, failing which the appeal is denied.
- iii) The Conditions identified in **Attachment B** are approved.

Should difficulties be encountered in the implementation of this Interim or Final Decision and Order, the TLAB may be spoken to on notice to the Parties.

X

Sean Karmali
Panel Chair, Toronto Local Appeal Body

ATTACHMENT A

Approved Variances

1. Chapter 900.2.10.(930)(C), By-law 569-2013 and Section 2.(C), By-law 1426- 2017

A vehicle entrance through the front main wall of a residential building, other than an ancillary building, is not permitted.

The new two-storey detached dwelling will include a vehicle entrance through the front main wall.

2. Chapter 900.2.10.(930)(D), By-law 569-2013 and Section 2.(D), By-law 1426- 2017

Despite regulations 10.5.40.50(2), 10.5.40.60(1)(C) and 10.5.40.60(1)(D), a platform without main walls, such as a deck or balcony, attached to or within 0.3 m of the rear main wall of a residential building and at a height greater than 1.2 m above established grade, must comply with the following: (i) the maximum area of the platform is 4.0 m²; (ii) the minimum side yard setback of the platform is 1.8 m. In this case, the rear deck (inclusive of the landing) will have an area of 6.72 m² and will be located 0.46 m from the east side lot line.

3. Chapter 10.5.50.10.(1)(B), By-law 569-2013

A minimum of 50% (21.8 m²) of the front yard must be landscaping. In this case, 39% (17.2 m²) of the front yard will be landscaping.

4. Chapter 10.5.50.10.(1)(D), By-law 569-2013

A minimum of 75% (16.4 m²) of the required front yard landscaped open space must be maintained as soft landscaping. In this case, 69.7% (15.2 m²) of the required front yard landscaped open space will be maintained soft landscaping.

5. Chapter 10.10.40.40.(1)(A), By-law 569-2013

The maximum permitted floor space index of a detached dwelling is 0.6 times the area of the lot (200.34 m²). The new two-storey detached dwelling will have a floor space index of 0.692 times the area of the lot (231.03 m²).

7. Chapter 10.10.40.30.(1)(A), By-law 569-2013

The maximum permitted depth of a detached dwelling is 17.0 m. The new two-storey detached dwelling will have a depth of 18.29 m.

ATTACHMENT B

Conditions as of the date of this Interim Decision and Order

CONDITION 1 applies to the approved variance from Chapter 900.2.10.(930)(D), By-law 569-2013 and Section 2.(D), By-law 1426- 2017 (the rear deck platform)	A privacy screen with a minimum height of 1.6 metres be installed on the east and south sides of the upper-level deck.
CONDITION 2 applies to the approved variances for development	A Submission of a complete application for permit to injure or remove City owned trees under Municipal Code Chapter 813 Article II, Trees on City Streets.