

DECISION AND ORDER

Decision Issue Date Wednesday, January 19, 2022

PROCEEDING COMMENCED UNDER Section 53, subsection 53(19), Section 45(12), subsection 45(1) of the Planning Act, R.S.O. 1990, c. P.13, as amended (the "Act")

Appellant(s): KRISTOPHER TAVELLA

Applicant(s): KRISTOPHER TAVELLA

Subject(s): 53 (14)

Property Address/Description:

Committee of Adjustment File 5 ENFIELD AVENUE

Number(s): 20 211766 WET 03 CO, 20 211772 WET 03 MV, 20 211773 WET 03 MV

TLAB Case File Numbers: 21 174942 S53 03 TLAB, 21 174944 S45 03 TLAB, 21 174945 S45 03 TLAB

Hearing date: November 8, 2021 and December 16, 2021

Deadline Date for Closing Submissions/Undertakings:

DECISION DELIVERED BY TLAB Panel Member Justin Leung

REGISTERED PARTIES AND PARTICIPANT

Applicant/Owner/Appellant	KRISTOPHER TAVELLA
Appellant's Legal Rep.	AMBER STEWART
Participant	ROBERT MOCHOCKI
Participant	EMMA ARCHER
Participant	AUDREY SPENCE-THOMAS
Participant	LAUREN PLESKO
Party (TLAB)	CITY OF TORONTO
Party's Legal Rep.	JESSICA JAKUBOWSKI
Expert Witness	CHRISTIAN CHAN
Expert Witness	BRAM BULGER

INTRODUCTION

This is a matter on Appeal from the Etobicoke-York Panel of the City of Toronto Committee of Adjustment (COA) which refused Applications for the severance (Consent) of 5 Enfield Avenue (subject property) and associated Variances to permit construction of two lots which would have a new dwelling built on each.

This property is situated in the Alderwood neighbourhood in the Etobicoke district which is located south of Alcan Avenue and bounded by Gort Avenue to the west and Foch Avenue to the east. The subject property is located on Enfield Avenue, south of Alcan Avenue and north of Lakeshore Boulevard West.

This property is designated as '*Neighbourhoods*' in the *City Official Plan (OP)* and is zoned as RM as per *Zoning By-law 569-2013* and R3 under the *Zoning By-laws 1979-67* and *1981-272*.

The Residential Multiple Dwelling RM zone permits detached, semi-detached, duplex, triplex, fourplex dwellings & apartment buildings, municipal shelter and a park. The R3 zone also permits residential type uses.

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 surrounding neighbourhood and had reviewed all pre-filed materials related to this Appeal but that the evidence to be heard is of importance.

BACKGROUND

The Owner originally submitted Applications to the COA in October 2020. A hearing was scheduled for June 3, 2021. The City Planning staff provided a staff report which did not support this proposal. The COA subsequently refused these Applications. The Applicant appealed the matter to the TLAB which scheduled a Hearing for November 8, 2021.

At the Hearing, the Appellant's legal representative Amber Stewart stated that a settlement, in principle, had been reached with the City based on a revised proposal. With this, she requested an adjournment and for a re-scheduled Hearing date so that all Parties to this Appeal matter would have sufficient time to review the new proposal. In addition, she also indicated they wanted additional time so as to engage the opposing Parties to discuss this new proposal with them as well.

The proposal

The proposal before the TLAB is to sever the subject property into two lots and construct a new detached dwelling on each lot. As a result, a total of 14 Variances were requested.

The original Variances being requested by the Appellant can be summarized as follows:

Retained – Part 1

1. Section 90.(18)(A)(i), By-law 569-2013

The minimum required lot area is 465 square metres.

The lot area will be 278.3 square metres.

2. Section 900.6.10.(18)(B)(i), By-law 569-2013

The minimum required lot frontage is 12 metres.

The lot frontage will be 7.31 metres.

3. Section 1(A), By-law 67-1979

The maximum permitted gross floor area is 0.4 times the area of the lot (111.44 square metres).

The new dwelling will have a gross floor area of 0.73 times the area of the lot (204.9 square metres).

4. Section 900.6.10.(18)(C)(i), By-law 569-2013

The maximum permitted lot coverage is 33% of the lot (91.8 square metres).

The new dwelling will cover 34.5% of the lot area (96.05 square metres).

5. Section 10.80.40.70.(3)(A), By-law 569-2013

The minimum required side yard setback is 1.2 metres.

The new dwelling will be located 0.91 metres from the west side lot line and 0.61 metres from the east side lot line.

6. Section 3, By-law 67-1979

The maximum permitted height is 7.5 metres.

The new dwelling will have a height of 8.41 metres.

7. Section 4, By-law 67-1979

No cellar shall be erected to exceed 1 metres above grade.

The proposed cellar ceiling height will be 1.52 metres above grade.

Conveyed – Part 2

1. Section 900.6.10.(18)(A)(i), By-law 569-2013

The minimum required lot area is 465 square metres.

The lot area will be 278.3 square metres.

2. Section 900.6.10.(18)(B)(i), By-law 569-2013

The minimum required lot frontage is 12 metres.

The lot frontage will be 7.31 metres. Staff Report Committee of Adjustment Application – 5
Enfield Avenue 3

3. Section 1(A), By-law 67-1979

The maximum permitted gross floor area is 0.4 times the area of the lot (111.45 square metres).

The new dwelling will have a gross floor area of 0.74 times the area of the lot (205.1 square metres).

4. Section 900.6.10.(18)(C)(i), By-law 569-2013

The maximum permitted lot coverage is 33% of the lot area.

The new dwelling will cover 34.5% of the lot area (96.05 square metres).

5. Section 10.80.40.70.(3)(A), By-law 569-2013

The minimum required side yard setback is 1.2 metres.

The new dwelling will be located 0.61 metres from the west side lot line and 0.91 metres from the east side lot line.

6. Section 3, By-law 67-1979

The maximum permitted height is 7.5 metres.

The new dwelling will have a height of 8.68 metres.

7. Section 4, By-law 67-1979

No cellar shall be erected to exceed 1 metres above grade.

The proposed cellar ceiling height will be 1.58 metres above grade.

MATTERS IN ISSUE

The Appellant presented the TLAB with a revised proposal which has resulted in a reduction in the number of Variance requests. With this, the proposal continues to be oriented towards the creation of two new residential lots. The City Solicitor stated that they had been engaging in discussions with the Appellant and were in acceptance of this revised proposal. It is noted that the Participants to this Appeal matter had not reviewed this new proposal yet.

Herein, the TLAB will need to assess the arguments and positions which have been provided to it to determine whether allowing the creation of these two residential lots constitutes good planning and would fit and be complimentary to the current neighbourhood character.

JURISDICTION

Provincial Policy – S. 3

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

Consent – S. 53

TLAB must be satisfied that a plan of subdivision is not necessary for the orderly development of the municipality pursuant to s. 53(1) of the Act and that the application for consent to sever meets the criteria set out in s. 51(24) of the Act. These criteria require that " regard shall be had, among other matters, to the health, safety,

convenience, accessibility for persons with disabilities and welfare of the present and future inhabitants of the municipality and to,

- (a) the effect of development of the proposed subdivision on matters of provincial interest as referred to in section 2 of the Planning Act;
- (b) whether the proposed subdivision is premature or in the public interest;
- (c) whether the plan conforms to the official plan and adjacent plans of subdivision, if any;
- (d) the suitability of the land for the purposes for which it is to be subdivided;
 - (d.1) if any affordable housing units are being proposed, the suitability of the proposed units for affordable housing;
- (e) the number, width, location and proposed grades and elevations of highways, and the adequacy of them, and the highways linking the highways in the proposed subdivision with the established highway system in the vicinity and the adequacy of them;
- (f) the dimensions and shapes of the proposed lots;
- (g) the restrictions or proposed restrictions, if any, on the land proposed to be subdivided or the buildings and structures proposed to be erected on it and the restrictions, if any, on adjoining land;
- (h) conservation of natural resources and flood control;
- (i) the adequacy of utilities and municipal services;
- (j) the adequacy of school sites;
- (k) the area of land, if any, within the proposed subdivision that, exclusive of highways, is to be conveyed or dedicated for public purposes;
- (l) the extent to which the plan's design optimizes the available supply, means of supplying, efficient use and conservation of energy; and
- (m) the interrelationship between the design of the proposed plan of subdivision and site plan control matters relating to any development on the land, if the land is also located within a site plan control area designated under subsection 41 (2) of this Act or subsection 114 (2) of the City of Toronto Act, 2006. 1994, c. 23, s. 30; 2001, c. 32, s. 31 (2); 2006, c. 23, s. 22 (3, 4); 2016, c. 25, Sched. 4, s. 8 (2).

Minor Variance – S. 45(1)

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

Amended application

(18.1) On an appeal, the Tribunal may make a decision on an application which has been amended from the original application if, before issuing its order, written notice is given to the persons and public bodies who received notice of the original application under subsection (5) and to other persons and agencies prescribed under that subsection. 1993, c. 26, s. 56; 1994, c. 23, s. 26 (7); 2017, c. 23, Sched. 5, s. 80.

Exception

(18.1.1) The Tribunal is not required to give notice under subsection (18.1) if, in its opinion, the amendment to the original application is minor. 2017, c. 23, Sched. 5, s. 98 (5).

EVIDENCE

The Hearing commenced with Ms. Amber Stewart stating that a settlement, in principle, had been reached with the City. As such, she was requesting an adjournment so that a new settlement Hearing date can be scheduled. This would also provide additional time to submit materials relating to this settlement to the TLAB.

Ms. Stewart indicated that they have submitted their revised proposal to the City's Building Dept. so they can undertake a new Zoning Review to confirm what the revised Variance requests will be.

The original proposal was for two detached dwellings on the retained and conveyed lots. City Planning staff had indicated they believed semi-detached dwellings would be a more appropriate building type. The proposal has now been revised to show two semi-detached dwellings with an integral garage at ground level. The original proposal had the garage situated at below-grade. As a result, the height, scale and massing have also been materially decreased here.

With regards to the Variance requests of both retained and conveyed lots, the lot area Variance remains unchanged. However, it is noted that the assessment here is different as this is now for semi-detached as opposed to detached dwellings. This would also be similar situation with the lot frontage Variances. With the side yard setback Variances, the interior side yard setbacks have been eliminated as it is now semi-detached dwellings but the exterior side yard setbacks have increased slightly. Due to

this, the lot coverage Variance has increased slightly as well. The building height Variance relates to the *Etobicoke Zoning By-law*; however, the height complies with *Zoning By-law 569-2013*. The cellar height Variance has been withdrawn for the conveyed lot. Finally, the gross floor area (GFA) Variances have also been reduced.

The City Solicitor Jessica Jakubowski stated that the City was now in support of the revised proposal, as it is consistent with Planning staff recommendations.

Ms. Stewart contends that further public notification, as per s. 18.1.1 of the *Planning Act*, would not be necessary as she submits that the revised proposal is an overall improvement, and was done to address City staff comments. In view of this, I find that the proposal has resulted in decrease in overall scale and intensity and as such, further public notification would not be necessary.

I also agreed that an adjournment and re-scheduling to a new settlement Hearing date could afford the Participants here additional time to review the revised proposal which may influence their position on this Appeal matter. Therefore, I canvassed the Parties to see their availability for the settlement Hearing date and the consensus was the week of December 13, 2021.

On the second day of Hearings, Ms. Stewart re-iterated that a settlement has now been reached with her client, the Appellant, and the resulting in the proposal that now includes semi-detached dwellings. This now requires revisions to some of the Variance requests. She argues that this revised proposal would result in a built form which is consistent with the neighbourhood character. With regards to the other Parties in this Appeal matter, Ms. Stewart indicated that while she had not been able to communicate with them since the previous Hearing. However, she recognizes that they will have now had time to review the settlement proposal. However, it does not appear they are in acceptance of it.

Ms. Jakubowski stated that the City is in attendance to support the settlement which has been reached between the Appellant and the City. She further indicated that an updated curriculum vitae (CV) had been submitted to the TLAB relating to City Planner Bram Bulger, who was appearing as an Expert Witness.

Ms. Stewart then requested that Christian Chan be called to provide expert witness testimony to the Tribunal. I stated that I had reviewed Mr. Chan's CV and was willing to qualify him in the field of land use planning.

The following exhibits were entered as part of the record:

Exhibit 1: Appellant's Document Book

Exhibit 2: Expert Witness Statement of Christian Chan

Exhibit 3: Supplementary Witness Statement of Christian Chan

Exhibit 4: Table of Variances Sought

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Mr. Chan referred to a table of the Variances originally brought to the COA and the revised Variances now before the TLAB. The primary change to the proposal is that it is now for semi-detached as opposed to detached dwellings. The Variance for lot coverage has now increased from 34.5 percent to 37.4 percent. The Variance side yard setback between the two dwellings has been withdrawn as these are now semi-detached dwellings. However, the outer side yard setback Variances has now increased from 0.61m to 0.96m on both the western and easterly property lines. The Variance for FSI has now been reduced from 0.74 to 0.67. The Variance for building height has also been reduced from 8.68m to 7.96m. The Variances for cellar height (for the retained and severed lots) is now withdrawn.

In terms of the potential need to re-notify the public, as per S. 45(18) of the *Planning Act*, Mr. Chan argues that public re-notification is not necessary as these are minor alterations to the proposal. Ms. Stewart then asked if the Planning staff report requested the proposal be altered from detached to semi-detached dwelling. Mr. Chan acknowledged this.

S. 4.1.5 of the OP provides for development criteria in residential neighbourhoods. It further defines the terms of broader and immediate context. Mr. Chan then showed his study area, which is bounded approximately by Horner Avenue to the north, Edgeware Drive to the south, Sunset Avenue to the west and Browns Line to the east. Within the study area that this property is located in, Mr. Chan describes that 397 of the 678 properties are two storey detached dwellings. There are also 270 one storey detached dwellings. In addition, there are 3 three storey detached dwellings.

Ms. Stewart asked about portions of the neighbourhood which are omitted from Mr. Chan's study area. He stated that portions of streets to the west of this study area were not included as they had a different RD Zone designation. As such, they would have a differing neighbourhood character.

Mr. Chan then showed aerial photography and indicated that the current dwelling on this property did not exist in the 1950s. He further referenced the parallelogram shape of this lot, due to the orientation of the street. This aerial photographs also showed the close proximity of this property to the Long Branch GO station. Adjacent to this is the Long Branch Toronto Transit Commission (TTC) streetcar loop. As such, this is described as an intermodal transit area.

Mr. Chan then proceeded to show his photographic study of buildings in his study area. With regards to side yard setbacks, he showed older and newer constructed detached dwellings which have smaller side yard setbacks. He also showed that there are also older buildings which are semi-detached as well.

With regards to the lot frontage, a Variance is being sought due to the angular front lot line. Due to the lots orientation, it results in a greater Variance for lot frontage. Mr. Chan further states that the RM Zone designation does permit triplexes. While the proposal here is for two dwellings, Mr. Chan stated that each of these dwellings could support secondary suites, or basement apartments, if the property-owners elected to do so. In terms of the façade of the proposed semi-detached dwellings, Mr. Chan states that they will be of a more similar building type which exists in this neighbourhood. He

further argues that this revised proposal is an improvement from original one presented to the COA.

In assessing the policy context, Mr. Chan reiterated S. 4.1.5 of the OP which provides for development criteria for in-fill development in established residential neighbourhoods. This criteria is assessed according to pictorial and factual evidence to determine if a proposal will be in keeping of the prevailing neighbourhood character. Mr. Chan then showed a graphic and COA Variance Decision chart for previously approved Variances for FSI within his study area. Here, he states that there has been Variances for FSI of 0.737 or greater. Many of this type of Variance request was due to land severance. He noted that the original proposal was for an FSI of 0.737. The majority of the approved Variances were within the range of 0.40 to 0.737, with which Mr. Chan indicated that the current proposed FSI of 0.67 would fall within.

In terms of side yard setbacks, Mr. Chan has used the City's property data map to determine side yard setback of properties within his study area, as shown in graphic presented to the Tribunal. While acknowledging that there is a margin of error with this data, it is explained that smaller side yard setback Variances have been approved on several instances in this study area.

The subject property has both Zoning By-law 569-2013 and former City of Etobicoke Zoning By-law applicable to it. The RM Zone designation allows a variety of low-rise building types. In terms of the proposed side yard setbacks, he believes they will still be able to address issues such as drainage, access.

Mr. Chan opined that the cumulative impact of the Variances will be minimal. In terms of the building height Variance, he contends it is only a slight difference from what is permitted by the Zoning By-law and opined it would not be precedent setting. Housing options for the area will be increased for this neighbourhood adjacent to two higher order transit services.

Participant Lauren Plesko asked Mr. Chan if the graphic he showed depicting the previous detached dwelling to the now semi-detached dwelling proposal was misleading as it appeared to be scaled properly.

Mr. Chan responded that the detached dwelling was the original proposal presented to COA. As such, he contends it is not relevant to be discussed here as the TLAB is tasked to assess the revised proposal instead. However, the original proposals detached dwelling has building height calculated to the midpoint to the roof. The building height is not calculated to the top of the roof. In terms of the original proposal, Mr. Chan stated that Ms. Plesko's Participant Statement described it as a three-storey type dwelling whereas the revised proposal is now a two-storey dwelling. As such, he believes that it is accurate to state that the overall building height has been reduced and is not misleading in nature. Mr. Chan further indicated that if needed by the TLAB, he can provide updated drawings to address this matter.

I asked if that drawing had been submitted to the City's Building Dept for their review. Mr. Chan responded that it had been, in order to complete an updated Zoning Notice which identified the new Variance requests as part of the revised proposal.

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Ms. Jakubowski asked if the major transit station area (MTSA) had not yet been delineated for the Long Branch GO station area. Mr. Chan acknowledged that the MTSA boundaries have not been finalized as the City has yet to complete that part of its Municipal Comprehensive Review of its OP.

I inquired if, as part of the evidence provided by Mr. Chan, that he contends there has been several approved land severances for this area. Mr. Chan responded that the COA and TLAB have permitted numerous land severances in this neighbourhood. These land severance approvals have been granted over the last 10 years.

I then asked about the notion of prevailing character and if Mr. Chan believed this can be clearly established for this neighbourhood. Mr. Chan responded that the majority of buildings here are detached dwellings. However, he further stated that the Zoning provisions for this neighbourhood also provide for a range of low-rise building types. He contends that the Zoning By-law supersedes the notion of prevailing neighbourhood character.

I noted that the Long Branch GO station will also be part of the proposed GO Regional Express Rail (RER) line which would result in higher frequency train service. Mr. Chan acknowledged this and stated that the proposed semi-detached dwellings can accommodate secondary suites, which would support policies for intensification near transit stations.

Ms. Jakubowski called Mr. Bulger to provide evidence and noted that this was the first TLAB hearing in which he would be doing this. She then asked Mr. Bulger to explain his duties and responsibilities. Mr. Bulger stated that he reviews and comments on variety of Planning Applications. He has reviewed approximately 100 Variance Applications. Prior to his Assistant Planner role, he was an Application Technician which was to process and handle COA Applications. He has a Bachelor's Degree in Planning, Certificate in Local Economic Development and is a Candidate member of Ontario Professional Planners Institute (OPPI). No questions or comments were raised regarding Mr. Bulger's credentials and I stated I would be willing to qualify him in the field of land use planning.

Ms. Jakubowski requested the following exhibits be entered into the record, for which I accepted:

Exhibit 5: Expert Witness Statement of Bram Bulger

Exhibit 6: Addendum to Witness Statement of Bram Bulger

Exhibit 7: City's Document Disclosure Book

Mr. Bulger then showed a graphic of his study area which is bounded approximately by Jellicoe Avenue to the North, Edgeware Drive to the South, Gort Avenue to the west and Lloyd George Avenue to the east. He described that the original proposal's detached dwelling would have resulted in a house with the largest FSI within this neighbourhood.

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Ms. Jakubowski then asked Mr. Bulger for his professional opinion on the revised proposal. Mr. Bulger stated that the revised proposal now has lower FSI, removal of cellar height and increase in the side yard setback, as they relate to the Variance requests. He opines that these revised proposals will be more compatible for this neighbourhood. In terms of building height, Mr. Bulger referenced statements as made by Ms. Plesko and indicated that the revised proposal has a reduced midpoint, which is where building height is measured, which he believes will have a reduce impact at the street level. With regards to the lot coverage, while this has increased Mr. Bulger believes it would still be in keeping with the neighbourhood character and is consistent with previous Variance approvals for lot coverage.

In terms of the conditions of approval for both the Consent and Variance Applications, as proposed by the Appellant, he believes they are appropriate.

With this study area, Mr. Bulger stated that Zoning boundaries are also used to determine the study area boundaries as well.

Ms. Stewart asked Mr. Bulger to confirm if the subject property is not within TRCA regulated area. Mr. Bulger acknowledged this. She then asked if there is a prevailing character for this neighbourhood. Mr. Bulger stated that there are nuances to establishing the neighbourhood character. As such, this is partly why they proposed semi-detached dwelling. There is a variety of neighbourhood characters expressed in this local area context. However, Mr. Bulger found that semi-detached dwellings are usually found on smaller lots, which is applicable here as this is land severance to create two lots.

Ms. Stewart then asked Mr. Bulger if he believes the tenets S. 4.1.5 of the OP are met with this proposal. He acknowledged this.

Ms. Plesko referenced written correspondence she submitted to the TLAB expressing concern that since the last TLAB Hearing no consultation with the Participants had occurred. She contends this is an overbuild. In terms of side yard setbacks as described by Mr. Chan, Ms. Plesko raised concerns with this information and believes it to be inaccurate. She further indicated that she had physically measured these side yard setbacks of neighbourhood properties.

Ms. Plesko stated that she is not opposing development for this area but is not supportive of overdevelopment.

Ms. Stewart indicated that she had reviewed Ms. Plesko's written comments and had considered them. Ms. Stewart does not believe decreasing the side yard setbacks, which results in greater building length, would be preferable. She further indicated City Planning staff are not in support of such a change to the proposal. Ms. Stewart also contends that the Participants would have had sufficient time to review the revised proposal since the last Hearing date.

After this Hearing concluded, I inquired if a Minutes of Settlement had been executed here. Ms. Stewart and Ms. Jakubowski responded that they had determined that a Minutes of Settlement did not need to be prepared.

ANALYSIS, FINDINGS, REASONS

This Appeal matter focused on a revised proposal which had been agreed upon, in principle, between the Appellant and the City. It is noted that this was presented to the TLAB just prior to the first Hearing date. As such, I found it appropriate that the Hearing be adjourned so that the other Parties to this Appeal could review the revised proposal. I had further indicated that, if possible, additional discussion between the Appellant and the Opposing Parties should occur to see if they are in acceptance of this revised proposal.

At the second Hearing date, Participant Ms. Plesko stated that there had been no discussions with the Appellant which was confirmed by Ms. Stewart. However, the revised proposal had been uploaded to the City's Application Information Centre (AIC) so that all Parties could review it. Furthermore, Ms. Stewart contended that her client had attempted to discuss this proposal when it had initially gone to the COA, and the response from some residents, including Ms. Plesko's father, was in general opposition to in-fill development.

At this Hearing, I found that an adjournment of this second Hearing would not be relevant as it appeared the other Parties to this Appeal were also not in acceptance of the revised proposal. Ms. Plesko had provided a written submission on additional changes to the proposal which she felt would be appropriate. Ms. Stewart had indicated that such changes, while having been considered by her client, were not found to be feasible. City Solicitor Ms. Jakubowski reiterated that she was in attendance to support the revised proposal and had no further comment on Ms. Plesko's recommendations.

During the first Hearing date, I had recommended that the Appellant speak with the Opposing Parties on the revised proposal and to elicit their support, if possible. While I had requested this, I noted that I can't make this a mandatory exercise. In addition, I recognize from the oral testimony of the Opposing Parties, including Ms. Plesko, that they have now reviewed the revised proposal since the first Hearing date and continue to have concerns with what is being proposed on the property. As such, I found that a further adjournment would not be appropriate and therefore, I converted the second Hearing to a settlement Hearing to allow the merits of the proposal to be discussed further.

As part of the revisions to the original proposal (that was presented to the COA), there have also been changes to the Variance requests. The Appellant, since the first Hearing date, completed a new Zoning Notice with the City's Building Dept. This was done to properly identify the Variances needed to facilitate the revised proposal for semi-detached dwellings, as opposed to detached dwelling of the original proposal. The client's retained Expert Witness Mr. Chan outlined the revised Variances to the Tribunal, and these are expressed in following table, also prepared and submitted by Mr. Chan:

approved.

Variances Sought- Precedents in the Neighbourhood			
Variance	Part 1 West Lot (5 Enfield)	Part 2 East Lot (5 Enfield)	Precedent
Reduced Lot Area	278.3m ²	278.3m ²	206.52m ² - 57 Albright Ave
Reduced Lot Frontage	7.31m	7.31m	6.66m- 37 Gort Ave
Increased GFA	0.73 0.67	0.74 0.67	0.89- 25 Roseland Dr
Increased Lot Coverage	34.6% 37.4%	34.6% 37.4%	42.8%- 32 Jellicoe Ave
Reduced Side Yard Setback	0.91m(w)+ 0.64m(e) 0.96m(w)	0.91m(e)+ 0.64m(w) 0.96m(e)	0.23m- 34 Lloyd George Ave

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Increased Building Height	8.41m 7.97m	8.68m 7.97m	9.26m- 12 Albright Ave
Increased Cellar Height	4.52m- (DELETED)	4.58m (DELETED)	1.72m- 17 Foch Ave

Figure 1: Table of Variances Sought (from Supplementary Expert Witness Statement of C. Chan)

Here, Mr. Chan opines that the new Zoning Notice has outlined that there has been a reduction in the Variances for lot area, lot frontage and side yard setbacks. However, the Variances for GFA, lot coverage and building height have increased. The Variance for cellar height has now been withdrawn. Mr. Chan further opined that the changes to the proposal are minor and, as such, he believes no further public re-notification needs to occur, as per S.45(18) of the *Planning Act*. I note that the Consent (land severance) remains substantially similar, however the building type on the two proposed lots to be created are now semi-detached as opposed to detached dwellings. The Variances have now been altered to facilitate for this revised proposal.

I find that the overall quantum of Variances has now been reduced, from seven to six and I am of the opinion that the remaining Variance requests are similar to what had initially been brought before the COA. However, the numerical value of each Variance has been slightly altered as part of the revised proposal to be presented to the TLAB. The City did not raise concerns regarding this while the Opposing Parties in attendance at the Hearing had no further comments on this either. As such, I find that no further re-notification would be necessary.

As part of his testimony, Mr. Chan presented graphic which highlighted the front elevation of the original and revised proposals. This graphic was disputed by Ms. Plesko who indicated that this graphic was not presented to scale. As such, Ms. Plesko stated that the height different for both proposal is not being properly conveyed to the Tribunal. Mr. Chan responded that building height is measured not to the top but mid-point of a roof. Furthermore, when I asked if this graphic/drawing had been submitted to the City for its review, he responded that it had as part of the new Zoning Notice which the Appellant had completed. It should be noted that this Zoning Notice was completed as both the Appellant and City wanted confirmation of the Variance requests as part of the revised proposal which they had agreed upon, in principle.

The genesis of Ms. Plesko's concerns appear to be regarding how the building heights are being presented. With that, she questions if there is a significant difference or reduction in the building height of the revised proposal with the original one. Mr. Chan stated that the material is for reference purposes and if the tribunal required, he could look into this matter further.

I indicated that the TLAB requires all Parties to act in a good faith manner. Mr. Chan was affirmed to provide Expert Witness testimony and, as such, I would expect material such as the graphic submitted by Mr. Chan to be accurate, from his perspective. With this, I don't believe additional material needs to be provided here. Although there is a building height Variance, there are also five other Variance requests being proffered by the Appellant. The Variances, and the Consent, must be considered collectively to determine the actual scale and impact of this proposal and the Variances must individually and cumulatively meet the four statutory tests in the Act and to determine if it constitutes good planning. As such, this graphic is one of several disclosure documents which I must assess, in addition to the other documents filed and the evidence heard in this matter.

The testimony of both the Appellant and City's Expert Witnesses, who are Planners by profession, was in support of the revised proposal. They contend that the alteration from detached to semi-detached dwelling will result in a built form which is more consistent with neighbourhood attributes. As stated previously, the Consent (severance) request would be unaltered, however, the Variances have now been revised due to the change in the proposed built form. Although the Variance for cellar height has now been withdrawn, the other six Variances remain. Three of the Variance requests, for lot area, lot frontage and side yard setbacks have been reduced in numerical value. However, the remaining three Variances for GFA, lot coverage and building height have increased. Both Expert Witnesses provided testimony relating to this and believe that these alterations to the Variances are appropriate as they allow for a semi-detached dwelling to be constructed on the property, which would be more compatible and consistent with the prevailing built form and development pattern for this local area context.

Mr. Chan's testimony focused on S. 4.1.5 of the OP which stipulates in-fill development must be consistent with the prevailing neighbourhood character. He then devised a study area to assess previous Variances granted for other adjacent properties. His assessment also used a photographic study to illustrate the prevailing built form for this neighbourhood as well. Both assessment methodologies are proffered to assess both the Consent (severance) and Variance Applications. In outlining how this proposal, in his professional opinion, acts to meet this and other relevant planning policies and legislation, Mr. Chan further opines that:

"25. Lots of this size in the Immediate Context has been split to accommodate semidetached dwellings as seen immediately east of the subject site at 3-3A Enfield

Avenue. The proposed lots and two new homes are desirable in their provision of increased housing options in the neighbourhood.

26. I note that Engineering and Construction Services have cited no objections for the proposed variances and the creation of two new lots. The proposed lot areas,

lot frontages, floor area, lot coverage, side yard setback, building height, and cellar establishment above grade are reflective of and are numerically within, the range of the existing and COA-approved homes in the local neighbourhood and is in our opinion, appropriate development and the variances, should they be approved, will not set a precedent.”¹

These comments, as outlined in Mr. Chan’s *Expert Witness Statement*, argues that the proposed lots and semi-detached dwellings to be built on those lots would not constitute a form of ‘over-build’ as stated by the Opposing Parties. In conducting a research exercise on previously approved Variances for his study area, and in an assessment of current housing types in his study area (as depicted in his photographic study contained in the disclosure documents), Mr. Chan has found that there has been similar in-fill development which has occurred in this neighbourhood. Several of these developments have been accomplished through applying for planning applications such as Consent and/or Variance. What was notable from Mr. Chan’s testimony is that the adjacent property of 3 Enfield Avenue had a Consent (severance) approval to create semi-detached dwelling, as was depicted in his photographic study:



Figure 2: Photographs of building types within study area (from Appellant’s Document Disclosure Book)

This is notable in demonstrating that a land severance, of similar built form, has already occurred in the adjacency of the subject property. The Appellant has now acted to revise their proposal to be a housing type which is not dis-similar to the development pattern which has been unfolding in this neighbourhood.

¹ Chan, C. *Supplementary Expert Witness Statement of Christian Chan* December 2021, pp. 9

The City Planner, Mr. Bulger, provided his Expert Witness testimony after Mr. Chan. However, his proffered testimony was more concise, as his professional opinion was similar to that of Mr. Chan. As such, City Solicitor Ms. Jakubowski explained she did not believe more fulsome testimony was necessary as it would act to reiterate what had already been communicated to the Tribunal by Mr. Chan. Mr. Bulger supported the arguments as advanced by Mr. Chan and further stated that the City was now able to support the proposal due to its alteration from detached to semi-detached dwelling. A notable difference in the testimony of both Expert Witnesses is that Mr. Chan did opine that the subject property is near the Long Branch GO station and, as such, this neighbourhood is suitable for transit-oriented development (TOD). Mr. Bulger did not provide such testimony with Ms. Jakubowski indicating that Long Branch GO station had not been formally declared a major transit station area (MTSA), as stipulated by provincial policy requirements. Mr. Chan acknowledged this.

Although I do recognize that the MTSA has not been potentially declared here, it is evident from the photographic study of Mr. Chan and in conducting a site visit of this property and surrounding neighbourhood that the Long Branch GO station is within walking distance to the subject property. In such respects, it is rationale to surmise that this property is in close proximity to higher order transit. It is further noted that the Long Branch GO station is adjacent to the TTC and Mississauga Transit (also known as MiWay) Long Branch loop.

I would be remised if I did not discuss Ms. Plesko's written correspondence to the TLAB, submitted just prior to the second Hearing date. Her initial statements regarding engaging the Opposing Parties on the revised proposal had been addressed previously in this document. In furtherance to that, I had agreed to an adjournment of the first Hearing date to principally ensure the that the Opposing Parties had an opportunity to review the revised proposal and to be prepared to discuss it once we re-convened.

The other portion of Ms. Plesko's written correspondence should be outlined here as she has proposed changes to the proposal which she argues would be appropriate:

"The newest plans address City Planning's preference for semi-detached rather than two detached homes on the lot, however our concerns with the massing and scale remain. Limited (if any) material sacrifice on the square footage of the dwellings is needed to soften the impact on the streetscape. Lowering the soffit heights by incorporating ceiling heights within the roofline, reducing floor heights (i.e. 9' and 8', rather than 10' and 9' as proposed), and conforming to side yard setback requirements are examples of how to achieve this. Any consequent reduction in floor space could be recovered by extending the homes deeper into the lot, which would have minimal if any impact on the streetscape."²

As had been stated previously in this document, the Appellant's lawyer Ms. Stewart indicated that she had reviewed these comments and, in consulting with her client, found that they would not be feasible. Furthermore, she indicated that the proposed changes, most notably increasing the building length, would actually act to negatively impact the adjacent properties. City Solicitor Ms. Jakubowski stated that,

² Plesko, L. *Written correspondence sent to TLAB* December 2021

after reviewing this correspondence, that the City's position remained unchanged and they were supportive of the revised proposal which they had agreed upon with the Appellant.

I recognize the active participation of Ms. Plekso in this Appeal matter and in providing erstwhile comments to the TLAB to address concerns by some neighbourhood residents with this proposal. While so, I would have to apply a critical analysis to her proposed changes to the proposal. In terms of the ceiling heights, I find that the Applicant has revised the proposal to eliminate the Variances for cellar height. In terms of increasing the building length, without drawings provided in relation to this recommendation, I would find that there is a possibility that an additional Variance for building length may be required. In addition, this could act to compromise the front and rear yard greenspace which would also not be consistent with neighbourhood attributes.

In terms of the side yard setback, Mr. *Bulger's Expert Witness Statement* does state that the majority of properties within his study area have side yard setbacks which comply with Zoning requirements, and that all properties along Enfield Avenue are Zoning compliant in this regard. However, in his oral testimony, Mr. Bulger did note the commentary within his *Expert Witness Statement* had been drafted in relation to the original proposal. However, due to changes to that proposal resulting in a new housing type, Mr. Bulger had revised his professional opinion and now opines that the list of revised Variances, such as for side yard setbacks, would be appropriate here to allow for semi-detached dwelling to be constructed, which would be more consistent with the neighbourhood character.

I find that here, in addition to the Appellant's Expert Witness, the City's Expert Witness has undertaken a detailed review of this revised proposal and proffered their professional opinion in support of it. While recognizing Ms. Plesko's written comments, it does not appear that incorporating her proposed changes would result in a demonstrable improvement here. Furthermore, without additional information proffered, such as drawings, it is difficult to further ascertain how her changes would be incorporated into the actual built form being proposed for these two lots. Additionally, neither Ms. Plesko nor the other Opposing Parties further cross-examined Mr. Chan.

I prefer the evidence as advanced by both the Appellant and City. With regards to the Consent (severance), they have sufficiently demonstrated that S.51(24) of the *Planning Act*, or criteria for subdivision of land, can be met. It is noted that the adjacent property of 3 Enfield Avenue has already been severed to create two lots for semi-detached dwelling. As such, I find that the allowance of this proposal for semi-detached dwelling as well will not act to disrupt the neighbourhood character. The photographic study as outlined by Mr. Chan further underscored that there are semi-detached dwellings within this neighbourhood as well.

Mr. Bulger affirmed the testimony of Mr. Chan by stating that semi-detached dwelling would be more appropriate due to the proposed lot sizes. Although a semi-detached dwelling is proposed for each newly created lot, there is an existing detached dwelling on the property. In allowing this additional dwelling, Mr. Chan has discussed that there are sufficient local services, such as schools, to support this new tenant/family to the neighbourhood. Furthermore, Mr. Chan's testimony demonstrated

that redevelopment and reinvestment has been occurring in this neighbourhood over the past decade and therefore, I agree with Mr. Chan's opinion that proposal would be consistent with this development pattern and would not be a premature type of development. The subject property is close to the Etobicoke Creek. However, it does not fall within the TRCA regulated area which would impose certain conditions and restrictions for new development. These issues, as outlined, demonstrates that the provisions of S. 51(24) of the *Planning Act* have been met in relation to this severance proposal.

In allowing the Consent (severance) I am also granting the related Variances for the construction of semi-detached dwelling to be built on each newly created lot.. With regards to the four tests for Variance, as per the *Planning Act*, I find Mr. Chan's testimony to be more convincing.

In terms of 'meet the general intent and purpose of the Official Plan', I find Mr. Chan's testimony, especially in relation to S. 4.1.5 of the OP, has materially demonstrated that this revised proposal will be compatible with the neighbourhood character and will not act to disrupt the underlying attributes for this local area context.

With 'meet the general intent and purpose of the Zoning By-law', I prefer Mr. Chan testimony and evidence which show that similar Variances have been approved for in this area. Although there are six Variances for each of the two lots, it has been shown that they are employed to create a semi-detached dwelling which would be of a scale and intensity which is less impactful to the streetscape than a detached dwelling, as was originally proposed. For 'are desirable for the appropriate development or use of the land', again Mr. Chan's photograph study shows that this semi-detached dwelling is already occurring in this neighbourhood. In addition, this study further illustrated that in-fill development has been occurring in this area as well. Finally, if the proposal 'is minor', I agree that by revising the proposal to semi-detached dwelling, this has resulted in a built form which is of a scale and massing which is similar to neighbourhood character. This was affirmed by Mr. Bulger in his testimony. As such, I concur that the Applications and the Variances are more minor in nature as opposed to the original detached dwelling.

I note that the City's position, as argued by Mr. Bulger, was not in opposition to the Consent (severance) but to the originally proposed Variances as they could be construed as allowing a house (detached dwelling) to be built on an undersized lot. By altering it to be semi-detached dwelling, I find that the Applicant has attempted to address and resolve issues originally raised by the City. I further also find that this revised proposal will be complimentary to the neighbourhood 'rhythm'. Its allowance will not act to disrupt the local area context and will also allow for proper and orderly reinvestment and redevelopment to occur here.

It is noted that one of the Participants, Rober Mochocki, was not in attendance at the Hearing. As such, his submitted Participant Statement could not be further discussed before the Tribunal. The TLAB further notes that a Minutes of Settlement has not been executed between the Appellant and City. These two Parties have indicated that they do not believe such a document is necessary, and that the conditions of approval for the Consent and Variances attached below to this Decision as 'Conditions

of Consent and Variance Approval' will ensure the proposal is completed satisfactorily. Although the majority of settlement hearings that I have presided over have had a settlement document drafted, I would find that it is not within my purview to dictate whether such a document should be prepared. Moreover, I am satisfied that the conditions of approval, agreed upon between the Appellant and City, are an appropriate form and will ensure that this proposal is constructed in a manner which reflects the approval as granted by this Tribunal, while also ensuring the public interest is upheld.

DECISION AND ORDER

I authorize the following Variances and approve the Consent requested. The earlier decision of the COA is set aside.

Requested Variances

5 Enfield Avenue (Part 1) – List of Variances

1. Section 90.(18)(A)(i), By-law 569-2013

The minimum required lot area is 665 square metres.

The lot area will be 278.3 square metres.

2. Section 900.6.10.(18)(B)(i), By-law 569-2013

The minimum required lot frontage is 18.0 metres.

The lot frontage will be 7.31 metres.

3. Section 1(A), By-law 67-1979

The maximum permitted gross floor area is 0.4 times the area of the lot (111.32 square metres).

The new dwelling will have a gross floor area of 0.67 times the area of the lot (187.3 square metres).

4. Section 900.6.10.(18)(C)(i), By-law 569-2013

The maximum permitted lot coverage is 33% of the lot (91.8 square metres).

The new dwelling will cover 37.4% of the lot area (104.14 square metres).

5. Section 10.80.40.70.(3)(A), By-law 569-2013

The minimum required side yard setback is 1.5 metres.

The new dwelling will be located 0.96 metres from the west side lot line

6. Section 3, By-law 67-1979

The maximum permitted height is 7.5 metres.

The new dwelling will have a height of 7.96 metres.

5 Enfield Avenue (Part 2) – List of Variances

1. Chapter 10.80.30.10.(1)(C), By-law 569-2013

The minimum required lot area is 665 m². The area of the conveyed lot will be 278.3 m².

2. Chapter 10.80.30.20.(1)(C), By-law 569-2013

The minimum required lot frontage is 18.0 m. The frontage of the conveyed lot will be 7.31

3. Chapter 10.80.40.40.(1), By-law 569-2013

The maximum permitted gross floor area of a semi-detached dwelling is 0.4 times the area of the lot (111.32 m²). The new semi-detached dwelling will have a gross floor area equal to 0.67 times the area of the lot (187.3 m²).

4. Chapter 10.80.40.70.(3), By-law 569-2013

The minimum required side yard setback is 1.5 m. The new semi-detached dwelling will be located 0.96 m from the east side lot line.

5. (1))A) Gross Floor Area, By-law 1979-67

The maximum permitted gross floor area is 0.4 times area of lot. The new semi-detached dwelling will have gross floor area of 0.67 times area of the lot (187.3m²)

6. (3) Height, By-law 1979-67

Proposed building height is 7.96m

CONDITIONS OF CONSENT APPROVAL

1. Confirmation of payment of outstanding taxes to the satisfaction of the Revenue Services Division, in the form of a statement of tax account current to within 30 days of an applicant's request to the Deputy Secretary-Treasurer of the Committee of Adjustment to issue the Certificate of Official as outlined in Condition 6.
2. Municipal numbers for the subject lots, blocks, parts, or otherwise indicated on the applicable registered reference plan of survey shall be assigned to the satisfaction of the Supervisor, Surveys, Engineering Support Services, Engineering and Construction Services.
3. One electronic copy of the registered reference plan of survey integrated to NAD 83 CSRS (3 degree Modified Transverse Mercator projection), delineating by separate Parts the lands and their respective areas, shall be filed with, and to the satisfaction of, the Manager, Land and Property Surveys, Engineering Support Services, Engineering and Construction Services.
4. One electronic copy of the registered reference plan of survey satisfying the requirements of the Manager, Land and Property Surveys, Engineering Support Services, Engineering and Construction Services shall be filed with the Deputy Secretary-Treasurer of the Committee of Adjustment.
5. Prepare and submit a digital draft of the Certificate of Official, Form 2 or 4, O. Reg. 197/96, referencing either subsection 50(3) or (5) of the Planning Act if applicable as it pertains to the conveyed land and/or consent transaction to the satisfaction of the Deputy Secretary-Treasurer of the Committee of Adjustment.
6. Once all of the other conditions have been satisfied, the applicant shall request, in writing, that the Deputy Secretary-Treasurer of the Committee of Adjustment issue the Certificate of Official.
7. Within ONE YEAR of the date of the giving of this notice of decision, the applicant shall comply with the above-noted conditions.

CONDITIONS OF VARIANCE APPROVAL

1. The proposed dwellings shall be constructed substantially in accordance with the Site Plan (SP-1), Front Elevation and Right Side Elevation (A-4), and Rear Elevation and Left Side Elevation (A-5), prepared by MP Design & Associates and dated October 2021.
2. The owner shall submit a complete application for a permit to injure or remove a City owned tree, as per City of Toronto Municipal Code Chapter 813, Trees Article II Trees on City Streets.
3. Where there is no existing street tree, the owner shall provide payment in lieu of planting of one street tree on the City road allowance abutting each of the sites involved in the application. The current cash-in-lieu payment is \$583/tree.
4. The applicant shall submit a revised site plan with the following revisions and notations to the satisfaction of the Engineering and Construction Services and Transportation Services, at no cost to the City:
 - a) Illustrate the existing and proposed elevations along the boundary limit and within the proposed site.
 - b) Revise site plan to illustrate a positive slope of minimum 2% to 4% that will be maintained on each of the proposed driveways, as measured between the proposed garage door entrances to the curb line of Bellman Avenue.
 - c) Show footprint of the existing house and driveway. Label any redundant portion of the existing driveway to be removed within the right-of-way as to be restored with sod
 - d) Add the following notations to the Site Plan:
 - i. "All portions of the existing redundant driveway within the Enfield Avenue municipal boulevard shall be removed and restored with sod to the satisfaction of Transportation Services at no cost to the municipality."
 - ii. "The owner must obtain all required permits from the Permits and Enforcement unit of Transportation Services prior to commencing construction, which may include but not be limited to, payment of a Municipal Road Damage Deposit. The owner must contact the Permits and Enforcement unit of Transportation Services in order to obtain the exact particulars of all required permits."
 - iii. All work within the Enfield Avenue right-of-way must be done to the satisfaction of the Transportation Services Division, and at no cost to, the City of Toronto."

X



Justin Leung
Panel Chair, Toronto Local Appeal Body