

# DECISION AND ORDER

**Decision Issue Date**      Wednesday, September 29, 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): ADAM PROCHILO

Applicant(s): IN ROADS CONSULTANTS

Property Address/Description: 24 MORLAND ROAD

Committee of Adjustment File

Number(s): 20 212967 STE 04 MV

**TLAB Case File Number(s): 21 143559 S45 04 TLAB**

**Hearing date: August 19, 2021**

**Deadline Date for Closing Submissions/Undertakings:**

**DECISION DELIVERED BY JUSTIN LEUNG**

## REGISTERED PARTIES AND PARTICIPANTS

Applicant	IN ROADS CONSULTANTS
Owner	TANIA DASILVA
Appellant	ADAM PROCHILO
Appellant's Legal Rep.	AMBER STEWART
Party	CHARLES VINCENT
Party's Legal Rep.	ZACHARY FLEISHER
Expert Witness	FRANCO ROMANO
Participant	NEIL FERRIS

## INTRODUCTION

This is an Appeal from a decision of the Toronto-East York Committee of Adjustment (COA) pertaining to a request to permit a series of nine Variances for 24 Morland Road.

The Variances, if allowed by the Toronto Local Appeal Body (TLAB), would permit the construction a rear addition, third storey addition, third storey rear terrace, rear deck, walkout and an extension of the current garage.

This property is located in the Runnymede-Bloor West Village neighbourhood in the Old City of Toronto district of the City of Toronto (City) which is situated north of St. Johns Road and bounded by Jane Street the west and Runnymede Road to the east. The property is located on Morland Road, south of Dundas Street West and north of St. Johns Road.

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 immediate neighbourhood and had reviewed all materials related to this Appeal.

## BACKGROUND

The Variances that had been requested are outlined as follows:

### **1. Chapter 10.80.40.10.(2)(A), By-law 569-2013**

The maximum permitted height of all front and rear exterior main walls is 8.5 m.

- (i) The proposed height of the front exterior main walls is 10.49 m.
- (ii) The proposed height of the rear exterior main walls is 10.49 m.

**2. Chapter 10.80.40.40.(1)(A), By-law 569-2013**

The maximum permitted floor space index is 0.8 times the area of the lot: 180.7 m<sup>2</sup>.

The proposed floor space index is 0.98 times the area of the lot: 221.14 m<sup>2</sup>.

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

The minimum required side yard setback is 1.2 m.

The rear deck will be located 0.45 m from the west side lot line.

**4. Chapter 10.5.40.60.(7), By-law 569-2013**

Roof eaves may project a maximum of 0.9 m provided that they are no closer than 0.30 m to a lot line.

The roof eaves will be located 0 m from the west side lot line.

**5. Chapter 10.5.50.10.(3)(A), By-law 569-2013**

A minimum of 50% (48.39 m<sup>2</sup>) of the rear yard must be maintained as soft landscaping.

In this case, 16% (15.79 m<sup>2</sup>) of the rear yard will be maintained as soft landscaping.

**6. Chapter 10.5.40.60.(1)(A)(i) By-law 569-2013**

A platform without main walls, attached to or less than 0.3 m from a building, with a floor no higher than the first floor of the building above established grade may encroach into the required front yard setback 1.7 m if it is no closer to a side lot line than the required side yard setback.

The platform will encroach 2.35 m into the required front yard setback.

**7. Chapter 10.5.60.20.(3)(C)(iii), By-law 569-2013**

The minimum required side yard setback for an ancillary building or structure located in the rear yard and 1.8 m or more from the residential building on the lot is 0.3 m.

The detached garage will be located 0.16 m from the east side lot line.

**8. Chapter 10.80.40.50.(1)(B), By-law 569-2013**

The maximum permitted area of each platform at or above the second storey of a detached house is 4.0 m<sup>2</sup>.

The area of the third floor terrace will be 14.73 m<sup>2</sup>.

**9. Chapter 10.80.40.70.(3)(A), By-law 569-2013**

The minimum required side yard setback for a rear third floor platform is 1.2 m. The rear third floor platform will be located 0.45 m from the west side lot line.

These Variances were heard and refused at the March 31, 2021 Toronto-East York COA meeting. Subsequently, an Appeal was filed on April 20, 2021 by the property-owners of 24 Morland Road within the 20 day appeal period as outlined by the *Planning Act*. The TLAB received the Appeal and scheduled a Hearing on August 19, 2021 for all relevant parties to attend. On July 27, 2021, a Minutes of Settlement document was submitted to the Tribunal by the Appellant/Property-owner. The settlement proposal is between the Appellant and the Party Charles Vincent. Participant Neil Ferris informed the TLAB that he was not accepting of this settlement proposal and continued to have issues with the proposal. I communicated to the Parties that we would proceed with the scheduled Hearing so as to hear and consider all issues relating to this Appeal matter.

## **MATTERS IN ISSUE**

The subject proposal now has a settlement, in principle, with some of the Parties to the matter. There is a Participant who has not consented to this settlement. As such, a Hearing has been convened to assess the merits of this proposal to determine if it constitutes good planning and whether or it conforms to relevant planning policies and legislation. It is further noted that the proposal, as outlined in the Minutes of Settlement, now includes a revised set of Variance requests from what had originally been presented to the COA. As such, in addition to assessing this revised proposal, the TLAB will also have to determine if it is appropriate to accept this without further public notification.

The proposal that is before the Tribunal is defined as a modification to the existing dwelling on the subject property. It requires Variances to facilitate for this type of redevelopment. The TLAB will need to determine if this is an appropriate form of development for this neighbourhood context and if it also upholds the public interest here as well.

## **JURISDICTION**

### **Provincial Policy – S. 3**

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

### **Minor Variance – S. 45(1)**

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

At the beginning of the Hearing, I indicated that a settlement proposal had been presented to the TLAB for its review and consideration. However, the settlement was not unanimously accepted by all Parties to the Appeal matter. As such, I stated that we should commence the Hearing by presenting the Minutes of Settlement. Proceeding that, testimony from the Expert Witness could be provided. Afterwards, cross-examination and closing statements could then be provided, if necessary.

With this direction provided, Ms. Stewart, who was acting on behalf of the Appellant Adam Prochilo, proceeded with an opening statement. Ms. Stewart outlined that Minutes of Settlement have been prepared between her client and the Party Charles Vincent. As part of this settlement proposal, they have mutually agreed to a revised proposal which has resulted in a reduction in the number of Variance requests. The Variance requests now being proffered are as follows:

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

The maximum permitted floor space index is 0.8 times the area of the lot: 180.7m<sup>2</sup>.

The proposed floor space index is 0.92 times the area of the lot: 207.0m<sup>2</sup>.

### 2. Chapter 10.5.40.60.(7), By-law 569-2013

Roof eaves may project a maximum of 0.9m provided that they are no closer than 0.3m to a lot line.

The proposed roof eaves will be located 0.0m from the west side lot line.

### 3. Chapter 10.5.50.10.(3)(A), By-law 569-2013

A minimum of 50% (50.13m<sup>2</sup>) of the rear yard must be maintained as soft landscaping.

A minimum of 27.6% (27.7m<sup>2</sup>) of the rear yard will be maintained as soft landscaping.

### 4. Chapter 10.5.40.60.(1)(A)(i), By-law 569-2013

A platform without main walls, attached to or less than 0.3m from a building, with a floor no higher than the first floor of the building above established grade may encroach into the required front yard setback of 1.7m if it is no closer to a side lot line than the required side yard setback.

The proposed platform will encroach 2.35m into the required front yard setback.

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

The minimum required side yard setback is 1.2m.

The proposed west side yard setback is 0.37m.

The proposal has now resulted in a reduction from nine to five variance requests. Some of the Variances, such as NO. 1 and 3, have been altered. Variances 2 and 4 remain unchanged. Finally, Variance 5 is a new Variance being proposed. Ms. Stewart described this proposal as being as an addition and renovation to an existing dwelling. However, City Building staff have now determined that, with this revised proposal, it would be interpreted as a new build as it no longer retains 50% of the exterior walls. However, she explains that it technically continues to be an addition type construction. Due to these changes, Variance 5 is now being proposed. However, this is due to the new interpretation by City staff and the property setback condition here remains materially unchanged.

With regards to the original proposal which had been refused by the COA, Variances 1, 3, 7, 8 and 9 have now been removed (as had been described in the 'Background' section of this document).

The Minutes of Settlement has been reached with Mr. Vincent, who resides at the adjacent property of 26 Morland Road. The settlement proposal describes the revised Variance requests, as outlined previously, and also has a list of conditions to be satisfied, if the TLAB accepts this settlement. The Minutes of Settlement does further note that Participant Neil Ferris would be contacted to inform him of this settlement proposal and to elicit his support. Ms. Stewart acknowledges that Mr. Ferris is not in acceptance of this settlement. However, she further states that Mr. Ferris has not made any further submissions to the TLAB with regard to this revised proposal.

With regards to the settlement proposal, they have now revised the proposal to have an in-set fence between the subject property and Mr. Vincent's property to ensure he can access his rear yard on the existing narrow driveway. The settlement further outlines notification procedures for Mr. Vincent about construction and electrical issues, which may arise with the erection of proposed addition and modification to garage.

Ms. Stewart then requested that exhibits be entered as part of the TLAB record. I accepted and they were provided as follows:

Exhibit A: Minutes of Settlement

Exhibit B: Expert Witness Statement of F. Romano

Exhibit C: Letters of support from 694 Willard Avenue and 1 Morland Road

Ms. Stewart then requested that their retained Expert Witness be called to the stand to provide testimony to the tribunal. I indicated that I had reviewed Mr. Frank Romano's curriculum vitae and would be able to qualify him in the field of land use planning.

Mr. Romano commenced by describing the study area he had devised, as is the established practice to assess the principles related to Official Plan Amendment 320 (OPA 320). The study area is bounded by Dundas Street West to the north, Jane Street to the west, Runnymede Road to the east and St. Johns Road to the south. In accordance with OPA 320, which states that in-fill development proposals are to be

assessed with regards to the broader neighbourhood context, it also requires the analysis to look at the immediate context as well. Mr. Romano states that Morland Road is a shorter road and does not constitute a neighbourhood block. However, the immediate context will assess the buildings along Morland Road and in adjacent streets as well.

The study area is comprised principally of residentially zoned properties. There are approximately 37 properties which comprise this study area as well. These properties lot area and lot frontages are diverse. The building type for this area is mostly detached and semi-detached dwellings.

The subject property has a detached dwelling and a detached garage in the rear of the property, assessable by a right-of-way driveway shared between the subject property and the adjacent property. The rear building height of these dwellings can be varied due to different design typologies for each of the dwellings. With regards to parking arrangements, this is also diverse which can include front pad parking, rear parking garages and integral garages.

Mr. Romano then presented a photo study he had prepared with regards to this study area. Along Morland Road, there are properties which are three storey dwellings. Furthermore, on the same street one can also find semi-detached dwellings as well. With regards to the subject property, the current front yard walkway and landscaped treatment will remain. The building setting, specifically with regards to the front portion for the building, will remain substantially similar to the current site condition. The detached garage which is being proposed will be done to be Zoning By-law compliant. They had previously had Variance requests for this component but that has now been removed with the revised proposal.

Continuing with his assessment of Morland Road, he showed detached dwellings which have minimal side yard setbacks. There are some dwellings which have integral garages. Mr. Romano did note that the City no longer permits integral garages. He then proceeded to describe the building type on neighbouring streets of Williard Avenue, Jillson Avenue, Rexford Road and Windermere Avenue. With this portion of the photo study, Mr. Romano argues that the building type is also similar, while there may be some differently designed houses.

He then discussed that, as part of his research for his area, that there have been previous Variance requests for other adjacent dwellings. There has also been Consent (severance) Applications which have been submitted here. The area does not have provisions which govern the number of storeys for a dwelling. As a result, there has not been that type of Variance request here. With regards to main wall height, most dwellings comply with this due to permitted building height being 11 metres. In addition, the main wall height provision was only recently imposed in 2013.

Mr. Romano then proceeded to describe the subject proposal. The rear addition will generally maintain the current building footprint. However, a portion of the addition along the southern property line will 'jog' in as it extends into the rear yard. The building length will comply with Zoning requirements. There is a third storey platform proposed,

which is also Zoning compliant. There will also be a new detached garage which will also be done to meet Zoning stipulations. Mr. Romano then described those alterations to the building length were done to allow for a reduction in the overall FSI Variance request.

Mr. Romano opines that the order of magnitude of the Variance requests has decreased. He believes the revised proposal would allow for a more compatible form of development. Finally, it would meet the four tests for Variance, as per the *Planning Act*.

Ms. Stewart then inquired if the TLAB wanted presentations made with regard to whether public notification needs to occur, due to changes to the proposal. I responded that I would look to see if any other Parties had comments with regards to this.

Participant Neil Ferris made comments to the Tribunal which were related to potential issues/concerns with loss of greenspace as a result of this proposal being allowed to proceed. I responded to Mr. Ferris that we were currently addressing the issue of whether public notification, due to revised Variance requests, would be necessary. While I indicated I recognized his comments, I advised they should be raised at a later stage of this Hearing.

Not finding any other submissions being made on this matter, I stated that, based on my review of the revised proposal, I would determine that it is a material decrease in the scale and intensity of the proposal. As such, I would further find that further public notification would not be necessary, in accordance with the authority as provided to me by the *Planning Act*.

Mr. Romano then proceeded to provide testimony on *Official Plan (OP)* policies as they relate to the subject proposal. He opines that the OP does not require new development to be a replica of the prevailing building type of a neighbourhood. However, it should be complimentary to the current neighbourhood context. With regards to the block pattern and lot configuration, he describes the proposal as not acting to alter these elements. In terms of building height, massing and scale, the subject proposal's three storeys are Zoning compliant, and is also expressed with other current houses along Morland Road. With regards to the massing, Mr. Romano states that this proposal will again be similar to dwellings along Morland Road and adjacent streets. In terms of scale, he states that his analysis has found that this proposal will have a floor space index (FSI) which is consistent with other dwellings of this neighbourhood. The rear yard and side yard setbacks being proposed here are argued to also be similar to existing site conditions in this area.

Ms. Stewart commented that Mr. Ferris had raised potential landscaping issues on this property, particularly in the rear portion of the property. She asked if there were measures by which to address that here. Mr. Romano responded that this is not an OP related issue. However, and having discussed with the client, in the rear yard they would be accepting to install permeable pavers. This could be facilitated through a condition of approval.



While there are Variance requests being presented, Mr. Romano believes the OP policies which discuss Zoning By-law standards ensuring the physical character of the neighbourhood is preserved are being met in this instance. Although there are Variances being requested, he believes that the overall intent of the Zoning By-law is addressed and that the built form being proposed is not materially dis-similar to other houses in this area. The OP also has natural heritage policies, which are not applicable here as the subject property is not within a defined natural heritage area.

Mr. Romano then proceeded to assess the Zoning By-law and how it relates to the subject proposal. In terms of the FSI Variance request, he argues that this FSI is within the 'range' of FSI for houses for this neighbourhood. With the roof eaves setback, he opines that this condition will be similar to the current condition of the dwelling on site. In terms of the rear yard landscaping Variance, the reduction proposed here will be achieved by also ensuring drainage and permeability issues are sufficiently addressed. In addition, the front yard landscaping condition will remain unchanged. The platform Variance, for the platform at the front portion of the property, is argued by Mr. Romano to resemble other houses of the neighbourhood and will not be inconsistent with the neighbourhood context. Finally, with the west side yard setback Variance, he contends that the houses in this area have several instances of narrow side yard setbacks. As such, which is being proposed here is not a significant departure from the current neighbourhood context.

Ms. Stewart then asked Mr. Romano if the proposal is minor and if it is appropriate development. He responded that the proposal is for additions to an existing dwelling and is not introducing a new form of development to this area. The proposal is complimentary to the prevailing character here. He further contends that the proposal is minor as the Variance requests will permit a redeveloped dwelling in an area which is comprised primarily of dwellings as well. The proposal is an appropriate form of development as it will integrate into the existing neighbourhood fabric.

Mr. Romano's testimony to the TLAB then concluded.

Mr. Ferris stated that greenspace and flooding issues are of concern to him. He also is not sure about the efficacy of the permeable pavers the Appellant's lawyer has proposed. I inquired if this area is within a flood plain. Mr. Ferris was not aware of this. Ms. Stewart responded that it is not. Mr. Ferris also raised concerns that the revised proposal's drawings were not prepared by a contractor. I responded that, in general, drawings are not prepared by contractors but by architects or architectural designers.

Kevin Barnes, who was in attendance at the Hearing, had requested to speak. However, it was noted that he was not a Party or Participant to the proceedings. I indicated that he is welcome to observe the Hearing, however, in accordance with *TLAB Rules*, it would not be possible for him to make comments to the Tribunal.

Zachary Fleischer, legal representative for Mr. Vincent, then made presentation to the TLAB. He believes that the proposal will be a gentle and appropriate development for the neighbourhood. With regards to landscape issues, those had pertained to the enlargement of the rear detached garage. However, the revised proposal is no longer

looking to do this. As such, he argues that landscaping issues are no longer relevant. He further described that compatible does not mean it has to be similar to other development in an area. As such, he contends that this proposal is compatible redevelopment of an existing dwelling.

I inquired as to when the existing dwellings of the area had been constructed. Mr. Romano responded that they had been constructed in the early 20<sup>th</sup> century.

There were no closing statements provided. Ms. Stewart stated that, with regards to the condition she had proposed earlier in the hearing regarding permeable pavers, that she would draft condition wording related to this and submit it to the TLAB for my review and consideration. I acknowledged this and requested that be sent to me within one (1) week from this Hearing date.

With no further comments elicited, the Hearing then concluded.

Subsequently, after the Hearing, I asked Ms. Stewart if this revised proposal has been reviewed by City staff. Ms. Stewart responded through email correspondence that they have submitted it to City Building staff who had conducted a Zoning review of the revised proposal.

## **ANALYSIS, FINDINGS, REASONS**

The Hearing provided a more comprehensive appraisal of the settlement proposal which had been reached between the Appellant/Property-owner and a Party to this Appeal matter. It was noted that the other Participant here had not acquiesced to this proposal and had raised issues with regards to potential loss of greenspace and flooding issues if this redevelopment was permitted. The Appellant's lawyer, during a break in the proceedings, conferred with her client and had proposed an additional condition to provide for permeable pavers in the rear of the property, as a means of addressing these concerns. In addition, the Party's lawyer stated that the revised proposal, which was now before the TLAB, no longer contained the issues as raised by this Participant as the rear detached garage was no longer being proposed to be enlarged, albeit it will be rebuilt. He further noted that City staff did not raise concerns with this revised proposal either. With regards to the comments of both the Appellant and Party's lawyers to these issues, this Participant did not provide additional statements to the TLAB.

The Appellant had indicated that there is a differing interpretation between them and the City as to how to define this type of development. The Appellant contends that it is primarily an addition to the existing dwelling and rebuilding the rear detached garage. The City Building staff have described it as a new in-fill type development. Here, it does not appear to be a substantive issue and, in either respect, the proposal here does constitute a redevelopment on an existing parcel of land. The TLAB does note that the Appellant has forwarded their revised proposal to the City for their review. It was noted that the City, which had not been supportive of the initial proposal, has not provided any

further comments on this revised proposal. Furthermore, the City has not elected to be party to this Appeal matter either.

Mr. Romano provided a detailed analysis of the revised proposal and how, in his summation, it acts to meet the four tests for Variance, as per the *Planning Act*. In addition, he further contended that the revised proposal should be accepted by the TLAB, and that further public notification would not have to occur.

As had been described previously in this document, as authorized under s.18.1 of the *Planning Act*, I had found that the revised proposal is a material decrease in scale and intensity. As such, I would permit this revised proposal to be accepted by the Tribunal. Furthermore, I found that public notification relating to this would not be necessary. This is partly due to the proposal being materially decreased in terms of Variance requests, and as such, the public interest/concern to this matter would thus be diminished as a result. In addition, I would find that the prevailing public interest would also not be adversely impacted by permitting this revised proposal to be accepted and considered by the TLAB.

The Minutes of Settlement which had been submitted to the Tribunal provides a clear explanation on how the proposal has been revised since it was refused by the COA, and also provides for elements, that are part of this revised proposal, to minimize impacts to the adjacent properties. This is reflected in the proposed conditions which the Appellant has drafted, which were also accepted by the Party to this Appeal. They are as follows:

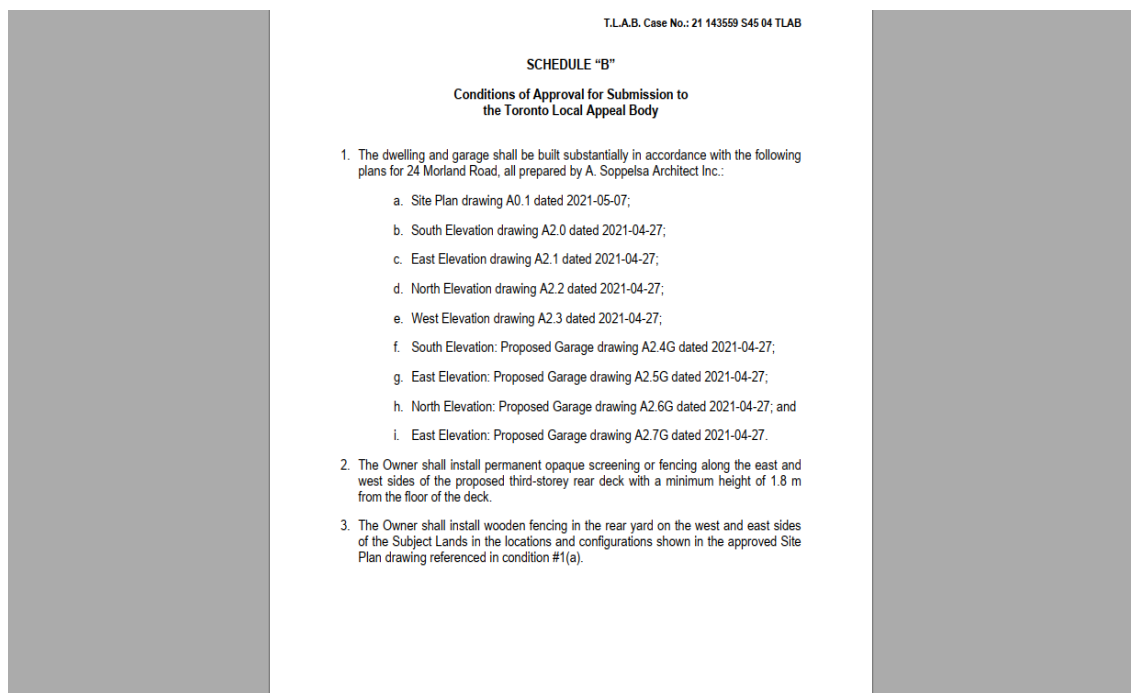


Figure 1: Proposed conditions of approval for this Minor Variance Application  
(extracted from the Minutes of Settlement document)

During the course of the Hearing, the Appellant's lawyer indicated that they recognized the comments as provided by the Participant to this Appeal matter, which generally related to landscaping on the subject property, and was now willing to include an additional condition which stipulated the use of permeable pavers in the rear portion of the property. Here, Ms. Stewart argued that this could be a means of minimizing flooding issues for this property. With regards to reduction in landscaped area, Expert Witness Mr. Romano had indicated that it was only in the rear portion of the property that this would occur. He opined that the front yard of the property, and its landscaped treatment, would remain unchanged. He further critiques that:

“3.44 The prevailing patterns of landscape open space is that it is found within the front yards and rear yards beyond accessory structures and features 41% of properties within the immediate context have more than 50% of the front yard landscaped. The proposal maintains this same character. 32% properties within the immediate context have less than 50% of the rear yard as landscaping. The proposal maintains this same character. Each of these front and rear yard landscaping characters are represented in substantial numbers. Altogether, the proposed landscape open space conforms and meets the general intent and purpose of the Official Plan.”<sup>1</sup>

What is being communicated here by the Expert Witness is that, with this proposed redevelopment, while there may be an impact of the landscaped area, he contends that it would still be a condition which is similar to other residential properties in this local neighbourhood context. It is noted that the Party's lawyer had stated that, as part of this revised proposal, the detached garage was no longer being enlarged. As a result, he contends that the landscape related issues as discussed by the Participant were not relevant.

In review of the drawings which are contained in the Minutes of Settlement, and as part of the testimony of the Expert Witness, it does affirm that the detached garage will be rebuilt. However, what is noted is the proposed new garage will be extended towards the north property line, into a portion of the property which is already paved. As such, it is not acting to further exacerbate the existing landscaped area in the rear portion of this property. More specifically, it does not contribute to an increase in the Variance request relating to a reduction in soft landscaping in rear of property. In addition, the Party's lawyer also stated that they had no concerns regarding the landscaping on the subject property and feel that the revised proposal will result in a site condition which is consistent with the prevailing neighbourhood characteristics.

While I recognize the Participant and his comments to the TLAB, it would not appear this issue is significant and would act to negatively affect the merits of this proposal. It is also noted that the Participant did not submit any written submissions to the Tribunal, prior to the Hearing, to further elaborate on the issues which he discussed at the Hearing. As such, the TLAB did not have additional material which it could review and consider, which is the general practice relating to Appeal matters.

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<sup>1</sup> Romano, I. *Expert Witness Statement of Franco Romano*. July 2021, pp. 14

In furtherance of the review of this Appeal matter, it is noted that, besides the landscape related comments as provided by the Participant, that there was no formal cross-examination which was proffered with regards to the testimony of the Expert Witness. The other Party's lawyer stated that they were in acceptance of Mr. Romano's testimony and elected to not engage in cross-examination of the evidence presented.

Mr. Romano's testimony provided specific references on how the revised proposal, which had reduced from nine to five Variance requests, was now, in his summation, a more acceptable form of development for the neighbourhood. Most notably, the Variance requests for main wall height had now been eliminated. Mr. Romano had also critiqued how this revised proposal is in compliance with Zoning provisions relating to building height. In addition, the floor space index (FSI) Variance request has also been reduced to 0.92 times the area of the lot, as opposed to the previous 0.98. When Ms. Stewart inquired as to how this had been achieved, Mr. Romano responded that the building length had been reduced. The soft landscape Variance request was also being decreased. The eaves encroachment and setback for platform Variance requests remain unchanged. Finally, a new Variance was now being proffered for side yard setback due to alterations to the proposal. Mr. Romano stated that it was his professional opinion that the overall quantum of Variances had now been reduced, even with the introduction of a new Variance.

Mr. Romano's testimony was also focused on the OP and Zoning By-law and how both documents 'interface' with the revised proposal. With regards to the OP, his testimony was oriented towards OPA 320 policies and how this proposal, in his opinion, acted to comply with it. He expounds on it in his Expert Witness Statement as well:

"The Official Plan contains policies recognizing that neighbourhoods are not static, that change within neighbourhoods will occur over time and that such change should respect and reinforce the existing physical character of the neighbourhood as it is evolving. The neighbourhoods policies do not require replication of existing physical character, but instead provide that new development should fit the general physical patterns found within the neighbourhood. Fit does not mean the same as. OPA 320 elaborates by referencing the geographic neighbourhood and immediate contexts."<sup>2</sup>

The paragraph cited here acts to summarize testimony as proffered by Mr. Romano where he stated on several occasions that development within established residential neighbourhoods should be complimentary. However, that does not mean that said in-fill type development must be materially similar to the existing housing stock of that specific neighbourhood. Most notably, the analysis of redevelopment proposals such as this must be done through both quantitative and qualitative methodologies.

With regards to issues as they pertain to the Zoning By-law, Mr. Romano's presentation of a photo study of a study area he had devised for this neighbourhood was used to demonstrate that this proposal is consistent with the development pattern of this local area context. While Variances were being requested to facilitate for the

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<sup>2</sup> Romano, F. *Expert Witness Statement of Franco Romano*. July 2021, pp. 19

redevelopment of the existing dwelling on this property, Mr. Romano contends that it would continue to meet the overall intent of the Zoning By-law as the final 'product' of this proposal would be compatible with the current neighbourhood attributes.

Here, the TLAB finds that two tests for Variance, as per the *Planning Act*, 'maintain the general intent and purpose of the Official Plan' and 'maintain the general intent and purpose of the Zoning By-law' are being met. Mr. Romano's, as the sole Expert Witness presented to the Tribunal, articulated how both Planning documents were being adhered to with this revised proposal. His analysis of a study area (as prepared by him) was presented in a cogent and rationale manner to demonstrate how this proposal would be a form of development which is being done to respect the Planning policies and legislation in force and effect for this neighbourhood.

With regards to the remaining two tests, 'are minor' and 'desirable for the appropriate development or use of the land', again Mr. Romano provided the sole Expert Witness testimony to the TLAB. He contends that the proposal is presenting a building type which is currently in existence in the area. In addition, the numerical value of the Variance requests is explained as a 'minor' departure from what is permitted by the Zoning By-law. In terms of the appropriateness of this development proposal, it is described that proposals such as this one ensure that a range of housing options are offered in this neighbourhood to meet the needs of the diverse residents of the City. Here, the Tribunal accepts the testimony of Mr. Romano in this regard and have determined that the form of development being proposed here represents the typical re-investment in residential neighbourhoods which occurs in a city. The revised proposal has been accomplished by acting to address issues and concerns of adjacent residents to minimize the disruption to them.

It is noted that, as is now an established convention of in Tribunal matters, that the *Provincial Policy Statement (PPS)* and *Growth Plan for the Greater Golden Horseshoe (Growth Plan)* documents are also assessed in relation to a proposal. Mr. Romano did not discuss these policy documents as part of his oral testimony. In addition, this was not raised during the Hearing by the other Parties in attendance. In review of the Expert Witness Statement that was provided, I find that Mr. Romano has provided material relating to these policies as part of the disclosure material to the TLAB.

It was observed that the testimony herein was not subject to the rigors of cross-examination. Furthermore, the only dissenting comments on this proposal were provided by the Participant to this Appeal matter. In recognizing this Participant's comments, it is noted that they did not specifically discuss the four tests for Variance, as per *Planning Act*, or other relevant Planning policies and legislation. There was also no disclosure material submitted to the TLAB by Mr. Ferris either. In terms of comments relating to landscaping issues, Mr. Ferris indicated the City encourages the preservation of greenspace. He also referenced potential flooding issues in this neighbourhood. In review of the City's Application Information Centre (AIC), it is found that the City Urban Forestry staff had provided no formal comments on this proposal. In addition, this subject property is not within a flood plain, according to flood plain mapping as prepared by Toronto and Region Conservation Authority (TRCA).

In recognizing these comments and attempting to address these concerns, the Appellant's lawyer indicated they are willing to install permeable pavers in the rear of the property. Mr. Ferris responded that he was not sure if such a measure would be sufficient. While recognizing the comments of Mr. Ferris, I would find that the general practice is that City staff will typically review the installation of permeable pavers to determine if they are appropriate. This will be included as a condition of approval so as to ensure review by City staff will occur. Although Mr. Ferris did not specifically acquiesce to this, I find that the inclusion of this condition is appropriate and will provide additional means of minimizing the impact to Mr. Ferris' property.

With the material presented to me, I would find that the settlement proposal which has been provided to the TLAB to be acceptable. The settlement acts to meet the tenets of relevant Planning policies and legislation. The Tribunal recognizes that there is a Participant who has chosen not to accept this proposal. However, the settlement in principle and the additional condition as proffered by the Appellant will act to address concerns which have been raised by Mr. Ferris and will result in a form of development which is compatible and complimentary for the neighbourhood characteristics. This additional condition and the other recommended conditions within the Minutes of Settlement will also ensure this proposed redevelopment will be accomplished in a manner which reduces the impact to the adjacent properties.

## **DECISION AND ORDER**

The Appeal is allowed, and the Variances in Appendix 1 are approved subject to the conditions therein and subject to the condition that the building must be constructed substantially in accordance with plans attached herein as Appendix 2.

## Appendix 1

### *List of proposed variances*

#### **1. Chapter 10.80.40.40.(1)(A), By-law 569-2013**

The maximum permitted floor space index is 0.8 times the area of the lot: 180.7m<sup>2</sup>.

The proposed floor space index is 0.92 times the area of the lot: 207.0m<sup>2</sup>.

#### **2. Chapter 10.5.40.60.(7), By-law 569-2013**

Roof eaves may project a maximum of 0.9m provided that they are no closer than 0.3m to a lot line.

The proposed roof eaves will be located 0.0m from the west side lot line.

#### **3. Chapter 10.5.50.10.(3)(A), By-law 569-2013**

A minimum of 50% (50.13m<sup>2</sup>) of the rear yard must be maintained as soft landscaping.

A minimum of 27.6% (27.7m<sup>2</sup>) of the rear yard will be maintained as soft landscaping.

#### **4. Chapter 10.5.40.60.(1)(A)(i), By-law 569-2013**

A platform without main walls, attached to or less than 0.3m from a building, with a floor no higher than the first floor of the building above established grade may encroach into the required front yard setback of 1.7m if it is no closer to a side lot line than the required side yard setback.

The proposed platform will encroach 2.35m into the required front yard setback.

#### **5. Chapter 10.80.40.70.(3), By-law 569-2013**

The minimum required side yard setback is 1.2m.

The proposed west side yard setback is 0.37m.

### *List of proposed conditions*

1. The dwelling and garage shall be built substantially in accordance with the following plans for 24 Morland Road, all prepared by A. Soppelsa Architect Inc.:
  - a. Site Plan drawing A0.1 dated 2021-05-07;
  - b. South Elevation drawing A2.0 dated 2021-04-27;
  - c. East Elevation drawing A2.1 dated 2021-04-27;
  - d. North Elevation drawing A2.2 dated 2021-04-27;
  - e. West Elevation drawing A2.3 dated 2021-04-27;
  - f. South Elevation: Proposed Garage drawing A2.4G dated 2021-04-27;
  - g. East Elevation: Proposed Garage drawing A2.5G dated 2021-04-27;
  - h. North Elevation: Proposed Garage drawing A2.6G dated 2021-04-27; and
  - i. East Elevation: Proposed Garage drawing A2.7G dated 2021-04-27.
2. The Owner shall install permanent opaque screening or fencing along the east and west sides of the proposed third-storey rear deck with a minimum height of 1.8 m from the floor of the deck.



**Decision of Toronto Local Appeal Body Panel Member: J. Leung**  
**TLAB Case File Number: 21 143559 S45 04 TLAB**

3. The Owner shall install wooden fencing in the rear yard on the west and east sides of the Subject Lands in the locations and configurations shown in the approved Site Plan drawing referenced in condition #1(a)
4. That permeable paver type driveway be installed in the rear portion of the property which is to connect to the garage located in the rear yard.

X 

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Justin Leung  
Panel Chair, Toronto Local Appeal Body