Toronto Local Appeal Body

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DECISION and ORDER

Decision Issue Date Thursday, June 17, 2021**,** and typographical error in lines 5 and 7 of Table 2 and hearing dates; all corrected pursuant to Rule 30.1 on Nov 15, 2021

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

Appellant(s): BRADLEY SELLORS
Applicant(s): MATTHEW KONIUSZEWSKI

Property Address/Description: 367 HOWLAND AVE
Committee of Adjustment File Number(s): 19 208800 STE 12 CO, 19 209007 STE 12 MV, 19 209008 STE 12 MV

TLAB Case File Number(s): 20 194299 S45 12 TLAB, 20 194329 S45 12 TLAB, 20 196319 S53 12 TLAB

Hearing Dates: April 7, 8, 12, 27, 29, May 21, 26, 2021

Final Written submissions June 4, 2021

DECISION DELIVERED BY TED YAO

APPEARANCES

Name	Roles	Representative
367 Howland Avenue Inc	Owner/Party	Amber Stewart
Matthew Koniuszewski	Applicant and summonsed witness	
Mike Dror	Expert Witness	
Bradley Sellors	Appellant	
Priscilla McAuliffe	Participant	
Michael Mastrangelo, Joseph and Annette Mastrangelo	Participants	
Geoff Sas	Participant	
Maureen Irish	Participant	
Paul Alves	Participant	
Dora Sung	Participant	
Phillip Kelly	Summonsed witness	
Robert Ursini	Expert witness and summonsed witness	

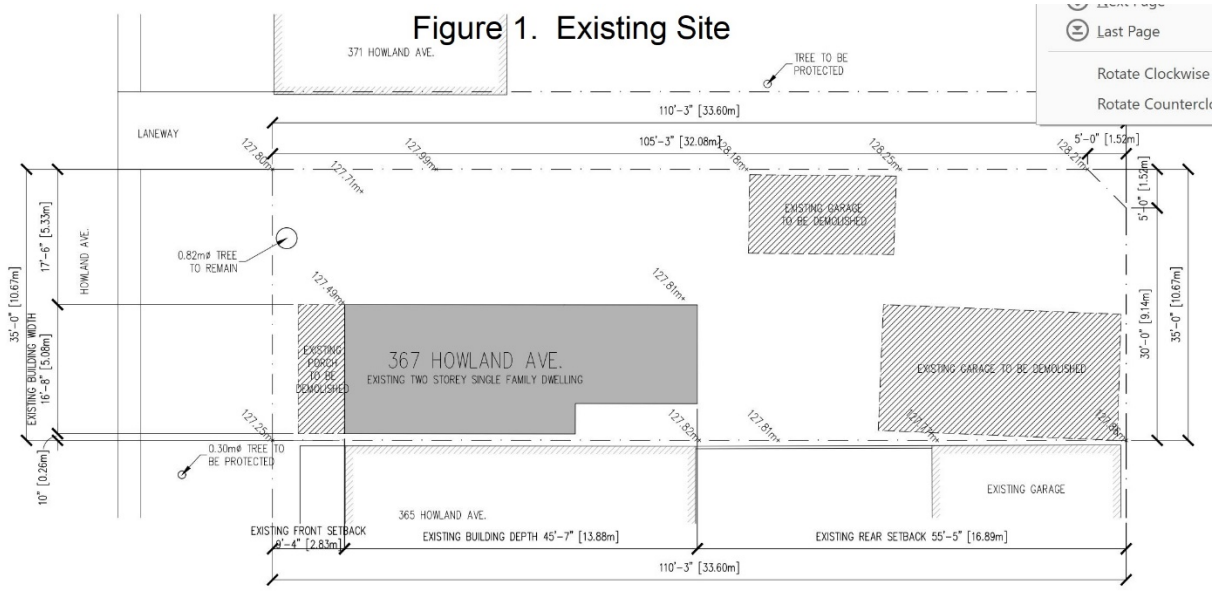
INTRODUCTION

367 Howland Avenue Inc. is in the business of building and owning rental housing. It purchased a dwelling in need of repair at 367 Howland which has an unusual feature: a wide side yard to the north. It proposes to demolish this dwelling, sever off the side yard and build two semidetached buildings, each with four apartments, for a total of eight units on the two lots. The new lot (north) will be renumbered 369 Howland Ave

Besides the severance, the proposal will require 14 variances under s. 45(1) of the *Planning Act* for the north lot building and 15 for the south half (Please see Table 2, below). The Committee of Adjustment (COA) granted the application, including the severance, on August 26, 2020. Mr. Sellors, a neighbour, appealed and so this matter came to the TLAB.

A site plan of the existing building is shown in Figure 1.

Figure 1. Existing Site



The side lot (towards top in Figure 1) contains a mature horse chestnut tree that all parties, including the owner, wish to preserve. The rear contains two garages that will be demolished to create four parking spaces, two short of what the zoning by-law requires . The new building will be 17.98 m in depth; the existing building is about 13.88 m long, which is about 3 m shorter than the full 17 m permitted under the by-law The current length is even with the southern neighbour's house, owned by Dr. Sas, who testified against the proposal. The main opposition at the hearing was from Mr. Sellors, who lives on Davenport St, north of the unnamed laneway that curls around the subject site in Figure 1.

Table 2. Variances sought for 367-9 Howland Ave (Part 1, north half (369 Howland); Part 2, south half (367 Howland))

		Required/Permitted	Proposed
Part 1; variances from 569-2013			
1	Side yard setback for third floor balcony	0.9 m	0.46 m from north side lot line;
2	Pedestrian entrance to secondary suite in semi-detached dwelling	Can't be in front wall	In front wall
3	Size of secondary suite	No more than 45% of principal dwelling unit	Three units will be 72.8%
4	Min. lot frontage	6 m	5.41 m
5	Floor Space Index	1.0 x the area of the lot	1.30 x the area of the lot
6	Front and rear main wall height	7.5 m	9.77 m
7	Side yard setback	0.9 m	0.46 m from north side lot line;
8	Setback from centreline of lane	2.5 m	2.0 m
9	Building depth	17 m	17.92 m
10	Front porch encroachment	May encroach 0.71 m if no closer than 0.9 m from side lot line	Encroaches 0.35 m and is only 0.8 m from north side lot line
11	Exterior stairs front yard setback	0.6 m	Zero
12	Max. driveway width	5.2 m	5.9 m
13	Front yard landscaping	8.36 m^2	5.6 m^2
	Front yard soft landscaping	6.27 m^2	5.6 m^2
14	Parking spaces	3	2
Part 2; variances from 569-2013			
1	Side yard setback for third floor balcony	0.9 m	0.26 m from south side lot line;

2	Pedestrian entrance to secondary suite in semi-detached dwelling	Can't be in front wall	In front wall
3	Exterior alteration in front wall (Part 2 only)	None permitted	Exterior alteration
4	Size of secondary suite	No more than 45% of principal dwelling unit	Three units will be 74.5%
5	Lot area	180 m^2	171 m^2
6	Frontage	6 m	5.26 m
7	Floor Space index	1.0 x the area of the lot	1.42 x the area of the lot
8	Front and rear main wall height	7.5 m	10.0 m
9	First floor above est. grade	1.2 m	1.3 m
10	Building depth	17 m	17.92 m
11	Front yard landscaping	6.76 m^2	3.4 m^2
	Front yard soft landscaping	5.07 m^2	3.4 m^2
12	Exterior stairs front yard setback	0.6 m	Zero m
13	Parking spaces	3	2
14	Parking space dimensions	5.6 m long by 2.6 m wide	Two spaces will be each 2.36 m wide
Variance from former City of Toronto Zoning 438-86[1]			
15	South side yard setback	0.45 m	0.26 m

MATTERS IN ISSUE

Under the *Planning Act,* I must examine whether the **severance**:

- adheres to higher level Provincial Policies;
- Is consistent with and conforms to matters of provincial interest as referred to in section 2 of the Planning Act;

[1] Since the 2013 by-law was appealed, zoning plans examiner vet applications under both the old and new by-laws.

- Meets the specific consent criteria in s. 51(24) of the *Planning Act,* specifically whether the severance conforms to the Official Plan of the municipality and has appropriate "dimensions and shapes".

The **variances** 45(1) of the *Planning Act,* also require conformity to the Toronto Official Plan. They must cumulatively and individually:

- maintain the general intent and purpose of the Official Plan;
- maintain the general intent and purpose of the Zoning By-laws;
- be desirable for the appropriate development or use of the land; and
- be minor.

The Official Plan must be considered for both the severance and variances. It contains two important policies: 3.2.1 Housing and 4.1.5 Neighbourhoods Policy in which the physical form of the development must "fit in" physically with the surrounding neighbourhood. There is a third policy in 3.4 the Natural Environment: "Protecting Toronto's natural environment and urban forest should not be compromised by growth", which applies to a mature horse chestnut tree on the north lot.

EVIDENCE

I heard from Michael Dror (367 Howland Avenue Inc's planner) and Robert Ursini (City planner appearing under summons), both of whom I qualified as able to give opinion evidence in the area of land use planning. Both supported the project and their support was based in part on memos from Urban Forestry, as no representative from this department appeared.

Mr. Sellors, Dr Sas, Mr. Mastrangelo, Ms. McAuliffe, Mr. Alves and Ms. Irish, all residents, testified in opposition. Mr. Sellors summonsed the following persons:

Matthew Koniuszewski, from architect Craig Race's office;
Robert Ursini, City planner; and
Phillip Kelly, member of the Tarragon Village Residents Association's working group.

Neither the City (in a formal capacity) nor the Tarragon Village Residents Association appeared as parties, although both were extensively involved in the negotiations leading up to the Committee of Adjustment hearing. Mr. Phillips did not give testimony (please see ruling 5). Some of the history of this application is set out below:

Chronology

July 24, 2019 First premeeting with members of the community.

August 1, 2019 Owner applies for 2 fourplexes and 2 laneway suites (10 dwelling units in all).

September 16, 2019 Engineer and Construction Services advises it has no objection

September 19, 2019 Neighbourhood meeting at which Tarragon Village Residents Association, the local Councillor, and City planer Mr. Ursini are in attendance. As a result of this meeting the owner decides to drop the laneway suites. At some point the Association forms a working group, with Mr. Kelly, Mr. Sellors and Dr. Sas and two others.

October 3, 2019 Mr. Kelly writes to architect Craig Race with questions.

October 4, 2019 Mr. Race replies with a design brief.

October 22, 2019 A Community "conditional support" letter was signed by 34 persons. Mr. Kelly writes to owner to amplify support is conditional on protection of the horse chestnut tree, noting:

> Overall, this is a tragic loss of mature tree cover in the neighbourhood. Planting elsewhere, or even planting anew on the property does nothing to alleviate that. It would be nice to see a creative design that respects at least some of the existing urban canopy.

Feb 2020 Over the winter the owner retains an arborist to conduct an exploratory dig. On March 19, 2020, Urban Forestry writes to confirm it is satisfied with mitigative measures that will protect the horse chestnut tree.

March 11, 2020 First zoning plan examination (Jamie Atkinson). He characterizes each half as a "three storey triplex" on the severed and retained lot. He finds the proposal needed 22 variances in total.

August 26, 2020 The Committee of Adjustment approves the proposal, with conditions. A total of 28 variances are granted. (The discrepancy is because the Committee "unbundled" some of the variances. For example, Mr. Atkinson grouped the side and rear wall heights under one paragraph.)

September 14, 2020 Mr. Sellors appeals to the TLAB.

October 28, 2020 The TLAB sends out a notice of Hearing for April 7, 2021.

Fall, 2020 The owner states that added costs have motivated it to divide each ground floor unit. Each side will gain a basement unit, raising the total unit count from 6 to 8. This constitutes a matter that must be disclosed to the other side under TLAB rules as it is a material change from the project that was at the Committee of Adjustment.

November 30, 2020 A new zoning plan examination by Stav Zalzman describes each half as "semidetached house containing 3 secondary suites". Her examination specifies 29 variances are needed, and therefore the issues are somewhat different than for the earlier characterization as a triplex.

March 4, 2021 Ms. Stewart brings a motion for mandatory mediation and to add two days to the single day scheduled for the hearing. She is unsuccessful before me with respect to mediation but succeeds in adding two hearing days to the schedule.

Member's Site visit

As required by my conditions of employment I visited the site for the sole purpose of better assessing the evidence given at the hearing

ANALYSIS, FINDINGS, REASONS

The Official Plan supports housing as an overarching goal and rental housing is one of the types of housing specifically mentioned. In conjunction with housing, there is the usual requirement of s 4.1.5, requiring all developments in neighbourhoods to "fit in". Mr. Dror summed up the planning issues as follows:

- The severance and lot widths;
- Secondary suites;
- Built form;
- Permitted encroachments;
- Landscaping;
- Parking; and
- Density or the size of the building compared to the lot area, which was the focus of Mr. Sellors's concerns.

Housing

Across Ontario, young families, college students, and downsizing seniors are looking for housing[2]. In response to this need, the Official Plan, states:

[2] More Homes, More Choice: Ontario's Housing Supply Action Plan, May 2019

> 3.2.1 HOUSING
> Adequate and affordable housing is a basic requirement for everyone. . . .The current production of ownership housing, especially condominium apartments, is in abundant supply.
>
> What is needed is a healthier balance among high rise ownership housing and other forms of housing, including purpose-built rental housing, affordable rental housing and affordable low-rise ownership housing for larger households with children and multi-family households**.**

This statement refers to two issues: tenure, that is, rental versus ownership, and built form types. The Province specifically mentions "additional units"[3] and purpose built multiresidential and these are proposed here. The proposal conforms to Provincial policies with respect to housing choice, tenure and type. All development in Toronto is encouraged to locate in proximity to transit; this site is within walking distance (470 m) of Dupont Subway station, which is according the evidence, is the most underutilized station in the TTC.

Mr. Sellors wrote to the Committee of Adjustment in 2020:

> The proposed plan removes a single-family home (which is in great short demand to meet the Toronto Official Plan objectives) and replacing it with exceptionally high density living with little to no parking which is not consistent with the Tarragon Village Community.

I disagree with all these statements from a planning policy perspective. The Tarragon Village Community is enhanced by diversity and purpose-built rental housing is encouraged. I find the proposal is not "exceptionally high density" and I discuss and parking below.

The study area

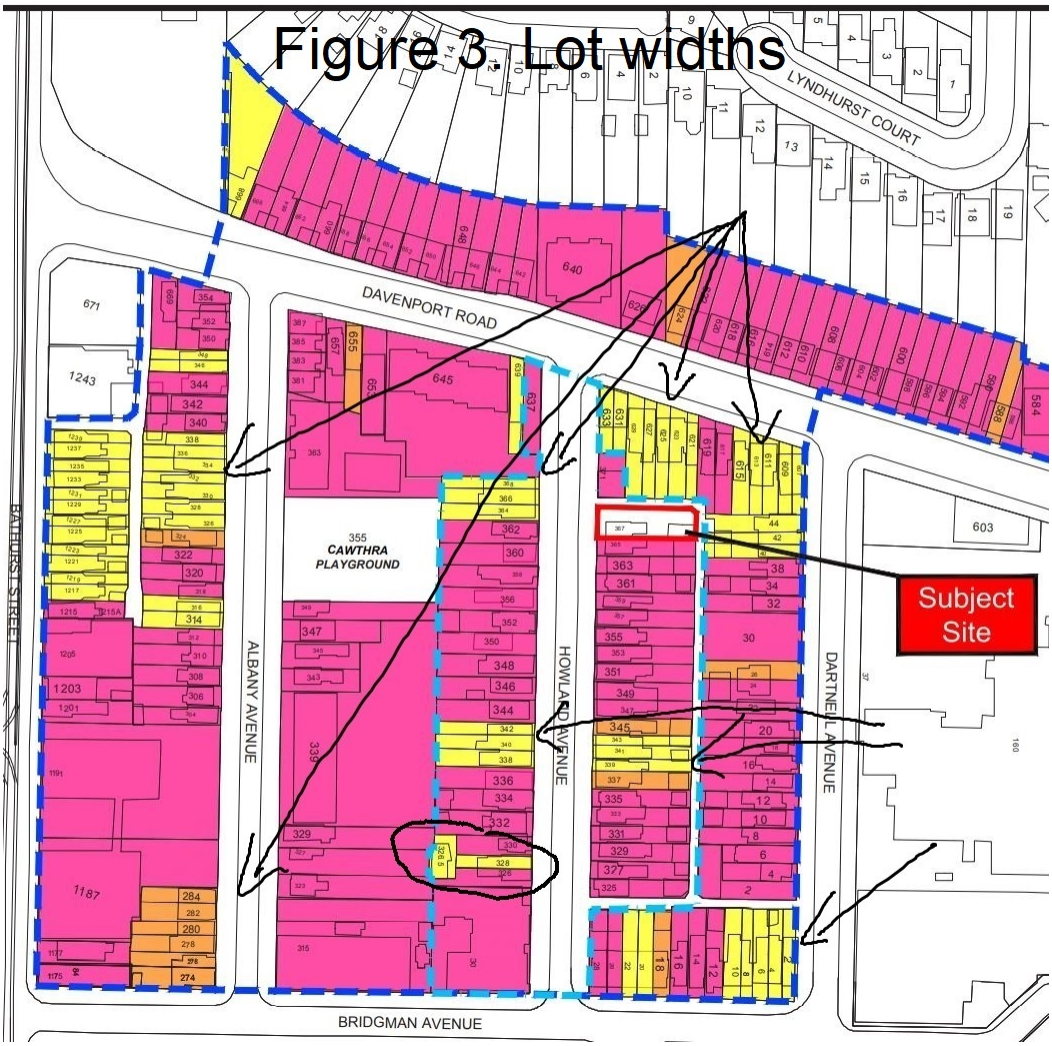
In order to study whether the project "fits in", the proponent is required to delineate a larger and smaller neighbourhood study area. In this case Mr. Dror chose the area bounded by Davenport and Bridgeman, Bathurst and Dartnell (200+ properties). The smaller neighbourhood (the immediate context as per OP 4.1.5) was composed of both sides of Howland (45 properties). The area is set out in Figure 3. He said:

[3] Clause 1.1.1 of the Provincial Policy Statement states: Liveable communities will be supported by: . . .accommodating an appropriate affordable and market-based range and mix of residential types (including single-detached**, additional residential units**, **multi-unit housing**, affordable housing and housing for older persons), . . . to meet long-term needs;

> The Study Area is generally characterized by detached, semi-detached and rowhouse dwellings which were generally constructed during the period between the 1920s to the early 1940s, while low-rise apartment buildings were generally constructed in the early 1950s. A mix of industrial and commercial buildings remain, generally on the south edge of the Study Area and along Bathurst Street, while newer townhouse and stacked townhouse developments were built in the 1980s and 1990s. In this regard, the Study Area reflects a wide range of architectural styles and residential building types, along with non-residential buildings, that accommodate a wide range of household types.

I accept Mr. Dror's choice of neighbourhoods and used them to test whether the development "respects and reinforces" the existing neighbourhood's physical characteristics, as required by the Official Plan.

Figure 3, Lot widths



The severance

Under s. 51(24) of the *Planning Act* regulating severances, the applicant must have regard for the present and future inhabitants of the municipality (which would include future renters) and for conformity with the Official Plan. Thus, the Official Plan applies to both and the severance and lot width tests merge. The owner proposes two frontages of 5.26 metres (17.3 ft) and 5.41 metres (17.8 ft) where the by-law requirement is 6.0 m (19.7 ft), a standard requirement for downtown Toronto. It may be seen that these are minor under sizes to the 6 m standard. The lot depths are not unusually shallow and since area = width x length, the lot areas area similarly undersized in a minor way.

Figure 3, compiled by Mr. Dror, shows while the majority of lots in the study area comply with 6 m, (darker shade), there are a substantial number of undersized widths (my arrows, yellow and ocher coloured lots)[4]. On this basis, I am satisfied that the lot frontages and areas respect and reinforce the physical characteristics of the neighbourhood. The owner has decided not to sever into equal frontages to better protect the horse chestnut tree, so the southern lot is somewhat wider than the northern lot. Since the severance test specifically requires attention to dimensions and shapes and conservation of natural resources, I find these satisfy the *Planning Act* as well.

Secondary units

The development needs variances from a zoning prohibition against having more than one front door and in "subordinateness" of the secondary unit's floor area~~.~~, which can be no more than 45% of the floor area of the principal unit. The number of doors is a minor departure from the by-law and is desirable for the appropriate development of the building.

With respect to the floor area, Mr. Sellors said this was a "loophole" that allowed the City to maintain a distinction between housing types.[5] As I explain on page 14, how the examiner categorizes the housing type is beyond my authority to question. Mr. Sellors then goes on to say Mr. Dror justifies the floor area variances (typically in the low 70's instead of 45%) because it makes the secondary units "less visible" from the outside.[6]

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[4] Including one property that is a house behind a house and therefore could be considered to have no frontage.

[5] The underlying reason or concern for why the zoning by-laws are clear on maintaining this distinction between a fourplex as opposed to a house with secondary suites; is because the City did not want to inadvertently enable parties in future to develop a loophole for getting around the zoning regulations for a triplex or a fourplex, by stating instead that the proposed development is an alleged residential dwelling that has one primary dwelling unit along with so many said secondary suites. (Sellors Closing Submissions)

[6] 161. In terms of interior floor area, as noted previously, were the zoning notice to consider these buildings semi-detached fourplexes, there would be no limit on the interior floor area of

At this point I have to depart somewhat from both witnesses, I find that secondary suites as a tool for intensification have an extremely strong policy foundation, and this has been true since 2012. According to the June 13, 2018 Report to Planning and Growth Management Committee[7], the *Strong Communities through Affordable Housing Act, 2011* (Bill 140), made it **mandatory** for Toronto to amend its Official Plan to authorize "the use of two residential units in a detached house, semi-detached house or rowhouse". Under that legislation, the Minister could pass a regulation to make it clear that a second unit may be occupied by any person regardless of whether the primary unit is occupied by the owner of the property". The Regulation was passed as Ontario Regulation 299/19 Additional Residential Units.

Secondary suites continue to the subject of attention by the Legislature. The *Promoting Affordable Housing Act, 2016* (Bill 7) amended both the *Planning Act* and the *Development Charges Act* to "further encourage the creation and legalization of second units" and exempt secondary suites in **new** homes from development charges. In 2018, the author of the June 2018 Report said "Currently, second units are only exempt in existing houses" but the exemption to new secondary units is being addressed by City Council as it moves to respond to Bill 140. The Report went on to emphasize how secondary units could increase housing choices, make better use of infrastructure and enable Toronto to help meet affordable housing objectives.

To return to whether the 45% floor area restriction should be relaxed, I note that the Craig Race plans indicate for 367 Howland, a person would enter at ground level and once inside the outside door enter a small vestibule with three doors, one to the left, one straight ahead and one to the right. The straight ahead door leads to the ground floor unit which occupies the whole floor, minus this vestibule, the other two doors lead to the upper level apartments, which are arranged one front and one rear.

I think the reader will agree that there is no obvious public interest in supervising these internal arrangements and is perhaps what Mr. Dror's said "hidden from view". To rebalance floor areas according the 45% ratio, the second floor units would have to give up some space to an enlarged ground floor unit. But this would require a third stairway to access it. It would be unworkable. I find the zoning intent is maintained by Mr. Race's sensible and efficient plan, and that a variance from the 45% is minor and desirable for the appropriate use of the building and supported by the Official Plan. Mr.

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the secondary suites. The intent of the zoning by-law provision is to ensure the primacy of the main unit such that the secondary suite **is largely hidden from view**. (my bold) It is my opinion that the proposed 72.8 percent and 74.5 percent on Parts I and 1 respectively maintains the general intent of the zoning by-law as the secondary suites are provided with greater interior floor area than permitted, while still respecting the existing character of the street, and by proposing a design that reflects that of a semi-detached dwelling." (Dror par 161 Witness Statement)

[7] This is Mr. Sellors's exhibit.

Dror noted many other buildings have one or more secondary units. There is no meaningful zoning purpose to be served by this floor area restriction and I should vary it.

To return to the issue of affordability, a larger unit, that is 75% instead of 45% allows for all units to be two bedroom. Assuming market rents are demanded by the landlord, these larger units offer flexibility in that people may share accommodation (for example a couple and a friend), where each adult pays their part; and the result if not affordable or mid-range, at least is less than if they did not share the unit. Such opportunities would not be possible if the three other units were all studios or one bedroom.[8]

Accordingly, I find the variances that are associated with the secondary units respond fully to all the *Planning Act* requirements.

The stigma against multiresidential

Tarragon Village is a wonderful place to live. It is a leafy enclave with parks and world class amenities like Casa Loma, Tarragon Theatre, Wychwood barns, the Toronto Archives and George Brown College. On page 12, the Growth Plan invites stakeholders in redevelopment disputes to "work collaboratively". Sometimes planning processes in an established residential area are not collaborative. These unfiltered and demeaning remarks are an example:

> Now the mass of this property means that there will be up to thirty new people living in this small double lot, which up to now had only four people. I just wonder where their bicycles, their garbage, where these people are going to go when they go out for a cigarette. Where are the children going to play? (Participant Priscilla McAuliffe, April 8, 2021)

Mr. Dror's (367 Howland St Inc.'s planner's) response was that thirty occupants of the buildings was "unlikely". He said that the City's neighbourhood data suggested an average household size between 2.01 to 2.42 persons per household or between 16 to 19 persons for the eight apartments. Comments like these are contrary to weight of the Supreme Court of Canada's pronouncements invalidating "people zoning".[9] I think it consistent with Provincial and City policies to give some access to rental households in this desirable neighbourhood of Toronto. The neighbourhood will continue to have

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[8] I did not get evidence on this but it is common sense. S. 16 of the *Statutory Powers Procedure Act:* states 16. A tribunal may, in making its decision in any proceeding, (a) take notice of facts that may be judicially noticed; and (b) take notice of any generally recognized scientific or technical facts, information or opinions within its scientific or specialized knowledge.

[9] *Bell v. R.,* 1979 CANLII 36 (SCC), [1979] 2 SCR 212

significant single detached and ownership housing. The proposal represents modest change contemplated by the Plan.

Built form variances

Mr. Dror found the depths of 17.92 metres (0.92 metres greater than permitted) is "generally in keeping with the setback character of other properties further south along the east side of Howland Avenue". With respect to main wall heights, this provision did not exist in the pre-2013 zoning by-law and is still under appeal. Thus pre-2013 constructed houses did not have to comply with this provision and the owner has no way to ascertain pre-2013 main wall heights for the purpose of comparison except by commissioning a survey. Mr. Dror noted fifteen properties where there are demonstrated exceedances in main wall height requirements.[10] With respect to the lane setback, the proposed setback (2.0 m, 2.5 m required), the subject proposal will be greater than other laneway-adjacent buildings such as 371 Howland (0 m) and 325 Howland (.25 m). I accept this evidence and find the built form variances minor, widespread and meet the other statutory tests.

Encroachments and landscaping variances

The encroachments are a result of the need for front porches to intrude on the front yard and side yards. I consider them minor and desirable for the appropriate development of the land. Although landscaping variances are sought, the owner has made a great effort to preserve the horse chestnut tree as well as the tree in Dr. Sas's front yard and so these also meet the tests.

Parking variances

The transit accessible nature of this site makes it reasonable for reduced parking. The owner provided a transportation engineering study that stated: "up to 44% of households in the immediate area does not own a vehicle" and the morning modal split for travel was about 30% each for transit, walking and private auto, with the remaining 10% being taxi. I find the variance with respect to number of parking spaces is reasonable and minor and in keeping with the bus and subway availability nature of this site.

Density or Floor Space Index (FSI) variance

[10] 326½ Howland Avenue, 383 Albany Avenue, 358 Howland Ave; • 355 Howland Ave • 363 Howland Ave • 18-28 Bridgman Ave; • 334-338 Albany Ave, 357-379 Albany Ave , 381-387 Albany Ave; • at 14 Bridgman Ave; 2 Bridgman Ave; 22 Dartnell Ave; 645 Davenport Road; 574-584 Davenport Road; and 586-626 Davenport Road

Mr. Dror made two alternative arguments. Argument 1 was that that a review of the City data, either including or not including basements, indicated that the subject property's density variance was justified. Argument 2 was that the building envelope was reasonable, fits its surroundings and thus followed the respect and reinforce test in the Official Plan. I accept both arguments.

This variance is Mr. Sellors's main concern. He began by calculating the gross floor area as **6700** sq ft (622 m^2) instead of **5224** sq ft (485.3 m^2), the number from both plan examiners. I am bound to accept 5224 sq ft because of s. 25 of the *Building Code Act,* which provides for an application to a judge by a person questioning a decision of the Chief Building Official:

> Appeal to court
> 25 (1) A person who considers themself aggrieved by an order or decision made by the chief building official, a registered code agency or an inspector under this Act [except conditional permits where there may be delay] may appeal the order or decision to the Superior Court of Justice within 20 days after the order or decision is made.

I realize the aggrieved person may have to incur the expense of going to court. Legal rights flow from the Chief Building Official's decision and the judge can hear both sides of the dispute, whereas here there is one sided criticism. Mr. Sellors wants me to accept his interpretation and calculations and reject the obligatory process in the *Building Code Act.* I cannot do that.

Because of s. 25, I consider that I have no jurisdiction to revisit any aspect of Ms. Zaltzman's examination, including:

- The quantum of the gross floor area;
- The decision to characterize the building as a semi with more than one secondary suite;
- The conclusion that the building is not a fourplex;
- The decision to exclude basement area from gross floor area including the interpretation of the zoning by-law's statutory language; and
- What constitutes a basement physically.

Because both the plans examiner and I have to read the entire by-law it may seem that our tasks are the same, but they are not. The examiner is to apply the provisions of the by-law; I am to ascertain its intent, whether the intent is maintained and whether the variances are justified.

Mr. Dror calculated total gross floor area divided by lot area for all his properties. Before he did this, he prefaced his presentation with a disclaimer that City data was unreliable. The plan examiners' FSI cannot be replicated in mass data because the data collector cannot interpret the zoning by-law. Accordingly, the GFA/ lot area

number is only a rough estimate. In the following discussion, I call Mr. Dror's ratios "FSI approximations", to distinguish them from legally calculated FSIs. With this proviso, the Mr. Dror's City data derived approximations showed the following results.

Table 4. Mr. Dror's FSI approximations

	Column A	Column B
Approximation >1.42	10 properties	4 properties
Approximation 1.30 to 1.42	4	3
Approximation 1.00 - 1.30	24	15
Approximation <1.00	175	191

Column A has total GFA and Column B removes below grade or basement gfa. I don't find much difference between the two columns. Mr. Dror said, that in his opinion, City numbers for GFAs were too low:

> There are examples where the above grade gross floor area is being undersold as well either because the building permit is being translated or because the work was done without a building permit.

I find this expert opinion that "underselling" occurs is observable in many instances in this neighbourhood. For example, a building is listed as 1 storey when it is two and so on and I accept this evidence.

Apart from the 200 approximations, there are only five properties for which we have examiners' (i.e., accurate) FSIs and four of them do not have enough information to discern a mathematical relation between the two. The remaining one, the subject itself, suggests if the plan examiner were to undertake a rigorous examination of a typical existing house in the area, the FSI would be somewhat (about 20%) higher than Mr. Dror's approximation (last line in Table 5, below). This suggests to me that although the 1.3 to 1.42 FSIs are still at the high end, they are not at the extreme end. I find they would still respect and reinforce the physical character of the neighbourhood.

Table 5: Examiners FSIs v Dror approximations

	Address	FSI	Dror approximation	Notes
1	6 Dartnell	1.82		2012 OMB decision rejecting this FSI

	326½ Howland	1.22		2014 COA decision for stub lot. Never built, according to Mr. Sellors
2	383 Albany	1.85		2019 COA decision for stub lot. This has been built.
4	2 Bridgman[11]	1.78	1.34 (75% of FSI)	Interim 2020 TLAB Decision
5	367 Howland	0.53	0.43 (81% of FSI)	From 2020 Craig Race notes

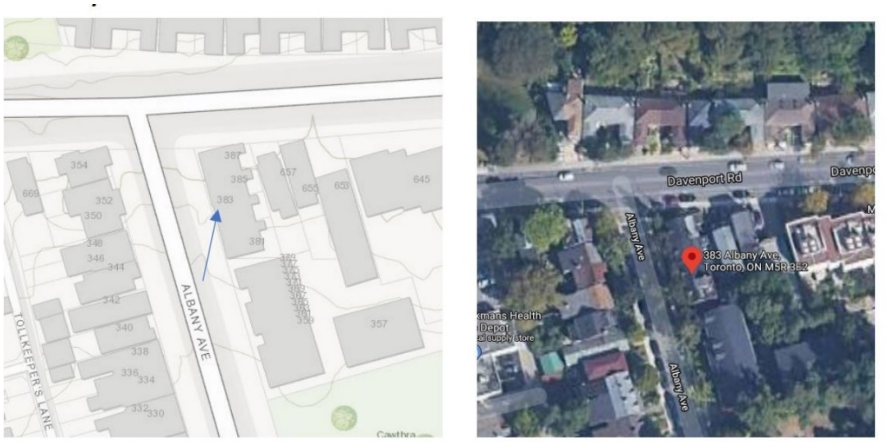
GFAs form one half of the approximation; the other is lot area; and in 383 Albany, we see the effect of a smaller lot. Here, a 2019 COA decision approved 155 m^2 of GFA (1668 sq ft), which is not much for a three storey townhouse. The reason for the high FSI is the extremely shallow lot (13.7 m, or 45 ft deep), which it shares with its three similar townhouse neighbours. The Committee of Adjustment also granted a rear yard setback of 1.5 m (7.5 m required). Table 7 shows the GFA/lot area approximations for all four.

Table 6. "FSI approximations" for 381 -387 Albany

	Dror Approximation	Rank out of 213	COA decision
381 Albany	1.23	10th	
383 Albany	1.12	28th	Actual FSI 1.85 (rank 2nd, compared to approximations)
385 Albany	1.17	23rd	
387 Albany	1.01	36th	

I show a photo set from Mr. Sellors's disclosure: number 383 is the townhouse with the white enclosed porch (lower left).

[11] Mr. Sellors objected to any use of this Interim Decision. However, it was not the sole or determinative reason for accepting Mr. Dror's evidence.



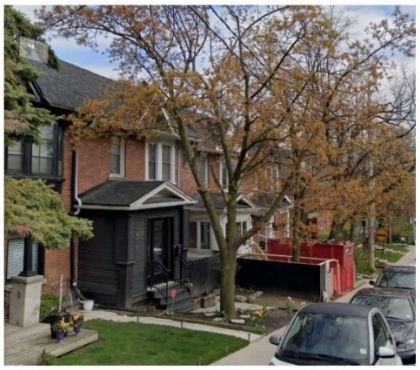


Figure 7. 383 Albany

It is difficult to tell which house has received the FSI variance; there is a common roof line and 383's third floor addition is tucked away behind the roof ridge line. And yet 383 Albany is the second highest FSI in the entire neighbourhood, even higher than 2 Bridgman. Number 2 Bridgman was criticized by Mr. Sellors, but he did not express the same concern for 383 Albany. Throughout the hearing, he referred to the "bigness" of the subject development.

Mitigation of a higher FSI by good design

In Figure 9, I show the architect's rendering of front and rear shapes. The front façade is similar to nearby houses on Howland; The rear view (right) shows that the while the flat roof extends somewhat more than Dr Sas's building, it is not unreasonable since he could also add 2 m to his third floor roof as of right although has not chosen to do so.

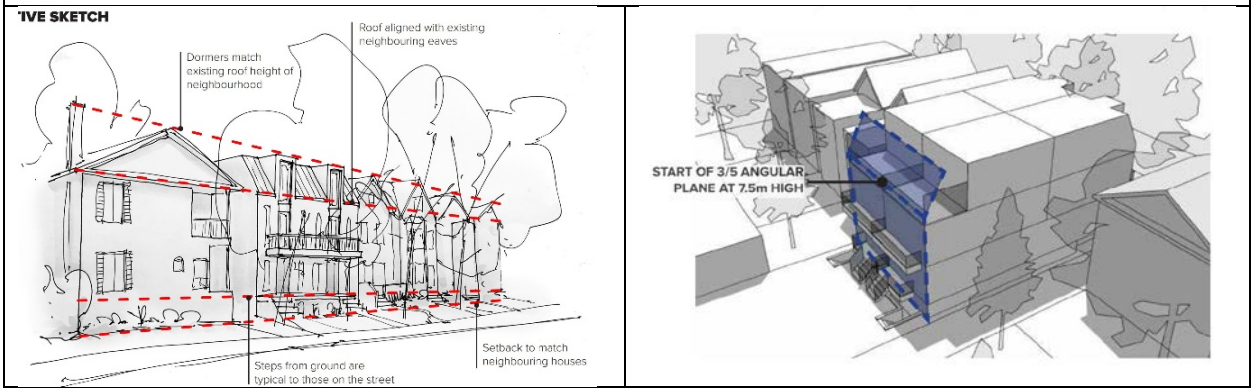
Mr. Dror broke down the treatment of the roofs into three elements:

- a slanting third floor at the front, along with a dormer feature,
- a flat roofed middle portion and

- a 3 m notch or setback at the rear.
-

He noted many similar examples in the neighbourhood[12]. Although the middle portion for the subject roofs runs the maximum length between the end features, an entire third floor is otherwise permitted. The architect has, like others, has chosen a compatible design that conceals the density.

Figure 9. Left: front façade. Right: rear roof line



I find that these two buildings will respect the existing physical character of the area, reinforcing the stability of the neighbourhood (2.3.1 Heathy Neighbourhoods) and thus maintain the general intent of the official plan and zoning by-law.

[12] Mr. Dror's oral evidence was "Starting on Bridgman, we have the newer townhouses, that were spoken of by Mr. Alves, at 18 and 28 Bridgman, which have this flat roof character, with setbacks at the rear, similar to what's proposed at the subject site, and slightly sloping roofs at the front with little dormers as well. . .. In terms of the other developments along Bridgman, the majority of them appear to have flat roofs, with some peaked roofs. For example, this is one over here.
Along Dartnell, there certainly are examples of peaked roofs in the neighbourhood; there's no disputing that…, but I think it's important to recognize there are a number of different roof types in the area. For example, . . .6 Dartnell, over here, which doesn't appear to be in great condition, but I believe it has a flat roof. Another flat roof here, more or less a flat roof, a bit of slope here, ah, another roof, semidetached dwelling.
[Along Howland] there certainly are many examples of peaked roofs, as was discussed earlier. =, but there are other examples as well. For example, this is a peaked roof with a flat roof above that and beyond that; there are other examples as well. Um there are a couple of examples, here, which aren't very visible, unfortunately, but you can see the flat roof part in behind. . . .
There are a number of examples here along the west side of Howland which have peaked or pitched elements at the front, with dormers, but more or less flat roofs at the back, here and here."

To sum up this whole discussion, I find all the variances individually and cumulatively meet the statutory tests in s. 45(1) of the *Planning Act*. I find as well that that having regard to the matters in s. 51(24), it is appropriate to grant the severance.

Conclusion

There is a strong policy direction in the Official Plan for secondary units and private rental housing, so long as it is contained in a compatible and sensitive design. This is such as design. Although I have not discussed Mr. Ursini's evidence, he asked for and received design modifications in the lead up to the Committee of Adjustment hearing and when they were met, he was supportive of this design. He was involved throughout and liaised with the local Councillor, as did many persons in the Tarragon Village Residents Association. His opinion was not changed by the owner's use of the basement for additional secondary units because he said this was an internal modification within an acceptable outward built form. This is also an important element in my reasoning and his expert opinion on the appropriateness of the variances, tested by cross examination but both Mr. Sellors and Mr. Alves, was in my view sound and persuasive.

DECISION AND ORDER

Mr. Sellors's appeal is dismissed. I grant the severance and authorize the variances in Table 2 on these conditions.

Conditions of Consent Approval

1. Confirmation of payment of outstanding taxes to the satisfaction of Revenue Services Division, Finance Department.

2. Municipal numbers for the subject lots indicated on the applicable Registered Plan of Survey shall be assigned to the satisfaction of Survey and Mapping Services, Technical Services.

3. Two copies of the registered reference plan of survey integrated with the Ontario Coordinate System and listing the Parts and their respective areas, shall be filed with City Surveyor, Survey & Mapping, and Technical Services.

4. Three copies of the registered reference plan of survey satisfying the requirements of the City Surveyor, shall be filed with the Committee of Adjustment.

5. Within ONE YEAR of the date of the giving of this notice of decision, the applicant shall comply with the above-noted conditions and prepare for electronic submission to the Deputy Secretary-Treasurer, the Certificate of Official, Form 2 or 4, O. Reg. 197/96,

referencing either subsection 50(3) or (5) or subsection 53(42) of the Planning Act, as it pertains to the conveyed land and/or consent transaction.

Conditions of Minor Variance Approval

1. Prior to the issuance of a building permit, the applicant/owner shall submit a complete application for permit to injure or remove a City owned tree(s) under Municipal Code Chapter 813, Trees Article II, Trees on City Streets, to the satisfaction of the Supervisor, Urban Forestry, Tree Protection and Plan Review, Toronto and East York District.

2. Prior to the issuance of a building permit, the applicant/owner shall submit a complete application for permit to injure or remove privately owned tree(s) under Municipal Code Chapter 813, Trees Article III, Private Tree Protection, to the satisfaction of the Supervisor, Urban Forestry, Tree Protection and Plan Review, Toronto and East York District

3. The third storey, including the vegetative privacy screening, shall be built substantially in accordance with the Plans, by Craig Race Architecture Inc., dated November 17, 2020

X

Ted Yao
Panel Chair, Toronto Local Appeal Body

The following are rulings made in the course of this hearing.

Ruling 1 – April 7, 2021

Mr. Sellors was a self-represented party. By s. 10.1 of the *Statutory Powers Procedure Act*, a party is permitted to call and cross examine witnesses. This right is not unfettered and in the course of conducting the hearing I made many decisions that Mr. Sellors did not agree with. My decisions are properly subject to the scrutiny and criticism by all members of the public, including Mr. Sellors. When he did not agree with my ruling, the proper course of action was to complete the hearing and take any further remedy open to him, not to reargue the point. The TLAB has clear authority to control its own procedures and while latitude may be given to those who are self-represented, it is

also necessary for the tribunal's authority to be exercised to complete the work of a hearing.

Mr. Sellors requested an adjournment to study "new information". The information was not new, but was a repackaging of information disclosed on November 18, 2020:

> The internal layout of the two semi-detached buildings has been reconfigured to add an additional unit into the basement of each building, so that each building has four units. The internal changes do not generate any changes to the building envelope of the proposed building.

The package also included the CV for architect Craig Race, "in the event he testifies", and Mr. Sellors did not need an adjournment to digest this standard document. Accordingly, I refused the adjournment request.

Ruling 2, April 7, 2021

Mr. Sellors asked me to permit him to cross examine Ms. Stewart on her affidavit of service; I refused to allow this.

In my view, an opponent cannot cross examine opposing counsel without establishing a good reason. Although Ms. Stewart's evidence might be relevant, she is obligated by solicitor-client privilege not to disclose much of what she knows. Given that Mr. Dror was produced, and is not bound by such privilege, I found that there was little point in permitting cross-examination of Ms. Stewart. Questions concerning the Applicant's disclosure could be and were addressed to both Mr. Dror and Mr. Ursini (summonsed City planner).

Ruling 3, April 7, 2021

I excused Phillip Kelly, member of the Tarragon Village Residents Association after this exchange:

Mr. Sellors: I have no questions for Mr. Kelly at this juncture.
Mr. Yao: Really? So, he can be released?
Mr. Sellors: If you see fit.

As a result, I released Mr. Kelly from his obligations under the summons issued to him by Mr. Sellors.

Ruling 4, April 7, 2021

Mr. Sellors asked me to disqualify myself from hearing this case because I made a decision in another TLAB file, 1258 Broadview, which was a rental building in which Leonid Kotov was the applicant, Ms. Stewart was the lawyer and Mr. Dror was the planner.

The proper test for disqualification, recusal or apprehension of bias is[13]:

> The apprehension of bias must be a reasonable one, held by reasonable and right minded persons, applying themselves to the question and obtaining thereon the required information, the test of "what would an informed person, viewing the matter realistically and practically—conclude?"

The test uses the words "realistically" and "practically". Each case is decided on its own facts. A reasonable realistic person viewing Mr. Sellors's request would not conclude he was entitled to my disqualification. In terms of practicality, it would be very inconvenient to recuse myself in the middle of a hearing, in effect imposing an adjournment on 367 Howland St Inc. and placing a burden on a small tribunal. It is common for the TLAB to encounter the same lawyers and planning witnesses. This would not cause a right-minded person to assume the adjudicator was biased. I did not recuse myself and so informed Mr. Sellors.

Ruling 5, April 8, 2021

Mr. Sellors advised he found the previous day's proceedings as "adversarial" and requested that I convert the hearing into a mediation. Presumably I would be the mediator. Ms. Stewart had previously asked for mediation by written motion and at that time it was Mr. Sellors who was not willing. I agreed with his previous position that unless mediation was consensual, there was no point in ordering it. Now that the hearing had started, this seemed to me to a process for delay and I refused.

Ruling 6, April 12, 2021

Mr. Sellors alleges that I unfairly restricted his cross examination of Mr. Dror.

Three days were set aside for the hearing. On Day 1, I asked that the summonsed witnesses be heard first. I also heard from Dr. Sas and Mr. Mastrangelo.

On Day 2, at 10:10 Mr. Dror began his direct examination and remained in direct examination at the close of day.

On Day 3, Mr. Dror's direct examination concluded at 2:42 p.m., interrupted by Ms. McAuliffe's and Mr. Alves' testimony, which took place between 11:02 to 12:45.

[13] *Committee for Justice and Liberty et al. v. National Energy Board et al.,* [1978] 1 S.C.R. 369

I should point out that none of Mr. Sellors's witnesses provided a witness statement as required by Rule 16.4 and not only was each allowed to testify, but also at the time of their own convenience, and sometimes this was during Mr. Dror's direct evidence.

Mr. Sellors began his cross examination on Day 3 immediately at 2:43. By the close of Day 3, at 5:30 I asked Mr. Sellors how much longer he would be. He first indicated he would be an hour, then shifted to two hours and then refused to be pinned down. I asked if we continued the hearing for one half an hour, whether we could finish with Mr. Dror? I believe it was this interchange that has caused him to feel he was unable to conduct the cross examination as he wished.[14]

Mr. Sellors said he was "exhausted" and that point we adjourned for the day.

A continuation had to be rescheduled and there was no continuation day cleared on the TLAB calendar. Through discussions between Mr. Sellors and Ms. Stewart, he accommodated her by making himself available for the morning of Day 4. He concluded his cross examination by noon of Day 4, and then excused himself to attend his business meeting. I point out this accommodation by Mr. Sellors. The TLAB has responsibility and control of its procedure, balancing the interests of the parties and practicalities.

[14] " Mr. Sellors stated his questioning of Mr. Dror "was curtained prematurely as Counsel Ms. Stewart raised objection to having him reattend for further questioning,. . ." (par. 12, Appellant (Mr. Sellors's) Submission: Closing Statement)