

DECISION AND ORDER

Decision Issue Date Monday, October 18, 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): LJUBIN GJORGIJEVSKI

Applicant(s): DESIGN WORKSHOP ARCHITECTURE INC

Property Address/Description: 260 INGLETON BLVD

Committee of Adjustment File

Number(s): 20 233890 ESC 23 MV (A0010/21SC)

TLAB Case File Number(s): 21 164059 S45 23 TLAB

Hearing date: September 15, 2021

Deadline Date for Closing Submissions/Undertakings: N/A

DECISION DELIVERED BY A. BASSIOS

REGISTERED PARTIES AND PARTICIPANTS

| | |
|--------------------|---|
| Applicant | DESIGN WORKSHOP ARCHITECTURE |
| Appellant | LJUBIN GJORGIJEVSKI |
| Owner/Party | SHRI PARAM HANS ADVAIT MAT |
| Party's Legal Rep. | DAVID BRONSKILL |
| Party | OWENS CORNING INSULATING SYSTEMS CANADA GP INC |
| Party's Legal Rep. | TARA PIURKO - MILLER THOMSON LLP |
| Expert Witness | ELDON THEODORE |
| Expert Witness | CHRISTIAN CHAN |

INTRODUCTION

This is an Appeal of the Scarborough panel of the City of Toronto (City) Committee of Adjustment's (COA) approval, with conditions, of an application for variances at 260 Ingleton Blvd (subject property). The purpose of the application is to redevelop the existing place of worship with a new two-storey building. The subject property is located in the Milliken neighbourhood in the former City of Scarborough. It is designated *Neighbourhoods* in the City Official Plan (OP) and zoned Institutional Place of Worship (IPW) 0.4 under Zoning By-law 569-2013 (By-law). Site specific provision (Exception IPW x80) within Zoning By-law 569-2013 states that the maximum permitted height and lot coverage on site is the height of the building that lawfully existed on the date of the enactment of Zoning By-law 569-2013.

In attendance at the Hearing were:

- Sam Sethi, for the Shri Param Hans Advait Mat Ontario, David Bronskill, legal counsel for the Applicant, and Expert Witness Eldon Theodore (Land Use Planning);
- Ljubin Gjorgijevski, the Appellant;
- Tara Piurko and Calvin Weeks, legal counsel for Party Owens Corning Insulating Systems and Expert Christian Chan.

I advised those present at the Hearing that, as per Council direction, I had attended at the site and the surrounding area and reviewed the pre-filed materials in preparation for the hearing of their evidence.

Mr. Gjorgijevski, the Appellant, was not able to connect electronically and was only able to participate in the Hearing by phone.

BACKGROUND

The application seeks to demolish an existing place of worship on the site at 260 Ingleton Boulevard and redevelop the lands with a new, modernized temple with a total gross floor area of 2,460.35m². The new temple will include a primary prayer hall, community hall, commercial kitchen, meeting rooms, offices as well as meditation rooms. 306.72m² of the total gross floor area will be dedicated to the main worship area. It should be noted that were it not for Exception IPW 80 within By-law 569-2013, the proposal would comply with the maximum height and lot coverage otherwise generally permitted in the Institutional Place of Worship zones elsewhere in the City. The subject application seeks a total of four variances to Toronto Zoning By-laws, as follows:

1. Exception IPW 80.(D), By-law 569-2013

The maximum permitted lot coverage is equal to the area of the lot covered by all buildings and structures that lawfully existed on the date of the enactment of this By-law (9.84% or 601m²). The proposed new lot coverage is 21.83% of the lot area (1,333.64m²).

2. Exception IPW 80.(C), By-law 569-2013

The maximum permitted height is the height of the building that lawfully existed on the date of the enactment of this By-law (10.95m). The proposed new building height is 14.26m.

3. Exception IPW 80.(B), By-law 569-2013

A minimum of 189 parking spaces are required.

A total of 93 parking spaces are proposed (92 surface and 1 indoor).

4. Performance Standard 139, By-law 17677

A minimum of 190 parking spaces are required.

A total of 93 parking spaces are proposed (92 surface and 1 indoor)

MATTERS IN ISSUE

The Appellant in this matter expressed opposition to the application on the basis that there was no justified need to demolish the existing building. Additional concerns of building style, the associated uses (such as the commercial kitchen and the numbers of bedrooms proposed), noise, height, parking and parking lot entrances and the history of development on the property were raised.

As the subject property is within the influence area of a designated *Employment Area*, the COA's approval of the application was conditional on the owner entering into a site plan agreement with the City to secure a condition containing a warning clause regarding the location of the subject lands within the potential influence area of a Class III Industrial Facility located at 3450 McNicoll Ave.

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').

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.

EVIDENCE

At the outset of the Hearing, Ms. Piurko advised that her client's participation in this matter would be confined to securing the condition that the COA had imposed referencing the Class III Industrial Facility warning clause to be included in the site plan agreement, as follows:

"Prior to the issuance of a building permit for 260 Ingleton Boulevard (the "Subject Lands") the owner shall enter into a site plan agreement with the City securing the following condition:

The Owner shall include the following warning clause in any future purchase and sale or lease agreement(s) in connection with the Subject Lands, which purchase and sale and lease agreement(s) shall require that any subsequent purchase and sale or lease agreement(s) include the following warning clause:

The Subject Lands are located within the potential influence area of a Class III Industrial Facility located at 3450 McNicoll Avenue in the City of Toronto (the "Subject Class III Industrial Facility") determined in accordance with the Ontario Ministry of Environment, Conservation and Parks D-6-3 Separation Distances guideline, updated to March 22, 2019, or any amended, successor or similar guideline, regulation or legislation. The Class III Industrial Facility generates noise and odour. There may be alterations or expansions of the Subject Class III Industrial Facility in the future."

Ms. Piurko advised that Mr. Chan would be available to provide evidence regarding the proposed condition, should he be required. As the condition had been agreed to by the

Applicant and Ms. Piurko's client, and the Appellant did not take issue with the clause itself, Mr. Chan's evidence was not required.

APPLICANT

Mr. Theodore provided uncontested land use planning opinion evidence on this matter, relying on his Expert Witness Statement (Exhibit 1).

Mr. Theodore described the subject property and the use of the existing place of worship. He advised as follows:

- the property is approximately 0.61 ha and has frontage onto and takes access off Ingleton Blvd;
- the temple includes a prayer hall, 4 meditation rooms, a main prayer hall which holds about 75 to 100 people, a larger hall that is used for communal dining, cooking facilities and a small office;
- two priestesses and one priest live within the building full time;
- a private bedroom and kitchen are maintained for the faith's Pope who visits Canada every two to three years;
- Services are held every Sunday from 12pm to 2pm, followed by lunch;
- Special sermons are held on six days in the year to mark significant dates;
- 90 surface parking spaces are included on the site and an accessory structure for storage is located within the parking field.

Mr. Theodore identified a geographic context and an immediate context as described in OP Policy 4.1.5. He described the broader and immediate context. He noted that the south side of the Immediate context reflects the typical 1980's character of the broader context, but that the north side of Ingleton Blvd displays a different character with the place of worship on the subject lands, an abutting commercial plaza between the subject lands and Middlefield Road to the east, and the entrance to Milliken District Park to the west. He advised that 900 Middlefield Rd (the plaza property) is the subject of an active OP and Zoning By-law Amendment Application for a 5-storey mixed use building with ground floor commercial and residential above.

The Tapscott Business Park is located across Middlefield Road and was not included in Mr. Theodore's study areas. He noted, however, that there are numerous employment uses located within the Business Park, including Owens Corning Insulating Systems, a Party to this Appeal, as well as a place of worship, the Gurskh Sabha Canada.

Mr. Theodore described the proposal in detail. He advised that the plan includes a primary prayer hall, commercial kitchen, meeting rooms, offices and meditation rooms, the purpose of which is to modernize the facilities associated with the place of worship. He noted that the main worship area is proposed to be 306.72m² and that the remainder of the 2,460.35m² area is to be used to provide support services for the operation of the place of worship. Mr. Theodore advised that while the overall building size and footprint are proposed to increase, the congregation remains largely as it exists today, and that in his opinion, the expansion simply assists in accommodating the associated functions

(commercial kitchen, meeting rooms, offices) to operate a modern place of worship to serve the existing congregation.

With regard to the commercial kitchen, Mr. Theodore advised that this is referred to as a commercial kitchen only because it is required to be at a commercial grade for the preparation of quantities of food. He advised that it would be the same as any other place of worship kitchen that supports a congregation and that there is no intention to use the kitchen for a commercial operation or to make food for commercial sale.

The four tests

Mr. Theodore provided opinion evidence regarding the four tests mandated by s.45(1) of the *Planning Act*.

GENERAL INTENT AND PURPOSE OF THE OFFICIAL PLAN

Mr. Theodore advised that the OP permits local institutions such as a Place of Worship in the *Neighbourhoods* designation.

As the subject property is in proximity to the Tapscott Business Park, a Provincially Significant Employment Zone, Mr. Theodore reviewed the applicable OP Policies regarding compatibility of significant employment uses with sensitive land uses such as that proposed in this application. He advised that City Planning staff, through the review of the Site Plan Application, had determined that a Compatibility/ Mitigation Study was not necessary as the intensity of the use will not increase as a result of the proposed larger building size.

It was Mr. Theodore's opinion that OP Policy 4.1.9 applies in this case as in his opinion the subject property differs from the prevailing pattern of lot size, configuration and orientation and the lot size is bigger than most in the neighbourhood.

Based on his detailed and thorough analysis of the OP Policies, it was Mr. Theodore's opinion that the proposed variances meet the general intent and purpose of the OP.

GENERAL INTENT AND PURPOSE OF THE ZONING BY-LAW

Mr. Theodore advised that while the zoning on the subject property permits a place of worship with a maximum density of 0.4 FSI, there is a site-specific exception on the site that imposes additional restrictions on development. He noted that the site-specific provision (x80) restricts permissions on the subject property to what lawfully existed on the date of the enactment of By-law (569-2013). Without the site-specific exception to the zoning, he advised, the proposal would comply with the requirements of the IPW 0.4 zoning and variances would not be required. Mr. Theodore described the variances as a request to increase the permissions to an exception to the By-law, not the By-law itself.

Mr. Theodore advised that, through the exception, the property is also subject to the former Scarborough Zoning By-law 17677 in relation to the minimum parking rate, resulting in the requirement for a duplicate variance under both By-laws.

Lot Coverage

Mr. Theodore opined that the general intent and purpose of the lot coverage provision is to ensure that the bulk and massing a building is appropriately sized to fit on a lot and to help control massing and density of a building. He noted that the IPW zone permits a 40% coverage, well above the proposed coverage of 21.83%. He further advised that the lot coverage of the proposal is well below the neighbourhood average and that in the Immediate Context.

Height

Mr. Theodore advised that the current IPW zone permits a height of 15m and the proposal is less than 11m. The proposed 3.31m increase to the existing maximum height would be mitigated in his opinion as the building is to be screened from the public realm through enhanced landscaping on site and setting the building further away from existing residential homes.

Parking

Mr. Theodore advised that it is the capacity of the place of worship component of the building which drives the parking requirement on the site and the place of worship area is proposed to remain relatively unchanged from the existing condition. He noted that without the site-specific exception, the parking standards of By-law 569-2013 would require only 81 parking spaces while 93 are proposed.

Mr. Theodore referenced a Transportation Study Update (Exhibit 2, Tab 9) which concluded that the proposed parking supply is expected to be sufficient and noted that this conclusion has been reaffirmed by City Transportation Services who, he advises, have no objection to the variances.

It was Mr. Theodore's opinion that the proposed variances, individually and collectively, meet the intent and purpose of the Zoning By-laws.

DESIRABLE FOR THE USE OF THE LAND

In Mr. Theodore's opinion, the requested variances would allow for the redevelopment of the subject property and permit the construction of a modern place of worship and would support the important role local institutions play in the community. It is Mr. Theodore's opinion that the proposed building, with enhanced fencing, landscaping and improvement upon existing setbacks, is in keeping with the character of the neighbourhood,

It is Mr. Theodore's opinion that the proposal is compatible with the Immediate Context and will not result in overpowering of the streetscape or the neighbouring dwellings.

In Mr. Theodore's opinion, the variances are appropriate and desirable for the use of the subject property.

Minor

Mr. Theodore noted that the test for "minor" is not that of no impact, but rather that the imputed impact rise to the level of being an unacceptable adverse impact of a planning

nature. In his opinion, the variances do not create any undue adverse impacts on the streetscape or the adjacent neighbours, including with respect to shadowing, privacy, overlook or parking and that the requested variances are minor in nature.

It was Mr. Theodore's opinion that the requested variances represent good planning and are in the public interest and that the variances, individually and cumulatively, meet the tests of s. 45(1) of the *Planning Act*, the PPS and the Growth Plan.

Mr. Theodore recommended that the requested variances be granted subject to the same conditions that were imposed by the COA, as follows:

1. The owner shall build substantially in accordance with Site Plan Drawing No.AS100, prepared by AE7 Ltd. and Design Workshop Architects Inc., issued on August 14, 2020, as detailed on Figure 1 attached.
2. Prior to the issuance of a building permit for 260 Ingleton Boulevard (the "Subject Lands") the owner shall enter into a site plan agreement with the City securing the following condition:

The Owner shall include the following warning clause in any future purchase and sale or lease agreement(s) in connection with the Subject Lands, which purchase and sale and lease agreement(s) shall require that any subsequent purchase and sale or lease agreement(s) include the following warning clause:

The Subject Lands are located within the potential influence area of a Class III Industrial Facility located at 3450 McNicoll Avenue in the City of Toronto (the "Subject Class III Industrial Facility") determined in accordance with the Ontario Ministry of Environment, Conservation and Parks D-6-3 Separation Distances guideline, updated to March 22, 2019, or any amended, successor or similar guideline, regulation or legislation. The Class III Industrial Facility generates noise and odour. There may be alterations or expansions of the Subject Class III Industrial Facility in the future.

APPELLANT

Mr. Gjorgijevski shared his extensive personal history as a resident of Ingleton Blvd since 1980. He said that he had paid "big money" for his house as there was a sign across the street (where the subject property is located) that identified Milliken Park and he expected that he was buying a house in front of a park. He said that when he saw a rezoning sign (for the place of worship) go up in the same place as the previous sign, he and his neighbours objected and attended an OMB hearing to voice their concern. Mr. Gjorgijevski expressed strong feelings about his perception that he had been misled and that Scarborough Council and the local Councillor had not listened to his and his neighbours' concerns. He was concerned that the original building on the subject property was small and has expanded over time to a much bigger building. He also

explained that he had objected to the plaza being built and now objected to the apartments that are now being proposed adjacent to the subject property.

Mr. Gjorgijevski expressed the essence of his objection as follows: “plaza and church do not belong in front of our houses. We wanted to see a park in front of our houses, that was what we were promised, that was our expectation”. He said that he is the only one of the original owners left and that if he knew at the time that the front entrance of the driveway for a (place of worship) was going to be exactly opposite his house he would never have bought it.

The maintenance of the property and the building were among Mr. Gjorgijevski’s concerns. He expressed his dislike of the style of the design, objected to the smell of cooking from the kitchen, the number of bedrooms and need for bedrooms in a place of worship, and most particularly to the entrance to the parking lot right opposite to his home, which he indicated causes problems for him regarding snow accumulation on his driveway and car headlights lighting up his home at night as the congregation leaves the property on special festival occasions.

Mr. Gjorgijevski had a list of expectations that he wished to share, which included that the TLAB direct City Planning staff to take another look at the parking requirements, that the height of the proposal be taken down, and that there should be a limit in what is “minor” for a floor area variance. One of Mr. Gjorgijevski’s significant expectations was that the entrance to the parking lot be moved from in front of his house and that the temple be required to take access from Middlefield Rd through the adjacent plaza, or through Milliken park.

ANALYSIS, FINDINGS, REASONS

It became clear through Mr. Gjorgijevski’s testimony that he was of the mindset that the TLAB Hearing would be an opportunity for recognizing what he thought of as previous wrongs and that the TLAB could, and would, direct City Planning staff to make changes to aspects of the development such as driveway entrances, the location of a transformer and other issues. Counsel for the Applicant acknowledged that a site plan agreement would be entered into with the City, and that while his client fully intends to be a good and accommodating neighbour, some of Mr. Gjorgijevski’s expectations such as moving the vehicular access to the property off Ingleton Blvd were practically and feasibly unrealistic.

Mr. Theodore had been helpful in patiently explaining planning concepts and the basis for his expert opinion, but when I attempted to clarify for Mr. Gjorgijevski that the mandate of the TLAB is limited to the four variances requested, and that I had no authority to instruct City Planning staff in the execution of their duties in the manner that he expected, he became quite upset.

I empathize with Mr. Gjorgijevski’s obvious emotion and frustration; nonetheless, his expectations of the outcome of this TLAB Hearing are not tenable. The mandate of the TLAB is specific and limited – to adjudicate whether an application for variances is consistent with Provincial Policy and whether the requested variances meet the four

tests set out in s.45(1) of the *Planning Act*. In this matter, what is before the TLAB is a request for four variances; for coverage, height, and parking (2). Mr. Gjorgijevski stated his objection to the variances but did not offer justification or a foundation for his objections that could be applied to the four tests mandated by s. 45(1).

Mr. Theodore provided detailed evidence and analysis in support of the requested variances. I find Mr. Theodore's evidence thorough and complete and I concur with his opinion evidence that the requested variances, individually and cumulatively, maintain the general intent and purpose of the OP, maintain the general intent and purpose of the Zoning By-laws, are desirable for the development of the land and are minor.

In the course of Mr. Theodore's testimony, a minor amendment to the first condition that had been imposed by the COA was discussed. For added reassurance for the neighbours, the Applicant's representatives agreed to amend the first condition that the owner shall build in accordance with the site plan drawing and include that the main elevations be included in this condition, in addition to the site plan.

DECISION AND ORDER

As there is a minor amendment to one of the conditions imposed by the COA, the Appeal is allowed in part, and the Committee of Adjustment decision dated May 12, 2021, is varied accordingly.

The variances listed in Appendix A are authorized, subject to the conditions contained therein.

X 

Ana Bassios
Panel Chair, Toronto Local Appeal Body

APPENDIX A

APPROVED VARIANCES AND CONDITIONS OF VARIANCE APPROVAL:

VARIANCES:

1. Exception IPW 80.(D), By-law 569-2013

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2. Exception IPW 80.(C), By-law 569-2013

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3. Exception IPW 80.(B), By-law 569-2013

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A total of 93 parking spaces are proposed (92 surface and 1 indoor).

4. Performance Standard 139, By-law 17677

A minimum of 190 parking spaces are required.

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CONDITIONS:

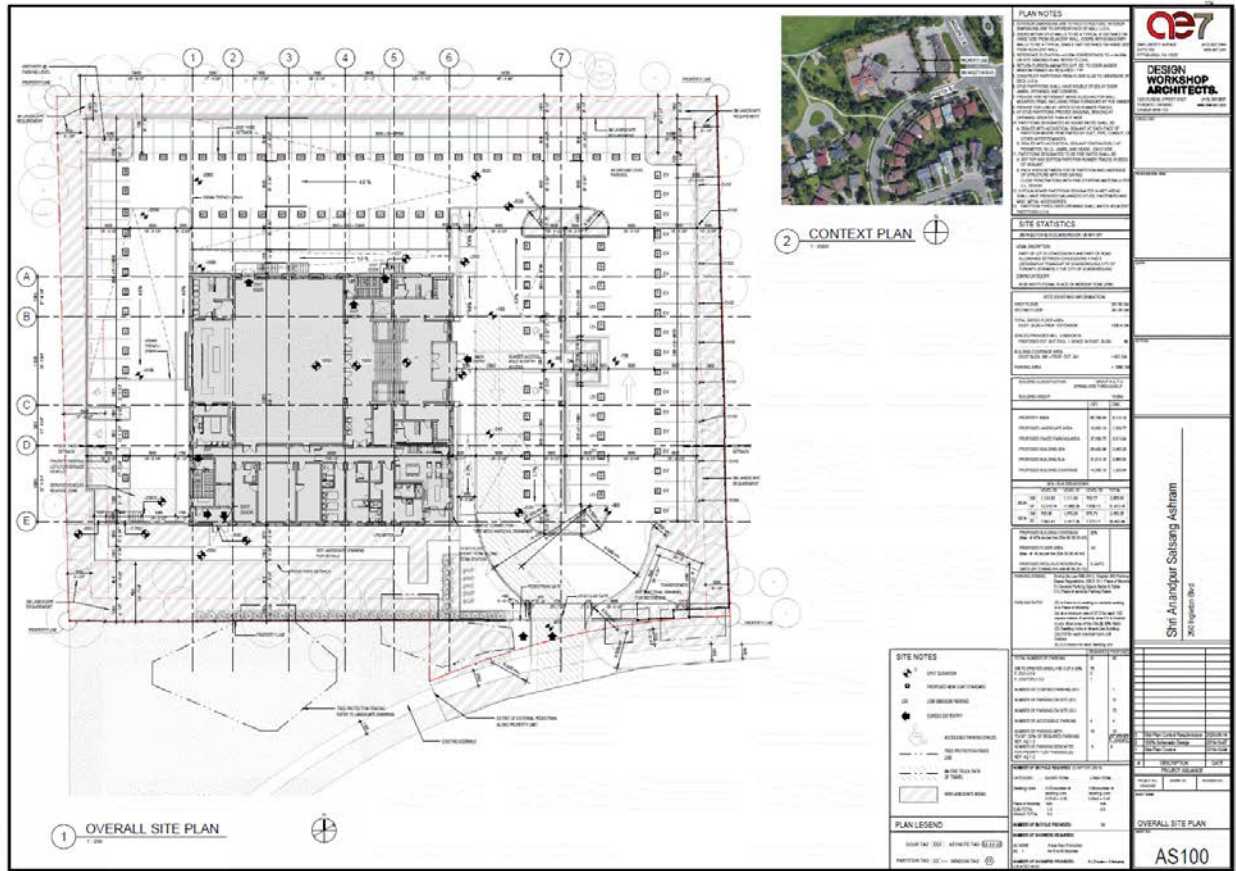
1. The owner shall build substantially in accordance with Site Plan Drawing (AS100), East and South Elevations (A202), and West and North Elevations (A203) prepared by AE7 Ltd. and Design Workshop Architects Inc., dated August 14, 2020, as attached.
2. Prior to the issuance of a building permit for 260 Ingleton Boulevard (the "Subject Lands") the owner shall enter into a site plan agreement with the City securing the following condition:

The Owner shall include the following warning clause in any future purchase and sale or lease agreement(s) in connection with the Subject Lands, which purchase and sale and lease agreement(s) shall require that any subsequent purchase and sale or lease agreement(s) include the following warning clause:

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