





the Parties. I granted the adjournment request and, in a Decision and Order (D&O) dated September 1, 2021, I provided the following direction:

*The Hearing on August 30, 2021, regarding the above-referenced matter, is adjourned. The Appellant's legal representative will apprise the TLAB of the status of any Minutes of Settlement and associated revised plans and file same with the TLAB and serve the terms of the proposed settlement on all other Parties and Participants at the earliest possible date.*

*In the event that a settlement is ultimately finalized, that above-referenced filing will include a revised and final set of drawings, a revised list of variances being requested and corresponding new Zoning Notice, and a copy of the terms of Settlement.*

*Once confirmed, TLAB staff will canvas the Parties and Participants for a new Hearing date for an expedited Settlement Hearing of this matter and issue a new, revised Notice of Settlement Hearing to reflect the rescheduled date once a date has been secured. All previous submission and filing dates will remain as before.*

As of December 16, 2021, the TLAB had yet to hear from any of the Parties as directed in the September 1<sup>st</sup> D&O. Therefore, I asked staff to contact the Parties to determine the status of the settlement matter and to request an update. Unfortunately, this information was unavailable and so to expedite matters, I directed that staff schedule a 'virtual' teleconference call with the Parties and Participants in this matter by way of the City's WebEx meeting platform.

During that call, the Parties confirmed that a Terms of Settlement had been drafted but could not be executed because the Appellant was awaiting a revised Zoning Examiner's confirmation related to the agreed to amendments to the plans. Ms. Stewart also advised that two additional variances were at issue and discussions were on-going.

The Parties acknowledged that more time was required to finalize these outstanding matters in order to execute an MOS executed and requested that the Tribunal consider scheduling a new Hearing date sometime in February 2022. On the consent of the Parties, I agreed to this request for additional time and directed TLAB staff to schedule the return for a one-day Hearing on February 16, 2022, for which the TLAB Rules for Settlement Hearings, and attendant notice, would follow.

Additionally, I provided the Parties with the proviso that if they were able to finalize and execute a MOS and serve this document along with revised drawings on the Parties and Participants and file same with the TLAB, then the February 16<sup>th</sup> Hearing would be converted to an expedited Settlement Hearing in this matter.

Conversely, I advised that if no formal settlement is achieved, I would direct that the Hearing proceed as a contested appeal matter.





within the building envelope permitted by the zoning by-law. The ground floor has been reduced in length by 0.6 m on the east and west sides and the second floor has also been reduced in length by 2.9 m resulting in a reduced FSI variance.

Due to the shortening of the second floor, the rear of the building is now 'tiered.' As a result, this redesign has required the Applicant to reconfigure the interior layout resulting in an emergency access balcony and dormer being relocated to the rear south wall and a small, third floor balcony inset within the roofline.

Mr. Romano noted that the front façade design has also been revised in accordance with an alternative sketch produced at mediation and submitted that the revised proposal will continue to maintain substantial zoning compliance including building length and rear yard setbacks.

Due to the revisions to the original plans, the Applicant now requires eleven (11) variances identified through City zoning examination, as follow:

*i. Floor Space Index (FSI)*

The requested FSI of 0.85 (248.76 m<sup>2</sup>) times the area of the lot, whereas a maximum of 0.6 (176.38 m<sup>2</sup>) is permitted, is a reduction from the 0.93 (274.1 m<sup>2</sup>) FSI previously sought by the Applicant. Mr. Romano explained that the revised FSI reflected the gross floor area accommodated within the enclosed walls as follows: 43.12 m<sup>2</sup> (3rd Floor); 104.36 m<sup>2</sup> (2<sup>nd</sup> Floor); and 100.5 m<sup>2</sup> (1<sup>st</sup> Floor, including a 17.43 m<sup>2</sup> garage).

*ii. Building Height*

There are two (2) variances sought for building height (Variances 2 & 11), one from the new Zoning By-law 569-2013 and the other from the former By-law 438-86. The proposed height is now 9.88 m, whereas the permitted maximum height is 9.0 m in the new Zoning By-law, and 10.51 m in the former By-law, whereas a maximum height of 9.0 m permitted.

Mr. Romano noted that the proposed building height pursuant to the new By-law has been reduced from the previously requested height of 10.17 m, with the delta being 0.92 m. He also submitted that the proposal continues to be by-law compliant concerning the proposed number of storeys, main wall height, and first floor height.

In a further clarification, he submitted that building height provisions under Zoning By-law 569-2013, are still under appeal before the Ontario Land Tribunal (OLT) but that a recent OLT decision requires the City to implement zoning by-law provisions which will raise height permissions to 10.0 m. thereby effectively eliminating this building height variance.

*iii. Roof Eaves West Side Yard Setback*

He advised that this variance has not changed from the original proposal and asserted that the roof eaves setback is comparable to the existing condition.

*iv. West Side Yard Setback*

Mr. Romano noted that the original Application proposed a renovation to the existing dwelling with additions that maintained the west side yard setback and required no variance relief. The revised proposal seeks relief to the west side yard setback of 0.21 m, whereas 0.9 m minimum is required. However, he was of the opinion that the proposed west side yard setback would be similar to the setback in the original proposal, which ranged from a 0.21 m to 0.27 m widening and to 0.61 m for the approximately 4.2 m of the rear building length.

*v. Rear Second Floor Balcony West Side Yard*

The original proposal had a balcony along the east portion of the rear wall. The revised proposal now incorporates a second-floor balcony attached at the rear wall of the new dwelling with the east and west side yard setbacks that align with the side walls of the dwelling at the rear. Mr. Romano noted that because of the Settlement and Condition 2 in that MOS, the Applicant has revised the proposal to incorporate permanent 1.0 m wide planters at each end of the balcony which effectively produce a west side yard setback of 1.65 m and a corresponding east side yard setback of 1.92 m to the usable balcony. This, he opined, ensures a larger spatial separation to the side lot line.

In Mr. Romano's opinion, this balcony redesign will mitigate impacts associated with the elevated balcony satisfying the general intent and purpose of the zoning by-law.

*vi. Chimney West Side Yard Setback*

He submitted that the 0.13 m setback back of the chimney from the west side lot line, whereas a 0.9 m minimum is required, achieves a subordinate attachment or projection within a suitable access context maintaining the general intent and purpose of the zoning by-law.

*vii. Front Yard Setback*

Mr. Romano opined that the executed settlement has resulted in the Applicant moving the proposed dwelling closer to the front lot line which triggers the front yard setback variance of 6.16 m. Because of this, the proposed front wall of the new dwelling will be staggered such that the west portion of the front wall is set back further than the eastern portion to follow the front lot line arc alignment. Nevertheless, he advised that while most of the front wall is further away from the front lot line than in the original proposal, some eastern and western portions of that wall actually meet the minimum setback requirement of 6.77 m.

*viii. Two Platforms*

The revised proposal incorporates a rear second storey balcony and a second platform within the third floor. The third storey platform has a small area of approximately 2 m<sup>2</sup> and is inset within the roofline thereby screening the platform along

the side of the dwelling. He advised that this second platform will accommodate an air conditioning unit but, otherwise, is intended to address emergency access Ontario Building Code requirements.

*ix. Rear Secondary Floor Balcony Size*

He noted that the area of the proposed rear second storey balcony of 12.43 m<sup>2</sup> represents the Zoning Examiners calculation and appears to include the width of the permanent planters located on each side. However, he advised that the Applicant acknowledges that the maximum accessible floor area of this balcony will be capped at 11.05 m<sup>2</sup>, as confirmed in Condition 2 (Schedule “B”) in the MOS.

Mr. Romano then summarized his opinion on each of the requested variances and how, individually and cumulatively, they satisfy the four statutory tests in the *Act*.

He was of the opinion that the revised proposal properly implements the applicable sections of the *Act*, as amended, including Section 2, and that there are no substantive implications on matters of Provincial interest.

In addressing Provincial considerations, he opined that the revised proposal is consistent with the Settlement Area-related policies of the PPS (2020), particularly as it relates to achieving an appropriate mix and range of housing options and submitted that the Application will result in a proposal that optimizes the use of land and is an efficient use of existing infrastructure.

He also submitted that the proposal conforms to, and does not conflict with, the *Built Up Area* policies of the Growth Plan (2020), asserting that the proposal appropriately implements the applicable intensification policies (1.2.1, 2.21., 2.2.2, 2.26, 4.2, 5.1, and 5.2) to achieve complete communities that optimize land use and infrastructure.

### **Official Plan**

Mr. Romano opined that the revised proposal and the associated variances continue to maintain the general intent and purpose of the OP. He highlighted the policy context of the OP and specifically Policies 2.3.1, 3.1.2, and 4.1.5, and asserted that the Application represents a compatible physical character that respects and reinforces the prevailing physical character of the neighbourhood and smaller geographic areas, including the immediate context.

### **Zoning By-law**

He opined that the revised proposal and variances, individually and together, continue to maintain the general intent and purpose of the Zoning By-law(s) and represent an orderly development with a site design, layout and massing that is reflective of, and compatible with the existing neighbourhood context.



He submitted that the proposed west side yard setback now before the TLAB meets the general intent and purpose of the zoning by-law ensuring adequate space for access purposes and spatial separation.

He also asserted that the proposed front yard setback will ensure an appropriate yet modulating front wall alignment along Verbena Avenue ensuring an appropriate wall alignment along the street that will maintain the general intent and purpose of the zoning by-law.

Furthermore, he opined that the proposed design and size of the rear, second storey balcony will mitigate impacts associated with an elevated platform and that the platform location and design features of the third-floor platform/balcony will mitigate impacts associated with the number of permitted platforms, satisfying the general intent and purpose of the zoning by-law.

### **Desirable**

Mr. Romano asserted that the revised proposal would contribute to the mix of housing choices in the neighbourhood in a manner that reflects and reinforces the subject property's physical character. He asserted that it builds upon and maintains the existing physical character in a suitable manner and opined that the proposal is desirable for the appropriate development and use of the land.

### **Minor**

He submitted that the revised proposal incorporates site layout and built form features which minimize and mitigate potential adverse impacts. He opined that the proposal will not cause any unacceptable adverse impacts such as shadowing, privacy or overlook related to site development features and that the requested variances are within the order of magnitude represented by residential properties within the area. In his opinion, the revised proposal and requested variances are minor in nature.

Mr. Romano concluded that the revised proposal satisfies all four *Planning Act* statutory tests, represents good planning, and asked that the TLAB approve the Application.

As to the issue of the requirement for further notice of the revised Application, Mr. Romano submitted that the amended proposal and revised list of requested variances represent an improved development and a minor amendment to the original application. Therefore, he asserted that no further notice is required pursuant to Section 45.18.1.1 of the *Planning Act*.

Mr. Roberts declined to cross-examine the witness and expressed his client's support for the recommendations/conditions of approval outlined in the MOS. He acknowledged that the conversion of the proposal from a renovation of the existing dwelling to one of a 'new build' and the reorientation of the proposed new dwelling closer to the subject property's front lot line will contribute to satisfactorily addressing



The TLAB professes that it will not lightly interfere with such settlements unless they demonstrate a term that could reflect improperly on the City, the TLAB, principles of good community planning or are otherwise offensive to the public interest. Settlement terms themselves are rarely comprehensive of the public interest and Exhibit 3 is no exception, although it is well drafted.

Despite a proffered settlement, the TLAB must be convinced that the policy and statutory tests set out in the *Planning Act* are properly satisfied and that any additional terms, if any, of the MOS are in the public interest.

I accept the acknowledgement of the Parties that the imposition of the terms and conditions of the Minutes are satisfactory to resolve the particular issues as between the adjacent property owner to the west, Mr. Campbell, who is a signatory. Furthermore, I accept that the eight (8) neighbours in this matter, who elected Participant status, have been served with the revised plans and MOS and do not object as evidenced by their absence at the Settlement Hearing to speak in opposition, subsequently confirmed by Mr. Roberts.

I also accept the uncontested evidence of the Applicant's expert witness, Mr. Romano, that the additional variances now being sought to reconstruct a new contemporary dwelling on the subject property of architectural style and/or expression that will fit in a harmonious manner should be granted. For those variances sought to be added and modified, as expressed in the Applicant's Revised List of Variances (Exhibit 4), and as recited under the 'Evidence' section above, I accept the explanation and evidence in their regard.

I find that the proposal will contribute to the overall physical form prevailing characteristics in a manner that appropriately satisfies all OP considerations. I find that it will respect and reinforce the neighbourhood's physical contexts and is materially consistent with the geographic neighbourhood and immediate physical context.

I find the variances requested, as so modified from those approved by the COA, to be acceptable in the circumstances of the subject property. I find that individually and collectively, the revised variances meet the intent and purpose of the OP and Zoning By-laws, are minor and desirable – both for the reasons described and on the evidence of the Applicant's expert planning witness.

I also find that they are consistent with Provincial Policy and conform to the Growth Plan.

As above noted, the TLAB encourages settlement and will generally implement agreements between interested Parties, subject to overriding considerations of public policy and the public interest. The Tribunal heard nothing by way of substantive measure or analysis that would compel it to find that the revised proposal is so out of character, so aberrant in terms of standards, so impactful as to be unwarranted or so detrimental to an identified attribute to suggest that one or more of the variances requested should be disallowed.



The proposed rear second floor balcony will have a side yard setback of 0.65 m from the west property line.

**7. Section 10.5.40.60.(5)(B), By-law 569-2013**

A chimney breast may encroach into a required minimum building setback a maximum of 0.6 m, if it is no wider than 2.0 m and is no closer to a lot line than 0.3 m. The proposed chimney breast is located 0.13 m from the west side lot line.

**8. Section 10.5.40.70.(1), By-law 569-2013**

The minimum required front yard setback is 6.77 m. The proposed front yard setback is 6.16 m.

**9. Section 10.20.40.50.(1)(A), By-law 569-2013**

The permitted maximum number of platforms at or above the second storey located on the (front/rear/side) walls of a detached house is one.  
The proposed number of platforms located on the rear wall is two.

**10. Section 10.20.40.50.(1)(B), By-law 569-2013**

The permitted maximum area of each platform at or above the second storey is 4.0 m<sup>2</sup>. The proposed area of the rear second floor balcony is 12.43 m<sup>2</sup>.

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

12. The maximum permitted building height is 9.0 m. The proposed building height is 10.51 m.

**APPENDIX B**

*Conditions of Approval*

1. The dwelling shall be constructed substantially in accordance with the following plans dated July 2, 2021, prepared by ManArch Design, and attached as **APPENDIX C** herein: a. Site Plan A1; b. North Elevation A7; c. South Elevation A8; d. East Elevation A9; and e. West Elevation A10.
2. Any other variance(s) that may appear as required on these plans but are not listed in this written decision are **NOT** authorized.
3. The Owner shall install permanent planters a minimum of 1.00 m wide on the sides of the rear second storey balcony, which shall be planted with trees or shrubs that have a minimum height of 1.8 m, measured from the floor of the balcony. The accessible floor

area of the rear second storey balcony (excluding the area of the planters) shall be a maximum of 11.05 m<sup>2</sup>.

4. The south facing railing on the rear second storey balcony shall be frosted glass or opaque material.

5. The south-facing third storey balcony shall be no larger in size than is required to satisfy the requirements of the Ontario Building Code and shall be used for emergency purposes only.

6. The lot grading for the site shall be to the satisfaction of the City of Toronto Building Division. The Chief Building Official of the City is requested to pay particular attention to try and ensure that overland stormwater drains away from and does not adversely impact adjacent properties.

**X**



---

Dino Lombardi  
Panel Chair, Toronto Local Appeal Body  
Signed by: dlombar

## **APPENDIX C**

*Site Plans*











