

## DECISION AND ORDER

**Decision Issue Date** Friday, March 11, 2022

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): BRAM GRANOVSKY

Applicant(s): JOEL TANNER

Property Address/Description: 14 ROSEMARY LANE

Committee of Adjustment File

Number(s): 20 218134 STE 12 MV (A1039/20TEY)

TLAB Case File Number(s): 21 186162 S45 12 TLAB

Hearing dates: January 6, February 3, 2022

**DECISION DELIVERED BY: TED YAO**

### REGISTERED PARTIES AND PARTICIPANTS

Owner/Appellant	Bram Granovsky
Appellant's Legal Rep	David Bronskill
Applicant	Joel Tanner
Expert Witness	Martin Rendl
Party	Lorne Gold
Party's Legal Rep	Christina Kapelos
Expert Witness	TJ Cieciura

## INTRODUCTION

Bram Granovsky wishes to tear down his house at 14 Rosemary Lane and build a new three storey house. In order to do so, he seeks the variances shown below in Table 1.

<b>Table1. Variances sought for 14 Rosemary Lane</b>			
		Required	Proposed
<b>Variances from Zoning By-law 569-2013</b>			
1	Rear deck	1. Be at the same level as access floor. 2. May extend 2.5 m at any height above ground. 3. Portion beyond 2.5 m must be no higher than 1.2 m above the ground	3.81 m above the ground and as much as 5.49 m from rear wall
2	Building height for flat or shallow roof	7.2 m (11 m for pitched roof)	11.26 m
3	# of stories	2	3
4	Front stair width	2.0 m	2.25 m
5	Side yard setback for exterior stairs	No closer than 0.6 m from lot line	North side stairs will be located 0.28 m from the north side lot line.
6	Platform/balcony	May encroach 1.5 m into required side yard setback of 0.3 m	The north side balcony will encroach 1.2 m and is 0.28 m from the north side lot line
7	Building depth	19 m	28.45 m
8	Floor space index	0.6 times area of the lot	0.69
9	Minimum front yard setback	7.67 m	6.34 m
10	Building length	17.0	29.78 m
11	Front yard landscaping	60% of front yard	47 %
12	Soft landscaping in front yard	75% of the required landscaping (i.e., 75% of 60% of front yard)	47%

Table1. Variances sought for 14 Rosemary Lane			
Variances from Zoning By-law 438-86 <sup>1</sup>			
13	Building height	11 m	11.77 m

## BACKGROUND

The Committee of Adjustment refused the application on June 30, 2021. On July 17, 2021 Mr. Bronskill filed an appeal, “Our client respectfully submits that the Committee should have granted the Proposal.”. Under Rule 12.2 an appellant is not required to elect to be a party; Mr. Granovsky is deemed to be a party. On October 25, 2021, Mr. Gold elected to be a party and subsequently his lawyer, Ms. Kapelos, filed party disclosure. Therefore, this hearing was a two person dispute, each one with his own lawyer and planner. This enabled the parties to agree that certain issues could be removed from consideration.

## MATTERS IN ISSUE

The Provincial Policy Statement and the Greater Golden Horseshoe Growth Plan must be considered, but they contain a high level of generality. The parties agree that as far as they are applicable, the development causes no inconsistency or non-conformity. I agree that this application does not engage broader policy issues such as preserving agricultural land or building affordable housing.

The variances must comply with s. 45(1) of the *Planning Act* and 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.

## Right to develop

The obligation is on the proponent Mr. Granovsky to demonstrate to the decision-maker that the tests are met on the balance of probabilities; there is no right to a variance.

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<sup>1</sup> By-law 438-86 is the former City of Toronto Zoning By-law. The current by-law 569-2013 is still under appeal, and since plan examiners test the application under both the new and former by-law this creates an additional variance request because the rules on height differ under the two by-laws.

## EVIDENCE

I heard from Martin Rendl, Mr. Granovsky's land use planner and T.J. Cieciura, Mr. Gold's planner, both of whom I qualified as able to give opinion evidence in the area of land use planning. These were the only witnesses.

### Member's Site visit

I made a site visit for the sole purpose of better assessing the evidence given at the hearing.

**Figure. 2. Depiction of Mr. Gold's property (dotted line) in relation to the 14 Rosemary Lane. Common property line in heavy black. Source document Mr. Cieciura's "common rear wall line"**

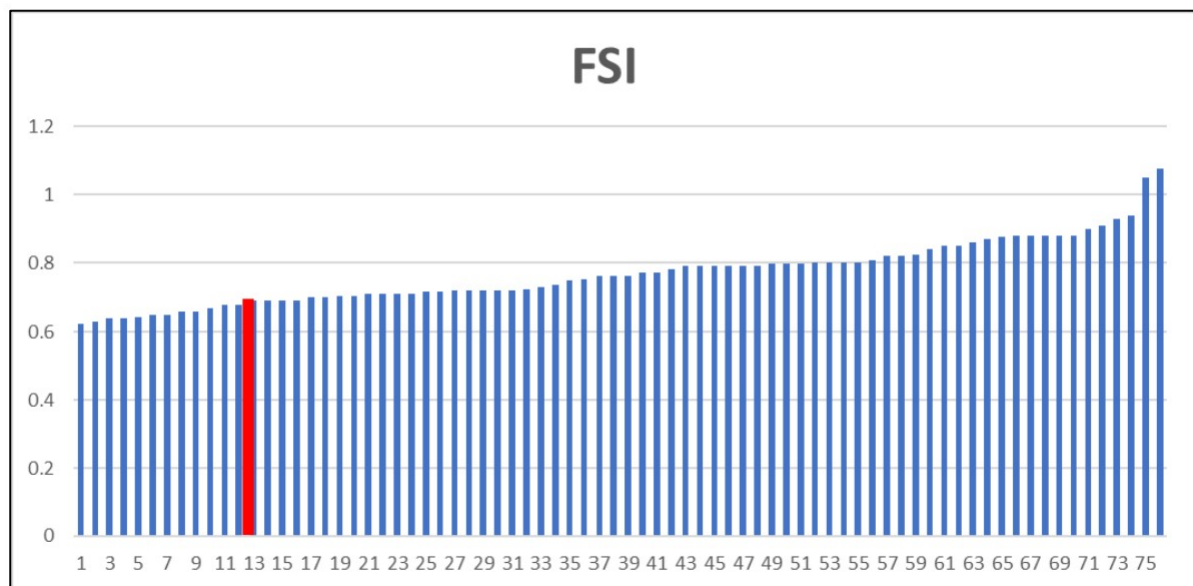


## ANALYSIS FINDINGS, REASONS

Mr. Cieciura focused on depth, length, and rear porch height. Building **length** is the distance between front and rear walls, whether they are above or below ground. The **depth** is measured from the front yard setback line instead of where the front wall is. In this case the front wall is slightly behind the front yard setback line of 7.67 m.

Mr. Cieciura's diagram on the previous page indicates the relation of the two properties: Mr. Gold is a rear yard neighbour. The two properties have an angled relationship, with only a small portion of their rear yards being common.

**Figure 3. Committee of Adjustment granted floor space indexes**

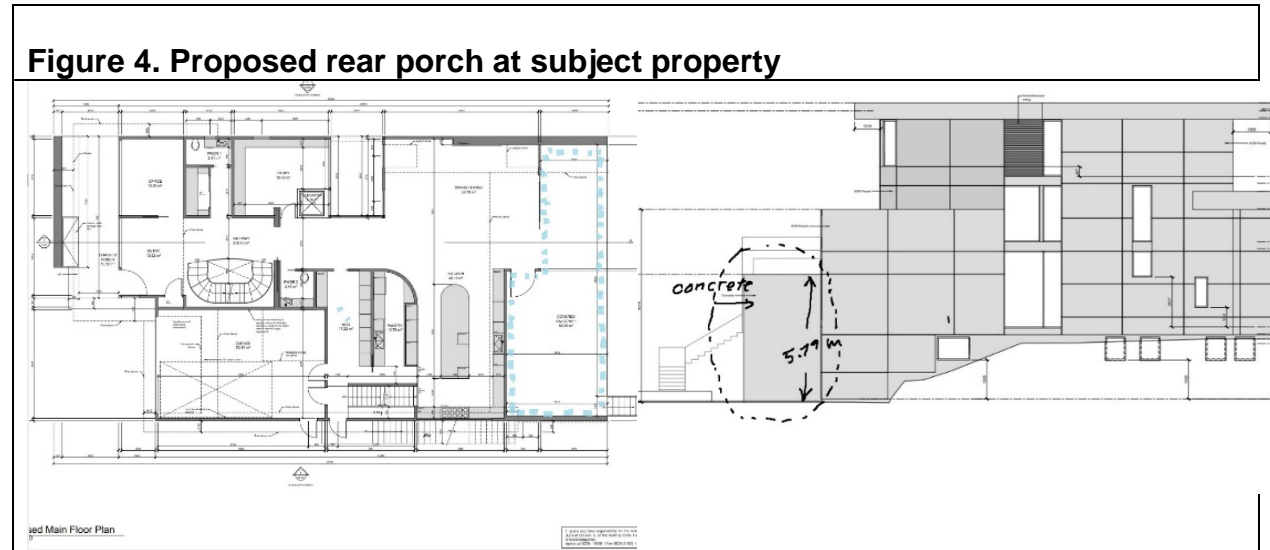


Mr. Granovsky's planner Mr. Rendl gave a detailed planning justification which concentrated on density and height. He produced a bar graph (Figure 3), showing that the sought for density (0.69; 0.60 permitted) is at the low end. Mr. Cieciura, Mr. Gold's planner, conceded that density was not a factor. I agree that a 0.69 density variance is in itself minor.

The design is for a flat roof. In Mr. Rendl's view, the limit of 7.2 m for flat roofs is artificially low. He said flat roofs will probably have their height limits be raised as a consequence of the recent Ontario Land Tribunal decision dealing with an appeal of the current zoning bylaw. The panel has rendered an interim decision on flat roof heights but no final order. In the meanwhile, Mr. Bronskill asked that the variance as requested

be granted. I make no finding as the merits of the variance related to the roof height; this decision will turn on other issues.

I now turn to length and depth. The design has two features that affect these variances:



- The basement is farther forward underground than the first floor front wall (not shown in Figure 4); this contributes to building length, but not depth. (Please see Footnote 5).
- The sides and floor of the rear porch count for both depth and length. The left hand picture shows the layout from above. The deck is shorter at the top of the diagram because the living room extends further to the rear. The side to side measurement is 15.3 m (50.1 feet), that is, to a back yard observer, the deck spans the entire width of the house. The porch's depth/length varies from 3.6 to 5.4 m deep (11.5 to 17.7 ft).

The sides are concrete. The deck itself is uncovered but it forms the roof of a basement walkout. Figure 4 shows the wall facing Mr. Gold (dotted line). The language used to describe this side structure was debated; Mr. Cieciura called it a “wing wall”; Mr. Bronskill suggested a better term was “privacy screen”. It is marked “privacy wall” on the plans. The depicted structure will be 5.79 m high (19.feet) and 3.6 m wide (11.8 feet).

**Figure 4. Rendl (top)and Cieciura (bottom)spreadsheets (partial)**



**Decision of Toronto Local Appeal Body Panel Member: T. Yao**  
**TLAB Case File Number: 21 186162 S45 12 TLAB**

	TYPE	YEAR	HEIGHT	LENGTH	DEPTH	FSI	SETB.
<b>14 Rosemary Lane (Proposed)</b>	<b>New House</b>	<b>2021</b>	<b>11.26 m*</b> <b>11.77**</b>	<b>29.78 m</b>	<b>28.45 m</b>	<b>0.69</b>	<b>6.34</b>
11 Rosemary Lane	New House	2016	9.36 m*	28.22 m	27.23 m	0.80	6.94
19 Rosemary Lane	New House	2008	---	---	---	0.80	5.16
22 Rosemary Lane	Addition	2013	---	24.29 m	24.29 m	---	---
220 Rosemary Rd	New House	2012	---	---	---	0.736	---
305 Rosemary Rd	Additions	2019	---	21.57 m	21.70 m	0.708	---
310 Rosemary Rd	New House	2011	---	17.39 m	---	0.825	5.63
311 Rosemary Rd	New House	2011	---	---	---	0.84	---
317 Rosemary Rd	Additions	2009	---	---	---	0.76	---
402 Rosemary Rd	New House	2008	---	---	---	0.85	5.79
403 Rosemary Rd	Addition	2011	---	---	---	0.85	---
410 Rosemary Rd	New House	2009	---	---	---	0.72	---
5 Dewbourne Ave	Additions	2020	---	---	---	0.80	---
6 Dewbourne Ave	Additions	2020	---	27.92 m	28.48 m	0.72	---
8 Dewbourne Ave	New House	2015	9.19 m*	---	---	0.66	---
9 Dewbourne Ave	New House	2015	11.15 m**	---	---	0.77	---
15 Dewbourne Ave	New House	2013	---	---	---	0.79	8.12
215 Richview Ave	New House	2011	---	---	---	0.72	---
217 Richview Ave	New House	2019	---	18.2 m	---	0.76	---

ess	Street Name	Application File No.	Part	Description	COA Decision	Zone	Maximum FSI (permitted - 0.6x or 588.19m2)	PYSB (required - 7.67m)	Length (permitted - 17m)	Maximum Depth (permitted - 16m)	Max (per 588)
11	Rosemary Lane	A0469/16TEY		New detached dwelling	Approved	RD & R1	0.8x (728.21m2)	6.94m (7.53m req.)	28.22m	27.23m	
19	Rosemary Lane	A0469/08TEY		New detached dwelling	Approved	R1	0.8x (692.16m2)	5.16m (9.09m req.)			
22	Rosemary Lane	A0673/13TEY		Addition to existing detached dwelling	Approved	R1			24.29m	24.29m	
3	Ava Crescent	A0122/09TEY		Additions to existing detached dwelling	Approved	R1	0.72x (476.12 m2)	6.48m (7.93m req.)			
3	Ava Crescent	A0918/14TEY		Additions to existing detached dwelling	Approved	RD & R1	0.73x (492.9 m2)				
7	Ava Crescent	A0320/18TEY		Addition to building permit approved dwelling under construction	Approved	RD & R1					
7	Ava Crescent	A0791/16TEY		New detached dwelling	Approved	RD & R1	0.698x (563.73m2)	6.9m (7.58m req.)	21.46m	21.46m	
7	Ava Crescent	A0676/09TEY		Addition to existing detached dwelling	Refused	R1	0.86x (588.85m2)	7.04m (7.85m req.)			
5	Ava Road	A0151/10TEY		Addition to existing detached dwelling and convert garage to living space	Approved	R1	0.642x (429.32m2)				
18	Ava Road	A0673/16TEY		Addition to existing detached dwelling	Approved	RD & R1	0.996x (414.3m2)				
29	Ava Road	A1015/21TEY		New detached dwelling	Approved	RD & R1	1.05x (506.3m2)	4.63m (5.19m req.)	21.06m	20.45m	
29	Ava Road	A1142/20TEY		New detached dwelling	Approved	RD & R1	1.05x (506.3m2)	4.63m (5.19m req.)	21.06m	20.45m	
36	Ava Road	A0468/21TEY		New detached dwelling	Approved	RD	0.879x (478m2)				
39	Ava Road	A0460/13TEY		Addition to existing detached dwelling	Approved	R1				22.84m	
41	Ava Road	A0478/09TEY		Convert garage to living space	Approved	R1	0.61x (294.3m2)				
11	Chadwick Avenue	A0742/07TEY		Addition to existing detached dwelling	Approved	R1	0.79x (487.19m2)	6.29m (8.6m req.)			
5	Dewbourne Avenue	A1038/19TEY		Addition to existing detached dwelling	Approved	RD & R1	0.8x (560.48m2)				
6	Dewbourne Avenue	A0269/20TEY		Addition to existing detached dwelling	Approved	RD	0.72x (482.93m2)		27.92m	28.48m	
8	Dewbourne Avenue	A0041/15TEY		construct a new detached dwelling	Approved	RD & R1	0.66x (437.26m2)				
9	Dewbourne Avenue	A0213/15TEY		New detached dwelling	Approved	RD & R1	0.77x (514m2)				
15	Dewbourne Avenue	A0553/08TEY		Extend existing driveway	Approved	R1					
15	Dewbourne Avenue	A0514/13TEY		New detached dwelling	Approved	R1	0.79x (528.2m2)	8.12m (8.66m req.)			
9	Elderswood Drive	A0082/09TEY		Addition to existing detached dwelling	Approved	R1	0.76x (395.7m2)				
10	Elderswood Drive	A0632/10TEY		New detached dwelling	Refused	R1	0.851x (415.17m2)				
15	Elderswood Drive	A0860/14TEY		New detached dwelling	Approved	RD & R1	0.710x (358.58m2)				
20	Elderswood Drive	A0998/17TEY		New detached dwelling	Approved	RD & R1	0.795x (390m2)	5.91m (6.83m req.)	18.39m		
21	Elderswood Drive	A0518/11TEY		Addition to existing detached dwelling	Approved	R1	0.71x (385.97m2)				
38	Elderswood Drive	A1095/14TEY		New detached dwelling	Approved	RD & R1	0.76x (321.62m2)				
41	Elderswood Drive	A0656/10TEY		Convert garage to living space	Approved	R1	0.79x (407.43m2)				

Both planners' study areas for the purposes of defining the "neighbourhood" were similar; the area southeast of the Bathurst and Eglinton intersection to the extent of about 3 to 4 blocks. Mr. Cieciura had a few more properties. Neither party challenged the other's study area or list of Committee of Adjustment decision ( Figure 4). Mr. Rendl's list contained 75 unique addresses and Mr. Cieciura 79. I used Mr. Cieciura's data, as there seemed to be little difference and Mr. Cieciura has provided slightly more information.

Mr. Rendl did not produce charts for building length and depth, as he did for density. Neither did Mr. Cieciura; he relied on averages and ranges<sup>2</sup>, summarized in Table 5.

<b>Table 5 summary of Committee of Adjustment spreadsheets</b>	
Granovsky application Length variance of 29.78 m (17 m permitted by the zoning The depth variance sought is 28.45 m (19 m permitted)	
<b>Rendl “enclosed space” proxies</b> (to be explained on page 13)	<b>Cieciura averages and ranges</b>
Length: 18.9, and 22.5 m Depth 22.5	Average length variance granted is 23.85 m. Depth range: 17.39 to 36.48 Average depth variance granted is 22.55 m. Depth range: 17.73 to 30.54 <sup>3</sup>

Turning to a comparison of the **number of decisions** to the **number of properties** in the broader neighbourhood of 402 properties, there are only a small number (about 7 %) who have sought variances of any kind. For example, in 2009, 114 Old Forest Hill Rd obtained a front setback variance to reconstruct a circular driveway; this was the extent of the application. The others have either received variances prior to the relevant time period, built “as of right” or not built at all. This is a neighbourhood where both planners agree there is considerable “regeneration” and where it might be expected that if one adds an addition, one wishes to maximize the sunk costs of an architect and builder.

I found 22 depth variances and 26 length variances out of 79 unique addresses. The sought for depth of 28.45 m (93.3 ft) is 4<sup>th</sup> highest of the 22 decisions and the sought for length of 29.78 m (97.7 ft), is 3<sup>rd</sup> highest out of the 26.

Mr. Rendl’s “proxy numbers” (my word) are numbers he believes are truer comparisons because they quantify “enclosed space” and exclude the rear porch. I defer a fuller discussion to the end of this decision. To conclude the discussion of spreadsheet information, the sought-for numbers exceed the averages by at least 4.5 m. I find they are at the high end of the spectrum.

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<sup>2</sup> Mr. Cieciura’s averages included duplicated decisions, for example 323 Glenayr Rd has three decisions, with 2012, 2018 and 2019 file numbers. It could be that the owner actually built to the 2012 variances; equally possible that they changed their minds. Mr. Rendl selected one decision per address. There are reasons to justify either approach.

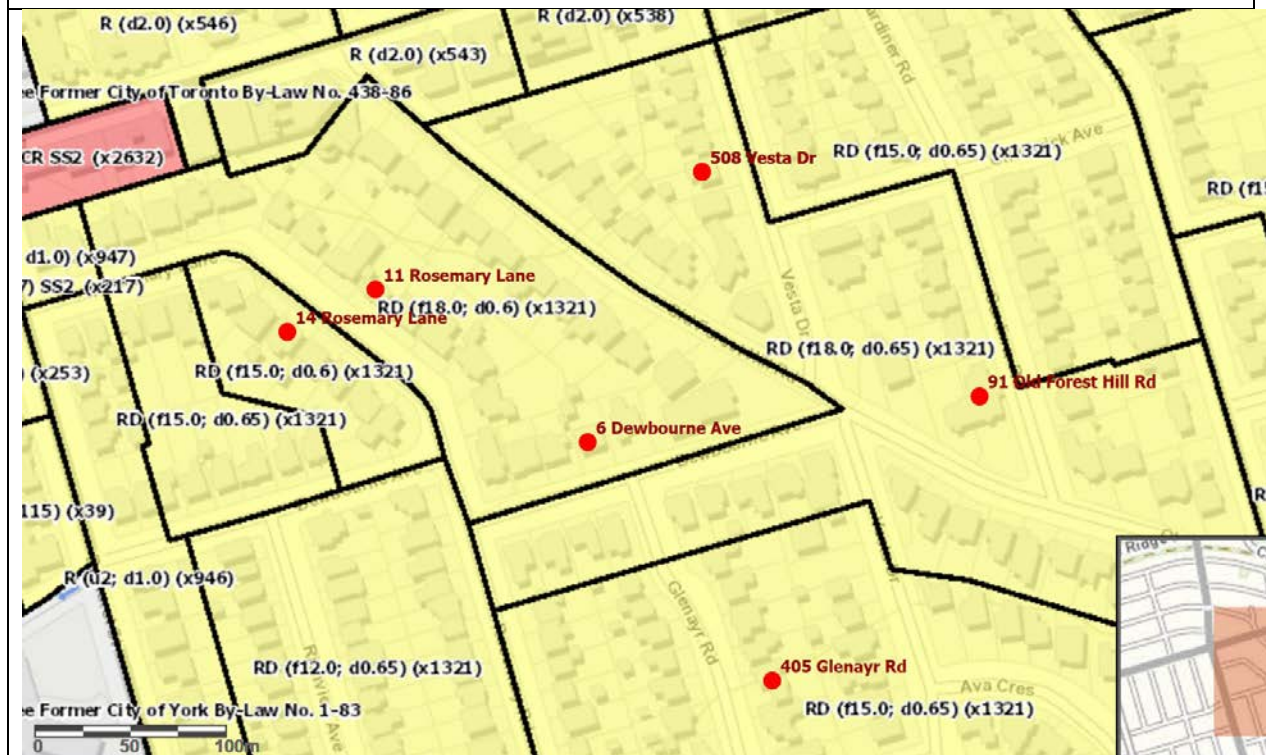
<sup>3</sup> I have corrected his top range number; 91 Old Forest Hill Rd decision of 2017 was a double lot and never built.



I now wish to discuss three “context” issues: the zoning context, the site context and the interpretive context.

### Zoning context

Figure 6. Highest building lengths mapped on the zoning map



The Committee has made five decisions that for length that are comparable to the subject application (14 Rosemary Lane): these are 508 Vesta, 11 Rosemary Lane, 6 Dewbourne, 91 Old Forest Hill Rd and 405 Glenayr. Numbers 14 Rosemary Lane and 405 Glenayr Rd are both in an f15 zone. The suffix “f15” means the minimum frontage is 15 m. The others are in f18 zones where the minimum frontage is 18 m. (Please see Figure 6, above) This suggests an intention in the zoning bylaw to permit larger length variances in areas that contain larger lots. The Official Plan states that zoning is a relevant criterion for demarcation of the geographic neighbourhood<sup>4</sup> and the *Planning Act* tells me that both the Official Plan and zoning by-law are to be read together.

<sup>4</sup> The geographic neighbourhood for the purposes of this policy will be delineated by considering the context within the *Neighbourhood* in proximity to a proposed development, including zoning; prevailing dwelling type and scale; lot size and configuration; street pattern; pedestrian connectivity; and natural and human-made dividing features.

## The site context

Figure 6 also shows the location of 11 Rosemary Lane, across the street from the subject. Referring to topography, Mr. Cieciura noted that 11 Rosemary Lane had a 3 m drop from rear to front, whereas the subject property has a similar drop, but from front to rear, amplifying the impact of the height and massing of the rear deck. He argued that it has the appearance of a large second floor balcony. I agree with this observation. By contrast, the land behind 11 Rosemary Lane slopes up to Old Forest Hill Rd. A large two storey structure at the foot of this incline would have less impact on the back door neighbour.

Although the subject site is one of the largest in immediate neighbourhood, it has limitations: a grade change. In Figure 3 on page 4, I reproduce Mr. Cieciura's approximation of rear walls in the neighbourhood, which I find is a good indication of prevailing back yard massing. Mr. Rendl did not file any similar evidence. It is plain on this simple demonstration that the proposal projects beyond the line joining the rear walls of nearby properties. Of the 19 properties depicted, the only other address with variances is 22 Rosemary Lane. This owner obtained a variance of 24.29 m for both length and depth; Mr. Granovsky's requests exceeds these numbers.

I now move to the interpretative context.

## Legal and interpretive context

Under s. 45(1) of the *Planning Act*, I am to determine the purpose and intent of the Official Plan and zoning by-law. The purpose looks at what Council intends and this intention may be ascertained by considering the **total context, consisting in what words Council has chosen to use, and what Council was trying to do.**

Mr. Rendl questioned the judgement of the zoning examiner, who used the front wall of the basement as the starting point for length. He said, "For some reason the zoning examiner considers this to be the front wall of the house". This comes close to suggesting the zoning plan examiner has made a mistake. The by-law is clear.<sup>5</sup> The proper remedy if Mr. Rendl considers the examiner has erred is an application under the *Building Code Act*.

Mr. Bronskill further submitted that I should imagine the rear deck constructed with "two by fours"; suggesting that an informal structure would not attract the need for

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<sup>5</sup> 1) Portion of Building to which Building Length Applies In the Residential Zone category, building length regulations apply to all main walls of a building above and **below-ground**, excluding the footings for the building.

variances and the zoning plan examiner was being unduly technical. He suggested that the by-law assumes a flat lot, and so the zoning fails to foresee a site as sloped as the subject. This is a more nuanced objection than Mr. Rendl's; it requires me to look at the words used in the applicable zoning provision:

The zoning by-law limits a rear porch's dimensions by a formula<sup>6</sup> The porch height can be any height above the ground at the point where one steps out onto the deck, so long as there is no step up or down. As one walks away from the door, at a point 2.5 m from the rear wall, the by-law **restricts porch floor height to 1.2 m** above the "ground". For Mr. Granovsky's proposal, the portion nearest the kitchen is 3.81 m (12.5 ft) above the ground, which is compliant, since any height is permitted for nearest portions. But the plans show this porch remains at this height from 3.5 m to 5.49 m (11.5 to 18 feet) from the rear walls.

This zoning provision reads as follows:

**10.5.40.50 (4)** . . . the level of the floor of a platform, **such as a deck or balcony**, and located at or below the first storey of a residential building . . . may be no higher than 1.2 metres above the **ground** at any point below the **platform**, except where the platform is attached to . . . (C) a rear main wall, any part of the platform floor located 2.5 metres or less from the rear main wall may be no higher than the level of **the floor from which it gains access**. . . .

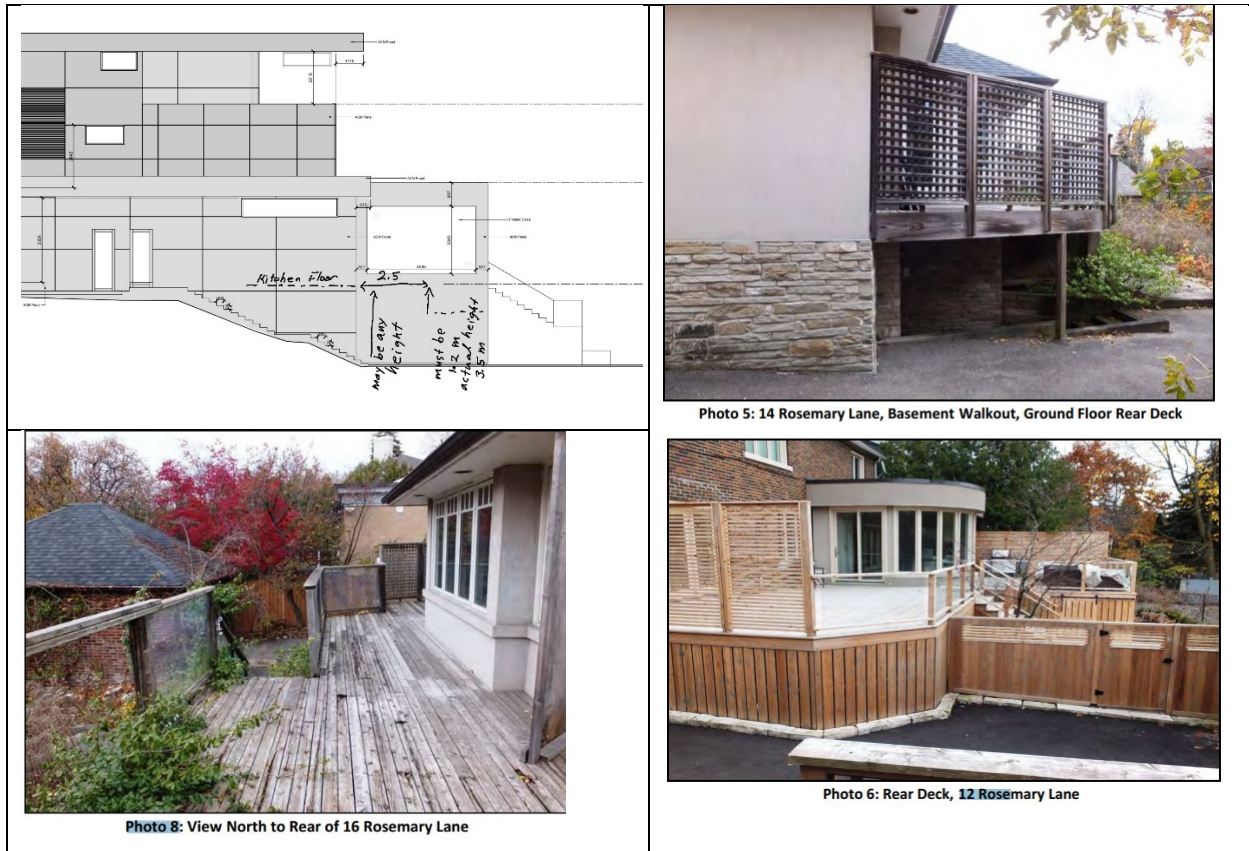
Its words are non-technical: "such as a deck or balcony", "ground", "similar structure". I find that the intention is to capture everything from a home handyperson's creation to elaborate concrete structures. I find it also foresees a non-flat site, because there is no limit on porch height for 2.5 m of the porch's depth. The purpose is to produce decks like those in the photos in Figure 7: low, ground-related and by their design not triggering an extension to either length or depth.

**Figure 7 left: Intent of "10.5.40.50 Decks, Platforms and Amenities"; left top: Photos of rear decks of 16, 12, and 14 Rosemary Lane (counter clockwise from 8 o'clock position)**

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<sup>6</sup>10.5.40.50 (4) Platforms at . . . the First Storey of a Residential Building . . . the level of the floor of a platform, **such as a deck or balcony**, [and complying with the rear yard setback, see Footnote 6] and located at or below the first storey of a residential building . . . may be no higher than 1.2 metres above the **ground** at any point below the platform, except where the platform is attached to or within 0.3 metres of:

(C) a rear main wall, any part of the platform floor located 2.5 metres or less from the rear main wall may be no higher than the level of the floor from which it gains access (from Zoning notice Nov 5, 2020, Stav Zaltzman)



The intention of the rear porch restriction is to allow a resident to walk from the kitchen to rear deck easily and safely. However, the zoning by-law does not intend that this provision be extended unreasonably and imposes a 2.5 m (8.2 feet) limit.

The zoning's intention is shown in the photos of existing neighbourhood comparables; the current decks at 14 and the two neighbours, who did not appear at the hearing. All three have limited the deck height to 1.2 m (4 feet). By so doing they can build out beyond the 8.2-foot restriction; enough to have a dining table and so on. Decks must also comply with rear yard setback restrictions.<sup>7</sup> In this respect the unenclosed space (the deck) is treated like enclosed space (the main building.)

I now turn to Mr. Rendl's "proxy numbers".

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<sup>7</sup> (2) Platforms in Relation to Building Setbacks In the Residential Zone category, a platform without main walls, such as a **deck, porch, balcony or similar structure**, attached to or within 0.3 metres of a building, must comply with the required minimum building setbacks for the zone.

Mr. Rendl said, “It [i.e., 28.45 m] gives you a somewhat **misleading impression**”.<sup>8</sup> He asked me to accept that a truer picture would limit depth to only the “enclosed space” part of the house. If this is done, he said, the [depth] number is “22.5 m (73.8 ft), “which is 3.5 m more than the maximum permitted”. The number of 22.5 is Mr. Rendl’s proxy number for depth in Figure 5, and I put in his analogous proxy numbers of 18.9, and 22.5 m for length. They fall within the ranges of granted variances found by Mr. Cieciura.

The test requires the proponent to establish the character of the neighbourhood: S. 4.1.5 (the Neighbourhoods Policy) in which the development must “fit in” physically with the surrounding neighbourhood as well as be sensitive and gradual. Specifically,

5. Development in established *Neighbourhoods* will respect and reinforce the existing physical character of each geographic neighbourhood, including in particular: . . .

c) prevailing heights, massing, scale, density and dwelling type of nearby residential properties;

The first task of the proponent is to establish the **massing and scale** of rear elevations of nearby residential properties and then further assist the decision maker by ascertaining what is “prevailing” On this I was given no evidence from Mr. Rendl, except for the photos in Figure 7.

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<sup>8</sup> . 3.858 m [the depth of the porch on the Gold side] is this wall here, which is more in the nature of a screen, uh on this side of the rear deck or balcony. But when we then, when I then look the actual depth that corresponds to the floor area within the house, it’s 22.5 m along this east wall, which is 3.5 m more than the 19 m, maximum permitted. So, the point here is, that if you just look at the numbers, . . . the number for building depth, 28.45, **I think it gives you a somewhat misleading [impression] about the actual depth of the house and the floor area contained within the house, which I think is what the intent of the by-law is to, . . . to deal with and that depth is 22.5 m. It’s not 28.45. The 28.45 is an exaggerated depth, due to the inclusion by the City of the areas I’ve outlined in red on this plan.**

Another point I think that’s relevant here is that the depth is dealing with the placement of the house and its floor area on the lot. So, the house envelope, the three-dimensional box encloses a certain amount of floor space, which is measured among other things, by FSI, and in this case the FSI is contained within this 22.8, 22.5 m length or depth along there – it’s not— my point, I guess one of the points here is that this depth does not correspond to the actual floor area or FSI of the house. It would be wrong to interpret the depth as being the numeric depth here as being a factor in the massing or density of the house, it doesn’t contribute to the floor area or the density.

And then lastly in terms of depth one of the intents of limiting how far a house can extend into a property is to make sure there is an adequate and appropriately deep and large rear yard as an outdoor amenity area. And in fact, because this is both a very deep lot this depth here does not, . . . in my, does not in any way compromise the amount of area in the rear yard that is outdoor amenity space. In fact, the balcony um adjacent to some of this depth is outdoor amenity area as well. (Rendl oral testimony).



This is also a public interest question that transcends Mr. Gold's concern about views and overlook. While the applicant can attempt to minimize the variance, it seems in this case that I am asked to equate apples with oranges when the "apple" is the variance as found from a zoning examiner, who has applied the zoning by-law in the same way as the other 26 or so length variances. Mr. Rendl, on behalf of his client, is inviting me to downplay or distort this standard application of the law in favour of Mr. Granovsky's specific planning circumstances.

I had strong evidence from Mr. Cieciura that the variances he zeroed in on, do not maintain the general intent of the Official Plan and zoning by-law. He found no other rear porch height variance was sought for any of the 402 properties in the study area. The obligation is on Mr. Granovsky to demonstrate that all of the variances are justified, not just density and height. I find that there is insufficient evidence that the length and depth sought would respect and reinforce the existing character of the neighbourhood or be minor or desirable. I also find from an analysis of 10.5.40.50 Decks, Platforms and Amenities that the intent of the zoning by-law is not maintained.

Accordingly, I dismiss Mr. Granovsky's appeal.

## **DECISION AND ORDER**

The variances are not authorized.



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Ted Yao  
Panel Chair, Toronto Local Appeal Body