Toronto Local Appeal Body

40 Orchard View Blvd, Suite 211
Toronto, Ontario M4R 1B9

Telephone: 416-392-4697
Fax: 416-696-4307
Email: tlab@toronto.ca
Website: www.toronto.ca/tlab

DECISION AND ORDER

Decision Issue Date Wednesday, April 20, 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): 2766332 ONTARIO INC.

Applicant(s): NABEEL NASSAR

Property Address/Description: 24 TREEVIEW DRIVE

Committee of Adjustment File

Number(s): 21 151618 WET 03 MV (A0250/21EYK)

TLAB Case File Number(s): 21 200863 S45 03 TLAB

Hearing date: Tuesday, March 22, 2022

Deadline Date for Closing Submissions/Undertakings:

DECISION DELIVERED BY TLAB Panel Member S. Gopikrishna

REGISTERED PARTIES AND PARTICIPANTS

Appellant	2766332 Ontario Inc.
Appellant's Legal Rep.	Arkadi Bouchelev
Applicant	Nabeel Nassar
Expert Witness	Terrance Glover

INTRODUCTION AND BACKGROUND

276322 Ontario Inc. (the Appellant) is the owner of 24 Treeview Drive, located in Municipal Ward 03 (Etobicoke- Lakeshore) in the City of Toronto. The Appellant applied for relief from the applicable Zoning By-Laws to the Committee of Adjustment (COA) to

construct a new detached dwelling with an attached garage. On July 29, 2021, the COA heard the Application, and refused it in its entirety.

The Applicants appealed the Decision to the Toronto Local Appeal Body (TLAB) on July 29, 2021, which then scheduled a Hearing on March 22, 2022.

MATTERS IN ISSUE

The following recital lists of the variances requested by the Appellants with respect to 24 Treeview Drive:

1.Section 900.6.10.(18)(C)(i), By-law 569-2013
The maximum permitted lot coverage is 33% of the lot area (169.53 m²).
The proposed dwelling will cover 33.97% of the lot area (174.5 m²).

2. Section 900.6.10.(18), By-law 569-2013 & Section 1.(a), By-law 67-1979
The maximum permitted gross floor area is 0.4 times the lot area (205.5 m²).
The proposed dwelling will have a gross floor area of 0.92 times the lot area (470.19 m²).

3. Section 10.5.40.70.(1)(B), by-law 569-2013
The minimum required front yard setback is 7.95 m.
The proposed dwelling will be located 7.65 m from the front lot line.

4. Section 10.80.40.20.(1), By-law 569-2013
The maximum permitted dwelling length is 17 m.
The proposed dwelling will have a length of 19 m.

5. Section 10.80.40.10.(4), By-law 569-2013
The maximum permitted height of the main pedestrian entrance is 1.2 m above established grade. The proposed pedestrian entrance height will be 2.74 m above established grade.

6. Section 10.80.40.10.(2)(A)(i) & (ii), By-law 569-2013
A minimum of 60% of the total width of the front and rear exterior main walls shall be less than 7 m. A total of 0% of the width of the front and rear exterior main walls are less than 7 m (100% of the walls will be 8.95 m).

7. Section 900.6.10.(18), By-law 569-2013 & Section 3, By-law 67-1979
The maximum permitted dwelling height is 7.5 m.
The proposed dwelling will have a height of 9.25 m.

8. Section 10.80.40.50.(1)(A), By-law 569-2013

The maximum permitted number of platforms at or above the second storey located on the rear main wall is 1. The proposed dwelling will have 2 platforms located at or above the second storey on the rear main wall.

9. Section 10.80.40.50.(1)(B), By-law 569-2013
The maximum permitted area of a platform at or above the second storey is 4 m². The proposed second storey rear platform will have an area of 8.84 m² and the proposed third storey rear platform will have an area of 4.13 m².

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 Hearing held on March 22, 2022, the Appellant was represented by Mr. Arkadi Bouchelev, a lawyer, and Mr. Terrence Glover, a planner. It is important to note that there were no other Parties, or Participants involved in the Appeal.

The Appellants submitted their Witness Statement to the TLAB on March 21, 2022, exactly one day before the Hearing. After informing the Appellant at the onset of the Hearing that I had visited the Site, I observed that the Witness Statement had been submitted at "literally the last minute", and expressed my disappointment at the non-adherence to the deadlines provided in the Notice of Hearing.

Mr. Glover was affirmed, and then recognized as an Expert in the discipline of land use planning.

The highlights of his evidence are as follows:

The proposal looks to redevelop the existing house into a house with an attached garage, on the first floor, with two floors of living space, above the garage. Throughout his testimony, Mr. Glover emphasized quite a few times that the house that would be developed if the Appeal were successful, would be a "market based dwelling", which he defined to be "typical of what market conditions are looking for". Through a Report issued on July 20, 2021, the City's Planning Department expressed concerns about the massing, and scale of the dwelling. They specifically objected to this proposal because the house would present as a three storeyed house, in the context of the Immediate Context (defined by the Report as "those properties that face Treeview Drive on the same block as well as the block opposite in relation to the subject site") that is dominated by one or two storey houses. Mr. Glover said that after he was retained on the project, he had specifically advised his client to make some changes to the front façade of the proposed house so that it "fit better" with what existed on the street, and opined that the house presented more as a "two and half storeyed" house, rather than a three storey house, as described in the City's Report.

I informed the Appellant's representatives that the Hearing before the TLAB is *de novo*, which in practical terms, means what happened prior to the COA Application, as well as at the COA Hearing, is immaterial, in terms of my making findings.

According to Mr. Glover, many of the requested variances are the consequence of situating the garage at the first floor level, because this effectively plays the part of the basement- in his words "what formerly happened in the garage now happens at the first floor level" . He emphasized that in order to avoid designing a reverse-slope driveway, (as per the City's guidelines to avoid the latter), the Applicant went to great lengths to design a driveway that has a positive slope, which resulted in their opting to have an integral garage with two floors of living space above.

By way of an editorial note, it is important to state that the Witness presented some evidence on their Application to injure/remove a Tree, which is not recited here. The reason behind my decision not to recite the evidence, is that I was advised at the end of the Hearing that there would be no need for the TLAB to impose a condition, regarding the trees, since the removal of trees would be addressed by By-Law 813 (Tree Protection By-law) , as part of the process to obtain a Building Permit.

He said that the proposal complied with the **Provincial Policy Statement** with specific reference to Policies 1.1.1 b, 1.4.1, & 1.4.3, "which accommodate a Market Based range and mix of residential types". In addition, the proposal is also consistent with the Policy 1.7.1 b) further encourages residential uses to respond to dynamic market-based needs and provide necessary housing supply and range of housing options for a diverse workforce.

Speaking to how the proposal satisfies the Official Plan (OP), Mr. Glover referred to Policies 1.1.3.3, 1.4.3 and 1.7, and interpreted the expression "range of housing options" to mean "higher-end", or luxurious housing. He reiterated quite a few times, that since the OP looks to implement the PPS at the municipal level, it is important to consider the entire gamut of housing, including "higher-end" housing.

Mr. Glover then referred to Policy 2.2.6.1 of the Growth Plan, which discusses the need to "diversify their overall stock across the municipality", and then interpreted it to mean that it was important to focus on other varieties, besides affordable housing.

He then discussed how the Official Plan (OP) implemented the Higher Level Provincial Policies at the Municipal Level, and then discussed Policy 2.1, before interpreting it to reiterate the need for "luxury housing". Mr. Glover interpreted Policy 2.3.1 to mean that one couldn't build something "that was totally outside the character of the neighbourhood". He specifically referred to 2.3.1 (d), and interpreted "clear windows, and entrances that allow views" to mean "eyes on the street", and discussed the importance of building houses that were safe for the residents, through taking precautions to prevent crime.

Mr. Glover next discussed Policy 4.1.5, with an emphasis on" respecting the prevailing character" of the neighbourhood. He said that a house could be built if its characteristics were present in sufficiently large numbers in the neighbourhood, even if it didn't belong to the "prevailing type". He referred to other houses on Treeview Drive, which had the same proposed development at 24 Treeview Drive, such as 53 Treeview, 8 Treeview, and 34 Treeview Drive "to name a few, as well and many other examples throughout the surrounding neighbourhood". I pointed out to Mr. Glover that the "Prevailing Type" was specific to a given "geographic Neighbourhood", which had to be established on the basis of various parameters, as defined in Section 4.1.5 of the OP, before asking him to identify his Geographic Neighbourhood. Mr. Glover attempted to identify the section in the OP where the definition could be found, but couldn't identify the Section. He then said that when he referred to the "neighbourhood", he meant the "Geographic Neighbourhood", before adding that he was going to refer to the "Geographic Neighbourhood, as well as what lay beyond it". When Mr. Bouchelev read out the Section on the "prevailing type" later to Mr. Glover, and asked him how this definition applied to the proposal, the latter said that the "general neighbourhood" consisted of the "Immediate Blocks" on the Street that the proposal is located on, and added that if one looked for "what existed 4-5 blocks beyond the proposal, it became the "Surrounding Neighbourhood".

Mr. Glover described the "prevailing neighbourhood" as being is in transition from being an older post war-time housing development, to a modern market-based neighbourhood that supports both older and newer uses, architecture, and designed".

He then asserted the following to demonstrate that the proposal respected the prevailing type in the neighbourhood:

- The proposed dwelling is similar in style, relative height, massing, and streetscape as other existing dwellings along the same street and within the surrounding neighbourhood.
- The proposed dwelling is similar in style, that fits neatly within the existing

streetscape, and has improved glazing (windows) in the (revised) front facade design, that provides for proposed ground floor uses, clear windows and entrances that allow improved views from adjacent streets

- The proposed single detached dwelling is similar in scale and design to other dwelling within the area, and has minor characteristics of a walk-up design.
- The proposed dwelling is lower than four storeys (as is permitted if the building was a walk-up apartment). Mr. Glover added that this is not an apartment building; however it's walk-up design and massing is appropriate given the context of the neighbourhood, where similar massing already exists.

He asserted that many single family redevelopments (similar to the subject property) have been approved and either built or under construction, before expressing "confusion" why the City has taken a contrary stance on this particular redevelopment.

In response to another question from me about how to identify the prevailing type for the purposes of Policy 4.1.5, Mr. Glover reiterated" that some geographic neighbourhoods contain a mix of physical characters". In such cases, the direction to respect and reinforce the prevailing physical character will not preclude development whose physical characteristics are not the most frequently occurring but do not existing substantial numbers within the geographic neighbourhood , provided that the physical characteristics of the proposed development are materially consistent with the physical character of the geographic neighbourhood, and already have a "significant" presence on properties located in the immediate context or abutting the same street in the immediately adjacent blocks) within the geographic neighbourhood'. He conceded that "admittedly, the proposed dwelling character may not be the most occurring design" but insisted that "its design is well within the character of existing and established buildings within the neighbourhood and on the same street".

I repeated my questions about how to identify a Geographic Neighbourhood, and the prevailing type, to which the response was that the prevailing type consisted of " one storey, the two storey and a third storey" houses. When I told Mr. Glover that I found the categorization was so broad that "it captured just about everything", he said that the "process of establishing the prevailing type" was simply not a matter of height, or storeys, but also usability, massing etc" and showed me pictures of "comparators", of which there were six examples – 4 Treeview, 8 Treeview, 34 Treeview, 53 Treeview, 76 Treeview and 34 Robindale, "besides others". When asked why he didn't bring forward more examples, Mr. Glover said that what had been shown was "sufficient to get the point across". When asked how many blocks did he get his examples from, and how many houses existed in that areas, he said that he looked at "2-3 blocks from the Site", which translated into "200 houses".

On the basis of this evidence, Mr. Glover concluded that the proposal fulfilled the intent and purpose of the Official Plan.

He then discussed how the proposal satisfied the test of fulfilling the intent and purpose of the By-Law. Mr. Glover discussed the City's perspective on actively discouraging reverse slope garages, and said that "Except for apartment buildings and larger townhouse developments with common underground garages, driveways to below grade garages that are integral to residences will be discouraged'. Alluding to the proposal, he said " As included in the proposed subject property design, the garage has been kept at grade, thus triggering some of the requested variances on floor interpretation and height. As a result, the proposed redevelopment respected this policy in its design, but has also triggered a double edged sword, as minor variances are then required", before declaring that "The applicant should not be penalized for respecting the City's own redevelopment policies".

Mr. Glover stated that "unless a monotonous development style is the purpose, slight deviation from the zoning requirements should be expected and encouraged to a limited extent". He reiterated and emphasized that in the case of the subject redevelopment, "none of the requested variances is offensive to the current Zoning By-law, as each variance is only marginally outside the current by-law permissions, and those that are more of a deviation are a direct result of the applicant attempting to respect City Official Plan policies that then trigger variances in floor/basement interpretation, entry stair and building height, and number/levels of platforms". He reiterated that "the applicant should not be penalized for attempting to meet City Official Plan policies, which are triggered by zoning definitions that have not considered the type of proposed development". Furthermore, he asserted that the proposed redevelopment is "within the existing character of the neighbourhood, as seen through the numerous examples, and witnessed" when one is physically present in the area.

Based on the above evidence, Mr. Glover concluded that the proposal satisfied the test of fulfilling the intent and purpose of the Zoning By-law.

It is to be noted that the Witness Statement did not have any reference to how the proposal satisfied the test of appropriate development, and the test minor, though the conclusion asserted that the proposal satisfied all the four tests under Section 45.1 of the OP.

When I asked Mr. Glover about how the proposal satisfies the test of appropriate development, and minor, he said that "it adds to the number of market based units", and satisfies the principles of "good development", and therefore meets the test of "appropriate development". With respect to the test of minor, he said that many of the variances involved "small deviations" from what is of right, and consequently met the test of minor. He reiterated how there would have been fewer variances, if the first floor did not have to play the part of the first floor. He

reiterated that the "variances are marginally outside what is of right (20-30% variance though he wasn't sure of a numerical number), and many of these variances are technical because here the first floor has to be treated as the ground floor.

At the end, in response to Mr. Bouchelev's asking a question of clarification about the prevailing type, Mr. Glover said that "war time one or two storeys are the prevailing type", before adding that "bigger 2.5- 3 storey buildings are becoming common, and therefore the new buildings respect what already exists, because it is a "market based" house".

When asked about how one determined if a proposal respected what exists in the community, Mr. Glover spoke to the need to "fit in" by not standing out" such as when "something was painted pink, or was painted like the Canadian flag".

Mr. Bouchelev made brief closing remarks asking that the Appeal be allowed, and the requested variances be approved, subject to a condition that required the Appellant to build in substantial conformity with the Plans and Elevations. When he spoke about the need to remove one of the submitted drawings because it was redundant, I asked Mr. Bouchelev to make a submission to the TLAB consisting of the correct Plans and Elevations, alongside the list of requested variances, with suggested wording of the conditions, with an explicit reference to the details of the Plans and Elevations (e.g. who prepared the drawings, and when were they prepared).

I thanked the Appellant's representatives for their evidence and submissions respectively, and asked Mr. Bouchelev to complete the submission within a two week period after the Hearing.

On March 25, 2022, the TLAB Staff forwarded submissions made by Mr. Bouchelev, as per my instructions in the aforementioned paragraphs.

ANALYSIS, FINDINGS, REASONS

I begin my analysis by noting the lack of the submission of a Witness Statement by the Appellant on or before the requisite deadline provided in the Notice of Hearing, because it was received just a day before the Hearing. While I acknowledge that the absence of other Parties in this Proceeding can be interpreted to mean that there is no prejudice, it is important for the Presiding Member read the Witness Statement, and inform themselves of salient features, that need attention at the time of the Site Visit- in other words, the value add of a Witness Statement is best realized if it is read *before* (my emphasis) the Site Visit, rather than after the Site Visit.

Notwithstanding the inconvenience caused by the above issues, there are no negative inferences, or findings made regarding the above.

By way of an editorial note, my analysis uses the expressions “the proposal” and “requested variances” interchangeably because all the evidence focused on the totality of the variances, as opposed to individual variances.

The evidence provided in response to the Higher Level Provincial Policies, as well as the Official Plan, strongly emphasized the need to create “high end housing”, or “luxury housing”- notwithstanding the unusual perspective to establish the nexus established between the proposal and the higher level Policies, I find that the proposal satisfies the higher level Provincial Policies . The other evidence provided in this context about “market based dwellings” is not taken into consideration because this feature, while asserted on numerous occasions, was neither explained, nor demonstrated by way of evidence. There was no clear explanation provided about what these “market” forces are, and how do they manifest themselves in the creation of new dwellings, such as what is proposed by the Appellant.

With respect to the Official Plan, I agree that there is enough change in the community that the intent of Policy 2.1.3 is fulfilled- however, this finding is the result of my site visit rather than photographic evidence brought forward by the Appellant, which was restricted to a total of six buildings, mainly on Treeview Avenue, and one building on Robindale. There were a few other pictures that purportedly represented change in the “Surrounding Area”, but this cannot be ascertained since the addresses of these houses were not provided. Given the paucity of pertinent photographs in the photo tour of the community, I am not sure that a finding supporting the proposal’s fulfilling the intent of Policy 2.3.1 could have been made on the basis of the photographs alone.

It is important to note that the evidence did not even identify, let alone explore Policy 3.1.2 (Built form Policy), which begins with “*Development will be located and organized to fit with its existing and planned context”* before explaining how the “fit” can be established. Of crucial importance in this Section is Policy 3.1.2.3 (recited below) which discusses how the proposal will safeguard the privacy of neighbours living in nearby buildings:

“*Development will protect privacy within adjacent buildings by providing setbacks and separation distances from neighbouring properties and adjacent building walls containing windows*”

The evidence provided to me at the Hearing was striking for its abstaining from the very discussion of the concept of privacy.

The important aspect of Policy 4.1.5 of the OP is to establish the “prevailing type”, because the proposal needs to result in a building which respects the prevailing type. Before describing the reasons for my findings, I would like to identify a few important concepts, all of which can be found in Policy 4.1.5:

*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 **prevailing** building type and physical character of a geographic neighbourhood will be determined by the most frequently occurring form of development in that neighbourhood.*

***"…..Immediate context,** or abutting the same street in the immediately adjacent block(s) within the geographic neighbourhood*.

Notwithstanding that these concepts are the bread and butter of Policy 4.1.5, I am disappointed that the evidence did not provide a definition of any of these concepts, let alone utilize them for evidentiary purposes.

In other words, the minimum analysis required for a meaningful application of the aforementioned concepts includes:

- Establishment of a General Neighbourhood based on the parameters listed in Section 4.1.5
- Answering the question if there are differences between different parts of the General Neighbourhood, in which case identification of the Immediate Context becomes necessary. An Immediate Context can then be identified through the definition provided on the previous page.
- Completion of a counting exercise of the houses in the Immediate Context, or General Neighbourhood (as the case may be), on the basis of a pertinent parameter, to identify the "Prevailing Type" in the context of a General Neighbourhood, or Immediate Context, as the case may be. The expression "*will be determined by the most frequently occurring form of development in that neighbourhood"* definitively establishes that a counting exercise is necessary to enumerate the various types of development, of which the "prevailing type" is identified by virtue of being the most frequently occurring, or the "mode", to borrow a the terminology from statistics.

As stated earlier, the evidence asserted that there many examples of similar development, but speciifcally identified only six examples of such houses, out of "approximately 200 houses". I cannot determine whether the collection of 200 houses is the Geographic Neighbourhood, or the Immediate Context; while the evidence was clear that the sample of 6 houses is not the prevailing type, it is unclear as to how these houses "respect the prevailing type", because the latter has not been identified through an enumeration process. In addition, 6 out of 200 houses cannot be interpreted to mean "exist in substantial numbers" or "significant presence" in the following sentence excerpted from the OP below. By way of an editorial note, the dictionary meanings of these words appear after the recitation of the sentence:

In such cases, the direction to respect and reinforce the prevailing physical character will not preclude development whose physical characteristics are not the most frequently occurring but exist in substantial numbers within the geographic neighbourhood, provided that the physical characteristics of the proposed development are materially consistent with the physical character of the geographic neighbourhood, and already have a "significant" presence on properties located in the immediate context or abutting the same street in the immediately adjacent blocks) within the geographic neighbourhood

According to the Merriam-Webster dictionary, a popular standard dictionary in North America:

"substantial" means "*considerable in quantity, significantly great*."

"significant" means "*of a noticeably or measurably large amount"* or "*probably caused by something other than mere chance*"

I find that 6 out of 200 houses, satisfies neither the meaning of "substantial", nor "significant" on the basis of meanings found in the Merriam -Webster dictionary.

I now return to the evidence respecting the expression "prevailing type", which is of key importance to this entire discussion. Despite trying multiple times to obtain an answer from the Witness about the "prevailing type", I was not successful in obtaining a succinct response, or even a confirmation of the definition provided in the OP as being the "*the most frequently occurring*". The closest I came to an answer was that the prevailing type consists of "one, two and three storey buildings", which as I pointed out by way of a question to the Witness, is so "broad" that it becomes a catchall. In response to a question from Counsel at the end of the Hearing, a different answer "single floored, and double floored wartime style houses" were asserted to be the "prevailing type". I find that both the answers are guesses, not demonstrated through a counting exercise, and contradict each other- I find that these definitions cannot be utilized for decision making purposes.

I note that the evidence used the expressions General Neighbourhood" ,"Neighb ourhood" and "Immediate Context" interchangeably, though they mean very different things, as illustrated in the definitions provided earlier in this Section. Regrettably, my efforts to clarify the differences by asking probing questions were unsuccessful.

As a result of an absence of any discussion about the impact of the proposal through a discussion of Section 3.1.2, and the prevailing confusion with respect to all components of Section 4.1.5, I find that the proposal does not satisfy the intent and purpose of the Official Plan.

With respect to the test of fulfilling the intent and purpose of the Zoning By-law, it is important to note that the demonstrable performance standard for the dwelling as a whole, is its ability to respect and reinforce what exists in the community, without causing any adverse impacts on its neighbours. The evidence did not focus on the impact of the proposal on its neighbours- the evidence, as stated earlier, steers clear of

the issue of establishing the overall impact of the proposal on the neighbourhood, with specific reference to its neighbours. As a result, there is barely an acknowledgement of the concepts of adverse impact, or unacceptable adverse impact, let alone an explication or an exploration of these important acceptance. The lacuna of information about these questions fortifies my concerns about the overall impact of the proposal on the neighbourhood, if approved.

I also note that with respect to the test respecting the Zoning By-law, the evidence focused on why many of the variances would not have been required, if the garage was not located at the first floor level. I acknowledge that the design of the house is the consequence of the Appellants' efforts to situate the garage such it would not have a reverse slope. However, efforts made by the Appellant to avoid a garage with a reverse slope does not obviate the need to demonstrate how their design satisfies pertinent performance standards, which is key to demonstrating the proposal satisfies the intent and purpose of the pertinent Zoning By-law.

I am confused by the implications of the Appellants' statement that they "should not be penalized for respecting the City's own redevelopment policies", by way of evidence with respect to the tests focusing on the Official Plan, or the Zoning By-law. No favours are owed to any Applicant/Appellant for merely following the redevelopment policies because this is what is expected of any good, sound proposal that adheres to proven planning principles. In addition, allegations of being penalized cannot constitute evidence to demonstrate that the intent and purpose of the Zoning By-law have been fulfilled.

While I don't take issue with the evidence interpreting a number of expressions, and contexts to argue that "high end housing" ought to be created, I would be appalled at the thought of such housing being created without a discussion of its impact on neighbouring properties- it would be trite to state that neither prosperity, privilege, nor pedigree entitle anybody to build luxury housing, without any consideration whatsoever about the impact on their neighbours.

Lastly, while the evidence touched on a couple of definitions in Zoning By-law 569-2013, there was no reference whatsoever to the application, or terminology to definitions from By-Law 67-1979, notwithstanding its being applicable to two of the requested variances.

As a result, I find that the proposal does not satisfy the test of fulfilling the intent and purpose of the Zoning By-laws.

I note that evidence regarding the test of minor, and appropriate evidence was proffered only in response to a pointed question from me. I was surprised by the lack of discussion in the Witness Statement about these two tests, since each of the four tests under Section 45.1 has equal weight, and needs to be discussed individually to demonstrate that the proposal has passed all tests under Section 45.1. The mutual exclusivity of these four tests means that findings about the proposal's ability to satisfy a given test, cannot automatically become the basis for making a finding that a different test has been satisfied. I find that both the Expert Witness Statement, and the evidence

have to specifically discuss each of the four tests, and demonstrate that the test in question has been satisfied.

In response to my question about fulfilling the test of "appropriate development", I find that the evidence concentrated on "market" driven housing. As stated earlier, I don't take issue with the contention of the development of "high end housing"; however, the nexus between the concepts of "appropriate development", "market" driven housing, and "high end housing" has not been established by the evidence. Consequently, I find that the proposal does not fulfill the test of appropriate development.

The test of "minor" concentrates on the qualitative impact of the proposal, of which protecting the privacy of the neighbours is a crucial component. As stated earlier, the issues of "impact" or "privacy" were not canvassed, notwithstanding this proposal's being contemplated in a developed, urban area, where privacy concerns are legitimate. I reiterate that the expression "undue adverse impact" was never uttered throughout the Hearing, let alone be discussed, or applied to this proposal. The evidence concentrated on the change in numerical percentages to the requested variances, without establishing the threshold to identify "minor"- in response to a question about how the Witness had concluded that the numerical deviations from what is of right were "minor", the answer given was that none of the variances were within the 20-30% range from what is "as of right". The evidence did not establish how this threshold was arrived at, or how reasonable is this threshold useful to determine "minor". In the absence of any pertinent evidence, I find that the proposal does not satisfy the minor.

Given that the proposal and requested variances have not satisfied any component of the four part test under Section 45.1 of the Planning Act, individually or collectively, I find that the variances have to be refused. As a result, I confirm the decision made by the Committee of Adjustment with respect to 24 Treeview Drive on June 29, 2021, and refuse the Appeal.

DECISION AND ORDER

1. The Appeal respecting 24 Treeview Drive is refused, and the decision of the Committee of Adjustment, respecting 24 Treeview Drive, dated July 29, 2021 is confirmed.

2. All the requested variances, listed below, are refused:

1. Section 900.6.10.(18)(C)(i), By-law 569-2013
The maximum permitted lot coverage is 33% of the lot area (169.53 m²).
The proposed dwelling will cover 33.97% of the lot area (174.5 m²).

2**. Section 900.6.10.(18), By-law 569-2013 & Section 1.(a), By-law 67-1979**
The maximum permitted gross floor area is 0.4 times the lot area (205.5 m²).

The proposed dwelling will have a gross floor area of 0.92 times the lot area (470.19 m^2).

3. Section 10.5.40.70.(1)(B), by-law 569-2013
The minimum required front yard setback is 7.95 m.
The proposed dwelling will be located 7.65 m from the front lot line.

4. Section 10.80.40.20.(1), By-law 569-2013
The maximum permitted dwelling length is 17 m.
The proposed dwelling will have a length of 19 m.

5. Section 10.80.40.10.(4), By-law 569-2013
The maximum permitted height of the main pedestrian entrance is 1.2 m above established grade. The proposed pedestrian entrance height will be 2.74 m above established grade.

6. Section 10.80.40.10.(2)(A)(i) & (ii), By-law 569-2013
A minimum of 60% of the total width of the front and rear exterior main walls shall be less than 7 m. A total of 0% of the width of the front and rear exterior main walls are less than 7 m (100% of the walls will be 8.95 m).

7. Section 900.6.10.(18), By-law 569-2013 & Section 3, By-law 67-1979
The maximum permitted dwelling height is 7.5 m.
The proposed dwelling will have a height of 9.25 m.

8. Section 10.80.40.50.(1)(A), By-law 569-2013
The maximum permitted number of platforms at or above the second storey located on the rear main wall is 1. The proposed dwelling will have 2 platforms located at or above the second storey on the rear main wall.

9. Section 10.80.40.50.(1)(B), By-law 569-2013
The maximum permitted area of a platform at or above the second storey is 4 m^2. The proposed second storey rear platform will have an area of 8.84 m^2 and the proposed third storey rear platform will have an area of 4.13 m^2.

So orders the Toronto Local Appeal Body

X

S. Gopikrishna
Panel Chair, Toronto Local Appeal Body