

# DECISION AND ORDER

**Decision Issue Date**      **Wednesday, June 29, 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): 661 BERESFORD AVENUE LTD.

Applicant(s): C2 PLANNING LAND USE PLANNERS

Property Address/Description: 661 BERESFORD AVENUE

Committee of Adjustment File

Number(s): 21 133382 STE 04 MV (A0412/21TEY)

**TLAB Case File Number(s): 21 221358 S45 04 TLAB**

**Hearing date: June 24, 2022**

**DECISION DELIVERED BY TLAB Panel Member G. Swinkin**

## REGISTERED PARTIES AND PARTICIPANTS

Appellant	661 Beresford Avenue Ltd.
Appellant's Legal Rep	Ian Flett
Applicant	C2 Planning Land Use Planners
Participant	Mayra Cilia
Expert Witness	Christian Chan

## **INTRODUCTION**

The matter on appeal to the Toronto Local Appeal Body (the “Tribunal”) in this instance concerns the property municipally known as 661 Beresford Avenue (the “Property”), which is owned by 661 Beresford Avenue Ltd. (the “Owner”).

The Property is presently improved with a modest and aged single detached dwelling with a garage in the rear yard accessed by a driveway on the south side of the Property. The Owner wishes to demolish the existing dwelling and and garage and replace it with a three storey structure containing four dwelling units. This type of structure is defined under Zoning By-law 569-2013 (the Zoning By-law”) as a fourplex.

The Property is zoned within the RM (Residential Multiple) zoning category. That zone category allows for multiple unit residential buildings, subject to a regulatory control on the number of units. The full zone label applicable to the Property is RM (f12.0;u2;d0.8)(x252). This zone label permits the types of dwellings authorized for the RM zone, which includes multiple unit buildings (including a fourplex), requires a minimum lot frontage of 12 metres (“m”), limits the number of dwelling units to two and limits density to 0.8 Floor Space Index (being the ratio of gross floor to lot area).

The redevelopment proposal would require a number of variances from the provisions of the Zoning By-law. Consequently, the Owner made application to the Committee of Adjustment (the “Committee”) for that purpose.

The requested variances from the Zoning By-law are as follows:

- 1.** Chapter 10.5.40.50.(2), By-law 569-2013  
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 m of a building, must comply with the required minimum 2.4 m building setbacks.  
The rear third storey balcony platform will be located 1.87 m from the north side lot line.
  
- 2.** Chapter 10.5.40.60.(1)(A)(i), By-law 569-2013  
A platform without main walls, attached to or less than 0.3 m from a building, with a floor no higher than the first floor of the building above established grade may encroach into the required front yard setback 1.73 m if it is no closer to a side lot line than the required side yard setback (2.4 m).  
The front lower basement patio will encroach 1.77 m into the required front yard setback.
  
- 3.** Chapter 10.5.40.60.(3)(A)(iii), By-law 569-2013  
Exterior stairs providing pedestrian access to a building or structure may encroach into a required building setback if the stairs are no closer to a lot line

than 0.6 m.

The front porch stairs will be located 0.17 m from the front (west) lot line.

4. Chapter 10.5.50.10.(3)(A), By-law 569-2013  
A minimum of 50% (124.46 m<sup>2</sup>) of the rear yard must be maintained as soft landscaping.  
In this case, 34.85% (86.74 m<sup>2</sup>) of the rear yard will be maintained as soft landscaping.
  
5. Chapter 10.80.40.40.(1)(A), By-law 569-2013  
The maximum permitted floor space index of a fourplex is 0.8 times the area of the lot (365.84 m<sup>2</sup>).  
The fourplex will have a floor space index equal to 0.85 times the area of the lot (389.55 m<sup>2</sup>).
  
6. Chapter 10.80.40.70.(1), By-law 569-2013  
The minimum required front yard setback is 3.46 m.  
The fourplex will be located 2.25 m from the front (west) lot line.
  
7. Chapter 10.80.40.70.(3)(D), By-law 569-2013  
The minimum required side yard setback is 2.4 m.  
The fourplex will be located 0.45 m from the north side lot line.
  
8. Chapter 10.80.20.40.(1)(E)(ii), By-law 569-2013  
A dwelling unit is permitted in a fourplex if the zone label has a numerical value of 4 or greater following the letter "u" in the zone label.  
In this case, the dwelling units will be located in a fourplex with a numerical value of 2 following the letter "u" in the zone label and a fourplex is not a permitted building type on the lot.
  
9. Chapter 10.5.40.60.(3)(A)(iii), By-law 569-2013  
Exterior stairs providing pedestrian access to a building or structure may encroach into a required building setback if the stairs are no closer to a lot line than 0.6 m.  
The front basement walkout stairs will be located 0.17 m from the front (west) lot line.

**10. Chapter 10.5.50.10.(1)(D), By-law 569-2013**

A minimum of 75% (5.82 m<sup>2</sup>) of the required front yard landscaped open space shall be in the form of soft landscaping.

In this case, 74.59% (5.79 m<sup>2</sup>) of the required front yard landscaped open space will be in the form of soft landscaping.

**11. Chapter 200.5.10.1.(1), By-law 569-2013**

A minimum of four parking spaces are required to be provided. In this case, three parking spaces will be provided.

The Committee heard the application on September 15, 2021 and, by a vote of 3 to 2, refused to grant the requested variances.

The Owner appealed that decision to the Tribunal.

## **BACKGROUND**

Beresford Avenue is an established street within a neighbourhood of mixed low density residential dwellings. The area is known as Neighbourhood 89 within Runnymede/Bloor West Village. Beresford Avenue runs north/south parallel to, and west of, Runnymede Road. The Property lies a short distance south of Dundas Street West. Both Dundas Street West, a major arterial road, and Runnymede Road, a minor arterial road, are served by public transit, which routes connect to the subway system.

As is the case with many neighbourhoods in Toronto, this neighbourhood is experiencing renewal through redevelopment of properties, examples of which can be seen in the form of larger, and more architecturally varied, dwelling structures throughout the area.

A detailed explanation of the neighbourhood context and a relevant neighbourhood study was undertaken by the Owner's land use planning consultant, Christian Chan. Mr. Chan was retained by the Owner prior to the application to the Committee and he prepared and presented the application to the Committee.

Mr. Chan was called by the Owner's counsel to give evidence in this proceeding. He was qualified by the Tribunal, based upon his training and experience, to give opinion evidence on land use planning matters in this hearing. His evidence was comprehensive and persuasive. Although the Tribunal had a brief Participant Statement from the neighbour to the south, Mayra Cilia (who was not available to be present for the hearing), Mr. Chan was the sole person to provide evidence in the proceeding. His evidence was well researched and credible and the Tribunal put great reliance on it. The extensive Document Book was taken in as Exhibit 1 and Mr. Chan's Witness Statement was taken in as Exhibit 2.

## JURISDICTION

### Provincial Policy – S. 3 of the *Planning Act*

A decision of the Tribunal must be consistent with the 2020 Provincial Policy Statement ('PPS') and conform to the Growth Plan for the Greater Golden Horseshoe ('Growth Plan').

### Variance – S. 45(1) of the *Planning Act*

In considering the applications for variances from the Zoning By-laws, the Tribunal must be satisfied that the application meets 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

Mr. Chan advised of his site visits and the nature of the research and analysis which he had undertaken.

Mr. Chan summarized the intended development as a three-storey residential fourplex with a front porch, a second storey balcony on the front façade, a front basement walkout, a rear basement level patio, a rear ground floor deck, and a rear second and third storey balcony. He advised that the lot has an area of 457.30m<sup>2</sup>. The proposed total floor area is 503.11m<sup>2</sup>, which figure includes the basement and platform areas. The gross floor area as calculated in accordance with the Zoning by-law (and excludes basement floor area) results in a total Floor Space Index ("FSI") of 0.85 times the lot area. The proposed floor area of the individual dwelling units ranges from 102.7 m<sup>2</sup> to 113.8m<sup>2</sup>. The three-storey building will have a height of 11m and is compliant with the overall permitted height in the Zoning by-law. Three open air parking spaces are to be provided in the rear yard, with access through the driveway adjacent to the southern lot line. The driveway and the parking area is to be constructed using pavers so as to be water permeable and reduce off-site drainage.

Mr. Chan advised that prior to the Committee hearing City Planning and Transportation Services Staff were consulted extensively on the proposal, and after alteration of the design by elimination of a proposed roof deck and stair enclosure

leading to it, had no objections to the application.

In accordance with the direction in Policy 4.1.4 of the City Official Plan (“OP”), Mr. Chan outlined a *Geographic Neighbourhood*. The *Geographic Neighbourhood* comprises the *Broader Context* bounded by Annette Street to the south, Jane Street to the west, Runnymede Road to the east, and Dundas Street West to the north. The *Immediate Context* and *Adjacent Block* are composed of the two segments of Beresford Avenue which run between Annette Street and Dundas Street West and are bisected by St. John’s Road. He advised that this Geographic Neighbourhood has primarily one to two storey dwellings which are typically detached or semi-detached, but that there are three storey buildings which are becoming increasingly present due to the redevelopment activity which is occurring. The zoning by-law permits heights of 11m, so three-storey buildings on narrow lots are becoming common, particularly associated with a number of lot splits that have occurred recently.

Mr. Chan’s observation and research indicates to him that there are a number of narrow lots in the Geographic Neighbourhood having a frontage of less than 5m. Under the current zoning, these lots may accommodate structures having two dwelling units. The relevance of this to him is that as the Property has a frontage of 9.75m, it could be the subject of a lot split and structures accommodating an aggregate of four units could be created.

Despite the fact that the zoning label indicates a required minimum frontage of 12m, similar to the circumstance with the Property, Mr. Chan advised that most properties in the broader neighbourhood do not comply with this standard.

#### Planning Policy and Policy Direction

Mr. Chan directed the Tribunal to the relevant Provincial planning policies applicable to this proposal and to certain initiatives already enacted by City Council and which are in gestation, which he is of the view bear directly upon the issues before the Tribunal in this matter.

He asserted that the PPS and the Growth Plan identify broad planning policies for development in urban areas, including the promotion of compact urban form through the intensification of existing urban areas. The intent is to better use land and infrastructure to avoid the outward expansion of our communities. Policies 1.1.3.3, 1.1.3.4 and 1.4.3 of the PPS, and the related policies in the Growth Plan (Policies 2.2.1, 2.2.2, 2.2.6, 4.2, 5.1, and 5.2 are relevant to the proposed development). These specifically will be addressed in more detail further on in this Decision.

It was his opinion that the proposal provides additional housing options in an appropriate location in the neighbourhood and maintains the intent of the Draft Multiplex Official Plan Amendment proposed by City Staff, and the Council-Approved Parking Standards By-law amendment which removes minimum parking space requirements for fourplexes. In his view, the proposal is an example of compact urban form providing

gentle intensification in an existing urban area. The proposal contributes to the avoidance of the outward expansion of our communities and will be transit supportive.

With respect to the matter of parking space requirements for fourplexes, Mr. Chan informed the Tribunal that City Council on February 3, 2022 enacted By-law 89-2022, which alters parking standards prescribed under the Zoning By-law and that this amendment to the Zoning By-law has the effect of eliminating any minimum on-site parking supply in connection with use of the Property for a fourplex. As the by-law has been appealed and is pending a hearing at the Ontario Land Tribunal, its provisions are not yet in effect but may become so in the near future and at a minimum represents a clear expression of Council's policy direction.

Mr Chan provided background to a recent planning initiative specifically addressing the matter of multiplex development and a draft Official Plan Amendment which has been prepared by City Planning staff. This emerges from the Expanding Housing Options in Neighbourhoods (EHON) study which was undertaken by the Planning Department at the direction of Council. The draft official plan amendment was released in May, 2022 for consultation purposes. The canvas of the issues in that study was directly germane to the matter before the Tribunal in this appeal. The gist of the Study is that the City's present official planning policy text creates inhibitors to the development of multiplexes in Neighbourhoods designated lands and that this undermines the City's intention to encourage what is referred to as "the missing middle" housing.

In November of 2021, the Chief Planner produced an interim report on the initiative. In it, he says that the Multiplex study is part of the Expanding Housing Options in Neighbourhoods initiative, intended to support the construction of a range of low-rise housing across the City's low-rise neighbourhoods, increasing both the variety and type of housing available in these areas. The scope of this study includes multiplexes - buildings with two, three, and four units - and low-rise apartment buildings.

This study on expanding Multiplex housing permissions relates to a number of City and Provincial policy objectives to provide a full range of housing options to Torontonians, in a form that makes efficient use of land, infrastructure, and existing services. The report indicates that these low-rise housing forms are compatible with the Official Plan's objective that physical change to Neighbourhoods will be sensitive, gradual, and fit the existing physical character.

The report advises that areas designated as Neighbourhoods make up approximately 35% of Toronto's total land area. Currently, about 70% of the lands designated Neighbourhoods have a zoning permission to allow only detached houses and a secondary suite. It goes on to state that allowing a greater variety of housing to be built across the city is a critical part of addressing Toronto's housing needs, providing more housing options in more locations for a range of household structures, for people at different ages and incomes, for people to move within their current neighbourhoods, and for new residents to find a suitable home.

The report specifically references policies in the PPS. In particular, Policy 1.4.3 b) of the PPS which directs planning authorities to permit and facilitate: 1. all housing

options required to meet the social, health, economic and well-being requirements of current and future residents, including special needs requirements and needs arising from demographic changes and employment opportunities; and

2. all types of residential intensification, including additional residential units, and redevelopment in accordance with Policy 1.1.3.3. Policy 1.1.3.3 directs planning authorities to identify appropriate locations and promote opportunities for transit supportive development, accommodating a significant supply and range of housing options through intensification and redevelopment where this can be accommodated taking into account existing building stock or areas, including brownfield sites and the availability of suitable existing or planned infrastructure and public service facilities required to accommodate projected needs. Other policies relating to new housing and residential intensification include: Policy 1.4.3 d) promoting densities for new housing which efficiently use land, resources, infrastructure and public service facilities, and support the use of active transportation and transit in areas where it exists or is to be developed; and Policy 1.4.3 f) establishing development standards for residential intensification which minimize the cost of housing and facilitate compact form, while maintaining appropriate levels of public health and safety.

The discussion in the report then turns to the City OP. It observes that the Neighbourhoods, which comprise 35.4% of the city's land area, are described as "stable but not static", with some physical change expected over time. A key objective of the Plan is that new development be sensitive, gradual and "fit" the existing physical character to respect and reinforce the general physical patterns in a Neighbourhood. Policy 4.1.5 further specifies that proposed development within a Neighbourhood will be materially consistent with the prevailing physical character of properties in both the broader and immediate contexts.

The report then steps back to consider the City's Official Plan as a comprehensive, cohesive, and integrated document which is intended to be read and applied as a whole. The Plan contains supportive language and policies regarding the provision of a range of housing types, including multiplex housing, across the City and within neighbourhoods. Other sections and policies of the Official Plan can, however, be interpreted as contrasting or even contradictory to the Plan's overall housing policy direction by preventing the construction of certain housing types where a range of housing types, including multiplex housing, are not already present as part of an area's prevailing built context. In effect, while the low scale neighbourhoods are intended primarily for residential development up to four storeys, the prevailing built context policies create sub categories where the evolution of housing is cautiously restricted to only what already exists. The weight given to physical form limits achievement of the Official Plan's many other stated objectives. There is room within the overall low scale built form in neighbourhoods to achieve a better balance.

Current Official Plan policy language that often inhibits the introduction of multiplexes is found in Chapter 4.1, within the development criteria that are evaluated when reviewing development in Neighbourhoods. Policy 4.1.5 currently reads, in part:

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



- a) patterns of streets, blocks and lanes, parks and public building sites;
- b) prevailing size and configuration of lots;
- c) prevailing heights, massing, scale, density and dwelling type of nearby residential properties;
- d) prevailing building type(s);
- e) prevailing location, design and elevations relative to the grade of driveways and garages;
- f) prevailing setbacks of buildings from the street or streets;
- g) prevailing patterns of rear and side yard setbacks and landscaped open space;
- h) continuation of special landscape or built-form features that contribute to the unique physical character of the geographic neighbourhood; and,
- i) conservation of heritage buildings, structures and landscapes."

Policy 4.1.5 primarily concerns the physical form of buildings and lots within a Neighbourhood. It defines "prevailing" to be the most frequently occurring. This policy also recognizes that there may be neighbourhoods where there is more than one prevailing physical character. The direction in these instances is to look at the immediate context and whether what is being proposed already has a significant presence on properties located in proximity to the development site. Criteria c) and d) noted above present challenging policy barriers to developing multiplexes in Neighbourhoods, even in areas where multiplex building types are permitted in the zoning by-law. In practice, if multiplexes are not already present or do not have a significant presence (often described as 50%+1) in a neighbourhood, they are unlikely to be supported by City Planning staff, approved at the Committee of Adjustment, or supported at the Toronto Local Appeal Body (TLAB) based on this policy.

Supplementary to understanding Policy 4.1.5, the sidebar entitled "Prevailing Building Types and Lot Patterns" currently reads, in part:

"Many zoning by-laws currently permit only single detached houses. The type of dwellings permitted varies among geographic neighbourhoods and these detailed residential use lists are contained in the established zoning by-laws, which will remain in place and establish the benchmark for what is to be permitted in the future. If, for example, an existing zoning by-law permits only single detached houses in a particular geographic neighbourhood and the prevailing building type in that neighbourhood is single detached dwellings, then the Plan's policies are to be interpreted to allow only single detached dwellings in order to respect and reinforce the established physical character of the neighbourhood. While most Neighbourhoods will have one prevailing building type, some may have more. For example, multiples may prevail at the edge, along major streets, while singles prevail in the interior, along local roads."

This non-policy text guides the interpretation of Policy 4.1.5 to permit only single detached houses where the zoning determines this to be the planned context or what might generally be understood to be the future or anticipated context. However, it is important to note that the intent of the policy is to "respect and reinforce the established physical character of the neighbourhood." In Neighbourhoods, this is a low-rise character, generally four storeys or less.

To facilitate multiplex permissions across the City, the report indicates that the Multiplex team is carefully considering where Official Plan policy and interpretation can be revisited to allow more flexibility in building types, and better balance its intended outcomes for healthy, vibrant low-rise neighbourhoods to support broader housing objectives that support evolutionary change in keeping with the stated balance of "stable but not static".

In this regard, the draft Official Plan Amendment which has been prepared by Planning Staff and which is out for comment contains the following proposed override on the question of "prevailing" building type. The text from the draft is here reproduced (the text below in square brackets and italicized is grey-toned in the report and represents commentary by staff):

"XXX. Multiplexes in Neighbourhoods.

*[Section 4.1.5 of the Official Plan outlines the criteria for development in Neighbourhoods. This statement is intended to clarify that multiplexes are a permitted building type in all Neighbourhoods, subject to the criteria that follow in subsection b) below.]*

Despite section 4.1.5, multiplexes are permitted in Neighbourhoods, subject to the following policies:

*[This text provides a definition for the term "multiplex", consistent with the City-wide Zoning By-law.]*

a) For the purposes of this Site and Area Specific Policy, a "multiplex" refers to a duplex, triplex, or fourplex, as defined by zoning by-law 569-2013.

b) Development of multiplexes:

*[The Official Plan Amendment is proposed to be structured as a Site and Area-Specific Policy (SASP), located in Chapter 7 of the Official Plan. The SASP would apply to all lands within the city that have a Neighbourhoods land use designation, as shown in yellow on Official Plan Maps 13-23.]*

*We anticipate that ongoing work through EHON and the Municipal Comprehensive Review may result in future changes to Official Plan policies pertaining to Neighbourhoods. The changes below are being introduced now to facilitate the creation of multiplexes in the near term.*

*Section 4.1.5 of the Official Plan outlines the criteria for development in Neighbourhoods. This statement is intended to clarify that multiplexes are a permitted building type in all Neighbourhoods, subject to the criteria that follow in subsection b) below.*

*The following policies are similar to those found in Section 4.1.5 of the Official Plan, which are intended to guide the development or redevelopment of buildings in Neighbourhoods. Certain changes are proposed to facilitate the creation of multiplexes in Neighbourhoods: Development will respect and reinforce the planned physical character of geographic neighbourhoods, as well as the existing character. Generally speaking, the existing character of any given area refers to what is there now, while the planned character refers to what is intended in the future. In Neighbourhoods, it is intended that multiplexes will continue to be built to the same general scale and zoning standards for low-rise buildings. The development criteria for multiplexes (listed as a) through f) below) does not include “prevailing building types” as an element to consider in the existing context of a neighbourhood. Multiplexes do not currently exist in many neighbourhoods because they have historically not been permitted, and therefore cannot be shown to be a “prevailing building type”. Deleting this criterion removes a policy barrier that stands in the way of multiplexes.]*

will respect and reinforce the existing and planned physical character of each geographic neighbourhood, including in particular:

- a) patterns of streets, blocks and lanes, parks and public building sites; b) prevailing size and configuration of lots;
- c) prevailing setbacks of buildings from the street or streets;
- d) prevailing patterns of rear and side yard setbacks and landscaped open space;
- e) continuation of special landscape or built-form features that contribute to the unique physical character of the geographic neighbourhood; and
- f) conservation of heritage buildings, structures and landscapes.

### The Variances Requested - Their Characterization and Magnitude

Mr. Chan undertook research as to building characteristics and variance activity in the Geographic Neighbourhood and put before the Tribunal a variety of data, plans and charts outlining this work. He then used that material to explain and assess each requested head of variance relief. The Tribunal will here document that approach.

Variance 1: This relates to the third floor rear balcony setback to the north lot line. The Zoning By-law requires a 2.4m setback. In this case, the rear third storey balcony platform will be located 1.87m from the north side lot line. The platform will be 53cm (approximately 1.74ft) closer to the north lot line than what is permitted in the Zoning By-law. He advised that balconies are common within the immediate context, for example, 657 and 659 Beresford Avenue both have front yard balconies that have the same side yard setback as the residential building on the lot. The side yard setback from the north property line at 659 Beresford is 0.41m. In the case of the Property, the existing setback of the residential dwelling from the north lot line is 0.44m. As will be seen from Variance 7, relief is requested for the north side yard setback to allow 0.45m, which is 0.01m greater than the existing dwelling. With relief for that yard setback, this balcony projection will be shielded from the property to the north. Also the property to

the north has its driveway on the south side along the lot line, thereby increasing the separation between buildings as discussed below with respect to Variance 7.

Variance 2: The Zoning By-law allows a front yard platform to encroach into the required front yard setback 1.73m if it is setback 2.4m from the side lot line. In this instance the front yard patio will encroach 1.77m (a 4cm difference, or approximately 0.13 feet). Mr. Chan confirms that the building itself, that is, its main front wall, meets the front yard setback requirement. The encroachment is allowing for patio and amenity space for the new residents. The proposed encroachment will serve a dual purpose of providing an amenity space and will allow for more sunlight to enter the basement unit.

Variance 3: Exterior stairs providing pedestrian access to a building setback if the stairs are no closer to a lot line than 0.6m. In this instance the front porch stairs will be located 0.17m from the front (west) lot line. This variance is requested for the front stairs leading to the porch that will be main entry space for the multiplex residents. According to Mr. Chan, this condition is not uncommon on Beresford Avenue and together with front lawns, driveways, and walkways form an additional perceived front yard setback from the street.

Variance 4: Under the Zoning By-law, a minimum of 50% (124.46 m<sup>2</sup>) of the rear yard must be maintained as soft landscaping. In this case, 34.85% (86.74 m<sup>2</sup>) of the rear yard will be maintained as soft landscaping. The rear yard will have reduced soft landscaping to accommodate the required parking spaces, a driveway turnaround, and a pedestrian pathway from the rear entrance into the side yard. On-site parking in the immediate context is often provided in the rear yards of properties on Beresford Avenue.

The impact of the reduced soft landscaping will be mitigated in part by the use of stepped planters in the front and rear yards to assist with stormwater runoff, as well as the use of permeable pavers in the construction of the entire driveway and parking area.

Variance 5: The maximum permitted floor space index for a fourplex is 0.8 times the area of the lot (365.84 m<sup>2</sup>). The proposed fourplex will have a floor space index equal to 0.85 times the area of the lot (389.55 m<sup>2</sup>). The proposed FSI is 0.05 (23.71m<sup>2</sup>) times the area of lot beyond what is permitted. This FSI is inclusive of the balcony areas. As shown and labelled in the plans, the FSI calculated for the ground floor, second floor, and third floor will be 0.74 times the area of the lot. The Committee records disclose that within the immediate context block, there have been 8 properties which have received FSI variance relief, mostly over 0.9 times lot area. Given that the proposal will provide a building that achieves a “missing middle” built-form, providing additional housing options in the neighbourhood there is a significant benefit to the community in exchange for a minor exceedance.

Variance 6: The minimum required front yard setback under the Zoning By-law is 3.46m. The proposed building will be located 2.25m from the front (west) lot line. The front yard setback of 2.25m is calculated based on the covered front porch and balcony extent, which elements do not extend across the entirety of the building’s massing. The main front wall will be 4.37m from the front lot line. This Zoning By-law minimum setback is based upon the average front yard setback of adjacent buildings. The

present front yard setback of the building on the Property is 3.31m. The front yard setback of the building at 665 Beresford is 3.33m. The front yard setback of the building at 659 Beresford is 3.57m. In consequence, based upon main front wall setback, the proposed building will appear further setback than the present building.

Variance 7: The minimum required side yard setback is 2.4m. The proposed fourplex will be located 0.45m from the north side lot line. As noted with reference to Variance 1, the existing north side yard setback is 0.44m. The proposed north side yard setback represents a minor improvement over the existing setback. The proposed north side yard setback variance is triggered as the proposal is for a fourplex building. Had the proposed structure been for a detached house, the Zoning By-law setback would have been 0.45m as presently proposed on the north side yard.. With reference to context, the adjacent building to the south of the Property (659 Beresford Ave) has a north side yard setback of 0.41m. And also with reference to context, the north main wall of the fourplex will be 3.92m away from the building at 665 Beresford, as there is a driveway in 665's south side yard.

Variance 8: Under the Zoning By-law, within the RM zone, a dwelling unit is permitted in a fourplex if the zone label has a numerical value of 4 or greater following the letter "u" in the zone label. In this case, the dwelling units are proposed to be located in a fourplex with a numerical value of 2 following the letter "u" in the zone label and a fourplex is therefore not a permitted building type on the lot. The policies in the OP with respect to the Neighbourhood designation are designed to maintain the neighbourhoods as a low density residential environment with buildings that are compatible one with the other. On the same side of this street at 675-681 Beresford Avenue, the two dwelling structures function similarly to a fourplex as there are 4 units within the principal building in total, although it is distributed through two separate addresses. Similarly, 647 and 649 Beresford, recent new builds which are semi-detached, present a massing that is comparable to the proposal in this instance. A further recent example is found at 544A and 544B Beresford, another semi-detached of very similar massing and extent to the proposal. On this point, the proposal for the Property will comply with the permitted building height of 11m, with maximum building length and depth, and with maximum heights for main walls, and will thus not be distinguished especially from a semi-detached dwelling built as-of-right, which as-of-right under the zoning label could be designed as duplex dwellings yielding altogether four dwelling units. Mr. Chan asserts that adequate living spaces, amenity space, and on-site parking will be available to occupants and, after adjustment of the proposal to remove the rooftop terrace and associated covered stairway, there were no concerns expressed by either Community Planning or Transportation Services staff for the proposed number of units or level and organization of parking.

Variance 9: Exterior stairs providing pedestrian access to a building or structure may encroach into a required building setback if the stairs are no closer to a lot line than 0.6 m. The front basement walkout stairs will be located 0.17 m from the front (west) lot line. This is essentially the same relief as set out in Variance 3 except that it is linked to the front basement walkout rather than the pedestrian stairs that serve the front porch entrance to the above-grade units. The front basement walkout stairs comprise a relatively small percentage of the front yard property line's length (30%). The bottom of

the stairs will be separated from the fourplex by 2.13m which is desirable to allow for a covered porch above it, which will be an amenity space for occupants in the first-floor unit.

Variance 10: A minimum of 75% (5.82 m<sup>2</sup>) of the required front yard landscaped open space shall be in the form of soft landscaping. In this case, 74.59% (5.79 m<sup>2</sup>) of the required front yard landscaped open space will be in the form of soft landscaping. This generates a deficiency of only 0.41% (0.03 m<sup>2</sup>) of soft landscaping in the front yard. Space in the front yard will be used for parking access, amenity space, a porch and stairs. Despite this, the required soft landscaping is almost met. Stepped planters will be placed in the front yard to achieve the planned function of a landscaping requirement for the front yard and to maintain an attractive public facing relationship on the site.

Variance 11: A minimum of four parking spaces are required to be provided. In this case, three parking spaces will be provided. The proposed reduced parking space rate is consistent with the direction of City Council in their approval of the Parking Space Rate Reduction By-law, amending the Zoning By-law to remove parking space rate minimums for low-rise residential development. The by-law provides that no resident parking spaces are required for fourplexes. The Property is in good proximity to transit service as the stop for TTC bus 40A and 40B (Dundas St West at Runnymede Rd West Side) is located approximately 190m from the Property and provides access to Kipling Station as well as Jane and St. Clair. Runnymede Station is located approximately 1.6 km from the Property. Variances for parking relief have been granted by the Committee elsewhere in the Geographic Neighbourhood. Transportation Services noted no concerns with the proposed reduction in parking spaces.

Against this background, policy and factual, and the individual assessment of each head of requested relief, Mr. Chan advised that, in his opinion, the requested variances meet the four tests articulated in s.45(1) of the *Planning Act* namely that they meet the intent and purpose of the Official Plan, meet the intent and purpose of the Zoning By-law, are desirable and are minor.

It was his opinion that the variances represent good planning practice and are in the public interest.

His opinion came coupled with the recommendation that, should the Tribunal see fit to allow the appeal and approve the requested variances, that that approval be conditioned on the following:

a) The Owner shall build substantially in accordance with the site plan and elevations as provided in TLAB Form 3.

b) All second and third storey balconies will have opaque screening along the north and south sides of the platforms; and

c) Submission of a complete application for a permit to injure or remove a privately owned tree(s), as per City of Toronto Municipal Code Chapter 813, Trees Article III Private Tree Protection.

## ANALYSIS, FINDINGS, REASONS

The key to determining this appeal lies in appreciating the physical proposal objectively and then maintaining a broad vision of key policy objectives, both at the Provincial level as well as at the City level.

On the purely physical side, as noted in the above delineation of the evidence before the Tribunal, the proposed building will be very much in keeping with the new building which has been occurring in this immediate as well as geographic neighbourhood. The massing and location on the lot of the structure is largely compliant with the applicable Zoning By-law standards. The proposed building will comply with the by-law's overall height maximum, wall height maxima, and with its building length and depth limitations. The exceedance of FSI is, relatively speaking, vanishingly small. The yard setback relief sought as it relates to the front yard is essentially technical as the non-conformities relate to building overhangs and stairways, the main front wall well removed from the front lot line. The north side yard setback essentially echoes the existing condition and abuts an open driveway on the property to the north, leaving adequate separation between the building on that property and the proposal here.

The relief related to provision of on-site parking is consistent with similar relief previously granted to other properties in the neighbourhood. The circumstance of providing parking in the rear yard is common in the area. Its impact on the reduction of soft landscaping in the rear yard is compensated for in part by the intention to complete the driveway and parking area with pavers that will allow rainwater permeability and through the intended installation of planter boxes. Furthermore, the non-conformity seems to have now been rendered largely academic in light of the enactment by City Council of By-law 89-2022, which eliminates on-site parking requirements for this character of use. The intention of Council in this regard is thus manifest.

The matter which appears to have caused the Committee to pause is the regulatory provision in the Zoning By-law which caps the number of dwelling units on the Property at two. And this hesitation likely emerges in light of certain amendments to the Neighbourhoods policies of the OP through Official Plan Amendment 320, which introduced some guidance to approaching the 'prevailing' character of an area.

The fact is that in this Geographic Neighbourhood there is, at present, no other fourplex. In the absence of this housing type, a question surfaces about reconciliation with the concept of 'prevailing' as set forth in Policy 4.1.5 of the OP.

It is at this juncture that one has to step back to appreciate the nature of the OP and its specific articulation as to how it is to be approached and implemented. City Planning staff alluded to this issue in their reports concerning the unintended suppression of the fourplex housing type.

As has been referenced in part above, the OP has many policies, which deal with a host of concerns and objectives. The OP provides some guidance on how the exercise of applying its policies should be approached. Three passages are of particular relevance and importance and are here set forth.

Chapter 1, Section 2 of the OP is entitled “Principles For A Successful Toronto” and it says, “This Plan is about the basics of successful city-building. Holistic and integrated thinking is a fundamental requirement for planning a modern city like Toronto. Integrated thinking means seeing, understanding and accounting for all the connections as we go about our decision making. Sometimes it means thinking differently about solutions. Always it means searching for outcomes that demonstrate integration, balance and interdependence and that earn social, environmental and economic rewards.”

Chapter 1, Section 5 of the OP is entitled “How to Read The Plan”. It states:

“This is not a conventional Official Plan with individual, stand-alone chapters devoted to specific topics. In successful city-building, ‘everything is connected to everything’ and so it is with the Plan. While the Plan is organized into various chapters, it is a comprehensive and cohesive whole.

The Plan consists of the policies, maps and schedules as indicated in Chapter Five under Interpretation of the Plan. The Plan also consists of non-policy textual commentary (unshaded text and sidebars) to make the Plan more accessible and to make the context and intent of the policies more readily understandable. The non-policy textual commentary is not to be afforded any independent status in interpreting the Plan and is to take on meaning only as an explanation of the policies, maps and schedules. The Plan is an integrated document. For any individual part to be properly understood, the Plan must be read as a whole.”

Finally, Chapter 5.6 of the OP is styled as an Interpretation provision. It reads:

1           The Plan should be read as a whole to understand its comprehensive and integrative intent as a policy framework for priority setting and decision making.

1.1       The Plan is more than a set of individual policies. Policies in the Plan should not be read in isolation or to the exclusion of other relevant policies in the Plan. When more than one policy is relevant, all appropriate policies are to be considered in each situation. The goal of the Plan is to appropriately balance and reconcile a range of diverse objectives affecting land use planning in the City.

Lifting from OP Section 5.6, Policy 1.1, the Tribunal here must consider all of the relevant policies and the context in which they are to be applied. The primary objective, to take the express direction from the OP, is to appropriately balance and reconcile the diverse range of objectives which are at play in this appeal.

And from Section 1.1, this amounts to a search for an outcome which demonstrates integration, balance and interdependence in pursuit of social, environmental and economic rewards.



In addition to proper consideration of OP conformity this necessarily also includes ensuring that the outcome will be consistent with the PPS and conform with the Growth Plan.

With respect to Provincial planning policy, as was canvassed above, the evidence suggests that the development proposal will bring intensification of use to the Property and additional housing, which in its turn maximizes the efficiency of the transportation system and reasonably optimizes existing municipal infrastructure and public service facilities.

Based upon the evidence, the Tribunal has concluded that the requested variances would be consistent with, and better advance, the policies and objectives of the PPS, and would conform with the related policies of the Growth Plan. This application is precisely the “opportunity” which Policy 1.1.3.3 of the PPS directs should be promoted to accommodate a range of housing options through intensification,

In approaching the s.45(1) *Planning Act* tests of whether the requested variances are in keeping with the general intent and purpose of the OP and Zoning By-law, it is critical that both documents be considered in their entirety and that where there may be apparent or superficial conflict in the implementation of those policies that some effort be made to reconcile any apparent cross-purposes amongst policies and provisions.

In this regard, this panel approaches the kernel of Policy 4.1.5 to be expressed in its opening declaration that it is a goal of the Neighbourhoods policy to respect and reinforce the existing physical character of each geographic neighbourhood. It then goes on in clauses a) through i) to suggest elements that may be taken to contribute to this character. The list is not expressed as being exhaustive nor of absolute application. The text represents guidance in connection with the analysis of that geographic neighbourhood’s physical character.

Based upon the evidence before the Tribunal in this hearing, the Tribunal has before it plans and building elevations of the proposed structure and photographs of built form in both the immediate and broader neighbourhood. From this evidence, the Tribunal is satisfied that the building proposal for the Property is consistent with, and compatible with, the built form in its vicinity. In the words of the OP, the proposal will “fit” within the neighbourhood. On this basis, the Tribunal is of the view that from a physical perspective, the proposal will conform with the OP.

Bearing that very salient conclusion in mind, and attempting to respect and implement the very important housing objectives of the OP, the road to reconciliation lies in accepting that the Zoning By-law category of RM expressly allows fourplexes and that, under circumstances where the context warrants it, as it does here, the unit count in a zoning label is legitimately susceptible of variance in order to achieve that housing objective, and would be fully in keeping with the intent of both the OP and zoning instruments.

This approach seems to reflect the current thinking of the City Planning Dept. associated with the EHON initiative. And as this panel reads it, what is laid out in the draft OPA arising out of that initiative is not so much an amendment or change in policy

as an exercise in clarifying and harmonizing existing policy goals in the OP and removing any ambiguity which may be arising from the current text.

It is worth pointing out again that the City has taken no position in this hearing and did not express any objection to the proposal when it was before the Committee. The Committee itself split on the application before it.

Consequently, on the whole of the evidence and the submissions of counsel for the Appellant, the Tribunal is prepared to accept the opinion of Mr. Chan that these requested variances meet the four tests under s.45(1) of the *Planning Act* and should be approved.

## **DECISION AND ORDER**

The Tribunal will allow the appeal and authorize the variances which were requested by the Appellant before the Committee, as are detailed in the foregoing decision.

This approval is conditional on the following:

- a) The Owner shall build substantially in accordance with the site plan and elevations as provided in TLAB Form 3 (prepared by Studio JCI, revised May 18, 2021)
- b) All second and third storey balconies will have opaque screening along the north and south sides of the platforms; and
- c) Submission of a complete application for a permit to injure or remove a privately owned tree(s), as per City of Toronto Municipal Code Chapter 813, Trees Article III Private Tree Protection.



G. Swinkin  
Panel Chair, Toronto Local Appeal  
Body