

# DECISION AND ORDER

**Decision Issue Date**      Friday, June 24, 2022

PROCEEDINGS COMMENCED UNDER section 45(12), subsection 45(1) of the Planning Act, R.S.O. 1990, c. P.13, as amended

Appellant(s):                      WENDY ORBACH

Property Address/Description: 85 ALBERTUS AVE

Committee of Adjustment File

Number(s):                          20 143461 NNY 08 MV

**TLAB Case File Number(s): 20 185509 S45 08 TLAB**

**Hearing date: Wednesday April 20<sup>th</sup>, 2021**

**Deadline Date for Closing Submissions/Undertakings: August 10, 2021**

**DECISION DELIVERED BY S. Gopikrishna**

## REGISTERED PARTIES AND PARTICIPANTS

Owner                                  PAUL JOSEPH MACEROLLO

Appellant                              WENDY ORBACH

Party                                    FRANK MILLER

Party                                    PAUL JOSEPH MACEROLLO

Party's Legal Rep.                  ANDY MARGARITIS

Participant                            CHRISOULA LUCAS



## **6. Chapter (949) Exception R 949, By-law No. 438-86; 12(2) 112**

The maximum building length is 14.0 m.  
The proposed building length is of 17.60 m.

## **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 Hearings held on April 20, 2021 and July 26, 2021, the Applicant was represented by Mr. Andy Margaritis, a lawyer, and Mr. T.J.Cieciura, a land use planner. Parties Orbach and Miller represented themselves, while relying on Mr. Michael Barton, a land use planner, for land use planning evidence. Ms. Lucas, who had elected to be a Participant in opposition to the proposal, represented herself. At the beginning of the Hearing on April 20, 2021, Mr. Margaritis, advised that the Applicants had reached a Settlement with Ms. Kacaba, who resides at 80 Briar Hill Avenue, and had consequently withdrawn her Appeal.

The highlights of Mr. Cieciura's evidence are as follows:

The Subject Property is located in an area bounded by Glencairn Avenue on the North, by Yonge Street on the East, Rosewell Avenue on the West, and Eglinton Avenue West of the West. It is generally within the neighbourhood referred to as "Lawrence Park South" within the former Municipality of Toronto, now part of the City of Toronto.

The Subject Property is currently occupied by a single detached two-storey, residential dwelling containing 1 dwelling unit and a rear frame shed. The proposal looks to demolish the existing dwelling, and construct a new detached residential dwelling containing a dwelling unit, and will include a rear deck, a front porch and a widened

driveway. The immediate land uses to the north, south, east and west of the Site include single detached and semi-detached residential dwellings. The single detached or semi-detached dwellings that abut Albertus Avenue are “all oriented to face their front on to Albertus Avenue”. Mr. Cieciora added that there are a mix of commercial and residential uses along Yonge Street “which are generally located within low-rise buildings”.

Albertus Avenue, which runs east to west between Duplex Avenue and Rosewell Avenue, was described by Mr. Cieciora “as a quiet residential street”. He said that the Subject lot is rectangular in shape, with 7.62m of frontage and a depth of 40.66m. The lot depth on the east side (40.66m) is deeper than the lot depth on the west side (40.65m), by 1 centimetre. The lot area of the subject property is 309.8 square metres, with a frame shed in the rear.

Mr. Cieciora described Duplex Avenue as being a minor collector road “for the quiet residential streets which pass through it, and consists mostly of residential land uses as well as all three institutional uses within the neighbourhood”. He said that the single detached or semi-detached dwellings that abut Duplex Avenue are mostly oriented, such that their side yards face Duplex Avenue. He also added that a few of the dwellings that abut Duplex Avenue “are oriented to face their front yards to Duplex Avenue”. The residential buildings in this neighbourhood predominantly consist of single detached and semi-detached dwellings. The buildings mostly appear to be one to three storeys in height. According to Mr. Cieciora, the neighbourhood is “characterized by narrow dwellings with small side yard setback distances from abutting lot lines”, based on his “visual observations within the neighbourhood”.

Describing the proposal, Mr. Cieciora said that the proposed Plans and Elevations, consistent with the variances that were approved at the COA hearing held on Aug 25, 2020 for the new single detached dwelling, show that the new detached dwelling has a front yard landscaping area of 69.42%, a driveway width of 3.35 metres, a first floor height above the established grade of 1.39 metres, a building depth of 17.60 metres, a floor space index of 0.68 times the lot area and a building length of 17.60 metres. He emphasized that the Plans propose a west side yard setback to 0.61 metres, an east side yard setback of 1.02 metres, a front yard setback of 6.90 metres, and a rear yard setback of 16.16 metres.

Mr. Cieciora discussed the compatibility between the proposal and the Higher Level Provincial Policies. He said that the proposal satisfies the goals of the Provincial Policy Statement (PPS 2020) by virtue of its promoting “efficient land development” and “regeneration” of the community, as well as “accommodating an appropriate affordable and market-based range and mix of residential types”. He added that the proposal also satisfied the “Growth Plan for Golden Horseshoe” (2020) by virtue of its “efficient use of land”, and “reflect the market demand for single detached dwelling”.

Discussing the relationship between the proposal and the Official Plan, Mr. Cieciora said that the Official Plan designation for the subject property, can be found in Chapter 4 of the Official Plan (OP) and is designated as “Neighbourhoods”. Under the new Toronto City Wide Zoning By-law 569-2013 the site is zoned “R (f7.5; u2; d0.6) (x949)”

which is a Residential Zone that permits a range of building types including a single detached dwelling with a frontage of 7.5m and a floor space index of 0.6 times the area of the lot. Exception 949 permits a maximum building length of 14.0m for a dwelling. This 14.0m maximum length requirement was carried over in this area of Toronto from the former 438-86 by-law through Site Specific Exception 949.

Mr. Cieciura reiterated that his Neighbourhood Area is bounded by Glencairn Avenue on the North, Yonge Street on the East, Rosewell Avenue on the West, and Eglinton Avenue West, before describing how he established his Study Neighbourhood on the basis of parameters provided in Section 4.1.5 of the Official Plan (the former OPA 320). He said that his Study Area consisted of all properties on lands zoned Residential Detached (RD) under Zoning By-law 569-2013, with a minimum frontage of 7.5 m. According to Mr. Cieciura, the Prevailing Dwelling type consists of single detached dwellings, the lot shapes are rectangular in shape, with some irregular lots front onto Rosewell Avenue. With respect to street pattern, Albertus is part of a single block pattern of streets, which intersects Duplex Street, “a north-south street that connects the broader neighbourhood from Lawrence Avenue West south of Eglinton Avenue West”. In terms of pedestrian connectivity, the entire study area is unified as a single neighbourhood, with a pedestrian walkway on both sides of Albertus Avenue, providing pedestrian connectivity to the entire neighbourhood.

Mr. Cieciura next spoke about the relationship between the proposal, and Section 2.3.1 of the OP. He spoke to the change that had taken place in the community through the means of a photo tour, with a focus on the kinds of variances that had been granted that were similar to what was requested in the proposal. He asserted that the proposal for a new 2-storey single detached dwelling, “respects and reinforces the existing physical character of the buildings, streetscapes and does little to nothing to change the open space pattern in this area where there is currently a 2-storey detached dwelling on the existing lot, “, when it replaces an existing 2 storey building.

Mr. Cieciura then spoke to the relationship between the proposal, and Section 3.1.2 (Built Form Policies). The Policy preamble specifically contemplates development on infill and redevelopment sites such as the subject property provided that it fits in, respecting and improving the character of the surrounding area. The subject application would result in one new 2-storey single detached dwelling to be developed where one older 2-storey single detached dwelling currently exists. The proposed dwelling will fit in with the surrounding area which consists of mostly single detached dwellings. He emphasized that the new buildings that replaced older buildings, were almost always larger than the former buildings. He also opined that the proposal would satisfy Policy 3.1.2.3, because the proposed massing was similar to what exists presently, with no variances to the overall height or exterior side wall height of the building, enabling the building to fit within the scale and character of the street and neighbourhood. On the basis of Sun and Shadow studies, prepared by Rubinoff Architects, Mr. Cieciura asserted that there will be little to no change to the light and privacy of adjacent/abutting dwellings if a dwelling were constructed in accordance with the Zoning By-law requirement, “as was the case with the proposal”. He also pointed out that since the height of the proposed house was in compliance with the Zoning By-law, the shadows

would not cause any adverse impacts on its neighbours, which means Policy 3.1.2 was satisfied.

Mr. Cieciora next spoke to the relationship between the proposal, and Policy 3.4 (Natural Environment Policy) next. He noted that notwithstanding the removal of trees within the “as of right permitted building envelope, no memo from the City of Toronto Urban Forestry Department has been received”. He also pointed out the Applicant was prepared to follow Urban Forestry’s advice that the owner will abide by a condition to use permeable paver material in the new driveway, which will assist in mitigating storm-water infiltration, and provide a soft landscaping component to a current driveway constructed of asphalt. He reviewed the details of which trees would be removed, and stated that there is an easement of 6 feet, 8 inches between the property at the Site, and 83 Albertus, and stated that it would be used solely for pedestrian purposes, “since it was too narrow for a vehicle to pass”.

Mr. Cieciora recited and discussed Policy 4.1.5 next- he asserted that given the massing of the house, the lack of variances for height, “the extra FSI would not be visible from the street”. He also stated that the “integral garage is proposed in a manner that is common in the neighbourhood and consistent with typical designs throughout the City”, which can be accessed directly from Albertus Avenue. Speaking to the front yard setback, he said that the setback was consistent with the Zoning By-law, as well as the other setbacks on the street. The side-yard setbacks would be “altered” such that it would be “consistent with other interior lots”. He asserted that the proposed altered side yard setback pattern will improve the existing west side yard setback condition of the subject property, by providing a west side yard setback of 0.61m whereas a 0.0m west side yard setback which currently exists. He said that the existing east side yard setback will be maintained, and that the gap between 87 Albertus, and the Site, would largely be on the Subject Property.

On the basis of this evidence, Mr. Cieciora concluded that the proposal satisfied the test of fulfilling the intent and purpose of the Official Plan.

Mr. Cieciora next focused on the relationship between the proposal and the applicable Zoning By-laws, 569-2013, and 438-86.

Describing the purpose of the Zoning By-laws, Mr. Cieciora stated that the By-laws regulate the use and physical characteristics of building on the site. The By-laws are meant to encourage compatible built form within the zone and surrounding properties, and prevent any different or nuisance uses of the properties from the surrounding uses.

He then discussed the relationship between the specific variances, and their intent and purpose, as stated in the By-laws. Speaking to the request for 69.24% soft landscape variance in the front yard vs. the required 75% prescribed by the Zoning By-law, Mr. Cieciora said that the intent of the By-law is to provide adequate soft landscaping in the front yard of a property, and to allow for ample green space as well as storm water infiltration and drainage. He asserted that the 5.58% reduction in front yard soft landscaping should still allow sufficient front yard soft landscaping area, which will be adequate for the

purposes of water infiltration and drainage as well as providing ample green space, and will be in keeping with what already exists within the neighbourhood and will not adversely impact the streetscape of the neighbourhood, and is “consistent with what already exists on other properties on the street”. He reiterated that the owner was prepared to accept one of the recommended conditions, regarding the construction of the driveway with permeable paver material, which will add to the ability for the front yard to infiltrate rainwater and provide a “green” appearance.

Speaking next to the 3.2 metre wide driveway versus the recommended 3.35 metre wide driveway, Mr. Cieciora said that seen from the perspective of the intended performance standard, the intent of a maximum Driveway Width is to ensure that a driveway “does not take up a large portion of the front yard, creating an unpleasant front yard area” in front of a property, and does not adversely impact a property’s ability to accommodate storm water infiltration and runoff. He said that the proposed driveway will replace the existing front porch on the Subject Property, and will extend to the municipal boulevard. Mr. Cieciora added that the proposed driveway width will not significantly impact the front yard area of the Subject Property, and opined that the proposed driveway is actually an improvement on the existing driveway. He emphasized that the Transportation Department had no objection, regarding this variance, when their opinion was requested.

Speaking next to the variance respecting the height of the first floor above established grade, Mr. Cieciora said that the intent of the height of first floor above established grade standard is in large part, to maintain a consistent massing in the neighbourhood, to help control the height of the main floor, and the entrance to the dwelling above the ground. The proposed height of the first floor above established grade is a result of the grade changes present on the subject property, and is at its highest point near the proposed front door entrance. According to Mr. Cieciora, the design of the front elevation has been carefully considered to keep the main front door lower than the balance of the main floor within the dwelling, which “meets the intent of the by-law provision, and provides a grade related front door which has a direct relationship to the street/sidewalk”. Mr. Cieciora asserted that the proposed first floor above established grade will be in keeping with the existing character of the neighbourhood, and will not adversely impact any adjacent properties or the surrounding neighbourhood as a whole.

Mr. Cieciora spoke to the relationship between the variance respecting the building depth, and the Zoning By-law. He said that the intent of the maximum building depth standard is in large part, to regulate the size and footprint of a dwelling, with regard to how far back the rear main wall of a dwelling can be from the required front yard setback. According to Mr. Cieciora, the building depth standard helps control the proportions of a building, relative to the required front yard setback. It also helps maintain a consistent massing with what exists in the neighbourhood. He emphasized that “the proposed building depth would be only 60 centimetres above the permitted building depth, and will have no further impact than what the by-law already contemplates”. He added that the proposed dwelling has a depth of 17.6m for only a portion of the dwelling, because the front main wall has a “jut-out of 0.3m”. The remaining portion of the dwelling has a proposed depth of 17.3 metres, which is only

0.3m from what is permitted. Mr. Cieciora asserted repeatedly that the depth would have no adverse impact on the neighbours. He also stated that while the Zoning By-law discusses the limits on the frontage and depth of the lot, the Zoning By-law does not place any “restrictions on the area of the house”. To demonstrate the reasonableness of the depth, and area requested, Mr. Cieciora discussed a practice, which is apparently followed in Toronto for houses in areas where there are no stated parameters for the allowable area of a house. In such houses, with no restrictions placed by the Zoning By-law, the practice is to multiply the minimum frontage by 30 metres (i.e. there is an assumption of a depth of 30 metres). In this proposal, he said that the “frontage exceeded the minimum length, and the depth is 40.65 metres, which is significantly more than the minimum width of 30 metres”, resulting in a minimum allowable area, that is significantly higher than houses, with smaller frontages, and depths of only 30 metres.

“As a result,” Mr. Cieciora concluded that “additional depth” could be added to the proposed building, beyond what the By-law allows, without any significant impact on the neighbouring properties. He added that the proposed dwelling will be just 0.36m greater in depth, than the existing dwelling at 87 Albertus Avenue, the adjacent property to the west of the Subject Property. On the basis of this evidence, Mr. Cieciora concluded that the proposed building depth is “consistent with the development trends in this area and will fit in with the neighbourhood”.

Speaking next to the FSI variance which requests 0.68 x Lot Size versus the allowable FSI of 0.6 X Lot Size under the By-Law, Mr. Cieciora said that the intent of the maximum floor space index is “in large part, to regulate the amount of GFA which can be built on a property with regard to massing and built form”. He asserted that the proposed FSI will be imperceptible from the street, and would not be “that different from the dwelling that could be constructed as of right “on the subject property, and from dwellings within the neighbourhood, in terms of massing and scale. He pointed out that the proposed floor space index is within the existing range of dwelling gross floor areas in the neighbourhood, and “is only 25.75 square metres (0.08x) larger than what is currently permitted on the Subject Property.” He then referred to COA decisions from within the neighbourhood, which demonstrated that the range of FSIs granted in this community range from 0.61 X Lot Area, to 1.09X Lot Area, with an average FSI granted by the FSI, being 0.7 X Lot Area

Lastly, Mr. Cieciora discussed the relationship between the Building length and By-law 569-2013, where the allowable length is 17 metres, and By-Law 438-86, where the maximum length permissible under the By-law is 14 metres. Mr. Cieciora stated that the intent of the maximum building length standard is “in large part, to regulate the size and footprint of a dwelling, mainly with regard to how far back the rear main wall of a dwelling can be from the front main wall of a dwelling”. The building length standard helps control the proportions of a building. He asserted that the extra length of 3.6 metres would not have an impact, because it is “difficult to perceive from the street when the setbacks of the dwellings on either side are quite small”. Given that the proposal cannot move any more than 60 cm closer to the front lot line”, the proposed solution to reduce “the length of the building at the front, and have a rear wall located 17m back from the front yard setback”. In terms of the impact, he reiterated what was



mentioned earlier in the discussion regarding maximum building depth i.e. the proposed rear main wall will extend only 36cm past the existing rear main wall of the dwelling at 87 Albertus Avenue.

On the basis of this evidence, Mr. Cieciora concluded that the proposal satisfied the test of meeting the intent and purpose of the By-laws.

Mr. Cieciora then spoke to how the proposal satisfies the test of appropriate development. He said that the proposed redevelopment will improve the existing condition of the subject property, and “serves to implement the Province and City’s desire to direct growth and development to settlement areas”. He said that the new developments within the neighbourhood cited by way of the earlier photo tour of the community, “provided examples of modest redevelopment, which respect and reinforce the character of the area”. He asserted that what is proposed at this Site is “representative of modest redevelopment and regeneration that has been occurring in the neighbourhood of “Lawrence Park South”. He opined that the proposal represented “ a gradual change” and that “ if this application were to be approved, it would not change the pattern, or built form of the Study area”.

On the basis of this evidence, Mr. Cieciora concluded that the proposal met the test of appropriate development.

Lastly, Mr. Cieciora spoke to how the proposal satisfied the test of minor.

He asserted that there will be little to no adverse impact on adjacent dwellings, if the proposal were built as planned, what would be built “would be comparable to what might be experienced if the land was developed in accordance with the as-of-right zoning or previous approval”. Mr. Cieciora reiterated that the Sun and Shadow studies demonstrated that the shadow impact of what was proposed, is not different from what is as-of-right.

He said that when considering impact, “one has to think about the quantum of the variance as well as any impact on adjacent properties over and above what would be permitted as of right.”

On the basis of this evidence, he concluded that the proposal met the test of minor.

It is important to note that at this stage, Mr. Cieciora did not suggest any conditions to be imposed on the proposal, if approved.

Ms. Orbach cross-examined Mr. Cieciora. She initially focused on the 17.6 metre length requested by the Applicants, as opposed to the “14 m length as of right” , to which Mr. Cieciora explained the difference in how “length” is measured under By-law 486-86, and the new By-law 569-2013, and how the “length” relates to the “depth” of the house. He disagreed with Ms. Orbach’s question about the variance being a significant departure from what is of right. Ms. Orbach reviewed the details of a number of houses in Mr. Cieciora’s COA table, and questioned the “accuracy” of his information – as examples,

she pointed out that 92 and 96 Albertus were compliant with the 14m limit discussed in By-Law 438-86 X 949. She asked if the existing houses at 27,62 and 158 Craighurst as well as 165 St. Clements were “detached”, as stated by Mr. Cieciora, to which he explained that the Zoning allowed for a detached house to be built, and how the built form, as seen from the street, resulted in his understanding that the houses are “detached houses”. Ms. Orbach then asked if larger houses were appropriate for the lots on Albertus, which had “smaller frontages” compared to other streets in the neighbourhood. Mr. Cieciora disagreed with the premise of the question, and referred to “other attributes” that are similar between the lots on other streets, and Albertus, which resulted in the houses being mutually “respectful”, and “compatible”, without reference to the street. Ms. Orbach asked about the impact of the proposal if it had a triangular roof like 183 Albertus, to which Mr. Cieciora said that he had not completed a “side by side” comparison. She observed that at 34 Albertus, the rear extension authorized by the OMB decision had not been completed, and that at 62 Craighurst no extension had been built, notwithstanding a COA decision authorizing the same. In addition, Ms. Orbach then referred to the case of 92 and 94 Briar Hill, where TLAB “had reduced the variances”, before asking what Mr. Cieciora had relied on to prepare his COA table- was it just COA approvals, or TLAB decisions, or what exists actually on the ground, as opposed to what was approved. Mr. Cieciora conceded that he relied on the COA approvals, as opposed to modifications made by the TLAB.

Ms. Orbach next asked Mr. Cieciora about his contention that there was no difference between the “immediate context, and the broader area”. She asserted that the lots were generally smaller on streets like Albertus, while they were bigger on Briar Hill, because the latter had 30% fewer lots than Albertus. Mr. Cieciora pointed to the commonality of Zoning governing all the streets in the General Neighbourhood, and asserted that from a zoning perspective, “there is no difference between semi-detached and detached homes.” When Ms. Orbach asked questions about the test of minor as seen through the prism of percentages, Mr. Cieciora responded about the test of minor is based on “impact”, as opposed to numerical considerations. When discussing Ms. Orbach’s contention about the “lack of compatibility of 159 Albertus (an example shown in the photo tour) with its neighbours”, Mr. Cieciora said that “if the home had been approved, then it is deemed to be compatible”. Ms. Orbach then introduced pictures of 33 and 35 Craighurst taken from the backyard of the former, and compared it to the situation that would exist between her house, and the proposal, if the latter were approved- by way of an editorial comment, the visual impression created by the comparison of 33 and 35 Craighurst, is that one is visibly large than the other. Mr. Cieciora stated that “no side by side comparison” had been completed as part of analysis, and that he disagreed with the suggestion that any of the impacts referred to by Ms. Orbach, constituted unacceptable adverse impact. Lastly, Ms. Orbach’s contention was that the space at the back of her house would lose privacy and sunlight, if the proposal were approved. Mr. Cieciora disagreed with the contention about overlook, and said that in a tightly packed neighbourhood, overlook is an “accepted fact”.

By way of re-examination, Mr. Margaritis asked Mr. Cieciora to confirm that the Sun Shadow Studies confirmed that there would be no undue adverse impact on the neighbours, to which Mr. Cieciora replied in the affirmative.

Mr. Michael Barton was affirmed, and recognized as an Expert in the area of land use planning. Mr. Barton testified against the proposal; the highlights of his evidence are presented below:

Mr. Barton said that while there is some variability in the rear yard setbacks, the majority of properties have a similar rear yard setback to the existing condition at the subject property and the Appellant's property. This helps to ensure that all residents can enjoy the amenity area in their rear yards without impacts to privacy and sunlight, as well as other impacts from dwellings on adjacent properties.

Mr. Barton highlighted, through photographs, "the small side yard setbacks between dwellings" and the "consistent front and rear yard setbacks" of houses in the vicinity of 85 Albertus. He said that "while these setbacks represent the character of the community, deviations from these existing conditions on one property can result in significant adverse impacts to abutting properties", and spoke to how every development must be illustrated in the context of its immediate vicinity, irrespective of when the houses may have been developed, as opposed to developments that may have taken place in other parts of a given neighbourhood, even if these developments resemble what has been developed at the Site.

Mr. Barton asserted that many of the properties that have received previous minor variance approvals and cited by the Applicants, "as precedents" are not located in the "immediate vicinity of the Subject Property". According to Mr. Barton, the two properties in closest proximity to the Subject Property (112 and 118 Albertus) which received approval for building lengths, are 113 Albertus, and 118 Albertus, where the Building Length approvals, are for 17 metres, and 16.56 metres respectively.

Mr. Barton next spoke to Section 4.1.5 of the Official Policy, and pointed out to how this Policy places greater significance on the Immediate Context, rather than the larger General Neighbourhood, when there is a difference between the two. He defined his Immediate Context to be the stretch of Albertus Avenue, between Duplex Ave on the East, and Rosewell Avenue on the West. Mr. Barton then discussed how "small lots" are the prevailing type, and how in his opinion, the proposal did not respect the "prevailing type" by proposing a big house, relative to the lot that it is located on, even if this specific lot were bigger than its neighbours. He opined that the proposed building, would be the exception to what existed on Albertus, and consequently did not "respect or reinforce what exists in the neighbourhood".

He then listed what he perceived to be specific negative impacts caused by the proposal, if approved, on the property owned by Ms. Orbach and Mr. Miller, with specific reference to their rear yards, and outdoor amenity areas, as listed below:

- Expansion of the building footprint into the rear yard relative to the existing dwelling will adversely impact privacy and daylight of the adjacent rear yard amenity areas, including the Appellant's property, by significantly increasing shadows

**Decision of Toronto Local Appeal Body Panel Member: S. Gopikrishna  
TLAB Case File Number: 20 185509 S45 08 TLAB**

- Door and windows proposed on east side of dwelling, including large basement window, will create significant privacy and security concerns
- The additional height above established grade will exacerbate the privacy and comfort concerns associated with the additional building massing, depth and deck area
- Proposed deck extends even further into the rear yard will provide direct views into the Appellant's rear yard and at the rear of their dwelling, which is a condition that does not exist under current conditions;
- The proposed building depth and length are out of character for the surrounding area and impact the built form function and quality; and
- Proposed driveway will result in negative impacts to the existing street tree located in front of the subject property and also reduce on-street parking opportunities for residents and visitors.

Mr. Barton also spoke to the variances respecting the required front yard landscaping, and the permitted driveway width. He expressed concerns about how in his opinion, these variances did not satisfy the test of minor, because they reduced the non-paved area of the front yard "in favour of hard surface, for parking and vehicular access". He said that the purpose of "front yard landscaping areas is to provide attractive amenity areas to the streetscape, public realm and surrounding properties by balancing the front yard area against driveway, parking, built footprint and other elements", and added that since the landscaped area allows for controlled runoff, and infiltration of rain water, the replacement of soft landscaping, with hard landscaping could result in flooding issues.

Mr. Barton also emphasized that a variance cannot be determined to be "minor in nature" based merely on a review of the proposed statistics compared to the Zoning By-Law regulations, but that the "impacts resulting from the deviations from the zoning regulations, however small they may be, must be considered". On the basis of pictures taken of his client's backyard, Mr. Barton described the impact of the requested variances for relief from the height of the first floor, above established grade, with specific reference to privacy and enjoyment of the Appellant's property, both inside their dwelling and their rear yard.

.Speaking to the requested variances for depth and FSI from By-Law 569-2013, and the variance requesting relief for length from By-law 438-86, Mr. Barton said that the cumulative impact of these variances would be to increase the size of the dwelling on the Subject Property, "relative to existing conditions", and specifically result in a dwelling that is much "deeper than the dwellings that directly about the Subject property", including the Appellant's property. Mr. Barton stated, repeated and reiterated "that there is no form of "precedent" from a previous approval on a different property that should be applied to another property without looking at the impact".

Mr. Barton then recited Section 1.5.2 of Zoning By-Law 569-2013, which states the Purpose and Intent of the By-Law, and specifies the following: "*This By-law regulates the use of land, the bulk, height, location, erection and use of buildings and structures, the provision of parking spaces, loading spaces and other associated matters in the City of Toronto*". He reiterated that the shadowing, and privacy impacts that he detailed

earlier, contradicted the intention of the Zoning By-law, which meant that the variances cumulatively, did not uphold the intention, and purpose of the Zoning By-law.

Based on these conclusions, Mr. Barton concluded that the proposal did not meet any of the four tests, and that none of the variances should be approved.

Mr. Margaritis began his Cross-Examination by asking Mr. Barton if he had included any information about how the proposal corresponded to the Higher Level Provincial Policies, to which the latter replied in the negative. Mr. Margaritis also established that Mr. Barton had relied more on pictures taken by Ceiciura to come to the conclusions, as opposed to his own pictures. He then asked Mr. Barton to explain what “immediate vicinity” meant, to which the Mr. Barton said that he referred to houses situated in close proximity to the Site, and confirmed for Mr. Margaritis that “immediate vicinity” is not a defined expression. When asked about the delineation of a General Neighbourhood, and its relationship to the Immediate Context, Mr. Barton said that he had “delineated the neighbourhood though not as a map”. When asked about how the “prevailing features of Albertus were different from other streets in the neighbourhood, Mr. Barton repeated his earlier evidence about differences in lot sizes on the streets, “as demonstrated by Albertus having 148% more lots than Briarwood”.. Mr. Barton insisted that the Immediate Context was of greater relevance in the context of this proposal, while Mr. Margaritis read out the text of Section 4.1.5 of the OP to demonstrate that the Immediate Context was of greater importance “only when there was a demonstrable difference between different parts of the General Neighbourhood”. When Mr. Margaritis showed Mr. Barton a picture of the five windows, existing on the side of 85 Albertus facing 83 Albertus, and asked if “the two windows planned in the new house on 85 Albertus created less of a privacy concern,” compared to what exists presently, the latter kept saying that the impact would be “fewer windows”. Mr. Barton confirmed that there were no policies in the OP which “guaranteed” that there would be no loss of privacy.

When asked if a single variance with an FSI of 0.68\* lot size would “destabilize” the community, Mr. Barton confirmed that it would have a “destabilizing effect” because the “average” FSI that been approved in this community was much lower. Mr. Margaritis next asked Mr. Barton to identify the “more important context, between what exists, and what is planned “. Mr. Barton’s answer “both are important”. Mr. Margaritis asked Mr. Barton to confirm that “if a variance were consistent with the Zoning, then it satisfies the Official Plan”, the latter did not provide a clear answer.

Ms. Chrisoula Lucas was sworn in next, and said that she was a Participant who lived at 87 Albertus Avenue, the house adjacent to the proposed site, for 30 years and had “great interest in seeing this project done well, in a respectful way”. She said that her home is almost 100 years old, and that she took great pride in “maintaining it in a way that preserves what the neighbourhood represents”. She noted that 10 years ago, her family built a one storey addition at the back of their house, “while being careful not to block our neighbours views and impinge upon their privacy whilst maintaining green space”. She asserted that her “one storey addition does not impact the street or the backyard”, but the “proposed height and length of the proposed building at 85 Albertus

presents a great impact to the backyards and to the street in terms of light and shadowing and privacy". Speaking to the requested length of 17.60 m, she was concerned with the excessive length being requested "as it is not consistent with the immediate properties around us." She said that the "new addition will now surpass her family room, putting it into perpetual shade for the first half of the day".

Ms. Lucas asked the front mature City Oak tree at the front of the property be protected from all construction related activity, and not removed or injured to make way for the widened driveway. She also spoke to other concerns such as water drainage, foundation shoring, and chimney/fireplace code violation which are not recited here, because they are outside the TLAB's jurisdiction, which means that no pertinent findings can be made.

When Mr. Margaritis asked if Ms. Lucas was aware that the Applicants had removed various height variances at the COA meeting in order to respect her concerns, she said that while she appreciated the changes, "not enough changes had been made to respect her concerns". When Mr. Margaritis asked Ms. Lucas if she appreciated that there would be an increase to the distance between the two houses at the side yard level, her answer was "it did not change the distance at the roof level, which was more concerning" to her". In response to different questions from Mr. Margaritis about the length and depth of the house, Ms. Lucas kept repeating that given that the frontage of the lots was 25 feet or less, there had to be a separation of 5 feet or more between the houses for her concerns to be addressed satisfactorily. In terms of impact, and its relevance to her privacy, Ms. Lucas conceded that there was no variance specific to the deck, but stated that the length of the house was such that it was possible to "look straight into my living room".

The last Witness to testify was Mr. Norman Miller, who cohabits 83 Albertus with Ms. Wendy Orbach, the Appellant. His evidence is not repeated here, because he echoed many of the concerns raised by Ms. Lucas through her evidence, and Ms. Orbach through her Cross-Examination. By way of an editorial note, he referred to numerical information about the neighbourhood, introduced by an Expert Witness, who had testified before the TLAB, with respect to a different Appeal before the TLAB. Mr. Margaritis vigorously questioned the use of this information, and its introduction to the Appeal respecting 85 Albertus, because the "Witness responsible for compiling the information had not been produced by the Appellants", to which Mr. Miller contended that the information was available on the TLAB website, and was "public information, which could be used for evidentiary purposes". Mr. Miller asked that the proposal be refused, and suggested conditions that could be imposed, if the proposal were to be approved. These suggested conditions are not recited here for reasons discussed in the "Analysis, Findings and Reasons" Section of this Decision

At the end of the Hearing, I asked the Parties to complete Oral Argument by way of written submissions. I also asked the Applicants to send me a Word Copy of the requested variances, suggestions for conditions to be imposed if the Proposal were approved, and a document listing which variances were mutually interdependent, and which variances were not related to each other. I explained to the Parties that this listing would help me to avoid "logical errors", should some variances be refused, and others



approved e.g. approval of given variance, but refusal of a different variance, dependent on the variance that has been approved.

Final submissions, including Oral Argument were made within the requisite timelines by the Parties.

## **ANALYSIS, FINDINGS, REASONS**

I find that it is important to list principles relied upon to determine the result of the Appeal respecting 85 Albertus Ave:

- Since this Appeal is being heard by way of a Hearing *de novo*, the onus lies with the Applicants to demonstrate that the requested variances satisfy Sections 3 and 45.1 of the Planning Act. This means that they have to demonstrate that the requested variances, individually and cumulatively, satisfy each of the four tests, listed under Section 45.1 of the Planning Act.
- The vigour and rigour, with which the Applicants have to demonstrate that the requested variances satisfy each of the four tests, is better appreciated, when contrasted with the approach that may be relied upon by the Opposition to demonstrate that a given variance should not be approved- while the Applicants have to demonstrate that ***all four tests be satisfied*** ( my emphasis) are satisfied by the requested variance(s), the latter need to demonstrate that the variance does not fulfill ***at least one of the four tests*** ( my emphasis) under Section 45.1. The decision to refuse a variance does not distinguish, nor discriminate between how many of the four tests could not be satisfied- failing one, two, three or all four tests results in the refusal of the variance in question. I find that it is important to appreciate the asymmetry between the approach of the Applicants, and the Appellants, to achieve their desired objectives-the singularity of the path to success contrasts with the multiplicity of paths to failure.

Consequently, an allegation by the Applicants about the Appellant's lack of thoroughness, or rigour, because they did not discuss each and every test under Sections 3 and 45.1 of the Planning Act, will not be accorded any weight.

- As a corollary of the above principle, it is not always necessary for the Opposition to identify a Geographic Neighbourhood, or an Immediate Context, because such identification is important only in the context of investigating whether or not the variances in question satisfy the intent and purpose of the Official Plan. Should the Opposition chose to focus their attention solely on the test of minor, or the test respecting the intent and purpose of the Zoning By-Law, the identification of a Geographic Neighbourhood, or Immediate Context, becomes irrelevant.
- However, it is important to identify a Geographic Neighbourhood, before an Immediate Context can be identified, because the latter becomes important if and

only if it can be demonstrated that there is a significant difference between the broader and immediate contexts. In other words, for the purposes of analysis, one cannot have an Immediate Context, without a Geographic Neighbourhood, as can be seen from the following extracts from Chapter 4 of the Official Plan:

*The physical character of the geographic neighbourhood includes both the physical characteristics of the entire geographic area in proximity to the proposed development (the broader context) and the physical characteristics of the properties that face the same street as the proposed development in the same block and the block opposite the proposed development (the immediate context).*

*However, it is important to identify a Geographic Neighbourhood, before identifying an Immediate Context. As per the language of the Official Plan, “Proposed development within a Neighbourhood will be materially consistent with the prevailing physical character of properties in both the broader and immediate contexts. In instances of significant difference between these two contexts, the immediate context will be considered to be of greater relevance.*

- To satisfy the test respecting the intent and purpose of the Official Plan, it is important that the Applicants satisfy all applicable policies. On the other hand, If the Opposition demonstrates that a proposal does not satisfy any one, or more of the Policies, a finding can be made that the proposal has not satisfied the intent, and purpose of the OP, without the need to analyze other Policies.
- According to the City of Toronto guidelines, Sun and Shadow Studies are not necessary for buildings less than six floors. However, should a Party decide to introduce Sun and Shadow Studies for buildings with less than six floors, it is important that they ensure that the City’s guidelines are adhered to.

Should the Sun and Shadow Studies not follow the City of Toronto guidelines, the submission, and any evidence provided with respect to the Studies, will not be given any weight whatsoever, because it is difficult to understand the impact, without reference to information required by the City’s guidelines. While the size of the shadow may not have to be measured to determine the impact of the proposal on its neighbours, I find that the presence of a scale (as suggested by the City’s Guidelines) provides a context to understand the impact of a project, and helps distinguish between unacceptable adverse impact, and other types of impacts.

- If the evidence does not clearly demonstrate that a variance can pass all four tests, I find it important to be prudent, and refuse the variance(s).

Given that the burden of proof lies with the Applicants, I will analyze their evidence to determine if the requested variances can satisfy Sections 3 and 45.1. The Opposition’s evidence will be analyzed to primarily understand their concerns, and whether or not the Applicant’s evidence addresses these objections meaningfully. It is important to understand that evidence is not a “zero sum game”, where there are only two outcomes,



involving two Parties involved in a dispute, such that one Party's being vanquished, automatically translates into a victory for the other Party- in other words, disproving the other Party does not automatically translate into an acceptance of one's evidence

I find that it is important to answer a few questions about the adequacy of the evidence before me to make findings about the relationship between the proposal, and the four tests, before addressing the questions of whether the proposal satisfies Sections 3 and 45.1 of the Planning Act.

The questions that I propose to analyze appear in bold, italicized letters, followed by an analysis that helps me arrive at a finding.

***Is the Geographic Neighbourhood (GN) provided by the Applicants adequate and acceptable to come to findings in the context of the Official Plan?***

The identification of a "Geographic Neighbourhood" (GN) is the starting point of the analysis between the relationship of a given proposal, and the existing and planned context of the neighbourhood it is situated in. At the risk of belabouring the point, it may be noted that the Applicants defined their General Neighbourhood, as being bounded by Glencairn Avenue on the North, Yonge Street on the West, Rosewell Avenue on the West, and Eglinton Avenue West on the South, and added that it is generally within the neighbourhood referred to as "Lawrence Park South", within the City of Toronto. I understand that the rationale for this GN, is the commonality of Zoning under Zoning By-law 569-2013, specifically listed as (F7.5; U2; D0.6) (X949). Based on the fact that the Zoning is the same throughout the aforementioned GN, the Applicants also conclude that there is no difference between the GN, and the Immediate Context.

However, the OP advises us that the GN is not merely determined by the Zoning, but is identified by a number of other important factors, as listed in the following excerpt from 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.*

On the basis of the phrase that begins with the word "including" in Policy 4.1.5, followed by a list of variables, each of which is separated from the former, and the latter by a comma, and the use of the word "and" before the last variable ( i.e. natural and human made dividing features), I interpret the above sentence to mean that a GN is to be determined by the simultaneous use of more than one variable; indeed, the ideal GN should be able to satisfy all of the above parameters. The presence of the commas between variables, and the use of the word "and" before the last variable, preclude the possibility of these variables being interpreted as mutually exclusive alternatives, as in "zoning", **OR** ( my emphasis) prevailing dwelling type and scale" **OR** other variables.

While it may not be possible for any GN to satisfy all the parameters listed, it is important to ensure that the variables used for delineating the GN in question, rely on as many of the listed variables as possible, such that the uniqueness of the community is borne out, and its internal diversity recognized, and respected. The aim of the exercise to identify the GN is to provide for a judicious determination of a context, such that the relationship between the proposal, and the neighbourhood, can be understood.

I find that it helpful to think of the determination of an GN as an iterative process, where a variable such as Zoning may be a good starting point for the analysis, which is subsequently fine-tuned through the use of other listed variables, to arrive at the optimal version of the GN, which best captures how the local residents experience their neighbourhood.

The Opposition, in its Cross-Examination of the Applicant's Witness, focused on what they saw as a discernable difference between Albertus Ave., with smaller lot frontages, and smaller houses, versus its neighbours such as Briar Hill and Castlefield, where the lots are bigger, and are therefore appropriate for bigger houses. I note that the Applicant's Witness disagreed with this question by focusing on the built form of the houses, rather than the lot frontage which was the focus of the Appellant's questions. However, the Applicant's evidence did not vigorously challenge the Appellant's basic contention, that there is a discernable, and appreciable difference, between Albertus Ave, and its neighbouring streets, with respect to lot frontages- namely Albertus Ave. is home to "smaller houses on smaller lots", a phrase used by the Applicants to describe Albertus Ave. in their own Examination-in-Chief. The Appellants' questioning suggests that the lot-sizes ( a listed variable in the identification of the GN in the OP, recited earlier in this Section) are an important variable, that helps discern the uniqueness of Albertus Ave, compared to its neighbours- this difference is not borne out by reliance on the Zoning. The Applicants also asserted that detached houses are the "prevailing type" in the GN. However, the rationale behind how this conclusion was reached was not provided. The process of identifying the "prevailing type" is a numerical exercise, where a counting exercise needs to be completed to identify which type is the most frequently occurring- the "prevailing type" cannot be determined through a qualitative analysis, and can be determined only through a counting exercise. In addition, the conclusion about detached dwellings being the "prevailing type" is not helpful to understand how lot sizes impact the size of the detached dwelling in question, which is one of the key questions raised by the Opposition.

A negative inference is drawn from the Applicants' lack of consideration of lot size in delineating their GN, and the seeming overreliance on Zoning, and the type of dwelling.

I acknowledge that the individuals in opposition to the proposal have been local residents for many decades, and that their experiences of their own community on a daily basis, is important to rely on to determine the adequacy of the identified GN.

My giving significant weight to the daily experiences of the local residents, on the basis of which they questioned the construction of a bigger house on a street with small lots and small homes, when juxtaposed on the earlier inference about not considering lot

sizes to determine the GN, results in my finding that the Applicants' GN is not sufficient for the purposes of analyzing the relationship between the proposal, and the neighbourhood. I find that I cannot answer the question of how the requested variances "*respect and reinforce the existing physical character of each geographic neighbourhood*", as stated Policy 4.1.5, because the GN has not been adequately identified.

The consequence of this analysis is that there is no evidence before me to demonstrate that the proposal satisfies Policy 4.1.5 of the OP, on the basis of which I find that the proposal, including the requested variances do not maintain the general intent and purpose of the Official Plan. The consequence of this finding is that no weight can be given to the Table of approvals of variances granted the Committee of Adjustment, because this information assumes that the GN delineated by the Party can be relied upon for decision making purposes. Likewise, the photographs provided of the GN cannot be relied upon for decision making purposes, because the GN itself has not been accepted for decision making purposes.

***Does the evidence provide an adequate analysis of the relationship between the proposal and its Immediate Context?***

One of the important consequences of the Applicants' reliance on the GN, and insistence that there are no discernable differences within the GN, is that they did not identify the Immediate Context. Consequently, the relationship between the proposal, and its Immediate Context becomes indeterminate, because the question of how the former "fits" the character of the latter, is not answered.

It is important to note that the Opposition defined the "Immediate Context", and provided a critique of why the proposal does not "fit" the Immediate Context, which was objected to by the Applicants on the basis that a GN was not identified, before the Immediate Context in question was identified. While the objection is technically true, and the Opposition's analysis of the Immediate Context is consequently excluded from this analysis. However, I find that the Applicant's evidence is insufficient, and incomplete to answer the question of the relationship between the variances, and the Immediate Context of 85 Albertus Ave, with specific reference to "fit".

***Can any findings about privacy and sun-shadow impacts be made on the basis of the Sun-Shadow Studies?***

Given that the Opposition focused its attention on the loss of privacy, and shadowing issues arising from the proposal, it is important to understand what evidence was put forward by the Applicants to address these issues. The main tool relied upon by the Applicants are the use of Sun and Shadow Studies, prepared by Rubinoff Associates, to address these concerns. I reiterate that given the height, and number of storeys of this low rise building, it is not necessary to introduce Sun and Shadow Studies. However, since the evidence of the Applicants introduced such a Study, and relied upon the same to conclude that there are no adverse impacts resulting from the proposal, the submission, and evidence about the Sun and Shadow Studies cannot be ignored.

In order to highlight the specific issue that I have identified with the Applicant's evidence in this regard, I first recite the City of Toronto's guidelines regarding Sun and Shadow Studies, which may be found at

<https://www.toronto.ca/city-government/planning-development/application-forms-fees/building-toronto-together-a-development-guide/application-support-material-terms-of-reference/>

under the heading "Sun and Shadow Studies", below:

***The Model***

*Modeling will have two parts, the first showing the existing situation and the second showing the proposed development in its context. The proposed development context should include other approved but not built buildings within the model area. These should be indicated graphically as different from the proposal and the built context.*

*Shadow diagrams should be plotted in colour to a standard metric scale and include a bar scale on each sheet labelled in 1,2,5,10,20, 100 and 200m increments. A reference base plan should also be plotted at a metric standard scale.*

*"As of right" or other site specific applicable shadow conditions should be indicated clearly by a contrasting colour single-line overlay with explanatory notation provided in a printed legend (i.e., red for "as of right" on the subject property, yellow for approved but not yet built adjacent development).*

Unfortunately, I find that the drawings submitted by the Applicants did not follow the City's guidelines stated above. The specific issues with the Sun and Shadow Studies are as follows:

- The Sun and Shadow studies don't have a bar scale on each sheet, nor is a reference base plan provided at the bottom of every sheet.
- Secondly and more importantly, the proposed drawings are not illustrated with a different colour (e.g. the Guidelines' references to a different colour, e.g. *red for "as of right" on the subject property, yellow for approved but not yet built adjacent development*), with the result I cannot understand the incremental impact of what the Applicants propose to build, and how it compares with what is of right.

It is not possible for me to understand the differences between the impacts of the proposed building, and the "as-of-right", based on the drawings submitted, and the evidence regarding Sun and Shadow Studies. The lack of a substantive answer to this question makes it impossible to satisfactorily answer the Appellants' concerns about the potential for unacceptable adverse impact, if the proposal were approved.

As a result of this analysis, I find that no findings regarding shadowing impacts can be made on the basis of the Sun and Shadow Studies submitted by the Applicants.

This finding impacts the ability of the proposal to satisfy Policy 3.1.2 of the OP, which emphasizes the importance of ensuring that Outdoor Amenity Spaces have access to sunlight, because shadowing and loss of access to sunlight are a leitmotif in the Opposition's evidence.

Further, the above finding is pertinent to determining if the proposal results in unacceptable adverse impact on the neighbouring properties, which is the crux of the determination of the test of minor.

***Is there adequate evidence before me to understand if the length, depth and FSI variances, satisfy the corresponding performance standards?***

The evidence given by the Applicants when discussing the variances respecting length, depth and FSI, cite the purpose of the corresponding performance standard, followed by an assertion that the requested variances, and their impacts, are either not visible, or cannot be gauged from the street, or is comparable to what the neighbours have on their properties. As an example, in the discussion of the FSI, the evidence is that the intention of the variance “***is to regulate the amount of GFA which can be built on a property with regard to massing and built form***”, before stating that the proposed FSI will be imperceptible from the street, “***because of narrow side yards***”. Visual inspection of the depth, length, and/or FSI variances from the front of the house, or the public realm, is not helpful to understand the impact of the FSI variance, because it is not necessarily experienced from the street, or front of the house. The Building Depth, and Building Length regulations are overtly intended to control the deployment of floor-space over the **whole** of the property (my emphasis), with the intention of preventing overdevelopment of the Site. Like the impact of the requested FSI the impact of building length and depth, cannot be determined by observing the proposal from the street.

Further, the Applicants refer to the requested variances resulting in an appropriate “massing”, which is associated with the OP, as opposed to the use of Floor Space, which is key to the performance standard, under the Zoning By-laws. There is no evidence before me to demonstrate that massing has to be considered, as part of the performance standard to test the appropriateness of the requested FSI.

The methodology used to justify the depth relies on the comparator of a hypothetical house found in Toronto, with a 30 metre depth. This “one size fits all”, Toronto-wide approach does not take local context, and the uniqueness of the community into consideration.

I find the analysis of how the requested variances respecting depth, length and FSI to be superficial and inadequate, in understanding the relationship between the proposal, and the Zoning By-Laws.

***What weight can be given to the submissions from the Applicants, made on August 3, 2021, in response to my direction at the end of the Hearing for a submission regarding the “grouping of variances”, such that illogical situations ( e.g. where a variance is approved, but a different variance, dependent on the former is refused) can be avoided.***

I reiterate that at the end of the Hearing on Day 2, I specifically asked the Applicants to submit suggested language for conditions to be imposed, should the variances be approved. I also asked for a submission to list which variances had to be “grouped”. The purpose of the latter question, as explained to the Parties at the Hearing, was to investigate the possibility of approving some variances, while not approving other variances- I wanted to ensure that the Applicants would not be forced into an illogical situation, where a given variance would be approved, but another variance influenced by the variance in question, would be refused.

I emphasize that my directions to the Applicants asked for a grouping of variances, as opposed to exploring the rationale behind how they chose to group the variances in question.

The submission sent in by the Applicants on August 3, 2021, in response to my request is interesting, because it partially answers my question by discussing the relationship between some of the variances e.g. ***“It is technically possible for the TLAB to approve the building depth variance without approving the building length variance, but it is not possible to approve the building length variance without the building depth variance”***, but then includes a significant corpus of information justifying the Applicants’ request. I am frustrated because the question of the mutual interdependence of the variance is not fully answered, even after wading through the submission. What is doubly frustrating is that there is new information, of unproven relevance to the Appeal before me.

On August 5, 2021, the Appellants sent in a submission expressing their concern about the submission, because they perceived it to be “additional and new evidence”, which had not been raised at the Hearing, and consequently prevented their Cross-Examining the Witness about this information.

After reviewing the Hearing tapes numerous times to understand if the submission merely repeated what had been given to me by way of evidence at the Hearing, I agree with the Appellants that the information provided to me, goes significantly beyond the submission asked of the Applicants, and constitutes new information, which the Appellants cannot test by way of Cross-Examination.

Consequently, no weight is given to this corpus of submissions made by the Witness on August 3, 2021. I must express my bewilderment, to put it mildly, when a sophisticated Party, with access to planning and legal expertise, thought it appropriate to make a submission, with new information. The consequence of the exclusion of this submission results in my question regarding interdependence among the variances remaining

unanswered- the options available to me is the approval, or refusal of all the variances taken collectively.

I note that the exclusion of this submission does not apply to submissions made by Counsel for the Applicants by way of Oral Argument.

On the basis of the analysis, I provide answers to the relationship between the proposal, Section 3, and the four tests under Section 45.1.

***Does the proposal satisfy Section 3 of the Planning Act?***

I find that the proposal satisfies the higher level Provincial Policies by virtue of its focus on promoting “efficient land development”. Given the granularity of the proposal, it would be unusual if a low rise residence in the “Neighbourhoods” designation did not satisfy the intention and purpose of the higher level Provincial Policies- as a result, the Appellant’s lengthy Cross-Examination of the Applicant’s evidence has not been recited.

***Does the proposal maintain the general intent and purpose of the Official Plan?***

The analysis, and answer to the question about the Applicants’ General Neighbourhood, earlier in this Section, results in my finding that the evidence provided by the Applicants cannot satisfy Section 4.1.5 of the OP. As a result of the approach discussed at the beginning of this Section, I find that the variances don’t satisfy the intent and purpose of the OP, without having to analyze other Policies.

However, it is important to note that the lack of information about the impact of the proposal on the neighbours, results in strong doubts being cast on its ability to not cause negative, or adverse impact, which means the relationship between the proposal and Section 3.1.2 (Building Policy) is also in question. This finding fortifies my earlier finding about the proposal not satisfying the general intent and purpose of the Official Plan.

***Does the proposal maintain the general intent and purpose of the Zoning By-laws?***

As my discussion in this Section demonstrates, there is insufficient evidence to demonstrate that the variances respecting FSI, Building Length and Building Depth, satisfy relevant performance standards.

Given the exclusion of the Applicants’ submission, dated August 3, 2021 about the interdependence of variances with respect to each other, I have to refuse all variances, because there is insufficient evidence to demonstrate that they meet the intent and purpose of the By-laws.

***Are the variances desirable for the appropriate development, or use of the land?***

On the basis of the analysis in this Section, there is insufficient information before me to understand the relationship, between the proposal, and its Immediate Context, with respect to the “fit”, because the Applicants’ analysis eschewed the concept of the Immediate Context.

There is insufficient evidence to demonstrate that the requested variances satisfy the performance standards, as stated in the analysis pertaining to the Zoning By-law. Consequently, the proposal, and the requested variances cannot be considered to be desirable for the appropriate development, or use of the land.

***Are the variances minor?***

The issue of unacceptable adverse impact resulting from the proposal is a key consideration to a finding about the variances being minor. A finding that the variances satisfy the test of “minor” cannot be made, because of insufficient evidence about the impact on the neighbouring properties, as stated earlier in this Section. I therefore find that the proposal, and requested variances don’t satisfy the test of minor.

As stated in the beginning to this Section, the variances have to be collectively refused even if they fail one of the four tests under Section 45.1 of the Planning Act. In this case, I find that the variances have failed all four of the tests under Section 45.1 of the Planning Act, and have to be consequently refused.

The conditions suggested by the Opposition are not recited, nor analyzed, because they are relevant only if the variances are approved.

As a result of the above analysis, I find that the variances have to be refused. The consequence of this is that the Appeal respecting 85 Albertus is allowed, and the decision of the Committee of Adjustment made on August 6, 2020, is set aside.

I must take this opportunity to apologize to the Parties, for the length of time taken to issue this Decision. I experienced technical issues with the quality of parts of the video-recording, which had to be resolved through the assistance of the TLAB staff. I note that the video-recordings were valuable in understanding the impact of the Sun and Shadow studies by way of evidence, even if electronic copies of the same were available. It is important to acknowledge, and thank the TLAB Staff for their assistance and patience with this issue.

I then spent significant time reviewing the tapes repeatedly to see if the submissions made by the Applicants on August 3, 2021, constituted repetition of what was stated by evidence at the Hearings, or whether it constituted new information. It was not possible for me to make a satisfactory finding on this question, till I reviewed the entire tapes (spanning two days of evidence) multiple times. Between the restrictions resulting from COVID-19, the need to work remotely, and the pressures resulting from having to complete Hearings for other Appeals, the release of this Decision has taken significantly longer than anticipated, or planned. I reiterate my apology to the Parties for the inconvenience caused to them.



## DECISION AND ORDER

1. The Appeal respecting 85 Albertus is allowed, and the decision of the Committee of Adjustment dated August 6, 2020, respecting 85 Albertus Ave. is set aside.

So orders the Toronto Local Appeal Body



---

S. Gopikrishna  
Panel Chair, Toronto Local Appeal Body