

**Toronto Local Appeal Body** 

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## **DECISION AND ORDER**

Decision Issue Date Monday, August 22, 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): FRONTDOOR DEVELOPMENTS (CALEDONIA) INC

Applicant(s): WESTON CONSULTING

Property Address/Description: 19 INNES AVE & 177 CALEDONIA RD

Committee of Adjustment File

Number(s): 21 155000 STE 09 MV (A0648/21TEY)

TLAB Case File Number(s): 21 215321 S45 09 TLAB

Hearing date: February 1, 2022

**DECISION DELIVERED BY TLAB Panel Member J. Tassiopoulos** 

#### **REGISTERED PARTIES AND PARTICIPANTS**

Owner/ Appellant	FRONTDOOR DEVELOPMENTS (CALEDONIA) INC
Appellant's Legal Rep.	OVERLAND LLP
Primary Owner	FRONTDOOR DEVELOPMENTS INC
Applicant	WESTON CONSULTING
Participant	JEAN-BAPTISTE NGUYEN
Participant	COREY MEEHAN
Participant	DOMINICK VENTRICE
Participant	RACHEL NAIPAUL
Participant	SIEGFRIED BUHLER
Expert Witness	MICHAEL VANI

#### INTRODUCTION

On September 1, 2021, the City of Toronto (City) Committee of Adjustment (COA) refused the variance requested for the COA file number A0648/21TEY, for the property located at 19 Innes Avenue and 177 Caledonia Road (subject property), for the height variance for one 3-unit row house and 10 semi-detached residential units. The Appellant / Applicant is proposing roof top terraces on dwelling units fronting Innes Avenue (Units 29 to 41) of site specific By-law 790-2015, which results in the height variance request.

The site is located on the east side of Caledonia Road, south of Rogers Road. The property was formerly occupied by a public school and the lands are currently being redeveloped to include 41 dwellings and a new public park. The proposed variance is only with respect to the 13 units facing Innes Avenue and indicated as Parcel A in the site plan.

The COA's refusal of the height variance was appealed to the Toronto Local Appeal Body (TLAB) by Mr. Michael Cara counsel for the Applicant / Appellant, Frontdoor Developments (Caledonia) Inc., on September 20, 2021. The TLAB issued a Notice of Hearing setting a Hearing date for February 1, 2022.

In attendance at the Hearing were:

- Mr. Michael Cara, legal counsel for the Applicant / Appellant;
- Expert Witness Michael Vani (Land Use Planning);
- Gary Tiz, Frank Maeda, David Tiz, Owner, Frontdoor Developments Inc
- Jean-Baptiste Nguyen, Participant;
- Corey Meehan, Participant;
- Rachel Naipaul, Participant; and
- Siegfried Buhler, Participant.

I advised, as per Council direction, that I had visited the site and surrounding neighbourhood and reviewed the pre-filed materials in preparation for the Hearing, but it was the evidence to be heard that was of importance.

#### BACKGROUND

Since the COA Hearing, the Appellant was able to adjust their plans to remove the height variance for four of the units. During the TLAB Hearing Mr. Cara, counsel for the Appellant, indicated that the height variance would not be required for four of the thirteen units (Units 38 to 41). The requested height variance would still be required for the remaining nine units (Units 29 to 37).

The height variance sought from the site specific By-law is as follows:

#### Section 4(h)a, By-law 790-2015

The maximum permitted height of any semi-detached dwelling or row house in Parcel A as identified on Map 1 is 11.7 m above grade. The height of the row house (Units 29 to 31) will be 12.57 m above grade. The height of the semi-detached house (Units 32 to 33) will be 12.42 m above grade. The height of the semi-detached house (Units 34 to 35) will be 12.57 m above grade. The height of the semi-detached house (Units 36 to 37) will be 12.57 m above grade.

#### **MATTERS IN ISSUE**

The Participants are concerned that the proposed height variances for the 3 row house and 6 semi-detached residential units would cause adverse impacts to their properties with respect to shadowing, potential overlook, and loss of privacy.

This is an appeal of the COA's approval of the requested height variances. Being a *de novo* Hearing, the TLAB must be satisfied that applicable policy and all four tests of the *Planning Act* have been satisfied.

#### 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

A summary of evidence is presented here for the purpose of providing some context for the following sections of this Decision. All of the evidence and testimony in this matter have been carefully reviewed and the omission of any point of evidence in this summary should not be interpreted to mean that it was not fully considered, but rather that the recitation of it is not material to the threads of reasoning that will be outlined in the *Analysis, Findings, Reasons* section below.

Mr. Cara in his opening statement indicated that the single height variance sought was only for a portion of the Parcel A units of the approved development on the subject property, consisting of 9 units facing onto Innes Avenue. He explained that whereas

11.7m additional height is permitted, the additional height sought, ranging from 11.84m to 12.54m, was not sought for the addition of livable space or to permit a new use. The variance is requested for the enclosed staircases that provide access to the rooftop amenity spaces which are permitted as-of-right.

He mentioned that the drawings were circulated to City departments for review and there were no comments regarding the height variance. He mentioned that the proposal had been revised to eliminate the height variance for 4 units (Units 38 to 41), and they would not be seeking the variance for these units. The remaining 9 units (Units 29-37) of Parcel A still require the height variance, which is less than 1.0m.

#### Expert Land Use Planning Witness Michael Vani

Mr. Cara called Mr. Michael Vani as an expert witness, and he was affirmed. Mr. Vani was qualified to provide opinion evidence in land use planning. He provided a brief synopsis of his retainer and indicated the material he would cover in his witness statement and supporting materials (Exhibit #1).

Mr. Vani noted that the variance was for only 9 of the 13 units facing onto Innes Avenue and out of a total of 42 units of the overall development which was approved through a site specific zoning application and approved by Council in August of 2014.



Figure 1: Parcel A (orange outline) & Units Requiring Height Variance (blue outline – Units 29 to 37) - Exhibit #1

Mr. Vani reiterated that the height variance of 0.9m sought was specifically related to the access stairwell portion (8.5  $m^2$ ) that gives access to the rooftop amenity space and does not apply to any other part of the roof surface. The height for the rest of the roof is permitted by the site specific by-law and the rooftop terraces are permitted as-of-right.

The neighbourhood study area (Rogers Road - north, Norman Avenue – south, Gilbert Avenue – west and McRoberts Avenue – east) was described as including a variety of

housing types and styles that include the characteristic of balconies and outdoor terraces at or above the second level; immediately evident on McRoberts Avenue.

In the immediate neighbourhood along Innes Avenue, he indicated that the north side was comprised of a Place of Worship and both single detached and semi-detached residential dwellings. On the east side, McRoberts Avenue is comprised of single detached, semi-detached, and three-unit rowhouse residential dwellings.

Mr. Vani opined that the development had been previously approved by City Council and conformed with the Official Plan and the site specific by-law. Although this matter was predominantly local, it was also in conformity with Provincial policy of both the *Growth Plan* and the *PPS* in providing appropriate intensification and will make more efficient use of transit and infrastructure in the existing built up area.

Mr. Vani stated that the setbacks from adjacent buildings and public streets were approved as part of the site specific by-law and are not subject to this application. The adjacent streets to the units, Innes and McRoberts Avenues, have a designated right-of-way width of 20.0m, which, combined with the setbacks, ensure there will be adequate privacy, sunlight, and existing sky views. He indicated that privacy is further facilitated by the units requiring the variance because they do not face rear yards or amenity areas of the existing residential dwellings and are oriented to provide a front yard to front yard relationship.

With respect to shadow impact, Mr. Vani indicated in the shadow study prepared that any added shadowing associated with the variance will only occur on the rooftop terrace and would have no impact on adjacent residential dwellings.

The rooftop terraces do not require variances as they are permitted in both the former ZBL or site specific by-law. He reiterated that the only variance sought was for the 8.5m<sup>2</sup> enclosed access stairwell that accesses the rooftop terraces. This projection of the stairwell enclosure was not captured in the height description of the site specific by-law and that is the reason for the variance. He noted that the ZBL does permit such projections without requiring a variance in height.

He opined that the variance was not numerically minor and would also have no impact on the community. The variance does not significantly alter the design of the units in Parcel A and does not materially alter the site specific zoning approval associated with these dwellings.

Mr. Vani submitted that the shadow study submitted by the Applicant was prepared as per City of Toronto terms of reference and applies only for development of 6 storeys or 20 metres or greater in height. It illustrated, with respect to the Parcel A residential units, that the majority of the shadowing including the proposed stairwell projections occurred on the rooftop of the units or onto the adjacent right-of-way.

Mr. Vani opined that the application meets all four tests with respect to the variances and that the height variance sought only applies to a stairwell projection that makes up a very small portion of the rooftop. He noted that if approved, the approval will be tied to the drawings as per the City staff condition for the units to be built substantially in accordance with these plans.

#### Participant Jean-Baptiste Nguyen

Mr. Nguyen was concerned that the development had a height approved in the site specific zoning of 11.7m which was 0.7m more than what was permitted in the neighbourhood, and that now an additional 0.9m in height was being sought. He stated that a total of 1.6m in added height was not minor.

He was concerned that there would be a loss of privacy and noise impacts presented from the proposed rooftop terraces. He was concerned that the rooftop would result in overlook into their home which fronts onto Innes Avenue.

Mr. Nguyen was asked by Mr. Cara if he was aware that the rooftop terraces are permitted and that the variance in height was only for the access stairwell. He responded that he was aware and that the two were tied to each other; the rooftop terrace would not be possible without the added height.

Mr. Cara asked if the rooftop plans were revised to limit access to the front portion of the rooftop, would this address his privacy concern? Mr. Nguyen replied that it would be an improvement.

#### Participant Rachel Naipaul

Ms. Naipaul was concerned that there was an iterative increase in height that is proposed by the variance and that the added height will impact the existing neighbourhood.

She expressed a concern that there may be some issue with wind impact and that there may be rooftop terrace furniture or items that could potentially be blown off of the rooftop.

Mr. Cara asked if the privacy concern would be addressed if rooftop plans were revised to limit access to the front portion. Ms. Naipaul confirmed it would.

#### Participant Corey Meehan

Mr. Meehan was concerned that the rooftop terraces would lead to an overlook condition and suggested that although these spaces were not living spaces, they were inhabitable spaces that could impact the privacy of adjacent residences.

He also expressed concern that there would be potential shadowing of his dwelling from the variance height and structures that may be erected on the rooftop terraces.

#### ANALYSIS, FINDINGS, REASONS

I accept Mr. Vani's evidence that the proposal is consistent with the *PPS* and the *Growth Plan.* Furthermore, I find that Mr. Vani's evidence was uncontroverted during the course of the Hearing.

In considering the evidence presented by both Mr. Vani and the Participants (Mr. John-Baptiste, Ms. Naipaul, and Mr. Meehan) it is important to note that the proposal required one variance for height related specifically to the projection of the stairwell enclosure accessing the rooftop terraces. These features, as per Mr. Vani's testimony, have a footprint of 8.5m<sup>2</sup> on the rooftop and are set back from the front elevation between 2.67m and 2.97m. The height variance for these specific projections ranges from 0.85m to 0.88m for Units 29 to 37 in Parcel A, fronting onto Innes Avenue (Fig. 2).



Figure 2: Portion of covered stairwell access requiring height variance on Units 29 to 37 (orange highlight) - Exhibit #1, p.145

Originally, the height variance presented at the COA applied to all 13 units in Parcel A and through revisions since that submission the Applicant / Appellant was able to remove the variance request for 4 of the units resulting in 9 units requiring the height variance.

In my review of the evidence and exhibit material, I am satisfied that the small projection both in height and mass as well as setback will not result in any undue adverse impact. All of the Participants noted concerns that there would be overlook from the front of the proposed rooftop terraces resulting in a loss of privacy to residential units opposite and fronting Innes Avenue. I find that the potential for overlook by the proposals front elevation facing onto front elevations on Innes Avenue is within expected limits in an urban context where buildings face onto the public realm. Furthermore, as per the *Motisi et al. v. Bernardi* Decision by Q.C. Member Chapman, "…there is nothing unusual in a *city about being able to see, or having to look at, your neighbour's house from your property.*"

During the course of the Hearing, Mr. Cara indicated that the Appellant / Applicant having heard the concern with respect to overlook and privacy had revised the rooftop plan to include planter boxes setback from the front elevation and lined up with the covered stairwell access to limit access to the front portion of the terrace (Fig. 3). Each Participant indicated that this change has resulted in an improvement to the proposed condition or addressed their concern with respect to overlook. I find that this further refinement of the rooftop plan is a thoughtful revision that does address the concerns raised by the Participants during the Hearing.

Figure 3: Planter boxes setback on rooftop terrace restricting access to front overlooking Innes Avenue (orange highlight)



With respect to potential shadow impact onto the Participants' properties, Mr. Vani was able to demonstrate that the shadowing mainly occurs within the road right of way. Although shadow studies are not required for such development, Mr. Vani explained that it was undertaken to address the concerns of the Participants. Having considered the evidence during the Hearing and reviewed the shadow study presented in Exhibit #1 (pdf pages 152-156), I am satisfied that there is no shadowing impact on Innes Avenue and the only shadowing indicated was on the front yards of 3 properties on McRoberts Avenue during 4:18pm and 5:18pm.

Furthermore, I find that the variance sought for height will not create a further adverse impact that is not already present from the as-of-right units originally approved for Parcel A.

I preferred Mr. Vani's evidence and I laud the efforts made by the Applicant / Appellant to address the concerns of the Participants and the refinements to the proposal to remove units requiring a variance and the revisions to the roof terrace plan.

#### Conclusion

Based on the analysis and reasons stated above, I find that the requested variance for height for the enclosed rooftop access stairwell meets the four tests (s.45(1) of the *Planning Act*), namely, that it maintains the general intent and purpose of the Official Plan and Zoning By-laws, it is minor in nature and desirable for the appropriate use and development of the subject property.

The drawings, including the revised rooftop terrace design that includes the setback planters restricting access to the front portion of the rooftop, will be included as a condition to this Decision.

#### **DECISION AND ORDER**

The appeal is allowed and the decision of the Committee of Adjustment is set aside. The following variance is authorized subject to the conditions listed below:

#### Section 4(h)a, By-law 790-2015

The maximum permitted height of any semi-detached dwelling or row house in Parcel A as identified on Map 1 is 11.7 m above grade.

The height of the row house (Units 29 to 31) will be 12.55 m above grade. The height of the semi-detached house (Units 32 to 33) will be 12.55 m above grade. The height of the semi-detached house (Units 34 to 35) will be 12.58 m above grade. The height of the semi-detached house (Units 36 to 37) will be 12.58 m above grade.

#### Conditions

- The proposed development shall be constructed substantially in accordance with the building elevations (Page 1 of 2), dated August 16, 2022, and the rooftop drawing (Page 2 of 2), dated February 1, 2022, prepared by Hunt Design Associates and provided as **Attachment 1** to this Decision.
- 2. Any variance(s) that may appear on these plans but are not listed in the written decision are **NOT** authorized.

John Tassiopoulos Panel Chair, Toronto Local Appeal Body







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### LEGEND

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- DROP OR RAISE BANDING BY AMOUNT
- ADD BANDING AND/OR TRIM AS INDICATED.
- ADDED CAMBERED HEADERS.
- 5 8'-0" X 8'-0" GARAGE DOORS.
- 6 DROPPED OR RAISED SOFFIT AS INDICATED.
- ADJUSTED ROOF OVERHANG AS INDICATED ON
- $^{\scriptscriptstyle \Delta}$  ROOF PLAN.
- B PROVIDE GUARD PER CONSTRUCTION NOTE 1
- 9 FOYER SUNKEN AS INDICATED
- 10 LIGHT FIXTURE RELOCATED AS INDICATED

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4.	REVISED PER TLAB COMMENTS	2022.08.17	SR
3.	REVISED FOR TLAB HEARING	2022.02.01	DC
2.	REVISED PER CLIENT COMMENTS / ISSUED FINAL	2021.11.09	SR
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## **ATTACHMENT 1**



## UPPER FLOOR AND ROOF PLAN FOR UNIT 1501







## CROSS SECTION 'A-A' FOR UNIT 1502





# FRONT ELEVATION FOR UNIT 1501



## CROSS SECTION 'A-A' FOR UNIT 1501







All drawings specifications related documents and design are the copyright property of Hunt Design Associates (H.D.A). Reproduction of this property in whole or in part is strictly prohibited without H.D.A's written permission (H.D.A. assumes no responsibility or liability or this property unless it bears the appropriate BCIN number and original signature.)

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