

# DECISION AND ORDER

**Decision Issue Date**      Monday, October 17, 2022

PROCEEDING COMMENCED UNDER Section 53, subsection 53(19), Section 45(12), subsection 45(1) of the Planning Act, R.S.O. 1990, c. P.13, as amended (the "Act")

Appellant(s): ANTHONY MICHAEL HOFFMANN

Applicant(s): BABAK IZADI

Property Address/Description: 60-64 ROSELAWN AVE

Committee of Adjustment File

Number(s): 21 119119 NNY 08 MV - 21 119113 NNY 08 MV - 21 119117 NNY 08 MV  
- 21 119115 NNY 08 MV - 21 119114 NNY 08 MV - 21 119257 NNY 08 CO - 21  
119082 NNY 08 CO - 21 119121 NNY 08 MV - 21 119084 NNY 08 CO (B0012/21NY,  
A0186/21NY, A0187/21NY, A0188/21NY, A0189/21NY, and A0190/21NY)

**TLAB Case File Number(s): 22 127858 S53 08 TLAB - 22 127860 S53 08 TLAB -  
22 127864 S45 08 TLAB - 22 127863 S45 08 TLAB - 22 127861 S45 08 TLAB - 22  
127862 S45 08 TLAB - 22 127866 S45 08 TLAB**

**Hearing date: October 13, 2022**

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

## REGISTERED PARTIES AND PARTICIPANTS

Applicant / Party (TLAB)	BABAK IZADI
Party's Legal Rep.	DAVID BRONSKILL
Appellant	ANTHONY MICHAEL HOFFMANN
Expert Witness	TAE RYUCK

## **INTRODUCTION, CONTEXT AND SUMMARY OF EVIDENCE**

The Committee of Adjustment (the “Committee”) had before it two applications for consent to sever and five applications for variance relief with respect to the proposed division of 60 Roselawn Avenue and 64 Roselawn Avenue (taken together and referred to herein collectively as “the Property”) into five new parcels of land fronting onto Duplex Avenue.

The redevelopment proposal being advanced by the owner/proponent is to demolish the two single family dwellings and other structures which are presently located on the Property (and which front onto Roselawn Avenue) and to create five new lots which will front onto Duplex Avenue and will each accommodate a new three storey detached dwelling.

To accommodate this proposal a variety of variances are required relating to minimum lot area, minimum lot frontage, floor space index, minimum yards, height of structure and walls and in the case of the proposed corner lot, the point of driveway access. The specific variances will be detailed below.

The Committee considered the written comments received and heard oral submissions at their hearing session. The Committee approved all of the applications subject to conditions.

Anthony HOFFMANN (the “Appellant”) is a neighbour of the Property, residing at 39 Castlefield Avenue. His rear yard is exposed to the Property. In the Notice of Appeal filed by the Appellant, objection was taken to the absence of a condition which would prohibit use of the rear third floor area for terrace or balcony purposes. It was his understanding that the Committee was sympathetic to the concerns raised by him about this circumstance and that the agent for the applicant had undertaken to abide by such a limitation. However, when he received and reviewed the final issued version of the decisions, no such limitation or condition was imposed. Due to that, the Appellant filed his Notice of Appeal.

At the outset of the Tribunal’s hearing session, the Tribunal precipitated a discussion with the Appellant and counsel for the proponent. Upon review of the plans filed by the proponent, it was apparent to the Tribunal that the rear third floor area was shown as a portion of roof adjacent to the principal bedroom but contained an express note that this was inaccessible roof. Indeed, the plans did not show any door or means of access to this rather limited area of roof. The plans did show a panel placed at the edge of roof.

Upon questioning by the Tribunal, counsel for the proponent, Mr. Bronskill, did confirm that this area was not meant to be accessible from inside the dwelling and was

not intended to function as any kind of platform, balcony or terrace for resident resort. He offered to have the Tribunal subject that area to an express restriction in that regard by way of an express prohibition as a condition of approval of the variances in order to make that clear and to impose some ongoing control over such an outcome.

That proposal was put to the Appellant and after some discussion as to its enforceability, the Appellant was prepared to accept such a disposition as a resolution to the variance appeals. In addition, the Appellant conceded that he had not registered any objection to the consent decisions and understood that in the absence of any grounds of proper planning objection there was no basis for the Tribunal to sustain his appeals against those decisions.

In order to impose the condition, it is necessary for the Tribunal to allow the Appellant's appeals of the variance decisions in order to give the Tribunal jurisdiction to impose the further condition.

To that end, and to confirm the matter of planning conformity, the Tribunal qualified Tae Ryuck, the proponent's land use planning consultant, to provide expert land use planning evidence in this proceeding. Mr. Ryuck advised the Tribunal that he considered the proposed condition to be appropriate. He adopted all of the statements in his Expert Witness Statement and confirmed that the variances approved by the Committee met the four tests of Section 45(1) of the *Planning Act*. There is no issue with PPS consistency or with Growth Plan conformity.

## **THE LEGISLATIVE AND POLICY FRAMEWORK**

### **Provincial Policy – S. 3**

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 for the subject area ('Growth Plan').

### **Consent – S. 53**

The Tribunal must be satisfied that a plan of subdivision is not necessary for the orderly development of the municipality pursuant to s. 53(1) of the Act and that the application for consent to sever meets the criteria set out in s. 51(24) of the Act. These criteria require that " regard shall be had, among other matters, to the health, safety, convenience, accessibility for persons with disabilities and welfare of the present and future inhabitants of the municipality and to,

- (a) the effect of development of the proposed subdivision on matters of provincial interest as referred to in section 2 of the Planning Act;

- (b) whether the proposed subdivision is premature or in the public interest;
- (c) whether the plan conforms to the official plan and adjacent plans of subdivision, if any;
- (d) the suitability of the land for the purposes for which it is to be subdivided;
  - (d.1) if any affordable housing units are being proposed, the suitability of the proposed units for affordable housing;
- (e) the number, width, location and proposed grades and elevations of highways, and the adequacy of them, and the highways linking the highways in the proposed subdivision with the established highway system in the vicinity and the adequacy of them;
- (f) the dimensions and shapes of the proposed lots;
- (g) the restrictions or proposed restrictions, if any, on the land proposed to be subdivided or the buildings and structures proposed to be erected on it and the restrictions, if any, on adjoining land;
- (h) conservation of natural resources and flood control;
- (i) the adequacy of utilities and municipal services;
- (j) the adequacy of school sites;
- (k) the area of land, if any, within the proposed subdivision that, exclusive of highways, is to be conveyed or dedicated for public purposes;
- (l) the extent to which the plan's design optimizes the available supply, means of supplying, efficient use and conservation of energy; and
- (m) the interrelationship between the design of the proposed plan of subdivision and site plan control matters relating to any development on the land, if the land is also located within a site plan control area designated under subsection 41 (2) of this Act or subsection 114 (2) of the City of Toronto Act, 2006. 1994, c. 23, s. 30; 2001, c. 32, s. 31 (2); 2006, c. 23, s. 22 (3, 4); 2016, c. 25, Sched. 4, s. 8 (2).

### **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.

## **CONCLUSION**

Based upon the focused objection of the Appellant and what turned out to be the design intent of the redevelopment proposal in any event whereby the roof space adjacent to the third floor principal bedroom of each of the proposed dwellings is not to be accessible, the Appellant's objection is addressed in a positive fashion. In order to ensure that such areas remain off limits for resident leisure use, the condition proposed by the proponent and accepted by the Appellant should clarify the common understanding and ensure ongoing control over this roof space.

On this basis, the Tribunal will allow the Appellant's five variance appeals for the purpose of imposing a further condition to control use of the rear third floor roof space on each of the dwellings but otherwise approve the variances which were approved by the Committee. The consent appeals will be dismissed and will therefore come into effect in accordance with the Committee's dispositions of them.

## **DECISION AND ORDER**

Then Tribunal **ORDERS** that:

1. The appeals by the Appellant against the consent decisions of the Committee are dismissed; and

2. The appeals by the Appellant against the variance decisions of the Committee are allowed for the purpose of imposing a further condition (new Condition 1, with the two imposed by the Committee re-numbered) and the following variances, as approved by the Committee, are approved by the Tribunal:

A0186/21NY– 60-64 Roselawn Avenue – LOT A

Chapter 10.10.30.10.(1)A), By-lawNo.569-2013 The required minimum lot area is 225 m<sup>2</sup>.

The proposed lot area is 208.37 m<sup>2</sup>.

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Chapter 10.10.40.40.(1)A, By-law No. 569-2013

The permitted maximum floor space index is 0.6 times the area of the lot. The proposed floor space index is 1.08 times the area of the lot.

Chapter 10.10.40.70.(1), By-law No. 569-2013 The required minimum front yard setback is 0.9 m. The proposed front yard setback is 0.5 m.

Chapter 10.10.40.70.(2), By-law No. 569-2013 The required minimum rear yard setback is 7.5 m. The proposed rear yard setback is 2.9 m.

Chapter 10.10.40.10.(1)A, By-law No. 569-2013

The permitted maximum height of a building or structure is 9.0 m. The proposed height of the (building/structure) is 10.7 m.

Chapter 10.10.40.10.(2)B(i), By-law No. 569-2013

The permitted maximum height of all side exterior main walls facing a side lot line is 7.0 m.

The proposed height of the side exterior main walls facing a side lot line is 10.7 m.

Chapter 10.5.80.40.(3)(B), By-law No. 569-2013

Vehicle access to a parking space on a corner lot must be from a flanking street that is not a major street.

The proposed vehicle access to a parking space is from the front.

Section (4)(2), By-law No. 438-86 The maximum building height is 9.0 m.

The proposed building height is 11.63 m.

A0187/21NY – 60-64 Roselawn Avenue – LOT B

Chapter 10.10.30.10.(1)A, By-law No. 569-2013 The required minimum lot area is 225 m<sup>2</sup>.

The proposed lot area is 145.29 m<sup>2</sup>.

Chapter 10.10.40.40.(1)A, By-law No. 569-2013

The permitted maximum floor space index is 0.6 times the area of the lot.

The proposed floor space index is 1.31 times the area of the lot.

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Chapter 10.10.40.70.(2), By-law No. 569-2013 The required minimum rear yard setback is 7.5 m. The proposed rear yard setback is 5.08 m.

Chapter 10.10.40.10.(1)A), By-law No. 569-2013  
The permitted maximum height of a building or structure is 9.0 m. The proposed height of the (building/structure) is 10.7 m.

Chapter 10.10.40.10.(2)B)(i), By-law No. 569-2013  
The permitted maximum height of all side exterior main walls facing a side lot line is 7.0 m.  
The proposed height of the side exterior main walls facing a side lot line is 10.7 m.

Section (4)(2), By-law No. 438-86  
The maximum building height is 9.0 m. The proposed building height is 11.48 m.

A0188/21NY – 60-64 Roselawn Avenue – LOT C

Chapter 10.10.30.10.(1) A), By-law No. 569-2013  
The required minimum lot area is 225 m<sup>2</sup>. The proposed lot area is 145.12 m<sup>2</sup>.

Chapter 10.10.30.20.(1) C)(i), By-law No. 569-2013  
The required minimum lot frontage for a semi-detached house is 7.5 m. The proposed lot frontage is 7.2 m.

Chapter 10.10.40.40.(1) A), By-law No. 569-2013  
The permitted maximum floor space index is 0.6 times the area of the lot. The proposed floor space index is 1.32 times the area of the lot.

Chapter 10.10.40.70.(2), By-law No. 569-2013  
The required minimum rear yard setback is 7.5 m. The proposed rear yard setback is 6.03 m.

Chapter 10.10.40.10.(1) A), By-law No. 569-2013  
The permitted maximum height of a building or structure is 9.0 m. The proposed height of the (building/structure) is 10.65 m.

Chapter 10.10.40.10.(2) B)(i), By-law No. 569-2013  
The permitted maximum height of all side exterior main walls facing a side lot line is 7.0

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m.

The proposed height of the side exterior main walls facing a side lot line is 10.65 m.

Chapter 10.10.80.40.(1), By-law No. 569-2013

Vehicle entrances through the front main wall of the building are permitted provided the lot has a minimum frontage of 7.6 m.

The proposed lot frontage is 7.2 m.

Section (4)(2), By-law No. 438-86

The maximum building height is 9.0 m. The proposed building height is 11.48 m.

A0189/21NY – 60-64 Roselawn Avenue – LOT D

Chapter 10.10.30.10.(1) A), By-law No. 569-2013 The required minimum lot area is 225 m<sup>2</sup>.

The proposed lot area is 153.80 m<sup>2</sup>.

Chapter 10.10.30.20.(1) C)(i), By-law No. 569-2013

The required minimum lot frontage for a detached house is 7.5 m. The proposed lot frontage is 7.2 m.

Chapter 10.10.40.40.(1) A), By-law No. 569-2013

The permitted maximum floor space index is 0.6 times the area of the lot.

The proposed floor space index is 1.24 times the area of the lot.

Chapter 10.10.40.70.(2), By-law No. 569-2013 The required minimum rear yard setback is 7.5 m. The proposed rear yard setback is 7.02 m.

Chapter 10.10.40.10.(1) A), By-law No. 569-2013

The permitted maximum height of a building or structure is 9.0 m. The proposed height of the (building/structure) is 10.63 m.

Chapter 10.10.40.10.(2) B)(i), By-law No. 569-2013

The permitted maximum height of all side exterior main walls facing a side lot line is 7.0 m.

The proposed height of the side exterior main walls facing a side lot line is 10.63 m.



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Chapter10.10.80.40.(1),By-lawNo.569-2013

Vehicle entrances through the front main wall of the building are permitted provided the lot has a minimum frontage of 7.6 m.  
The proposed lot frontage is 6.09 m.

Section(4)(2),By-lawNo.438-86

The maximum building height is 9.0 m. The proposed building height is 11.54 m.

A0190/21NY– 60-64 Roselawn Avenue – LOT E

Chapter10.10.30.10.(1)A),By-lawNo.569-2013 The required minimum lot area is 225 m<sup>2</sup>.

The proposed lot area is 162.6 m<sup>2</sup>.

Chapter10.10.40.40.(1)A),By-lawNo.569-2013

The permitted maximum floor space index is 0.6 times the area of the lot.  
The proposed floor space index is 1.18 times the area of the lot.

Chapter10.10.40.10.(1)A),By-lawNo.569-2013

The permitted maximum height of a building or structure is 9.0 m. The proposed height of the (building/structure) is 10.6 m.

Chapter10.10.40.10.(2)B)(i),By-lawNo.569-2013

The permitted maximum height of all side exterior main walls facing a side lot line is 7.0 m.

The proposed height of the side exterior main walls facing a side lot line is 10.6 m.

Section(4)(2),By-lawNo.438-86

The maximum building height is 9.0 m. The proposed building height is 11.54 m.

**This Decision is subject to the following conditions applicable to all of the foregoing variance applications:**

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1. Despite Section 10.20.40.50 of Zoning By-law 569-2013, no rear third floor platform, deck or balcony shall be permitted.

2. The requirements of the Parks and Recreation, Urban Forestry Division;

- Submission of a complete application for a permit to injure or remove a City owned tree(s), as per City of Toronto Municipal Code Chapter 813, Trees Article II Trees on City Streets.

- 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.

3. The applicant to satisfy the requirements of the Engineering and Construction Services Division as follows:

1. The applicant shall submit revised site plan(s) with the following revisions and notations to the satisfaction of the Engineering and Construction Services and Transportation Services, at no cost to the City;

a) Illustrate the existing and proposed grades at all corners along the property boundary;

b) Revise the site plan to illustrate a positive slope of a minimum 2% to a maximum 4% that will be maintained on each of the proposed driveways, as measured between the curb line of Duplex Avenue to the proposed garage door entrance;

c) Show the footprint of the existing driveways. Label any portion of driveways to be removed within the right-of-way as to be restored with sod.

d) The site plans must be revised to clearly indicate the restoration of the redundant portion of the former driveways and curb cuts with sod and combined raised curb and sidewalk, all of which shall be designed to municipal standards;

e) Add the following notations to the Site Plan:

"The applicant is required to restore any redundant section of the existing driveway that is being closed with soft landscaping and a poured raised concrete curb and combined sidewalk within the municipal boulevard according to City

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of Toronto Design Standard, to the satisfaction of Transportation Services;

"The proposed new driveways shall be constructed to the applicable City of Toronto Design Standards at no cost to the municipality";

"The applicant shall also submit a Municipal Road Damage Deposit (MRDD) prior to obtaining a Building Permit." The applicant is advised to contact Franca Mollo of our Right-of-Way Management Section at (416) 395-6266 regarding municipal road damage deposit requirements;" and,

"The applicant shall obtain the necessary authorizations and permits from the City's Right-of-Way Management Section of the Transportation Services before excavating within or encroaching into the municipal road allowance";



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G. Swinkin  
Panel Chair, Toronto Local Appeal Body