

DECISION AND ORDER

Decision Issue Date Friday, October 14, 2022

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

Appellant(s): CHRISTOPHER MUDRY

Applicant(s): GLEN SCHNARR & ASSOC

Property Address/Description: 36 MACPHERSON AVE

Committee of Adjustment File

Number(s): 21 243699 STE 11 MV (A1465/21TEY)

TLAB Case File Number(s): 22 133607 S45 11 TLAB

Hearing dates: Sept. 2, 14, 28, 2022

DECISION DELIVERED BY TLAB Panel Member T. Yao

REGISTERED PARTIES AND PARTICIPANTS

Applicant	Glen Schnarr & Assoc
Owner/Appellant	Christopher Mudry
Mr. Mudry's Legal Rep.	David Bronskill
Mr. Mudry's Expert Witness	Stephanie Matveeva, Addison Milne-Price
City of Toronto's Legal Rep	Jessica Jakubowski, Derin Abimbola
Toronto's Expert Witness	Cameron Williamson
Party	ABC Residents Association
ABC's Expert Witness	Stephen Qi

INTRODUCTION AND SUMMARY

Mr. Mudry wishes to excavate the front yard at 36 Macpherson Ave and install an integral garage in the basement area. The entrance would be under the front porch. Except for a protective railing, a relocated front walkway, and removal of some of the front lawn, nothing else would change. Mr. Mudry's main motivation is to provide a charging station in the garage for his electric car, which otherwise currently needs a

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one-kilometer trip to a public charging station. To achieve his integral garage, he needs the variances in Table 1. I have bolded the ones to be discussed in depth as they were the main variances in dispute.

Table1. Variances sought for 36 Macpherson			
		Required	Proposed
Variances from Zoning By-law 569-2013			
1	Front porch west side yard setback	0.9 m	0.45 m (This represents an existing condition)
2	Front yard setback (existing porch)	3.9 m	1.45 m (This represents an existing condition)
3	Front yard landscaping (this variance is no longer being sought)	75% of all landscaping must be soft	50% (this variance is no longer being sought)
4	“Reverse slope driveway”	Lowest point of driveway must have elevation of 118.44 m above sea level	Lowest point of driveway is .118.03 m above sea level)
5	Integral garages	No integral garage if frontage < 7.6 m (24.93 ft)	Frontage is 7.14 m (23.42 ft)

On March 23, 2022, the Committee of Adjustment refused the variances. Mr. Mudry appealed and so the appeal came to the TLAB.

LEGISLATIVE AND POLICY CONTEXT

The Provincial Policy Statement and the Greater Golden Horseshoe Growth Plan must be considered, but they contain a high level of generality. For example, the Provincial Policy Statement discourages lot creation on prime agricultural land and prefers municipal water and sewage over private systems and so on. I do not find these policies offer much guidance for this case, which seeks to create a new driveway and garage, for one lot in a “settlement area” (i.e., the City of Toronto).

The variances must comply with s. 45(1) of the *Planning Act* and must cumulatively and individually:

- maintain the general intent and purpose of the Official Plan;
- maintain the general intent and purpose of the Zoning By-laws;
- be desirable for the appropriate development or use of the land; and
- be minor.¹

¹ 45 (1) . . . [the TLAB] may authorize such minor variance from the provisions of the by-law, in respect of the land, building or structure or the use thereof, as in its opinion is desirable for the appropriate development or use of the land, building or structure, if in the opinion of the

Right to develop

The obligation is on Mr. Mudry to demonstrate to the decision-maker that the tests are met on the balance of probabilities; there is no right to a variance.

EVIDENCE

I heard from Ms. Matveeva, Mr. Williamson and Mr. Qi, and qualified all three as able to give opinion evidence in the area of land use planning.

I made a site visit. Although my views are not evidence, they give context to help me understand the testimony of the three witnesses.

ANALYSIS, FINDINGS, REASONS

Through its zoning powers, Council does not permit integral garages for lots less than 7.6 m wide (24.93 ft) and does not permit “reverse slope” driveways for lots of any width. Mr. Mudry wishes a variance from the integral garage provision, as his lot is just under 7.6 m. Mr. Bronskill invited me not to overemphasize “numbers”, citing a recent TLAB case: 251 Forest Hill Road. I considered the reasoning in that case and have applied the tests mandated by s. 45(1) of the Planning Act, after which I find that the tests are not met.

The bolded variances

The non bolded variances in Table 1 either reflect an existing condition, or were modified and eliminated after the Committee of Adjustment decision. For the two remaining variances in dispute:

- A vehicle entrance may not pierce the front wall, also called an “integral garage”²; and
- “reverse slope” driveways are not permitted.³

committee the general intent and purpose of the by-law and of the official plan, if any, are maintained.

² 10.10.80.40 Access to Parking Space (1) Garage Entrance in Front Wall Not Permitted on Certain Lots. . . If a lot in the R zone has a lot frontage of 7.6 metres or less, a vehicle entrance through the front main wall of a building, other than an ancillary building, is not permitted

³ 10.5.80.40 Access to Parking Space I summarize this section as follows:

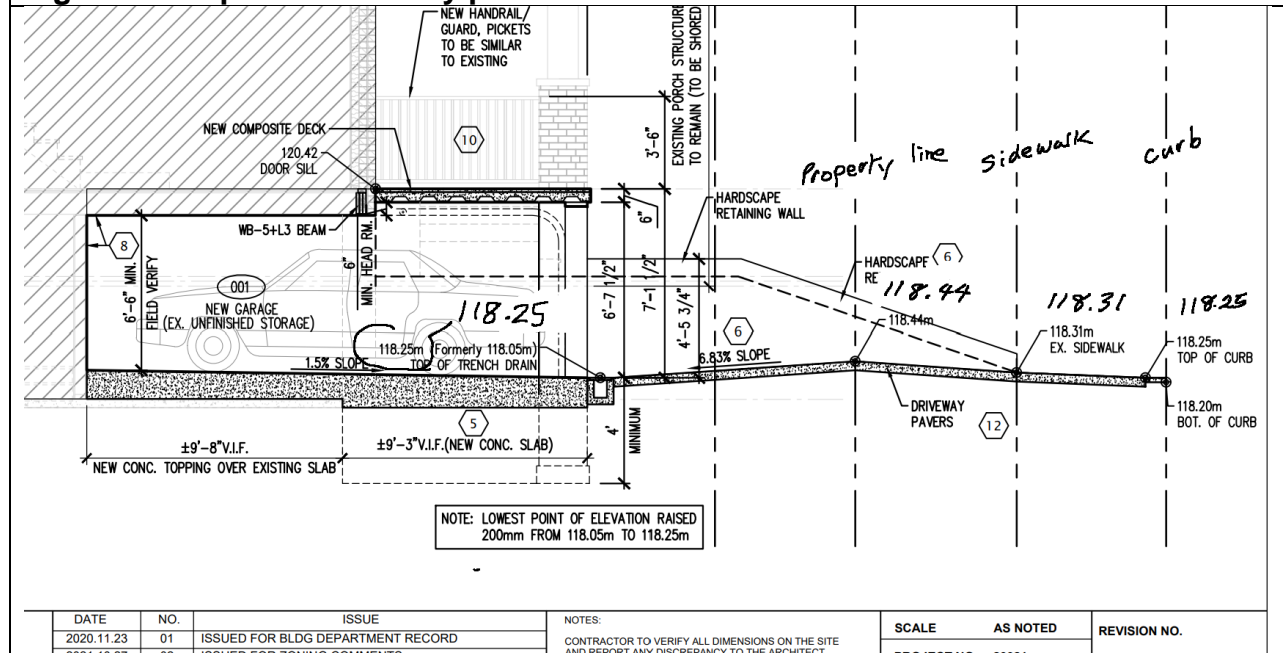
- Maximum vehicle entrance width of 6 m
- Bottom of garage door must be higher than centre point of the street lot line;
- No street access for lots that have a rear lane.

The complete text is:

(1) Maximum Width of Garage Entrance in Front Wall on Certain Lots In the Residential Zone category, for a lot with a detached house or a semi-detached house, if the required minimum lot

Neither is permitted for 36 Macpherson. For an owner to install an integral garage, the bylaw requires a frontage greater than 7.6 m or 24.93 ft; Mr. Mudry's lot is slightly smaller at 7.14 m or 23.42 ft wide. The difference is 0.46 m.

Figure 2. Proposed driveway profile



The reverse slope prohibition is measured from the property line to the bottom of the garage door. Mr. Bronskill suggested that Mr. Mudry only needs to raise the floor of the garage to the level of the sidewalk (118.31 - 118.25 = 0.06 m or 2.4 inches) to obtain a permit without a variance.

These provisions (relating to reverse slopes and integral garages) were enacted sometime between 1996 and 2013. For the examples on page 6 in this decision, ("comparables" of existing garages and driveways), all relevant construction was prior to 2013. While I accept that such properties may form part of the neighbourhood

frontage is less than 24.0 metres, the maximum combined width of all vehicle entrances through the front main wall of the residential building is 6.0 metres.

(2) Elevation of Garage Entrance in Certain Types of Residential Buildings In the Residential Zone category, for a detached house . . . where an individual private driveway leads directly to the dwelling unit, the elevation of the lowest point of a vehicle entrance in a main wall of the building must be higher than the elevation of the centreline of the driveway at the point where it intersects a lot line abutting a street.

(3) Parking Space Access on a Lot In the Residential Zone category, vehicle access to a parking space on a lot must: (A) be from the lane, if the lot abuts a lane; (B) be from a flanking street that is not a major street on the Policy Areas Overlay Map, if the lot does not abut a lane; and (C) in all other cases, may be from the street on which the lot fronts. [By-law: PL130592 Mar_2018]

character, I cannot ignore that there was an intent to change zoning by-laws. I must consider whether the proposal meets the current intent and purpose of the zoning by-law.

The study area

Figure 3. Ms. Matveeva's (Mr. Mudry's planner) study area



I accept the Mudrys' planner's (Ms. Matveeva's) study area, but note there are important differences within her area. The north side of Macpherson (including the Mudrys) is the most dependent on permit parking. Her area consists of three streets, the other planners agreed with those streets for the relevant study area, but also went a little farther south:




1. **Marlborough Ave** On the north side, the street is dominated by the York Racquets Club and the Alex Mews residential development. On the south side are semis and townhouses. The south side of the street is different from Mr. Mudry's street in that many Marlborough homes have front yard parking pads.⁴
2. **Macpherson Ave.** North side lots (even addresses) have no lane, but south side lots do, and as a result none of Mr. Mudry's neighbours across the street need to use permit parking.
3. **Roxborough St W, and Gibson Ave.** These streets are not in Ms. Matveeva's area, but nothing turns on this. All of north side Roxborough and most of the south lots have laneway parking. All of Gibson lots likewise have access to a lane and the south side of Gibson borders Ramsden Park so those residents do not even have to share their lane. I have not considered these streets in this decision.

⁴ 92. There are 48 lots in the wider context that have off-street parking permits in the front yard, of those, 47 can be found on Marlborough Avenue and one (1) on Roxborough Street West. (Witness Statement C. Williamson, the City's planner)

The Inventory of garages and construction dates

Below is a list of all Macpherson Ave garages and some information on the grade or elevation. The photos are from Ms. Matveeva (Mr. Mudry's planner) and the other information is from Mr. Williamson (the City planner). The number of lots on Macpherson, 172 lots, was obtained by my counting of the data on the City's document disclosure pages 45 to 52.

Figure 4. Inventory of garages and construction dates of Macpherson properties. All "non-compliant"⁵ garages/ driveways (marked with an asterisk) were constructed prior to the 2013 zoning by-law

	24 Macpherson; 1909	Non integral, at grade
	34 Macpherson*. Original house 1909. Driveway and modifications construction date unknown	Integral, below grade.
	74 Macpherson*; 1996	Integral, at grade; (the frontage is deficient. 7.5 m < 7.6 m required.)

⁵ By "non-compliant" I mean non-compliant if built today.

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	<p>76 Macpherson*; 2008</p>	<p>Not integral, below grade</p>
	<p>115 Macpherson; unknown</p>	<p>Integral (frontage 10.7 m), at grade</p>
	<p>138 Macpherson; farmhouse 1889; later addition unknown construction date</p>	<p>Not integral, at grade</p>

To summarize,

One integral garage (#74); frontage 7.5 m < 7.6 m.

Four side-attached garages (#s24. 76, 115, 138)

One with a reverse slope driveway (#76), but side attached garage (i.e., non-integral);

One with a reverse slope parking area leading to a former integral garage (#34). The garage has now been converted to living area. The result is a de facto below grade parking pad.

None of the examples have both an integral garage and reverse slope driveway.

Even these examples are numerically small in number for the study area. While they exist as part of the neighbourhood, I find they are not “prevailing”.

In the next section, I set out Mr. Bronskill's submissions. He says that I should not dismiss the application simply because of the lack of direct comparables. I do dismiss the application but not for that reason only. I am required to determine the general intent of policy provisions relating to reverse slopes and integral garages. That intent can be determined from reading the whole of those documents and integrating it with physical description of the neighbourhood.

Mr. Bronskill's legal submissions

A seeker of a variance does so because some zoning measurement is excessive or deficient. They must show the exceedance or deficiency nonetheless respects and reinforces the neighbourhood character. A proponent argument is that deficiency, say 46 centimeters or 6 centimeters, may be found in similar favorable decisions of the Committee of Adjustment or the TLAB, because the numbers are "close". Of course, the proponent may make other arguments, reflecting the diversity of Toronto lots and neighbourhoods. But Mr. Bronskill cannot make this argument because there aren't any decisions granting variances to Macpherson area properties for reverse slopes or integral garages, under current zoning.

Mr. Bronskill began by asking me to read the TLAB case 251 Forest Hill Rd and adopt Member Swinkin's approach of a "visceral judgement" and not just a tabulation of data.⁶ I should say at the outset that I agree with Member Swinkin's reasoning and find

⁶ This decision that I've put in front of you in my respectful submission is an extension of the long line of decisions regarding minor variances that it's not a mathematical exercise, that is, tests for minor variances have never been and should not be about the numbers. And sir, you will be well aware, going back to 2006, it's the infamous Toronto Standard Condominium Corp. decision [that was not furnished by Mr. Bronskill] that indicated that it's not a mathematical exercise and instead the performance standards in a zoning bylaw are not an end but a means to an end, and that end is good planning.

The language for better or worse. . . in policy 4.1.5 of the Official Plan has tempted, I think, **to many to revive mathematics as a test for whether requested variances maintain the general intent and purpose of the Official Plan.** And I sir would urge you to reject that approach and the Forest Hill decision that I provided to you this morning did reject that approach. And sir it'll come back to . . . my submissions later in terms of the application of 4.1.5 and the two steps that I put to the witnesses and to which they agreed. And that is sir the first step is understanding the existing physical character and that's where sir the word "prevailing" comes in, and we get to look at what is "frequently occurring" in terms of understanding the character of the neighbourhood.

The mistake sir I would respectfully submit is an approach that says if you are not one of those frequently occurring "things", you cannot then be permitted by way of a variance or even a rezoning sir. In my respectful submission that the wrong approach and the planners sir with respect actually I think agreed with me. That is, that you establish the physical character **then you determine whether you respect and reinforce it, whether you are materially consistent with it, whether you are compatible with it**, different tests that we see in both policy 4.1.5 itself and in policy 4.1.8.

our approaches are the same. My refusal is not based on narrow mathematics but a holistic assessment of the planning issues.

However, I disagree with the argument that the “fit” test (shorthand for the “respect and reinforce” test of the Official Plan) should not be relevant. It is obviously one factor to balance in the overall assessment of the four tests.

Member Swinkin was adjudicating a dispute between a proponent who wished to build a rear addition with a one storey breakfast nook “bump out”, needing building length and FSI variances. The opposing planner said:

Mr. Manett [neighbour's planner] has determined that the average FSI throughout the study area is on the order of 0.5. He says that if approved, the proposed FSI of 0.84

Going back sir to the Toronto Standard Condominium case that the zoning by-law is not an end in and of itself but a means to an end. And sir the mistake . . . is when we get caught up in the numbers and try and decide whether something is “the same as” those numbers and that is the wrong test, and your colleague Mr. Swinkin went through that in the Forest Hill decision

[Mr. Bronskill then quoted from Member Swinkin's decision, with his added remarks that I have omitted.]

It [Member Swinkin is speaking] is this panel's view that an OP is a policy document which is intended to be read more as a conceptual framework or vision statement and not as a prescriptive instrument in the manner of a zoning bylaw. [251 Old Forest Hill Road, p 10]

The purely arithmetic approach adopted by Mr. Manett has the effect of removing context from the assessment of the proposal and diminishing the qualitative features from their role in an all encompassing judgment

*The question which must be approached on any application is whether its unique contribution reinforces the character of the neighborhood, the character involving the interplay of public and private realms, recognizing that each realm is naturally evolving by maturation and renewal. The judgment of 'fit' is at some level a **visceral** one and not simply a tabulation of data. That judgment properly comes from a 'walk' about the neighbourhood, what a pedestrian perceives from the street. This more holistic approach is grounded in the penultimate paragraph text in Policy 4.1.5 of the OP, which says that no changes will be made through rezoning, minor variance, consent or other public action that are out of keeping with the overall physical character of the entire Neighbourhood (emphasis added). [251 Old Forest Hill Road, p 11]*

And that sir is the ultimate approach. What's interesting sir is that if it is just the numbers that would mean that an Official Plan amendment would be required to permit something like this not a rezoning or even a minor variance and that sir in my respectful opinion is absurd. And that sir, is why it's the two steps: it is not do we find this in the neighbourhood, in numbers? It's whether it fits once you've established the character of the neighbourhood and it will not be surprising sir my submission will be that it does fit and isn't going to destabilize. . . . There's not a lot of dispute about the character of the neighborhood and where there are and where there aren't garages.

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would exceed the average in both the immediate context and the broader neighbourhood. On the basis of these figures, he says that the proposed FSI is inconsistent with the prevailing densities in both the immediate context and broader neighbourhood and therefore not in conformity with OP policy. [251 Forest Hill Rd, p 8]

Member Swinkin rejected this evidence, but he did not do so only because it was “quantitative” or purely numbers-based. In fact, he used numbers and drew arithmetic inferences in an overall planning assessment.

*She [Ms. MacFarlane, planner for the proponent] said that especially when an FSI variance is not accompanied by other built form variances (such as height, length - this application being an exception regarding the one-storey breakfast nook involved - and setbacks), a qualitative analysis of fit and compatibility is of greater importance than a quantitative assessment focusing solely on the numerical FSI figure. While she acknowledges that the FSI is on the higher end of what is found in the geographic neighbourhood, she says that it does exist **in substantial numbers** especially on replacement homes that differ in character and scale from original dwellings. Over **50%** of the applications to the Committee include an FSI variance and therefore FSI values greater than 0.6 on replacement homes **are very common**, rather than being an exception. . . .As noted by Ms. McFarlane, the next door neighbour's] property itself sports a breakfast nook situated at its eastern side, so this may indeed be described as a neighbourhood feature as it appears that this feature **is also present** on other properties in the vicinity. The aerial photography in particular discloses that there is indeed no uniformity in rear wall location for the properties in this neighbourhood, so that the prevailing condition is **a mixed bag**. [251 Old Forest Hill Road, p 10]*

The dispute was a three-dimensional spatial problem. Rear additions come in all sizes and shapes, some wholly two-storey, some partly two-storey and one-storey (as in this case), some articulated and so on. Neither the English language nor the FSI-related provisions (Floor Space Index, the ratio of interior space divided by lot area) of the zoning by-law have a vocabulary rich enough to encompass all these shapes. Member Swinkin thus said:

The judgment of ‘fit’ is at some level a visceral one and not simply a tabulation of data. That judgment properly comes from a ‘walk’ about the neighbourhood, what a pedestrian perceives from the street. . [251 Old Forest Hill Road, p 11]

The “walk about the neighbourhood” is the approach I will use here, as this case is primarily about preserving the stability of existing streetscapes.

Moving to Mr. Bronskill’s invitation to substitute “materially consistent” in place of “respect and reinforce”, s. 4.1.5 says:

Proposed development within a Neighbourhood will be **materially consistent** with the prevailing physical character of properties in both the broader and immediate contexts

“Materially consistent” allows some leniency when looking across both the broader and immediate contexts of the neighbourhood and is particularly useful in mixed neighbourhoods where neighbourhood character is hard to define. I find, based on the

evidence and Mr. Bronskill's submissions, that this is not a mixed neighbourhood, that the variances are not materially consistent with the character of this part of Macpherson where integral garages or reverse slopes are present only in the tiny numbers that I have discussed.

With respect to "agreement by opposing planners", I believe he referred to cross-examination about the compatibility of 74 Macpherson's driveway. This was a house built before the current restriction.

Application of the Official Plan and zoning tests

My jurisdiction is to look at what the Official Plan or zoning by-law intends. I am not required to "approach it" as set out in a "line of OMB decisions" as Mr. Bronskill invited me to do, but to follow s. 45(1) of the Planning Act and come to my own opinion based on the evidence I have heard in this case. The Official Plan itself contains directions on "How to Read the Plan"—it is to be read as a whole and all paragraphs read together.⁷ In the next part of this decision I look at sections from the "Built Environment" and the "Public Realm" sections to get insight into the "respect and reinforce" test of the Official Plan.

What does s. 4.1.5 intend?⁸ I find that it says development will reinforce the character traits of a neighbourhood, including the "elevation" of driveways. What are these elevations in this case? On the evidence in this case, I find they are mostly "at grade". While some older properties have sloped driveways, I find that the area character is not one of sloped driveways.

Council's intention is further contained in the Commissioner's advice that changes should be made to prevent: ". . . hard surfaces, proliferation of curb ramps, pedestrian interference from vehicles crossing sidewalks, elimination of landscaped open space and stress to street trees caused by the installation of parking pads (p 1)".⁹ These reasons are equally applicable today and there is nothing in Ms. Matveeva's evidence or Mr. Bronskill's submissions that would change this.

⁷ 1.5 HOW TO READ THE PLAN

. . . In successful city-building, "everything is connected to everything" and so it is with the Plan. While the Plan is organized into various chapters, it is a comprehensive and cohesive whole. . . . The Plan is an integrated document. For any individual part to be properly understood, **the Plan must be read as a whole.**

⁸ 5. Development in established Neighbourhoods will respect and reinforce the existing physical character of each geographic neighbourhood, including in particular: . . .) e) prevailing location, **design and elevations relative to the grade of driveways and garages;** (4.1.5 Neighbourhoods)

⁹ Solutions for Front Yard Parking and Boulevard Parking to Preserve Neighbourhood Streetscapes". 1996

Well-designed blocks

According to the Official Plan, well designed blocks are not just an aesthetic overlay but good business and social policy.¹⁰ I infer that this is the motivation for ABC Residents' Association's opposition to the proposal; it supports "well designed blocks". I find that in comparison to Marlborough, where there is a profusion of parking pads, Macpherson is well designed. Making the requested variances could change that.

Greening

I agree with Mr. Bronskill that this is an objective of the Official Plan.¹¹ He also suggested that the proposed private charging station helps bring this development into a "green" initiative. However, the commentary in the Plan's 2.4 Progressive Agenda of Transportation Change concludes:

We have to plan in "next generation" terms to make walking, cycling, and transit increasingly attractive alternatives to using the car and to move towards a more sustainable transportation system.

This means that, while Mr. Mudry's choice of an electric vehicle is commendable, the overall planning thrust is to reduce dependency on all cars, not just those with combustion engines.

Pedestrian safety

The Official Plan seeks safe movement for pedestrians of all ages.¹²

¹⁰ Great cities do not happen by accident – they are designed and orchestrated so that individual private and public developments work together to create cohesive blocks, neighbourhoods and districts. Good urban design is not just an aesthetic overlay, but an essential ingredient of city building. Good urban design is good business and good social policy. (3.1 The Built Environment)

Beautiful, comfortable, safe and accessible streets, parks, open spaces and public buildings are a key shared asset. These public spaces draw people together, creating strong social bonds at the neighbourhood, city and regional level. (3.1.1 The Public Realm)

¹¹ We can work together in our neighbourhoods to create a healthier Toronto by reducing waste, better managing stormwater runoff, greening our communities, reducing harmful emissions and conserving energy and water. (2.3.1 Healthy Neighbourhoods)

¹² City streets are significant public open spaces which connect people and places and support the development of sustainable, economically vibrant and complete communities. . New and existing City streets will incorporate a Complete Streets approach and be designed to perform their diverse roles by:

- a) balancing the needs and priorities of the various users and uses within the right-of-way, including provision for:
 - i. the safe and efficient movement of **pedestrians** of all ages and abilities, cyclists, transit vehicles and users, goods and services vehicles, emergency vehicles, and motorists across the network;. . . (3.1.1.5 The Public Realm)

In my view, particularly for children playing on the sidewalk and those with mobility issues, the present Macpherson streetscape is safer than Marlborough, where there are numerous parking pads leading vehicular movements and conflicts. I note there is a cedar hedge beside a driveway of 22-26 Marlborough, which could cause a hazard from a vehicle backing up.

Figure 5. 22-26 Marlborough, beside Crown's Lane, behind Yonge Street properties (phot from Mr. Qi)



The system of permit parking and street parking supply

Mr. Williamson, the City planner, stated that for Macpherson Ave by itself, there was a deficit of street parking (77 spaces available and 103 permits issued). For the larger area, the situation is reversed (358 spaces, 257 permits). This means that Macpherson north side properties may have to seek a space that is on a nearby block.

Mr. Bronskill's argument was that an impairment of the current supply of spaces on Macpherson was off set: the Mudrys would remove their electric vehicle from the demand and their new curb cut would remove one from the supply. I do not accept this argument; it takes visitors, shoppers and others out of the equation. They also might wish to use the 77 spaces. This chipping away at the public realm for a private space is inappropriate in terms of the common sense of community.¹³

The Official Plan also calls for curb cuts to be minimized.¹⁴ This project will create an additional curb cut and therefore is contrary to the explicit words of the Plan. Mr. Williamson provided this evidence.

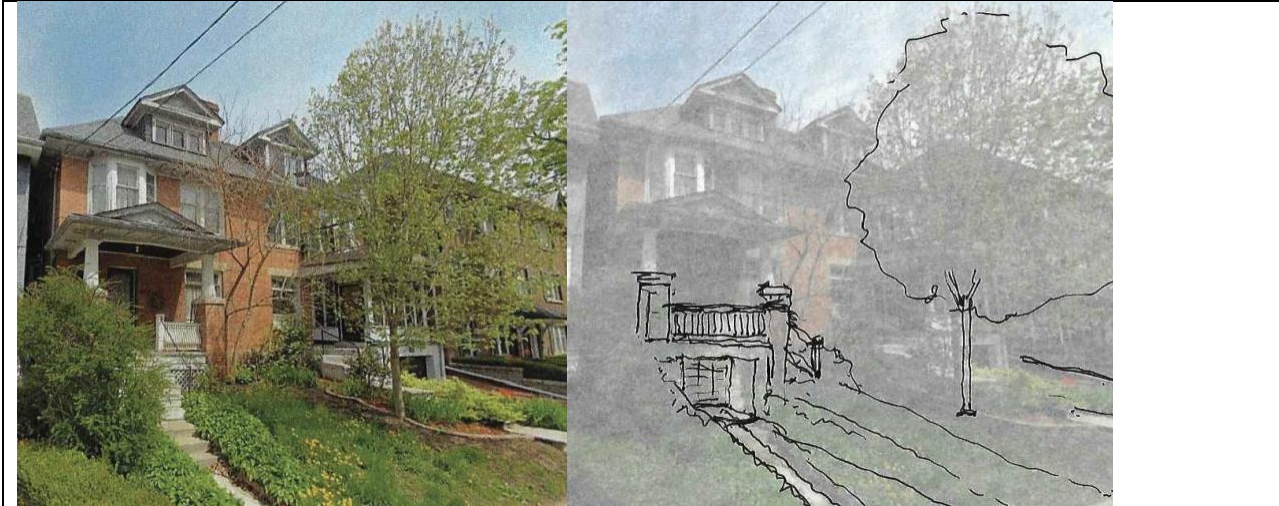
Minor and Desirable

¹³ Our neighbourhoods are where we connect with people to develop a common sense of community.(2.3.1 Healthy Neighbourhoods)

¹⁴ 3.1.2.4. Development will locate and organize vehicle parking, vehicular access and ramps, loading, servicing, storage areas, and utilities to minimize their impact and improve the safety and attractiveness of the public realm, the site and surrounding by: . . . b) consolidating and minimizing the width of driveways and **curb cuts** across the public sidewalk; (3.1.2 Built Form)

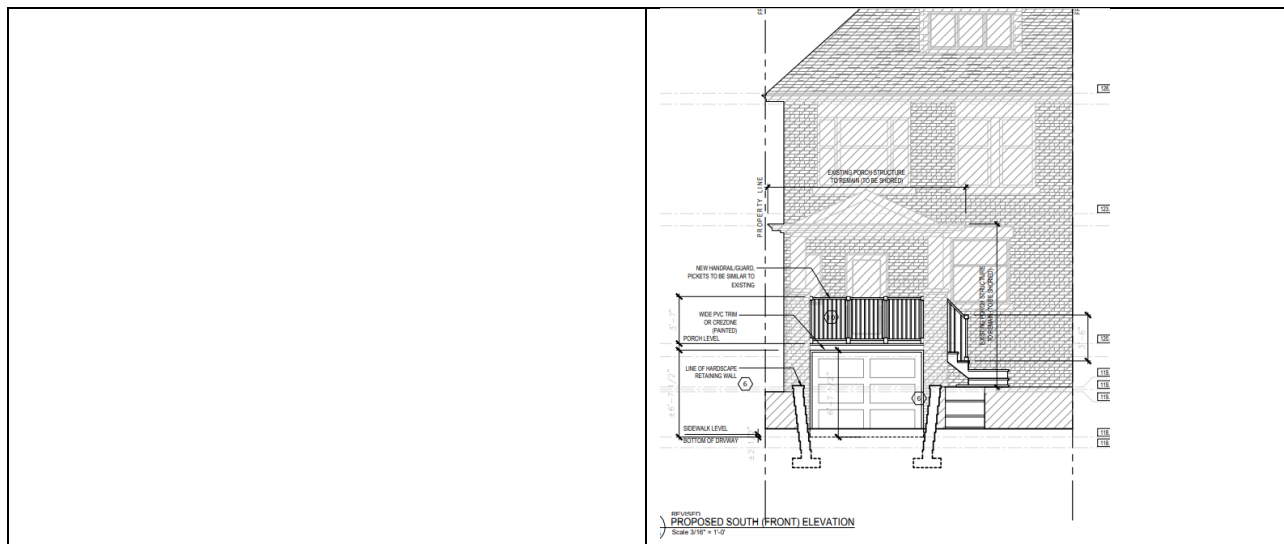
Mr. Bronskill's commenced his submissions stating that the Mudrys see a garage as a positive "parking solution". For other homeowners on Macpherson, the solution is street parking.¹⁵ The law in DeGasperis is that desirability must be measured in the public interest.¹⁶

Figure 7. Above: Existing and proposed garage view (the drawing is by Mr. Mudry's architect); Below , proposed south elevation



¹⁵ 6. An adequate supply of **off-street parking** for bicycles and automobiles will be provided and maintained to meet the short-term parking demands of commercial, institutional and tourist activities while ensuring a minimal level of all-day automobile parking for commuters that reflects the availability of alternative travel modes. (2.4.6 Bringing the City Together)

¹⁶ [This is Justice Matlow speaking] [14] The second test requires the committee to consider and reach an opinion on the desirability of the variance sought for the appropriate development or use of the land, building or structure. This includes a consideration of the many factors that can affect **the broad public interest** as it relates to the development or use. [15] Accordingly, in my view the Board was required to consider each variance sought and reach an opinion as to whether or not it, either alone or together with the other variances sought, was desirable for the appropriate use of the subject property. The issue was not whether the variance was desirable from the perspective of the DeGasperis' plans for their home but, rather, whether it was desirable from a planning and public interest point of view. [Vincent v. Degasperis, 2005 CanLII 24263 (ON SCDC)] This case was provided by Ms. Jakubowski as an addendum to 193 Winnett.



In terms of “well-designed blocks”, Figure 7 shows the proposed construction in an artist’s rendering (row above) and architect’s elevation (row below). Although the porch, windows etc. remain the same, the connection to the street is diminished, and the porch fenced off from the public realm by the guardrail. What was an inviting facade is now dominated by a garage door and retaining walls. The development detracts from visual and physical continuity of the streetscape, and this streetscape contributes to the desirability of this neighbourhood, both in terms of the Planning Act test and the ordinary meaning that people desire to live on Macpherson Ave.

Turing to the minor test, I find that the public interest provisions, bearing on the maintaining of an older, below-St Clair neighbourhood, where parking is at a premium, leafy and safe streets adding to its livability, mean the impact of these variances is not minor. In making this finding on non-numeric grounds, I am doing what Mr. Bronskill suggested I do, as did my colleague, Member Swinkin, looking holistically.

Conclusion

I find the intent of the Official Plan and the current zoning by-law have not been maintained. It is a basic interpretative principle that laws are remedial; i.e., their purpose is to solve problems. Granting these variances would be contrary to that principle and would not maintain the intent of the zoning amendments specifically enacted to restrict integral garages and remove permission for reverse slopes. Finally, the variances are not minor or desirable in the public interest.

As a postscript I note that there was a variance eliminated (landscaped open space) and so Mr. Bronskill requested an order under s. 45(18.1.1) of the Planning Act that no further notice is necessary. I do so, even though this is moot, given the decision.

DECISION AND ORDER

I make the order requested that no further notice of the change in the plans is necessary as the change made is minor and in the downward direction.

The variances are not authorized.

X



Ted Yao
Panel Chair, Toronto Local Appeal Body