Ontario Municipal Board
Commission des affaires municipales de l'Ontario

ISSUE DATE: March 01, 2018 **CASE NO(S).:** PL130592

PROCCEEDING COMMENCED UNDER subsection 34(19) of the *Planning Act,* R.S.O. 1990, c. P.13, as amended

Appellant(s):	Multiple Appellants
Subject:	By-law No. 569-2013
Municipality:	City of Toronto
OMB Case No.:	PL130592
OMB File No.:	PL130592
OMB Case Name:	Bahardoust v. Toronto (City)

Heard: June 26 to 30 and July 5 to 7, 2017 in Toronto, Ontario

APPEARANCES:

Parties	**Counsel*/Representative**
City of Toronto	E. Penner*, T. Wall*
Conservatory Group and related companies and persons	J. Alati*, I. Banach*, J. Cole (Student-at-Law)
Ontario Association of Architects	R. Kanter*, J. Block (Student-at-Law)
Swansea Area Ratepayers' Group	W. Roberts*
Teddington Park Residents Association Inc., Confederation of Resident and Ratepayer Associations in Toronto, Eileen and Michael Denny	E. Denny
Stan Makow	S. Makow

DECISION DELIVERED BY C. CONTI AND ORDER OF THE BOARD

INTRODUCTION

[1] This is the decision for the phase 2 hearing regarding multiple appeals against the approval by the City of Toronto ("City") of new Zoning By-law No. 569-2013 ("By-law"). The By-law is intended to bring together the provisions of 43 separate zoning by-laws of the former municipalities that now comprise the City of Toronto. The By-law will serve as the single comprehensive zoning By-law for the City.

[2] There were 324 appeals filed against the By-law. Through pre-hearing conferences ("PHC") which have taken place over the past two and a half years many of the appeals have been settled or withdrawn. In addition, the Board has approved various provisions of the By-law that were not in dispute.

[3] In preparing and adopting By-law 569-2013 the intent of the City has been to harmonize the former By-laws. This task has mainly involved identifying and developing common provisions that would apply to each type of zoning category across the City, rather than to complete a detailed review of the zoning standards. In many cases existing provisions that applied to one or more of the former municipalities have been adopted to apply to the whole City. The City intends to undertake a detailed review of the zoning standards in the future as a subsequent phase of this exercise.

[4] The structure of the By-law is fairly complex consisting of three volumes. It includes regulations that apply to all zones in Chapter 5 and, in other chapters, regulations for types of zoning categories including Residential, Residential Apartment, Commercial, Commercial Residential, Commercial Residential Employment, Employment Industrial, Institutional, Open Space, and Utility and Transportation, as well as regulations for specific uses, parking space, loading space, and bicycle parking space. There are also sections of the By-law for Special Districts, Overlay Zones, Definitions and Exceptions. The By-law also includes Zoning Maps and overlay maps

which assist in identifying the way that the provisions of the By-law apply to specific areas.

[5] The Board heard that the provisions of the By-law are intended to apply to new applications. Through exemption clauses and the terms “lawful” and “lawfully existing”, buildings that existed before zoning by-laws applied, that complied with the former by-laws or that had received previous approvals were exempted from the more restrictive provisions of the By-law.

[6] The intent of the phase 2 hearing is to deal with outstanding issues regarding the appeals of the regulations for the Residential Zone category contained in Chapter 10 of the By-law which generally apply to lower scale types of residential development including single detached dwellings, semi-detached dwellings, duplexes, townhouses and apartment buildings generally with a maximum height of four storeys. The Residential Zone category in Chapter 10 includes provisions for Residential (R), Residential Detached (RD), Residential Single (RS), Residential Townhouse (RT), and Residential Semi-detached (RS) zones. It should be noted that while the Chapter 10 regulations apply to all zones in the Residential Zone category, zoning standards for specific areas may vary from those set out in the Chapter 10 regulations through the exceptions, special districts and overlays maps.

[7] The parties identified above, except of course for the City of Toronto, are the Appellants with remaining issues regarding the Chapter 10 residential provisions.

PRELIMINARY MATTERS

Request for Recusal

[8] At the beginning of the hearing Ms. Denny requested that this Member recuse himself contending that she has been treated unfairly in the process leading up to this hearing. No documents were filed by Ms. Denny in support of her request.

[9] At the PHC for these appeals which took place on June 6, 2017, this Member sitting with Member Sills ruled that Ms. Denny would not be allowed to provide evidence at the phase 2 hearing. Ms. Denny also raised a previous decision issued on February 6, 2015, Board file Number PL140218, for a property at 61 Snowden Avenue in which this Member did not support the position and issues raised by the Teddington Park Residents Association. The request for recusal was opposed by Counsel for the City of Toronto, the Ontario Association of Architects ("OAA") and the Conservatory Group and related companies and persons ("Conservatory Group"). The representatives of the other parties did not take a position on the matter.

[10] With regard to the involvement of Ms. Denny in the process leading up to this hearing, the appeals for the By-law have undergone nine PHC's prior to this hearing through which a number of matters were settled and procedures for resolving some of the outstanding appeals have been determined. According to the Board's records, Ms. Denny has attended the majority of these PHC's. During this process the Board has determined that some matters should be resolved through the filing of motions. The Board's *Rules of Practice and Procedure* ("Rules") set out the requirements for parties to file motion materials and for other parties to file responses through Rules No. 34 to 43. These include specific timelines for submissions and the need for affidavits to accompany the materials.

[11] At a number of the proceedings, Ms. Denny attempted to respond to motions that had been filed according to the Board's Rules. While other parties had filed responses according to the timelines and other requirements in the Rules, Ms. Denny failed to comply with these requirements. On the first occasion during the PHC of January 4, 2016, the Board heard Ms. Denny's oral response to the motion but advised her that she needed to adhere to the requirements of the Board's Rules. On subsequent occasions the Board refused to hear Ms. Denny's oral response because no written response to the motion had been filed that complied with the Board's Rules.

[12] A number of Board orders have been issued resulting from matters considered at the PHC's. The procedures for the phase 2 hearing were determined at the PHC held on April 13, 2017 through which the Board provided an Oral Decision ordering issues lists to be filed by May 19, 2017 and witness statements filed by June 2, 2017. Ms. Denny was in attendance at this PHC.

[13] At the PHC held on June 6, 2017, the Board heard that issues lists and witness statements had not been filed by Ms. Denny. With the hearing scheduled to commence on June 26, 2017 the Board was concerned that any further delay in filing issues lists and witness statements would be prejudicial to the other parties. Therefore, the Board ruled that Ms. Denny would not be permitted to provide evidence at the phase 2 hearing, but that she could participate in other the ways that are normally available to parties, that is through cross-examination of the other parties' witnesses and through submissions and argument.

[14] With regard to the decision of this Member for 61 Snowden Avenue, it involved an appeal by the owner of the property regarding the refusal by the Committee of Adjustment ("COA") of an application for minor variances to permit the construction of a new dwelling. The decision was not provided to the Board by Ms. Denny in support of the request for recusal, but was included in the evidence submitted by the OAA in Exhibit 112, Tab 4.

[15] The City did not appear at the Board hearing for the 61 Snowden Avenue appeal and provided no evidence to support the COA decision. The Teddington Park Residents Association at that hearing was represented by Counsel and provided evidence through an expert planning witness. According to the decision Ms. Denny did not provide evidence and there is no indication in the decision that Ms. Denny attended the hearing. This Member has no recollection of her involvement with that appeal.

[16] Even if this Member were to accept that the ruling in the 61 Snowden Avenue hearing was against Ms. Denny that would not support the relief requested by Ms. Denny for recusal. There is no basis to conclude that a Board member cannot approach a new appeal with a fair and open mind when that Member may not have accepted the evidence or submissions presented by that party regarding an earlier appeal. It goes without saying that detailed and careful reasons would have to be put forward to explain how the grounds to each appeal prevent a member from presiding with an open mind. That factual underpinning was not provided by Ms. Denny in the request for recusal.

[17] With regard to the rulings which have gone against Ms. Denny in the current appeals, it should be noted that while this Member has chaired all of the PHC's the rulings were ordered by the two member panel. Furthermore, all of the rulings were based upon the failure of Ms. Denny to comply with the requirements of the Board's Rules and Board orders. The Board understands that part of the reason for Ms. Denny's difficulty in complying with required dates for filing documents is a lack of capacity to receive and send large documents when dealing with multiple parties. However, this issue continued over a period of many months without resolution. The Board generally exercises some flexibility in the application of its rules when dealing with self-represented parties and lay representatives. The Board did exercise flexibility initially when dealing with Ms. Denny, but when there were repeated incidents of failure to file documents, the Board determined that Rules needed to be applied. The Board has an obligation to ensure that appeals are dealt with according to principles of procedural fairness. Compliance with the Board's Rules and Board orders help to ensure fairness is provided to all parties and that no party is prejudiced.

[18] After considering the request the Board found that no basis had been identified that would justify the recusal of this Member from the hearing. The Board's rulings which have gone against Ms. Denny were simply matters of applying the Board's Rules to ensure fairness to all parties. The need to rely on the Board's Rules must be emphasized because this matter is dealing with multi party appeals and the Board has to ensure that hearing time is used efficiently so that these appeals, which were filed in

2013, are processed and disposed of without delay. There is a public interest in enforcing the Board's Rules and avoiding unnecessary adjournments.

[19] Ms. Denny failed to disclose any indication of unfair determinations, discriminatory treatment, preferential interest or any other matter that would constitute bias. Nothing has been raised by Ms. Denny that would suggest that this Member would make a decision in this hearing that was anything other than fair and objective. The Board issued an oral ruling refusing the request for recusal included later in this decision.

[20] After hearing the Board's ruling, Ms. Denny participated in the hearing through cross-examination of a number of witnesses. However, she did not attend after the morning of July 5, 2017 and she provided no argument.

Provisions in Dispute

[21] Through Board decisions from the PHC's for the appeals, the parties were directed to scope their appeals, to identify the remaining matters under appeal, to identify their issues for the phase 2 hearing and to file witness statements. In Exhibit 97 the City identified the provisions of Chapter 10 that are in dispute among the parties. At the start of the phase 2 hearing, the City also provided proposed modifications to a number of these provisions in Exhibit 98 which was intended to resolve some of the concerns of the parties.

[22] Ms. Penner requested that the Board limit potential amendments through this decision to those regulations of the By-law set out in Exhibit 97. She objected to the inclusions of a number of By-law regulations identified in items vi to xi in Mr. Alati's letter of May 19, 2017 which identified the issues for the hearing on behalf of the Conservatory Group. Ms. Penner indicated that potential changes to the maps that form part of the By-law should not be considered as part of this hearing but may be dealt with in a later phase. She also noted that the witness statements from the OAA included

suggestions for amendments to regulations beyond those identified in the OAA Issues List.

[23] Mr. Alati responded that all of the provisions noted in his letter are still under appeal. He indicated that if there are changes to provisions of the By-law identified in Exhibit 97 others may be affected. He maintained that it would be premature to limit the witnesses' ability to speak about these other regulations and that none of them are in force and effect.

[24] Mr. Makow maintained that the By-law's maps are relevant to the evidence in this part of the appeal. He indicated that density is one issue that he wants to raise in this phase of the hearing. He contended that the maps relate to density, that they should be able to be discussed at least in a general way and they should not be excluded.

[25] Mr. Kanter maintained that witnesses should be able to speak to those regulations that are not listed in Exhibit 97. He requested that the Board not rule to exclude specific regulations from consideration that are not listed in Exhibit 97. He maintained that the Board should wait to hear the evidence and that Ms. Penner could object to evidence coming forward about specific regulations if there were concerns.

[26] The Board considered the submissions of the parties. The Board recognized that the regulations under appeal are not limited to those listed in Exhibit 97. While the evidence should focus on the matters identified in Exhibit 97, evidence related to other regulations may be relevant and they may be affected by potential changes to the matters in Exhibit 97. Therefore, the Board determined that the evidence related to regulations not identified in Exhibit 97 should be considered as part of this hearing if it is relevant.

Oral Ruling

[27] In consideration of the above matters the Board issued the following oral ruling:

> "Regarding the request that I recuse myself from the hearing, no basis has been provided in the submissions of Ms. Denny for doing so. The decision for 61 Snowden Avenue was dealing with a site specific appeal of a variance application. While the Teddington Park Residents Association was part of that appeal, nothing has been raised to suggest that the decision was based upon anything other than the evidence raised in that appeal.
>
> The Board may deal with the same parties in appeals over the course of months and years. Simply because a decision goes against the interest of one party in a specific case does not indicate bias.
>
> With regard to this appeal, the decisions which have restricted Ms. Denny's participation in motions and in this phase 2 hearing have been based upon the Board's Rules and Orders which are intended to ensure procedural fairness. The high threshold test required to establish bias that may require recusal of a member has simply not been met in this case.
>
> With regard to the matter of potentially amending those parts of the By-law that are not identified in Exhibit 97, if the evidence regarding other regulations not identified in Exhibit 97 is relevant to the Board's decision, then that evidence should be heard during this phase of the hearing. If significant changes are being proposed to regulations or parts of the By-law that are not identified in Exhibit 97, the Board will likely defer these to a subsequent phase of the hearing."

[28] After issuing this ruling the hearing proceeded to consider the evidence related to the By-law, the provisions that were in dispute, and specific issues raised by the parties.

[29] It should be noted that some regulations in Chapter 10 of the By-law that were under appeal but were not in dispute have already been approved through previous Board decisions including those issued on September 13, 2016 and February 7, 2017.

This decision deals with those regulations and provisions of Chapter 10 that have not been approved through previous decisions.

ISSUES

[30] The main issues in this appeal fall under the requirements of s. 24 (1) of the *Planning Act* (“Act”) whereby By-laws must comply with the relevant municipality’s Official Plan. Multiple more specific issues were identified by the parties and are included in the submitted witness statements.

EVIDENCE

[31] The Board heard evidence from a total of eight witnesses over the course of eight days all of whom were qualified as experts.

[32] The Board heard evidence on behalf of the City from Joe D’Abramo and Dwayne Tapp. Mr. D’Abramo is a planning consultant and formerly the Director of Zoning and Environmental Planning with the City and he was qualified as an expert in land use planning. Mr. Tapp is Manager-Plan Review East District with the City and he has a Professional Manager designation from the Ministry of Municipal Affairs and Housing in accordance with O. Reg. 305/03. He was qualified and as an expert in plan review in the context of zoning by-laws and plans before the Chief Building Official.

[33] The Board heard evidence on behalf of Stan Makow from James Pfeffer, a Registered Architect. He was qualified as an expert in architecture and infill development.

[34] Evidence on behalf of the OAA was provided by Michael Goldberg and Mark Sterling. Mr. Goldberg is a Registered Professional Planner and Principal of the Goldberg Group, and he was qualified by the Board as an expert in land use planning. Mr. Sterling is a Registered Architect and Registered Professional Planner and he is

Principal of Acronym Urban Design and Planning/Mark Sterling Consulting Inc. He was qualified as an expert in architecture, urban design and planning.

[35] Evidence for the Swansea Area Ratepayer's Group ("SARG") was provided by Terry Mills, Principal of ARRIS Strategy Studio. Mr. Mills is a Registered Professional Planner and he was qualified by the Board as a land use planning consultant.

[36] The Board heard evidence on behalf of the Conservatory Group from Stephen Hunt and Peter Swinton. Mr. Hunt is Principal of Hunt Design Associates Inc. and he was qualified as an expert in urban design. Mr. Swinton is Manager of Urban Design with PMG Planning Consultants. He was qualified to provide land use planning opinion evidence, supplementary in the area of urban design.

[37] The Board heard no other evidence in relation to these appeals.

PLANNING POLICY REQUIREMENTS

[38] No issues were raised in the evidence regarding consistency with the Provincial Policy Statement ("PPS") or conformity with the Growth Plan for the Greater Golden Horseshoe ("Growth Plan"). The main issues involved whether development that would be permitted through the By-law would conform to policies in the Official Plan, whether the provisions of the By-law would permit appropriate and acceptable development, and whether the provisions placed unnecessary restrictions on development that would require additional variances.

[39] After considering the evidence, the Board has determined that the following policies of the City's Official Plan are relevant to the Board's decision in this matter.

[40] Section 4 of the Official Plan sets out the policies for areas of the City within the Neighbourhoods designation. The zone categories in Chapter 10 provide for the types of uses and buildings anticipated in Neighbourhoods.

[41] The Official Plan describes Neighbourhoods as physically stable areas where change should be gradual, sensitive and generally fit with the existing physical character. However, as noted in the description in s. 2.3.1 Neighbourhoods are stable, not static and they are not frozen in time. Some change will occur over time, but a key policy direction is that new development must respect and reinforce the existing physical character of the area in which it is located.

[42] Criteria to be considered in approving new development are set out in s. 4.1.5 which states the following:

> 5. Development in established *Neighbourhoods* will respect and reinforce the existing physical character of the neighbourhood, including in particular:
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> a) patterns of streets, blocks and lanes, parks and public building sites;
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> b) size and configuration of lots;
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> c) heights, massing, scale and dwelling type of nearby residential properties;
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> d) prevailing building type(s);
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> e) setbacks of buildings from the street or streets;
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> f) prevailing patterns of rear and side yard setbacks and landscaped open space;
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> g) continuation of special landscape or built-form features that contribute to the unique physical character of a neighbourhood; and
>
> h) conservation of heritage buildings, structures and landscapes.
>
> No changes will be made through rezoning, minor variance, consent or other public action that are out of keeping with the physical character of the neighbourhood. The prevailing building type will be the predominant form of development in the neighbourhood. Some *Neighbourhoods* will have more than one prevailing building type. In such cases, a prevailing building type in one neighbourhood will not be considered when determining the prevailing building type in another neighbourhood. (Exhibit 100A, Tab 3, p. 152)

[43] Neighbourhoods are intended to be physically stable areas. Other areas of the City under the Mixed Use Areas, Employment Areas, Regeneration Areas and Institutional Areas designations are intended to accommodate the majority of intensification. Most residential development is intended to be directed to areas identified as Centres and along Avenues (Exhibit 100 A, Tab 3, p. 92). Sections 4.1.6 and 4.1.7 of the Official Plan address intensification within the Neighbourhoods designation as follows:

> 6. Where a more intense form of development than the prevailing building type has been approved on a major street in a *Neighbourhood*, it will not be considered when reviewing prevailing building type(s) in the assessment of development proposals in the interior of the *Neighbourhood*.
>
> 7. Proposals for intensification of land on major streets in *Neighbourhoods* are not encouraged by the policies of this Plan. Where a more intense form of residential development than that permitted by existing zoning on a major street in a Neighbourhood is proposed, the application will be reviewed in accordance with Policy 5, having regard to both the form of development along the street and its relationship to adjacent development in the *Neighbourhood*. (Exhibit 100 A, Tab 3, p. 152)

[44] In s. 4.1.8 the Official Plan identifies requirements for zoning by-laws that apply to Neighbourhoods. It states:

> 8. Zoning by-laws will contain numerical site standards for matters such as building type and height, density, lot sizes, lot depths, lot frontages, parking, building setbacks from lot lines, landscaped open space and any other performance standards to ensure that new development will be compatible with the physical character of established residential Neighbourhoods.(Exhibit 100 A, Tab 3, p.153)

[45] The Built Form policies in s. 3.1.2 of the Official Plan are also relevant to the zoning provisions in Chapter 10 of the By-law. Section 3.1.3 states:

> 3. New development will be massed and its exterior façade will be designed to fit harmoniously into its existing and/or planned context, and will limit its impact on neighbouring streets, parks, open spaces and properties by:
>
> a) massing new buildings to frame adjacent streets and open spaces in a way that respects the existing and/or planned street proportion;
>
> b) incorporating exterior design elements, their form, scale, proportion, pattern and materials, and their sustainable design, to influence the character, scale and appearance of the development;
>
> c) creating appropriate transitions in scale to neighbouring existing and/or planned buildings for the purpose of achieving the objectives of this Plan;
>
> d) providing for adequate light and privacy;
>
> e) adequately limiting any resulting shadowing of, and uncomfortable wind conditions on, neighbouring streets, properties and open spaces, having regard for the varied nature of such areas; and
>
> f) minimizing any additional shadowing and uncomfortable wind conditions on neighbouring parks as necessary to preserve their utility. (Exhibit 100A, Tab 3, p. 110)

ISSUES, ANALYSIS AND FINDINGS

[46] The Board has carefully considered all of the evidence and submissions. Through the evidence of Mr. D'Abramo, the City provided planning opinion evidence that the regulations in Chapter 10 are appropriate, they comply with the Official Plan and they should be approved with a number of modifications. The City recommended approval of the majority of the regulations in Chapter 10 as set out in the By-law. However, through Exhibit 126, the City also recommended that certain amendments to the regulations as set out in Exhibits 98, 125 and 127 be approved, and that some regulations as they apply to lots with 12 metre ("m") wide frontages and less be referred back to City Council for further review. This was in response to a number of concerns raised by the other parties that the provisions of the By-law would prevent the construction of typical two-storey dwellings on these types of lots.

[47] The SARG supported the City's position on many of the provisions that were in dispute. They raised issues about provisions for parking on corner lots, and the provision for allowing 20 square metres ("sq m") in attics to be exempt from inclusion in the gross floor area ("GFA"). These issues were addressed by the City through proposed amendments to the By-law in Exhibits 125 and 127. Also, SARG opposed the provisions which exempt a second parking space on larger lots from being included in the gross floor area of the building.

[48] The OAA, the Conservatory Group and Stan Makow generally maintained that certain regulations are not appropriate, they propose excessive and unnecessary changes to the existing regulations, they will result in more applications for variances, will require a greater number of variances, and they unnecessarily restrict good architectural design.

[49] The Board heard that the process to create the By-law had been primarily intended as a harmonization exercise where the provisions of the former By-laws would be brought together through common provisions. However, the evidence of the OAA, the Conservatory Group and Stan Makow contended that the changes to the By-law

exceed the original intent and will cause fundamental changes to the types of dwellings that can be built as of right in the City.

[50] In their submissions, the OAA, Conservatory Group and Stan Makow recommended that a number of provisions in addition to those recommended by the City for further review should be referred back to the City for further consultation and then brought back to the Board, so that they can potentially be revised in a way that is more acceptable.

[51] In considering the evidence, the Board notes that the main statutory test that the provisions of the By-law must meet is conformity with the Official Plan as required through s. 24 (1) of the Act. The provisions of the Official Plan generally require that new development in Neighbourhoods should respect and reinforce the existing physical character of the area in which it is located. After reviewing s. 4.1 of the Official Plan which applies to Neighbourhoods, it is clear to the Board that when considered together the intent of these provisions is that the general existing physical character of neighbourhoods should be maintained. In the Board's view, if it is clear that a regulation would result in development that does not respect and reinforce the existing physical character or that it would not provide for the maintenance of the general existing physical character, then the Board would have to conclude that the regulation does not comply with the Official Plan and it should not be approved. This is not to say that changes in Neighbourhoods could never occur. However, proposals that may intend to change the existing physical character of areas designated as Neighbourhoods should require Official Plan amendments or fall under special Official Plan policies in order to be approved.

[52] A number of witnesses have raised concerns about certain regulations being unnecessary, that they would lead to an increased numbers of variances or would unnecessarily restrict design. The Board is concerned that unnecessary provisions which would complicate the application approval process may not be in the public interest. The provisions of the By-law should implement planning objectives that are

rooted in the policies of the Official Plan. However, the evidence must be clear that specific regulations are unnecessary or are not based upon the direction in planning policy before the Board would find that they should not be approved on this basis.

[53] With regard to restrictions on design, the Board generally does not get involved in assessing the architectural design and quality of buildings. It is unlikely that this would be a factor for refusing to approve provisions of the By-law that are at issue in this hearing. However, built form and urban design can be factors in Board decisions through the need to comply with sections of Official Plans or guideline documents which set out relevant requirements.

[54] In determining whether or not specific regulations comply with the Official Plan it must be recognized that Official Plan policies can be relatively broad in scope setting out general parameters for development within designations whereas the By-law regulations are much more targeted often providing numerical standards for development. There can be a range of By-law regulations that could reasonably be found to comply with Official Plan policies. In order for the Board to find that a regulation does not comply with the Official Plan the Board must as a minimum be satisfied that the Official Plan's identified parameters for development or the intent of Official Plan provisions would be offended if the regulation were approved.

[55] In consideration of the above and after reviewing the evidence the Board is satisfied that many regulations in Chapter 10 of the By-law are appropriate, they comply with the Official Plan and they should be approved. However, the Board is concerned that some provisions of the By-law would not allow for the construction of the types of dwellings which define the predominant physical character of areas within the Residential Zone category. Therefore, the Board through this decision is directing the City to carry out further review with regard to a number of provisions. This review is not to the same extent as that recommended by the OAA, Conservatory Group and Stan Makow, but it will involve additional regulations beyond those suggested by the City and

consideration of some provisions for all lots, not only those with frontages of 12 m in width and narrower.

[56] The Board has also determined that the evidence has not established the purpose and need for a portion of a proposed regulation that requires the inclusion of part of the area of some basements with walk-outs in the calculation of the GFA for the dwelling. The Board will not approve this portion of the provision and will amend the regulation through this decision.

[57] Detailed reasons for coming these conclusions and specific findings are provided in the remainder of this decision.

[58] The issues and the Board's findings are discussed mainly in relation to the regulations that are in dispute. While all issues identified in the witness statements and the evidence may not be specifically mentioned in the following, they have been considered in making this decision.

Height Regulations

[59] The general regulations of the By-law which set out building height requirements for all Residential zones in the Residential Zone category are in chapter 10.5.40.10. The general height exemptions that apply to the Residential Zone category are provided in chapter 10.5.40.11.

[60] The Board heard that the provisions have been carried over from By-laws of the former municipalities. The main changes with regard to height and the major point of disagreement among the parties involves s. 10.5.40.10 (1) which states the following:

> (1) Determination of the Height of a Building
>
> In the Residential Zone category, the height of a building is the distance between the **established grade** and the elevation of the highest point of the **building.** (Exhibit 100 A, Tab 4, p. 250)

[61] The words in bold identify defined terms in the By-law.

[62] The above regulation changes the previous practice by providing a single method to determine the established grade and a common point to which height is to be measured on dwellings across all former municipalities of the City. The definition of established grade requires that it is to be determined by taking the average elevation of the ground at the front yard setback projected 0.01 m. beyond each side property line. This represents a change from the former By-laws, but Mr. D'Abramo indicated that this will be a more reliable method of determining established grade and the intent was to prevent tampering with ground elevations to gain additional height.

[63] The more significant change through this regulation involves the point on buildings to which height is to be measured. The City's evidence was that under the former By-laws there was some variation in the way height is determined. In three of the former municipalities the height measurement is taken to the peak of the roof and in the other three including the former cities of Toronto, York and North York the measurement is taken to the midpoint of the roof.

[64] The Board heard that the City's objective in preparing the By-law was to have a single method for determining height for all buildings in the Residential zone category and that measuring to the mid-point could result in a variety of actual building heights. Furthermore, with more complex roof types it becomes more difficult to determine the mid-point. Therefore the By-law requires height to be measured to the highest point of elevation of the building.

[65] The height limits are set out through regulations 10.10.40.10 (1), 10.20.40.10 (1), 10.40.40.10 (1), and 10.80.40.10 (1) and are identified for specific areas in the City on the zoning maps. The heights for single detached dwellings, semi-detached dwellings and townhouses in the old By-laws for the former Cities of Toronto and York had been set at 10, 11 and 12 metres and in the new By-law it is proposed that these height limits will be maintained. In North York the height limit was set at 8.8 m in the former By-law.

In the new By-law this is proposed to be increased to 10 m for some parts of North York where the 8.8 m height limit previously applied.

[66] The City's evidence was that the great majority of existing neighbourhoods in residential zones are composed of mainly two storey pitched roof buildings. The 10 m. height limit measured to the peak of the roof will provide sufficient height to allow for the construction of two storey pitched roof buildings.

[67] The height provisions in s. 10.5.40.10 (1) were supported by the SARG. The OAA, the Conservatory Group, and Stan Makow contended that the proposed changes in the manner for measuring height will reduce the actual height of residential buildings in areas where the height limit has not been increased. They maintained that the proposed changes will cause dwellings to be shorter and they will have roofs with shallower slopes than dwellings that are currently permitted and many existing dwellings. In their visual evidence, both Mr. Hunt and Mr. Pfeffer submitted drawings illustrating the difference between dwellings that would be constructed with a height of 10 m measured to the midpoint of the roof vs. dwellings where height is measured to the peak of the roof (Exhibits 121 and 108).

[68] Mr. D'Abramo acknowledged that there will be some reduction in actual height. However, he maintained that the height provisions of the By-law will permit the predominant built form in neighbourhoods, that is two storey pitched roof houses, to continue to be constructed. He indicated that height is not only a function of the height provisions, but that other regulations also affect height of buildings such as the permitted floor space index ("FSI"). He maintained that under the By-laws for the former municipalities only two storey dwellings could be constructed where the height limits were 10 and 11 m. Where height limits were 12 m it may be possible to construct three storey dwellings, but only if the FSI values are high enough.

[69] In considering the evidence of the parties, the Board agrees with the City that it would be preferable for the By-law to provide a single method for determining the height

of buildings within the Residential zone category. Furthermore, the Board agrees that using the highest point of the building as the point to which height is measured is more reliable than attempting to measure to the mid-point, which may be difficult to identify particularly on complex roofs. However, the Board is concerned that the changes to the way height is measured will result in shorter dwellings with flatter roof lines. In affected parts of the City, this change may alter the existing physical character of neighbourhoods.

[70] The Board heard through the evidence of the City and supported in the positions taken by SARG that changes to the By-law were in part the response to the concerns of residents about the massing of new buildings in the residential zones. Through the provisions of the By-law there appears to be an attempt to control excessive massing. The failure of the City to increase height limits in areas where height had been measured to the roof's mid-point appears to be in part a response to this desire to control massing.

[71] However, the provisions of the Official Plan, in particular s. 4.1.5 noted above, require that new development must respect and reinforce the existing physical character of the neighbourhood. The actual height of dwellings is one element that helps define the physical character.

[72] In neighbourhoods where part of the character is defined by dwellings with pitched roofs that measure 10 m to the mid-point, it is not clear to the Board how the character will be reinforced by only permitting buildings that will generally be approximately 1 m to 1.5 m shorter because of the change in the point of measurement on roofs. If proposals come forward with roofs that are the same as those of existing dwellings in these neighbourhoods, they will all need minor variances for height and it is difficult to anticipate any basis upon which these variances could be refused.

[73] The provisions of s. 4.1.5 require that new development respect and reinforce existing physical character with regard to a number of factors including height. While

existing physical character may be respected by shorter dwellings, the term “reinforced” implies supporting and strengthening the type of physical character that exists. The Board questions whether houses constructed according to the height provisions of the By-law would reinforce the existing character of areas built to the standards of the former By-laws of the Cities of Toronto, York and possibly North York in terms of height.

[74] There is no requirement for dwellings to be constructed to the maximum height permitted in the By-law and certainly shorter dwellings with flatter roofs may comply with the provisions of the Official Plan. The Board has often interpreted the provisions of the Official Plan that require development to respect and reinforce existing character to mean that new development must be compatible with the existing physical character. This interpretation allows for some flexibility in the characteristics of dwellings that may be permitted.

[75] However, in the Board’s view the intent of the provisions of the Official Plan is that general existing physical character of Neighbourhoods should be maintained. This intent is expressed not only in the criteria set out ins. 4.1.5, but also in a number of other sections. Of particular note is s. 4.1.8 which directs zoning By-laws to include standards for a number of parameters including building height to ensure compatibility with existing character. Also, the Built Form policies in s. 3.1.2 require new development to fit within its existing and/or planned context.

[76] By adopting a standard through which new dwellings will as of right be constructed at a lower actual height and with flatter roofs than surrounding dwellings the physical character of some neighbourhoods will undoubtedly be changed. The character will be strongly influenced by shorter dwellings with flatter roofs. In the Board’s view, this would not comply with the intent and direction of the policies of the Official Plan.

[77] If reduced height and massing is the desired policy direction, the City could amend the Official Plan to require a lower scale physical character for specific

neighbourhoods. However, through the evidence the Board was not made aware of any such amendment or proposed direction in planning policy.

[78] The Board must conclude the provisions of the By-law that change the height measurement from the mid-point of the roof to the peak of the roof without a corresponding increase in height limits are contrary to the intent of the provisions of the Official Plan that apply to Neighbourhoods. Therefore, the Board will require that the City undertake further review of these regulations and consider the appropriate means to implement increased height limits to compensate for the potential reduced height of dwellings in areas where the mid-point roof measurement had been used.

[79] The By-law includes regulations for the Residential Zone category which are intended to control the maximum height of specified pairs of main walls. The requirement as it applies to the R zone is in regulation 10.10.40.10 (2) which states the following:

> (2) Maximum Height of Specified Pairs of Main Walls
>
> In the R zone, the permitted height of the exterior portion of **main walls** for a **residential building**, other than an **apartment building**, is the higher of 7.0 m. above **established grade** or 2.5 m. less than the permitted maximum height in regulation 10.10. 40. 10 (1), for either (A) or (B) below:
>
> (A) For no less than 60% of the total width of:
>
> (i) All front **main walls**; and
>
> (ii) All rear **main walls**; or
>
> (B) All side **main walls:**
>
> (i) For no less than 60% of the total width of the side **main walls** facing a **side lot line** that abuts a **street;** and
>
> (ii) For no less than 100% of the total width of the side **main walls** that do not face a **side lot line** that abuts a street.

[80] Regulation 10.10.40.10 (1) referenced above sets out the height limits for properties in reference to the numerical values on the zoning overlay maps, and where there is no number identified by setting a default value of 10 m.

[81] Regulations controlling the maximum height of specified pairs of main walls apply to buildings in the R, RD, RS and to single and semi-detached houses in the RM zone. The Board heard that the intent of these provisions is to discourage the construction of three storey pitched roof houses. Mr. D'Abramo's evidence was that in a number of the former By-laws there were provisions which stipulated the maximum eaves height which essentially had the same effect as regulation 10.10.40.10 (2). The regulation will permit only two opposite main walls of dwellings to rise to the high point of the roof. The height of the other two opposite main walls is restricted as indicated above. If all four main walls were allowed to rise to the peak of the roof, this could potentially represent a three storey flat roofed building.

[82] The evidence of the OAA, the Conservatory Group and Stan Makow raised concerns about these provisions. They maintained that the regulations are unnecessary, would result in an increased number of variances and would restrict architectural design.

[83] The Board recognizes the importance of good architectural design. However, architectural quality has not been a matter upon which Board decisions have been traditionally based. While there is undoubtedly some variety in the characteristics of neighbourhoods the Board accepts the City's evidence that the great majority of neighborhoods are comprised mainly of two storey pitched roof buildings. The above regulations are complementary to the provisions regarding the determination of height and height limits. They are intended to ensure that roofs of residential dwellings have appropriate slopes. Based upon the evidence the Board finds that the above regulation is acceptable in principle.

[84] However, in view of the Board's findings about regulation 10.5.40.10 (1), the numerical values identified for portions of the main walls set out in the regulations may require revision to ensure that appropriate slopes are maintained. Furthermore, these provisions may be affected by the review of the provisions for lots with 12 m. frontage or

less. Therefore, the Board will not approve these regulations at this time and will require that they be subject to further review.

[85] The By-law includes provisions that restrict the width of dormers. The regulation is repeated in the R, RD, RS and RM zones, but in the RM zone it only applies to single and semi-detached dwellings. Regulation 10.10.40.10 (5) which applies in the R zone states:

> (5) Width of Dormers in a Roof Above a Second Storey or Higher
>
> In the R zone, on a **residential building** with two or more **storeys**, the exterior sides of a dormer are not **main walls** if the total width of dormers projecting from the surface of a roof does not occupy more than 40% of the total width of the **building's main walls** on the same front, rear or side as the dormers, measured at the level of the uppermost **storey** below the roof. (Exhibit 100A, Tab 4, p. 270)

[86] The intent of these regulations is to restrict the width of dormers so that they do not effectively become like a third storey of a dwelling. The regulations also require dormers to be limited in order to respect the main wall provisions of the By-law. The City maintained that these provisions allow dormers to continue as a design element, but fit into the other requirements of the By-law regarding three storey dwellings and main wall heights.

[87] The evidence of the OAA, the Conservatory Group and Stan Makow was that these regulations are unnecessary and will restrict design. The Board heard that roof dormers are a common design element in the City's houses and the provisions will discourage their inclusion in houses in the future.

[88] The Board recognizes that the provisions may place some restriction on the way that houses are designed. However, roof dormers will still be allowed and they can continue to form part of the physical character of neighbourhoods. The Board does not consider the restriction on the width of dormers to be a fundamental change that would conflict with the intent of the Official Plan. However, since the regulations related to the width of dormers may be affected by the review of provisions related to lots with 12 m or

less frontage, the Board will include these regulations with those that require further review.

[89] With regard to flat roofed dwellings, the By-law limits them to two storeys within the RD zone. Regulation 10.20.40.10(4) states the following:

> (4) Restrictions for a Detached House with a Flat or Shallow Roof
>
> If a **detached house** in the RD zone has a roof with a slope of less than 1.0 vertical unit for every four horizontal units, for more than 50% of the total horizontal roof area:
>
> (A) Despite regulation 10.20.40.10 (1), the permitted maximum height of the **building** is 7.2 metres;
>
> (B) Regulation 10.20.40.10 (2) does not apply; and
>
> (C) Despite regulation 10.20.40.10 (3), the **building** may have no more than two **storeys**.

[90] The City's evidence was that provisions to restrict the height of flat roofed dwellings are included in the former By-laws for North York, Etobicoke and parts of Scarborough. Mr. D'Abramo indicated that three storey buildings in neighbourhoods can create light, view and privacy issues. He maintained that the above regulation is appropriate since it will assist in preventing these issues.

[91] Mr. D'Abramo also referred to the definition of flat roofs included in the regulation He indicated that this will prevent hybrid roofs that include a portion that is pitched and a portion that is flat from being considered pitched roofs which then could allow predominantly flat roofed buildings to be constructed to the permitted height of pitched roof buildings.

[92] Mr. D'Abramo also noted in his evidence that regulation 10.10.40.10 (4) places a restriction on the maximum slope of roofs above the second floor for detached dwellings in the R zone.

[93] The evidence of SARG supported the restrictions on flat roofed buildings. The evidence provided on behalf of Stan Makow, the OAA and the Conservatory Group opposed the height restrictions.

[94] Mr. Pfeffer raised concerns about the height provisions for flat roofed dwellings. He indicated that the provisions in Regulation 10.20.40.10(4) for identifying flat roofs would include many mansard roofs which would have more than 50% flat area. He maintained that three storey flat roofed houses can be compatible with the existing physical context and raised an example in Exhibit 108, Tab 28.

[95] Mr. Goldberg stated that most neighbourhoods in the City where single detached dwellings predominate are zoned RD in the By-law. Consequently they would be subject to the height restrictions for flat roofed dwellings. Mr. Goldberg referred to an example of a flat roofed building in North York that was approved by the Board with a height of 9.85 m and which he maintained was appropriate (Exhibit 112, Tab 1). This application was approved by the Board and the City did not appear at the hearing to oppose the application.

[96] Mr. Goldberg contended that with the 7.2 m height restriction, for many properties, it would not be possible to construct a flat roofed dwelling with an integral garage and two living levels above it. The height limit would be exceeded. He maintained that there would be no demand for the type of flat roof housing that could be built under the provisions of the By-law.

[97] Mr. Goldberg suggested that a step back for the third floor of flat roofed dwellings would be a way to provide two floors of living area above an integral garage while reducing massing.

[98] The Board recognizes that flat roofed houses form a part of Toronto neighbourhoods and they can be a compatible form of development with two-storey pitched roof dwellings. Furthermore there are examples of flat roofed houses that exceed 7.2 m that have been found to be compatible. However, in most areas flat

roofed houses are not the predominant form of development. In the Board's view, to restrict the height of flat roofed dwellings so that they are two, rather than three storeys will not fundamentally change the existing character of neighbourhoods and will assist in addressing potential privacy issues pursuant to Official Plan policy 3.1.3 (d). Furthermore, the Board was not made aware of any built form policies that would be offended by this change.

[99] However, in Mr. Goldberg's evidence he raised concerns that for houses on lots with frontages of 12 m or less, it will be difficult to construct two storey dwellings of an acceptable size without needing variances. This applies to both pitched roof and flat roofed dwellings. The By-law's provisions for the location of parking spaces behind the front walls of houses, the elevation of integral garages, the definition of the first floor and height requirements are all factors in creating these difficulties for smaller lots.

[100] It was in part response to the evidence raised by Mr. Goldberg for both flat and pitched roofed buildings on smaller lots, that the City agreed to review various provisions as they apply to these lots. The Board agrees with the concern that the combined provisions of the By-law make it difficult to construct a typical house on lots of 12 m or less frontage and will order through this decision that the City undertake additional review of the By-law's provisions with regard to these lots. This should include the requirements for both pitched and flat roofed buildings on lots with frontages in this range. In the Board's view the evidence does not support a review of all of these regulations for larger lots or a review of the regulation restricting roof slopes on detached dwellings above the second storey. There is further discussion of this matter and identification of the regulations which require further review later in this decision.

[101] Another set of regulations that affect building height involves the height of the first floor of dwellings. The regulation is repeated in the sections of the By-law applying to the R, RD, RS and RM zones. It only applies to single and semi-detached dwellings in the R and RM zones. The City proposed an amendment in Exhibit 98 to regulations

10.10.40.10 (6), 10.20.40.10 (6), 10.40.40.10 (4) and 10.80.40.10 (4). These regulations are essentially the same as Regulation 10.10.40.10 (6) which currently states:

> (6) Height of First Floor Above Established Grade
>
> In the R zone, for a **detached house** or a **semi-detached house, t**he permitted maximum height of the **first floor** above **established grade** is 1.2 metres. (Exhibit 100A, Tab 4, p. 270)

[102] The proposed amendment to the above provision applies to the above-noted regulations for the R, RD, RS and RM zones.

[103] The wording applying to the R zone is as follows:

> (6) Height of Main Pedestrian Entrance
>
> In the R zone, for a **detached house,** or a **semi-detached house**, the elevation of the lowest point of a main pedestrian entrance through the **front wall** or a side **main wall** may be no higher than 1.2 metres above the **established grade**.

[104] The City also recommended that regulation 10.5.40.10 (5) which required a minimum of 10 sq m of the first floor to be within 4 m of the front main wall to be deleted. Mr. D'Abramo indicated that there was difficulty in interpreting this regulation.

[105] Mr. D'Abramo's evidence was that all of the former By-laws regulated the height of the first floor and that a maximum height of 1.2 m above grade was consistent among them. He recommended the revisions provided in Exhibit 98.

[106] Mr. Goldberg raised concerns about this regulation in conjunction with regulations in s. 10.5.40.10. He maintained that the requirement for the first floor to be at 1.2 m above established grade can push the height of dwellings upward particularly on lots with narrower frontage.

[107] The Board agrees with the concerns raised by Mr. Goldberg and other witnesses and will withhold approval pending further review of these regulations related to lots smaller frontages.

[108] Exhibit 97 identified regulation 10.5.40.10 (2) as one with which Stan Makow had raised issues. The regulation deals with the height of structures on roofs. The Board understands that part of the concern was the exclusion of skylights from the list of rooftop structures that could exceed the permitted building height.

[109] In Exhibit 125 the City included a proposed amendment to regulation 10.5.40.10 (3) which should deal with the concern for skylights. The regulation permits certain structures on roofs required for the functional operation of buildings to exceed the permitted maximum height of a building by 5 m. The City proposed amending part A of this regulation to include skylights, but limits the amount that they may exceed the maximum height limit to 1.m.Mr. D'Abramo's evidence was that this change is appropriate and should be approved. The other parties did not oppose the amendment. The Board agrees with the evidence provided by Mr. D'Abramo and will approve the amended regulation through this decision and also approve regulation 10.5.40.10 (2).

[110] As noted earlier, the evidence of Mr. Goldberg which was supported by the evidence of Mr. Swinton and Mr. Pfeffer contended that the regulations of the By-law would make it difficult if not impossible to construct a typical two-storey pitched roof dwelling on a lot of 12 m. frontage or smaller without the need for variances. Mr. Goldberg provided a number of examples to illustrate this point (Exhibit 112, Tab 2, 3,4, 6, 11). Essentially, parking provisions generally require that a parking space be provided behind the main wall of the house, which on smaller lots usually necessitates the construction of an integral garage. The floor of the garage must be raised above the level of the driveway entrance at the street. Also, the first floor of the house must be 1.2 m above the established grade. It was Mr. Goldberg's opinion that these requirements push the height of these types of dwellings upward making it difficult to construct two full storeys of reasonable size without the need for variances.

[111] The regulations in the by-law related to height, massing and other factors were supported by a study prepared by P. Gabor Associates which compared existing dwellings in various parts of the City with dwellings that could be constructed as of right

under the By-law (Exhibit 100B, Tab 14). The illustrations in the study show dwellings that could be constructed under the By-law placed in existing streetscapes. While these drawings seem to illustrate compatibility of dwellings constructed under the By-law with existing physical character, the drawings are not to scale. It is difficult to draw any firm conclusions from the study.

[112] Through the amendments to regulations proposed in the City's evidence, some of the concerns for the above regulations will be resolved. However, there are still concerns particularly for lots with frontages of 12 m and less. The City recognized that there may be some validity to these concerns when it agreed that certain provisions as set out in Exhibit 126 could be subject to further review.

[113] After considering the evidence the Board agrees with the City's recommendation that further review of a number of regulations is required primarily for lots with 12 m and smaller frontage. If typical houses of reasonable size cannot be constructed as of right, the Board cannot conclude that the requirements of the Official Plan to respect and reinforce existing physical character will be met. While there is less concern for the regulation for larger lots, the review may affect the wording of these regulations in their entirety. Therefore, the Board will delay approval of the specified regulations pending the results of this review.

[114] As noted above, the regulations for determining the height of buildings and for maximum height require review for all lots. The Board is not opposed to the proposed determination of height by measuring to the peak of a roof, but then the maximum height should be adjusted for those areas of the City where the measurement in the former By-laws was taken to the mid-point of a roof and the maximum height has not been increased. Since the regulations for the maximum height of specified main walls may also need to be amended in conjunction with changes in the maximum building height regulations, they should also be reviewed for all lots. In addition, the definitions in the By-law of first floor and basement are related to building height and they should be included in the review for all lots.

[115] The regulations that require further review are identified in the order at the end of this decision.

Building Length and Depth

[116] The regulations in dispute apply to the length of buildings and to their depth which is the distance to which the building extends into the rear yard taken from the front yard setback. The regulations in dispute as identified in Exhibit 97 are 10.5.40.20 (1), 10.5.40.30 (1), 10.10.40.30 (1), 10.40.40.20 (1), 10.40.40.20 (1), 10.40.40.20 (2), 10.40.40.30 (1), 10.80.40.20 (1), 10.80.40.20 (2), and 10.80.40.30 (1).

[117] Regulations 10.5.40.20 (1) and 10.5.40.30 (1) require building length and depth to apply to all main walls of the building. Parts of buildings that are permitted to encroach into a required setback, such as porches or decks, are excluded from the depth and length calculations if they extend no more than 2.5 m or 50% of length of the front or rear setback whichever is lesser. The Board heard that this applies to the enclosed space below porches and decks in front yards.

[118] The Board heard that in the R zone, the building length and depth requirements were carried forward from By-law 438-86 that applied to the former City of Toronto. Regulation 10.10.40.30.1 requires 17 m. building depth for detached and semi-detached houses and 14 m depth for duplex, triplex, fourplex, townhouse and apartment buildings. Mr. D'Abramo's evidence was that these depth requirements were determined in consideration of potential impacts respecting light, views and privacy on adjacent properties.

[119] Through regulation 10.40.40.20 (1) and 10.80.40.20 (1) building length is limited to 17 m in the RS and RM zones. In the latter zone it applies only to single detached and semi-detached dwellings.

[120] Extensions of 2 m are allowed in the RS, RM and RD zones subject to a number of requirements including that the lot frontage for a detached or semi-detached house is greater than 12 m.

[121] Through regulations 10.40.40.30 (1) and 10.80.40.30 (1) building depth is limited to 19 m in RS, RM and RD zones. The Board heard that these lots are likely to be deeper and can accommodate the greater building depths.

[122] The Board heard that building depth and length provisions have been in place for many years and were carried over from former By-laws. Mr. D'Abramo's opinion was that the regulations are appropriate and should be approved.

[123] The concerns of the other parties about these provisions mainly involved permitting space under building extensions to be exempt from the building depth and length measurements. Mr. D'Abramo indicated that for porch and deck extensions that are permitted to extend a specified amount into the front yard setback, the below grade area is also allowed to be extended to the same degree as the above ground extension and it is excluded from length and depth requirements. The Board is satisfied that this will accommodate basement features such as cold cellars which was a concern of the other parties. The Board was not provided with compelling evidence for excluding other basement extensions from building depth and length requirements.

[124] Therefore the Board finds that the regulations related to building depth and length are appropriate, they conform to the Official Plan and they should be approved. This matter is dealt with in the order provided at the end of this decision.

Floor Area Requirements

[125] The By-law includes a number of regulations that control the amount of floor area in buildings in s. 10.5.40.40. The permitted FSI for specific areas of the City is identified in the zone label on the zoning maps. The former By-laws of Etobicoke, York, Toronto and East York included the FSI values which have been carried forward into the By-law.

The Board heard that there are also exceptions in many parts of the City that apply different FSI values in specific areas.

[126] In determining the FSI, the By-law requires GFA to be calculated for an entire building and then it sets out parts of the building that are excluded so that the GFA is reduced.

[127] The evidence of Mr. Pfeffer and Mr. Goldberg contended that the FSI values identified on the zoning maps do not reflect the reality of the houses that are commonly built in neighbourhoods. They maintained that residents of neighbourhoods when constructing new homes or additions to existing homes generally prefer larger homes which require variances to the density values in the By-law. The Board heard that these variances are frequently approved by the Committee of Adjustment and on appeal by the Board.

[128] In his evidence, Mr. D'Abramo addressed the City's preferred approach to dealing with zoning standards including those for FSI. His position was that the review of zoning standards is a matter to be considered through a subsequent phase of the By-law review process. He also maintained that changes to standards should be considered through a detailed review, likely on an area specific basis. He referred to the West Forest Hill Zoning Study as an example of the type of study that should be undertaken (Exhibit 100 C, Tab 21).

[129] The Board recognizes the concerns expressed by the parties regarding the need to review zoning standards. It appears from the examples raised, that standards for density are substantially lower than the FSI that is approved on a regular basis.

[130] However, the Board does not have sufficient basis through the evidence provided in this hearing for establishing new zoning standards for density or other parameters. The Board agrees with the evidence provided by the City, that potential changes to the standards require further study and that this should be left to a future phase of the By-law review.

[131] The specific regulations related to floor space that are in dispute among the parties are 10.5.40.40 (1), 10.5.40.40 (2) and 10.5.40.40 (3). Regulation 10.5.40.40 (1) sets out requirements for portions of attics with sufficient vertical clearance to be included in the calculation of GFA. The City proposed a modification to regulation 10.5.40.40 (1) in Exhibit 98. The modified regulation states:

> (1) Inclusion of Attic Space as Gross Floor Area in a Residential Building Other than an Apartment Building
>
> In the Residential Zone category, the **gross floor area** of a **residential building,** other than an **apartment building**, includes the portion of the floor area in an attic that has a vertical clearance of more than 1.4 metres between the ceiling joists below and the roof rafters if at least 80% of the area has:
>
> (A) a vertical clearance of more than 2.0 metres; and
>
> (B) an area of at least 10 square metres.

[132] This revision eliminated a provision where attic space would be included in GFA if it where accessed by a permanent staircase or elevating device and it also reduced the area requirement in item (B) above from 20 sq m to 10 sq m.

[133] Regulation 10.5.40.40 (2) sets out an exclusion for a specified amount of attic space that is used to house mechanical equipment. After hearing the evidence of the other parties the City submitted a proposed amendment to this regulation in reply (Exhibit 125). It states the following:

> If the floor area meets the conditions of regulation 10.5.40.40 (1) and the area or the portion of the area is used for mechanical equipment for the functional operation of the **building**, that area is not included in the **gross floor area** of the **building** if it is not more than 5% of the permitted maximum **gross floor area** of the **building** to a maximum of 20 square metres.

[134] Concerns about regulation 10.5.40.40 (1) were raised by Mr. Pfeffer, Mr. Goldberg and Mr. Sterling. They maintained that the provision is unnecessary and that for houses with normal roof design the attic area may qualify for inclusion in GFA. However, they contended that this does not significantly affect massing of the building. Mr. Pfeffer contended that including attic space in GFA would restrict building design and mitigate against using floor joists rather than trusses for the construction of roofs.

However, at the end of the hearing, the OAA, the Conservatory Group and Mr. Makow provided recommendations to the Board including regulations that they contended should be changed or reviewed. The above regulations were not included.

[135] The evidence of Mr. Mills supported the inclusion of attic space in GFA and SARG supported the revisions to the regulation.

[136] The Board recognizes that the above regulations may restrict roof design. However, measures can be implemented to prevent attic areas from being included in GFA. The Board was not made aware of Official Plan policies dealing with built form that would be offended by the regulations, The Board cannot conclude from the evidence that these regulations would provide for development that would not comply with the Official Plan.

[137] Based upon the above, the Board finds that regulation 10.5.40.40 (1) and 10.5.40.40 (2) as amended through Exhibit 98 and Exhibit 125 are appropriate and should be approved.

[138] The other regulation that was in dispute related to floor area is 10.5.40.40 (3) which states:

> (3) Gross Floor Area Calculations for a Residential Building Other Than an Apartment Building
> In the Residential Zone category, the **gross floor area** of a **residential building** other than an **apartment building**, may be reduced by:
>
> (A) The floor area of the **basement**, unless the **established grade** is higher than the average elevation of the ground floor along the rear **main wall** of the **residential building** by 2.5 metres or more, in which case the **gross floor area** of the **building** may be reduced by 50% of the floor area of the **basement**;
>
> (B) The area of a void in a floor if there is a vertical clearance of more than 4.5 metres between the top of the floor below the void and the ceiling directly above it, to a maximum of 10% of the permitted maximum **gross floor area** for the **building**;
>
> (C) The area of required **parking spaces** in the **building**; and
>
> (D) In addition to (C) above, the area used for one additional **parking space** in a **detached house** on a **lot** with a **lot frontage** of more than 12.0 metres.

[139] Mr. D'Abramo's evidence was that part (A) of the above regulation with regard to including 50% of the basement area in the GFA calculation where the established grade is 2.5 m or more above the ground floor was added as a result of community consultation. The Board heard that some residents were concerned that buildings would be extended deep into rear yards to take advantage of the slope in order to provide a walkout. Also concerns were expressed that grades would be altered in rear yards to provide for walkouts.

[140] The evidence provided by SARG supported part (A) of the regulation. The evidence provided by Mr. Pfeffer, Mr. Sterling and Mr. Swinton questioned the need for the part of this provision that could include 50% of some basements in the GFA calculation. They raised concerns that the provision penalizes houses with walk out basements. The recommendations of the OAA, the Conservatory Group and Stan Makow included this provision as one which should require further review.

[141] After considering the evidence the Board does not agree with the City and SARG that the part of the provision that may include 50% of basement area in the GFA calculation is necessary and the Board is concerned that it is not a reasonable interpretation of the policy direction in the Official Plan. If the concern is that lots sloping toward the rear would encourage deeper buildings, the building depth and length provisions of the By-law should provide control over this matter. If the concern is that property owners will change grades at the rear of lots to create walk-outs, the Board understands that the City has the authority to control grading in conjunction with the building permit process. If the concern is massing, the floor area of a basement with a walkout is generally not visible from the street and does not affect the massing along the street.

[142] The Board recognizes that the Official Plan includes massing as one of the factors through which existing physical character must be respected and reinforced. By including 50% of the floor area of the basement in the GFA of the building, the GFA for the floors above the basement level will likely be substantially reduced, possibly by 25%

for a two storey dwelling. The massing at street level of dwellings with walkout basements will be substantially smaller than that of the other houses in the neighbourhood. It is not clear to the Board why this would be desirable and in what way this reinforces the existing physical character of the neighbourhood. Buildings with massing similar to others in the vicinity that comply with the By-law's provisions should be able to be constructed without the need for variances.

[143] The Board was provided with no evidence of any Official Plan or other planning policies that indicate that dwellings with walk-out basements should have reduced street level massing to compensate for GFA in the basement. If there is a problem with the massing of dwellings with walk-out basements in parts of the City, an area specific Official Plan policy and by-law can be adopted. The Board does not consider the part of this provision that requires a portion of the basement to be included in the GFA calculation to be reasonable interpretation of the policy direction in the Official Plan.

[144] Based upon the above, the Board agrees with the evidence provided on behalf of the OAA, the Conservatory Group and Mr. Makow and will not approve part A of this regulation as it is written.

[145] With regard to the remainder of part (A) of this regulation, the Board did not hear any evidence opposed to excluding other types of basement space from the GFA calculation. Through the order at the end of this decision the Board amends regulation 10.5.40.40 (3) (A) so that it reads "The floor area of the basement;" and so that the remainder of this provision is deleted.

[146] With regard to parts (B) and (C) above, these provisions were generally not opposed by the parties.

[147] With regard to (D) Mr. Mills raised some concern about excluding a second parking space in a garage from the GFA calculation contending that it would add to the massing of buildings. However, the other witnesses did not oppose this provision. This provision is only intended to apply to larger lots and where, in the Board's view, the

additional massing can generally be accommodated. The evidence has not established that this provision would not comply with the Official Plan.

[148] Therefore, the Board agrees with the evidence provided by the City that parts (B), (C) and (D) of the regulation are appropriate and should be approved.

Setbacks

[149] The By-law's regulations identify various types of setbacks including, front and rear yard setbacks, side yard setbacks and minimum separation distances for buildings. Regulation 10.20.40.70 (3) sets out side yard setback requirements in the RD zone with increasing setback distances as the lot frontage increases. The smallest setback is for lots less than 6 m where the setback requirement is 0.6 m. The requirement for lots with frontage widths of 6.0 m to less than 12 m. is 0.9 m, and for lots with frontage of 12 m to less than 15 m the setback distance is 1.2 m. The setback increases to a maximum of 3.0 m for lots with a frontage of 30.0 m or greater.

[150] Mr. D'Abramo's evidence was that in the former zoning By-laws the side yard setbacks tended to equal 10% of the lot frontage width. This percentage is largely reflected in the side yard setback requirements of the By-law. He indicated that an exception to this rule was in the R1 zone in the former City of Toronto By-law which is now the RD zone in the By-law, where the side yard setback requirement was 0.9 m regardless of lot width. He noted that in public consultation there appeared to be little concern with this change.

[151] However, Mr. Pfeffer maintained that the proposed changes in side yard setback in regulation 10.20.40.70 (3) are not appropriate. He contended that they would not allow new development that respects and reinforces the existing physical character of neighbourhoods and therefore the side yard setback provisions do not comply with the Official Plan.

[152] In considering this regulation, the Board agrees with the evidence provided by the City. The Board recognizes that there will be some change in setback requirements for parts of the City, but in most cases, the Board considers the changes to be minor. In the former R1 zone for lots with frontages between 6 m and less than 12 m the side yard setback requirement will not change. For lots frontages smaller than 6 m and between 12 m and less than 15 m the change in side yard setback requirements is only 0.3 m. This would cover a large number of lots in the former City of Toronto. In the Board's view this is not a significant change and it should not fundamentally affect the existing physical character of neighbourhoods. The Board has concluded that development constructed to the By-law's side yard setback requirements would respect and reinforce the existing physical character of these areas. Therefore, the Board finds that these provisions comply with the Official Plan and should be approved.

[153] Regulation 10.60.40.70 provides setback requirements for RT Zones. The Conservatory Group raised concerns about Regulation 10.60.40.70 (3) which states the following:

> "(3) Minimum Side Yard Setback
>
> In the RT zone:
>
> (A) The required minimum **side yard setback** is 7.5 metres; and
>
> (B) Despite (A) above, the required **side yard setback i**s 0.9 metres for:
>
> (i) a **detached house**;
>
> (ii) a **semi-detached house**; or
>
> (iii) a **townhouse**, if all the **dwelling units** front directly on a **street**. (Exhibit 100 A, Tab 4, p. 288)

[154] Regulation 10.60.40.80 provides requirements for separation of buildings in the RT zone. Concerns about this regulation were raised by the Conservatory Group. After hearing the evidence the City proposed an amendment to regulation 10.60.40.80 (2) in Exhibit 125. The regulation including the proposed amendment states the following:

"10.60.40.80 Separation

(1) Distance Between Main Walls of the Same Townhouse

In the RT zone, if a **townhouse** has **main walls** where a line projected outward at a right angle from one of the **main walls** intercepts another **main wall** of the same **building**, the required minimum above-ground separation distance between **main walls** is:

(A) 5.5 metres if there are no openings to **dwelling units** in one or more of those **main walls**; and

(B) 11.0 metres if each **main wall** has an opening to a **dwelling unit**.

(2) Distance Between Residential Buildings on the Same Lot

In the RT zone, if two or more **residential buildings** are on the same **lot**, the required minimum above-ground separation distance between the **main walls** of the respective **buildings** is:

(A) 5.5 metres if there are no openings to **dwelling units** in the front or rear **main wall** of one or more of the **buildings**;

(B) 11.0 metres if each front or rear **main wall** has an opening to a **dwelling unit;** and

(C) 2.4 metres between the side **main walls** of two **residential buildings.**

[155] The amendment indicates that the separation distances in parts (A) and (B) apply in relation to the presence or absence of openings in the front and rear main walls of buildings. Also, the amendment adds part (C) to the regulation which applies to the side main walls.

[156] Issues about these provisions were raised in the evidence of Mr. Hunt and Mr. Swinton. Mr. Hunt noted that through regulations 10.60.40.70 (3) a side yard setback of 0.9 m. is permitted for townhouses fronting on a public street, but for townhouses fronting on a private street a 7.5 m side yard setback is required. He contended that the 0.9 m setback should apply to private streets.

[157] It was Mr. Swinton's position was that the setback regulations are too restrictive and would prevent good design. He maintained that the By-law needs to distinguish between primary and secondary openings in buildings. He also indicated that regulations should be adjusted to allow a smaller side yard setback when the side yard

does not act as the primary amenity space. He raised a number of examples of townhouse projects to show the potential impacts of the By-law's regulations. (Exhibit 121, Tab 7).

[158] The City's evidence was that the regulations with the modifications noted above are appropriate and should be approved. Mr. D'Abramo acknowledged that regulation 10.60.40.80 (2) should be amended as proposed in Exhibit 125 so that the separation distance between side main walls of buildings on the same lot could be reduced to 2.4 m. The Board heard that this would comply with the requirements of the *Ontario Building Code*.

[159] Mr. D'Abramo addressed the example raised by Mr. Swinton. He maintained that when the side yards of townhouses are adjacent to the rear yards of detached dwellings a larger setback is required to mitigate privacy and overlook issues. Therefore his opinion was that the regulations with the amendment included in exhibit 125 are appropriate and should be approved.

[160] After considering the evidence the Board agrees with the evidence provided by the City. Townhouses on private streets are more likely to be adjacent to the rear yards of dwellings than townhouses on public streets. A larger setback is required to deal with privacy and overlook concerns pursuant to the policies of the Official Plan. Also, the amendment in s. 10.60.40.80 (2) regarding side main walls partially addresses the other concerns raised by Mr. Hunt and Mr. Swinton.

[161] Based upon the evidence, the Board finds that the setback and building separation provisions with the amendments included in Exhibit 125 are appropriate and should be approved.

Platforms - Porches, Decks and Balconies

[162] The By-law contains provisions for platforms including decks, porches and balconies in section 10.5.40.50 and permitted encroachments are set out in s.

10.5.40.60. The City proposed a number of amendments to these provisions in Exhibit 98 to address some of the concerns raised by the other parties.

[163] It was Mr. D'Abramo's evidence that part (3) of regulation 10.5.40.50 should be revised to indicate that a second storey platform could be 0.2 m higher than the level of the floor of the storey where it is located. This change is in response to concerns that second storey platforms constructed on existing houses may require a step up. Mr. D'Abramo also proposed adding a section to regulation 10.5.40.50 to respond to concerns raised by SARG that platforms on the first floor in the front or rear yards could be constructed at a level higher than the maximum permitted height of the first floor. Regulation 10.5.40.50 including proposed amendments is as follows:

> (1) Interpretation of Platform Walls
>
> In the Residential Zone category, the exterior sides of a platform, such as a deck, porch, balcony of similar **structure**, attached to or within 0.3 metres of a **building**, are not **main walls** if at least 50% of the exterior sides above the floor are open to the outside.
>
> (2) Platforms in Relation to Building Setbacks
>
> In the Residential Zone category, a platform without **main walls**, such as a deck, porch, balcony or similar **structure**, attached to or within 0.3 metres of a **building**, must comply with the required minimum **building setbacks** for the zone.
>
> (3) Platforms at or Above the Second Storey of a Residential Building other than an Apartment Building
>
> In the Residential Zone category, the level of the floor of a platform, such as a deck or balcony located at or above the second **storey** of a **residential building** other than an **apartment building**, may be no higher than 0.2 metres above the level of the floor of the **storey** from which it gains access.
>
> (4) Platforms at or Below the First Storey of a Residential Building other than an Apartment Building
>
> In the Residential Zone category, the level of the floor of a platform, such as a deck or balcony, permitted in accordance with (2) above and located at or below the first **storey** of a **residential building** other than an **apartment building**, may be no higher than 1.2 metres above the ground at any point below the platform, except where the platform is attached to or within 0.3 metres of:
>
> (A) a **front wall**, the floor of the platform may be no higher than 1.2 metres above the **established grade**;
>
> (B) a side **main wall**, the floor of the platform may be no higher than the level of the floor from which it gains access; and

(C) a rear **main wall**, any part of the platform floor located 2.5 metres or less from the rear **main wall** may be no higher than the level of the floor from which it gains access.

[164] Mr. D'Abramo's evidence was that with the amendments these regulations are appropriate and they should be approved. From the evidence the Board understands that the amendments resolved the concerns raised by the parties for the need for a step up on second floor balconies and to prevent the potential for first floor platforms to be elevated above the level of the first floor.

[165] Regulation 10.5.30.40 (2) identifies lot coverage requirements for platforms and indicates that in the Residential Zone category platforms that do not encroach into the minimum building setback are not included in the calculation of lot coverage if they are attached or less than 0.3 m from the building and cover no more than 5% of the total lot area. In response to a concern raised by Stan Makow, Mr. D'Abramo proposed an amendment to regulation 10.5.30.40 (2) to specify that any roof, canopy, awning, or similar structure above these platforms are not included in the calculation of lot coverage. The Board understands that this resolved the lot coverage concerns of Stan Makow related to Regulation 10.5.30.40 (1) and 10.5.30.40 (2).

[166] Mr. D'Abramo also addressed a concern raised by SARG for regulation 10.5.40.60 (4) regarding the provision for the encroachment of cladding on the outside of buildings into the building setback. SARG noted that in the former City of Toronto By-law it applied only to buildings erected on or prior to October 17, 1988. Mr. D'Abramo contended that the regulation as written is appropriate and the Board agrees.

[167] The amendments proposed by the City and supported by Mr. D'Abramo's opinion evidence resolved the major concerns raised by the parties as they relate to the platform provisions of the By-law. The Board accepts and agrees with the opinion evidence provided by Mr. D'Abramo and finds that these provisions are appropriate, they comply with the Official Plan and they should be approved.

Ancillary Buildings

[168] The parties had raised concerns about a number of regulations in the By-law that apply to ancillary buildings in a Residential Zone category. Mr. D'Abramo indicated that regulation 10.5.60.10 (1) does not permit ancillary buildings and structures in front yards. He noted that Stan Makow had raised a concern about this provision unnecessarily restricting landscape elements and minor structures. However, Mr. D'Abramo noted that landscaping is permitted in front yards as long as a minimum of 75% of it is soft landscaping. In his opinion it is appropriate to prohibit ancillary buildings in front yards and the regulation should be approved.

[169] Mr. D'Abramo's evidence was that regulation 10.5.60.20 (1) requires setbacks to be applied to both the above and below grade parts of ancillary buildings and structures. It was his opinion that this is reasonable and the regulation should be approved.

[170] Regulation 10.5.60.30 (1) requires ancillary buildings to be a minimum of 1.8 m. from a residential building if the ancillary building is greater than 2.5 m in height or greater than 10 sq m in area.

[171] Through regulation 10.5.60.40 (1) the height of ancillary buildings must be determined by measuring from average grade to the highest point of the building. Regulation 10.5.60.40 (2) requires the maximum height of ancillary buildings to be 2.5 m if located less than 1.8 m from a residential building and 4.0 m if located further away.

[172] The regulations restrict the entrance to ancillary buildings to 2.5 m in height above the average elevation of the ground.

[173] Regulation 10.5.60.50 (2) limits the floor area of ancillary buildings to a maximum of 40 sq m for lots with less than 12 m frontage and 60 sq m for lots with frontage of 12 m or greater.

[174] Mr. D'Abramo indicated that these regulations are appropriate and they follow the approach in the By-laws of the former municipalities. His opinion was that they conform to the Official Plan, they represent good planning and they should be approved.

[175] The other parties provided little evidence in opposition to the position provided by the City. After considering the evidence the Board agrees with the planning opinion provided by Mr. D'Abramo and finds that the regulations related to ancillary buildings and structures comply with the Official Plan and they should be approved.

Parking

[176] The By-law includes regulations for parking in the Residential Zone category in s. 10.5.80. Mr. D'Abramo recommended some amendments to these regulations and his evidence was that the regulations with the amendments are appropriate.

[177] The regulations in section 10.5.80.40 limit the width of entrances to integral garages to 6.0 m on lots with frontages less than 24 m., require the elevation of the entrances to integral garages to be above the level of the point where the driveway enters the street, and control vehicular access to corner lots.

[178] Concerns were raised by SARG about the corner lot provisions. Mr. D'Abramo recommended a proposed amendment to regulation 10.5.80.40 (3) which is set out in Exhibit 127 and states the following:

> (3) Parking Space Access to a Lot
>
> In the Residential Zone category, vehicle access to a parking space on a lot must:
>
> (A) be from a 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 a **street** on which the **lot** fronts.

[179] The proposed amendment in the above regulation had the effect of removing the word “corner” from the provision.

[180] Mr. D’Abramo included another amendment in Exhibit 127 which removed the word “corner” from regulation 10.10.80.200 (1). This regulation removed the requirement to provide a parking space located in a side or rear yard on a lots with smaller frontages that meet certain criteria and where access cannot be provided from a lane or flanking street. In the By-law it applied only to corner lots, but Mr. D’Abramo’s recommended change would apply this provision to all lots that meet the criteria.

[181] In addition Mr. D’Abramo proposed an amendment to Regulation 900.3.10 (961) Exception RD 961 which requires that parking access to a lot abutting a lane or flanking street must be from the lane or flanking street. Mr. D’Abramo’s evidence was that this amendment would allow the Swansea area to continue under regulations similar to those that applied under the old By-law with regard to parking access.

[182] The Board understands that the above changes resolved the concerns raised by SARG and no party was opposed to these amendments.

[183] Other concerns were raised about parking mainly through the evidence of Mr. Goldberg and Mr. Swinton. They indicated that the provisions of the By-law restrict the provision of parking spaces in front yards. On lots with narrower frontages it is difficult to accommodate a driveway along the side of the dwelling to provide parking space in the rear yard. Also, regulation 10.5.80.40 (2) requires the entrance to an integral garage to be raised above the street level. The combination of these regulations cause difficulties in providing suitable parking spaces on lots with smaller frontages and result in increased height of dwellings in order to provide suitable living space while incorporating an integral garage. The recommendation of the Conservatory Group was that these provisions related to parking should form part of the further review of the By-law’s provisions related to smaller lots.

[184] After considering the evidence the Board accepts the amendments proposed by the City. The Board finds that the majority of the parking provisions are appropriate. However, the Board agrees with the opinion evidence provided on behalf of the OAA and the Conservatory Group that the need to provide a parking space and that it be located behind the main wall of a dwelling creates issues for the construction of reasonably sized dwellings on smaller lots. Therefore the Board will order that those provisions of the By-law related to parking identified in Exhibit 130 will form part of the further review to be undertaken by the City and the parties.

Other Issues

[185] A considerable amount of evidence was provided by the parties around the issue of whether or not a substantial increase in the number of variances will result from the requirements of the By-law compared with the number required under the former By-laws. In Mr. Tapp's evidence he provided an analysis of 400 applications in the four Committee of Adjustment districts (Exhibit 100 D) and a review of the number of building permit applications that required variances. It was his opinion that there was not a substantial difference in the number of variances required by the former By-laws and the By-law. This evidence was disputed by the OAA, Conservatory Group and Stan Makow.

[186] However, in reviewing the evidence, the Board can draw no firm conclusions about this issue. There may be some increase in the number of required variances under the By-law, but it is difficult to determine the magnitude that this might involve.

[187] The Board has reviewed the authorities submitted by the parties. The findings in this decision are generally supported by the authorities and nothing in the authorities would cause the Board to change the determinations in this decision.

[188] The Board notes that the decision *Ottawa Restricted Area By-law 158-80, Re*, 1981 CarswellOnt 1513 deals with the potential downzoning of properties through the passage of a By-law. There has been some suggestion by parties in this hearing that

the City's action through the provisions of the By-law in some cases amounts to downzoning. While the Board has not been provided with full submissions on this matter and will make no findings, it should be noted that cases where downzoning has been a factor often involve a change in zoning category which would permit a less intense use of properties. It is not clear that the changes resulting from the By-law would have a similar effect.

[189] In their submissions, Mr. Kanter and Mr. Alati noted that the City did not call an expert witness to provide urban design evidence and therefore less weight should be given to the City's evidence regarding regulations which relate to urban design. However, in the Board's view the evidence provided by the City appropriately addressed urban design matters related to the policies of the Official Plan. There is no reason to change the Board's findings identified in this decision based upon urban design concerns.

[190] In his submissions, Stan Makow recommended that the Board should repeal Chapter 10 of the By-law and that the provisions of the former By-laws should remain in effect. However, the Board notes that many provisions of Chapter 10 were previously approved and that only a relatively few provisions were the subject of opposing evidence. In addition, some question was raised by other parties about the Board's jurisdiction to repeal Chapter 10 of the By-law. The Board will not provide detailed findings about this matter or discuss the Board's jurisdiction, but based upon the evidence and submissions, the Board can find no basis for contemplating the action recommended by Stan Makow.

CONCLUSION

[191] Through this decision the Board is approving many of the regulations in Chapter 10 of the By-law. In its evidence, the City emphasized the importance of approving the By-law in order to eliminate a dual review process under the By-law and the former By-laws that occurs with each application. The City indicated that this is a very inefficient

process and that approval of the By-law is a significant matter for the City. While approval of a number of regulations is being deferred, the approvals issued through his decision should assist in reducing the requirement for dual review.

[192] The main test for the Board in making determinations about these appeals and in considering the regulations in the By-law has been conformity with the Official Plan. The regulations of the By-law that were determined to be in dispute by the parties at the start of the hearing are identified in Exhibit 97. Some additional parking provisions raised in the evidence that are not included in Exhibit 97 were recommended for further review by the Conservatory Group. The Board has included these regulations among those that should be reviewed further in conjunction with lots having 12 m and smaller frontages. Beyond these parking regulations, no issues were raised in the evidence at the hearing with regard to other Chapter 10 regulations that are not included in Exhibit 97.

[193] Mr. Makow's evidence contended that the density values on the zoning maps should form part of the further review to be undertaken by the City and parties. However, the Board is satisfied with the evidence provided by the City, that the review of density values on the maps should be undertaken through a future phase in the consideration of the By-law.

[194] The opinion evidence of the City in support of those Chapter 10 regulations that were not in dispute during the hearing was not contested. The Board accepts the evidence provided by the City and finds that those regulations in Chapter 10 which are still under appeal, other than those identified for further review, regulation 10.5.40.10 (5) which is being deleted, regulation 10.5.40.40 (3) (A) which is being amended by the Board through this decision, and those regulations amended at the recommendation of the City, comply with the Official Plan and should be approved. As noted earlier, a number of provisions of chapter 10 have been approved through previous Board decisions.

[195] Furthermore, as discussed above the Board has found that a number of the regulations that were in dispute that are identified in Exhibit 97 should be approved. In addition, the Board has found that the amendments proposed by the City in Exhibits 98, 125 and 127 are appropriate. In most cases the amended regulations will be approved as amended although some of these regulations are being deferred for further review and will not be finally approved until the review has been completed. Those regulations that require further review are identified later in this section.

[196] Based upon the evidence, in this decision the Board has found that the following regulations that were in dispute should be approved:

1. Height – Regulations 10.10.40.10 (4), 10.20.40.10 (8);

2. Building Length and Depth - Regulations 10.5.40.20 (1), 10.5.40.30 (1), 10.10.40.30 (1), 10.40.40.20 (1), 10.40.40.20 (1), 10.40.40.20 (2), 10.40.40.30 (1), 10.80.40.20 (1), 10.80.40.20 (2), and 10.80.40.30 (1);

3. Gross Floor Area Calculations – Regulation 10.5.40.40 (3) (B), (C), and (D), and regulation 10.5.40.40 (1) and 10.5.40.40 (2) as amended;

4. Setbacks and Separation – Regulations 10.20.40.70 (3), 10.60.40.70 (3), 10.60.40.80 (1), and Regulation 10.60.40.80 (2) as amended;

5. Platforms – Regulation 10.5.30.40 (1), 10.5.40.60 (1), 10.5.40.60 (2), 10.5.40.60 (4), additional Regulation 10.5.40.50 (4) and Regulations 10.5.30.40 (2), 10.5.40.50 (3), as amended;

6. Ancillary Buildings – Regulation 10.5.60.10 (1), 10.5.60.20 (1), 10.5.60.30 (1), 10.5.60.40 (1), 10.5.60.40 (2), 10.5.60.40 (4), 10.5.60.50 (2);

7. Parking – Regulation 10.5.100.1, 10.10.80.40 (1), 10.10.80.40 (2) and Regulations 10.5.80.40 (3), 10.10.80.200 (1) and 900.3.10 (961) Exception 961 as amended;

8. Height of Structures on a Building -Regulation 10.5.40.10 (2) and Regulation 10.5.40.10 (3) (A) as amended.

[197] The Board has found that sufficient evidence has not been provided to demonstrate that the part of Regulation 10.5.40.40 (3) (A) which requires the inclusion in the calculation of GFA of 50% of the area of walk-out basements that are at least 2.5 m below established grade, is necessary or that it is reasonable based on the policies of the Official Plan. Furthermore, no opposing evidence was provided to the approval of the first part of this regulation that indicates other types of basement area should be excluded from the GFA calculation. Therefore, the Board will amend this regulation to remove the part that requires a portion of these types of walk out basements to be included in the GFA calculation.

[198] The Board has also found that the evidence has not demonstrated that regulation 10.5.40.10 (1), which in some parts of the City changes the point of measurement of height on buildings from the mid-point of the roof to the peak of the roof, would permit development as of right that reinforces the existing physical character of neighbourhoods. Therefore the Board finds that this regulation should be reviewed in conjunction with the height limits for those areas where the height limit has not been increased to compensate for the potential height reduction of buildings by measuring to the peak of the roof. The height limits are identified in regulations 10.10.40.10. (1), 10.20.40.10 (1) and 10.40.40.10 (1). The review of these regulations should cover all areas where the point of measurement on the roof has changed, and should not be limited to areas with lot frontages of 12 m and less. As noted in the decision, the Board is not necessarily concerned with the change in the point of measurement, but is concerned about enacting this change without revising the height limits.

[199] The regulations regarding the height of specified pairs of main walls may require adjustment depending upon the outcome of the review of the other height provisions. Therefore regulations 10.10.40.10 (2), 10.20.40.10 (2), 10.40.40.10 (2), 10.80.40.10 (2) should also be reviewed for all lots.

[200] Other regulations, as discussed above, that are being approved by the Board may result in some physical change in neighbourhoods in parts of the City. However, the Board considers these changes to be minor and not fundamental to the physical character of neighbourhoods in contrast to the height provisions. Therefore, the Board has found that it is appropriate to approve these regulations through this decision.

[201] In their submissions, the parties provided their recommendations to the Board. The City, the OAA, Stan Makow and the Conservatory Group provided written recommendations in Exhibits 126, 128, 129 and 130. The City in Exhibit 126 recommended that the Board approve the modifications to regulations set out in Exhibits 98, 125 and 127 and that City Council undertake a review of various regulations as they apply to lots with 12 m frontage or less. The OAA, the Conservatory Group and Stan Makow generally supported a review of regulations but submitted that additional regulations should be included in the review.

[202] Based upon the evidence the Board agrees with the recommendations of the City, the OAA, the Conservatory Group and Stan Makow that there should be further review of certain regulations as they apply to lots with 12 m and smaller frontages. The regulations subject to the review include all listed in Exhibit 126 and some additional regulations that have been identified in the Board's findings discussed above. As noted above the review of the regulations in item 1, 2 and 3 below should not be limited to lots with frontages of 12 m and less. The definitions of first floor and basement should also form part of the review for all lots as noted in item 8. While they are of primary concern for smaller lots through the review it may be appropriate to amend these definitions for all lots. The review of the other regulations listed below in items 4, 5, 6 and 7 should focus on lots of 12 m and smaller frontages although changes to the regulations for

these lots may entail changes to the regulations generally. The regulations which are subject to further review are as follows:

1. Regulation 10.5.40.10 (1) for determining the height of buildings (as noted above the review should not be limited to lots with frontages of 12 m. and less);

2. Regulations 10.10.40.10 (1), 10.20.40.10 (1), 10.40.40.10 (1), 10.80.40.10 (1) maximum height (as noted above the review should not be limited to lots with frontages of 12 m. and less);

3. Regulations 10.10.40.10 (2), 10.20.40.10 (2), 10.40.40.10 (2), 10.80.40.10 (2) maximum height of specified pairs of main walls (may require adjustment for all lots);

4. Regulation 10.20.40.10 (4) restrictions for a detached house with a flat or shallow roof;

5. Regulations 10.10.40.10 (6), 10.20.40.10 (6), 10.40.40.10 (4), 10.80.40.10 (4) height of the first floor above established grade;

6. Regulations 10.10.40.10 (5), 10.20.40.10 (7), 10.40.40.10 (5), 10.80.40.10 (5) width of dormers;

7. Regulations 10.5.80.1 (1), 10.5.80.10 (1), 10.5.80.10 (3) parking provisions;

8. The definitions of first floor and basement (may need to be revised for all lots).

[203] The above provisions for maximum height, height of specified pair of main walls, for the height of the first floor above established grade and for width of dormers includes the regulations for the RM zone which Mr. Alati recommended to be included with those

that require further review. Ms. Penner agreed that these could be subject to a further review, but that it should be focused. Since the method of determining height is potentially changing for some parts of the City in the RM zone, the Board considers it appropriate to review the maximum height provision for all lots where the height limits have not been changed to compensate for the reduction in height due to the roof point of measurement. If height limits change then the maximum height of the specified pairs of main walls may need to be adjusted. This provision should also be reviewed for all lots. The other provisions identified above that apply to the RM zone should be reviewed only as they apply to lots with frontages of 12 m or less.

[204] The above are the only regulations of the By-law that the Board is directing that further review be undertaken by the City. The Board has included the By-law's definitions of basement and first floor in the provisions to be considered, since the evidence indicated that these definitions could be affected or need to be amended as part of the review. It is recognized that other provisions of the By-law may come under consideration in the review if changes to those provisions would assist in accomplishing the objective of permitting a standard sized two-storey dwelling on lots of 12 m or less frontage. Furthermore, the provisions as they apply to all lots may be amended if it determined to be appropriate through the review of the provisions related to lots with frontages of 12 m and less. Therefore, those regulations that require further review will not be approved until the review has been completed and an acceptable final form of the regulations is determined.

[205] The review shall include the parties and involve other groups and individuals as the City may determine necessary. The Board heard that there will be a need for further public consultation regarding any changes to the By-law that might be contemplated.

[206] However, the appeals of these regulations are still before the Board and the changes to the regulations that may be determined through the review process need to come back to the Board for approval. After the City's review has been completed the

hearing will continue to consider any changes to the By-law's provisions that may be proposed and evidence related to the regulations under consideration.

[207] The parties suggested various time frames for these matters to come back to the Board. The Board understands that the review could take a considerable amount of time in order to undertake appropriate consultations and bring relevant matters to the relevant Committee and City Council. The Board will allow ten months from the date of issuance of this decision for the City to undertake this review and bring the regulations with any proposed revisions back to the Board. The City and parties shall report back to the Board within six months of the date of issuance of this decision to update the Board on progress in completing the review. The update may be undertaken through a telephone conference call if appropriate.

[208] There was a suggestion in some submissions that the Board should treat the above provisions that have been referred for review as being withdrawn if the City does not come back to the Board with approved provisions within the specified time period. However, the Board will not take any such action. The regulations noted above are still before the Board and will remain so until the Board issues its final decision on these matters.

[209] The disposition of the matters discussed above is included in the Board's order provided below. In addition, the Board has adopted some standard wording in its order that has been included in previous Board orders approving other provisions of the By-law.

ORDER

[210] The Board orders that the appeals are allowed in part, the amendments to Toronto By-law 569-2013 set out in Exhibit 98, 125 and 127 are adopted, and the provisions of Chapter 10 of By-law 569-2013 are disposed of as follows:

A. Regulations 10.5.40.10 (2), 10.5.40.20 (1), 10.5.40.30 (1), 10.10.40.10 (4), 10.20.40.10 (8), 10.10.40.30 (1), 10.40.40.20 (1), 10.40.40.20 (1), 10.40.40.20 (2), 10.40.40.30 (1), 10.80.40.20 (1), 10.80.40.20 (2), 10.80.40.30 (1), 10.5.40.40 (3) (B), (C), (D), 10.20.40.70 (3), 10.60.40.70 (3), 10.60.40.80 (1), 10.5.30.40 (1), 10.5.40.60 (1), 10.5.40.60 (2), 10.5.40.60 (4), 10.5.60.10 (1), 10.5.60.20 (1), 10.5.60.30 (1), 10.5.60.40 (1), 10.5.60.40 (2), 10.5.60.40 (4), 10.5.60.50 (2), 10.5.100.1, 10.10.80.40 (1), 10.10.80.40 (2) are approved;

B. Regulations 10.5.40.10 (3) (A), 10.5.40.40 (1), 10.5.40.40 (2), 10.60.40.80 (2), 10.5.30.40 (2), 10.5.40.50 (3), 10.5.80.40 (3), 10.10.80.200 (1) and Regulation 900.3.10 (961) Exception 961 are approved as amended in Exhibits 98, 125 and 127;

C. Regulation 10.5.40.40 (3) (A) is amended to read “The floor area of the basement.”;

D. Regulation 10.5.40.50 (4) is added as set out in Exhibit 98 and is approved;

E. Regulation 10.5.40.10 (5) is deleted;

Furthermore, the Board orders the City, in conjunction with the parties, to undertake further review of the following provisions:

1. Regulations 10.5.40.10 (1), 10.10.40.10 (1), 10.20.40.10 (1), 10.40.40.10 (1), 10.80.40.10 (1), 10.10.40.10 (2), 10.20.40.10 (2), 10.40.40.10 (2), 10.80.40.10 (2) and the definitions in the By-law of first floor and basement require review for all lots;

2. Regulations 10.20.40.10 (4), 10.10.40.10 (6), 10.20.40.10 (6), 10.40.40.10 (4), 10.80.40.10 (4), 10.10.40.10 (5), 10.20.40.10 (7), 10.40.40.10 (5),

10.80.40.10 (5), 10.5.80.1 (1), 10.5.80.10 (1), 10.5.80.10 (3) require review for lots with frontages of 12 m. or less.

The City and parties shall bring forward to the Board for further consideration, the regulations and definitions identified in # 1 and #2 above amended as may be appropriate in conjunction with the relevant evidence within ten months of the date of issuance of this decision. The City and parties shall provide an update on the progress of the review process approximately six months from the date of issuance of this decision which may occur by telephone conference call, if appropriate.

The Board orders that all other regulations in Chapter 10 of the By-law that are still under appeal and have not been disposed of as identified in A, B, C , D, and E above and are not included in the regulations ordered for further review, are approved.

The Board orders that the regulations in Chapter 10 that have been approved through this decision are in full force and effect as of May 9, 2013 which is the date By-law 569-2103 was passed pursuant to s. 34 (31) of the *Planning Act* save and except as they apply to sites that are subject to site-specific and area-specific appeals.

The Board orders that the coming into effect of the portions of the By-law through this decision:

a) shall be without prejudice to the rights of any party for their proposed exceptions or modifications to By-law 569-2013 in a site-specific appeal. For greater certainty and without limiting the foregoing, this Order shall not have any effect on the Board's authority to grant issue-specific or site-specific exceptions or modifications to By-law 569-2013, regardless of whether the proposed exceptions or modifications deviate from portions of By-law 569-2013 that the Board has already approved;

b) shall not have the effect of limiting existing or future resolutions of any appellant's appeal;
c) shall not limit any party's right to seek to amend portions of By-law 569-2013;
d) does not limit the jurisdiction of the Board to consider and approve amendments to the By-law including the addition of permitted uses and building types, and site specific exceptions or modifications to By-law 569-2013 that may deviate from portions of the By-law that the Board has already approved; and
e) shall not apply to any portion of By-law 569-2013 that remains in issue in the appeal;

[211] The member is seized of matters related to phase 2 of the By-law appeals and can be spoken to if required.

"C. Conti"

C. CONTI
VICE-CHAIR