

DECISION AND ORDER

Decision Issue Date Monday, March 19, 2018

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

Appellant(s): JULIEN SEBASTIAN NEMA

Applicant: GABRIELE GUIDUCCI

Property Address/Description: 38 THIRTY SIXTH ST

Committee of Adjustment Case File Number:

17 127430 WET 06 CO (B0018/17EYK), 17 127445 WET 06 MV (A0234/17EYK), 17 127446 WET 06 MV (A0233/17EYK)

TLAB Case File Number:

17 201219 S53 06 TLAB, 17 201220 S45 06 TLAB, 17 201221 S45 06 TLAB

Hearing date: Wednesday, March 07, 2018

DECISION DELIVERED BY Ian James LORD

APPEARANCES

Name	Role	Representative/Counsel*
Julien Sebastian Nema	Owner/Appellant	Mary Flynn Gugglietti*
Gabriele Guiducci	Applicant	-
Robert Davis	Party	-
City of Toronto	Party	S. Amini*, A.Suriano*
Henry Zavagno	Participant	Mary Fawson
Gregory Johnston	Participant	-
Maria Pezza	Participant	-
Clemencia Bonsma	Participant	-
Peter Gerasimopoulos	Participant	-
Jeff Dunlop	Participant	-
Leanne Peper Armano	Participant	-
Rob Bowsma	Participant	-
Donna Donald	Participant	-
Albert Flis	Participant	-
Ronald Jamieson	Participant	-
Maria Magdalena Skubic	Participant	-
Alexander Donald	Participant	-
David Godley	Participant	-
Jonathan Chevreau	Participant	-
David Hahn	Participant	-

INTRODUCTION

By decision dated July 7, 2017, the Etobicoke York Panel of the Committee of Adjustment ('COA') of the City of Toronto ('City') dismissed applications for the

severance of 38Thirty Sixth Street (the 'subject property') and associated variances.

The applicant proposed removal of an existing single detached residence and its replacement by two single detached dwellings on the divided lot. The subject property is situate somewhat centrally in the former Village of Long Branch, now within the City. It is located on the west side of the north/south street, south of Lakeshore Drive and is somewhat more proximate to the Lake Ontario shore, between James Street and Lake Promenade.

BACKGROUND

The Hearing of this matter engaged two full days, as above noted. Preceding these sittings and indeed, in advance of the COA Hearing, extensive evidentiary filings and interest was exhibited by the many persons of interest listed, including others. Many hundreds of pages, ranging from media extracts, individual studies, photograph records, drawings and technical submissions were provided, including expert reports, Staff Reports and the requisite attestations required by the Rules of the Toronto Local Appeal Body (the 'TLAB').

Ultimately, before the TLAB, eight persons gave direct testimony. The Applicant/Appellant called professional land use planning evidence and arborist evidence from Lorelie Jones and Laura Storzinski, respectively; similarly, the City called from the same disciplines Sabrina Salatino and Dr. Max Dida. All four of these witnesses were qualified and provided expert testimony in respect of their separate disciplines.

I also heard extensive lay citizen participant evidence from Ronald Jamieson, David Godley, Alexander Donald and Robert Davis.

Pursuant to the standing direction of Council to the TLAB, I advised I had visited the subject property and surrounding streets.

After hearing submissions, I declined to hear a presentation from Christine Mercado, President of the Long Branch Ratepayers Association. Ms. Mercado attended at the close of the sitting and rose on a general invitation to hear from individuals who were present with an interest in the matter. She advised that the Association, though long in existence as a consensual membership group, had been recently incorporated in October, 2017. The Association, while in existence prior to the commencement of the first TLAB sitting, had made no filings pursuant to the Rules, had not sought any status and had not identified itself as an entity of interest until the open invitation was extended at the conclusion of the second date of formal evidence. I excused Ms. Mercado, with apologies, on the ground that I considered a representative corporation to hold and be in a different capacity with different responsibilities than a lay individual. She had candidly acknowledged to Ms. Flynn Guglietti that no formal meeting or resolution of the Association had authorized her attendance. She had also offered that much of her presentation consisted of materials that had been heard over the sitting. I did not feel it appropriate or fair, at the late stage of hearing conclusion, to admit into evidence a corporate presentation, regardless of its position on the Applications, that had not been

disclosed, addressed or that had not respected the Rules that had governed the Parties and Participants, in respect of the subject property.

At the outset of the sitting, on December 12, 2017, the Appellant had raised in correspondence from the previous day, numerous irregularities by named Participants mainly in relation to late filing of documents as well as certain status issues. Upon clarification that:

- a) Mr. Robert Davis was content to retain Participant status and give direct testimony;
- b) Mr. Henry Zavagno was not seeking elevated Party status (ultimately neither he nor his representative, Mary Fawson, took any role); and that
- c) Mr. David Godley was not seeking 'expert witness' status;

I was satisfied that the late filings into December, 2017, would not cause substantial or any prejudice.

Having admonished the Parties and Participants that late filings contravened the spirit of the TLAB Rules for early disclosure and sober consideration of positions with a view to encouraging settlement discussions, I noted the need for flexibility in the early deliberation and application of Rules by a new statutory tribunal.

Regrettably, additional filings appeared between the sittings. These were marginalized in weight or excluded entirely for failure to adhere to the Rules.

MATTERS IN ISSUE

The applications and appeal were neither novel nor complicated. At issue was whether the Applicant's severance of the lot for the purpose of introducing infill housing as a form of intensification, was appropriate. Resulting from the severance was the need to address zoning relief in the form of minor variances to permit construction on the undersized lots of the specific dwellings proposed. The requested variances from the pending City By-law 568-2013 (the 'new Zoning By-law') and the specific provisions of the Etobicoke Zoning Code (the 'existing By-law') are set out in **Attachment 1** to this decision (Exhibit 2, paragraph 5.5.1, Chart).

In opening remarks, the contrasting positions were succinctly stated by counsel for the Parties. Namely, new lots optimizing in a modest way the efficient use of land through modest intensification; versus, it is not good planning to permit oversized homes on undersized lots that do not 'fit' the neighbourhood and result in a diminution of the urban forest.

All of the Participants giving testimony supported the latter aspects of this divide.

The Parties disagreed on the applicability of OPA 320, an adopted policy initiative of the City that was under appeal, and the application of Long Branch Urban Design Guidelines approved by Community Council (and ultimately City Council), but

without having any other official status. The City indicated it would not rely on this documentation, but not that it was not applicable.

I ruled both would be admissible, that their weight was a matter for the evidence but that neither would be determinative of the matters in issue. Ultimately, neither were elaborated upon at any length nor do they form part of these reasons, apart from overlapping descriptions.

JURISDICTION

Provincial Policy – S. 3

A decision of the Toronto Local Appeal Body ('TLAB') must be consistent with the 2014 Provincial Policy Statement ('PPS') and conform to the Growth Plan of the Greater Golden Horseshoe for the subject area ('Growth Plan').

Consent – S. 53

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

- (a) the effect of development of the proposed subdivision on matters of provincial interest as referred to in section 2 of the Planning Act;
- (b) whether the proposed subdivision is premature or in the public interest;
- (c) whether the plan conforms to the official plan and adjacent plans of subdivision, if any;
- (d) the suitability of the land for the purposes for which it is to be subdivided;
 - (d.1) if any affordable housing units are being proposed, the suitability of the proposed units for affordable housing;
- (e) the number, width, location and proposed grades and elevations of highways, and the adequacy of them, and the highways linking the highways in the proposed subdivision with the established highway system in the vicinity and the adequacy of them;
- (f) the dimensions and shapes of the proposed lots;

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(g) the restrictions or proposed restrictions, if any, on the land proposed to be subdivided or the buildings and structures proposed to be erected on it and the restrictions, if any, on adjoining land;

(h) conservation of natural resources and flood control;

(i) the adequacy of utilities and municipal services;

(j) the adequacy of school sites;

(k) the area of land, if any, within the proposed subdivision that, exclusive of highways, is to be conveyed or dedicated for public purposes;

(l) the extent to which the plan's design optimizes the available supply, means of supplying, efficient use and conservation of energy; and

(m) the interrelationship between the design of the proposed plan of subdivision and site plan control matters relating to any development on the land, if the land is also located within a site plan control area designated under subsection 41 (2) of this Act or subsection 114 (2) of the City of Toronto Act, 2006. 1994, c. 23, s. 30; 2001, c. 32, s. 31 (2); 2006, c. 23, s. 22 (3, 4); 2016, c. 25, Sched. 4, s. 8 (2).

Minor Variance – S. 45(1)

In considering the applications for variances from the Zoning By-laws, the TLAB Panel must be satisfied that the applications meet all of the four tests under s. 45(1) of the Act. The tests are whether the variances:

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

EVIDENCE

Ms. Jones, in her witness statement (Exhibit 1, Tab 3) and evidence set out the dimensions of the subject property (frontage: 15.24 m; depth 40.23 m and area (613.18 sq m). Retained in August, 2017, she had successfully recommended revisions to the client (an fsi reduction from .69 to .62 (Part 1, south parcel) and .63 (Part 2, north parcel) times the lot area), side yard set-back and eaves projection improvements. Her Chart, found at paragraph 5.5.1 of her Witness Statement, is replicated by Ms. Salatino as **Attachment 2** to this decision which sets out the **revised** variances being sought (Exhibit 3, paragraph 5, Chart).

These revisions were part of the Applicants Disclosure filing.

In summary, lot frontages are proposed at 7.62 m from the by-law standard of 12 m; lot areas are proposed of 306.6 sq m from the by-law standard of 370 sq m. The

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changes disclosed to that before the COA consistent of: an exterior main wall height increase on Part 2 to 8.13 m over the by-law standard of 7.0 m (and the proposal at 8.0 m before the COA); a maximum height for the first floor increase on Part 2 to 2.9 m over the by-law standard of 1.2 m (and the proposal of 2.77 m before the COA); an increase to the north and south side lot line setbacks to .77 m to adjacent lots of record from the by-law standard of .9 m under the new Zoning By-law (from .61 m (Part 2) before the COA); modest improved separation changes to the degree of roof eaves projections.

No objection was taken to the introduction and scale of these improvements, nor the reductions and additional increases being requested. For the purposes of their consideration, I find these to be minor changes and that no further notice is required pursuant to section 45 (18.1.1) of the Planning Act.

Ms. Jones' extensive evidence was supportive of the applications and the appeal. In several areas this evidence was largely uncontested, save in respect of matters specifically identified below, but substantively in respect of:

- a) consistency with the Provincial Policy Statements;
- b) conformity with the Growth Plan of the Greater Golden Horseshoe;
- c) application of the City Official Plan, notably sections 2,3, and 5;
- d) the relevance of the new and Existing Zoning By-laws, the statutory considerations and the Trees By-law, Chapter 813 of the Toronto Municipal Code.

There was also some similarity in the area description of character, albeit with a dramatic difference in emphasis, importance and relevance to the application of Official Plan policy:

- i) single detached dwellings of 1, 1 1/2 and 2 stories, generally with peaked rooves;
- ii) mature front and rear yard landscaping;
- iii) extensive 'urban forest' canopy coverage;
- iv) building forms of garage and parking location variety;
- v) generous front, side and rear yard separation setbacks;
- vi) variety and distribution of lot frontages and lot areas;
- vii) lot pattern, lake access and streetscape grid consistency;
- viii) recognizable age and size of dwellings;
- ix) diverse architectural character;
- x) diverse regeneration approaches;
- xi) building materials and heights variety;
- xii) low rise steps to the front door.

While elements of these matters were frequently referenced in the evidence of all those who spoke, the residents especially referenced and elaborated on their perception of recognition, importance and perceived value, and of others. These elements are collectively referred to here as the 'Character Attributes'. I understand that another list may exist in the Long Branch Urban Design Guidelines; however, those

were not specifically brought to my attention and I have not conducted any search or audit of their existence, similarity or inclusiveness.

Ms. Jones demonstrated her appreciation of many of these attributes in an extensive photographic record (Exhibit 1, Appendix A) and a Study Area. She acknowledged that a greater diversity in lot pattern and sizes was reflected east of thirty Fifth Street in a different zone category, but still part of her study area (Exhibit 1, Appendix C). She acknowledged that examples of older original cottages and houses created an 'eclectic feel' to the area, forming an interesting and desirable relationship to the lake.

She provided an elevations plan, Exhibit 1, Appendix B, being a rendering used to describe intended building presentation, driveways and use of materials for the subject property, with efforts to replicate area character. She noted that no variances are required for: unit type, rear yard setback, integral garages, front yard setback, landscaped open space, building height and depth of buildings.

Early in her evidence she recommended a 1.5 m privacy screen on modestly elevated decks of both proposed units, on sides abutting adjacent lots of record.

In addressing the criteria for severance and variances, she employed her Study Area map to demonstrate some 16% of all 589 lots were equal to or of a lesser lot area than proposed and were well disbursed. Similarly, some 19% consisted of lot frontages of 7.62 m or less, 'sprinkled' geographically. She suggested that although her statistics included different zone categories, the proximity of the properties would be part of the daily experience of residents.

Ms. Jones reviewed 21 minor variance applications approved by the COA or the Ontario Municipal Board ('OMB') in her study area and concluded from them, support and maintenance of other similar lots to those requested. From this analysis, she also concluded the proposal: permitted an appropriate relationship to the street; a mass and scale that relates; and replicated examples of integral garages and stepped entrances and proposed heights and massing within the range that is occurring. As such she opined that the proposals can be seen to 'fit' with the existing and evolving character of the area.

In summary, she asserted compatibility of the proposals, that they met statutory severance criteria and demonstrated compliance with the four tests for the variances sought. While acknowledging the arborists reports that there would be a loss of one private and one City owned tree, with a permit application process including injury to two others, she felt the tree by-law - requiring appropriate evaluation and the permitting process – was complied with through remedies that required replacement replanting and compensation. On the basis of lot frontages and areas that had been approved and exist in the neighbourhood, she opined that the proposed lots reflected a frontage and lot area that in the context of this diverse neighbourhood were minor and acceptable. She foresaw no negative impact in rear decks protected by a privacy screen, or the commonality in front yard steps with minor height and setback variations that individually and cumulatively can function well on the lot.

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With respect to the severance evaluation criteria under section 51(24) of the Planning Act, she referenced the extensive assessment in her Witness Statement and the absence of any negative comment from the City's Development Engineering Division.

She was of the opinion that the consent criteria were met, that the proposed lots will fit and be accommodated subject to conditions (Exhibit 1, Appendix F) and the building permit requirements to accommodate storm water management.

She recommended approval of the consent and revised variances for construction substantively in accordance with the plans for two houses in Exhibit 1, Tab 23.

In cross examination by Ms. Amini, she acknowledged that the locational distribution of undersized lots was quite different than the immediate area of the subject property. She agreed that the preponderance of lots on Thirty Sixth Street were in the 50 feet category, 71% of which complied with the 12 m zoning standard for frontage.

She agreed that 'character' is "what is built and what you see".

She acknowledged that a severance approval at 30 Thirty Sixth Street refused an fsi of .67 as well as side yard separation reductions to the extent sought. Further, that a Villa Road example she had employed in respect of lot sizes was not within her Study Area. She agreed that: the Official Plan is the most important policy document; that the local context is important; and, that one 'absolutely must be mindful of the Official Plan and consider its policies seriously'. She acknowledged that policy 4.1.5 c) requires a focus on 'nearby residential properties' and that her evidence was based on the area diversity as the rational for a number of the variances.

She felt, in re-examination, that 'nearby residential properties' would take into consideration more than one or two blocks. Further, that redevelopment under existing zoning could similarly include a variety of storeys, integral garages and contemporary built form.

Laura Storozinski was qualified as the Appellants arborist without objection. She referenced two reports, the latter updated to July 28, 2017. She reviewed the Reports and their conclusion as above synopsisized: 2 removals and 2 trees subject to permit to injure and tree preservation measures. These conclusions were not disputed by the City's expert arborist, Dr. Dida.

There was also no dispute and a complete consensus that the subject trees were healthy, in good to very good condition and would serve as part of the City's 'urban forest' and tree canopy for many years to come.

The photo studies of both arborists reveal that the Magnolia and Manitoba Maple trees slated for removal, on the evidence of both arborists, contribute to the urban forest and are a significant presence in the summer canopy season.

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Ms. Storozinski acknowledged that the only reason for the removal and injury permission was the severance, the proposed development and construction. Namely, that none of the criteria of consideration in the City Municipal Code, Chapter 815 had any bearing, connection to or support of the consequences of the approvals sought.

She also agreed that it is a goal of the Official Plan to support the urban forest generally, although she reserved whether or not this goal could be extended to specific trees. In re-examination she repeated that she expected consideration of five trees to be replanted in addition to compensation.

Ronald Jamieson provided Participant evidence as a courtesy of counsel and in advance of the City due to a scheduling conflict. As a resident of 10 Thirty Eighth Street, he had prepared and filed 'Lot Size Analysis' and 'Lot Frontage Analysis' charts, in addition to the requisite filings under the Rules. He considered a study area that differed from the planners of 438 properties, 345 of which were residential. Unrestrained by convention, professional practice or administrative law practices, he focused on an area and impact review premised on the principle of 'near to far' from the subject property, concluding that the prevailing property distribution is 50 foot lots and the application was inconsistent with the character of the block and the abutting properties. He suggested from his analysis that the fsi mean of his narrower Study Area was .22 times coverage, with predominant conformity overall to the zoning standard of .35 times lot area. He asserted that the proposal is '180% of the by-law and three times the character of the existing'.

Emphasizing a 'numbers' approach, he said that 25 foot frontages are 37% the by-law standard established and repeated over time, and the proposal is simply not consistent with the area, is too large to be considered minor and the resultant impact on character would not be complementary but an overbuilt and dramatic change to area fsi standards. Of interest, by way of indirect comment on the Appellants evidence, he said: "other people doing it (meaning applicants) is not a justification; (the TLAB) must consider the fact circumstances".

He noted that the replacement trees would reach no noticeable proportions comparatively in 'our lifetime'. Dr. Dida made a similar observation in his evidence, noting as well in his evidence that the severance of the site removed, as well, the opportunity for urban canopy planting 'inventory', from the City.

In questioning, Mr. Jamieson acknowledged he was not a planner, that his use of 'prevailing' stemmed from analogous terminology in section 4.1.5 of the Official Plan where it occurs twice and that, while he lived two blocks from the subject property, his study used a homogeneous zoning area, unlike Ms. Jones.

He acknowledged that one street is not a neighbourhood.

The hearing reconvened on March 7, 2018 with the evidence of the City Planner, Sabrina Salatino. Although not a Registered Professional Planner or member of the Ontario Professional Planners Institute, her curriculum vitae, work experience and familiarity with the Long Branch setting supported her qualifications to give expert land use planning opinion evidence and advice. The TLAB can recognize professional

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planning qualifications apart from the foregoing membership; however, membership affords the public and the tribunal a consistent standard of continuing education, professional peer recognition and public and private disciplinary accountability that cannot otherwise be easily independently and objectively accessed.

I recite here some of those areas of evidentiary departure from Ms. Jones that Ms. Salatino called to the TLAB's attention.

On the severance, she extracted from s. 51(24), above, subsections c) and f) for her opinion of non-compliance, in addition to non-conformity aspects of the Official Plan expanded upon in her variance considerations.

Employing a Study Area and attendant colour maps for a Lot Frontage Analysis, Lot Study (Potential) Analysis and Long Branch Overview comparisons, showing the relative distribution of lot sizes and the presence of severance and variance applications, recent and pending, she formulated several observations (evidence and Witness Statement paragraphs 12, 25-28ff, and attachments, maps, photos and schedules):

- a) the location of the subject property has the greatest concentration of 50 foot lots;
- b) the longstanding zoning standards are area specific that ensure preservation of identified attributes: desirable open space, 'lavish' landscaping, lot size, area, height and frontage restrictions that cumulatively delivers the 'rhythm and pattern' of an existing, spacious, detached, low density, mature vegetation and heavily treed streetscape;
- c) with 13 consent applications since 2015 (several within the Lot Study Area) and 9 more pending, there is an increased potential for change that is neither gradual nor sensitive, with particular concern for the central Neighbourhood situation of the subject property having the potential for the greatest disruption.

While acknowledging some redevelopment potential on the subject property, she opined that the two proposed dwellings represented an increase in density, massing and scale not suitable to area character. She said that although physical change can occur with additions under existing zoning, the cornerstone of Official Plan policy (section 3.1.1) is 'stability' to the character of buildings and the streetscape. As well, she indicated that protection of changes to the natural environment (section 3.4.1), are policies that require the preservation and enhancement of the urban forest, including regulating the injury and destruction of trees.

In her view, the proposal offended these goals and that the change represented by the applications was neither 'sensitive, gradual nor respectful of the criteria for consideration in section 4.1.5, sections a),b),c) f) and g).

She opined that:

- i) the proposed buildings were large and out of keeping;

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- ii) presented narrow comparative frontages with reduced landscaping opportunity;
- iii) resulted in the loss of mature trees failing to reinforce preservation;
- iv) compromised open space, separation distances, comparative lot sizes and main wall height.

She concluded that Official Plan conformity was not met due to the substandard lot frontages, lot areas and pattern of distribution and, as such, the applications on the subject property fail to respect and reinforce the existing physical character of the area. She concluded the variances failed the Official Plan criteria cited, countered the area specific character preservation standards in zoning and were not minor, desirable, sensitive or gradual.

Her evidence on meeting the four tests of a minor variance application dwelt in many of the same areas, emphasizing elements of contrast between the applications as she viewed them and the existing physical character of the area and whether stability was reinforced (see as well: Witness Statement, paragraphs 29-55).

She suggested the proposed narrow lots and the narrow taller design of the buildings upset the street rhythm with oversized and increased massing in a manner that did not further good planning. She said the cumulative effect of the severance and variances constituted a fundamental shift that is not sensitive, gradual or a fit with the physical character of the area. By inference or otherwise, her evidence on the proliferation of applications since 2015, generating as it did Council's instruction to conduct an area study, represented the potential for significant change in the wider character of the area.

On cross-examination, Ms. Salatino agreed the applications were intensification consistent with provincial policy but were not supportable if they changed the character of the area. She acknowledged that her assessment did not include as 'in play' on the applications, the Long Branch Urban Design Guidelines. She classified the applicant's revisions, detailed in paragraph 5 of her Witness Statement, as 'very minor modifications'. She maintained that in her Study Area, 'including more than one street', prevailing lot sizes were 50 feet frontage or greater, not the 25 feet proposed. She agreed that the 35% of the lots with less than 50 feet frontage were also part of the character of the neighbourhood. She felt the Official Plan policy direction is to consider streets and blocks in a 'neighbourhood', undelineated, and agreed that existing attributes need only to be compatible, not identical.

On being challenged as to her use of the term 'premature' for the applications, she suggested that one severance having been allowed was now demonstrated to be followed by an influx of applications indicating that the pattern, the subject block and abutting blocks, need careful review if preservation is to be maintained. She suggested time would provide an indication as to how the neighbourhood will develop – presumably under existing zoning permissions and current pressures.

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Ms. Salatino resisted the suggestion that her attention was focused on one block, but stated rather that her Study Area demonstrated sectional changes. She noted that within the Study Area depiction of the neighbourhood, her second study showed the predominance of 50 foot lots thereby opening the planning view of what could happen through successive severance applications. While agreeing that these existing large lots could already redevelop into larger two-storey dwellings with integral garages, she elaborated in re-examination that such redevelopment would continue to have to meet the side, rear, setbacks, heights, fsi standards, front yards, landscape open space and resultant preservation of mature trees, controlled by existing regulations.

She acknowledged that on Thirty Sixth Street alone, some 11 lots fell within the range of frontages around 7.62 m, noting however that only two, permitted by the OMB at 30 Thirty Sixth Street, were created by consent. The balance were lots of record pre-dating applicable zoning.

I previously have referred to the evidence of the City arborist and Supervisor, West District, Urban Forestry Division, Dr. Max Dida. There is no dispute between the arborists on assessment and the effect of development on the tree inventory. Dr. Dida applied the Code criteria for assessment. He concluded and recommended that the proposed removal and injury to trees do not meet the criteria and reasons for removal. They should be preserved, in his opinion, in compliance with Official Plan policy direction for the public benefit. He stated 40 years would elapse to approach the current benefit and, although there existed a compensation policy, neither the reason for removal (to facilitate the development) nor the loss of planting space by the proposed housing (eliminating the 5-7 m of clear planting space needed), supported removal.

His Reports offered alternative conditions should the applications be allowed.

There was no reply evidence to the City planning and arborist witnesses.

David Godley gave evidence as a lay citizen having a long standing attachment to Long Branch as a community. He presented an interesting challenge to what he termed the 'Long Branch Urban Myth': namely, that the character of an area can be discerned from a land use 'study area', creating a statistical record of selected measures, whether or not generated from zoning performance standards. Rather, like Mr. Jamieson, he emphasized site proximity and a building/streetscape characteristic list to better appreciate character.

Perhaps to his detriment, he over emphasized how 'design' should factor in as the third dimension of assessment. Building design in Ontario, arguably, remains in the hands of the owner, subject to provisions of the site plan control power, which are not part of these applications. Not deterred, he made the point that Official Plan policy and zoning standards do influence design and can create a character similarity and environment through which compatible develop can rise.

Mr. Godley provided extensive filings. His commentaries on behalf of the community form a valuable reservoir of fact, observation, anecdotal remarks, egregious commentary, ruminations and perspectives of a knowledgeable and irrepressible character. In the Hearing, he confined himself to a small subset of observations and

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private support opinion that challenged the appropriateness of the applications: 'double' the approved density is not supportable; neighbourhoods are not to be the focused or intended recipients of intensification; severance proposals create instability in the perception of the neighbourhood where every 50 foot lot is a candidate for severance; addressing the size of lots and their attendant buildings is in the public interest; the proposed density (FSI), lot frontage and housing profile contemplated is not minor or found on the surrounding streetscapes; longstanding zoning, reaffirmed in the new Zoning By-law has defined the Long Branch character and remains relevant, in the main; and, the planners have failed in understanding how to evaluate its 'harmony'.

While acknowledging in cross examination that he lived beyond the reach of either Planners 'Study Area's', he claimed residency in the 'greater Long Branch area' with a broader, higher, strategic view. While he acknowledged that every block he walked in the area was different, he described a compelling similarity of approach within the parameters applicable to the common zone category. He noted very few three storey buildings (the subject have that arguable appearance, although not the definition), and character facets –above labeled for ease of reference as Character Attributes - that he suggested need to be reflected, and were not.

Alexander Donald spoke on his own and his wife's behalf as registered Participants. His residence is two houses south of the subject property at 34 Thirty Sixth Street.

The Donald's expressed two principle concerns arising from 'soldier housing': both environmentally oriented. While never defined, I took this reference to 'soldier housing' to imply a degree of resistance to housing that is tall (two-storeys or more, narrow and with limited (narrow) side yards, often accompanied by integral garages at grade). Soldiers, in a line, at attention, I presume.

The subject proposal and scaled perspective presented by Ms. Jones would fit this 'soldier housing' description. Mr. Donald described the 'sheer number' of variances to achieve the proposed result as excessive, centering on the consequential expectation of increased run-off and loss of tree canopy, shade, and adverse impact on streetscape presence. He described, pictorially, area flooding (indicated not to be addressed by the City before 2020), and the environmental benefits from maintaining tree cover. Like Mr. Godley and others, he cited the loss of existing tree cover, as proposed, was advancing an adverse cumulative effect in the neighbourhood that was changing its character: "a move in the exact opposite direction of the City to preserve the urban forest".

On questioning, he deferred to others more knowledgeable than he as to zoning standards, fsi calculations and the amount of space that could be occupied on the subject property, as of right. In his observation (but admittedly not his expertise), it is inappropriate that the proposal reflected a 197% increase in the amount of space taken up, suggesting that to accomplish this, mature trees had to be removed.

Robert Davis is a Participant who has lived at 40 Thirty Sixth Street since 2002. Like Mssrs. Godley and Jamieson, his filed evidence was extensive. For those materials filed out of compliance with the Rules, he accepted the direction not to dwell on materials not properly filed. He opposed the applications as inconsistent in

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presentation with the cottage origins of Long Branch, oversized and out of scale with dwelling that provided space for healthy trees and soft landscaping.

Mr. Davies was articulate as to how he surmised that the subject applications were 'worst offenders' to area character. He described the presentation of materials to assist the COA in reaching its decision, related to the cumulative loss occurring to tree canopy, the existing densities to be well below the area zoning standard of 35% and the prevalence of 50 foot frontage lots and their sizes. As a lay person, he argued intensification premised on infill applied to vacant space and the subject property was not a vacant or an underutilized lot in a blighted neighbourhood, but was one that was capable on site of renovation, expansion and enlargement.

He cited a Ministers letter supporting the general direction of development to look to the Official Plan and zoning by-law. In this regard, Mr. Davis felt the proposal was neither sensitive, gradual nor a fit in proximity to his residence and that of the neighbours, He described them as enjoying 1-2 stories, peaked roof finishes, generous open setbacks, and garages that do not dominate street presentation. He described the proposal as having a visual presentation of three-storeys, with a grade level garage, den and recreation room. He described the first floor as visually elevated, with additional access steps up and the need for a five foot high 'privacy screen' to prevent overlook of his property, and that to the south. He noted perspective drawings and photographs showing mechanical equipment between the proposed buildings blocking passage to rear yards, reduced side yard setbacks and no space for green space. From the renderings provided, he described a perception of the tall buildings being perceived as flat roofs, not the pitched roofs common to the area. He suggested the massing, lack of visible trees and the reduced landscaping to defy the blending required by the by-law.

On this description, he asserted severe negative impact: tall building walls, long building depth, loss of sunlight, loss of privacy, loss of amenity trees (the 'magnolia is the most photographed tree in Long Branch') and the absence of the 'cottage feel'. His impression was that the two dwellings will present a comparative 'crammed' appearance and ruin the streetscape.

He stated he regretted the absence of an opportunity at consultation never pursued by the applicant and observed that there were no modifications effectively addressing the concerns of the adjacent neighbours.

He suggested that the desire of homeowners for larger homes is not a planning principle.

In questioning, he was unable to comment on an OMB decision at 40 Thirty Seventh Street as to suggested similar variances allowed and that Boards non-acceptance of a narrow interpretation of the neighbourhood. He responded that his neighbourhood included the east side of Thirty Seventh Street.

The Parties fully argued their respective positions.

ANALYSIS, FINDINGS, REASONS

As stated under 'Issues', there is nothing novel about the relief sought: a severance approval with variances to permit construction of two dwellings.

Counsel provided a number of cases for guidance. While I am appreciative of that assistance, ultimately the determination of the appeal must bear strong bonds to the evidence heard. I deal with summary *ratios* of the referenced cases below, taken chronologically, and refer to them by their popular name:

- a) *Montgomery v. Toronto (City)* 2004 CarswellOnt 6920 ('*Montgomery*') re 38 Thirty Eighth Street;
- b) *Darling v. Toronto (City)* OMB (PL151146) June 20, 2016 ('*Darling*'); re 284 Hounslow Avenue;
- c) 2425456 Ontario Inc. v. Toronto (City) OMB (PL160520) heard November 14, 2016 ('2425456') re 30 Thirty Sixth Street;
- d) *Toronto (City) v. Toronto (City)* OMB (PL161048) June 13, 2017 ('*Toronto*') re 9 Meaford Avenue;
- e) *Re Cantam Group Ltd.* TLAB (170515-17) September 21, 2017 ('*Cantam*') re 116 Poplar Road;
- f) *Fabrizi v. Toronto (City)* OMB (PL161248) October 24, 2017 ('*Fabrizi*') re 40 Thirty Seventh Street.

All of these references involved appeals on applications for consent and associated variances with the two new lots sought to be created. All but *Darling* (former North York) and *Cantam* (former Scarborough), involved lots within the Long Branch community of the City in which the subject property is located.

In *Montgomery*, Member Sneizek found the subject block was dominated by larger lots with frontages of more than the minimum by-law standard of 12 metres. He found: "The By-law is a control mechanism and a stabilizing feature that ensures there will be a level of certainty in the form of development or redevelopment... To allow this consent in this area would destabilize the neighbourhood."

In *Darling*, dealing with a by-law standard of minimum 15 metre lots, Member Stefanko, applying the criteria of the Act and the Official Plan, section 4.1.5, dealt with the asserted supporting issues of 'intensification' and 'precedent'.

On the former, intensification, he observed: "That argument however ignores the preferred areas of growth as set out in the City OP. Those preferred areas are Avenues, Centres, Employment Areas and the Downtown."

On the second, as to the proponents' denial of precedent, he observed: "That argument however, has somewhat of a hollow ring to it since they also point to earlier severances in the neighbourhood to justify the relief sought... It is true that individual cases must be assessed on their own merits; however, I have very little doubt that approval of 9.14 m lots would be, at the very least, influential in relation to similar future severance applications, if not determinative. The precedent nature or consequence of granting the relief sought is real; it cannot and should not, in my view, be disregarded."

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In 2425456, Member Krzeczunowicz, in a contested hearing near the subject property found that attention to the immediate surroundings is key and that the OP allowed physical change in the form of intensification. In describing that neighbourhood as 'diverse and 'eclectic', he concluded that the lot sizes and configuration proposed (at 7.62 m) "already form a substantive part of the urban fabric of this neighbourhood. Moreover, they are proliferating." On the issue of 'precedent', he observed: "It is certainly true that severed lots can subsequently be used to justify further severances because, once divided, they become part of the neighbourhood character. As the City's Neighbourhoods change, so might the planning merits of a severance at any particular location. This change in and of itself is not bad planning. It is merely a reflection of the OP vision that Neighbourhoods be "stable not static"."

The Member allowed the severance but disallowed proposed interior side yard setbacks at 0.6 m and an accompanying FSI variance of 0.69 time lot area, due to their influence to undermine 'the pattern of massing and scale'. He noted that the OP direction in section 4.1.5 c) set a specific test for evaluating whether the application 'respected and reinforced the existing physical character of "nearby residential properties"', To quote the Member: "This specific direction to review the immediate physical context when assessing variances that influence massing and scale – such as FSI – is distinct from the direction to review other characteristics such as lot size and configuration with reference only to the broader neighbourhood."

The Member found that the appetite of the market 'to maximize building space on a lot', is not relevant.

In disallowing the FSI variance, the Member stated: "...for the Board to ignore the magnitude of the variance – almost double the maximum permissible – would be to conclude that there is effectively no valid rationale for the 0.35 standard. In fact, the rationale is clear. The 0.35 standard is intended to reinforce, where appropriate, the historical pattern of relatively small homes on relatively large lots. It is unusually low in this neighbourhood because only a low FSI would effectively implement OP policies that seek to preserve the neighbourhood character."

In *Toronto*, Member Jones also dealt with, by refusal, a request to create 7.62 m lots in the greater Long Branch area. He found that the proposal would double the gross floor area permitted by both zoning by-laws, failing both the tests in relationship to sections 45(1) and 51(24) of the *Planning Act*. He observed: "The Board is mindful that this tribunal has allowed applications that may be described as similar (as well as dismissing same) in the Long Branch neighbourhood, but the proposed lot fabric and built form represented by these applications is so glaringly different from that on Meaford Avenue, which is a very small street, that an approval in this instance would ignore OP Neighbourhood policies which explicitly urge gradual transition and compatibility."

He found 'intensification' to be not a trump card "...to incur major variances with regard to mass, frontage and lot area which materially depart from existing conditions ...". Further, that although Long Branch could be considered a 'diverse' neighbourhood,

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recent approvals “do not suggest a trend, or a trend that would achieve traction in the face of explicit OP policies which prefer the maintenance of existing character over infill and intensification actions that would change the character.”

In *Cantam*, this TLAB Member reflected on the presence of comparable sized lots to those proposed, as a rationale for severance: “I also accept and find that successive Councils, through zoning, have established and reconfirmed lot area and frontage controls, at 12 m and 464 sq m minimums respectively, applicable to the subject lands and a significant area surrounding. This is not a case of the subject lands being located in a peripheral location, topographical change, dramatic swings in lot characteristic or other considerations that might, in different circumstances, differentiate the subject lands from the surrounding environment. I find the ‘bones’ of the West Hill Community bylaw and the newer City bylaw identified and continue to reflect an appreciation for these two performance standards or regulations, as essential character attributes. Both planners agreed, as relayed above, that despite their differing study area boundaries, the prevalent characteristic of lot areas and frontages ‘on the ground’ meet and exceed the standards set in these bylaws.”

Finally, in *Fabrizi*, Member Duncan addressed a property one street to the west of the subject property. He approved a request to create lot frontages of 7.93 m in width and an FSI of 0.66.

There was no lot area variance.

In considering issues of the relevant neighbourhood and the ‘fit’ of the proposal with the lot fabric and neighbourhood, the Member noted that the OP in force did not have a policy to establish the relevant neighbourhood and concluded that “one street does not a neighbourhood make”, preferring a ‘routine walk’ approach to the delineation.

He found the Long Branch area to be ‘highly eclectic’ and the proposal to be for modestly sized dwellings that would not represent overbuilding on the lots.

These decisions are helpful but not determinative.

There is no doubt, from the evidence of Ms. Jones that if the severance is allowed, two contemporary homes as proposed could be constructed on the resultant lots that could function independently. Indeed, the proposed units are reflected throughout many neighbourhoods in the City; the design of an at-grade integral garage on a narrow lot has become a significant mainstay of development and redevelopment initiatives, many times over.

The capability to erect the dwellings on the proposed lots and their ability to accommodate a dwelling was not put in issue or directly challenged. All of the challenges to the applications, rather, focused on policy direction, suitability, assessment criteria and locational context. It is these issues that need to be resolved within the ambit of the statutory considerations and the evidence, including those above recited.

I accept the general concurrence of both planners that there is no issue with the application of the Provincial Policy Statements or the Growth Plan. I agree that the proposal is a form of intensification but respectfully disagree with the suggestion in paragraph 5.3.1 of the Witness Statement of Ms. Jones as to whether the proposal is 'infill' housing. While nothing much turns on the terminology, her suggestion that the applications are a 'residential infill project' is aptly challenged by Mr. Godley and others. The proposal at least is not the type of 'infill' apparently contemplated in Official Plan policy 4.1.9, below.

There is no contest that the subject property is designated 'Neighbourhoods' and that the use of single detached dwellings is permitted.

I find the following text of the City Official Plan to be the appropriate starting point. It is this text over which the planners joined issue and hold diametrically opposed opinions as to its application and relevance. That application and relevance is required to be addressed: for the severance, as regard must be had to whether the plan conforms to the Official Plan pursuant to section 51(24) (c); and, for the variances, in the testing of each element in maintaining the general intent and purpose of the Official Plan.

I underline the policy language upon which I find that the evidence and its application calls to be resolved.

“Chapter 4. Land Use Designations

Section 4.1 Neighbourhoods

Policy 4.1.5

5. Development in established Neighbourhoods will respect and reinforce the existing physical character of the neighbourhood, including in particular:

- a) patterns of streets, blocks and lanes, parks and public building sites;
- b) size and configuration of lots;
- c) heights, massing, scale and dwelling type of nearby residential properties;
- d) prevailing building type(s);
- e) setbacks of buildings from the street or streets;
- f) prevailing patterns of rear and side yard setbacks and landscaped open space;
- 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.

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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.

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 Neighbourhoods.

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.

9. Infill development on properties that vary from the local pattern in terms of lot size, configuration and/or orientation in established Neighbourhoods will:

a) have heights, massing and scale appropriate for the site and compatible with that permitted by the zoning for adjacent and nearby residential properties;

b) provide adequate privacy, sunlight and sky views for residents of new and existing buildings by ensuring adequate distance and separation between building walls and using landscaping, planting and fencing to enhance privacy where needed;

c) front onto existing or newly created public streets wherever possible, with no gates limiting public access; and

d) locate and screen service areas and garbage storage to minimize the impact on existing and new streets and residences.”

From “**Chapter 2, City Building:**

2. Growth will be directed to the Centres, Avenues, Employment Areas and the Downtown as shown on Map 2 in order to:

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- a) use municipal land, infrastructure and services efficiently;
- b) concentrate jobs and people in areas well served by surface transit and rapid transit stations;
- c) create assessment growth and contribute to the City's fiscal health;
- d) promote mixed use development to increase opportunities for living close to work and to encourage walking and cycling for local trips;
- e) offer opportunities for people of all means to be affordably housed;
- f) facilitate social interaction, public safety and cultural and economic activity;
- g) improve air quality, energy efficiency and reduce greenhouse gas emissions;
- h) improve surface and groundwater quality and restore the hydrological function and habitat of streams, rivers, and wetlands; and
- i) protect neighbourhoods, green spaces and natural heritage features and functions from the effects of nearby development."

And from "**Healthy Neighbourhoods**, policy **2.3.1**:

"1. Neighbourhoods and Apartment Neighbourhoods are considered to be physically stable areas. Development within Neighbourhoods and Apartment Neighbourhoods will be consistent with this objective and will respect and reinforce the existing physical character of buildings, streetscapes and open space patterns in these areas.

3. Intensification of land adjacent to neighbourhoods will be carefully controlled so that neighbourhoods are protected from negative impact."

And under section **3.4, the Natural Environment**, this caveat or support for tree preservation:

"d) preserving and enhancing the urban forest by:

- i. providing suitable growing environments for trees;
- ii. increasing tree canopy coverage and diversity, especially of long-lived native and large shade trees; and
- iii. regulating the injury and destruction of trees;"

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Clearly, the City Official Plan holds out for special attention to be paid to its 'Neighbourhoods'; they are specifically not targeted for robust waives of intensification. Change is to be sensitive and gradual, just as these neighbourhoods have developed and been built up in the past.

The subject property is imbedded almost centrally in a large swath of the Neighbourhood designation and shares a common origin and age. The planners agree that the Neighbourhoods designation is not one to be frozen in time or held 'static'. Indeed, it is essential as with any organism that revitalization, regeneration and renewal take place. Clearly, as well, the delicate balance to which attention is called in this appeal is in the manner and means as to how that change occurs. There are many diverse neighbourhoods in the City that exhibit identifying characteristics. And there are as many whose diversity defies easy categorization or description. Curiously, whether exhibiting elements of consistency or diversity by any number of measures, they are frequently described, as in the subject case, as 'eclectic'.

I do not find such generalized terminology helpful unless accented by additional parameters of description capable of being visualized, replicated, identified and linked to some commonality or otherwise, of a physical nature.

Both planners identified a Study Area by which they sought to assess a norm or descriptor of character. The Official Plan encourages this effort, even refines it through emphasis that the policy obligation of planning decisions is to 'respect and reinforce the existing physical character of building, streetscapes and open space patterns'. That definition is further honed by intended reference to attributes, measures and features that are describable and replicable.

While Mr. Godley eschews the approach of the planners to focus on tangible measures of character delineation, I take his point to be more supportive of an approach that aims at a comprehensive assessment of physical character, inclusive of 'design' components – but, in my view, not to be exclusively design of built form.

I find that the delineation of a Study Area is a necessary first step by planning practitioners to attempt encapsulation of measures that replicate the existing physical character of a neighbourhood. I agree with the planners' agreement (and have so found in *Cantam*, above) that character, 'existing physical character' to repeat the direction of the Official Plan, is 'what you see on the ground'.

In my view a character assessment must be open, fluid, encompassing, accurate but not prescriptive to a finite degree. The debate of whether a Study Area that is equated to a neighbourhood and whether the size of the chosen area is good or bad as a base for assessment will continue. The Official Plan, at least the version applicable to the subject applications is not prescriptive of the delineation of a 'study area'. It must be of a scale sufficient to take the pulse of physical neighbourhood's character.

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In this Members view, Study Areas large and small can and have been accepted depending on their merit under the applicable policy directives to be applied. The job of the planning professionals starts with an assessment of neighbourhood character. They must gather content information on any applicable relevant parameter, omitting none, favouring none. Some elements of the 'existing physical character' lend themselves more readily to hard measurement; but too often these can become the sole support rationale for change, or resistance, masking others that are harder to define but equally open, obvious, notorious and contributory.

I have reviewed carefully the descriptors of neighbourhood character expressed by all the witnesses. Again I see a pattern of employing aspects of character for or against support of the proposal. It is fortunate that this particular hearing had the benefit of several descriptors of character from professional assessments, resident appreciations, neighbours and other inputs.

Cumulatively, these permit an appreciation of what is physically seen today.

There is no need to embark on a detailed review of each approach. Relevant considerations are stark boundaries, walking norms, measures of lot characteristics premised on comparative zoning standards, analytic measures, sample sizes, topography, geography and even geomorphology. What is germane is that the canvass be comprehensive, assembled and assimilated in a manner that the Official Plan directs. In two instances, a 'prevailing' or proximity standard is established by the Official Plan and where employed, permits anchors for assessment of 'sensitive, gradual' change and 'fit'.

On the evidence taken as a whole, including admissions in cross-examination, that amalgam of information necessary to make findings on the applications is present.

I find as a fact that the subject property is central to an established residential neighbourhood. I find that the street upon which it is located is a major residential connector directly linking Lakeshore Boulevard to Lake Ontario in a manner consistent with many such streets in the former Village of Long Branch. I find that the subject property is an existing lot of record and is of a dimension and scale consistent today with the prevalent lot pattern in the vicinity, by all measures of vicinity.

I find that there are many examples of lots similar in frontage, if not in size, to those proposed and that their distribution, while concentrated in some areas, are also geographically dispersed, including some eleven on Thirty Sixth Street itself. While relevant, I do not find this one measure as a determinant. I find a consistency, overall, in the general descriptors of the neighbourhood, large and small, identified above as 'Character Attributes. I find that of the smaller dimensioned lots, both in frontage and in lot area, a prevalence exists in being original lots of record. I find that although there are instances of severance in the neighbourhood in the manner of that proposed by the Appellant, there is no

policy support for increased lot division or compelling rationale, including 'intensification', that is required to be addressed by severance.

I do not accept as a generally accepted planning principle that the mere existence of, on this case lots or record or prior severances as comparable examples to what is proposed, is a sufficient rationale for additional candidate applications. I accept, of course, that a land owner is entitled as-of-right to pursue applications for intensification, including those applications that require revision to land use controls. That right is to be protected; however, with it comes the responsibility to assess the application itself and the context within which it occurs - which I have attempted to describe.

Here, the attributes of severance and the variances sought are supported by examples, the technical analysis of neighbourhood statistics and reliance on precedent. In my view, precedent is but one factor and it cuts both ways. As in *Darling*, it cannot be relied upon in support, and negated as a consequence. I do not accept that the presence of similar lot frontages, whether 19% (Jones) or 35% (Salatino) of a study area, is a compelling rationale for more such lots. The Long Branch community has an identifiable existing physical context: established lots of record, in this area predominantly of a 50 foot frontage character and with a lot size, setbacks, separation distances, mature vegetation, tree canopy and building sizes of a varied, generally pitched roof design character and size parameter -fsi. These measures of the existing physical form, I was advised, are at or below and compliant with a long established specific zoning regime, reasserted in the new Zoning By-law.

I recognize that the Appellant did not rely entirely on comparable examples of similar lot sizes to those proposed and some recent approvals of others (2425456; *Fabrizi*). Such references were however, present in both the planning rationale and the case law references of the Appellant.

I find that the 'examples' rationale in support of the suitability of the subject property to be subdivided is more applicable in this case to the status quo, being the predominant lot pattern in the Study Areas described.

I accept as a relevant consideration, that the inability to distinguish the current application to the majority of lots in the Study Areas does have implications for the future. The City planner, Ms. Salatino, satisfactorily demonstrated the presence and growing potential for similar applications. The subject severance application today and those that follow tomorrow represent the potential for change that is neither sensitive, nor gradual. It is a form of neighbourhood evolution that is the exact opposite of the Neighbourhoods policy support for gradual change and its zoning enforcement. Planning is nothing if it turns a blind eye to the future.

I find that a consideration of that potential, the potential for the rapid elimination of the prevailing historical pattern of lot sizes, is the proper prerogative of the municipal Council whose decisions to date have been to

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confirm the essential performance standards of 12 m lot frontages and 370 sq m lot areas, among other measures of physical built form.

I find that the form of proposed intensification on this major street, narrow lots and taller units is not consistent with area character despite the type of dwellings proposed, single detached, being common.

I find on the evidence that the subject property, while suitable for residential redevelopment, presents no compelling rationale supportive of the suitability for severance. I agree with a resident (and *Darling*) that marketability is not the test of compatibility, 'fit' or desirability.

I accept the importance of the referenced criteria in 2425456 to 'nearby residential properties' and the opinion evidence of the City and residents that the size of the proposed lots, their frontage, building wall height, massing, scale and separation distances are not consistent with those in the vicinity and will not respect and reinforce the existing physical character of the neighbourhood context.

I find that the loss of healthy mature trees is not supportive of the Natural Environment protection policy of section 3.4 d) of the Official Plan. Moreover, that mere alternative replacement policies, or compensation, are intended to mitigate but not obviate the preference for preservation. While tree removal alone is not a determinant of the applications, it is an element of area character that is not reinforced, given the immediacy of the loss, the reduction in planting area identified by Dr. Dida and the generations or more required to replace the existing physical offering. Intensification of the housing stock should be a shield for proper environmental management, not a sword to eliminate obstacles.

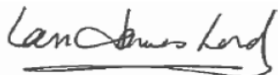
I accept the point made by the immediate neighbour, Robert Davis, that the reduced building separation distances which are guaranteed by the proposal, results in a loss of privacy, a reduction in landscaped space and an absolute loss of landscaping including the sense of physical openness enjoyed to date. The proposals noticeably and materially would contribute to a reduction in the prevailing patterns of side yard setbacks and landscaped open space as well as the loss of mature landscaping and representative tree canopy.

On the evidence, these are elements of physical character. They are valued by the community as a continuation of special landscape features that contribute to the unique physical character of the neighbourhood. These aspects of the proposal fail to respect and reinforce these neighbourhood attributes and its existing physical character.

The appeal grounds fail to meet the statutory review criteria for these reasons.

DECISION AND ORDER

The appeal is dismissed; the decision of the COA is confirmed.



X

I. Lord
Panel Chair, Toronto Local Appeal Body
Signed by: Ian Lord

Attachments (bolded)

Requested Variance	Permitted	Proposed Part 1	Proposed Part 2
Minimum Lot Frontage Section 10.20.30.20(1), By-law No. 569-2013, Chapter 330-23(A)(2)	12.0 m	7.62 m	7.62 m
Minimum Lot Area Section 10.20.30.10(1), By-law No. 569-2013	370m ²	306.6 m ²	306.6 m ²
Maximum Height of Specified Pairs of Main Walls Section 10.20.40.10(2), By-law No. 569-2013	7.0 m	8.0 m	8.13 m
Maximum Height of First Floor Above Established Grade Section 10.20.40.10(6), By-law No. 569-2013	1.2 m	2.77 m	2.9 m
Maximum Floor Space Index/ Gross Floor Area Section 10.20.40(1)(A), By-law No. 569-2013 and Chapter 330-23(A)(9)	0.35 times the lot area (107.3 m ²)	0.62 times the lot area (191.8 m ²)	0.63 times the lot area (194.3 m ²)
Minimum Side Yard Setback Section 10.20.40.70(3), By-law No. 569-2013 Chapter 330-23(A)(7)	1.2 m 0.9 m	0.77 m (north) 0.91 m (south)	0.77 m (south) 0.91 m (north)
Roof Eaves Projection Section 10.0.40.60(7) By-law No. 569-2013 Chapter 330-13(A)(2)	0.9 m provided they are no closer than 0.3 m to a lot line 0.5 m from all side lot lines	0.34 m from the north lot line	0.34 m from the south lot line

Attachment 2

Part 1

	Etobicoke Zoning Code	City-wide By-law	Refused Variance	Revised Variance for TLAB
Lot Frontage (minimum)	12 m	12 m	7.62 m	
Lot Area (minimum)	370 m ²	371 m ²	306.6 m ²	
Floor Space Index (maximum)	0.35	0.35	0.69	0.62 (decreased by 0.07)
Side Yard Setback (minimum)	0.9 m	1.2 m	0.61 m and 0.91 m	0.77 m (increased by 0.16 m) and 0.91 m
Eaves Setback (minimum)	0.5 m	0.3 m	0.2 m	0.34 m (increased by 0.14 m)
Front Exterior Main Wall Height (maximum)	7 m	7 m	8 m	
First Floor Above Established Grade Height (maximum)	1.2 m	1.2 m	2.77 m	

Part 2

	Etobicoke Zoning Code	City-wide By-law	Refused Variance	Revised Variance for TLAB
Lot Frontage (minimum)	12 m	12 m	7.62 m	
Lot Area (minimum)	370 m ²	371 m ²	306.6 m ²	
Floor Space Index (maximum)	0.35	0.35	0.69	0.63 (decreased by 0.06)
Side Yard Setback (minimum)	0.9 m	1.2 m	0.61 m and 0.91 m	0.77 m (increased by 0.16 m) And 0.91 m
Eaves Setback (minimum)	0.5 m	0.3 m	0.2 m	0.34 m (increased by 0.14 m)
Front Exterior Main Wall Height (maximum)	7 m	7 m	8.13 m	
First Floor Above Established Grade Height (maximum)	1.2 m	1.2 m	2.9 m	