

# DECISION AND ORDER

**Decision Issue Date**      Friday, August 31, 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): 2589060 ONTARIO INC

Applicant: LEMCAD CONSULTANTS

Property Address/Description: 502 & 504 MORTIMER AVE

Committee of Adjustment Case File Number: 17 249026 STE 29 CO, 17 249029 STE 29 MV, 17 249030 STE 29 MV, 17 249031 STE 29 MV

TLAB Case File Number: **18 122849 S53 29 TLAB, 18 122853 S45 29 TLAB, 18 122858 S45 29 TLAB, 18 122858 S45 29 TLAB**

**Motion Hearing date:**      Thursday, July 12, 2018

**DECISION DELIVERED BY Ian James Lord**

## APPEARANCES

Name	Role	Representative
Lemcad Consultants	Applicant	
2589060 Ontario Inc	Appellant/Owner	Javad Ameen
City of Toronto	Party	Laura Bisset
Alan Young	Expert Witness	
Deepak Bhatt	Expert Witness	
Andrew Pickett	Expert Witness	

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Name	Role	Representative
Davide Carnevale	Expert Witness	
James Baker	Participant	
Valerie Deacon	Participant	
Rodney Morrison	Participant	
Tiiu Bradley	Participant	
Valerie Lopes	Participant	

## **INTRODUCTION**

This matter is in respect of the appeal by the owner of the decision of the Toronto and East York District panel of the City of Toronto (City) Committee of Adjustment (COA) refusing severance applications and associated minor variances for 502 -504 Mortimer Avenue (subject property).

The matter was before the Toronto Local Appeal Body (TLAB) on July 12, 2018. That hearing was adjourned on consent to allow discussions to continue; indeed, in the interim, a site meeting was held. In the July 12, 2018 disposition it was made clear that: the TLAB, Parties and Participants were to be kept informed of developments; the Participants were encouraged to appoint a spokesperson; and evidence would be required “as to the statutory tests on the consent and variance file requests.”

The Participants appointed Dr. Valerie Deacon as their spokesperson.

At the Hearing, the TLAB heard from the four expert witnesses, above noted, and Ms. Deacon. Written Argument followed approximately within the week, due to time constraints on the day of the Hearing.

I thank counsel for their concise summary. I have not considered it necessary to reference the case authorities cited.

## **BACKGROUND**

The subject property is located on the north side of Mortimer Avenue, mid-block between Monarch Park Avenue on the west and Roosevelt Road, on the east. The 2 existing lots are rectangular in shape and slightly offset, with 504 Mortimer set back approximately 3 m northerly from its westerly neighbour.

The proposal before the COA and on appeal is the re-division of the subject property into 3 lots for the subsequent construction of 3 single detached residential dwellings.

A draft plan of survey, Exhibit 2 (Exhibit 1, Attachment 4) to the Hearing identifies the proposed lots, east to west as Part 1, Parts 2, 3, and Part 4. The middle lot, due to the offset in the original lot pattern, is not rectangular in description, but is somewhat oddly jogged in the front (Mortimer Avenue frontage) and the rear yard, by the 3 m offset.

Central to the evidence is the presence of a large, if not majestic, silver maple tree located primarily on the centerline of the two existing and original lots of record. This tree would be directly in front of the middle proposed lot, Parts 2, 3 on Exhibit 2, causing interference issues with its access, design and independent servicing, both above and below grade.

The existing lots are heavily treed with significant mature growth vegetation in both the front and rear yards.

The existing residences are aged and said to be in need of replacement. The proposal would intensify the use of the lot by the addition of three residential buildings at contemporary standards of construction and energy efficiency.

## **MATTERS IN ISSUE**

The principal matters in issue, generalized, are as follows:

1. The owner requests lot creation approval with the requisite variances; no standard conditions were identified in the *viva voce* evidence of the planner;
2. To the Participants, there are impact issues arising from the alleged over-intensification of the 2 lots;
3. To the City, it was the cumulative effect of the variances sought resulting from the severances and the implications of redevelopment on the 'urban forest'.

Common to the interest of all was the potential for loss of the prominent silver maple in the front yard.

## **JURISDICTION**

As has been repeatedly said by the TLAB, it has responsibility to examine applications for relief in light of the statutory, policy regime and prescribed considerations made relevant to the matters on appeal. This framework includes:

### **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**

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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;
- (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)

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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**

The TLAB heard from 2 qualified Registered Professional Planners, and two qualified professional arborists testifying on matters of arboriculture and tree preservation.

Both planners deferred entirely in respect of matters of tree assessment and preservation to their respective arborists. Mr. Young, on behalf of the City, made an additional effort to relate and apply that advice within a provincial and City policy context, related to the statutory tests.

Mr. Deepak Bhatt was called by the Appellant. His Witness Statement was filed as Exhibit 1; it includes a significant compendium of filed materials with multiple attachments, many of which were accessed in a precise and detailed exposition of his opinion evidence.

Of significant impression from his evidence was the advice that the proposed 3 lots complied with applicable zoning in respect of two significant measures: lot frontage and lot area. Indeed, the proposal exceeds these minimums and is *prima facie* evidence of respectful intensification as to these aspects of the severance. No variances are required for these elements.

In describing the proposal, he used the Examiners Notice of identified variances to By-law 568-2013 (new zoning), currently under appeal, and By-law 6752 (existing zoning). This was followed by opinion evidence on each, described in chart form. The Examiners Notice (Exhibit 1, Attachment 7) was supplemented by descriptive references to the Architectural Plans filed as Exhibit 3 (Exhibit 1, Attachment 5) and a Chart comprising 'commentary' evidence filed as Exhibit 6 (Exhibit 1, Attachment 9).

He described existing improvements as aged and non-compliant with current Building Code expectations for energy efficiency. By way of replacement dwellings, the 3 units proposed would have sloped roofs, reflecting (architectural elements common within?) the neighbourhood, except for the central flat roofed unit.

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While not mathematically identical, his evidence and the Chart observed requested variances arising from the Architectural Plans and draft survey for:

- a) lot coverage;
- b) parking space width dimension;
- c) building height from established grade, excepting Parts 2,3;
- d) first floor elevation;
- e) fsi (roughly 60 sq ft);
- f) side yard setback (approximately 1 ft);
- g) building length (existing zoning, approximately 10”).

In amplifying comments through Exhibit 4 on these matters, Mr. Bhatt described aspects of character on adjacent streets, made extensive reference to photographs or proximate property and used charts of Ontario Municipal Board and COA Decisions (Exhibit 5 and 6, respectively). These documents were employed to demonstrate that the range of examples were well within the magnitude of variances sought, despite in several examples a lack of proximity. He acknowledged that Mortimer Avenue was not a designated ‘intensification area’, but that s.2 of the Planning Act (Act) provided support for intensification; as proposed, he stated the proposal complies with the Provincial Policy Statements and conforms to these objectives of the Growth Plan.

None of the references provided involved severances in close proximity. He concluded that his area character assessment, within 200 m, concluded the proposal offered no inconsistencies. In his assessment, he opined that the Official Plan did not envisage the Neighbourhood designation as being static and that under zoning, new, energy efficient buildings - making better use of infrastructure and services, including schools - in a form and type of permitted use, created no conflict. In his opinion, the reinvestment in the community was desirable, provided additional on-site parking, created no shadowing, had no undue impact effects and the variances were minor.

He noted that the Applicant had abandoned a previous request to vary the front yard setback.

Mr. Bhatt was permitted to address the criteria of s. 51 (24) of the Planning Act, above referenced, despite a City concern that these had not been addressed, disclosed or considered in his Witness Statement. A review of that documentation concedes that, at best, those references were inferential. However, his permitted viva voce evidence on their application added little beyond the foundation expressed respecting the minor variance approval tests, which were extensively canvassed.

In referencing s. 51(24) g), restrictions on the land, he deferred entirely to the appellant’s witness, Mr. Davide Carnevale, respecting treatment of arborist matters

In this regard, he identified the ‘issue’ to be the silver maple tree in the front yard, originally intended to be removed but now proposed to be retained. In cross examination, he traced and confirmed the history of this issue:

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1. He acknowledged the early applications comment that the City's Urban Forestry division wanted the tree retained.
2. Applications had been filed with Urban Forestry to remove the silver maple, and trees in the rear yard and that these remain outstanding and unaltered.
3. The current proposal disclosed is to retain the silver maple.
4. A recent site meeting involved measures and recommendations to preserve and protect the silver maple, and perhaps other trees.

In cross examination, Mr. Bhatt acknowledged that: intensification is appropriate 'where it can be accommodated'; intensification is to be balanced with other provincial and local policy objectives, including protecting the environment; the local Official Plan is the most important policy document and principle vehicle to define and implement policy, provincial and local; the Metrolinx Act provided no policy recognition for Mortimer Avenue and no higher order transit initiative or facility was present or relevant; and that the policies of the City Official Plan, specifically s. 2.2.1, s. 4.1.5 (a-h), referenced environmental issues as components of the obligation of approvals to 'respect and reinforce the existing physical character of the area'. He acknowledged that the silver maple was a visible part of the neighbourhood which, if not retained 'in principle would undermine the policy of protection'. However, he was relying on the preservation plan proposed by the appellant's arborist, Mr. Carnevale, to assume that a loss would not occur.

Davide Carnevale, is a registered consulting arborist with over 20 years of experience. He was qualified on consent to give evidence on arboriculture and tree preservation. His company had produced two reports and a Supplementary Witness Statement dated August 20, 2018 prepared following a site attendance; he is the author of both of the latter items.

Mr. Carnevale described in his Reports and Supplemental Witness Statement (Exhibits 6, 7 and 8) his tree inventory assessment, tree descriptors and strategy to save the silver maple. This included the identification of a Tree Protection Zone (TPZ) comprised of rectangular exclusion areas and hard surfaced materials (driveway; sidewalk) adequate to protect all but 14% of the City's recommended protection area, represented by a large diameter circle around the stem, determined by the City as a function of tree diameter.

He concluded that if the TPZ area were further protected, if the traversing driveway were removed by hand and replaced with permeable pavers on a compacted base, then the silver maple was vibrant and healthy enough to be preserved and that the injury would be insignificant. A consulting arborist would be required to supervise the work on site.

He acknowledged that at a recent meeting with City Staff, Mr. Pickett (the City arborist) held a different view noting that surface roots from the stem adjacent the driveway had caused heaving of asphalt and exposure. He acknowledged that the tree roots could extend beyond the TPZ from on-site observation and that 'tunneling' under or near the tree would require the digging of a clear vertical 3'x3' hole some seven feet

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deep, well within the TPZ, to allow drilling and horizontal services installation: sewer; water; gas with attendant separation distances thereby increasing the area and risk of injury.

In cross examination he acknowledged:

1. The application for the permit to remove had not been withdrawn;
2. It is appropriate to preserve trees in fair condition, if conditions allow.
3. His retainer changed from instructions to remove to instructions to retain, and then instructions to protect.
4. The construction of the driveway to the middle lot is the primary concern as its reconstruction is impossible without access to the TPZ;
5. His conclusion in Exhibit 8 is dependent on attentive and ongoing arborists oversight and treatment including the pruning of the canopy to permit replacement trees underneath to have light and hydro service;
6. The silver maple and other rear yard trees slated for removal that remain healthy today can be protected and would, except for the proposed construction, provide community benefits for years to come.

Ms. Valerie Deacon spoke in her representative role as a Participant and immediate neighbour to the west at 500 Mortimer Avenue. Using assembled presentation graphics available from her Participants Statement, Exhibit 10, and pre-filed materials, she identified from the proposal areas of significant adverse impact:

- a) With the addition of one extra driveway, the loss of 2 on-street parking spaces only available at restricted hours given the status of Mortimer Avenue being under 'rush hour' controls;
- b) Cumulative variance impact arising by increase side lot line proximity, increased building height, depth and massing resulting in loss of light penetration and air movement to the disbenefit of her semi-detached dwelling which relies on east side wall windows, proximate to her lot line, for light and air circulation;
- c) deck overshadowing and massing by a new, blank side wall;
- d) environmental degradation through the loss of large canopy trees causing 10 degree (Celsius) temperature shifts.

On behalf of herself and the neighbours, she claimed the protection of the Official Plan supporting the retention in neighbourhoods of views, sunlight and privacy. She opined that 3 new homes of the scale and character proposed was not 'infill' and was not 'gradual, sensitive and a 'fit' with the otherwise uniform nature of the area.

Her evidence was not challenged.

Ms. Bisset called Mr. Andrew Pickett, Supervisor of Plans Review related to approval applications for site plans, consents, variances, front yard parking and Street By-law enforcement. Mr. Pickett was qualified to give expert opinion evidence of arboriculture and tree preservation, without objection. He had produced a Witness



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Statement (Exhibit 11) and prepared a composite presentation of materials from the filings (Exhibit 12) documenting the chronology of tree benefits, their recognition, characteristics and policy evolution within the City.

He described the tree assessment study "Every Tree Counts", the Urban Forestry 20 year 'Strategic Forest Management Plan', adopted by Council in July 2013, the regulatory controls in the Municipal Code, Chapter 813, Article 3 respecting assessment and protection of private trees, and the Urban Forestry assessments of trees affected by the proposal on the subject property.

His evidence was that large canopy trees (75 cm+), aptly represented by the silver maple (and others on the subject property), are in the minority in the City (14% exceed 30 cm) but carry the major burden of air purification, carbon storage and sequestration, habitat, shade and cooling, urban aesthetics and greening that have 10 x the benefit of smaller trees. He detailed the policy and regulatory steps, short of 'applicable law' under the Ontario Building Code Act Regulation, to ensure their protection, preservation and enhancement.

For the silver maple at 123 cm, Urban Forestry had identified a TPZ with a 7.4 m radius about the trunk for protection without a permit. He noted that roots can extend almost twice the crown. In describing 3 separate site visits, photographs and an on-site meeting with Mr. Carnevale, he observed surface tree roots elevating the old driveway pavement. He continued the position of Urban Forestry in its February 2, 2018 Memorandum to the COA that the application for severance be denied.

He confirmed the outstanding requests for permission to remove the silver maple and 3 other on-site or boundary trees, arising solely from proposed dwelling unit construction, included driveway encroachment and its replacement within the TPZ of the silver maple.

Mr. Pickett was firmly of the opinion, on 27 years' experience, that the effort to remove the existing driveway and replace it with a compacted base and permeable pavers will remove water and oxygen flows to the roots on the east side of the silver maple resulting in its death. Further, the requirement of a 3' x3' clear hole, seven feet deep and subsequent tunneling to the proposed middle unit for water, sewer and gas services would sever roots adding to the ultimate loss of the environmental benefits, canopy, aesthetic, economic and physical presence of the tree in the neighbourhood. This, he said, is contrary to the policies of the City Official Plan and the Urban Forest Management Strategy that is his mandate.

He continued to support redevelopment that provides greater protection for the trees on the subject property with no removal of private trees.

In questioning, he confirmed that he was sure "with 100% certainty" based on experience, exposure, monitoring and observation that the silver maple would be lost despite the management plan recommended by the consultant.

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Mr. Alan Young was called by the City, unopposed, to give expert land use planning opinion evidence on the applications under appeal. While indicating he relied upon the evidence of Mr. Pickett for arboriculture evidence, he had independently assessed the neighbourhood, chosen a study area (roughly 2 adjacent blocks in all directions) and supervised a photography exhibit, with special attention to the prominence of the silver maple as a neighbourhood visible asset.

Mr. Young described the neighbourhood as having a consistent ('homogeneous') appearance of somewhat uniform housing, similar zoning, high canopy mature growth vegetation and evenly spaced separation distances between dwelling.

In not taking issue with individual variances, he observed that the cumulative effect of the variances proposed caused a loss of on-street parking and an interruption to the streetscape arising from spacing and the anticipated loss of the silver maple. On this, he was of the opinion that it was the urban forestry criterion that 'should count' given the very large visible feature of the tree. In his opinion, it is that visual prominence from varying demonstrated sight lines that marks the silver maple as a 'landmark' tree.

In describing the tree as massive, he expressed the view that it constituted a special landscape feature of the neighbourhood, a street tree.

He took no issue that the Provincial Policy Statements (PPS) and the Growth Plan favour intensification, but he also asserted their support for 'green infrastructure' including the PPS and Growth Plan, policy 1.8 and 2.2.1.4, including urban forests and street trees.

He was of the opinion that removal of the silver maple does not support the PPS or Growth Plan policies for 'green infrastructure'. His Witness Statement, Exhibit 14 canvasses these sections in some detail, in Section 4.

Mr. Young also extracted from the City Official Plan, those policies supportive of sustainability and the preservation of the urban forest referenced by Mr. Pickett, all to the goal of preserving existing mature trees as an essential component of city character and benefit. These policies are addressed extensively in Section 5 of Exhibit 14 and were reviewed in evidence.

He was of the opinion that removal of the silver maple is not within the policy intent of the Official Plan of Section 3.4.1 d) preserving and enhancing the urban forest (OPA 262).

He was also of the view that applying Official Plan policy 4.1.5, respecting neighbourhood assessment criteria, applicable to both the consent and 3 variance appeal files, demonstrated non-conformity. He said the criterion for judging whether proposed development 'respected and reinforced the physical character of the neighbourhood', included criterion g). The maple tree, its size, prominence, street tree role, visibility, sheer mass, health and environmental benefits all were attributes to be considered a 'special landscape feature' to be respected. He said that its removal

would not respect and reinforce area character and would not be in conformity with the Official Plan.

Mr. Young's summary opinion, reiterated *viva voce*, is found in section 6 of his Witness Statement, Exhibit 14.

He described the compensation formulae for the removal of private trees as having no positive effect in value, time or opportunity in the circumstances.

In questioning, he acknowledged the hypothetical put that 'if' the silver maple can be saved, his opinion would change; however, he said the issue was speculative and one would have to have confidence to know for sure. He also had acknowledged in his witness statement that if the existing lots had construction commenced as-of-right, loss of trees in the rear yard would follow.

## **ANALYSIS, FINDINGS, REASONS**

The jurisdiction conferred on the TLAB, above, is both broad and specific. The applications require the consideration of both general and specific matters, from policy to details of servicing and impact. In this regard, it is incumbent on the decision maker to examine the evidence without focusing on any single issue, to the dismissal of the entire context.

In this case, there was no real disagreement between the planners that three houses could be built on the subject property and that, in doing so, the revisions necessary to the zoning by-law, at least separately, were of minor consequence. Indeed, as Mr. Bhatt pointed out on several occasions, the 3 lots would meet the minimum frontage and lot area criterion of the zoning by-laws, two important measures of both the severance and variance considerations.

Taken cumulatively, however, the evidence of Mr. Young and Ms. Deacon leaned to the apprehension that the variances resulted in disbenefits of a negative adverse impact: loss of on-street parking; loss of privacy, light, air, views and proximity of massing. Many of these aspects could occur notionally as-of-right.

Being in an urban environment, a degree of inconvenience and impact can be expected. Whether in this case those considerations would overcome the policy support for intensification, also agreed as between the planners, remains to be decided.

I accept that both planners agree that the applications refused by the COA propose a form of intensification which is promoted by provincial policy. I also agree with the caveat placed in the evidence, and also agreed to, that intensification as an objective of provincial and local policy consideration, does not 'trump' other criteria of assessment. The qualifier placed on the support for intensification is that it be fostered "where appropriate".

The site is not a targeted growth area.

Mr. Bhatt was of the opinion that neighbourhoods are not to be static and that intensification can be considered. He felt the subject property an appropriate candidate for lot division and assembly being on a busy, albeit minor arterial, Mortimer Avenue and meeting several zoning standards.

He left the issue of the environmental consequences, namely the effect of intensification on on-site trees, to the owner's consultant arborist, Mr. Carnevale. Mr. Bhatt advised that the revised tree protection plan that he had filed on May 22, 2018 showed an effort to reduce building size and to vary the alignment of the middle unit driveway, so as to protect trees, including the silver maple in the front yard. Mr. Bhatt relied on that arborist's advice as to the prospect of preservation (Witness Statement, Exhibit 1, para. 2.2.7); otherwise, he did not address the policy support around environmental protection and role of the trees in relation to assessing the physical character of the area. The City argued that even more fundamentally, his Witness Statement failed to address the environmental side of provincial policy and the criteria in s. 51(24) of the Act, respecting severances, including its directions on environmental and related matters of policy and mandatory consideration.

What struck me from the applicant's evidence, taken as a whole, is its reactive nature particularly in respect of the environmental considerations focused on the trees and the silver maple in particular.

At the outset, the Applicant concluded that the front yard silver maple, despite its prominence, should be removed to facilitate vehicular and pedestrian access to the middle unit. On receipt of correspondence from Urban Forestry recommending against the severance assembly, it again retained the arborist with instructions to protect tree integrity on site. In this regard, plan changes occurred, as above noted, without apparent consultation with the arborist. A revised report was prepared with recommendations, Exhibit 8, which was again later supplemented with recommendations by an addendum Supplementary Witness Statement following a site meeting in August, 2018, between Hearing sittings.

I can accept, as knowledgeable and credible, Mr. Carnevale's application of expertise as to the theory and practices behind his recommendations on tree protection and preservation. On the evidence, I believe he made a genuine and credible application of science and expertise to present the picture that best practices could be applied to the new objective, particularly the preservation of the silver maple. Even as the last embers of the Hearing were cooling, he was, however, reacting to advice that servicing the middle unit would require tunneling below the tree to install services for water, sanitary and gas piping and above grade hydro. Apart from an acknowledgement that the digging of the servicing basin 3' x3' to a depth of seven feet, would encounter and remove roots within the tree preservation zone, I recall no definitive opinion evidence through him on the nature of the tunneling or its potential impact on the health of the silver maple tree.

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I was left with a degree of uncertainty as to his final opinion on the sustainability of the silver maple tree or as to whether that opinion might further evolve as circumstances advanced.

Working with the same information and an equivalent or longer period of arboriculture experience, Mr. Pickett was “100% certain” that the silver maple tree would not survive construction of the middle unit.

As former United States President John F. Kennedy once said (admittedly in an entirely different context): “Security is not a sign of weakness, and sincerity is always subject to proof.” While I have no doubt as to the sincerity of Mr. Carnevale’s practices and expectations, it was clear from his evidence that continued sincere and deliberative attention before, during and after construction, including years of monitoring and pruning management of replacement plantings, would be required as attentive care. This kind of consultants care and attention holds many variables in respect of future ownership priorities, including for its sustainability.

It is not within the prerogative of the TLAB to provide for and maintain such conditions.

In contrast, Mr. Pickett offered the security that if the *status quo* remained largely unaltered, i.e., that the needed redevelopment did not engage the construction of the middle dwelling, the sustainability of the silver maple was assured.

On this assessment, the evidence strongly favours the retention of the *status quo*. Adherence to the ‘strong bonds to the evidence heard’, to borrow my colleague Mr. Lombardi’s language, was supplemented in the evidence of the Mr. Young who raised the considerations of provincial and local policy, above cited, that remain relevant considerations in the assessment of ‘where appropriate’, in the context of policy support for intensification. That evidence, tracking policy and regulatory support for ‘green infrastructure’, above referenced, raised the awareness that there are many considerations mandated to be resolved, in the assessment of Official Plan policy 4.1.5, as to whether an application served the purpose of ‘respecting and reinforcing the physical character of the neighbourhood’.

I accept the evidence of virtually all the witnesses that this area of the City presents a façade of well maintained, uniform, desirable and substantial, predominantly single detached dwellings in a pleasant, well treed landscape of mature vegetation and large canopy trees. Further, that the subject site contributes front and rear yard dominant examples of that canopy, the removal of which would undermine the landscape feature and character of the neighbourhood. Despite the growing sincerity of efforts to maintain that feature and the pattern of landscaping, I find that the security of its preservation is more compelling than the prospect of an additional dwelling unit threatening its existence.

While I cannot fault Mr. Bhatt or any of the witnesses in the expression of their views in these circumstances, I am more inclined to give weight to the policy of

environmental protectionism in this circumstance than the risks associated with intensification.

I am inclined to adopt the language of Mr. Lombardi in *Re Irfan, 2018 CarswellOnt 12815* wherein at page 17 he stated:

“Clearly, the Official Plan holds out special attention to be paid to its Neighbourhoods as they are not targeted for robust waves of intensification. Change is to be sensitive and gradual, just as these neighbourhoods have been developed and built in the past. The general intent and purpose of the designations is to create and define stable residential areas within the City to ensure compatibility of land uses and built form.”

In addition to the tree issue, the addition of a third lot is not without its other adverse impacts, detailed above on the perception of the Participants as expressed by Ms. Deacon. In the main, it is the derogation from policy tests, both environmental and the character criteria, that lead to the conclusion that the severance assembly, creative as it is, is disruptive to the established lot pattern, and inconsistent with and out of conformity to the Official Plan criterion of Section 4.1.5, for the reasons expressed by Mr. Young.

As well, the variance tests of minor and desirable, applied to the built form envisaged by the severance and assembly, fail in a cumulative sense to deliver a compellable, sustainable set of buildings that contribute positively to the streetscape, area character or locational impact.

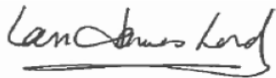
There appear to have been no severances of lots for intensification purposes in the surrounding zone category. In the absence of such a pattern, there can be no support for a proposition that the request is part of a historical trend or pattern of severance approvals.

In summary, I accept the evidence of Ms. Deacon, Mr. Young and Mr. Pickett that the appellants evidence does not satisfy the criteria set out in section 51(24) of the Act, and in particular , section 51 (24) a)-d), g), h), l). The proposed severance does not further or conform to important Official Plan policies governing development and *Neighbourhoods*, is not consistent with or conform to the ‘green infrastructure’ support principles of the PPS and Growth Plan respectively or to the Official Plan, as it would not represent appropriate, sensitive or gradual change.

## **DECISION AND ORDER**

The appeals are dismissed; the decisions of the COA are confirmed.

**Decision of Toronto Local Appeal Body Panel Member: I. Lord**  
**TLAB Case File Number: 18 122849 S53 29 TLAB, 18 122853 S45 29 TLAB,**  
**18 122858 S45 29 TLAB, 18 122858 S45 29 TLAB**



X

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Ian Lord

Panel Chair, Toronto Local Appeal Body

Signed by: Ian Lord