

# DECISION AND ORDER

**Decision Issue Date**      Tuesday, October 30, 2018

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

Appellant(s): DOROTHY GORNIK, ANNE ANDERSON, CITY OF TORONTO, VICTORIA RUSSELL

Applicant: ANTHONY GORNIK

Property Address/Description: 405 THE KINGSWAY

Committee of Adjustment Case File Number: 17 113058 WET 04 CO, 17 113699 WET 04 MV, 17 113700 WET 04 MV, 17 113701 WET 04 MV

TLAB Case File Number: **17 164539 S53 04 TLAB, 17 164540 S45 04 TLAB, 17 164541 S45 04 TLAB, 17 164542 S45 04 TLAB**

**Teleconference date:**      Friday, October 26, 2018

**DECISION DELIVERED BY Ian James LORD**

## APPEARANCES

Name	Role	Representative
Anthony Gornik	Applicant/Witness	
Dorothy Gornik	Appellant/Owner	Mary Flynn-Guglietti
City of Toronto	Appellant	Sara Amini
Victoria Russell	Appellant	
Anne Anderson	Appellant	
Alan Young	Expert Witness	
Lorelei Jones	Expert Witness	
David Bostock	Expert Witness	

**Decision of Toronto Local Appeal Body Panel Member: I. LORD**  
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Name	Role	Representative
Olivia Antonel	Expert Witness	
Mike Spencley	Expert Witness	
Dave Stephenson	Expert Witness	
Dale Leadbeater	Expert Witness	
Douglas Kinsman	Participant	

## **INTRODUCTION**

At the request of the Applicant, a teleconference was requested seeking clarification on discrete aspects of the Decision and Order issued September 4, 2018 (Decision), in respect of the above noted matters.

The Notice of Electronic Hearing issued by the Toronto Local Appeal Body (TLAB) provided the following descriptor:

“The purpose of this teleconference meeting is to seek clarification and direction of the Member with regards to the decision issued September 4, 2018 and the conditions laid out within.”

On the teleconference all of the original parties were present and participated:

Ms. M. Flynn-Guglietti for the Applicant, Dorothy Gornik  
Ms. S. Amini for the City of Toronto (City)  
Ms. A. Anderson for the neighbourhood association  
Ms. V. Russell, adjacent neighbour to 405 The Kingsway (subject property).

## **BACKGROUND**

The decision issued September 4, 2018 was sought to be clarified,

**First**, in respect of the intention related to the proposed new building design permitted on the severed lot; namely, whether flexibility was intended to permit a new design or whether either of the original designs presented in the Hearing were required.

**Second**, the Applicant requested clarity as to whether the direction in the Decision as to the location of the dividing line between the retained lot (containing the existing residence) and the allowed severed lot had flexibility.

Reference was made to the Decision, pages 31 and 34, and specifically Condition 7 (8) c).

The Applicant properly sought clarification prior to embarking on municipal staff discussions and preparing a design proposal compliant with the Decision.

**Third**, an ancillary request was made for the time limit set in the Conditions, of an eight (8) month period for compliance, to run from the amending decision or clarification, if any.

In support of the request, the Applicant circulated a revised Site Plan, dated September 26, 2018, prepared by M. Rosenow on behalf of the Applicant. That Site Plan is attached as **Attachment 1** hereto.

**Attachment 1** shows the proposed lot pattern for the severed (Part 2) and retained house lot (Part 1). On Part 2 a shadowed 'Hatched Building Area' is depicted within which a new residence is to be constructed. Together, these are elements locating the subject matter of the requests.

## **MATTERS IN ISSUE**

At issue are the three above noted requests. The Applicant expressed the intention to respect the Decision in all other respects. The Decision itself had invited that matters of implementation may result in a need to further address the TLAB.

## **JURISDICTION**

The Rules of Practice and Procedure of the Toronto Local Appeal Body include as follows:

### **Correcting Minor Errors**

30.1 The Local Appeal Body may at any time and without prior notice to the Parties correct a technical or typographical error, error in calculation or similar minor error made in a Decision or order. There is no fee if a Party requests such corrections.

## **EVIDENCE**

I find that the Applicant made a timely request for clarification and that, if necessary, Rule 30 provides ample jurisdiction to address a question in the category of 'error' or 'similar minor error', in the nature of the requested clarifications.

Again, if necessary, I find that the TLAB Rules impart some flexibility in dealing with a decision that permits correcting a lack of precision as to intended meaning. In my view, nothing turns on whether that consideration is labeled a 'technical error', 'minor error' or merely a correcting decision.

Rather than expend the resources to prepare the necessary filings detailed in the Decision and engage in their requisite discussion only to potentially arrive at a disagreement on a threshold interpretation issue, would be imprudent and wasteful.

In discussion, no party objected to the relief requested. Ms. Amini requested that the clarification sought continue to reflect the terms of the Decision that the final location of the dividing lot line between Part 1 and Part 2, *inter alia*, be subject to the Staff consultation defined. Ms. Anderson felt it prudent that there be some flexibility in the location of the lot line and within the building envelop on Part 2 to best ensure the maximum protection and retention of trees. Ms. Russell found the requests to be appropriate on similar terms as expressed by both.

There was also no disagreement on the eight (8) month period for implementation specified in the Decision, to run from the date of an amending decision.

## **ANALYSIS, FINDINGS, REASONS**

I find the requests made for clarification to be appropriate.

I am also grateful for the Applicant and the Parties in their concurrence with the request and thank them for their continue participation.

**Attachment 1** is a depiction of the location of the severance line between Parts 1 and 2 and the potential building envelop for a single detached dwelling on Part 2. It is to be considered draft until the full scope of the Decision is implemented in accordance with its terms.

Parenthetically, **Attachment 1** may be further revised by the addition of further measurements, etc., following the discussion and resolution process articulated in the Decision.

In that process, any amendment, revision or finalization of the site plan is directed to remove the light/feint line bisecting proposed Part 2 and running from Edenbridge Drive to the mid-point of the rear lot line of the final depiction of Part 2. If required, that direction is to be considered a part of this formal decision and order. There is to be no suggestion that Part 2 in the future may be the subject of a contemplated further lot division. Namely, the sole single detached dwelling on Part 2 is to be located within the 'Building Area' depicted on **Attachment 1** as the Applicant, in

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conjunction with municipal Staff, best determine as the most suitable location based on relevant considerations, all as specified in the Decision.

## **DECISION AND ORDER**

The Decision in the above noted matters is clarified as follows; in all other respects the Decision remains as written:

1. As a matter of design flexibility, there was no intention to restrict the Applicant to either of the design schemes in evidence at the Hearing.
2. The severance line as between Parts 1 and 2 and its ultimate configuration remains for final determination to be resolved by the Applicant in discussions and on the terms and conditions expressed in the Decision.
3. The eight (8) month period contained in the Conditions of the Decision shall run from the date hereof.

X



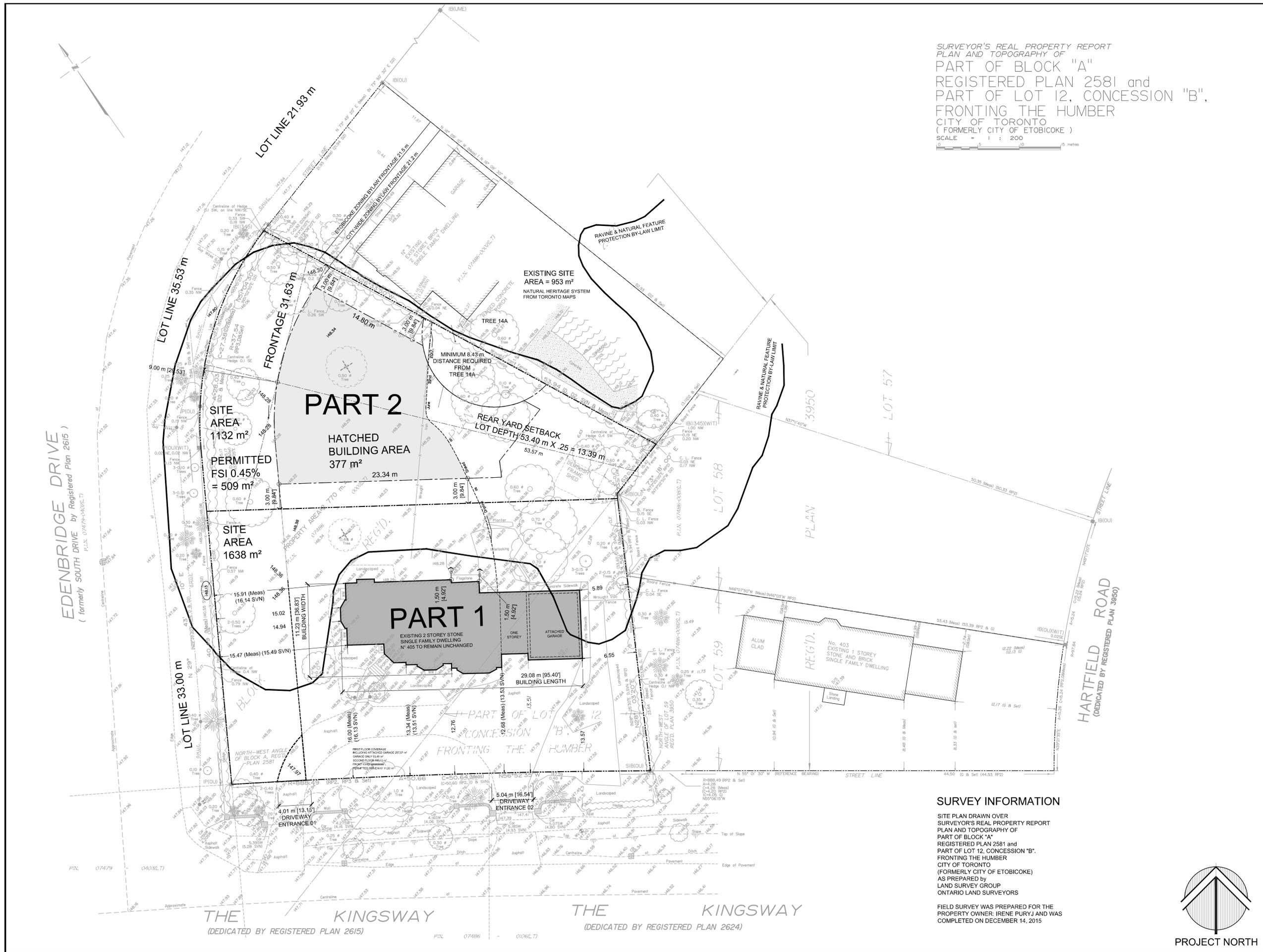
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Ian Lord

Panel Chair, Toronto Local Appeal Body

Signed by: Ian Lord

**Attachment 1**



SURVEYOR'S REAL PROPERTY REPORT  
PLAN AND TOPOGRAPHY OF  
PART OF BLOCK "A"  
REGISTERED PLAN 2581 and  
PART OF LOT 12, CONCESSION "B",  
FRONTING THE HUMBER  
CITY OF TORONTO  
(FORMERLY CITY OF ETOBICOKE)  
SCALE = 1 : 200  
0 5 10 15 metres

**SURVEY INFORMATION**  
SITE PLAN DRAWN OVER  
SURVEYOR'S REAL PROPERTY REPORT  
PLAN AND TOPOGRAPHY OF  
PART OF BLOCK "A"  
REGISTERED PLAN 2581 and  
PART OF LOT 12, CONCESSION "B",  
FRONTING THE HUMBER  
CITY OF TORONTO  
(FORMERLY CITY OF ETOBICOKE)  
AS PREPARED BY  
LAND SURVEY GROUP  
ONTARIO LAND SURVEYORS  
FIELD SURVEY WAS PREPARED FOR THE  
PROPERTY OWNER, IRENE PURYJ AND WAS  
COMPLETED ON DECEMBER 14, 2015



The undersigned has reviewed and takes responsibility for this design, has the qualifications and meets the requirements set out in the Ontario Building Code and meets the requirements set out in the attached documents.

**QUALIFICATION INFORMATION**  
Required unless design is exempt under Division C - Part 3, Article 3.2.5.1 of the Ontario Building Code

**Melvin Rosenow** 21122  
NAME SIGNATURE BCIN

**REGISTRATION INFORMATION**  
Required unless design is exempt under Division C - Part 3, Article 3.2.5.1 of the Ontario Building Code

**Melvin Rosenow** 30126  
NAME SIGNATURE BCIN

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**COMMENTS**

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**PROJECT TITLE:**  
405 THE KINGSWAY  
PROPOSED PARTS 1 & 2  
TORONTO, ONTARIO

**DRAWING TITLE:**  
SITE PLAN

**Designed by:**  
TONY GORNIK

**Drawn by:**  
LINEABOVE

**Scale:**  
1 : 200

**Issued:** SEPT 26, 2018  
**Plotted:** SEPTEMBER 26, 2018

**Drawing Number:**  
**A-01**