

DECISION AND ORDER

Decision Issue Date Wednesday, December 19, 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): EVAN SASKIN

Applicant: EVAN SASKIN

Property Address/Description: 1 CROFT ST

Committee of Adjustment Case File Number: 17 231421 STE 20 CO, 17 231446 STE 20 MV, 17 231447 STE 20 MV, 17 231451 STE 20 MV
TLAB Case File Number: **18 125238 S53 20 TLAB, 18 125239 S45 20 TLAB, 18 125240 S45 20 TLAB, 18 125241 S45 20 TLAB**

Hearing date: Friday, July 06, 2018; Wednesday, July 25, 2018; Thursday, Oct 18, 2018

DECISION DELIVERED BY T. Yao

APPEARANCES

Name	Role	Representative
Evan Saskin	Appellant/Applicant	Meaghan Barrett
Landmark Croft Corp.	Owner	
Shonda Wang	Expert Witness	
City of Toronto	Party	Laura Bisset, Persia Etemadi,
Catherine Spears	Expert Witness	
Harbord Village Residents' Association	Party	Robert Stambula, Sue Dexter

Joan Holben, Marvin Goldberg, 18 Borden St Participants

Elissa Borrelli, Tony Borrelli, Michael Borrelli, 10-14, and 24 Borden St Participants

Marida Lemos, 16 Borden St Participant

Robert Brown, 88 Spadina Rd Participant

INTRODUCTION

Landmark Croft Corp. seeks to sever the centre portion of an existing lot, thereby creating three lots. In addition, Landmark proposes to build a three storey townhouse on each lot; each dwelling requiring 12 minor variances from the zoning by-laws¹.

BACKGROUND

Landmark acquired 1 and 3 Croft Streets in December 2014. A photograph showing its present-day frontage was taken by Catherine Spears (the City's witness). It shows a garage door and white one storey brick building (all comprising 1 Croft) and faintly in the distance a one storey frame garage (3 Croft).



At the time of purchase, it was two separate parcels of land, which merged into one by operation of law. The resulting lot is 20.83 m wide (68.3 ft). Landmark proposes to divide the lot into three roughly equal lots; the smallest being 6.90 m wide or 22.6 ft. The depth ranges from 15.53 m (51 feet) to 17.12 m (56.2 m). They are called Parts 1, 2, and 3 proceeding from north to south.

¹ Since the more recent City-wide By-law 569-2013 is still under appeal, the zoning plan examiner must review plans under two applicable zoning by-laws. There is overlap between the by-laws but not exact duplication.

Table 1. Variances sought by Landmark Croft			
Zoning By-law 569-2013 (more recent, City-wide)			
		required	proposed
Parts 1, 2 and 3 (where indicated)			
1	Floor Space Index	1.00 times lot area	1.75, 1.76, 1.54 times lot area
2	North and south side yard setbacks, where no windows	0.45 m	Zero for both sides
3	Street frontage	Must abut a street	Doesn't abut a street
Zoning By-law 438-86 (less recent, former City of Toronto)			
1	Gross floor area	1.00 times lot area	1.75, 1.75, and 1.54 times lot area (not the same as FSI because of differences in measurement)
2	North and south side yard setbacks, where no windows	0.9 m	Zero for both sides
3	Front yard setback, under certain circumstances	6 m	zero
4	Rear yard setback	7.5 m	2.21, 2.21, 2.07 m
5	Landscaped open space	30%	14.35%, 14.35%, 13.78%
6	Integral garage	Not permitted where frontage < 7.62 m	Frontages will be 7.18, 6.75, 6.90 m
7		Minimum frontage > 3.5 m when abutting street	Assumption that "lot abuts street" is not met
8	North, south side yard setbacks	0.45 m	Zero for both sides
9	Front yard landscaped open space	30%	Zero %

The variances fall into three main categories:

- those relating to the property abutting a lane instead of a street, (bolded);
- those relating to gross floor area, setbacks etc.;
- those relating to landscaping.

There are no height, minimum lot size² or lot frontage variances sought. For a project of this size there are comparatively few variances sought.

THE WITNESSES

I heard from Shonda Wang and Catherine A. Spears, respectively planners for Landmark Croft and the City of Toronto. I qualified both planners as able to give opinion evidence in the area of land use planning. I heard from Robert Stambula and Sue Dexter of the Harbord Village Ratepayers' Association. Mr. Stambula presented HVRA's position on the statutory tests while Ms. Dexter presented HVRA's heritage preservation expertise. I also heard from all the residents of Borden Street whose properties abut the subject property.

MATTERS IN ISSUE

The tests for the consent are set out in 51(24) of the *Planning Act*. I will go through them in a more detailed way on page 30. For variances, the test under s. 45(1) of the *Planning Act* is whether they:

- 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.

² In para. 147-156 of her Witness Statement, Ms. Spears discusses apparent restrictions of lot frontage and minimum lot size. She states the minimum lot area is calculated by multiplying minimum lot frontage (6 m) by 30 = 180 m². She states this is governed by regulation 12(5)(h) of By-law 438-86, which was not supplied to me. There does seem to be support for her conclusion in 10.10.30.10 (1) b ["... the required minimum lot area, . . . , is the required minimum lot frontage multiplied by 30 metres"]. "Front Lot line", in turn refers to "street" (definition on page 6 of this decision). Perhaps because most (71% according to Ms. Spears' Excel data) HV lots are narrower than 6 m (19.7 ft), no party pursued the issue of lot frontage or minimum size. In any case the plan examiner did not call for a lot area variance nor did Landmark oppose the need for variances that consider Croft not a street. I am obliged to respect both conclusions of the plan examiner.

I must also be satisfied that the variances are consistent with the Provincial Policy Statement and conform to the Growth Plan. I will go through the minor variance tests on pages 8 and 32.

ANALYSIS, FINDINGS, REASONS

Nomenclature

A Through Lot, which I capitalize, is a lot touching a lane and a street. It is defined in 569-2013 as touching more than one “street”, which we will see has its own difficulties of definition.

There will also be references to “horizontal severance”, in which a Through Lot is severed to create a “street-only” lot and a “lane-only” lot, and a “vertical severance” (example 4-6 Croft), in which a lane only lot (that is, a non-Through Lot) is severed to create two lane-only lots.

“Laneway suites”, which adopts the word “suite” from the Provincial mandate for “secondary suites”, i.e. secondary dwelling units, such as basement apartments and granny flats, which are ancillary dwellings to a main dwelling unit.

“Laneway housing”, which means all other non-suites, where the laneway house is the main and only dwelling on the lot. The City and HVRA oppose laneway housing and I agree that **if** a proposal for laneway housing is accompanied by a request for a **horizontal** severance, this constitutes bad planning. Their principled opposition is based on:

- difficulty of vehicular access and emergency vehicle access;
- lack of hard services in laneways and possible expense if new hard services are needed;
- difficulty of snow removal;
- no sidewalks;
- usually concerns of shadowing, overlook and privacy with respect to neighbours’ rear yards;
- requests for severance, (usually a horizontal severance, with new non-Through Lot.);
- in most cases the laneway house can’t meet the Official Plan test of conformity with neighbourhood character.

But Landmark proposes a **vertical** severance, so the consequences are different and do not in this case constitute bad planning. Second, the lane on which it is situated has water, sewer and can admit emergency vehicles, removing most of the above issues from the table, except Official Plan compliance and privacy.

Two of the remaining items are not highly important considerations; snow removal and lack of sidewalks. Snow removal is a fact of life for any lane and cooperative solutions are found. Many Toronto streets lack sidewalks.

I will deal with the more important issues in the following order: not abutting a street, Official Plan conformity (taking up the majority of this decision), and finally, privacy and overlook.

“Street” and “lane”

“Street” is defined in By-law 569-2013 using the concept of public right-of-way. Croft allows general traffic circulation. It has speed bumps and is one-way southbound, with traffic signs. So, in 569-2013 terms, Croft Street is a “street”. However, in common parlance, Croft Street is a lane, and throughout the hearing, Croft was considered a lane from which the subject lands needed a variance.

For reference, I set out the applicable zoning definitions³:

³ By-law 438-86 excerpts submitted by parties were partial extracts.

Table 2. Selected Zoning Definitions		
word	569-2013	438-86
Through lot	(855) Through lot means a lot, other than a corner lot, that abuts: (A) more than one street; or (B) one street in more than one location.	
Street	(825) Street means a public right-of-way for general traffic circulation.	A public highway or public lane
Lane	A public right-of-way that is not for general traffic circulation	
Front lot line	The lot line or contiguous lines dividing a lot from a street	
Frontage on a public highway issue	5.10.30.1 (2) Fronting on a Street Except for a Parcel of Tied Land, a building or structure may not be erected or used, on any lot that does not abut a street	4(11)(a) No person shall erect or use a <i>residential building</i> otherwise than on a <i>lot</i> having a minimum <i>front lot line</i> of 3.5 metres fronting or abutting a highway assumed for public highway purposes , other than a lane laid out in the rear of lands abutting a highway or an outlet connecting the lane with a highway.
House behind a house issue	10.10.60. (2) Number of Residential Buildings on a Lot A maximum of one residential building is permitted on a lot in the R zone.	4(11)c No person shall erect or use a building in front of another building as to produce the condition of a <i>residential building</i> in the rear of another building.
Terms such as “minimum base curb” and “public highway”	Not defined	Not defined

Ms. Spears’ asserted that the “abutting a street” regulation 5.10.30.1.(2) is “binary” and admits of no variance. I respectfully disagree with Ms. Spears. Section 5.10.30.1 (2) is like any other section of the zoning bylaw and a variance from it has to be minor, viewed through the lens of the general intent and purpose of the zoning by-law⁴.

To ascertain the “general intent”, all sections of the by-law must be read, including:

⁴ *Re McNamara Corp. and Colekin Investments Ltd.*, 1977 CanLII 1050 (ON SC), 1977 CarswellOnt 322 (Div. Ct.)

5.10.30.1.(2) (1) Availability of Services No land may be used and no building or structure may be erected or used on the land unless: (A) the land abuts an existing street, or is connected to an existing street by a street or streets, constructed to a minimum base curb and base asphalt or concrete; and (B) all Municipal water mains and Municipal sewers, and their appurtenances, are installed to a lot line of the property and are operational.

In my opinion, the word street has different usages and that a variance may reflect different functional intent. At least three different uses of the word “street” can be found:

- as a source of connection to municipal services (as in 5.10.30.1 (1) above),
- as a legal boundary line (inherent in the definition of public right of way) and
- as a destination or origin for vehicular traffic (for example, the definition “driveway” means a passageway providing vehicle access between a street or lane and an area used for the parking, . . .of a vehicle).

In this case, all three purposes of the word “street” are maintained. Croft has services, it functions adequately as a boundary and can provide vehicular access.

Since this section of the definition contains the zoning provisions it would be convenient to deal with the minor variances #3 and #7 out of order and I find that they meet the statutory tests.

I list the following reasons:

1. The proposed new lots and buildings will abut a lane, owned by the City of Toronto (Spears par. 54) with hard services. Therefore 5.10.30.1.(2) (1) (B) is fulfilled functionally by the presence of operational municipal services at the doorstep.
2. There is no problem with the boundary line. Lanes have their own minimum widths and setback requirements and Landmark proposes that the first floor be inset from the front lot line (which is on the lane).
3. There is full vehicular access. This lane is 6.1 m wide and is the widest of the three segments of Croft St from Harbord to College. (Spears par. 55) This must be read in conjunction with the next reason.
4. The real purpose of 5.10.30.1.(2) (1)(A) is to discourage horizontal severances of Through Lots. The City doesn't wish that individuals on one lot obtain services from other lots nor does it wish to incur costs of new services. This is not the case here, because the Landmark lot is existing; and already enjoys municipal services. However, this reason should not be used to justify the creation of a new lot through horizontal severance, even if on a lane with full services.⁵

⁵ This puts 1-3 Croft in a different position from 157 Lippincott, now pending before the LPAT.

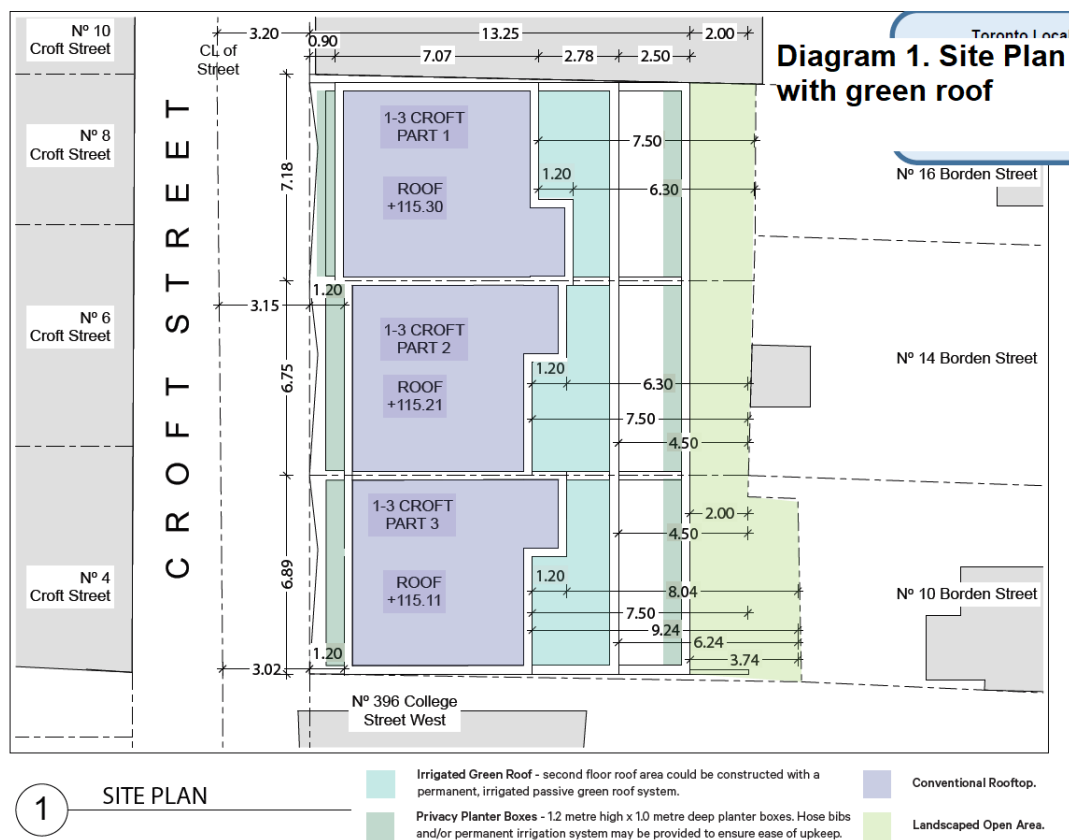
History of the Application

This case divides into two :there are “big picture” issues, such as whether the Official Plan tests are met and “small picture” issues, such as privacy and overlook. Although I begin with the discussions between Mr. Saskin and Mr. Kusic, these really tie into the overlook and privacy issues.

In May 2015, Landmark proposed a four storey four townhouse unit project, which was reduced through a number of revisions to the present three storey, three-unit proposal.

The site plan (next page) shows the orientation; this is the southernmost lot on Croft St, and similar residences exist on the east e.g. 4, 6, 8 etc. Croft St.). Just to the south are the rear of commercial buildings on the north side of College. spreadsheet describes these as 2 storey buildings, except for 10 Borden (white building, far right, this is 2.5 stories).

The chronology of negotiations is:



May 2015

meeting local Councillor and Planning

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December 2016 further meeting with Community Planning to present revisions
December 2017 Community Planning assigns a new planner, Mladen Kusic, who provides additional comments
February 2018 Mr. Kusic provides further comments in the lead up to the Committee of Adjustment decision of Feb 2018



The rear of the Borden homes is shown in Photo 2 (previous page).

Landmark's revisions in response to Mr. Kusic may be summarized as:

- increasing the rear yard setbacks to 2 m at grade, and a “step-back pattern where each floor is increasingly set back from the Borden homes.
- lowering the height to 9.5 m.
- elimination of third floor decks.
- a reduction in size of second floor rear decks, and installation of planters on rear 2nd floor decks.
- staggering the windows facing Croft Street.

The site plan shows new rear yards will be created where none exist now in the 2 to 3.74 m range (6.6 ft to 12.3 ft). The by-law requirement is 7.5 m (24.6 ft). Comparable setbacks for Borden properties are:

16 Borden	variable but closest point 6.82 m
14 Borden	11.5 m
10 Borden	4.2 – 5.4 m to common lot line with 1-3 Croft

These numbers arrived after written submissions, because of circumstances described on page 32. Number 14 satisfies the rear yard setback, but the other Borden properties do not comply. For 10 Borden the minimum setback is 4.2 m which is not much different from Landmark's 3.74 m. Mr. Kusic was aware that in Growth areas, the

Official Plan planned context “generally anticipates change”, that is, that the 14 Borden landowners can be expected at some future date to construct up to by-law limits.

In his report to the Committee Mr. Kusic wrote:

City Planning Staff have been in regular contact with the applicant since the application was submitted. Planning Staff were concerned that the originally proposed massing was not respectful of the built form character along Croft Street, and that the rear windows and elevated decks would create overlook and privacy issues on the adjacent properties. The applicant responded positively to Planning's concerns and had revised plans to address these concerns, as well as additional concerns expressed by some residents of the neighbourhood.

Planning Staff have spoken to the applicant regarding the above noted conditions on February 7, 2018. The applicant responded positively and has indicated a willingness to revise the plans and satisfy the conditions. As such, should the Committee impose the above noted conditions, Planning Staff do not object to the proposed variances.

So, the project was refined through discussions with Planning Staff, and I will rely repeated on Mr. Kusic's expertise, as I shall repeat again in this decision.

On February 14, 2018, the Committee of Adjustment refused the consent and variances and Landmark appealed to the TLAB.

Should Landmark have proceeded by way of zoning amendment?

Ms. Spears submitted that the application should have proceeded by zoning amendment not minor variance. Her testimony was:

In certain circumstances, Council, with the advice of staff, might consider the special circumstances, if, they met special criteria, [as set out in *Construction of Housing Laneways* below] and can demonstrate there is no adverse privacy, overlook, shadowing or engineering implications. Then it goes to Council for deliberation, not to the Committee of Adjustment, and the way to get there is through a zoning by-law application, and then you have all of the . . . , in front of staff, then you would have the checklist for a zoning by-law, that includes, . . . I make these applications all the time, that's what I do for a living.

(Interchange omitted) Ms. Spears: Shadow studies are required, massing models are required, concept plans are required, it's an entire list. Transportation. . . it's a whole, it's a laundry list. Very expensive.

This opinion was based on two documents:

1. *Construction of Housing in Laneways* Report (July 25, 2006, Council approval).

2. *Changing Lanes*, the City's Official Plan amendment 403 and zoning amendment (Council adoption July 2018) permitting as of right laneway suites. It came into force August 2018, before Ms. Spears testified but after she had filed her witness statement

Construction of Housing in Laneways was a staff report whose recommendations were:

"It is recommended that:

- (1) *the City not permit construction of housing on existing laneways, **except in special circumstances** where there are no adverse privacy, overlook, shadowing and engineering servicing implications;*
- (2) *in determining when these special circumstances may apply, City Planning staff will continue to provide their best advice to City Council about the appropriateness of laneway housing, on a site-specific basis, on the merits of the specific proposal;*
- (3) *Technical Services staff will continue to work with City Planning in instances where the proposal may have merit; and*
- (4) *the City not permit construction of housing on proposed/future laneways."*

I do not think the wording was meant to have the effect claimed by Ms. Spears. The report has to be put in context. It was in response to a request from Councillor Adam Giambrone, who asked staff whether the construction of housing in laneways "could be made more practical", which I interpret that in at least one member of Council's mind, there was interest in exploring whether laneway housing could be made easier, while still respecting planning and servicing exigencies.

The author of the report was Raffi Bedrosyan, Acting Director, Development Engineering, reporting to the Public Works Committee, not to Planning and Development.

Mr. Bedrosyan begins:

The construction of laneway housing in Toronto raises a number of issues that are broader and more fundamental than the practicality of providing City services such as snow removal, garbage collection and water/sewer connections. The construction of a laneway dwelling **almost invariably involves the severance of the rear portion of a lot** and relief from the zoning by-law standards for lot size, setbacks, landscaped open space and where there is no severance, for construction of a 'house behind a house' on the lot.
(my bold)

The bolded words suggest to me that Mr. Bedrosyan assumed (correctly, in my view) that the usual situation would be that the owner of a Through Lot would seek a horizontal severance to facilitate the laneway dwelling. Since the report dealt with 300 km of laneways in Toronto, it is not surprising that Mr. Bedrosyan did not address the situation of a non-Through Lot that had come into existence prior to 1920. The words "practicality of providing City services" suggests that Mr. Bedrosyan was concerned

about new services brought on by a horizontal severance of Through Lot, the common case, but not Landmark's.

As written, the report was originally intended to be entirely **negative** toward any new laneway housing because of servicing and planning issues. It was softened by Council by the introduction of clauses 2 and 3, so Council's intention, knowing of the wide variability in neighbourhoods and lanes, was to allow for some measure of site-specific exceptionality. Since Clause 2 was inserted at Council's behest, it is understandable that Council would use the words "City Council" in its larger sense meaning, the seat of all legislative, executive and quasi-judicial functions (i.e. including the Committee of Adjustment). So, I would interpret the report more broadly than Ms. Spears. Council was suggesting a pragmatic and measured approach.

I wish also to refer again to Mr. Kusic, who is a City planner, but was not called to testify. He could have taken the position advanced by Ms. Spears that a zoning amendment application was necessary, but he did not. I have to observe that Mr. Kusic has an operational job, he must deal with whatever comes in the door. He did not have the ability, as Ms. Wang and Ms. Spears did, of being able to decline an assignment if his views did not accord with the those of the person paying the retainer. As it happens, he took the position that his department would not oppose the application on certain conditions and this is in writing and before me⁶. After a three-day hearing, I agree with that advice.

Ms. Spears points to two places in the report in support of her argument. The first was Clause 2, already discussed. The second is the underlined word "amendment":

"In the former City of Toronto there are several streets with a historical context of laneway lots such as Jersey Avenue, Croft Street and portions of Clinton Street, where an additional laneway home would fit the neighbourhood character and conform to the Official Plan - although issues of overlook and privacy may still have to be resolved through sensitive design.... good conditions of privacy, overlook and open space can be achieved, and an amendment could be supported if servicing issues can be resolved." (Ms. Spears' underline)

Again, I disagree with Ms. Spears. These words, coming from Mr. Bedrosyan, were intended to cover both avenues — zoning amendment **or** minor variance. In my view a site-specific rezoning would be relatively uncommon. The lands are zoned Residential

⁶ In 127 Lippincott, a horizontal severance of a Through Lot, he did not hesitate to recommend that the applicant should proceed by zoning amendment.

(R) in Zoning By-Law 569-2013, and Residential (R3) in By-law 438-86, both of which permit the proposed use. Assuming that one does not usually need a rezoning to permit a reasonable gross floor increase (less than 80% of the other Croft residences' typical GFA, see page 18), and no servicing issues were at stake, the issues would be as they are in this case, the Official Plan and privacy and overlook.

In July 2018, Council adopted OPA 403 along with a zoning amendment that would permit as-of-right laneway suites. Public deputations were made by Evan Saskin and Sue Dexter. The City (par. 22) submits "Ms. Spears is not asserting that OPA 403 is "binding" on Landmark insofar as it applies to that application.

I agree with Ms. Bisset and Ms. Spears that the laneway suites policies in OPA 403 are not directly applicable to this situation. *Changing Lanes* is premised on Provincial planning initiatives to promote, among other goals, expansion of Toronto's rental housing supply; Landmark's homes are intended to be freehold ownership. However *Changing Lanes* does not establish any **new** barrier to laneway housing for a historic Through Lot.

Changing Lanes, deals with Through Lots on lanes without hard services. It covers an area from Parkside to Victoria Park, south of Eglinton and cannot address every situation. Section 1.2 states the Official Plan cannot anticipate all circumstances. Nor can one zoning by-law deal with all the diverse sizes and lot shapes in Harbord Village.

Changing Lanes' authors did specifically address severances and minor variance applications for laneway suites. To prevent jurisdictional arguments like this, Council amended its Official Plan in OPA 403 to **prohibit severances** in relation to laneway suites.⁷ Minor variance applications would be confined to promote certain desirable goals, such as provision of accessibility for disabled persons.

⁷ Proposed land divisions under the *Planning Act* or *Condominium Act, 1998* to create a lot containing a Laneway Suite separately conveyable from the principal dwelling are discouraged and can be considered only through a corresponding Zoning By-law Amendment application where it can be demonstrated that

- i. the lot pattern respects and reinforces the existing lot pattern of the established *Neighbourhood*;
- ii. servicing, including water, wastewater and hydro, can be accommodated to the satisfaction of and at no expense to the City;
- iii. what was originally considered the Laneway Suite meets all of the requirements for a principal dwelling unit on its own lot;
- iv. solid waste can be appropriately screened and appropriately collected by the City; and stormwater be managed on site.

If it had been clear as Ms. Spears suggests, then there would have been no need for an explicit clause.

Finally, we can look at the behavior of the City, which is expected to follow a consistent process. The City (par. 13) states Lynda Macdonald, Mr. Kusic's supervisor, advised Landmark that the 4-unit application should proceed by zoning amendment. I take this to mean that this was a polite "no", not a declaration of Department policy. I have indicated I agree with Ms. Macdonald's position that the development was inappropriate. In *Patterson Photographic*, (page 29) a laneway housing vertical severance, the City raised no zoning amendment demand. Neither did it in *750 Markham*, discussed on page 27.

I find the emphasis on whether there has been a zoning amendment application versus minor variance application misplaced. The *Planning Act* uses very general words, for example, "health safety, convenience, accessibility, etc." which are intended to allow the approval authority great flexibility. Of course, there are jurisdictional limits; as set out in the statute, but Ms. Spears was not saying I must make this finding, only I should.

Her chief demand appears to be for shadow studies, which she says would have been required in a zoning amendment application and which Landmark has not produced. Since the height limit is 12 m, the shadow studies requested she requests (paras. 29, 29, 58, 129 and 244) and HVRA (par. 57) would not show anything more than a 9.5 m high building would cast less shadow than the as-of-right 12 m high building. It would not assist me.

For all these reasons I reject the argument that Landmark should have proceeded by zoning amendment. I further reject that *Construction of Housing in Laneways* or OPA 403 is any indication of Council's intent to discourage Landmark's consent application. Council simply hasn't considered relatively rare situations like this.

The next step is to consider the Official Plan, first the infill provision and then the respect and reinforce test.

Official Plan infill test

In the Overview section of her Witness Statement Ms. Wang states "the proposal represents a form of **infill housing** that supports the planning policy objectives that apply to this site." The infill sections in the Official Plan represent policies for exceptional situations and I find they represent City policy for a situation like this.

These provisions apply to “former non-residential uses such as an industry. . . that were passed over in the first wave of urbanization”. We will learn from Ms. Dexter that this site was probably a dairy at one time. The infill policy provisions state:

4.1.9. 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;

1-3 Croft qualifies as infill and varies from the local pattern. It is smaller (“lot size”), is a non-Through Lot (“configuration”) and located on a lane instead of a street (“orientation”). It will have “appropriate heights”; the height is 9.5 m, less than the maximum. Extensive efforts have been made to step back the massing. The scale mirrors those of the other Croft residences and as I show on page 17, is compatible with other lane houses.

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

In the final section of this decision I conclude with findings on privacy. In my view it does provide adequate sunlight and sky views for both sets of residents. I rely again on Mr. Kusic’s judgement. Landmark will increase rear yard setbacks compared to the present brick structure. Plantings are needed and will be installed.

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

Croft is a public street under the zoning by-law. Even if we interpret the policy as disallowing fronting on Croft, there is an exception “wherever possible” There are no gates on Croft.

I find that the proposal maintains the intent of the infill section 4.1.9, and this will be further reinforced in the historical section when we research the origins of the lotting fabric.

Official Plan respect and reinforce test

Both tests 4.1.9 and 4.1.5 are met. The latter test states:

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

. . .

b) size and configuration of lots;

c) heights, massing, scale and dwelling type of nearby residential properties;

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.

Study area

Ms. Spears states this test is not met because the proposed lots are smaller than almost all lots in Harbord Village. Her study area was 220 lots in a six-block section close to the subject site, and she concluded with the following table:

Table 3. Ms. Spear's average lot area, frontage and lot depth						
Lot Study Results (Focused Study Area)						
Number of Lots in the Study Area:					220 Lots	
		Average				
Street Name:	Lots	Lot Area	Lot Frontage	Lot Depth	GFA	FSI
Borden Street	85	206.5	5.3	38.1	171.3	0.78
Lippincott Street	81	196.6	5.1	37.4	136.5	0.73
Croft Street	17	109.4	7.1	13.4	146.1	1.44
Ulster Street	31	119.2	4.7	24.5	122.9	1.08
Vankoughnet Street	5	119.2	6.3	19.4	117.9	0.99
Total All Streets	220	181.0	5.4	33.7	142.7	0.86

The Croft Street average lot sizes (109.4 m²) are smaller than the area wide average (181.0 m²). She pointed out that Part 3, the largest of the three lots, is smaller than 184 properties out of 220 in her study area. But so are the other seven or eight even-numbered Croft residences.

Before we leave Table 3, I note for Croft lots:

- frontages are wider than the average, 7.1 m versus 5.4 m (23.3 ft versus 17.7 ft).
- average gross floor areas are larger than lots on Lippincott, Ulster and Vankoughnet but less than Borden.

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- average Floor Space Index (gross floor area divided by lot area) is much larger, but this is what you would expect when the smaller lots are factored in.

The GFA figures suggest that we are talking **about the same sized house** on Croft versus area wide average — 146 m² versus 142.7 m².

Now I will move to Table 4, which I constructed from Ms. Spears' excel spreadsheet. It is a simple list of the nearby Croft properties.

Table 4. My distillation of Croft St data from Ms. Spears' Property Data

Address	Total Lot Area	Total Residential Units	FSI	Total Above GFA	Storeys Above Grade	Generalized Use
22 Croft St	102.19	0	1.5	153.2	1.5	Commercial
20 Croft St	116.3	1	1.59	185	3	Residential Singles
18 Croft St	89.3	0	2	178.3	2	Industrial
16 Croft St	95.9	1	2.02	193.8	2.5	Residential Townhouses
14 Croft St	93.1	1	2	186	2.5	Residential Townhouses
12 Croft St	93.2	1	2	186	2.5	Residential Townhouses
10 Croft St	93.2	1	2	186	2.5	Residential Townhouses
8 Croft St	100.3	1	1.93	193.8	2.5	Residential Townhouses
6 Croft St	111.8	1	1.65	184.4	3	Residential Singles
4 Croft St	106.6	1	1.89	201.1	3	Residential Singles

Croft Average 100.2 1.86 184.8 2.5

Landmark Avg 110.3 1.68 185.7 3

The average lot areas, densities and number of stories are all very close.

So, to sum up to this point, I found the Landmark numbers match well with the Croft residences. The densities are higher than the study area average; as are the existing Croft residences. The existing Croft residences are part of the neighbourhood and part of its character. The respect and reinforce test however doesn't ask us to match like with like or use gross averages, so it asks more — to discern the existing physical character of the neighbourhood.

What does this mean? A character is usually something that is beyond measurement, otherwise we would use a number. ("I'm 71.") Indeed, character is something that is more than the sum of the parts.

This is obviously a very old and historic area of Toronto. The City submits I investigate the historical origins of severances and I agree with this position.⁸ The following sections respond to this request and despite the fact it makes this decision lengthy, I find in the end, this investigation supports the finding that Landmark satisfies both the infill and respect and reinforce tests.

Diagram 3. Schematic of FSIs and dates of construction

I took Ms. Spears' property data to plot a schematic "map" (i.e. not drawn to scale), I simply took four pieces of information for each lot and arranged them consecutively.

Number of the house

Lot area in square metres / floor space index

Year of construction.

Bold is just an effort to make this more readable.

The frontages are shown vertically. I have omitted the frontages of the rear abutting properties and where a Croft property may abut two or more Lippincott properties, I have just chosen the lot that seems to have the most common lot line with the Croft lot.

⁸ Paras. 61 and 62 of its Written Submissions the City state that historical origins of severances must be considered, quoting *Inacio v Toronto*⁸:

61. . .In the 2018 OMB decision (sic.) *Inacio v. Toronto (City)*, the OMB found that although the narrower historic lots in the neighbourhood formed part of the neighbourhood context, ...

[I]t is the Board's view that any such lot-frontage analysis must also practically consider these other historical factors and realities and must examine the historical origins of severances and new-lot creation in order to properly assess the overall context of a neighbourhood's lot patterns, lot fabric, lot sizes and understand the true physical character of the neighbourhood. A failure to go beyond the mere existence of smaller lots in the neighbourhood to examine such evidence, may affect the credibility of the planning analysis and opinion that flows from a limited and narrowly-focused conclusion that: 'smaller lots exist in this neighbourhood'.

62. In assessing the physical character of the Harbord Village area, and Croft Street in the historic nature of the small lots must be given proper consideration and weight.

Diagram 3. Schematic diagram of Croft residences and rear neighbours

Lippincott	111 143.20 m ² /0.52 1909		Croft	34 247.4 m ² /0.93 1889	
	109 322.20 m ² /0.60 1909			32 232.2 m ² /0.88 1889	
	107 195.1 m ² /1.13 1879	22 102.9 m ² /1.50 1965		30 229.3 m ² /0.97 1880	
	105 213.7 m ² /0.64 1875	20 102.9 m ² /1.59 2015		28 241.5 m ² /0.85 1880	
	103 213.7 m ² /0.38 1909	18 89.3 m ² /2.00 1879		26 216.3 m ² /0.83 1893	
	97 139.4 m ² / 1.42 1909	16 95.9 m ² /2.02 1919		24 216.3 m ² /0.79 1890	
	95 139.3 m ² /0.78 1919	14 93.1 m ² /2.00 1919		22 229.3 m ² /0.87 1880	
	93 139.3 m ² /0.78 1919	12 93.2 m ² /2.00 1919		20 215.7 m ² /0.88 1890	
	91 167.22 m ² /0.95 1909	10 93.2 m ² /2.00 1919		18 216.3 m ² /0.74 1890	
	87 232.2 m ² /0.72 1909	8 100.3 m ² /1.93 1919		Part 1 108.7m ² /1.75 (1965) 16 135.8 m ² /0.98 1889	
				Borden	

Diagram 3. Schematic diagram of Croft residences and rear neighbours					
85 105.9 m ² /0.93 1909	6⁹ 111.8 m ² /1.65 1919	8.0	6.75	Part 2 103.7m ² /1.76	14 229.9 m ² /0.71 1933
81 111.48 m ² /0.93 1880	4 106.6m ² /1.89 2008	7.9	6.90	Part 3 118.6m ² /1.54 (1899)	10 170.7 m ² /0.97 1910

Ms. Spears concludes that Landmark’s FSI numbers represent “over-development”. The average FSI for the three new lots is 1.68. But the other Croft residences: 6 Croft, (*Patterson Photographic*), 20 Croft and 22 Croft all have larger FSIs at about FSI = 2.00. A glance at this map shows that Lippincott and Borden FSIs below 1.00, whereas all the Croft properties are much higher, sometimes twice as much. If the property is compared with only Croft lots, it is not overdevelopment. This is the same dilemma just discussed.

As we shall learn from Ms. Dexter’s evidence, the Croft homes are ‘descended’ from industrial buildings that never required rear yards and do not have them now. As Ms. Spears argued, Through Lots tend to have smaller FSIs than Croft lots because Through Lots tend to be larger to begin with. We now turn to the historical analysis.

Ms. Dexter’s evidence

I will now deal with HVRA’s evidence. HVRA called two witnesses: Mr. Stambula dealt with the jurisprudence and Ms. Dexter with the historical context. I recognize that both persons are volunteers and I thank them for their input. Mr. Stambula’s evidence was supportive of Ms. Spears, and since her testimony is dealt with at some length, I will not comment extensively on Mr. Stambula’s contribution, except to mention in passing his highly knowledgeable summary of past OMB decisions.

HVRA tendered this evidence through Ms. Dexter¹⁰. She is a former journalist and has taught television documentary and research at Ryerson. Part of her HVRA

⁹ For some reason, the City property data has maintained the 1919 construction date even though 6 was the twin for 4 Croft St.

¹⁰ Ms. Wang also said, “Well, I think it is important to be thinking about the history, because we’re thinking about. . .first of all how this site developed in the context of the broader geographic neighbourhood, um, how this fabric has been intact, for a number of years, this is an existing condition, . . . and that the proposal responds to that particular unique condition. It is also important to note that the **history of the neighbourhood**, particularly when you are trying to understand and get clues, and come

duties are to act as a stakeholder in visioning studies (e.g. for the former Honest Ed's site, Bathurst and Bloor). She called her Residents' Association a "good, busy downtown association". She characterized the area as having "modest infill", its character was predominantly 2 and 2.5 storey "bay and gable", more than 50% row housing, a consistent built form, with a commitment to "preservation of the historic fabric".

She objected convincingly to inclusion of land south of College in Ms. Wang's study area and for that reason I have worked from Ms. Spears' 220 properties instead of Ms. Wang's 700 plus data set. However, I believe there is a common core of properties in both witnesses' study areas, so not much turns on which study area is used.

Ms. Dexter went on to say that consents were "few and far between in our neighbourhood". One example was 146 and 148 Brunswick were, which were a pair of semis that joined and got split again, "which isn't the case with 1-3 Croft". With respect to Ms. Dexter, I disagree. That case is very similar; both are attempts to undo a merger of separate lots when they came under common ownership. I concede that in the Brunswick case 2 lots became one and then two, whereas here 2 lots became one and then seek to become three.

There was also no objection to the vertical severance in 4-6 Croft (*Patterson Photographic*, discussed more extensively at page 29). As well as a severance, *Patterson Photographic* was a change in use from industrial/commercial to residential, as well as an application to add a new third storey. This is very similar to the Landmark application.

Ms. Dexter went on:

"Unlike Kensington, we're full of lanes." She said Harbord Village lanes were heterogenous, the narrowest being 7 feet wide (2.1 m), barely accessible. "We will concede that Croft and Sussex Mews are larger than other lanes."

"Lots are small, rear yards are small, typically the lots aren't very deep. . . .so laneways are given over to garages, a handful of lanes outside of Croft contain dwellings. And most of those were little manufacturing plants, where workmen would have his studio back there, there were dairies scattered throughout the neighbourhood; nobody was pasteurizing anything. So, every corner is an old dairy, for example. Those buildings have been repurposed, like the [even numbered] Croft buildings to housing. But I would say, if you had twelve of them, and imagine, we're a kilometer square, if you had twelve of them, outside Croft, it would be a surprise."

up with some description of the character of that neighbourhood, so the things I just spoke to, the eclectic nature, the lot fabric, the varied architectural styles, um, I will elaborate on the built form we're seeing around there, are all elements of the future view of the character of the neighbourhood."

This is corroboration of this site being unique.

Ms. Dexter continued, “On the three block stretch of Croft Street from Harbord to College, there were 139 properties of which back onto the lane, and 123 of them are garages. There are 121 one storey garages, and two two-storey garages. There are 16 residences.” She then itemized the blocks street segment by street segment and showed that there were presently no residences on the east side, and very few on the west side, except for just north of College. “All the residences, except No. 20 were re-purposed existing buildings.”

She continued, “Number 1 [Croft] we can find nothing in Mite’s directory. In 1936, number 1 became the Toronto Ambulance Company [a private company]. That’s the reason the door way is canted, to allow vehicles to get in and out easily. It continues to be Toronto Ambulance Service until 1946, then it becomes somebody’s garage, then it becomes the Bellock Brothers Chemical Company.

She then reiterated that 1 Croft was the only residential building on the east side. “So, then we have the planned context, that little has changed since the nineteenth century, that workshops and dwellings were on the west side, north of Ulster there were five and from Ulster to College there were four with light manufacturing, . . . and workers’ shops. Those four became more than four through vertical severances. So, what you had was the built form of the building, remained, [and] was respected and what they did was put a third floor on, but the foot prints are the historic footprints.”

As I set out earlier, I respectfully disagree with Ms. Dexter that there is anything special in this application being on the east side of Croft when all the other houses are on the west side. The neighbourhood includes relevant lots on the opposite side of the lane.

1919 assessment rolls

At this point Ms. Dexter introduced the 1919 assessment rolls, “It’s really kind of interesting.” From this exhibit, I reproduce a portion, and I invite the reader to match the information with the schematic diagram on page 20.

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Table 5. 1919 assessment roll for 79-97 Lippincott, 6-8 Croft (4-6 Croft today) and 10 Croft (now 8-18 Croft)						
Taxable Party	occupation	Address	Size of Lot	Value of Land	Value of Building	Total
Charles Schliefer	Shipper	79 Lippincott	13 x 80	715	900	1615
Englander Annie	Widow	81 Lippincott	15 x 80	715	900	1615
Rotterman Israel	Tailor	83 Lippincott	12.7 x 80	692	900	1592
Coughlin James	T.F.D	85 Lippincott	13 x 80	715	900	1615
Laird Andrew Loveland Frederick	Garage	6-8 Croft	52 x 56	520	3500	4020
Laird Andrew Loveland Frederick		6-8 Croft	Business assessment 1005	1005		
Hayward James	Ship Builder	89 Lippincott	29.7 x 86	1636	250	1886
Hayward Frank	Decorator	91 Lippincott	21.3 x 86	1168	1000	2168
Hurd John	Cartage Agent	93 Lippincott	17 x 86	935	1200	2135
Plume Charles	Caretaker	95 Lippincott	17 x 86	935	1200	2135
Gregory Samuel	Inspector	97 Lippincott	17 x 86	850	2000	2850
Pius Kerhon¹¹ William	Garage	10 Croft	102 x 50	1020	8000	5200 (sic.)
Pius Kerhon William	Garage	10 Croft	Business assessment 1300	1300		
Scoon William	manufacturer	10 Croft	Business assessment 3820	3820		
Scoon William	manufacturer	10 Croft	Business assessment 2295	2295		
Roulston Ellen	Widow	99 Lippincott	13.7 x 136	880	700	

The first four entries show Lippincott residences with frontages 13, 15, 12.7 and 13 feet which more or less total 52 feet. These correspond to present addresses on the east side of Lippincott. The fifth entry is a lot labelled 6-8 Croft, (now 4-6 Croft); 52 feet wide and 56 feet deep. The assessed parties were Andrew Laird and Frederick Loveland, and their business was “garage”. Similarly, the rolls go on to list five residential properties (89-97 Lippincott) then a parcel of land twice as wide as the Laird

¹¹ This is difficult to read.

garage, but roughly the same depth (102 feet wide by 50 feet deep) used by William Pius and William Scoon, partly as a garage and partly as a manufacturing building. The five lot frontages (for what is now 8 to 18 Croft) add up to 102 feet.

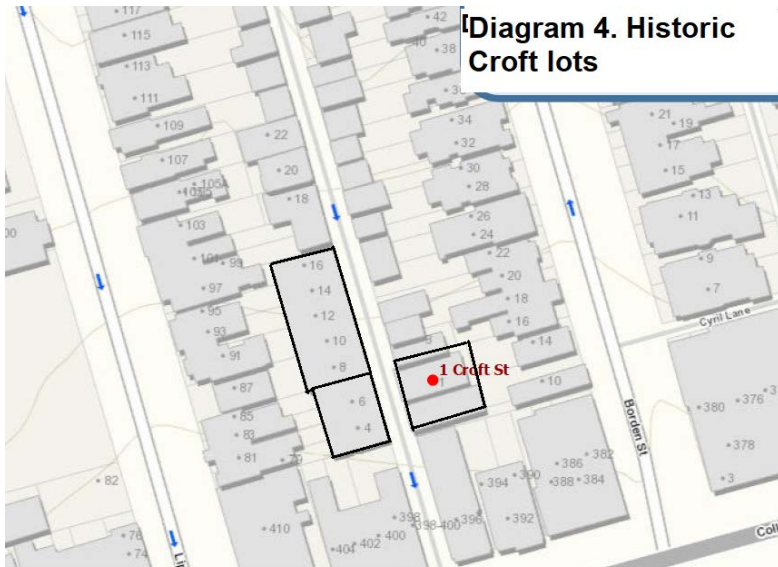
The next part is derived from information which I have not copied in Table 5. Moving north from William Scoon's lot, the roll numbers show two Through Lots (depth 136 ft, at 99 and 101 Lippincott, which have become horizontally severed in present times, and then a pair of non-Through Lots each with the same 24-foot frontage. They were either "severed" or laid out that way at the outset. Number 103 Lippincott had a 96-foot dept and 18 Croft has a 40 feet depth. Number 18 Croft was owned by College Street Cartage. From the dimensions, the cartage company building could only have been an office. At this point, the Croft lots die out.

I have outlined 4-6 Croft (frontage 52 feet) and 8-10 Croft (102 feet), together with parts 1 and 2 (frontage 15.54 m or 51 feet) on Diagram 4. Based on the earlier construction dates of the Lippincott properties and 1919 dates for numbers 4-16 Croft, the Laird and Scoon garages were either:

- built on land **taken** from the rear of the Lippincott properties; or,
- created from a reserve holding roughly 50-56 feet deep which was created contemporaneously with the Lippincott properties. Since the construction dates are all 1919, the subdivider might have created special "industrially zoned" lots on Croft Street. In other words, the original Lippincott owners might never have acquired Through Lots, they might have been street-only (that is, non-Through Lots) from the beginning.

Either way, in the distant past, the Croft lands were separate non-residential lots with frontage and lot area three to four times bigger than the residential lots. The idea of placing employment lands in close proximity with residential was thought appropriate in 1919; not unlike today's mixed-use areas¹².

¹² 4-6 Croft was originally 56 feet deep; assuming that rear yards were not necessary for Patterson's or a predecessor's purposes, they appear to have been conveyed to create 45-foot deep lots; and thus, the jog at 8-10 Croft, which is 50 feet deep. This has exacerbated the imbalance in FSI numbers.



We do not have comparable information for the east side of Croft. Based on the frontages of 6-8 and 10 Croft, and the construction dates, (1965 for 3 Croft and 1899 for 1 Croft), 1 Croft was also a separate lot, with a square shape (15.56 x 15.53 m or 51 feet square). Its size and shape are different from abutting Borden lots.

Over the years the use at 1 Croft has evolved, as indicated by Ms. Dexter

through various industrial/commercial uses, to its present status. The assertion in Mr. Borelli's letter that the lands were "expropriated" is conjecture and not consistent with Ms. Dexter's research. From the size of these non-residential lots, and their convenient access to College Street, I find these were seen as high value lands like today's employment lands. Progress has moved on from garages and dairies. Almost forgotten in this discussion is that the first floor of 1 Croft remains an obsolete "industrial" use and 3 Croft is a frame garage, on a former lot of record, used for the parking of a single car, both an underutilization of Downtown land, designated for growth.

To conclude Ms. Dexter's evidence, wide and shallow Croft lots, with a semi-commercial or industrial use were part of the character of the neighbourhood from its earliest time. They became "repurposed" ultimately to residential. Non-Through Lots were vertically severed, and merged lots were re-severed (146-8 Brunswick). This process has continued to the present with 1-3 Croft the last candidate. There are no more. "There is a genuine opportunity to add to the quality of Neighbourhood life by filling in the 'gaps' "(preamble to Official Plan infill section).

This proposal **respects and reinforces this character**, not by mimicking the average lot area but by being part of the "repurposing" and "vertical severance" activity. It respects this character by introducing no new horizontal severances, by so doing it reinforces the basic lot fabric. In this way the historic pattern of organic growth is also reinforced, enhancing Harbord Village's diverse and livable charm.

Conclusion: s. 4.1.5. "Respect and reinforce"

I find this test is met:

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

b) patterns of streets, blocks and lanes, parks and public building sites;

“Patterns of lanes” is specifically mentioned and by making better use of land which is which part of the pattern of lanes, the pattern is reinforced. “Blocks” are mentioned; not “sides of blocks” so I see no support for the criticism that this is the first laneway house on the **east** side of Croft (Spears, 32, 41, 66, 70; HVRA 19, 21, 43)

c) size and configuration of lots;

Please see Table 4 (page 18).

d) heights, massing, scale and dwelling type of nearby residential properties;

Patterson Photographic is nearby and evidence of existing physical character.

e) prevailing building type(s);

“Building types” usually refers to “single detached”, “apartment” etc. but I see no reason why in this context it should not refer to laneway and non-laneway housing, since they have specific servicing and planning implications.

f) prevailing patterns of rear and side yard setbacks and landscaped open space;

There was no discussion of side yard setbacks in the hearing as many Harbord Village homes are narrow townhouses. I deal with privacy and overlook in the next section. There is a request for a variance for the 30% landscaped open space under 438-86; which I do not feel is unreasonable for such a downtown location.

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.

I had no evidence of special landscape or built form features nor on any conservation of heritage buildings

Considering all the evidence, I conclude that the application demonstrates conformity with 4.1.5.

750 Markham

There is at least one TLAB case that applies the *Construction of Housing in Laneways Report* to a Through Lot — my own case at *750 Markham*. This case demonstrates the complexity of development on laneways whether they be suites or houses and also the type of opposition, this time from the City planner that may arise in this kind of application.

This project was an application for minor variance for “a house behind a house”, exactly the situation that was eased with OPA 403. The owner, Ms. Eichler, sought to legalize a one storey garage which had been converted without building permit to a 500 sq. ft third unit. The main dwelling already had a basement apartment. Because it was one storey, I concluded there were no privacy or overlook issues. Servicing was to be provided from the main dwelling, exactly as proposed in the *Laneway Suites* and *Changing Lanes* reports. The dwelling was to be rental and it was noted that the tenants and landlord shared “eyes on the street” by keeping a look-out on each other’s houses when the other person was away. The house was an end unit, like 1-3 Croft, and the laneway unit had the advantages the Croft proposal does not — two separate pedestrian access points for Ms. Eichler’s tenant and a parking pad with its own right-of-way through a parking lot. This allowed what was indoor space for a car to become habitable living space.

There were no servicing issues since the unit was within the required distance to a fire hydrant¹³. In my opinion, the examination, even though by minor variance and not by zoning amendment, was rigorous and warranted a finding of “exceptional circumstances”. Although there was no opposition, Mr. Swinton, Ms. Eichler’s planner, was in the stand until the mid-afternoon; this *750 Markham* case was not a “rubber stamping”; it considered all factors.

The 2006 recommendations envisioned that the Planning Department would take a lead role in discerning “exceptional circumstances”. In *750 Markham*, it was Technical Services that recognized the exceptional circumstances; Planning dismissed the application: “Permitting a second residential building on the lot will permit the rear yard to be used in a way currently prohibited by the Zoning By-law. Such a use may impede on the private amenity of adjacent properties.” Ms. Eichler expressed frustration at the difficulties and expense of legalizing what was a modest addition to Toronto’s rental housing stock. Her experience is summarized by a passage from *Changing Lanes*:

Although Toronto has numerous examples of laneway houses, the current permit process is prohibitively slow, expensive and unpredictable, making it ineffective as a means of supporting rental stock development. This arduous permit process has also limited

¹³ “*Technical Services staff will continue to work with City Planning in instances where the proposal may have merit;*”

development to those with architectural expertise or the necessary resources to invest, and has often resulted in projects of a scale beyond what an as-of-right

Patterson Photographic

Immediately after the *Construction of Housing in Laneways Report*, we have an OMB approval of a laneway house (not a suite) on Croft Street on December 14, 2006. It is valuable because it attaches plans and is thus the only source of detailed information on even numbered Croft homes. It also allows inferences about compatibility with abutting Lippincott residential properties.

Patterson Photographic, owner of 6 Croft Street (what is now 4 and 6 Croft) brought an application for a “vertical severance” before OMB Member John Aker in respect of an existing building 45 feet deep (13.7 m), slightly longer than Landmark’s building length of 13.25 m or 43.5 ft) and I assume this footprint extended upwards for two stories. Patterson wished to convert the use (described as “commercial legal non-conforming”) to “two three storey attached residential buildings”. I find the built form of the Patterson buildings very close to what is proposed by Landmark

In a quite different hearing from 1-3 Croft, the City was present with counsel and “not opposed”. The southernmost neighbour on Lippincott, Janice Cole, although expressing some concerns, was “in support”.

The *Patterson Photographic* decision permitted a second storey rear deck, with a privacy screen; and the decks were much smaller than Landmark’s. However, Landmark’s proposal of a continuous row of coniferous shrubs in the planter boxes, seems to me a better solution than an opaque privacy screen.

Table 6. Physical characteristics of 4 and 1 Croft buildings		
	4-6 Croft	1-3 Croft
Lot dimensions	7.7 m (25.5 ft) frontage by 13.89 m (45.6 feet).	6.9 to 7.18 m frontage by 15.53 to 17.12 m depth (51 ft to 56.2 ft).
First floor length	13.72 m (45 ft)	13.24 m (43.4 ft)
Second floor length	8.83 m (29 ft)	10.72 m (35.2 ft)
balcony	about 3.4 x 1.6 m (area 5.4 m ²)	6.95 x 2.6 m, area 18.1 m ² , (minus a “bump out” about the size of a bathtub)

Table 6. Physical characteristics of 4 and 1 Croft buildings		
Third floor	8.83 m (29 ft)	7.07 m (23.2 ft)
	No third-floor balcony	No third-floor balcony

I find *Patterson Photographic* represents a “template”. It is not necessarily the “ideal” but represents one possible reasonable and workable solution. Its privacy and overlook solutions likewise represent reasonable outcomes. *Patterson* was not criticized by either the City or HVRA in their written submissions. *Patterson* inherited a building extending right to the lot line, whereas Landmark will improve rear yard setbacks.

In summary:

- Patterson Photographic’s land was already a historic non-Through Lot. Although Mr. Aker did not mention the *Construction of Housing in Laneways* report, this factor could have been one of the “special circumstances”;
- A “vertical” severance was seen as not destabilizing;
- The cessation of an industrial use was seen as beneficial;
- Mr. Aker approved a building with dimensions very similar to what Landmark seeks.

The Legislative tests for consent and variance

Pursuant to s. 53(1) of the Act, I must be satisfied that the severance meets the criteria set out in s. 51(24), that is, I am required to have regard to:

51(24) In considering a draft plan of subdivision, 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,

I have had regard to the privacy and outlook concerns of the present inhabitants and balance this with the benefits of better utilization of scarce underutilized land in the Downtown with respect to future inhabitants.

*51(24)(a) the effect of development of the proposed subdivision on matters of **provincial interest** as referred to in section 2; (my bold)*

The Provincial interests are set out in Section 2 of the *Planning Act*, and, 2(f), *the adequate provision and efficient use of communication, transportation, sewage and*

water services and waste management systems 2(p) the appropriate location of growth and development; 2(q) the promotion of development that is designed to be sustainable, to support public transit and to be oriented to pedestrians;

The efficient use of infrastructure, pedestrian orientation and full range of housing objectives were met.

Provincial interest 2(h.1) the accessibility for persons with disabilities to all facilities, services and matters to which this Act applies; 2(j) the adequate provision of a full range of housing, including affordable housing

51(24) (d.1) if any affordable housing units are being proposed, the suitability of the proposed units for affordable housing;

There was no evidence that this project will be affordable or accessible to persons with disabilities. The Act directs me to have regard to all these interests not to ensure compliance with each one.

51(24)(b) whether the proposed subdivision is premature or in the public interest;

Ms. Spears found that the severance was premature and not in the public interest because it was not a special circumstance envisioned in *Construction of Housing in Laneways* (pars. 201-204.). I find that the public interest here, as articulated in the Provincial interest section is satisfied and the proposal is not premature.

51(24)(c) whether the [severance] conforms to the official plan and adjacent plans of subdivision, if any; and

51(24)(e) the . . . location . . . of highways, and the adequacy of them, . . . in the vicinity . .

51(24)(f) the dimensions and shapes of the proposed lots; . . .

;

I have discussed the Official Plan, dimensions of lots and the “adequacy” of Croft St at length. As well as the sections discussed, the proposal conforms to the transit-friendly and intensification goals of the Growth Plan and Official Plan: a diverse mix of housing options (3.2.1.1) and “complete communities” (2.2.1.4 c and 2.2.6.1). College Street, near the Toronto Western Hospital, U of T, Kensington Market and Central Technical School has convenient access to Toronto’s premier assets.

“Intensification” is defined in the Growth Plan as “the development of a property at a higher density than currently exists though a) redevelopment, b) the development of underutilized lots within previous developed areas, c) infill development and d) the expansion or conversion of existing buildings.” This proposal is all of these, except d).

The Official Plan states growth is anticipated in the Downtown, but many Downtown communities will remain stable, with little change (2.2.1). I find this provision of the Official Plan is met.

51(24)(g) the 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

“Adjoining land” would include Croft St and abutting it instead of a street could be considered a “restriction”. This has been discussed.

51(24)(2)(r) the promotion of built form that,

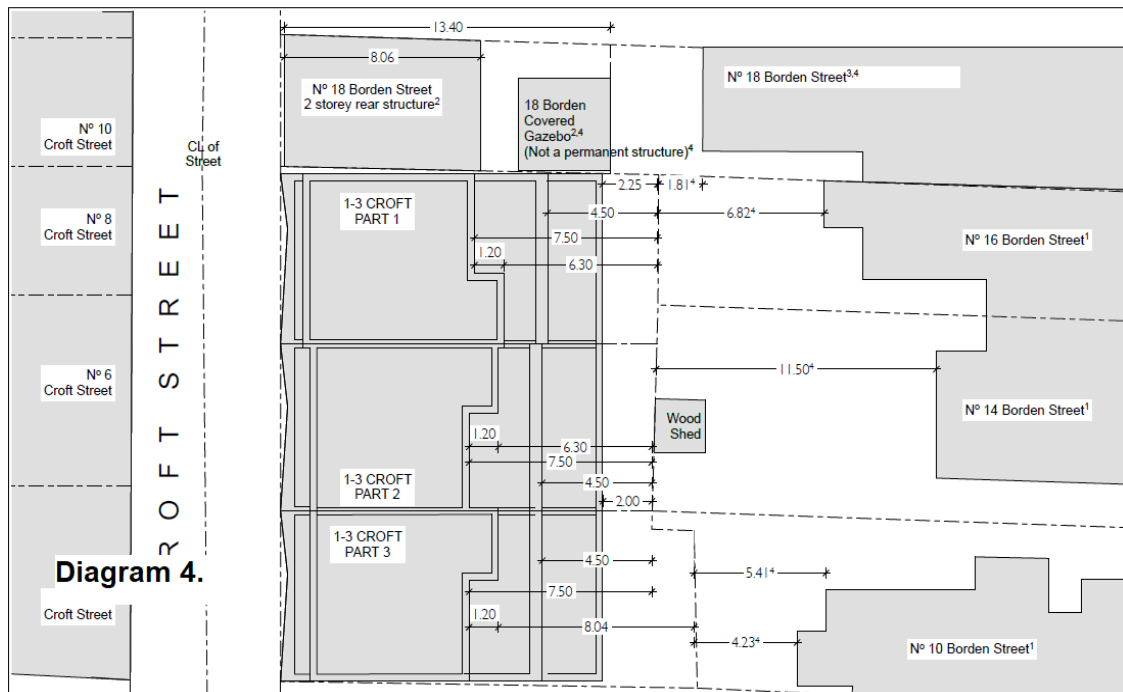
- (i) is well-designed,*
- (ii) encourages a sense of place, and*
- (iii) provides for public spaces that are of high quality, safe, accessible, attractive and vibrant;*

I find that one of the strengths of this proposal is that it has been carefully designed, even to the placement of windows and that such design has been vetted by Community Planning. Landmark has proposed a green roof and intensive coniferous plantings on the second-floor planter boxes. In my view, this is responsive to Provincial interest sections 2(r) sustainability and 2(q) a well-designed built form.

I find the consent tests are met. I now turn to the minor variances. The approach of both planners was to consider this as one combined application and I agree. The main issue here is whether 187 m² (2000 sq. ft) gross floor area per unit is minor and desirable for the appropriate development of the land and how this manifests itself turns into the question of whether the massing and form of the building create privacy and overlook objections. I find they do not, this conclusion to be amplified in the following sections.

The rear wall sketch

On December 4, 2018, the three parties furnished me with further information at my request. When compared with the site plan which was the working document during the hearing, I noted a number of inaccuracies, especially with respect to 18 Borden’s buildings. I do not say this as a criticism; indeed, I am grateful for having such a document in place on which to base my decision. It is rare that accurate information is available of the proposed development in context. I note as well that it was a cooperative effort; Ms. Spears personally measured many of the distances. Mr. Saskin produced the drawing.



Nonetheless, this document could be misleading because the Borden properties are truncated. The R.C. Rabideau Survey April 4, 1988, helpfully supplied by Ms. Holben, shows her building as being almost 80 feet long, but the portion depicted seems to be about 50 feet. This inadvertently overstates the Landmark footprints as compared to the Borden Street buildings.

Privacy and overlook

With this document, it is possible to make findings about privacy and overlook. To begin with, this is a very dense neighbourhood, where it appears any building can overlook many other properties and any yard can be overlooked by many other windows and balconies. This is not Scarborough or North York.

Number 18 Borden has a gazebo filling up much of the vacant space. If one is under the gazebo, one has privacy. If one is in the rest of the back yard, one's sky views are already compromised by the closeness of the two storey garage and the main building. Ms. Holben very fairly did not mention privacy concerns; she talked about closeness of the new construction to her buildings and snow load concerns.

Furthermore, there are two overlooking balconies already at 18 Borden: one attached to the main building (photograph) and the other over the garage, facing in two directions. Both balconies give unobstructed views and can be seen by Borden residents as is evidenced by the fact that it was Mr. Borelli who pointed out the errors in the location of the garage in Landmark's site plan (Diagram 1)



While the Landmark residences are close to 10, 14 and 16 Borden's rear yards, and their presence **will intrude** on their sight lines and privacy, the comparison to has be made is to planned context. Number 14 Borden could construct its own second floor balcony and overlook this area shared by potentially seven owners. Numbers 10 and 16 could construct their own gazebos or second floor balconies, subject to a minor variance.

I find the coniferous plantings sufficient to render those adverse impacts **not unacceptable** in all the circumstances. Again, I rely on the judgement of Mr. Kusic and all the information adduced in this case, including the fact that this situation is mirrored on Lippincott and is part of the existing physical character of the area. Therefore, I find all the statutory tests for minor variances are met.

Accessibility

Accessibility is prominently mentioned in s. 51(24) of the *Planning Act* and also in one of the matters in which the Province has declared an interest (2 h.1). It is one of the four matters in which OPA 403 permits an owner to seek a minor variance for a laneway suite¹⁴. This is a site which access can be gained from lane level without a single step up, which is not the case in most Harbord Village dwellings.

An installation of an elevator in one of these units would respond to these Provincial interests and align with OPA 403. I am **not** imposing this as a condition as I

¹⁴ To encourage accessible design, OPA 403 contains policies that compel City Planning staff to have additional regard for, and generally support, applications made under Section 45 of the *Planning Act* where the minor variances sought in support of the construction of a laneway suite are necessitated by the construction of a suite that meets accessible building standards. *Changing Lanes*, p 36

had no evidence on this, but should Landmark elect to do so, I am making it easy and feasible. I am inserting an “option clause” in condition 1 so as not to hold up the building permit. If Landmark needs a fresh variance for the elevator, I will amend this decision on email request in a prompt fashion without reopening the hearing, provided the City and HVRA consent.

I wish to thank counsel and the witnesses for their civility and cooperation throughout.

DECISION AND ORDER

I give provisional consent is given to sever Part 2 on the Draft R Plain filed by Becker and Starcevic Ltd, undated, Job No 15-052, subject to the Consent Conditions below. I authorize the minor variances in Table 1, subject to the Community Planning and Urban Forestry Conditions.

Community Planning Conditions

1. The owner will construct in substantial compliance with the plans filed with the Committee of Adjustment, with Landmark having to the option to depart from those plans in order to install an elevator in one or more of the units.
2. The third floor east facing windows shall be located at least 1 meter above the floor;
3. The third floor east facing windows shall be comprised of frosted glass material;
4. Planter boxes of a minimum 1 meter in width and 1.2 metres in height shall be located along the entire length of the eastern edge of the rear second storey decks;
5. The planter boxes on the eastern edge shall contain coniferous plantings.
6. The first-floor roofs shall contain a “Green Roof” as shown in Diagram 1.

Urban Forestry Conditions

1. Submission of complete application for permit to injure or remove privately owned trees under Municipal Chapter 813 Article III, Private trees.
2. Submission of complete application for permit to injure or remove City owned trees under Municipal Chapter 813 Article II, Street trees.

3. Where there are no existing street trees, the owner shall submit a payment in lieu of planting one street tree on the City road allowance abutting each of the sites involved in the application or elsewhere in the community if there is no space. The current cost of planting a tree is \$583.00, subject to changes.

Standard Consent Conditions

1. Confirmation of payment of outstanding taxes to the satisfaction of Revenue Services Division, Finance Department.
2. Municipal numbers for the subject lots indicated on the applicable Registered Plan of Survey shall be assigned to the satisfaction of Survey and Mapping Services, Technical Services.
3. Prior to the issuance of a building permit, the applicant shall satisfy all conditions concerning City owned trees, to the satisfaction of the Director, Parks, Forestry & Recreation, Urban Forestry Services.
4. Where no street trees exist, the owner shall provide payment in an amount to cover the cost of planting a street tree abutting each new lot created, to the satisfaction of the General Manager, Parks, Forestry and Recreation.
5. Two copies of the registered reference plan of survey integrated with the Ontario Coordinate System and listing the Parts and their respective areas, shall be filed with City Surveyor, Survey & Mapping, and Technical Services.
6. Three copies of the registered reference plan of survey satisfying the requirements of the City Surveyor, shall be filed with the Committee of Adjustment.
7. Within ONE YEAR of the date of the giving of this notice of decision, the applicant shall comply with the above-noted conditions and prepare for electronic submission to the Deputy Secretary-Treasurer, the Certificate of Official, Form 2 or 4, O. Reg. 197/96, referencing either subsection 50(3) or (5) or subsection 53(42) of the Planning Act, as it pertains to the conveyed land and/or consent transaction.

X 

Ted Yao
Panel Chair, Toronto Local Appeal Body
Signed by: Ted Yao