

DECISION AND ORDER

Decision Issue Date Friday, March 22, 2019

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

Appellant(s): Elizabeth Nejasmic

Applicant: Design Plan Services Inc

Property Address/Description: 4 Wilket Rd

Committee of Adjustment Case File Number: 17 158037 NNY 25 CO (B0036/17NY), 17 158045 NNY 25 MV (A0490/17NY), 17 158041 NNY 25 MV (A0489/17NY)

TLAB Case File Number: 18 215889 S53 25 TLAB, 18 215888 S45 25 TLAB, 18 215883 S45 25 TLAB

Hearing dates: February 05, 06 and 15, 2019

DECISION DELIVERED BY Ian James Lord

APPEARANCES

NAME	ROLE	REPRESENTATIVE
Marie Leung Allan Leung Michael Manett	Owner/Appellant Owner/Appellant Expert Witness	Jeffrey Streisfield
City of Toronto	Party	Ben Baena Kasia Czajkowski
Simona Rasanu	Expert Witness	
Marilyn Walton Rami Younes Franco Romano	Party Party Expert Witness	Brad Teichman Brad Teichman
Elizabeth Nejasmic	Participant	Ryan Wilson Steven Ferri

INTRODUCTION

These are appeals from decisions of the North York Panel of the City of Toronto (City) Committee of Adjustment (COA) refusing a severance and associated zoning

variances (Applications) applicable to 4 Wilket Road (subject property). The Applicant/Appellant sought the consent and variances to permit the construction of a new detached residential building on each half of the divided lot.

The subject property is located east of Bayview Avenue on the north side of Wilket Road, south of the York Mills Park and Arena Complex (in the southeast quadrant of the intersection of Bayview Avenue and York Mills Road), west of the Wilket Creek and north of the Tudor Gate intersection with Bayview Avenue, in the former City of North York.

The subject property is situated in what all the planners agreed is an isolated enclave of a well-established, prestigious, large lot subdivision consisting of single detached residential buildings principally of 1960's design, in a mature setting. Wilket Road and Tudor Gate constitute a curvilinear street pattern, roughly in the shape of a crescent moon providing the only connection and access to the east side of Bayview Avenue, at two points. An internal additional road network to the enclave completes the access arrangement. Only the Tudor Gate intersection with Bayview Avenue, a major arterial, is signalized.

The subject property is improved with a single storey ranch bungalow similar in typology to the majority of housing in the enclave of 64 lots. Its rear yard backs onto the York Mills Park and Arena Complex. To the east and west, numbers 2 and 6 Wilket Road are large lot single detached residences of similar typology. The subject property faces a similar facing built form configuration across Wilket Road. Some detached dwellings are two storey and evidence renovation and replacement dwellings of substantial magnitude, all on the existing lots of record fabric.

It is the character of the Bayview Avenue frontage that is said to be experiencing significant change.

BACKGROUND

The Applicant/Appellant sought approval of the Applications. On appeal to the Toronto Local Appeal Body (TLAB), no substantive revisions were revealed in the disclosure and exchanges. The decisions of the COA are supported by only the briefest of commentary.

Of note, on the filing of the Applications, an identical proposal for the property to the east, at 6 Wilket Road, was submitted for lot division and variances at the same time.

As the hearing of these Applications was being scheduled, apart from date conflicts, the request was made that each set of appeals be heard separately, but by the same Member, if possible. This arrangement could accommodate the obvious prospect of similar fact evidence but freed the parties to participate in the respective appeals to the extent, and as they determined, might be warranted. Two Hearings ensues

separate consideration of the respective applications and the possibility of lower costs to the parties by their own election as to the degree of participation. Different counsel and witnesses were indicated to have been engaged. Cross-mutuality of interest was not asserted; the conditions for consolidation were not further advanced.

In the result, the appeals related to the subject property proceeded on their own. Mr. Wilson appeared on behalf of the appellants at 6 Wilket Road. He confirmed his client's intention to adopt 'Participant' status in the 4 Wilket Road hearing and consented to the request to ignore filings made on behalf of his client emanating from the retained planner, Mr. Ted Ceiciura, at the time that his client had appellant Party status.

Thereafter, the representatives of 6 Wilket Road took no active role in the Hearing, save as is described below.

Extensive filings in compliance with the Rules were made by the three active Parties, the Appellant, the City and Mr. Teichman on behalf of named residents, Ms. Walton (8 Wilket Road) and Mr. R Younes (1 Wyegate Court). All three Parties participated actively in the Hearing.

Common to the evidence in the proceeding and qualifying as 'background' material is a planning study and set of 'Guidelines' adopted by City Council in December 2015 entitled: 'Bayview Avenue Townhouse Urban Design Guidelines' (Guidelines). These Guidelines, Exhibit 4 to the Hearing, were referenced extensively throughout the three Hearing days and are discussed in the 'Evidence' and 'Analysis, Findings and Reasons' sections, below.

Finally, in advance of the sittings and at the outset of the Hearing several preliminary matters were tendered by Mr. Streisfield and dealt with by way of Rulings.

The TLAB expresses its appreciation to senior counsel for their assistance in an expedited resolution of the matters that were of assistance in keeping the Hearing timely and on track. These matters included:

1. The acceptance of Participant status and a Participant Statement respecting the Nejasmic appeals (6 Wilket Road) and the release and exclusion from consideration and reliance on all filings involving expert opinion evidence from that source;
2. The agreement to hear orally a statement from Ms. M. Leung, Mr. Streisfield's client, despite the absence of a pre-filed Witness Statement;
3. The acceptance of a revised zoning examination Notice dated November 1, 2018, resulting in the removal of some variances.
4. The agreement that Official Plan Amendment 320 (OPA 320), under appeal at the time of the Applications but now approved, would be admissible in evidence as relevant but not determinative of an issue.
5. That the Applications were consistent with the policy thrust of the Provincial Policy Statement (PPS) and conformed to the Growth Plan (GP), subject to

the caveat that it is the City Official Plan (OP) that is directed to be the main vehicle for the implementation of provincial policy, and both the PPS and GP references were not to be excluded from the evidence.

MATTERS IN ISSUE

While ostensibly a straightforward consent and variance appeal, the Applications raised the issue of whether the device of lot division is or can be beneficial and accepted as a generally established?) planning principle providing transition, via lot severance and in resulting built form, that is applicable and appropriate for the subject property.

JURISDICTION

Provincial Policy – S. 3

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

Consent – S. 53

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

- (a) the effect of development of the proposed subdivision on matters of provincial interest as referred to in section 2 of the Planning Act;
- (b) whether the proposed subdivision is premature or in the public interest;
- (c) whether the plan conforms to the official plan and adjacent plans of subdivision, if any;
- (d) the suitability of the land for the purposes for which it is to be subdivided;
- (d.1) if any affordable housing units are being proposed, the suitability of the proposed units for affordable housing;

(e) the number, width, location and proposed grades and elevations of highways, and the adequacy of them, and the highways linking the highways in the proposed subdivision with the established highway system in the vicinity and the adequacy of them;

(f) the dimensions and shapes of the proposed lots;

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

(h) conservation of natural resources and flood control;

(i) the adequacy of utilities and municipal services;

(j) the adequacy of school sites;

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

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

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

Minor Variance – S. 45(1)

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

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

EVIDENCE

The TLAB heard from three qualified land use planners well established in their profession. In sorting through their evidence, it is possible to discern where there was

agreement and, of course, where and why there was disagreement on the Applications, findings and advice on the relevant tests.

In terms of facts, there was no significant dispute on the following - although some of the detail was only revealed over the three days of evidence:

1. To the extent a 'Study Area' is necessary to evaluate the criteria of the City Official Plan (OP), the 'enclave' was an appropriate surrogate being a 'self-contained neighbourhood';
2. The Applications involved the request to sever a compliant original lot of record having dimensions of 32 m frontage on Wilket Road and an area of some 1400 sq m into two essentially equal parcels with a frontage of 16 m and lot area of approximately 709 sq m. To enable proposed dwelling units to be built on the severed lots, variances are required to allow the sub-standard lot frontage of 16 m (from 30m minimum), lot area of 709 sq. m (from 1100 sq m minimum) and coverage to 30.6% (from 25% maximum). As well, both sites required reductions for the proposed exterior and interior side yards of the new dwellings.
3. No variances are being requested for: building height; main side wall heights; front or rear yard setbacks, floor space index (FSI) or gross floor area (GFA).
4. The applicable and relevant tests for consideration are set out above, under 'Jurisdiction'.
5. The 'Study Area' holds some 64 lots on which are built one or two-storey, single detached residences with a variety of parking solutions; newer units contain integral garages as proposed by the Applications.
6. Of the existing lots, 85% meet the zoning standard of 30 m frontage (all exceed 22 m frontage) and 100% meet the zoning standard of 1100 sq m in area.
7. The land use designation is '*Neighbourhoods*' in the OP. The zoning by-law, 569-2013, now in force, presents uniform standards throughout the enclave.
8. Bayview Avenue is a major arterial undergoing applications for medium density residential uses from single detached dwellings, notably to townhouse forms, over a significant reach north and south, Highway 401 to the Post Road, respectively, and beyond.
9. The Guidelines provide direction to the intensification of townhouse development on specific lots identified as being included in the Bayview 'Corridor', to which the provisions of the Guidelines are relevant. While not all properties fronting on Bayview Avenue are included as having potential for townhouse development, some projects already exist in the vicinity of Wilket Road and Tudor Gate, on the west side of Bayview Avenue.
10. The Guidelines were not pursued as an OP Amendment and since December 2015 have provided guidance for projects proposed, which themselves are not necessarily or exclusively confined to the definition of the Corridor identified. However, there is agreement that where the Guidelines do encourage townhouse development on the Bayview Avenue frontage properties, it is clear that they address only the lands within the identified

Corridor; they provide no policy direction for adjacent properties. They are to continue in their existing state. Adjacent the west limit of the enclave, fronting on the east side of Bayview Avenue, there are seven properties with applications at various stages of review. One of these properties is 2 Wilket Road, immediately to the west of the subject property. In January 2016, that property was approved by the Ontario Municipal Board (OMB), as it was then known, for 7 townhouse units fronting on Bayview Avenue (2 Wilket). That project has not been built nor the site prepared; on the agreed evidence, a site plan application remains outstanding with the expectation that it will be dealt with by the City 'in weeks or months' (2 Wilket Layout Plan').

11. The 2 Wilket Layout Plan was described from the OMB zoning order schedules (Exhibit 5) to permit 7 townhouses having specific zoning standards. Its built form is to run west to east, fronting on Bayview Avenue, at three-storeys beginning with a setback of some 4.5 m or more from Bayview Avenue, a unit width of 5.8 m and building depth of 14.13 m, a rear yard of 6 – 8 m, a detached (from each unit) garage having a depth of 6.65 m and an 8 meter vehicular access driveway running north south along the easterly lot line, but incorporating a 2-3 m landscaped strip, as a vegetated buffer adjacent to the subject property. The 2 Wilket Layout Plan has a south side yard of 3 m along Wilket Road and a north side yard, abutting York Mills Park and Recreation Complex, of 1.8 m. (2 Wilket Layout Plan – is my descriptor).

Michael Manett provided strong opinion evidence in support of the appeals premised largely on the location of the subject property being the second lot east of Bayview Avenue. His Witness Statement (Exhibit 1) and aerial photography were used to demonstrate area characteristics he felt defining of the reason it is appropriate to sever the subject property, due to its adjacency beside the 2 Wilket Layout Plan.

If created, he termed the Applications parcels as 'transition lots' between the medium intensity development of the 2 Wilket Layout Plan and the 30 m (100 ft) parcels, to the east.

He was of the opinion that this latter approval reflected the fact that the Bayview Corridor was being transitioned from 'rural type lots to urban townhouses and from large estate lots'. He produced a Neighbourhood Map showing his appreciation of the influence zone of the Guidelines, shown as a black dotted line, inclusive of the subject property and 6 Wilket Road, to the east. However, he declined to address 6 Wilket Road, being a matter on appeal to the TLAB.

Mr. Manett was very clear in his evidence and was not dissuaded in cross-examination as to his central thesis of opinion:

"My characterization of the proposal on appeal is that these are transition lots as a result of the redevelopment of the adjacent property and its impact on the subject property. They are an appropriate transition between 5.8 m wide townhouses and the 30 m wide internal lots. They will maintain the area

character of detached homes as transitions from townhouses along the corridor and at the entrance to the neighbourhood. The townhouses will be part of the continuing Neighbourhood, once construction has occurred.”

The Bayview Corridor was his most significant factor in the analysis of the context of the appeals.

Mr. Manett was critical of the other planners for not acknowledging that the adjacency of townhouses ‘occurring’ are part of the character change with an impact on the planning and development of the neighbourhood. In his view, the process of change ‘shows up as a changing of the “planned context”, being of a different character’. He later tied that terminology to the OP, Chapter 3, section 3.1.2.1, Built Form, wherein general direction is given to the requirement to assess the existing physical character of an area as well as its planned context. The sidebar was said to refer to the ‘future’, which he applied, in the circumstances extant, to mean the introduction of the townhouses.

For the subject property, in his opinion, the 2 Wilket Layout Plan constituted the key change as it was no longer located between two large traditional lots but within a ‘context’ of being between small and large ‘lots’. The immediate adjacency to the townhouse form and access to Bayview Avenue constituted grounds for the consideration of the changes proposed for the subject property. He described he planned context change, in the form of the 2 Wilket Layout Plan, to be ‘extremely significant to the life of the subject property.

He urged on the TLAB that the test to be applied to the Applications is whether the context ‘compatibility’ and ‘fit’, being OP terms, could be achieved. He was firmly of the view that the proposed severed lots would be compatible: at 707 sq m they are ‘small-large’ lots supporting a GFA of 427 sq m (some 4600 sq ft) homes. He felt the lots could support such built form on ‘modern’ development standards employed across the City. Further, that they would be compatible with the house sizes of area housing, fit appropriately and respect and reinforce the area, without the necessity of being identical.

He said the OP, section 4.1 and the criteria of 4.1.5 clearly contemplated an expectation of new development and none of the criteria was offended.

In support of the theme of change, Mr. Manett pointed to approved and built developments on the west side of Bayview Avenue at Bayview Ridge Crescent. That townhouse project has developed with smaller lots to its west “similar to the proposal,” and being ‘transition single detached residential on lots smaller in size than those further west’ – a “comparable situation”.

He suggested that the new homes on the subject property would be facing a side yard, the flankage side of the lot across the street and would have no impact on that lot or the streetscape as all houses on Wyeigate Court front on its right-of-way.

The planner was frank to acknowledge that the proposal was different from the norm in the subdivision, not being of the same size. He stated that the OP provided permission for severances subject to the applicable tests. In detailing those under sections 51 (24) and 45 of the *Planning Act*, above, he was of the opinion that there was no requirement that lots be the same size or that there should not be a response to a different form along Bayview Avenue frontage with its influence and character altering attributes. He stated that the OP supports an expectation of change over time in Neighbourhoods through redevelopment, provided it is sensitive, compatible and fits.

He opined that the subject lots could aptly support compatible housing and, if approved, are deemed compatible. In his opinion, the redevelopment of a large lot and having a range of lot sizes is an appropriate form of transition that will respect and reinforce the neighbourhood and provide compatible land uses.

The proposal contemplates near mirror image properties, two stories, integral garages with exterior side yard setbacks of 1.85m (west side) and 1.82 m (east side) and 1.37 m interior set-backs that are “standard or generous for new development”. He said ‘modern standards’ are now in the by-law and provide for intensification, enabling simple economics in newer developments. He called wide side yards as ‘wasted space’, in layman’s terms.

He noted that earlier approvals on 8 Wilket Road permitted a 33% coverage (approximately 30.6% proposed) over the zoning standard of 25%, and that it also enjoyed reduced side yard setbacks, and on a much larger lot than proposed. He suggested this flexibility should be equally afforded the smaller lots. The 2 Wilket Layout Plan proposes a 40% + coverage.

Mr. Manett concluded his evidence by opining that the variances set out in Exhibit 2, the Examiners Notice of November 2018, are appropriate, meet the four tests and would permit ‘infill’ houses consistent with OP policy 4.1.9, that will fit with character of the area and are of an architectural style that is compatible. He said a plan of subdivision was not required and the criteria of section 51(24) that are relevant were met and conformed with, such that the proposal would properly address the transformation of the Bayview Avenue entrance.

He noted no negative agency comments (excepting the City Planning Department). He was of the opinion that the Guidelines provided no special policy direction on the Bayview Corridor except within its boundary. He said the Guidelines do not apply as they only deal with development in the Corridor. He stated that the language respecting ‘transition’ in the Guidelines only dealt with lands within the Corridor, not adjacent.

He acknowledged a vacuum of policy direction for properties at the edge conditions of the Corridor or how to transition into the interior of this or any other neighbourhood. That vacuum means that it is necessary to revert to the OP policies of respecting and reinforcing the existing physical character of the neighbourhood, which he felt he had addressed.

Further, he said that the proposal provided no adverse impact or precedent affecting the interior lots and that there were no comparable instances of which he was aware, of large lots juxtaposed against townhouses. He saw the only potential replication of the proposal to be a possible precedent at Tudor Gate and Bayview Avenue.

He concluded that the minor variances and consents were appropriate, met the tests under the statute and that the development Applications constituted good planning in the context of the neighbourhood.

He supported as 'standard' the conditions of consent approval identified in Exhibit 6.

In cross examination, by Ms. Czajkowski and Mr. Teichman, Mr. Manett acknowledged or agreed with several significant amplifications to his evidence-in-chief:

- a) In his view, statistics are not important, it is the visual relationship of parcels; he did not perform a policy characterization or Study Area basis; rather "character is reality".
- b) The existing physical character of the neighborhood today does not include townhouses and the OP reference to 'planned context', insofar as the *Neighbourhoods* designation is concerned means that 'the planned context is the existing context', consistent with the goal of 'respecting and reinforcing' and preserving City Neighbourhoods. Policy 4.1.5 is the key policy and it refers only to the 'existing physical character'.
- c) There is a separation distance in the 2 Wilket Layout Plan of about 22 m between the townhouses proposed themselves, and the lot boundary with 4 Wilket Road, albeit with detached garages in between.
- d) The Bayview Ridge townhouse comparable has two transition lots meeting full by-law standards as part of the approved project, consistent with the Guideline that requires 'transition' to inner stable residential neighbourhoods to be self-contained on the property, itself wholly contained within the Corridor.
- e) The proposal would yield the smallest lots in the enclave with no prior examples of severances to date.
- f) There are no OP policies addressing transition applicable to the circumstance. He suggested this was a 'gap' and that perhaps there could or 'should' be a policy 'to address adjacency', but there is none. He further agreed there was no policy relevant to the Applications in the Guidelines, the subject property being internal to the neighbourhood, in Guideline language.
- g) He agreed that in the 3 or 4 places of the City OP with policy language where the concept of transition is engaged in different land use designations, none use the metric of lot fabric, lot patterns or lot sizes as a standard or criteria to effect 'transition'.
- h) There is no suggestion by him of a need to provide transitional lots; simply, that if approved, the lots could be described as 'transitional' by virtue of size and location between two differing offerings. His support is not based on a

need or requirement for transition but that creating lots to be transitional is appropriate in their own right, on measures of fit and absence of impact. The proposed lots become 'transitional' by default.

- i) The reduced exterior and interior side yards may not be part of the prevailing pattern, but they are more than adequate on contemporary standards.

Ms. Marie Leung read with conviction a Statement, with the consent of the Parties. As a resident of the subject property since 1985, she expressed shock at the approval of the townhouse project, reflected in the 2 Wilket Layout Plan, approved by the OMB (Exhibit 5).

She anticipated her light being blocked, gradients changed, 7 new houses next door, increased traffic and a busier environment. She anticipated a decline in value of her property with the financial impact being experienced only by her family. She decried the role of the City which had chosen her lot "to be sacrificed" by failure to defend against the townhouses. She asked rhetorically: why were the townhouses allowed?

She stated that the Applications on appeal by her was "all I can do to salvage what little I have." She urged that the TLAB decision should "go with the common Canadian", not the City and the citizen Parties.

She said she had no knowledge of the townhouse approval process and did not engage it.

The City, through Mr. Baena, called Simona Rasanu, a Staff Planner, to provide, without qualifications challenge, land use planning evidence in opposition to the Applications.

Ms. Rasanu in her evidence and Witness Statement, Exhibit 7, identified the specific tests with which she took issue in the Applications, and spoke to each, principally in relation to the Official Plan:

- a) The section 45 (1) variance tests related to side yards, lot coverage, lot frontage and lot area;
- b) The section 51 (24) applications of paragraph c), f).

These provisions are recited above. Her advice was that none of these tests were met on these elements.

The City approach followed the common analysis approach of defining the neighbourhood, identifying its 64 lots, describing applications extant on five of them and concluding the Study Area, the 'enclave', to be an active development area where redevelopment generally consisted of construction of new houses on existing lots. She described variance activity (8 instances) were distinguishable by none exemplifying reduced side yards, here both external and internal applicable, to both sides of a lot.

She presented confirmation that the Applications would yield the smallest lots on the smallest frontages in the Study Area with no pattern or example of such dimensions in the enclave.

Through the use of her attached photo book, she opined that the Applications built form elevations were not seen anywhere within the Study Area and can't be deemed compatible with her developed description of the 'physical character of the area': consistently larger lots and frontages; extensive, mature, front, side and rear yard landscaping; significant separation distances; one- 2 storey dwellings, ranch style bungalows and an extensive tree canopied streetscape, of differing architectural housing design.

She contrasted the site plan and elevations (Exhibit 4) and said the typology did not reflect the mix of large stately homes with large front yards; that the proposed lotting was inconsistent creating a juxtaposition of sizes that are simply not a feature or even existing in the Study Area. She noted the designs to be a derivative of the reduced frontage: they could not accommodate a detached garage, and the integral garage design solution forced habitable space above grade in a manner not found in the study area.

She referred extensively to the Official Plan and its criteria for the examination of the physical character of the area to determine such policy appreciation for 'stability' (section 2.3.1), 'fit' (section 3.1.2), 'respecting and reinforcing' (section 4.1, 4.1.5) and measuring 'sensitive' and 'gradual change'. She asked acceptance that the Provincial Policy Statement mandated, section 4.7, that the local Official Plan be seen as the principle vehicle to gauge the general policy supportive of intensification, among other objectives.

She suggested that the recent formal approval of OPA 320 aided the analysis of compatibility and 'fit' by examining closely the fabric of built form in the immediate geographic neighbourhood, the factors of which were not respected or reinforced by the proposal, in lot creation or built form. She said the further reinforcement by OPA 320 of the relevant analysis to properties and blocks nearby only emphasized the inconsistencies of the proposal

Ms. Rasanu said that in the 'Neighbourhoods' designation, there was very little difference between 'planned' and existing physical character. The designation and zone standards were identical over the Study Area and essentially were met by every parcel within the 64 lot universe. She said it was the 'combination', working together of all reduced side yards, the coverage increase, elevated first floor, design, and lot frontages and sizes that yielded the proposal as being out of keeping with the existing physical character of the area, being the policy value the Official Plan envisaged to be maintained.

She said the OP does not provide a policy basis for the idea of a buffer or transition between permitted uses in a Neighbourhood designation and there is no policy support for the subject property to function as a buffer or 'transition lot'.

She described her familiarity with the Guidelines being the area planner for projects to which the Corridor applied. She described the Guidelines not as an encouragement for townhouses within the Corridor, but for use in the evaluation of townhouse proposals. Through various references, she advised that the Guidelines required such projects to 'buffer themselves': to provide separation distances in built form of townhouse proposals to protect interior lots; to require proposals to include severances of lots within Corridor development sites themselves, where possible, that emulated the development standards of abutting interior neighbourhood lots; and to recognize that such townhouse proposals only proceed on the basis they do not require or engage changes to the established lot pattern of interior neighbourhoods, by assembly, transition or otherwise. In her view, section 14 of the Guideline (Exhibit 4) is clear that interior lots not function as 'transition' properties/houses/lots. Further, section 6 notes that not every candidate Corridor site can proceed because townhouses can have an adverse impact on adjacent properties: the townhouse project has to build in the transitions via rear yard setbacks, angular planes and other devices (Guideline, section 13).

She noted that No. 2 Wilket Road has a built in transition of 22-23 meters between the townhouse use and the lot line of the subject property.

Ms. Rasanu said the zoning test of intent and purpose and under the direction of section 4.1.8 of the OP was not met for the reasons earlier identified: individually and collectively, the variances represent a significant departure from area character. As such, they adversely affected the desirability of the streetscape through the qualitative introduction of standards that were not minor. The introduction of those standards would be 'noticeable', 'adverse', 'negative', unsupported by policy and constituted a negative precedent.

She recommended dismissal of the appeals.

In cross examination, Ms. Rasanu acknowledged that the subject property was not deep within the neighbourhood and that the 2 Wilket Layout Plan showed the townhouses as being within 3 metres of the Wilket Road allowance, which she described as a side yard relationship, but substantial to the streetscape given the front yard setbacks proposed to be maintained in the Applications, at 11-12 m.

She was challenged that with the acknowledged townhouse streetscape change, how could the approved townhouses be 'compatible', but that the proposed prevailing detached dwellings in the Applications not be, all matters considered? She responded by referencing the statutory tests, the different policy directions and by suggesting that lot fabric, built form and setbacks were all connected and, in her view, not influenced by the 'flankage' description provided by Mr. Manett. She said that flankage was not relevant to the consent application.

In being pressed for a description of what she considered tangible 'impact', she responded that it was the lot fabric and the relationship set side-by-side of the side yard setbacks that create offensive built form not in keeping with respecting and reinforcing

the 'remarkable consistency' of the neighbourhood. She said the change in the lot fabric could lead to other approval applications, resulting in 'substandard lots contributing to massing and built form' changes.

She claimed she was not aware of 'transition lots' as a recognized planning principle and had not found anything that either prohibits or supports the concept beyond the discussion that she had identified in the Guideline.

She would not agree that the proposed lots reflected a 'sensitive and gradual' transition, stating that the test overall is to respect and reinforce the existing physical character of the neighbourhood and the proposed lot widths and attendances were neither sensitive nor gradual.

She agreed that the proposed massing would not exceed what could be built as-of-right on the lot, without a severance.

Joe Nejasmic is a builder including residential in-fill housing; he is a resident and co-owner of 6 Wilket Road, since 2006. Beginning with the townhouse approvals on 2 Wilket Road, he joined with the owners of the subject property submitting joint severance applications to create four lots from their two properties.

As alluded to earlier, Mr. Ryan Wilson appeared on his behalf to release Party/Appellant status. Mr. Nejasmic filed a comprehensive Participants Statement which was admitted without objection (Exhibits 9 and 9).

In Mr. Nejasmic's view, the character of Wilket Road begins at the 16 foot high hedge on the south and westerly limit of No. 8 Wilket Road. He suggested a real estate market hesitancy in acquiring large lots adjacent the proposed townhouses and that the zoning by-law should be updated to recognize its age, lot shortages generally, and to recognize new services recently installed of Wyegate Court. On June 1, 2011 he had obtained a variance for a lot coverage of 27.7% and had then obtained a building permit, intending to build a new and larger house.

He described the area as under slow development pressure and cited significant familiarity with the townhouse interest shown on the Bayview Avenue frontage properties, south to Tudor Gate. He had 'no problem' with severances occurring on the subject property, and his own.

He acknowledged to Mr. Baena that an April 2019 Hearing was scheduled in respect of the severance and variance appeals on his own property and was dependent on the success of matters herein. To Mr. Teichman, he acknowledged that his own efforts at sale had shown little market interest and that he could not achieve his asking price.

Mr. Nejasmic felt it was not fair that townhouse lots of 5-6 m in width, sitting at 3 m from Wilket Road should be next to 30 m lots; however, he acknowledged that as-of-right conditions could put housing at 2 and 4 Wilket Road 6 m apart.

Mr. Teichman call Franco Romano, a qualified land use planner, to provide opinion evidence on the Applications. He had supplied an extensive Witness Statement and 4 attachments, Exhibit 10.

Mr. Romano has had considerable experience in North York both in public service for the former municipality and in private practice. He defined the 'enclave' as a study area of 59 lots, excluding five properties fronting on Bayview Avenue (including 2 Wilket Road) that do not have access to internal streets, specifically Wyegate Court. He included other frontages on Bayview Avenue, south to Tudor Gate, as they had dual frontages with Wyegate Court and each had 3 m reserves on their Bayview Avenue side, prohibiting access to the arterial.

Mr. Romano characterized the Study Area as being in the same designation and zone, subdivided by 3 plans of subdivision and as having a discrete definable character of the following attributes:

- a). 59 'stately' sized lots with greater than 30 m frontages and 1100 sq. m area, as measured under current zoning, By-law 569-2013;
- b) regeneration has occurred only through replacement building, renovations and additions;
- c) different building typologies are found within mature landscaping having ground floor access close to grade and garage units accessory to the dwellings' built form, often not visible from the street;
- d) dwellings are 'stately', having an undulating pattern of main front walls, a spreading layout with side yard setbacks that are large and accommodate expansive landscaped open space strips.

He described the proposal as having a wholly distinct and different streetscape appearance and character departing from the policy direction of section 2.1.3 of the OP as it is proposed as: conventional housing and lot sizes, lot sizes and frontages that are not represented or even present in the Study Area, narrow side yards, truncated and elevated ground floor built form, uniform front wall alignments and dominated by front facing integral garages, driveways and minimal front and side yard landscaping.

He said these distinctions were key to his opinion that the proposal failed to reflect the Neighbourhoods policy criteria of the OP, section 4.1.5, for sensitivity, stability and fit, by the proposed changes to the streetscape through the approvals sought.

In his view, the Applications offended OP criteria 4.1.5 b) being comprised of undersized, conventional lots that by size and built form and configuration do not respect and reinforce the physical character of the neighbourhood. Referring to criteria d), he said the Applications presented a height, massing and scale manifestly of a

distinctly different character to the large lot spreading ranch bungalows, still prevalent on 80% of the lots.

Mr. Romano distinguished the relationship between the subject property and the 2 Wilket Layout Plan, with Mr. Manett's Bayview Ridge comparison. For the latter, he noted different zone categories, lot areas and frontages, the comprehensive planning and on-site incorporation of detached dwellings to abut its interior neighbourhood, and the different project context adjacent a medical office and school, on the Bayview Avenue frontage. In contrast, he said the 2 Wilket Layout Plan incorporated 'what it needs for transition and buffer for the arterial and the interior of the neighbourhood'.

He was of the opinion that there was no need for another dwelling unit to occupy space adjacent 2 Wilket Road as a buffer or transition. Rather, he said that its location on Bayview Avenue, under the City OP and the Guidelines (and OPA 320, by confirmation), were offered different policy framework and treatment adjacent the arterial, and a completely different context than the subject property planning instruments.

He said that this framework was longstanding under the OP and any owner could have been cognizant of it.

Taken together, he said these differences presented common sense reasons to avoid "development creep". They acted to ensure the maintenance of an edge between differently treated properties and the interior lot properties, in a compatible manner.

He concluded by opining that the variances failed to implement the OP, were not even close to the zoning standards (OP, section 4.1.5,6 and 8), "were not minor 'by an order of magnitude', reasonable or reflective" of Study Area data, and contemplated incompatible lot sizes that were not in the public interest under both statutory directions.

He said that in his view, it was not in the public interest to intensify an established residential lot by one measure that constitutes development creep. He said that to use the future townhouses to justify the land severance, presented a direct correlation to precedent impact, with similar 6 Wilket Road appeals pending.

He challenged the efficacy of the support rationale for the consent on similar grounds, referencing section 51 (24) b), c), e) and f), above recited.

In cross-examination, Mr. Romano agreed that no one mathematical calculation of area character is determinative, and that the prevailing dwelling type consists of single detached dwellings, with which the Applications are consistent. Further, that the OP directs the evaluation of 'respect and reinforce' as the totality of an assessment of 'fit', and that such does not mandate exactly the same pattern of built form or use.

And he agreed that transition is an element of planning but said that he did not know what a 'transition lot' is. In terms of the townhouse examples referenced, he said those site layouts had occurred as part of a comprehensive site proposal and in a

different planning context. Finally, he opined that nothing detracts from the need to do an evaluation in the context of the neighbourhood to conclude, on assessment, whether the proposal fits with the resulting physical built form of the character surrounding. He said that the failure to 'fit' here did not implement the criteria of the OP, section 3.1.2.3. He said that that is an impact: two 16m lot frontages is not in the public interest. He said an approval would engineer pressure to replicate conventional housing on conventional sized lots, which is "not for this neighbourhood".

In re-examination, he re-stated that streetscape assessment is in three dimensions, namely, all the elements of what one sees.

ANALYSIS, FINDINGS, REASONS

Despite the lateness of the day, I was grateful to receive thoughtful and challenging argument from counsel, including helpful case precedents of administrative law.

These included what Mr. Streisfield described as the 'Transition Lot Case', below referenced.

Mr. Streisfield raised several cogent submissions:

1. The presence of examples of 'transition lots' on the Bayview Avenue corridor, arguing how they got there is irrelevant. They sit comfortably beside stately lots. Further, their size is irrelevant as they function as a transition lot.
2. There is no precedent issue as each appeal stands alone for consideration and a negative precedent should not be inferred from a minutiae of differences, especially where there is no sense of crowding and no abutting neighbour objection.
3. Pure logic suggests that if townhomes can co-exist with 30 m lot frontages, so too can they co-exist compatibly with two 16 m lots.

Mr. Teichman and Mr. Baena emphasized the remarkable consistency of the Study Area and that the policy tests of 'respect and reinforce' transcended mere 'compatibility'. They argued that the proposed smallest lots, the applicability and non-compliance with select consent and variance criteria and the absence of any policy direction on 'transition lots' as a support rationale for the Applications, contrasted with streetscape change, all warranted dismissal. They suggested that the precedent 'line-up' was already in queue, with the appeals on 6 Wilket Road; finally, that property 'value' was not a determinative or appropriate planning consideration.

In a recent decision of the Local Planning Appeal Tribunal (LPAT), Member Swinkin presents an engaging introduction stating that the development proposal before him would "be entirely unexceptional" but for the "crux of the case" coming "down to a very simple proposition, which could be referred to as the defining issue" (*Oben Flats Sherbourne* (PL170299, January 24, 2019)).

In the case before him, the issue was whether shadowing should be allowed to fall on a public park in a narrow policy defined prohibited time period.

Here, it is whether severances and attendant variances should be allowed adjacent a proposed townhouse project to create 'transition lots' between the townhomes and the large lot internal lot pattern of an existing residential neighbourhood.

The Parties diverge dramatically on the 'crux' of the matter.

On the one hand, the Appellant projects that only the subject property, adjacent the 2 Wilket Road Layout Plan, has to absorb the impacts of changing land use on Bayview Avenue and the intersection at Wilket Road, adjacent the subject property. The client, Ms. Leung, aptly described these in terms of an apprehension for increased traffic, congestion, noise, activity and associated maladies of urban living, resulting from the townhouse approvals and use of the Bayview Avenue entrance.

While she stated these influences deflated her property value, the TLAB (and LPAT) have often made findings that the effect of planning decisions on property values, in either direction, are not proper considerations in examining planning merit, except perhaps in extraordinary circumstances. No such circumstances were presented here and certainly no evidence at all was called in respect of land valuation.

Both Ms. Leung and Mr. Manett, her planning advisor, expressed the townhouse proximity to be the rationale to divide the subject property into two parcels with two new homes. The parcels, in Mr. Manett's terminology, would then become 'transition lots', of generous size and upon which there can be easily built substantial dwellings that would 'fit' with the agreed neighbourhood. He supported the transition lots and housing, requiring relatively few variances, to be reflective of the changing neighbourhood, with impressive 4600 sq ft housing well capable of being accommodated on the lots. The development would be a compatible, sensitive, gradual change that is appropriately responsive to the changing role of the Bayview Avenue Corridor, and variance relief given elsewhere in the neighbourhood.

On the other hand, the City and some neighbours point out the consistency of the fabric of the agreed neighbourhood. They assert value in its preservation and protection from changes that are not welcomed, in terms of lot pattern, lot size, built form character, streetscape, building typology and architectural and landscaping consistency.

They argue that the use of lot division and 'infill' or intensification housing, termed 'transition lots', is neither a planning principle nor applicable to lot creation, has no policy support in the OP and is not rationalized in this circumstance by need, example or warranted circumstance. Their planners opine that 'transition' is proposed and available in the 2 Wilket Road Layout Plan and all policy guides mitigate against changes of the type proposed to the interior lots of the established neighbourhood.

Consequently, there is no agreement on the Application's or any of the relevant assessment criteria and tests.

The TLAB (and LPAT) has a well- developed approach to the resolution of such opposing disputes.

Planning is a policy led system with the province at the apex. Here, the Parties agree that while Provincial Policy supports intensification in Built Up areas, it leaves to the City OP the mechanics of implementation, also agreed.

The City OP has many policies, which deal with a multiplicity of concerns and objectives. It also provides language that affords a roadmap on the application, exercise and approach. Without laboring on the details (they are set out as extracts in the decision of Mr. Swinton *Oben Flats Sherbourne, paragraphs 99-102*), they entail the following principles found in the referenced sections of the OP:

1.1 issue resolution acknowledges integration, balance and interdependence of relevant considerations and policies....

1.4 the OP is a comprehensive and cohesive whole of policy, maps and schedules and non-policy textual commentary – the latter to take on meaning only as an explanation of the policies, maps and schedules.

5.6 the OP must be read as a whole “to understand its comprehensive and integrative intent as a policy framework for priority setting and decision making.”

In referencing this framework, I do not mean to imply that any of the planners failed to consider those elements of the OP to which they wished to call attention, but rather that it is the task of the decision maker to approach the complexity of the plan without dogmatic reference to text extracts chosen or underscored as significant.

That task, as well, has to acknowledge and respect consistency with the Provincial Policy Statements and conformity with the Growth Plan, matters not directly challenged in this circumstance and generally agreed to by the planners, as above noted.

The second task is also well documented in tribunal decision making, namely the approach to the OP in the context of the Neighbourhoods designation in which the subject property resides. It is roundly described in the penultimate paragraph by Member Burton in her decision in *319 Horsham Avenue* (TLAB Case File Number 18 155272 S53 23), also in the North York area of the City, issued January 22, 2019:

“The wording in the explanatory portion of the OP respecting changes to established neighbourhoods is relevant here. None is to be frozen in time, even though change is to be gradual. New structures should fit harmoniously within the neighbourhood,

but do not have to be identical. They just must have no adverse impact of a planning nature, not no impact at all. A new structure should fit the general physical pattern, but there can be more than one physical pattern in a neighbourhood. Respecting the existing physical character does not mean replicating what is there. I agree with Ms. Stewart that even under OPA 320 (which is not applicable here), there is no requirement for a numerical evaluation of the percentage or majority of lots in the area. Even if it did have application, the evaluation of this proposal cannot be reduced to a purely mathematical exercise, as Mr. Romano testified, but must be considered as a whole. Subsection 51 (24) does not prioritize criteria such as frontage when considering size under a consent application. Nor does the OP indicate a preference for large lots over small ones.”

The extract raises what has become a standardized and accepted practice of the planning profession. When faced with evaluating applications for severance and variances to permit new residential construction, the OP directs an inquiry into the change expected to the established neighbourhood.

The ‘established neighbourhood’ is the one seen by the planner to be an appropriate basis for comparative analysis. The OP limits that to the evaluation of whether the proposal ‘respects and reinforces the physical character of the neighbourhood’ (Policy 4.1.5). In Neighbourhoods, the explanatory text states that, in the vernacular, what you see is what you get.’ In other words, the OP policy for Neighbourhoods is their preservation and maintenance against change, while recognizing some change is inevitable.

The ‘neighbourhood’ cannot be so large as to make comparative analysis meaningless but there must be a process of identification and comparative analysis.

The measure of change is not ‘compatibility’, although that is an element of assessment evaluation.

As Member Burton further describes, and as debated in the Application, Neighbourhoods are not to be ‘frozen’ from change but change that is to occur is to be ‘gradual, sensitive and fit’. There are at least two types of change: those that occur as-of-right; and those that require approval that invoke the above tests and their application to the overall policy direction to preserve and protect features of City Neighbourhoods.

The test of ‘fit’, as Member Burton notes and Mr. Manett asserts is not identical form or measure or replication, but requires a direct, principled assessment of the ‘totality’ of area character. Because the *Planning Act*, above, and the evaluation criteria of section 45 (1), section 51(24) and of OP policy 4.1.5, all address the ‘size’, ‘pattern’, orientation and character of lots, the planning profession puts these under a specific, often quantitative and qualitative analysis in furtherance of the OP direction to assess the physical pattern of development.

The jurisprudence is clear that such measures are descriptive and important to determining the relevance of some defined character attributes, where description is capable of being ascertained and can be said to have meaning. In the larger context, the direction in the OP requires the assessment of base line conditions. While neither the OP nor OPA 320 prescribe the precise details of the assessment process or the measures by which the listed performance measures are to be presented, the planning profession time and again responds by providing a panoply of information germane to defining area character. It then applies the observations found in presenting a comparative basis for the implications of the proposal.

The Member correctly observes that the evaluation of a proposal cannot be reduced to a purely mathematical exercise as the assessment must result from a comparison of the whole.

In this case, I find that the assessment has been broad and comprehensive, employs as one ingredient statistical measures of conformity and consistency, and the cumulative analysis, actually from all three planners, is helpful to the determination.

The extract, above, also notes that the OP does not prioritize 'frontage' or lot size character; however, it does expressly identify these attributes as relevant criteria and the overall assessment allows and necessitates that componentry being considered.

In essence, all criteria relevant to all the variances and suitability tests for lot division must be called forth. That examination is to be without fear or favour to anyone but must consider the relevant and exclude the irrelevant. In this respect, I adopt as an appropriate attitudinal direction the language of LPAT Member McKenzie in a decision supplied by Mr. Streisfield, *190 York Mills Road* (PL120799, issued August 22, 2013) at paragraph 60 wherein he states:

"The Board therefore finds that conformity with OP policies requiring new development to respect and reinforce the existing physical character of the neighbourhood, buildings, streetscapes and open space patterns must include and be based upon all properties in the neighbourhood, or, in such matters as are before the Board, the study area as identified as a suitable proxy for assessing compliance."

At that time, he went on to suggest there was no policy basis supporting a determination of character based on percentages or majorities. I take this as a statement of fact and was not intended to be a preclusion of such evidence. Indeed, he goes on to fully consider whether anything in the statistics yields something 'new or novel' to the neighbourhood. In any event, the times have moved on and OPA 320, as an example and discrete from current jurisprudence, has added to the mix of relevant considerations, measures of prevalence and the scope and role of study areas.

Here there are no disputes on those matters. Mr. Manett did not make independent assessments of a defined Study Area and acknowledged and substantively

agreed with the statistical measures of the other planners on issues as to the prevalence of some factors: lot sizes; lot areas; variances to building envelopes; characterization of typologies, built form, streetscapes and lot patterns.

With that backdrop, I return to the evidence on the issues as above recited:

“ the issue of whether the device of lot division is or can be beneficial and accepted as a generally accepted planning principle providing transition, via lot severance and in resulting built form that is applicable and appropriate for the subject property.”

Having heard the evidence of three planners and two owners with direct interest in the outcome, I find the issue statement is appropriate, if somewhat confining.

Mr. Streisfield provided what he termed the ‘Transition Case’, a decision of Member Carter-Whitney of the Ontario Municipal Board concerning *2655 and 2659 Bayview Avenue, 15 Old Colony Road* (MM1140064) issued March 15, 2016.

That case involved the approval of a rezoning for a Bayview Avenue Corridor townhouse project, inclusive of two single detached residential lots abutting the established residential neighbourhood, both being of a smaller frontage than the internal lots.

The Member at paragraph 22 and 23 states the following:

“A sidebar addressing the planning concept of transition is found with the Built Form policies at s. 3.1.2 of the OP....

(Mr. Goldberg) testified that the sidebar reflects the broader planning principle of transition, and that the OP further speaks of transition in directing that development be sensitive, gradual and generally fit. Mr. Matthew agreed that the concept of transition is a planning principle and noted the need for an appropriate transition between townhouses and single detached dwellings. The Board accepts that transition is a planning principle that seeks to endure new development is introduced in a manner that is sensitive, gradual and generally fits. Transition can be provided through different mechanisms, including setbacks, landscaping **and transition lots.**” (my emphasis).

In the case before me, Mr. Manett called the Applications transition lots ‘if they are created’. Ms. Rasanu was not familiar with the concept of transition lots and Mr. Teichman had Mr. Mannett acknowledge that where transition is spoken to as a ‘policy’ in the OP, nowhere were transition ‘lots’ identified, as a device to effect transitions.

All the planners identified that there were no transition policies applicable to the Applications found either in the OP or the Guidelines.

I accept that lot pattern and lot creation can be a device to effect transition between different scales of development in a designation. I find that that circumstance and use was aptly demonstrated not only in the *2655 and 2659 Bayview Avenue, 15 Old Colony Road* decision, but also in the descriptive characteristics of the Bayview Ridge developments, spoken to extensively by all three planners.

However, I find the application of the above decision and that of Bayview Ridge to be of a different circumstance and import to the present applications. The main distinction is, of course, that in both examples the creation of 'transition lots' occurred as a direct component of the original applications, project approvals and construction. Namely, the 'transition lots' were planned and implemented as such; they were not a consequence of the project and a subsequently arising concern for impact, nuisance, or amelioration of some identified incompatibility.

Indeed, there was no example provided of a rationale for 'transition lots' being developed in response to a townhouse project that demonstrated adverse impacts on adjacent properties – let alone, as here, a project that had not yet been built.

The Applications are not such a circumstance as described by example. The Applications differ in several material respects:

- a) The 2 Wilket Road Layout Plan has not been constructed and there is no evidence of impact beyond apprehension;
- b) The 2 Wilket Road Layout Plan envisages 22-23 m of buffer on its own lot between the townhouse units and the lot line of the subject property, consisting of landscaped open space, driveway, one-story garages, and rear yard amenity space all blocking sightlines, sound travel, visibility, and ameliorating shadow impact;
- c) Existing as-of-right conditions of proximity between dwellings could be markedly inferior in separation and attenuation of potential land use impacts.

More important, in the subject Applications, nothing was ever described to my satisfaction as what would be accomplished by lot division of 4 Wilket Road, other than the creation of two housing units both of which would now be closer to the townhouse source of agitation.

While it is true that arithmetically two lots of 16 m width would be the interface between the townhouses and No. 6 Wilket Drive at 30 m+, I was not apprised of any public benefit yielded. Clearly, the owner expects some financial benefit from lot division, but that is not a driving consideration in the evaluation of merit.

I find that placing two new dwelling units closer to the perceived nuisance, assuming without deciding that townhouses could generate that state, hardly seems responsive to the opening consideration in section 51 (24) relevant to a consent application:

“and welfare of the present and future inhabitants of the municipality and to,...

(b) whether the proposed subdivision is premature or in the public interest;” (my emphasis)

I was not provided with any explanation as to why these two lots should be subjected to the role of buffers or transitions, any more so than the one existing lot.

It could be argued that future owners would have the opportunity to decide their place of residence and might elect that location, but that has as hollow a ring as market rigidity to acquiring the existing lot.

It is said that ‘need’ is not a relevant consideration to planning approvals and that there is no requirement to justify ‘need’. While that may be the case in many circumstances, the Appellant’s request for land division and relief to build houses that require side yard and coverage changes to applicable zoning, does call for justification.

Mr. Manett removed ‘transition’ from the mix when he stated the effect, not cause for lot creation is transition; he did not assert that a planning purpose was being advanced for transition as a rationale for approval. Rather, he relied on the appropriateness of the fact of the project to support the rationale for development. Namely, the lots proposed to be created were large in relation to most lots in the City and the relief requested was related to the norm of measures requested elsewhere in the City. He justified the appropriateness of the built form on that basis and that it would fit in with comparable sizes of dwelling units and that the lots were well capable of accommodating the built form with no undue adverse impact.

The ‘City’ is not the comparative standard directed by the OP; it is the neighbourhood.

While I agree that the proposed elevation plans could be built on the proposed lots, that too is not the relevant test or standard.

I find that there must be a connection between the proposal and the consent and the variances to the neighbourhood. Even accepting that the Bayview Avenue Corridor is undergoing transition and is a part of the neighbourhood (as largely acknowledged by all the planners), that transition is being carefully managed with a view to it not impacting on the traditional neighbourhoods and lots which do not have frontage on Bayview Avenue.

That ‘management’ is through the implementation of a policy Guideline, which is not an OP amendment. Even so, the Guideline, or at least the parts brought to my attention largely by the City and Mr. Romano, clearly addresses the Corridor. It sets the bar that townhouse development be self-contained and not impact adjacent neighbourhoods. In the two or three proximate properties subject to the Guidelines, this

buffering and self-containment without impact has been or is proposed to be accomplished on the sites subject to the application. I was not shown an example of an adjacent interior lot being the subject of buffering based 'transition' approvals after the fact of a townhouse approval, whether built or in the site plan stage. The mere existence of different sized lots internal to neighbourhoods in proximity to the townhouse project is an understood norm and a consideration that is the result of comprehensive development. It is not the basis in itself to initiate further change, at least on the historical record.

I accept that in the absence of policy direction in the Guidelines, the relevant consideration of the Applications is based on the City OP as above described. That analysis, now somewhat traditional, is to invoke a neighbourhood analysis of whether the proposal is consistent, compatible and respects and reinforces the myriad of considerations that comprise neighbourhood character.

In that regard, I prefer the evidence of the planners Rasanu and Romano who performed study area character assessments, provided a cogent description of the neighbourhood and found that the Applications departed in material ways from character recognition, respect and reinforcement.

These critiques were categorized and challenged as mere 'words'. However, I find that the Applications would result in houses that:

- a) Are on lots of a frontage and size for which there is no instance of a single comparable in the study area. These are directed and relevant assessment criteria, among others. I so found in *116 Poplar Road*, (TLAB Case File Number 17 170515 S53 43, issued September 21, 2017, paragraphs 43, 48 and 49), supplied by Mr. Teichman.
- b) Demonstrate a built form that is characteristically different from the prevalent building typology by being mirror images massed closer to their respective lot lines than zoning permits, having first floor elevations raised noticeably above grade, demonstrating reduced landscaped open space and a coverage that exceeds by-law standards arising from and dependent on the reduced lot width sought to be approved. Mere assertions of 'compatibility' are not enough as that is but one element of a successful integration with neighbourhood character; and
- c) I find that the proposed built form is dramatically out of keeping with the lot pattern and streetscape of the study area; I am not prepared to parse the relevant component of the neighbourhood to west of Wyegate Court. That differential in composition of neighbourhood characteristics, if any, was not demonstrated to exist and support a recognizable distinction.

**Decision of Toronto Local Appeal Body Panel Member: I. Lord
TLAB Case File Number: 18 215889 S53 25 TLAB,
18 215888 S45 25 TLAB,
18 215883 S45 25 TLAB**

Previously, in *405 The Kingsway*, (TLAB Case File Number 17 164539 S53 04 released September 24, 2018, and revised), I addressed an ‘edge condition’ argument from the perspective that where changes are requested from zoning standards, these are appropriately addressed through policy and regulation in the Council enacted instruments supportive of transitions, absent demonstrable reasons otherwise. The zoning here is longstanding and has been revisited and re-confirmed without such recognition. I am not convinced that the 2 Wilket Road Layout Plan warrants any special dispensation on the evidence.

- d) I find that the approval of the two dwelling units would be an abrupt change not warranted on the evidence of townhouse impact and not consistent with the OP policy direction that change ‘fit’, be ‘sensitive’ and ‘gradual’.
- e) I accept the submissions of Messrs. Teichman and Baena that an approval of a severance in the location proposed would act as an incentive not just in this Study Area east of Bayview but could become a relevant consideration for lots along the Corridor. In my view, as I expressed in *116 Poplar Road* (TLAB Case File Number 17 170515 S53 43, issued September 21, 2017, at paragraph 50), it is not for the TLAB to start the erosion of ‘Neighbourhoods’ by the introduction of a precedent for ‘transition lots’, when it is the express objective of the Guidelines that that simply not occur.

Whether it is a ‘gap’ as Mr. Manett described or a conscious policy omission as alluded to otherwise, the City OP does not contain transition policies within the Neighbourhoods designation as between townhouse uses and detached residential dwelling units. Clearly, they can and do co-exist. On the facts of this case, I am not disposed to creating a policy exception in the circumstance applicable to 4 Wilket Road.

I find that paragraph 27 of the ‘Transition Decision’, *2655 and 2659 Bayview Avenue, 15 Old Colony Road*, consistent with this interpretation; namely, the approval of ‘transition lots’ in that decision: “should not be considered a precedent in relation to the size of lots in the interior neighbourhood”.

- f) Independent of the Guidelines on the Bayview Avenue Corridor, I accept the evidence of Ms. Rasanu and Mr. Romano: there is no relevant history of severance activity in the Study Area; the lot pattern is original, uniform, consistent, and its fabric is

**Decision of Toronto Local Appeal Body Panel Member: I. Lord
TLAB Case File Number: 18 215889 S53 25 TLAB,
18 215888 S45 25 TLAB,
18 215883 S45 25 TLAB**

entirely stable, apart from the supported Guidelines and properties directly engaged and applicable to a defined Bayview Avenue Corridor.

While that Corridor may be observed, as Ms. Rasanu did, as transitioning, the neighbourhood defined by Mr. Romano and accepted largely by the other two planners is not.

Redevelopment and regeneration is occurring on existing lots of record but stability of form and function has been maintained, reconfirmed by Bylaw 569-2013 and is evolving as supported by the OP in a 'sensitive, gradual' manner that 'fits' its character.

The subject property is part of that neighbourhood and indeed sets its presence as one of the first visible markers, entering from Bayview Avenue. While the size of the subject property aptly meets the ability of lot division to accommodate large lots on a broad City comparative basis, in my view and for the reasons given it does not meet the *in situ* consent application criteria in section 51(24) of the Act, with particular reference to sub-sections b), c), d) and f), above.

- g) I accept that substantial homes could be physically built on the subject property if severed, however, that alone is but a threshold for consideration of severance. I find that the variances themselves, cumulatively, call forward a spacing between buildings, a site conversion, excess coverage and a typology presentation, including the design prevalence of double integral garages and the mirror imaging of buildings, that are characteristics wholly inconsistent with the neighbourhood.

They would create, at a significant entrance, a building scale and massing that is not consistent with the spacious, serene, even 'stately' character of the balance of the subdivision plans that comprise the Study Area. I find no justification to set aside the 'Neighbourhoods' preservation policy objectives and to depart from the physical character of an area, as described by all the planners, with such an abrupt presentation of built form.

To do so would establish a new and different streetscape presentation in the absence of an expressed or compelling public interest objective and direction or a fulsome assessment and application of area character. I find the variances and plans proposed to be such a departure from area norms as to not be justified even under the latitude of broad definitions of 'compatibility', 'similar in form', 'dwelling type' and the scope of

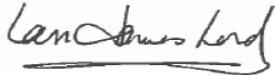
private design prerogative. Respectfully, the Applicant has not met the onus of satisfactorily establishing the application of the four variance tests.

- h) Consequent to the foregoing, there is no need to address conditions of approval under either the consent or variance jurisdiction.

DECISION AND ORDER

In the result, all the appeals are dismissed, and the decisions of the Committee of Adjustment are confirmed.

X



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