

DECISION AND ORDER

Decision Issue Date Tuesday, July 23, 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 (the "Act")

Appellant(s): DAVID T MILTON

Applicant: PETER HIGGINS ARCHITECT INC

Property Address/Description: 4 PINE RIDGE DR

Committee of Adjustment Case File Number: 17 268057 ESC 36 CO, 17 268068 ESC 36 MV, 17 268076 ESC 36 MV

TLAB Case File Number: **18 126075 S53 36 TLAB, 18 126077 S45 36 TLAB, 18 126079 S45 36 TLAB**

Hearing dates: Friday, July 20, 2018 (Day 1); Wednesday, August 15, 2018 (Day 2); Wednesday, September 19, 2018 (Day 3); Thursday, October 4, 2018 (Day 4); Friday April 26, 2019 (Day 5); Tuesday, May 7, 2019 (Day 6); Wednesday, May 22, 2019 (Day 7).

DECISION DELIVERED BY Ted Yao

APPEARANCES

| Name | Role | Representative |
|--|-------------------------|----------------|
| Andrea Cheung, Noelle Butler | Owners | Amber Stewart |
| Franco Romano | Planner, Expert Witness | |
| Cheryl Harrison-Wright and Robert Wright, John Koop, Sandra and Paul Spurgeon, John Bartlett, Catherine Manley, Lou Bikowski, Robert Long, Joan | Parties/Appellants | Ian Flett |

Decision of Toronto Local Appeal Body Panel Member: T. Yao
TLAB Case File Number: 18 126075 S53 36 TLAB, 18 126077 S45 36 TLAB, 18 126079 S45 36 TLAB

Hunter, Nancy Inberg, David Milton,
 Anne Winter, Beverley and David Baird

Catherine Spears

Planner, Expert Witness

INTRODUCTION

The owners, Andrea Cheung and Noelle Butler, seek to demolish an existing one storey house, sever the lot and build two new two-storey houses. To do so they need 9 variances for the southern house (Part 1) and 8 variances for the northern house (Part 2).

| Table 1. Variances sought for 4 Pine Ridge Drive | | | |
|---|--|--|---|
| | Required | Proposed Part 1 (the southern house) | Proposed Part 2 (the northern house) |
| From City wide Zoning By-law 569-2013 ¹ | | | |
| 1. Lot area | 2013 lot area; namely 2891.84 m ² | 1448.6 m² | 1447 m² |
| 2. Min. front lot line setback | 15.08 m | 11.11 m from front lot line | 11.11 m from front lot line |
| 3. Building height (est. grade) | 9 m | 10 m | 9.9 m |
| 4. Driveway width | 9 m | 10.65 m | 10.75 m |
| From former City of Scarborough Zoning By-law 9396 | | | |
| 5. Exception 1, Cliffside By-law. | One single-family dwelling per lot or block as shown on Registered Plan. | Two single family dwellings on a lot with 36.03 m frontage and lot area of 1448.6 m² | Two single family dwellings per lot with 35.4 m frontage and lot area of 1446.92 m² |

¹ The present City-wide zoning by-law was adopted in 2013 and because appeals are still being resolved, the City's zoning examiners require two sets of zoning compliance (testing for any variances from 2013 zoning by-law and previous Scarborough Cliffcrest Zoning By-law 9396.) There is considerable overlap between the new and previous by-law.

| | | | |
|--------------------------------------|-------------------|----------------------|--------------------|
| 6. Max. building height (mean grade) | 9 m | 9.9 m | 10 m |
| 7. Max. number of parking spaces | 2 | 3 | No variance sought |
| 8. Max area of garage | 75 m ² | 75.68 m ² | No variance sought |
| 9. Max size of garage | 7.6 x 7.6 m | 10.16 x 9.44 m | 7.75 x 7.96 m |
| 10 Max. driveway width | 9 m | 9.9 m | 10.75 m |

Both proposed new houses seek similar variances except that the southern house (Part 1) needs additional variances to increase the permitted number of parking spaces and larger garage (which I eventually deny). Part 1's house will face Meadowcliffe, but its garage will be at the back, where the driveway will curve into it, causing the necessity for the width variance (please see diagram on page 26).

BACKGROUND

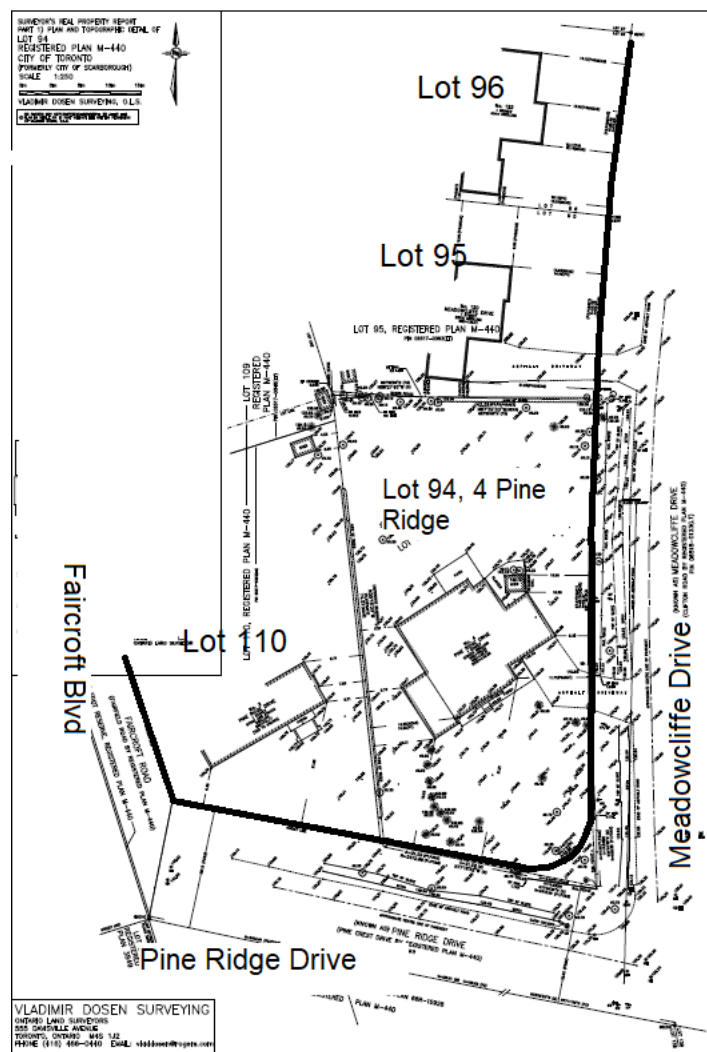
This neighbourhood, comprising about 120 homes, is a few blocks east of Bluffers Park in the Cliffside Community. Ms. Spears, the opponents' planner, wrote that it is "spacious, with a rural estate character with large lots and a variety of architectural styles" and "one of the more exclusive residential districts in southwest Scarborough inspired by the natural beauty of the Scarborough Bluffs".

On the next page is the proposed R plan which illustrates the basic disagreement in this hearing. The owners argue that if 4 Pine Ridge (Lot 94) is severed, it merely continues a physical pattern of the two northern lots 95 and 96² on Meadowcliffe. If a severance is granted for Lot 94, the opponents argue a similar argument could be successful elsewhere, for example the immediate neighbour, Lot 110 (2 Pine Ridge), resulting in several severances in the neighbourhood, and a breakdown in what has been up to now a stable lotting fabric.

² The pattern would be based on these measurements:

| Address | Frontage | Area |
|---|-----------------|--------------------------------|
| Lot 96 (122 Meadowcliffe) | 30.48 m | 2078 m ² |
| Lot 95 (120 Meadowcliffe) | 30.48 m | 1637 m ² |
| Lot 94, (two new lots, if consent is given) | About 36 m each | About 1450 m ² each |

MATTERS IN ISSUE



A severance is not given lightly. The decision maker must have regard to:

- The welfare of present and future inhabitants of Toronto; that is, both the neighbours who are represented by Mr. Flett and the future occupants of the land;
- higher level Provincial Policies that promote intensification on land that is already serviced, particularly where it is near major transit. This land is serviced, and within the urban boundaries but is not near major transit;
- matters of provincial interest as referred to in section 2 of the *Planning Act*, for example, h.1 the accessibility for persons with disabilities to all matters to which the Act applies. This leads to the condition regarding an elevator rough-in.
- consideration of the dimensions and shapes of the lots; and
- Official Plan conformity.

The minor variances require a different test, namely that the variances must meet all the four tests under s. 45(1) of the *Planning Act*. The tests are whether the variances individually and cumulatively :

- 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 of the land; and
- are minor.

Early in her testimony, Ms. Spears, the neighbours' planner, put the central issue this way:

One of the other concerns I have is that east of Faircroft, the rear yards are very large. Corner lots in particular offer views, as I mentioned there's no fences, there's spacious lawns and trees, and in this case, what's happening, is because the lot is being divided into two, . . . the rear yard's gone. The rear yard that is characteristic of this neighbourhood is gone. And a house is being built in the rear yard. [and this could be replicated in individual severances and assemblies for two into three lots]. . you could go around the neighbourhood and count them up.

In fact, I've been retained by the City of Toronto for 36 McNab. . . . and that particular lot is 1449 m². That's the equivalent what the proposed lots are here, after the severance. And . . . the proposal [for 36 McNab] is to take the size here and then split it again, into two 750 m². So, one of my concerns is **you start allowing consents in this area, you introduce a negative precedent and one that will destabilize the neighbourhood.**

Subsequently, I asked both planners to review possible future candidates for severance considering the concerns expressed regarding precedent and destabilization. My conclusion is that precedential effect would be minimal. I set out the facts on which I rely; facts that were amassed through a multi-day hearing with significant planning evidence.

This neighbourhood has experienced a limited number of severances, approximately two per decade for at least two generations out of 80-130 lots. The OMB granted one severance in 2005, two in 2016, Before that, there were a scattered few from the 60s to the 90s. This is gradual physical change in the sense of the words of the Official Plan:

Physical changes to our established Neighbourhoods must be sensitive, **gradual** and generally "fit" the existing physical character. (the preamble to 2.3.1 Healthy neighbourhoods)

This 2019 decision becomes part of this temporal context and must be considered by any future applicant in the short to medium term. I would argue that this decision in fact makes it increasingly difficult for an applicant who seeks the fourth severance in this decade to be considered "gradual" and to fit in, especially if the applicant seeks to create smaller lots than are approved here.

EVIDENCE

As well as Catherine Spears, I heard from Franco Romano, the owners' planner. Both were qualified by me as able to give opinion evidence in the area of land use planning.

Mr. Romano and then Ms. Spears testified on Days 2 and 3. On Day 3, at the conclusion of Ms. Spears' evidence, Mr. Romano was recalled, to rebut Ms. Spears'

assertion that the severance would cause a “precedent”. On Day 4, Mr. Flett, lawyer for the appellants, brought a motion to reopen his case to deal more fully with the reply evidence given by Mr. Romano. The motion was allowed but no evidence was called that day to give Mr. Romano time to prepare his evidence. On Day 5, Ms. Spears was recalled and testified as to twenty specific properties and Mr. Romano gave evidence in reply. On Days 6 and 7, I heard submissions from the parties.

ANALYSIS, FINDINGS, REASONS

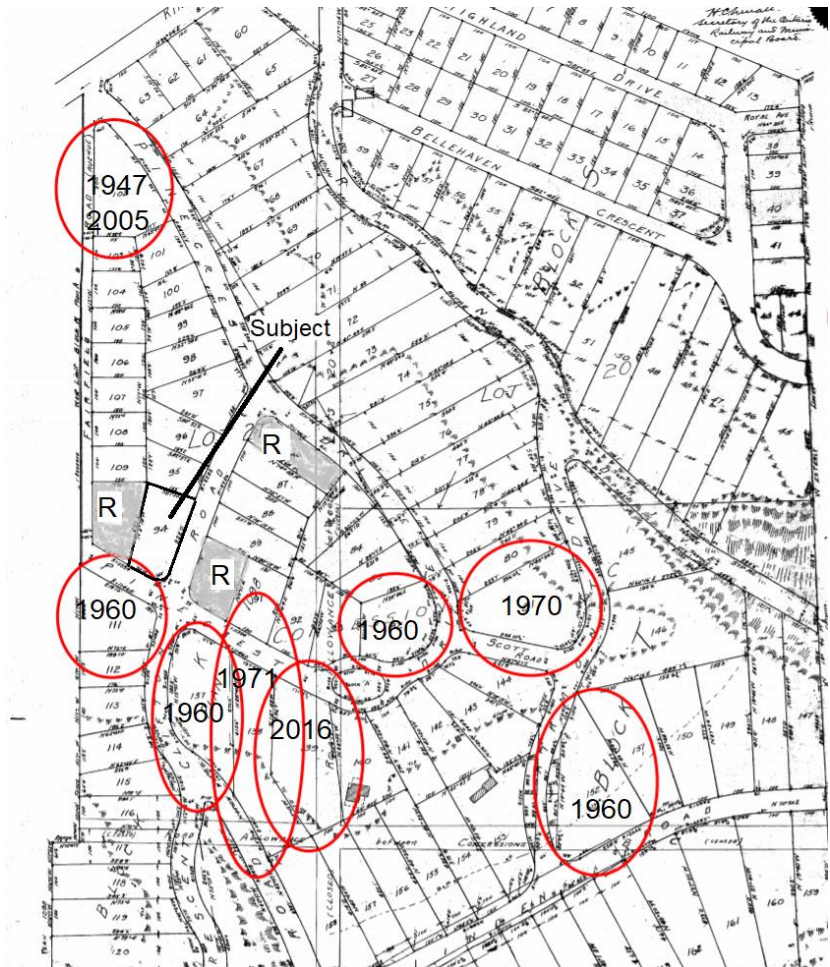
Overview

I am granting the severance but denying some of the variances.

The zoning and road pattern

The Cliffcrest Community Zoning By-law 9396, adopted in 1960, covers a larger area, perhaps ten times larger than the subject neighbourhood. Most of Cliffcrest consists of typical frontages of 12.2 m (40 feet) and depths of 30.4 m (100 feet). The subject property has a frontage of approximately 72 m; a depth of approximately 40 m depth; and an area of approximately 2900 m², which is about eight times larger than this typical lot.

The Pine Ridge neighbourhood has five streets; three connect to Kingston Road (McNab, Faircroft and north branch of Pine Ridge). These connections are not at right angles. McNab, Faircroft and the north side of Balcarra have regular rectangular lots; the remainder have irregular front and rear lot lines. Lots on the south side of lower Meadowcliffe abut Lake Ontario. Pine Ridge has a curved road pattern, with awkward angles at intersections. Thus, the neighbourhood itself is varied, within and without, and the same Cliffcrest By-law must accommodate this varied landscape as well as the more typical subdivisions north of Kingston Road.



Cliffcrest Exception 1

Instead of regulating lot size with minimum frontages and lot areas, the Cliffcrest by-law imposed a system of **density control**:

“1. One single family dwelling per lot or block as shown on a registered plan”.

This exception applies to the entire Cliffcrest Community. This density control is a substitute for the more was covered by interlocking registered Plans of Subdivision. Instead of setting minimum performance standards, (e.g., frontages and areas) Council historically set out the above standard, which is keyed to the Plan of Subdivision.

The Pine Ridge neighbourhood originates from two plans: Plan 1100 (170 lots, registered June 1921) and Plan 849 (29 lots, registered April 1950³). Plan 1110 created Pine Ridge Drive and as well as four other streets, and Plan 849 created McNab Boulevard as well as its attendant lots. Remarkably, most of the original lotting fabric remains today, 2019. On the map of Plan 1100 on page 6, Mr. Romano has drawn ovals showing which original lots now contain two houses. I added the year of amendment to these ovals as well as three lots which are shaded lots with an “R”. These are lots Mr. Romano conceded could be susceptible to a future severance application.

No frontage variance under the most recent by-law

In 2013, the present City-wide Zoning By-law 569-2013 reenacted the Cliffcrest density control as RD exception 200:

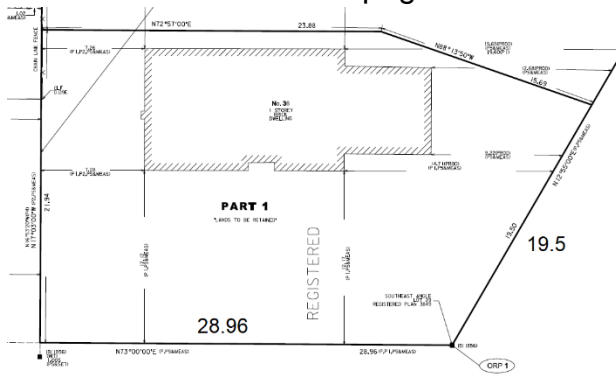
- (A) the minimum lot **frontage** is that which existed on the date of the enactment of this By-law;
- (B) the minimum lot **area** is that which existed on the date of the enactment of this By-law (my bold)

Mark Scanlon, the plan examiner, did not set out what the minimum frontage which existed in 2013 was for the subject lot but we can infer that whatever he calculated it was, the proposed frontages exceeded this number. This is because he required no variance for the frontage under By-law 569-2013. This is not always the case and we can see this from the current application for 36 McNab. There, the plan examiner, Paul Dhir, calculated the minimum frontage as the Balcarras frontage, shown

³ Ms. Spears used lot only from Plan 1100, whereas Mr. Romano, the owners’ planner, used both plans.

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in the sketch on the next page as 28.96 m. (I have just shown the southern lot.).



BALCARRA AVENUE

(BY REGISTERED PLAN 3849)
PIN 0643-0249(1T)

Neither of the proposed new frontages of 19.5 m (southerly lot) or 22.69 m (northerly lot) can meet this and therefore both new lots require a frontage variance from 569-2013.

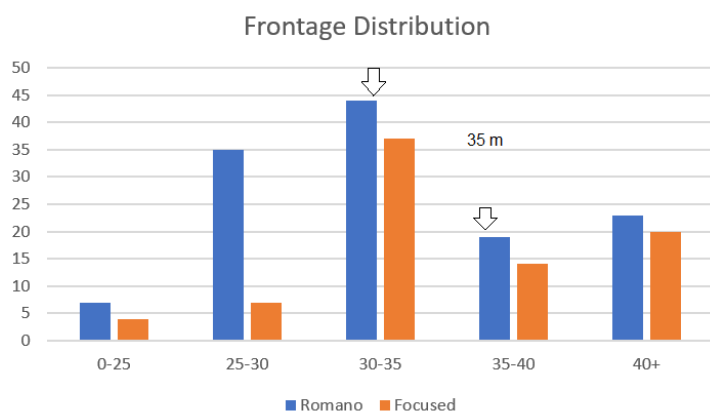
There is no ability for the respective lot owners of 36 McNab, 4 Pine Ridge or the TLAB to question conclusions of the plan examiner. But since the 4 Pine Ridge application does not need this variance and the 36 McNab does, the implication is that this application is closer to

maintaining the intent of the zoning by-law than that one.



The study areas

The two study areas are shown above. Mr. Romano's (owners' planner) area is on the left and Ms. Spears' (opponents' planner) "focused study area" is on the right. Both planners' study areas include Pine Ridge, Faircroft, Ledge and Meadowcliffe (about 82 properties). Mr. Romano and the above diagram of Ms. Spears also included Balcarra (11 properties); and Mr. Romano's area was the only one to include McNab (16 properties). Ms. Spears discussed as many as three areas, but for simplicity I have just taken her smallest, containing 82 properties. Mr. Romano's study area contains 128 properties⁴.



The owners seek two new lots with about ± 35 m frontage and about 1450 m² lot area. Rough averages for the Pine Ridge neighbourhood are 30 to 33 m frontages (about 100 -110 feet) and 3300-3400 m² lot area. The proposed lots are similar to or exceed those frontages, but the areas are smaller. Mr. Romano found that the proposed frontages fall in the largest 25% quartile (that is, are

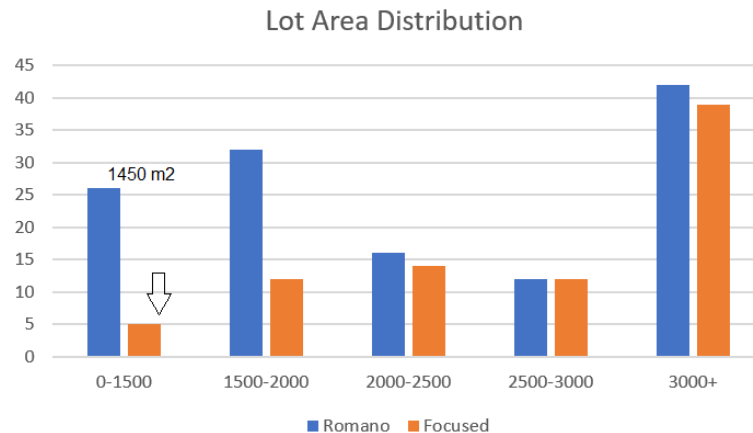
larger than 75% of the other frontages) and Ms. Spears found that the proposed areas fall in 11.5% quartile (smaller than 88.5% of other lots.) She added that for one of her study areas, they are in the smallest 7% of all lots.

I summarize this information in the charts above and below. In each, Mr. Romano's counts are on the left and Ms. Spears' focused study area on the right.

⁴ Although these numbers sound exact, there were small discrepancies that I was unable to account for.

I deal first with conclusions about **frontages**. The upper chart shows 35 m is somewhat in the middle or slightly above the middle of the distributions. (I use two arrows because 35 m is at the end point of two ranges.) In terms of percentiles, a comparably sized property, 20 Faircroft, with 35.69 m frontage, is at the 71.1% percentile for the 128-lot list, that is, it is larger than 71.1% of the frontages.

Turning to **lot areas**, the proposed 1450 m² is clearly at the bottom end of the ranges no matter whose study area is chosen, the proposed Butler/Cheung lots, in quantitative terms, are much below the average lot areas.



In the next sentence I am looking at existing comparably sized lots to get a percentile. For the 128-lot area, #36 McNab, at 1443 m², would be at the 18% percentile and for the focused study group, #111 Meadowcliffe at 1472 m² — only the 3.6% percentile, i.e. smaller than all but 3.6%). The next smallest, 7 Pine Ridge, which is 1472.2 m² in lot area, is at the 4.8% percentile. (This shows that for the smaller sample of 82 properties, a single “rank order” difference makes a perceptible percentile difference.)

Both planners said that this is not just a mathematical exercise, but then proceeded draw conclusions very heavily based on numbers. To be fair, this neighbourhood is extremely varied; and this variety contributes to the physical character of the neighbourhood. Also our society likes numbers, because that implies scientific accuracy, but planning is a multidimensional analysis, which is primarily informed judgement.

For example, take the south side of Balcarra (inset map next page). Both sides of Balcarra display a succession of “stately” homes (the word is Mr. Romano’s), some with three car garages, and so on. But the north side has rectangular lots with a constant depth, whereas the south side lots (odd numbers) are tapered. The

westernmost lot, #5 Balcarra, is one of the smallest lots in the 128-lot study area (12% percentile), it faces on the opposite side, #10 Balcarra (38% percentile). The last south side lot on the east end is very large (86% percentile) or larger than all but 14% of all lots in an area with plenty of very large lots. (The diagram may be a little misleading because there is a jog where Balcarra becomes Pine Ridge). So, the average area of Balcarra lots is 2453 m² (Spears Witness Statement, para. 115) masks this divergence. However, the frontages are generally clustered around the 28-29 m mark. This is for a single block, and so demonstrates the variety in the subdivision.



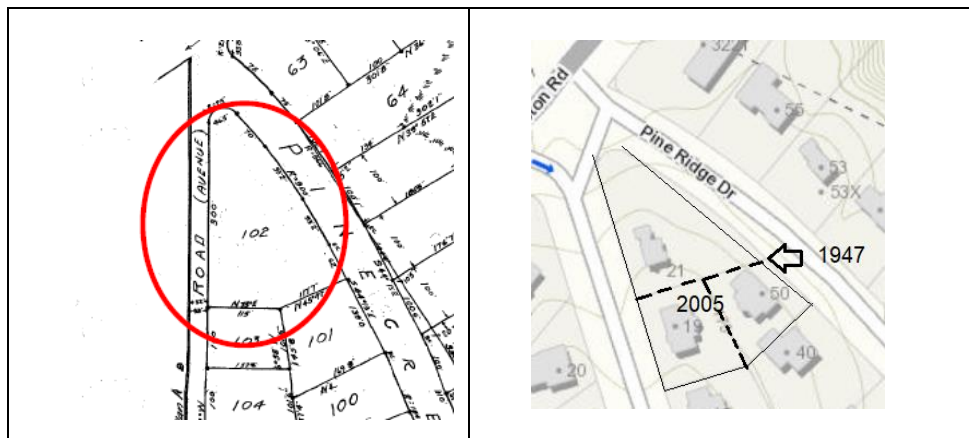
Although OMB Member Mr. Atcheson⁵ called frontage and area “benchmark elements” that “should not be changed lightly”, the Balcarra example tells me that between frontage and area, which are both zoning parameters, frontage is a better indicator of how a subdivider designs a Plan of Subdivision and in several instances how a decision maker has responded to a severance application. The past is essential to predicting the future. To understand the history, I will now look at every severance to understand the extent to which they were or were not “gradual” and “fitted in”.

21 Pine Ridge (Severances #1 and 13)

The first severance in the Pine Ridge neighbourhood was granted in 1947 pursuant to the *Veterans Land Act*. It created a northern portion, 21 Faircroft, the triangle shaped lot, and a southern “through” lot with frontage on Faircroft (west) and Pine Ridge (east). It is marked with a dotted line and an arrow “1947”. As far as I can tell no house was built on the “through” lot (called “pre 2005 50 Pine Ridge”) and Ms. Spears said that repeated attempts were made to sever it, which finally bore fruit in 2005. A decision by the OMB⁶ created 19 Faircroft and 50 Pine Ridge (post 2005). The houses on this southern portion were built in 2006.

⁵ Appeal by Kabbabah and Lopes, , April 16, 2014, PL130938, para. 58

⁶ *Dean Pheakos appeal with respect to 50 Pine Ridge Drive*, OMB decision PL040707 (March 18, 2005), R.G..M. Makuch and J. Chee-Hing.



The dates of construction, frontages and lot areas of all four parcels are:

Severance 1

| | Date of construction | Frontage | Lot area |
|--------------------------|----------------------|----------|---------------------|
| 21 Faircroft | 1949 | 49.68 m | 1817 m ² |
| "pre-2005 50 Pine Ridge" | no house | 25.09 m | 2194 m ² |

Severance 13 (creating two lots from "pre 2005 50 Pine Ridge")

| | | | |
|---------------------------|------|---------|---------------------|
| 19 Faircroft | 2006 | 38.71 m | 1198 m ² |
| 50 Pine Ridge (post-2005) | 2006 | 25.09 m | 981 m ² |

The details of Severance 1 are lost to history, but some conclusions can be reasonably deduced. Plan 1100 was registered in 1921, when Kingston Road was a dirt road on the way to Port Hope, amid farm fields. Lot 102 was a triangular lot abutting this dirt road, which needed to be large (almost exactly an acre) to support a septic system. When this dirt road was paved and services came to Scarborough Township, the one-acre size became an anachronism, giving rise to the Veterans severance. It made the best of a bad situation, to create a smaller triangle and a "through" lot.

This "though" lot was a fairly rare occurrence in Plan of Subdivision 1100 and this fact was recognized by the OMB. I infer that the Dean Pheakos severance succeeded because the OMB was willing to accept the solution of delivering sewer services to the Faircroft lot via an easement over the Pine Ridge lot, i.e. over private lands⁷.

⁷ Apparently as recently as 2005 there were no services on Faircroft.

Severance 13 (dotted line with “2005”) created two small lots; 50 Pine Ridge (post 2005) is the second smallest of 128 lots and 19 Faircroft is the 9th smallest. Number 21 Faircroft, the largest of the three “offspring” (created by the Veterans legislation) is 52nd smallest at 1817 m² but is larger than the proposed areas of the two new Cheung/Butler lots (1450 m²).

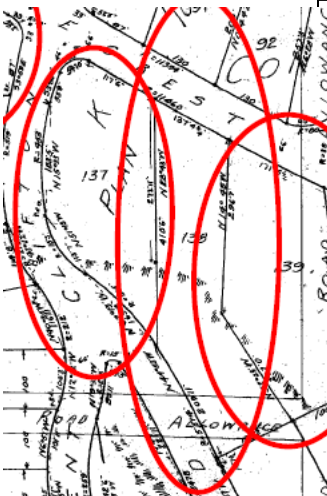
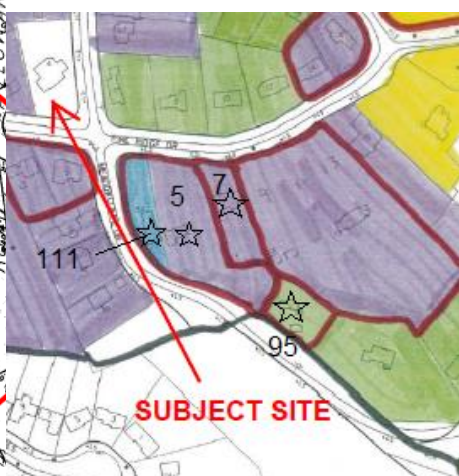
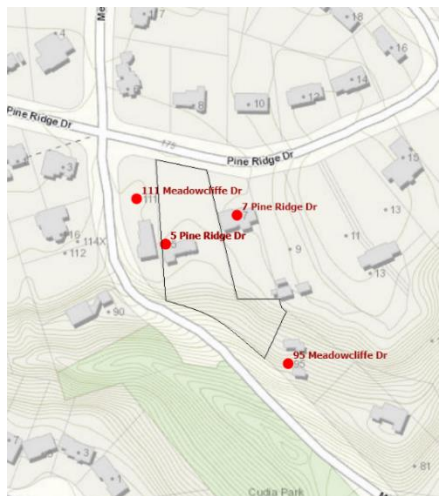
So, what do I conclude from this sequence? The 1921 Plan could not be expected to anticipate circumstances 80 years in the future and Lot 102 being a corner-like trapezoid was not ideally configured or sized. Subsequent Committee of Adjustment refused a severance for the “through” lot created in 1947 but OMB eventually approved it. Severances 1 and 13, have no strong planning relevance to the Cheung/Butler application. Severance 1 was approved under postwar housing imperatives and was proximate to Kingston Road; severance 13 remedied a rare “through” lot situation, which is not the case here.

2014 refusal by OMB Member J.P. Atcheson

The next-door owners to 50 Pine Ridge, Robert Kabbaheh and Ellen Lopes, unsuccessfully sought to follow the 2005 OMB decision and obtain a severance for their non-through lot. In 2014, they asked the OMB to be allowed to sever 40 Pine Ridge, immediately to the south of 50 Pine Ridge, and create two lots of 961 and 837 m² with frontages of 21.2 m. Both are very much smaller than the proposed dimensions for the subject property.

OMB Member Mr. Atcheson easily distinguished the situation before him as not being a “through” lot like 50 Pine Ridge. This shows that the smaller sizes granted by the OMB in 2005 did not result in a “blank cheque” for lots in the very small range (960 m²).

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| | | |
|---|--|---|
| Lots 137, 138 and 139 | Romano lot study map (excerpt) | Present day configuration |
|  |  |  |

111 Meadowcliffe (Severance, #2, 8)

This is the most complex re-lotting in the neighbourhood. I believe there were two events separated by at least 11 years; the first probably in 1952 and the second in 1971. Prior to the first event, I believe there was a single owner of the three lots: 137, 138, and 139 (please see leftmost diagram, above). This owner lived in the house on what is now 5 Pine Ridge and split off 111 Meadowcliffe and 7 Pine Ridge. The second event, in 1971, which may have involved some reassembly, severed off 95 Meadowcliffe, which was the buildable part of what had been a large "through" lot. So, severance 8 was a precursor to the 2005 OMB severance of 50 Pine Ridge just described.

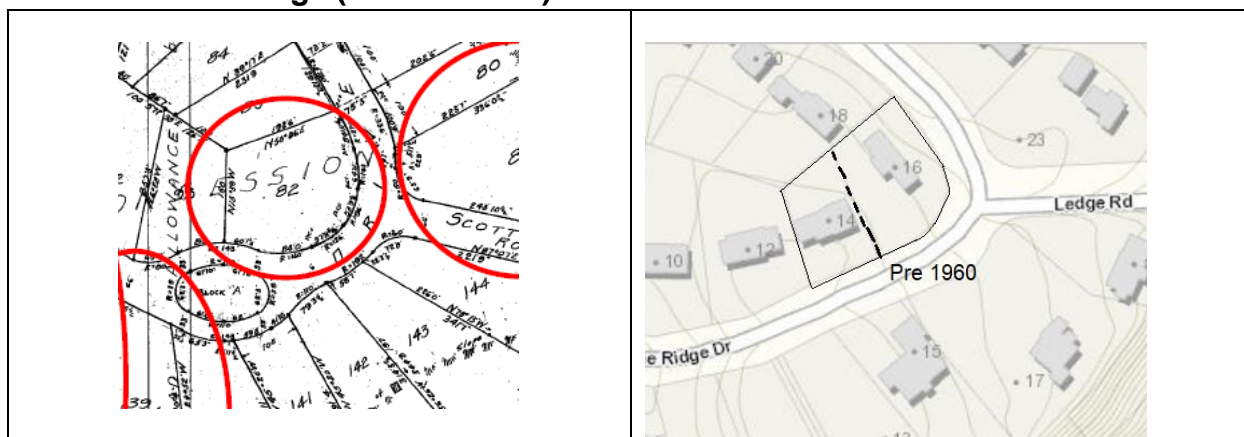
At the end of the day, we go from 3 lots to four, so the net gain is one. Nonetheless, I count these transactions as two severances, #2 and 8, to capture that two events have occurred that are separate in time.

| | Date of construction | Frontage (m) | Lot area (m ²) |
|--------------------|----------------------|----------------|----------------------------|
| 5 Pine Ridge | 1939 | 35.05 | 5272 |
| 111 Meadowcliffe | 1953 | 108 (my guess) | 1472 |
| 7 Pine Ridge Dr | 1955 | 28.65 | 2367 |
| 95 Meadowcliffe Dr | 1975 | 45.72 | 1943 |

I now discuss whether any of these could be candidates for a future severance. 111 Meadowcliffe is a corner lot, but also one of the most irregularly shaped lots in the neighbourhood and its lot area is barely larger than a single one of the two proposed lots. Its largest frontage is along Meadowcliffe (108 m or 354 ft) and the depth on the Pine Ridge side is only 15.09 m (49.5 ft). A severance of the front portion would aggravate nonconforming and insufficient setbacks for the house on the “retained lot”. The existing house at 111 Meadowcliffe is only 2 m from the lot line and 5 m from the house at 5 Pine Ridge. So, even though 111 Meadowcliffe has a lot of frontage, if it came forward, the most appropriate decision should be to refuse the severance.

Neither would the other three lots seem to be a good candidate for severance, since the development potential was exhausted by the 1971 severances. The largest of these “offspring” lots is 5 Pine Ridge, which despite its “through” lot status, has steep slopes on its Meadowcliffe frontage and, as will be discussed later, these steep slopes would be subject to an Official Plan policy requiring conveyance to the TRCA.

14 and 16 Pine Ridge (severance 3⁸)



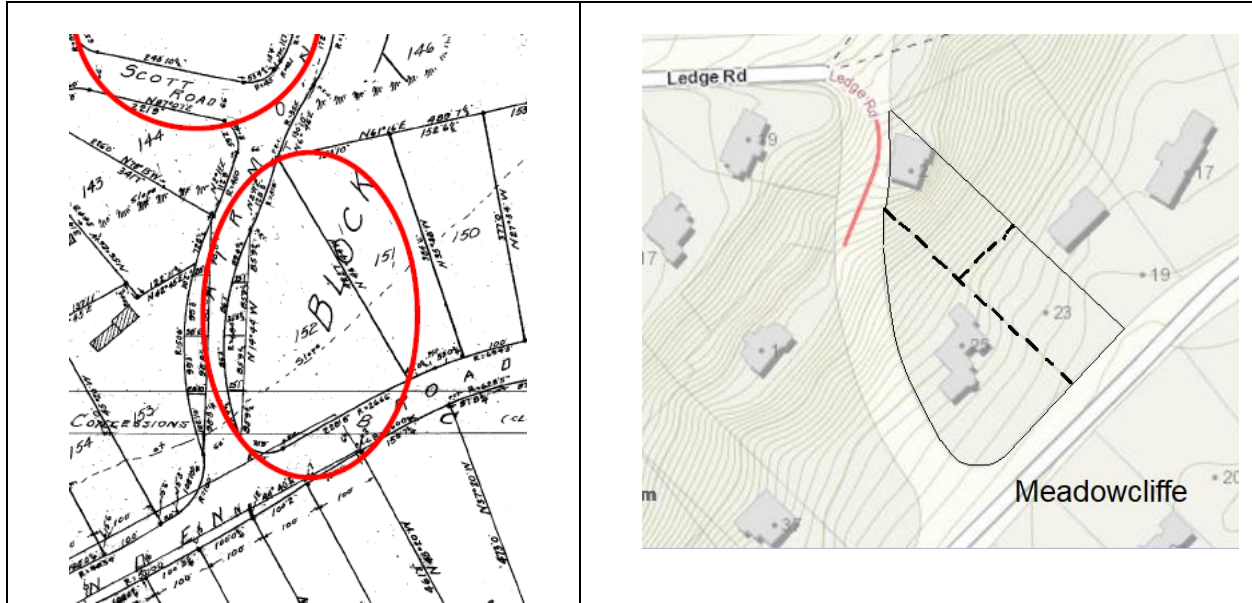
This is a severance of a corner Lot #82 in an “island” of 13 houses just east of the subject that occurred prior to 1960. The easternmost lot is a sort of “corner”, created by the two curvilinear arms of Pine Ridge.

| | | |
|--------------------|---------|---------------------|
| 14 Pine Ridge 1955 | 25.13 m | 1364 m ² |
| 16 Pine Ridge 2017 | 33.53 m | 1890 m ² |

This and severance #12 (1-3 Pine Ridge) are most like the subject application and will be discussed in “Summing Up”.

2 Ledge, 23, 25 Meadowcliffe (Severances #4 and 5)

⁸ There are four pre-1960 severances, arbitrarily chosen as to which is counted first.



This is a three-lot creation from parent lot 152, which I am counting as two severances, both created by a pre-1960 Exception 6, Lot 152 had table land accessible to Ledge Rd as well as land below the top of bank, from which the two Meadowcliffe lots were created. The present-day configuration (above right) contains an unopened right-of-way leading down to lower Meadowcliffe⁹. The dates of construction, frontages and areas for the three lots are:

| | | | |
|-----------------|---------|------------------|---------------------|
| 2 Ledge | 1955 | 40.09 m frontage | 1625 m ² |
| 25 Meadowcliffe | 1965 | 39.22 m frontage | 4087 m ² |
| 23 Meadowcliffe | no date | 30.50 m frontage | 1859 m ² |

Two of these three frontages are larger than the proposed frontage but 23 Meadowcliffe is smaller. Only 25 Meadowcliffe has sufficient area for a severance but it would be subject to the TRCA conveyance and discussed in further detail later.

36-38 McNabb (Severance 6)

The left-hand diagram (below, this page) shows the adjacent Plan of Subdivision 3849 with four circles. The top three circles are described later in the “Near to Kingston Road” section on page 19 and the fourth shows “36 McNab”. This is a pre-1960

⁹ Lower Meadowcliffe is the street running parallel to Lake Ontario and giving access to “Fool’s Paradise”, artist’s Dorothy McCarthy’s summer retreat. In her memoir, *My Life*, she wrote, “The small stucco cottage sat on a steep wooded slope above a long grassy meadow. From the cottage I could see a small woods beside the ravine on the left. I asked, “Is it for sale?” It was.

severance that created 38 McNab (northerly lot) and 36 McNab/4 Balcarra (the corner lot owned by Ms. Spencer).

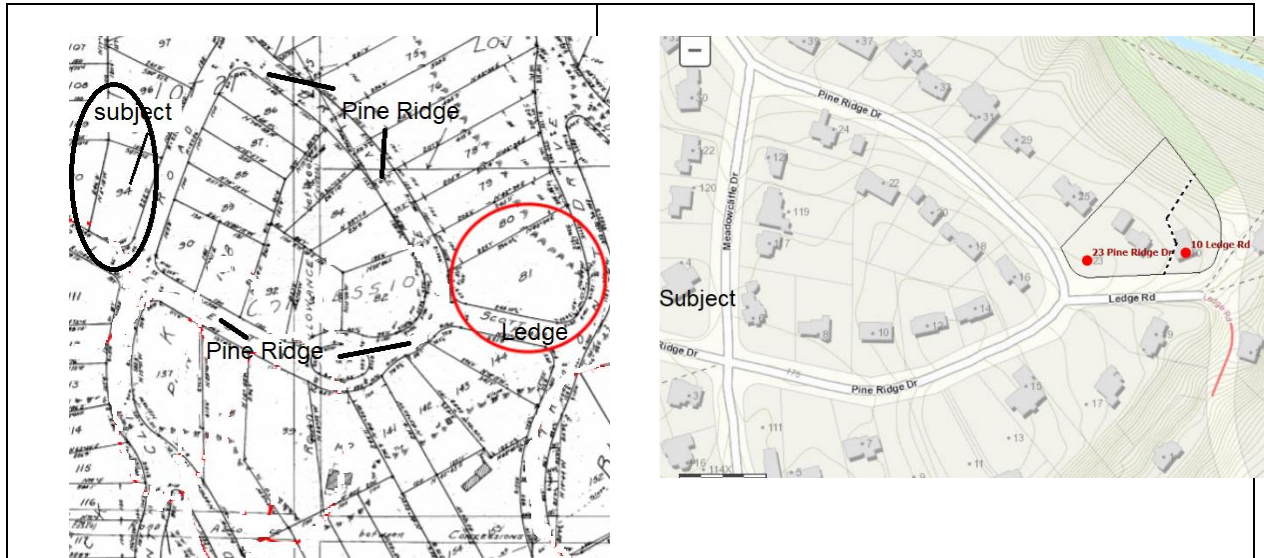


| | | | |
|---------------------|------|--------|---------------------|
| 38 McNab | 1955 | 24.4 m | 1217 m ² |
| 36 McNab/4 Balcarra | 1952 | 42.2 m | 1443 m ² |

Number 36 McNab is a severance application currently at the TLAB before Member Mr. Makuch. It is unusual to comment on another hearing before a TLAB member. The owner, Melissa Spencer, seeks to sever her lot into two roughly equal lots. I am sure Mr. Makuch will restrict himself to only the evidence before him and I do not purport to offer any opinion on the merits of that case. However, a fair question for this hearing is whether the granting of a severance at 4 Pine Ridge might constitute a precedent for 36 McNab and vice versa.

Ms. Stewart is the lawyer for Ms. Spencer in the hearing before Mr. Makuch, and Ms. Spears the planner for the City in opposition to Ms. Spencer. Mr. Romano is not involved in any way in that hearing. Nonetheless he offered an opinion, unimpeded by Ms. Stewart, that the proposed Spencer lots are too small, would be a severance of a previous severance, and will require a frontage variance as discussed previously at page . Ms. Spears concurred with Mr. Romano and I am sure she will advance her conclusions forcefully before Mr. Makuch. It may be recalled that examiner Mr. Dhir required a frontage variance for that property, while examiner Mr. Scanlon did not. It is also undeniable that Ms. Spencer seeks to create two lots that are half the size of the current proposed lots at 4 Pine Ridge and with about 60% of the proposed frontages.

23 Pine Ridge, 10 Ledge (Severance 7)



The severance of Lot 82 (October 1970) involves a lot across the east end of the “island” discussed in 14-16 Pine Ridge (Severance 3). Ledge Rd is unique and probably forms its own neighbourhood. It is a dead-end stub of a street which ends in steep slopes down to Bellamy Creek. The two newly created lots are:

| | | | |
|---------------|------|---------|---------------------|
| 23 Pine Ridge | 1947 | 77.75 m | 4780 m ² |
| 10 Ledge | 1971 | 21.34 m | 943 m ² |

Although this is a corner property, I do not think it has any implications for this decision as both lots are affected by steep slopes to the rear. This will be further discussed in the Ms. Carter-Whitney OMB decision below.

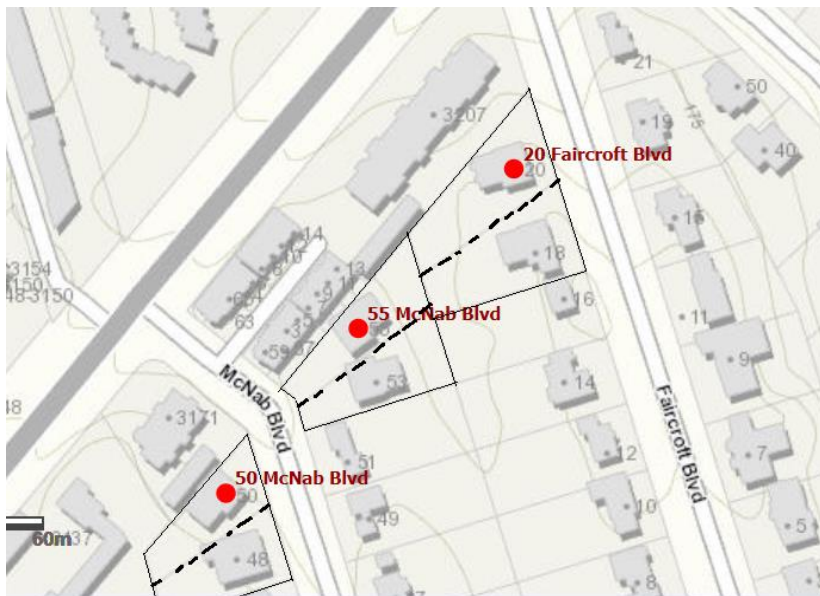
The three “near to Kingston Road” severances (9¹⁰, 10, 11)

These severances about higher density Kingston Road development and are all created by the same 1978 exception¹¹. I surmise Council’s thinking was to regularize “over-large” (my word) and awkwardly shaped “end pieces” created by the angular join of McNab with Kingston Road. The three pairs are:

| | | | |
|----------------------|------|--------|---------------------|
| Exceptions 47A and B | | | |
| 50 McNab | 1978 | 27.1 m | 973 m ² |
| 48 McNab | 1977 | 29.5 m | 1053 m ² |

¹⁰ Number 8 was discussed in the 111 Meadowcliffe severance above.

¹¹ Exception 47, June 1978



Exceptions 47C and D

| | | | |
|----------|------|-------|---------------------|
| 55 McNab | 1977 | 9.7 m | 1162 m ² |
| 53 McNab | 1977 | 8.9 m | 1135 m ² |

Exceptions 47E and F

| | | | |
|--------------|------|---------|---------------------|
| 20 Faircroft | 1980 | 35.7 m | 1170 m ² |
| 18 Faircroft | 1980 | 35.22 m | 1500 m ² |

I consider the very small frontages of the second pair to be an outlier, because nowhere in the neighbourhood are there other frontages as small as these. Generally, these six lots have smaller frontages and much smaller lot areas than the proposed Cheung/Butler lots.

1, 3 Pine Ridge (Severance #12

This is the last severance which used the process of a zoning amendment to the Cliffcrest By-law. After this, come severances 13, 14 and 15, all granted by the OMB, which is through the consent process. This severance created two lots from a corner Lot 111, in October 1990. This occurred after a twelve-year gap in which no severances were granted. The parent lot occupies the southwest corner of the same intersection where the subject 4 Pine Ridge occupies the north west corner. The two newly created lots have a smaller frontage but larger lot area than what is proposed:



| | | | |
|--------------|------|-----------------|--------------------------|
| 1 Pine Ridge | 1994 | 30.5 m frontage | 1818 m ² area |
| 3 Pine Ridge | 1993 | 26.5 m frontage | 1659 m ² area |

Ms. Spears' spreadsheet lists 3519 m² as the area for 3 Pine Ridge, which is obviously the pre-severance area, not yet corrected in the City's data base. This is the second "precedent" (along with Severance 3) for the subject 4 Pine Ridge application.

9, 11 and 13 Pine Ridge (Severances 14 and 15)

This is the last granted severance (the second last severance is the OMB Severance 13, discussed with severance 1). The left-hand map (next page) shows the three new lots; the right-hand map is the same area with a coloured irregular shape representing the "natural heritage overlay" in the Toronto Official Plan. This outline shows a landlocked rear area that was conveyed to the Toronto Region and Conservation Authority. The severance was granted by OMB Member Ms. Carter-Whitney in 2016, over opposition from the City of Toronto.

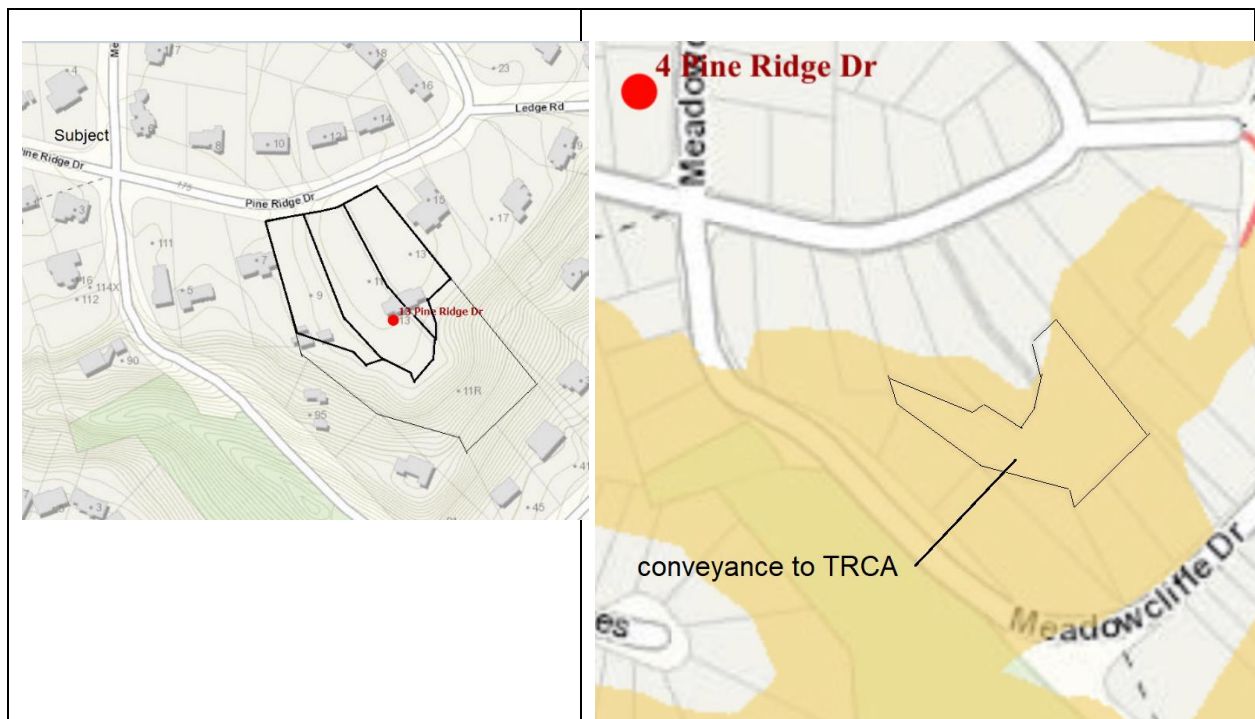
Original lot

| | | |
|---------------|------------------|-----------------------|
| 13 Pine Ridge | 77.26 m frontage | 16,511 m ² |
|---------------|------------------|-----------------------|

New lots

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| | | |
|----------------------------|------------------|---|
| 9 Pine Ridge ¹² | 25.8 m frontage | 2842 m ² area |
| 11 Pine Ridge | 26.33 m frontage | 3896 m ² area |
| 13 Pine Ridge | 25.13 m frontage | 2800 m ² area |
| TRCA lands | none | 6973 m ² (calculated by me). |



The main issue before Ms. Whitney-Carter was whether there should be three new lots (position of planner Ms. Nott for owner) or two (planner Mr. Young for City). The starting frontage was 77.26 m, so the OMB was looking at either 26 m or 37 m frontages. From a strictly frontage vantage point, the latter would be more in keeping with the neighbourhood of 30-33 m frontages, but this does not take into consideration the large size of the parent lot. If it had not been divided, it would be the largest in the neighbourhood by about 25%.

Heritage overlay designation

This 2016 OMB case seems to be the first application of Section 3.4.12 Natural Heritage of the Toronto Official Plan:

¹² No construction dates are given since the City's records are not updated. The original dwelling now demolished is listed as being constructed on 13 Pine Ridge in 1939 and along with 5 Pine Ridge, are the oldest houses in the neighbourhood.

12. Consents to sever land . . . will not be permitted for any parcel of land that is entirely within or part of the natural heritage system unless: a) the land is being conveyed to the Toronto and Region Conservation Authority ; . . . [or other justifying studies are performed]

There was much discussion between Mr. Romano and Ms. Spears as to the robustness of these policies, Mr. Romano alleging that that the policies had “teeth” and Ms. Spears saying that reasonable accommodation could be achieved. Mr. Romano referred to the following files where his clients had lands subject to TRCA policies:

33 Forty Second Street. This was a consent application to sever the existing residential property into two undersized lots, demolish an existing dwelling and build two new homes. To do so would have required lot area and frontage variance requirements as well as an increase in FSI. The entire property was considered a floodplain. The TRCA wrote:

Creating an additional lot and new dwelling . . . within a Regulatory Floodplain . . . where safe access/egress is not feasible increases the risk to life and property [and does not meet numerous planning policies]. . .

The letter suggests that no TRCA permit would be issued. On the strength of this letter (November 2017), Mr. Romano recommended to his client that he abandon the severance and the client took Mr. Romano’s advice.

63 Tilden Crescent. The owner wished construct a new two storey single family detached dwelling, including two below grade levels, integral garage and two rear cantilevered decks on an existing vacant lot of record. The property consisted of a small tableland portion with the rest comprising a steep slope, floodplain and valley floor of the Humber River. The TRCA recommended erosion and conservation studies and noted Toronto’s Living City Policies, [which are comparable to Official Plan and zoning instruments but in relation to TRCA’s permit-issuing powers] and recommended conveyance of such land to the TRCA. The result was the same as 33 Forty Second Street.

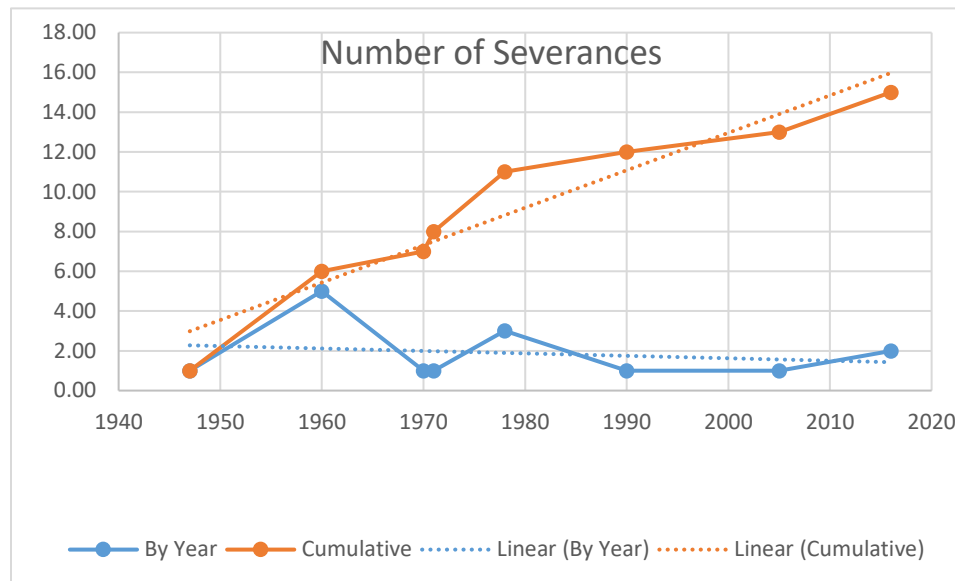
I accept that, of the twenty properties on Ms. Spears list representing concerns, seven have TRCA limitations: 23, 25, 29 Pine Ridge, 1 and 3 Ledge, and 17 and 25 Meadowcliffe. They should not be considered at risk for a successful severance application.

Summing up

This neighbourhood has been remarkably stable. There have been three “through” lot severances and others having a range of special circumstances. There

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are only two comparable “corner” lot situations: 14-16 Pine Ridge (pre-1960) and 1-3 Pine Ridge (1990). Thus, the data shows great stability; in particular, for Faircroft and McNab, with their rectangular lots and front-facing homes, the lotting fabric is unchanged through the years, except for the “near Kingston Road” lots.

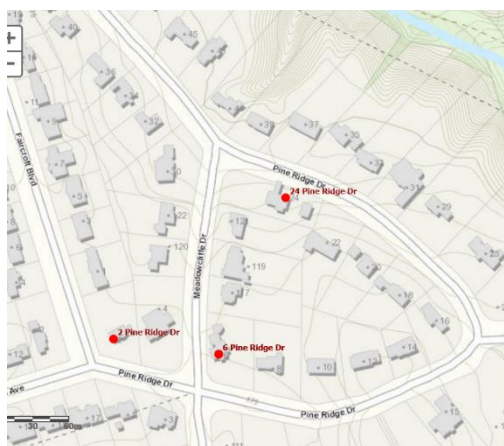


The chart to the left shows 15 severances over 69 years, or two per decade, and the rate being flat or slightly declining since the mid-1970s. I know that the application of the planning tests is more than applying a trendline, but this

is corroborative of the conclusion that, after a searching inquiry, one severance, in the right circumstances, might be “sensitive, gradual and fit in”. Otherwise the neighbourhood is “frozen in time”. This is not the intent of the Official Plan. I recognize as well that since 2014, there have been four severance applications (three successful, including this one) and although the City opposed the owner in three of these cases, it did not, for whatever reason, do so in this case.

The R lots

Of the thirteen remaining properties on Ms. Spears’ list, I accept Mr. Romano’s evidence that three of those could be highlighted as possible candidates for severance. This is a candid admission and caused me to examine them before making a final conclusion. These three lots are shown on the next page.



6 Pine Ridge

6 Pine Ridge is directly opposite the subject, at the north east corner of the intersection. This lot has greater depth (39.6 m vs about 35 m for the subject). However, its area is 18% less than the subject's before the severance; (2385 vs. 2896 m²). Ms. Spears' spreadsheet lists 6 Pine Ridge's longer side as 53.44 m, which would yield two new frontages of 26.7 m. This is much less than 39.6 m, and would require a frontage variance, like Ms. Spencer's case at 36 McNab. In my estimation both of these factors militate against this being a good candidate for a future severance.

24 Pine Ridge

The City's data show dimensions (frontage 30.38 and area of 2366 m²) that suggest that this would be a better candidate than 6 Pine Ridge. The 85 m depth suggests that the two new lots could achieve 40+ m frontages, more than the subject's. However, 24 Pine Ridge exists in a different block from the subject, farther removed from the smaller lots on Faircroft. If we consider the relevant neighbourhood to be the 13 lot "island", the average frontage is 35.55 m and average area 2469 m², which means the new 40 m frontages are compatible, but the parent lot area is presently barely more than average, and the new 1175 m² areas would be far below average and certainly less than 1450 m².

If we add the Cheung/Butler severance to the "island" study area, the average frontage actually increases by 0.04 m to 35.59 m while the average lot area falls from 2469 to 2333 m², not markedly different from the present "island" average. In my opinion, two new lots in the 1175 m² range, far less than the Cheung/Butler areas, would make 24 Pine Ridge a difficult candidate for severance.

2 Pine Ridge

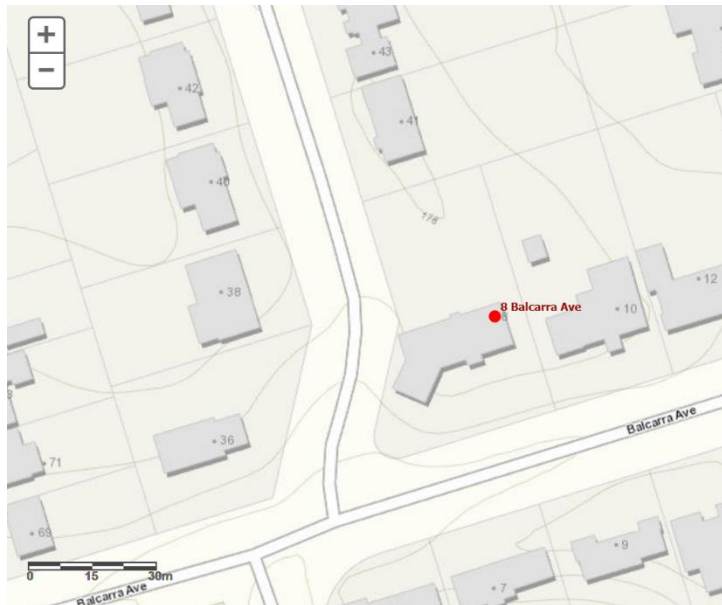
This lot is immediately adjacent to the subject property. It was on the real estate market during this hearing, and Ms. Spears advised that the listing spoke about its severance "potential". The figures for 2 Pine Ridge are:

| | |
|-------------------------------|--|
| Initial "long side" frontage | 60.66 m vs. subject's 71.42 m; |
| initial area | 2160 m ² vs subject's 2896 m ² ; |
| initial "short side" frontage | 35.61 m vs subject's about 35 m |

This suggests two new lots in the 30 m range and 1080 m² lot area. OPA 320 would require that the Cheung/Butler properties be important to use in assessing neighbourhood character. Both are under the subject's dimensions. It is true that 30.48 m is more or less the working average in the Pine Ridge neighbourhood, but 2 Pine Ridge would in my estimation require both a frontage and an area variance.

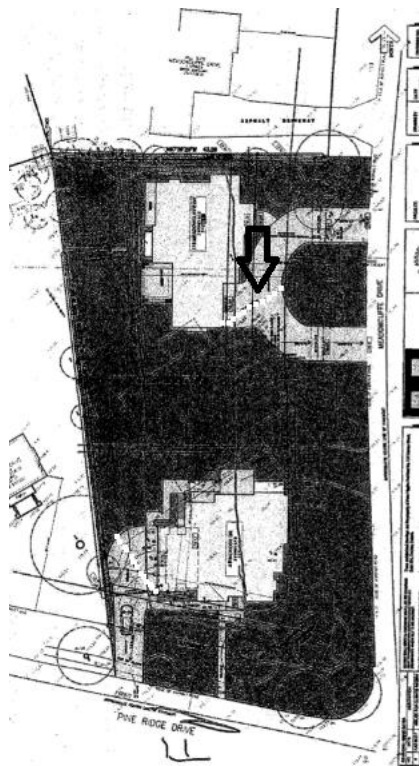
We could also have to consider that this is part of a continuum extending down from Faircroft. The average lot area for the "island" plus the two new lots at 4 Pine Ridge average area is about 2333 m²; and the average lot area for the Faircroft Blvd properties is 1457 m², both of which are significantly larger than 1080 m². In my view, this would pose risk to the hypothetical future 2 Pine Ridge applicant. I have explained how other small lots such as 50 Pine Ridge/19 Faircroft (the 2005 severance by the OMB), 48, 50 McNab and 20 Faircroft (near to Kingston Road severances) have special circumstances which would not apply to 2 Pine Ridge.

8 Balcarra I will close with a property that was not mentioned as being "vulnerable" by Mr. Romano, but which I wanted to investigate because I thought it should be considered. The dimensions here are frontage 37.8 m, area 2043 m², and depth 60.96 m. This is the property just opposite 36 McNab and as someone who has become a student of this neighbourhood, I recognize it as the "bookend" to severance #6, which created 36 McNab. In 1960, Council considered it appropriate to re-sever the corner lot on the west side to create 36 and 38 McNab. Over the years the owner of 8 Balcarra has never sought to monetize that "precedent". If the owner of 8 Balcarra were to attempt to do so today, the new areas—about 1020 m²—are even smaller than for 2 Pine Ridge, which I have found are problematic.



All but the last two rounds of severances (2005 and 2016) were rezonings by Council, not by the OMB or Committee of Adjustment. As such, the severances came about by Council action to amend the Cliffside Zoning By-Law. Section 45(1) of the *Planning Act* directs me to look to the intent of that bylaw and its many amendments. I find Council's actions in respect to 36-38 McNab (page 16), 1, 3 Pine Ridge (page 20), and 14-16 Pine Ridge (page 15) with respect to other corner lots display an intent to

permit some severances, where the Official Plan tests of respecting the neighbourhood character can be met. In other words, Council has through rezonings, appears to have cautiously permitted a severance when such change is sensitive, gradual and fits in.



The Variances

I authorize the bolded variances in Table 1 on pages 2-3. This includes frontages and lot area as contained in the shaded boxes (lines 1 and 5) on page 2. I also authorize variances to front yard setback (line 2) as I believe the intent of the zoning by-law is to bring eyes on the street instead of the more aloof relationship of 2 Pine Ridge. The driveways width variances are shown in the diagram left with the pinch points in a whitish line. I authorize the one for the lower lot because it allows the concealing of the garage doors at the back (lines 4A and 10A in Table 1). I do not authorize the variance for Part 1 (downwards arrow). While I cannot regulate the circular driveway design, it seems to me that the owners who will destroy a good many trees to build these houses should not devote so much hard surface (even if it is permeable) to the driveway. I authorize the height variances (line 3 and 6) as Ms. Stewart said that this applied to only a small portion of the roof and if not authorized would just result in an odd, lopped-off roof.

I am not permitting the variances in lines 7 to 9 with respect to larger garages. It may be that with the passage of time, compliance with the Cliffside By-law is no longer required, and my opinions may be irrelevant. However, if this by-law is still operative, I must be satisfied that the variances are desirable for the appropriate development of the land and in the circumstances I have described, I cannot come to this conclusion.

Conclusion

Accordingly, I find that the Official Plan tests are met, except for the non-authorized variances. The new lots respect and reinforce the pattern set out in 1921 and amended by various Cliffside exceptions to the zoning by Scarborough Township. The physical pattern of the area, including lot sizes and shapes, has been stable; most lots are unchanged since inception and the trend is a gradual change. Lots with frontages of 36 m and lot areas of 1450 m² is consistent with this; in short, this 2019 severance is

gradual and fits in to the geographical and temporal context of the neighbourhood. In terms of the variances, I find the ones I authorize are minor and appropriate.

I wish to thank Ms. Spears and Mr. Flett for their professionalism. I note that Messrs. Baird and Milton, residents in the area, appeared at the OMB hearings in 2014 and 2016 so their engagement to the physical character and love of this neighbourhood is evident, and to their credit.

DECISION AND ORDER

The severance is granted, and certain variances are authorized as set out above, subject to the following:

Conditions of Consent Approval

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 the Manager of Land and Property Surveys, Engineering Services, Engineering and Construction Services, Contacts: John House, Supervisor, Land and Property Surveys, at 416-392-8338; John.House@toronto.ca, or his designates, Elizabeth Machynia, at 416-338-5029; Elizabeth.Machynia@toronto.ca, John Fligg at 416-338-5031; John.Fligg@toronto.ca
3. An electronic copy of the registered reference plan of survey integrated to NAD 83 SCRS (3 degree Modified Transverse Mercator projection), delineating by separate Parts the lands and their respective areas, shall be filed with the Manager of Land and Property Surveys, Engineering Services, Engineering and Construction Services. Contact: John House, Supervisor, Land and Property Surveys, at 416-392-8338; John.House@toronto.ca,
4. An electronic copy of the registered reference plan of survey satisfying the requirements of the Manager of Land and Property Surveys, Engineering Services, Engineering and Construction Services shall be filed with the Committee of Adjustment.
5. The following conditions shall be fulfilled to the satisfaction of the Project Manager, Archeology, Heritage Preservation Services:

- a) The applicant shall retain a consultant archaeologist, licensed by the Ministry of Tourism, Culture and Sport under the provisions of the Ontario Heritage Act (R.S.O. 1990 as amended) to carry out Stage 1-2 archaeological assessment of the entire property and follow through on recommendations to mitigate, through preservation or resource removal and documentation, adverse impacts to any significant and archaeological resources found. The assessment is to be completed in accordance with the 2011 Standards and Guidelines for Consulting Archaeologists, Ministry of Tourism, Culture and Sport.
 - b) Should the archaeological assessment process continue beyond a Stage 1-2 assessment, any recommendation for Stage 3-4 mitigation strategies must be reviewed and approved by heritage Preservation Services prior to commencement of the site mitigation.
 - c) the consultant archaeologist shall submit a copy of the relevant assessment report(s) to the Heritage Preservation Services Unit in both hard copy format and as an Acrobat PDF file on compact disk. All archaeological assessment reports will be submitted to the City of Toronto for approval concurrent with their submission to the Ministry of Tourism, Culture and Sport.
 - d) No demolition, construction, grading or other soil disturbances shall take place on the subject property prior to the City's Planning Division (Heritage Preservation Services Unit) and the Ministry of Tourism, Culture and Sport (Heritage Operations Unit) confirming in writing that all archaeological licensing and technical review requirements have been satisfied.
6. The Owner shall submit a tree protection guarantee security deposit of \$29,161.00 to guarantee the protection of City-owned trees according to the Tree Protection Policy and Specifications for Construction Near Trees or as otherwise approved by Urban Forestry.
7. Payments shall be made payable to the **Treasure, City of Toronto** and sent to the attention of Supervisor Urban Forestry, Tree Protection & Plan Review, at 150 Borough Drive, 5th Floor, Toronto, Ontario, M1P 4N7. Accepted methods of payment may be in the form of a Letter of Credit, certified cheque, bank draft, money order, or pay in person by credit card or debit card.

A Letter of Clearance will be issued once the required conditions are fulfilled.

Applicants may contact our office at 416-338-5566 or by email at tppreast@toronto.ca for additional information.

8. The Owner shall obtain Final and Binding Decisions on minor variance applications A0459/17SC and A0460/17SC, to the satisfaction of the Deputy Secretary-Treasurer, Committee of Adjustment, Scarborough Panel.
9. Within **ONE YEAR** 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(43) of the *Planning Act*, as it pertains to the conveyed land and/or consent transaction.

Conditions of Minor Variance Approval

1. The proposed dwellings shall be constructed substantially in accordance with the Site Plan and Elevations prepared by Peter Higgins Architect Inc., dated May 2017, found at Exhibit 1, pp. 259, 265-268, 269, and 276-279, provided that the dwelling footprint may be reduced in size at the discretion of the owner. (CBO has asked that we include the following as well: "Any other variances arising from the plans that are not specifically noted are Not authorized." Also, should the drawings be attached?)
2. The new driveways shall be constructed with permeable pavers.
3. Smart home systems technology shall be installed in both new dwellings in order to provide for increased energy efficiency.
4. Adequate floor space shall be identified in the building permit plans to permit the rough-ins for elevators to be installed in both dwellings in accordance with applicable standards to allow for the future installation of an elevator, if desired.
5. The Owner shall submit a complete application for permit to injure or remove privately owned tree(s).
6. The applicant shall submit to Urban Forestry a complete application to Injure or Destroy Trees for City owned trees, as per City of Toronto Municipal Code Chapter 813, Article II.

X

Ted Yao

T. Yao

Panel Chair, Toronto Local Appeal Body

Signed by: Ted Yao