

DECISION AND ORDER

Decision Issue Date Thursday, October 31, 2019

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

Appellant(s): AISHA SONG

Applicant: MICHAEL FLYNN¹

Property Address/Description: 889 Royal York Rd

Committee of Adjustment Case File: 18 140401 WET 05 CO (B0037/18EYK), 19 140415 WET 05 MV (A0310/18EYK), 19 140416 WET 05 MV (A0311/18EYK).

TLAB Case File Number: 19 141925 S53 03 TLAB, 19 141926 S45 03 TLAB, 19 141927 S45 03 TLAB

Hearing dates: Friday, September 27, 2019, Monday, September 30, 2019, Thursday October 10, 2019

DECISION DELIVERED BY T. YAO

APPEARANCES

NAME	ROLE	REPRESENTATIVE
Aisha Song	Owner/Appellant	Mary Flynn-Guglietti, Kailey Sutton
Tom Bradley	Expert Witness	
Franco Romano	Expert Witness	
City of Toronto	Party	Michael Mahoney
Tony Lieu	Expert Witness	
Michael Green	Participant	
Robert Jenkins	Participant	
Penelope Lockwood	Participant	
Jason Caissie	Participant	
Fiona Campbell	Participant	
John Kalas	Participant	

¹ Michael Flynn is agent for the owner, Aisha Song.

Julie Kalas Participant
 Birute Luksenaite Participant

INTRODUCTION

Ms. Song seeks to sever her property and build two 2 storey homes, one on each lot.

Ms. Song revised the application twice; the first time to respond to a road widening and the second to preserve a boundary tree in the rear yard. Her initial application, April 2018, was revised and resubmitted December 2018, when she learned that she would have to give a road widening of about 5% of the land because the future right-of-way of Royal York is intended to be 27 m.

A second amendment occurred after the refusal by the Committee of Adjustment (March 28, 2019). Ms. Song retained Ms. Flynn-Guglietti, who advised her to obtain an arborist’s report, which she did. Mr. Bradley’s (the arborist’s) report dated July 22, 2019, recommended removal of a portion of the basement and cantilevering of a section to preserve the boundary tree. The proposal has now been revised to reflect these changes. (Please see site plan, page 4, where the arrow points to the cantilevered portion.)

Prior to second revision, Ms. Song applied for a severance and variances to the Committee of Adjustment which refused both applications. Ms. Song appealed and so this matter comes before the TLAB. The variances she seeks are set out in detail in Table 1 below:

Table 1. Variances sought for 889 Royal York Rd			
		Required	Proposed
Variances from Zoning By-law 569-2013			
1	Frontage	13.5m	North – 7.62m ² South - 7.62m
2	Lot Area	510 m2	North – 263.7m2 South – 263.7m2
3	Coverage	33%	North – 38% South – 41%

² The numbering on Royal York runs from south to north. The south proposed lot will be municipally numbered 889A and labelled Part 3, the north proposed lot to be 889B and Part 1.

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Table 1. Variances sought for 889 Royal York Rd			
4	Floor Space Index	0.5 times the lot area	North – 0.68 (180.45 m ²) South – 0.75 (198.3 4m ²)
5	Side Yard Setback	1.2 m	For both lots, interior 0.61m, exterior 0.91 m
6	Building Length	17 m	North – n/a South – 18.03m
7	Front Platform	Side yard setback must be 1.2 m	North and South – setbacks of 0.61 and 0.91 m
8	Front Platform encroachment	May encroach 2.5 m when side yard setback of 1.2m is respected	North – encroaches 4.4 m into front yard and is 0.9 m to north side lot line South - encroaches 3.5 m and is 0.3 m to south side yard lot line ³
9	Eaves	May encroach into the setback a maximum 0.9m if eaves at least 0.3m	Interior eaves have reciprocal 1.14 m encroachment and are 0.06 m from common lot line. ⁴
10	Parking space width	3.2 m	North – 3.1 m
11	Front yard setback	5.5 to 6.2 m	North - 3.5 m
Variances from former City of Etobicoke Code⁵			
12	Parking space width	3.2 m	North –3.1 m

³ Mr. Romano states “The zoning examination identifies measurements that do not necessarily follow the dimensions on the drawings.”

⁴ Mr. Romano expresses this as, “projection of 0.55 m with minimum 0.06 m and 0.36 mm (sic.) side yard.”

⁵ The LPAT is still hearing appeals of City-wide Zoning By-law 569-2013, so the Buildings Department examines plans under both it and the Etobicoke Code, leading to a duplication of one of the variances.

MATTERS IN ISSUE

Both parties considered the severance to be the most important issue. A partial list of the applicable *Planning Act* tests for the severance alone⁶ would include:

- adherence to higher level Provincial Policies;
- matters of provincial interest as referred to in section 2 of the *Planning Act*;
- the size of the lots; and

- Official Plan conformity.

Specific matters of Provincial interest in section 2 would include the location of growth and promotion of development designed to support public transit. The Official Plan speaks directly to both the severance and the minor variances.

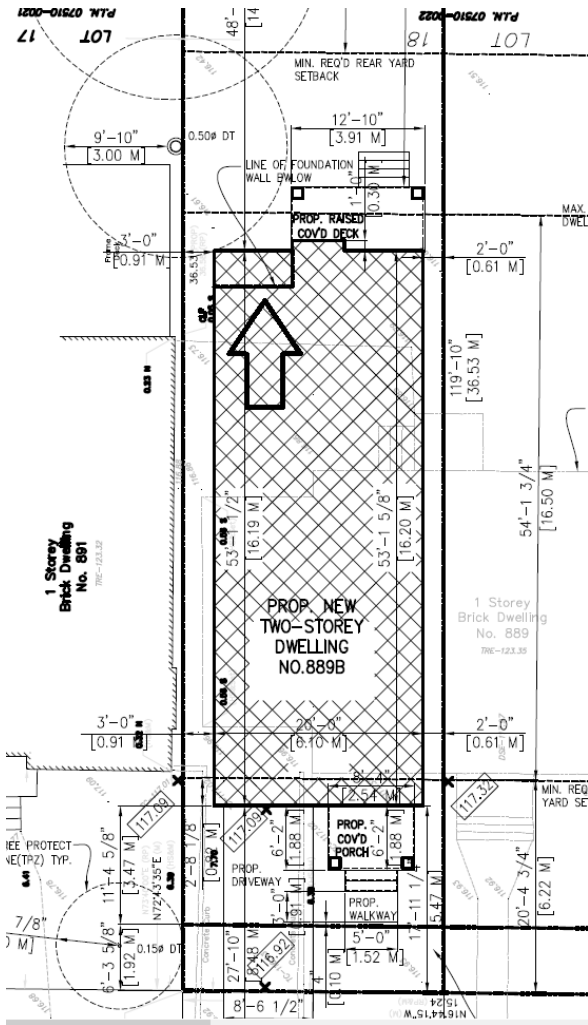
Both are considered “development” and the Official Plan states:

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

- b) size and configuration of lots; . . .

The variance also requires conformity to the Official Plan. The variances must cumulatively and individually:

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



EVIDENCE

I heard from Ms. Song's planner, Franco Romano and the City's planner, Tony Lieu; both of whom I qualified as expert planning witnesses. Professor Penelope

⁶ The *Planning Act* has separate tests for a severance and variances and does not have any special tests when both are sought, as in this case.

Lockwood, Mr. John Kalas, Mr. Robert Jenkins, Ms. Fiona Campbell and Ms. Birute Luksenaite testified on their own behalves.

ANALYSIS, FINDINGS, REASONS

Overview

The proposed development must respect and reinforce the existing physical character of each geographic neighbourhood, including in particular:

the prevailing size and configuration of lots and

prevailing heights, massing, scale, density and dwelling type of nearby residential properties.

I find the existing physical character of the neighbourhood is composed of well treed low-rise homes in which the majority have front yard parking or driveways leading to detached garages in the rear yard.⁷ Ms. Song's proposal of two 7.62 m (25 feet) lots with houses 1.2 m apart does not respect and reinforce this character.

Ms. Song relies on amendments to this policy (OPA 320) that seem to permit more intense development if there is a "mix of physical neighbourhood characters" or a distinct distinguishable character along a major street. Royal York is a major street, but nonetheless I find that these recent policies do not assist the case for a severance. Since neither the severance nor the variances conform to the Official Plan, they should not be granted.

The delineation exercise

To establish character, the "geographic neighbourhood" must be delineated.⁸ The Official Plan does not direct how to delineate but leaves allows considerable flexibility. In the end, I find that differences between the two geographic neighbourhoods delineated by the two planners are not critical.

⁷ Please see page 13.

⁸ S. 4.1.5 states: "The geographic neighbourhood for the purposes of this policy will be delineated by considering the context within the *Neighbourhood* in proximity to a proposed development, including zoning; prevailing dwelling type and scale; lot size and configuration; street pattern; pedestrian connectivity; and natural and human-made dividing features. Lots fronting onto a major street shown on Map 3 and designated *Neighbourhoods* are to be distinguished from lots in the interior of the block adjacent to that street in accordance with Policy 6 in order to recognize the potential for a more intense form of development along major streets to the extent permitted by this Plan."

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Mr. Romano produced a study area map that consisted only of Royal York Rd alone, whereas Mr. Lieu's included blocks to either side of Royal York.

Royal York Rd is a dividing line between two zones, but the difference is not significant. There is a slight difference east and west of Royal York in gross floor area limits but at the end of the day, both neighbourhoods permit only residential detached with:



- minimum frontage of 13.5 m (42.3 ft), where 25 feet is sought; and
- minimum lot area 510 m², where 278 m² is sought.

The proposed severance and variances can comply with the RD use but not the other two bullets.

The study areas

Mr. Romano's study area (left) is of Royal York only and shows frontages in six different colours. The only two that show up in black and white versions are:

37.2 to 42.3 feet frontage lots, depicted in a mid-tone grey, (for example the four-block strip on east side of Royal York abutting the corner of Bloor and Royal York); and

7.62 m (25 feet), or smaller lots, which show up in a darker tone (e.g. the two sets of twins on the east side of Royal York north and south of the subject).

In his study area at the right, Mr. Lieu has depicted only the 50-foot lots (e.g. the subject lot) and 25-foot lots, orange for the former and blue for the latter. (Unfortunately, both are the same shade of grey, if viewed as a black and white drawing. However, since the intermediate sized lots are not shaded, it is easy to see 25-foot lots because of their narrower shape.)

The “not precluded” test

Ms. Flynn-Guglietti's (Ms. Song's lawyer's) goal was to establish either:

- the “not precluded test” in the last sentence⁹ of Policy 4.1.5, or

⁹ The prevailing building type and physical character of a geographic neighbourhood will be determined by the most frequently occurring form of development in that neighbourhood. Some *Neighbourhoods* will have more than one prevailing building type or physical character. The prevailing building type or physical character in one geographic neighbourhood will not be considered when determining the prevailing building type or physical character in another geographic neighbourhood.

While prevailing will mean most frequently occurring for purposes of this policy, this Plan recognizes that some geographic neighbourhoods contain a mix of physical characters. In such cases, the direction to respect and reinforce the prevailing physical character **will not preclude development** whose physical characteristics are not the most frequently occurring but do exist in substantial numbers within the geographic neighbourhood, provided that the physical characteristics of the proposed development are materially consistent with the physical character of the geographic neighbourhood and already have a significant presence on properties located in the immediate context or abutting the same street in the immediately adjacent block(s) within the geographic neighbourhood.

- the “may be taken into account” , which is in the middle part of Policy 4.1.5, as part of a discussion of “major streets”.

The reader should take note of Footnote 9 on the previous page as we will be returning to it to re-read it when discussing “materially consistent and significant presence”. We discuss the first bullet here and reserve the second bullet (major streets) for page 14.

The Plan recognizes a mix of “building type and physical character”, for example, older parts of Toronto, where duplexes are side by side with semidetached houses. My example refers to the building type. “Physical character” is harder to pin down, and the phrase “more than one prevailing building type or physical character” is even harder to define. The evidence presented to me in the two study areas seeks to persuade me that two key conclusions are **determinative** because they are “prevailing”, in Mr. Romano’s case that the conclusion is that majority of frontages are **below 13.5 m** and in Mr. Lieu’s case, the conclusion is that the majority of frontages are **greater than 7.62 m**.

First, the plan asks me to determine if there is a prevailing frontage. Policy 4.1.5 uses the word “prevailing” as a modifier for many of the criteria:

4.5.1 Development . . . will respect and reinforce the existing physical character of each geographic neighbourhood, including in particular:

- b) **prevailing** size and configuration of lots;
- c) **prevailing** heights, massing, scale, density and dwelling type of nearby residential properties;
- f) **prevailing** setbacks of buildings from the street or streets;

There is a convention in statutory interpretation that “same words have same meanings and different words have different meanings”, and so I am of the view that “prevailing” has the same meaning throughout 4.1.5, whether it refers to a number, like “height” or “density”, or whether it describes something more abstract, like “configuration” or “massing”.

As well submitting the prevailing lot size was less than the by-law minimum, Ms. Flynn-Guglietti argued in the alternative, that the prevailing lot size was “a variety”.

“And that takes us back to all of the criteria that starts on page 190. . . .And we know that the vast majority of the lots are less than permitted by the zoning bylaw. . . .And **so that is the most frequently occurring form of development in the neighbourhood**. . . . Sometimes the word “eclectic” is used. It is not homogeneous. In terms of the lot size, it is not homogeneous in terms of the lot frontage. In fact, the variety is really what

is the “prevailing form of development”. If we go further down, it says some neighbourhoods will have more than one prevailing building type or physical character. This is such a neighbourhood.”

I cannot agree. On two occasions, the Plan states “. . .prevailing will mean most frequently occurring . . .”; which is also its core dictionary meaning (for example, “to be frequently occurring”; “*a house style that prevailed in 1940’s*”). Ms. Flynn-Guglietti ‘s can argue that there is a “variety” of physical characteristics, but I find that she must go farther and pick a prevailing size within that variety.

What are the conclusions reached in planners’ evidence on “prevailing”?

Mr. Romano:

- most of the lots already undersized;
- 80.8% are less than 13.5 m frontage for the area as a whole; and 28.6% of the block itself;
- 83.6% are less than minimum 510 m² lot area for the area as a whole; and the same 28.6% for the block; and
- If this severance is granted, here are 6 other 50-foot lots which would be candidates for severance (out of 73 lots)

Mr. Lieu:

- The new lots would form the second smallest frontages and lot areas in the neighbourhood;
- If this severance is granted, here are 32 other 50-foot lots which would be candidates for severance (out of 329¹⁰ lots).

Since the underlying data was supplied, I can combine the two lot distributions directly¹¹ In charts on the next page, there is an obvious “bump” at ranges far below the by-law minimum of 13.5 m (42.3 feet). The most frequent lot size is exactly 33 or 33.3 feet for Mr. Lieu¹² (this number is about 18% of the total of 329 lots), and a range

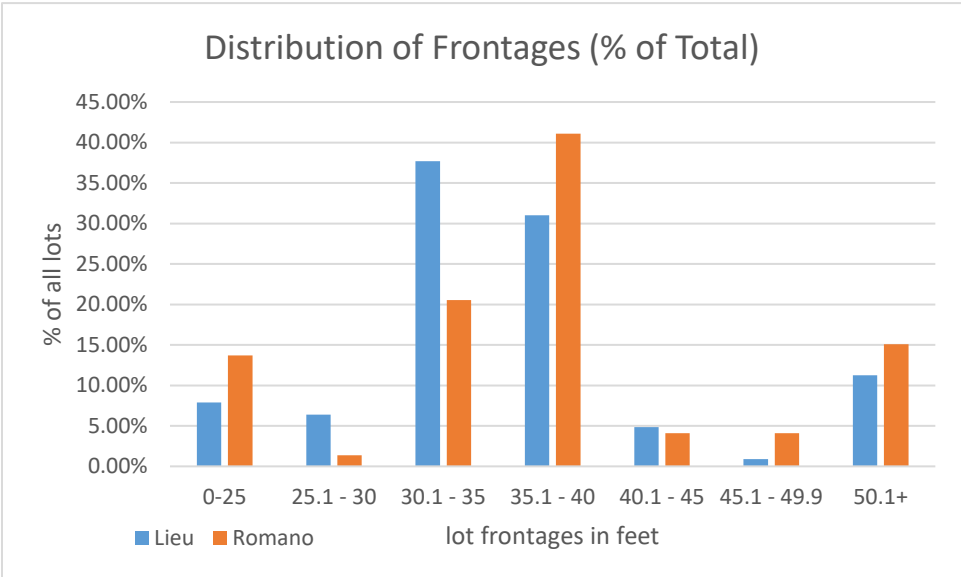
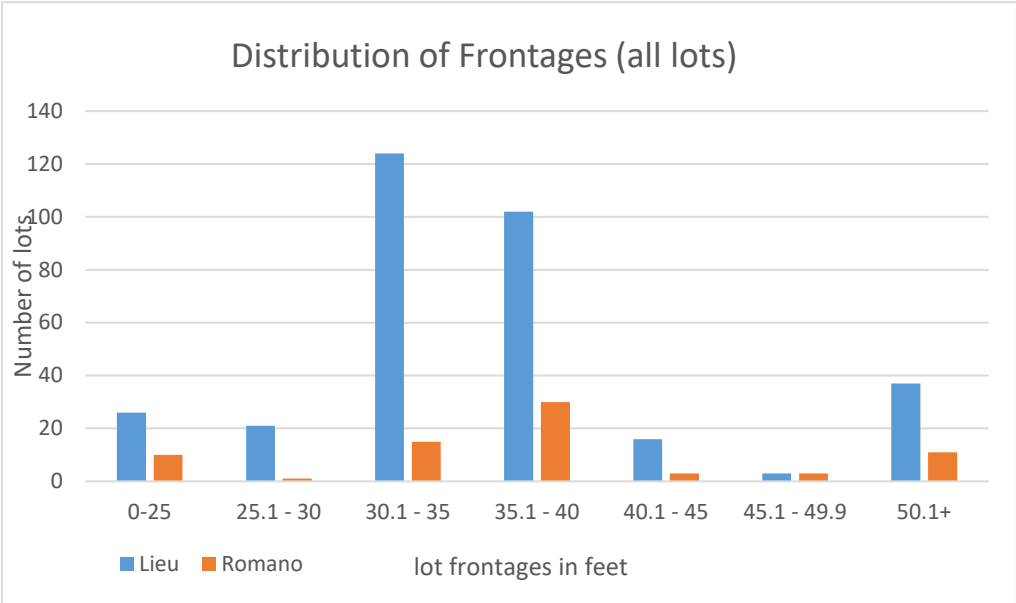
¹⁰ Mr. Lieu counted 332 lots and I get 329. It is possible in converting his document from Adobe to Excel, there were small copying errors made by me, but I do not consider this discrepancy significant.

¹¹ The charts are made by sorting Mr. Romano’s data p 34 and Mr. Lieu, pages 54 to 60 in their respective witness statements; I did not look outside these documents to make the charts.

¹² There were also many 31s and 34s, making this bar the highest for Mr. Lieu.

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from 35 to 40 feet for Mr. Romano¹³. (I used ranges that were smaller than either planner in order to more finely screen what was the “prevailing” lot frontage.) Accordingly, 25 foot lots are **not** the most frequently occurring in either study area, and unless Ms. Song can avail herself of other wording in 4.1.5, she would appear to fail the test of “respect and reinforce the prevailing lot size”.



¹³ Although there were twelve 33.3s in Mr. Romano’s study area, this was outweighed by the combination of nine 35s, eight 37s and eleven 39s. So, the combined 35.1 to 49-foot range was 28 lots for these three lot sizes.

“Mix”, “material consistency” and “significant presence”

The Plan allows does not preclude a non-prevailing lot size if three hurdles are satisfied¹⁴, which I paraphrase in the following numbered paragraphs:

1. A finding that there is a “mix of physical characters”. That is, more than one character, and “character” consists of all the characteristics following the word “including” in Policy 4.1.5, such as lot size and configuration, etc.

Ms. Flynn-Guglietti interpreted (wrongly in my opinion) this test to mean “a physical character **that is mixed**”¹⁵. But if there is no finding of a “mix of physical characters”, then everything that follows is not applicable.

First, I repeat her submissions on this issue:

Ms. Flynn-Guglietti said: “. . .And we know that the vast majority of the lots are less than permitted by the zoning bylaw. . . .And so that is the most frequently occurring form of development in the neighbourhood. . . . Sometimes the word “eclectic” is used. It is not homogeneous. In terms of the lot size, it is not homogeneous in terms of the lot frontage. **In fact, the variety is really what is the “prevailing form of development”**. If we go further down, it says some neighbourhoods will have more than one prevailing building type or physical character. This is such a neighbourhood. . . .And the physical character can be and is the lot size, the frontage, the rhythm of the street and the rhythm of the street in this case is the differential between the lot sizes.”

Ms. Flynn-Guglietti concluded that the character was one with a variety of sizes, frontages, setbacks and landscaping, “Physically [this] what you see when you’re walking down the street”.

Returning to the “hurdles”,

- 2., and 3. Assuming a “mix” is established, Ms. Song must then go on to establish that the 7.62 m lots exist in “substantial numbers in the geographic neighbourhood”, and are “materially consistent” with the physical character of the neighbourhood” and have a “significant presence” in the block where the subject property is located.

I think that this is language that tries to tell us how to interpret the “respect and reinforce” test means in these circumstances. We know that the physical characteristic of a 25-foot frontage is not the prevailing frontage. Although the text veers between “character” and “characteristic”, “characteristic” is always in the plural, so I believe I am

¹⁴ The text with respect to “does not preclude” is found in footnote 9 on page 7.

to look at all the characteristics, not just the lot frontage and area. I am required to look qualitatively and quantitatively at the proposal in its total geographic and policy context.

I start with the frontages:

Table 2 Percentage of 7.62 m lots in selected neighbourhoods	
East side of Royal York from 873 to 899	4 out of 14 = 28%
Both sides from Van Dusen/ Edgemore to Meadowvale	5 out of 26 = 19%
Both sides in the two-block stretch from Meadowvale to Bloor	10 out of 51 = 20%
Mr. Romano study area	10 out of 73 = 14%
Mr. Lieu study area	26 out of 329 = 8%

For the sake of argument, I will assume (but not make the finding) that there are enough numbers of 7.62 m frontages in all relevant areas except possibly Mr. Lieu’s 329 lots to meet the substantial presence test. But the test asks me to look at the “physical characteristics of the proposed development”— plural, not just a single metric.

This is the first severance in the neighbourhood, according to Ms. Campbell, except for 13 Orchard Crescent¹⁶. This decision created two 10.67 m lots (35 feet), considerably larger than Ms. Song proposes, and 10.67 m would meet the “prevailing” test in Mr. Lieu’s study area and barely meet it in Mr. Romano’s, if the 13 Orchard Cr lot was on Royal York.

I accept the evidence of Mr. Lieu that we must take a broader view. He looked at all “characteristics”, including the integral garage design, etc. and in so doing, I find that neither the material consistency nor sufficient presence tests is met. He testified that:

- Frontages of 7.62 m and lot areas of 263.7 m² are substantially less than the minimum and a greater deviation from the zoning by-law than the majority of the neighbourhood;
- The smallest lot in the neighbourhood, 60 Meadowvale Drive, with has a lot frontage of 7.62 m and a lot area of 254.98 m², which is “unique” and probably

¹⁶PLI161255, August 3, 2017.

dates from the registration of the original plans of subdivision. If the proposed lot sizes if created, would only be 8.72 m² larger than 60 Meadowvale Drive;

- The majority of lots within the neighbourhood have driveways with front yard parking or driveways that lead to detached garages in the rear yard¹⁷;
- Single detached dwellings with integral garages do exist in the neighbourhood but do not form the majority of dwellings in the neighbourhood;
- Mr. Lieu’s conclusion was that lot frontages of 7.62 m would impact the existing physical character and rhythm of the Royal York Road streetscape which composed of lots in the 35 to 40-foot range, on Mr. Romano’s evidence.

While there are significant numbers of 7.62 m lots, **there are not significant numbers of 7.62 m lots with those other characteristics** that the Plan requires I examine such as setbacks, massing, scale and density.

The below Lieu photos are for the block where the subject is situated (the subject is lower left). There is a spacious gap between the two houses 891 and 893 , the two



- Looking northeast along Royal York Road at 893, 895, and 897 Royal York Road.



- 893 Royal York Road
- Lot Frontage – 7.62 m



- 891 Royal York Road
- Lot Frontage – 7.62 m



- 889 Royal York Road – Subject Site
- Lot Frontage – 15.24 m



- 887 Royal York Road
- Lot Frontage – 15.24 m



- 885 Royal York Road
- Lot Frontage – 10.16 m

7.62 m lots abutting the subject property. According to Mr. Lieu this is type of gaps exists for the majority of homes in the study area.

¹⁷ Mr. Romano seems to concur: “• Prevailing patterns of side yard setbacks are modestly tight to wide. Larger side yards are associated with driveways leading to rear parking, for example.

- Prevailing patterns of rear yard setbacks are that they are modest to deep, in excess of zoning requirements, accommodating grade related open amenity and accessory features.

- Prevailing patterns of landscape open space is in the form of front and rear yard landscaping.

These 7.62 m frontage older homes are well integrated into the streetscape and I think it obvious that two new two-storey houses with integral garages and lot-line-to-lot-line massing do not have a significant presence in the neighbourhood, nor are they materially consistent with what is there now, even if the new homes meet many of the performance standards. I note that I am to consider the variances individually and cumulatively; that is, the reduced lot frontages together with the reduced side yard setbacks and increased coverage, floor space index and building length. There are none that tick all these boxes.

When all these criteria are considered I do not find the development would respect and reinforce the prevailing physical character in either the pre-OPA 320 formulation of 4.1.5, or in the more elaborate version, after the OPA 320 amendments.

Major streets

There are four references to major streets in section 4.1; I summarize my “take-aways” for each reference (i.e. my paraphrasing of each reference) and then set out the entire text:

Paraphrase:

1. Generally, a planner is directed to hesitate before including a major street in the study area for an interior lot;
2. If say, an apartment is approved on a major street, don't use it as a comparable for an interior lot;
3. If you are seeking to intensify on a major street you are nonetheless bound by the ordinary tests.
4. When you do apply the ordinary tests, it is acceptable to be sensitive to the fact that the project is on a major street.

Reference 1 (Part of Policy 5)

Lots fronting onto a **major street** . . . are to be distinguished from lots in the interior of the block adjacent to that street in accordance with Policy 6 in order to recognize the potential for a more intense form of development along major streets to the extent permitted by this Plan.

Reference 2 (Policy 6)

6. Where a more intense form of development than the prevailing building type has been approved on a **major street** in a Neighbourhood, it will not be considered when reviewing prevailing building type(s) in the assessment of development proposals in the interior of the Neighbourhood

Reference 3 (Policy 7)

7. Proposals for intensification of land on major streets in Neighbourhoods are not encouraged by the policies of this Plan. Where a more intense form of residential development than that permitted by existing zoning on a major street in a Neighbourhood is proposed, the application will be reviewed in accordance with Policy 5, having regard to both the form of development along the street and its relationship to adjacent development in the Neighbourhood.

Reference 4 (Part of Policy 4.1.5)

Lots fronting onto a **major street**, and flanking lots to the depth of the fronting lots, are often situated in geographic neighbourhoods distinguishable from those located in the interior of the Neighbourhood due to characteristics such as:

- different lot configurations;
- better access to public transit;
- adjacency to developments with varying heights, massing and scale; or
- direct exposure to greater volumes of traffic on adjacent and nearby streets.

In those neighbourhoods, such factors may be taken into account in the consideration of a more intense form of development on such lots to the extent permitted by this Plan.

Reference 1 occurs in the “delineation” section and asks the delineator to recognize that major streets are different from interior streets. The sentence then states why the major street lot is different. This is merely an observation and I do not consider it improves the chances for approval. Since the drafter of the section is talking about delineation, the words “for the purposes of delineation” could be “read in” so that the phrase to be interpreted becomes “are to be distinguished from interior *lots for the purposes of delineation*”. If there was any residual doubt, the reference concludes with the words “to the extent permitted by this Plan”.

Reference 2 is irrelevant. Reference 1 says “in accordance with Policy 6” (Reference 2), but only when considering an interior lot. 889 Royal York is not an interior lot.

Reference 3 says intensification on a major street is not encouraged, and Ms. Flynn-Guglietti says this does not mean “prohibit” or “is prevented” and I agree. But the section takes us back to 4.1.5, the ordinary test. She then laid the groundwork for Reference 4, to ask me to treat the application differently because it is on a major street, which is in direct contradiction to the words of the Plan:

So, I put this in front of you sir [this is Ms. Flynn-Guglietti speaking] for the purpose of pointing out with respect to developments that are on major streets, that we are directed

by the development criteria. that **developments on major streets are going to be treated differently**, than the interior. And in particular, would have regard to the form of development along the street and its relationship to adjacent development in the neighbourhood.

You'll recall that we walked through the differences between Royal York Road and the interior streets: sidewalks, bike lanes, buses going up and down the street. We heard evidence from the last witness {Ms. Luksenaite} who talked about how busy Royal York was. . . .And it's different. **It is different than the interior streets.** . . . And when we look at the last bullet "direct exposure to greater volumes of traffic. . ." and we know that is something that we would take into consideration. . . .

[quoting] In those neighbourhoods, such factors may be taken into account in the consideration of a more intense form of development on such lots to the extent permitted by this Plan.

2968-2970 Bayview Ave

After referring to these policies, Ms. Flynn-Guglietti reviewed introduced the TLAB case of *2968-2970 Bayview Ave*. Despite the wording that intensification on major streets is not encouraged, she asked me to draw a contrary conclusion because another TLAB member allowed the severance of two lots into four and granted 102 variances.

I find the facts are different. TLAB Member Ms. MacPherson points out in paragraph 18 that for the abutting lot to the south, Council had approved five 3-storey townhouses and that the subject land was five blocks north of the Bayview Subway Station and Bayview Shopping Centre, which has existed for decades and is the centre of a Secondary Plan with higher density development.

I find that currently. the Royal York/Bloor area does not have this level of planned development.

"Taking into account" the four bulleted factors

The four bullets are "different lot configurations; better access to public transit"; etc. reproduced under "Reference 4" on the previous page. Ms. Flynn-Guglietti argued:

"So, the critical point is, "to the extent permitted by the Plan."

I believe that Ms. Flynn-Guglietti has misstated the premise that must be established, before we can get to the conclusion "to the extent permitted by the Plan". These words are preceded by wording to the effect that lots on major streets are often distinguishable from interior lots because of, for example, better access to public transit. Ms. Flynn-

Guglietti argues: If A¹⁸, then B. (Instead of making the reader flip back to page 15, it is reproduced at the bottom of this page in footnote 18). Ms. Flynn-Guglietti has stated A as:

If Royal York has better access to transit (Proposition A), then bulleted factors may be taken into account. (Proposition B)

I interpret A as:

If major street neighbourhoods are **distinguishable** by virtue of better access, . .

Major streets in Etobicoke are few and far between. Other major streets include Kipling, Islington, Bloor, Queensway and Evans. This little stretch of Royal York is unlike parts of those other major streets in that it has no commercial or midrise, except at the Bloor node and the area around 810 Royal York near the Mimico Creek. There is no separate distinguishable lot distribution as a result of better access to transit, as I have already found. I have already found the Royal York neighbourhood and interior lots comparable in terms of lot frontages. Then I am not at liberty to apply the conclusion “B”, that is, “such factors may be taken into consideration.”

Even if I am again wrong in this, “What does “to the extent permitted by the plan” mean exactly? Suppose Royal York has 20,000 car movements a day and Humbervale has 1,000. Does this mean a 50-foot lot on Royal York is entitled to a severance and Humbervale’s lot is not? How do you calibrate “extent”? Ms. Song’s team of professionals has not convinced me, and it is on them to satisfy the burden.

I conclude that the development does not respect and reinforce the existing physical character of the neighbourhood, and the proposed physical change is not “sensitive, gradual and ‘fit’[ing] the existing physical character”¹⁹. I find all these Official Plan tests are not met.

Transit and Major Road Policies

Ms. Flynn-Guglietti’s submissions were:

What I’d like to focus on is the policy regime, and [I elicited from Mr. Lieu that the City had not brought its Official Plan in conformity with the 2019 Growth Plan] and the questions that you asked took the witness to those policies in the Growth Plan that talk about locations in close proximity, within walking distance to... rapid transit. . . .so, what we have

¹⁸The Official Plan text for proposition A is, “ Lots fronting onto a major street, . . are often situated in geographic neighbourhoods distinguishable from[interior lots], and for B is, “In those neighbourhoods, such factors may be taken into account in the consideration of a more intense form of development on such lots to the extent permitted by this Plan.”

¹⁹ Official Plan s. 4.1 Neighbourhoods

here. . . is proximity to the subway. . . and the investment that all levels of government have put into that rapid transit. And we do have evidence that **the persons and jobs per hectare are not meeting what would ordinarily be needed** before that type of rapid transit [sentence ends].

The Growth Plan for the Greater Golden Horseshoe states that the area around the Royal York subway station (“Major Transit Station Area”) is “to be planned for” a total of 200 residents and jobs per hectare.²⁰ Mr. Lieu said that City staff are working on this planning as directed by the Growth Plan, that is, are in the process of delineating boundaries and implementing rezoning towards the target densities.

The only evidence I have on the targets are:

Mr. Romano, who said that as far as he could tell from available sources, the density is around 100 residents and jobs per hectare (no boundaries given); and

Mr. Lieu who stated that census data shows 35.51 persons per hectare for typical residential tracts.

I note that it is the upper and lower tier municipalities that will do the planning, not the TLAB. I have neither the mandate nor sufficient information to undertake the planning. In the absence of the identification process directed by s. 2.2.4 of the Growth Plan, the severance is premature²¹.

Ms. Campbell’s testimony

Ms. Campbell, past president of the Parks and Forestry Advisory Committee and past president and active member of the Kingsway Park Ratepayers Association stated

²⁰ 2.2.4 *Transit Corridors and Station Areas*

1. The *priority transit corridors* shown in Schedule 5 will be identified in official plans. Planning will be prioritized for *major transit station areas* on *priority transit corridors*, including zoning in a manner that implements the policies of this Plan.
2. For *major transit station areas* on *priority transit corridors* or subway lines, upper- and single-tier municipalities, in consultation with lower-tier municipalities, will delineate the boundaries of *major transit station areas* in a *transit-supportive* manner that maximizes the size of the area and the number of potential transit users that are within walking distance of the station.
3. Major transit station areas on priority transit corridors or subway lines will be planned for a minimum density target of: a) 200 residents and jobs combined per hectare for those that are served by subways; b) 160 residents and jobs combined per hectare for those that are served by light rail transit or bus rapid transit; or c) 150 residents and jobs combined per hectare for those that are served by the GO Transit rail network.

²¹ S. 51(24)(b) “whether the [consent] is premature or in the public interest.”

that her group was supportive of reasonable intensification, which she suggested might take the form of a triplex:

Royal York is lined with homes, most of them low profile, . . . Injecting houses that are the equivalent of town houses has not occurred yet, and it's not welcome. What we are concerned about is the destruction of the overall neighbourhood context, which is green and leafy,

It should be noted there are no large parcels, industrial factories, commercial or large apartment buildings in the district, north on Royal York to the railway overpass, or south to the bridge at the Creek. So, intensification on this stretch of Royal York can only be done piece-meal, house by house. Intensification as per the rationale of plans is the objective, perhaps a more seamless insertion of one house, with all the necessary setbacks, on that lot at 889 Royal York, offering up to three apartments, **will address intensification and affordable housing all in one stroke**, rather than dividing a lot, . . . The current application only makes two huge houses, very expensive, on undersized lots, that cripple the land's ability to absorb water or support mature trees²² . . . and it will undoubtedly add at least two more cars each to the roadway. . . You could have three levels, with three apartments in there nicely. with the owner living in one and rent out the other two, . . . it'd certainly be more affordable.

I requested Ms. Flynn-Guglietti to ask her client if she wished to amend her proposal along the lines suggested by Ms. Campbell, and she was unable to obtain such instructions²³.

DECISION AND ORDER

The severance is not granted, and the variances are not authorized.



Ted Yao
Panel Chair, Toronto Local Appeal Body

²² Mr. Bradley, the applicant's arborist, stated each severed lot could absorb new tree plantings, but of course these would be smaller caliper trees.

²³ I should note for the record, that Ms. Song offered to rough in elevator shafts in each of the proposed houses, should the severance and variances be granted.