

DECISION AND ORDER

Decision Issue Date Friday, December 13, 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): IRENE HILDEN

Applicant: ELMIRA ZARRABI

Property Address/Description: 80 Bexhill Avenue

Committee of Adjustment Case File:18 270051 ESC 20 CO (B0068/18SC), 18 270059 ESC 20 MV (A0379/18SC), 18 270067 ESC 20 MV (A0380/18SC)

TLAB Case File Number: 19 127832 S53 20 TLAB,19 127835 S45 20 TLAB, 19 127834 S45 20 TLAB

Hearing date: Thursday, August 15, 2019

DECISION DELIVERED BY S. KARMALI

APPEARANCES

NAME	ROLE	REPRESENTATIVE
SAEID KOHRANGI	Owner/Party	DAVID BRONSKILL
TAE RYUCK	Expert Witness	
ELMIRA ZARRABI	Applicant	
REKA NICHOLAS	Party (TLAB)	
IRENE HILDEN	Appellant	
JOSEPH ROY	Participant	
HILDE JOHANNESSEN	Participant	
CHRISTINA DOOBAY	Participant	
CHARLES HASSE	Participant	

INTRODUCTION

[1] The subject property is 80 Bexhill Avenue. Located in the Clairlea-Birchmount community of Scarborough, the subject property is within the block bounded by St. Bede's Road to the south, Bexhill Avenue to the east, Westbourne Avenue to the west, and Bolster Avenue to the north. The subject property is designated *Neighbourhoods* under the Official Plan (OP) and is zoned Residential Detached (RD) (f12.0; a371) (x169) and single residential.



Source: City of Toronto Maps <http://map.toronto.ca/>

[2] On February 28, 2019 the Scarborough Panel of the City of Toronto (City) Committee of Adjustment (COA) approved the consent for severance application of the subject property. Both the retained and convey lots would have a frontage of 7.6 metres on Bexhill Avenue and lot areas of 241 square metres. The approved consent is identified in **Attachment A** hereto.

[3] Also, the COA modified and approved the variance applications for each severed lot on the subject property. While these applications are not identical, they share a common purpose: to construct a new two-storey detached single-family dwelling with a flat-roof and an integral garage on each lot. The modified and approved variances for both parcels are identified in **Attachment B** hereto.

[4] The COA approved severance and variance applications were appealed by Ms. Irene Hilden. She lives at 78 Bexhill Avenue, which is the property directly to the south and on the same side of the street as the subject property.

[5] Some of the registered Participants were not present at the TLAB hearing. I have carefully reviewed their Participant Witness Statements. I have identified only those who appeared at the proceeding, above.

[6] I informed those in attendance I had visited the subject property and surroundings, and had familiarized myself with the pre-filed materials related to this appeal, including the witness statements from the Participants and Parties.

[7] The City did not comment on the matter and did not appear.

BACKGROUND

[8] The Appellant and the Parties referred to prior decisions of the TLAB in the neighbourhood concerning requests for lot severance. Those matters include:

- A. *149 Westbourne Avenue* a decision of Member S. Ruddock dated December 19, 2017 (originally a 50-foot lot);
- B. *103 Westbourne Avenue*, a decision of Member T. Yao dated November 12, 2018 (a 50-foot lot);
- C. *157 Maybourne Avenue*, a decision of Chair I. J. Lord dated February 05, 2019; and (a 50-foot lot);
- D. *144 Westbourne Avenue*, a decision of Member S. Gopikrishna dated April 30, 2019 (originally a 50-foot lot)

[9] Each matter above involved a consent for severance to similarly-sized lots. Each matter would have been decided on its own merits. The matters of A and D were granted by the TLAB. The matters of B and C were refused by the TLAB. Less importantly, Mr. Tae Ryuck was retained for the matters of A, C, and D as a land-use planning expert in support of each consent for severance.

[10] While the decisions concerning the matters above are useful and informative, they do not determine the outcome of the matter at hand. In this respect, I agree with Member Yao's statement in *103 Westbourne Avenue* (B.), in which he writes "...any individual case will differ from another both in time and geographic location, even if it is in a similar study area." The determination of an appeal before the TLAB must be made on the evidence heard.

[11] I am mindful that an approved consent for severance joins the existing character of that neighbourhood. It is, therefore, important to not disregard the comments and reasons for properties of similar fact within the same general area. I have read the decisions above, to be clear, and I have not needed to refer to or rely on them to decide for the matter which is before me.

MATTERS IN ISSUE

[12] The primary issue in this appeal is whether the creation of two undersized lots and the resultant single-detached dwellings respect and reinforce the existing physical character of the neighbourhood. I must consider the provisions of Section 51(24) of the *Planning Act* and be satisfied a plan of subdivision is not necessary.

[13] If the consent for severance is confirmed by the TLAB, the second issue is whether the proposed variances for each part of the lot on the subject property satisfies the four tests set out under Section 45(1) of the *Planning Act*.

JURISDICTION

[14] Provincial Policy – S. 3

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

[15] Consent – S. 53

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

(a) the effect of development of the proposed subdivision on matters of provincial interest as referred to in section 2 of the Planning Act;

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

(c) whether the plan conforms to the official plan and adjacent plans of subdivision, if any;

(d) the suitability of the land for the purposes for which it is to be subdivided;

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

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

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

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

- (h) conservation of natural resources and flood control;
- (i) the adequacy of utilities and municipal services;
- (j) the adequacy of school sites;
- (k) the area of land, if any, within the proposed subdivision that, exclusive of highways, is to be conveyed or dedicated for public purposes;
- (l) the extent to which the plan's design optimizes the available supply, means of supplying, efficient use and conservation of energy; and
- (m) the interrelationship between the design of the proposed plan of subdivision and site plan control matters relating to any development on the land, if the land is also located within a site plan control area designated under subsection 41 (2) of this Act or subsection 114 (2) of the City of Toronto Act, 2006. 1994, c. 23, s. 30; 2001, c. 32, s. 31 (2); 2006, c. 23, s. 22 (3, 4); 2016, c. 25, Sched. 4, s. 8 (2).

[16] Minor Variance – S. 45(1)

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

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

EVIDENCE

[17] Mr. Bronskill called Tae Ryuck as an Expert Witness. Mr. Bronskill asked Mr. Ryuck to confirm his duties as indicated in Exhibit 2, which is an executed Form 6 – Acknowledgement of Expert's Duty Form. Mr. Ryuck confirmed his duties to provide expert opinion evidence in land use planning matters in a fair, objective, and non-partisan manner. He confirmed his duty to provide such additional assistance as the TLAB may reasonably require to determine a matter in issue. He further confirmed that these duties mentioned above are paramount.

[18] Mr. Bronskill asked Mr. Ryuck to confirm the items in Exhibit 1, Mr. Ryuck's curriculum vitae. Mr. Ryuck testified he obtained a Bachelor's degree in Urban and Regional Planning from Ryerson University in 2001. He also testified he had been a Registered Professional Planner since September 2001. Mr. Ryuck explained he has valid memberships in the Ontario Professional Planners Institute and the Canadian Institute of Planners.

[19] Mr. Ryuck stated he has been previously qualified to provide independent expert opinion evidence in land-use planning at the TLAB and the Local Appeal Planning Tribunal (LPAT). He confirmed he has been qualified before the TLAB for 144 Westbourne Avenue and 149 Westbourne Avenue, as well as 157 Maybourne Avenue.

Mr. Ryuck, Expert Witness

[20] I qualified Mr. Ryuck to provide expert opinion evidence in land-use planning. In providing expert testimony, Mr. Ryuck relied on Exhibit 3, his Expert Witness Statement including related attachments,

St. Clair Avenue East to the north,
Pharmacy Avenue to the east, Victoria Park Avenue to the west, and Dolphin Drive to the south. He testified that he chose this study area because it is reflective of what area residents would experience in their day-to-day life as they walk the streets. He further testified this area is under redevelopment in the form of additions, new homes also by way of consents. He indicated the subject property is located on the west side of Bexhill Avenue. There is currently a one-storey single-detached dwelling on site.

[22] He provided that the neighbourhood is very well-served by public transit. He stated there a mixture of commercial uses, including retail uses in the neighbourhood.

[23] Mr. Ryuck classified his study area as a stable residential neighbourhood. He testified the area has a mixture of lot sizes and frontages. He further testified the neighbourhood is characterized by primarily single-detached homes of one and two storeys along Bexhill Avenue. He noted there is regeneration in the neighbourhood in the form of redevelopment and additions.

[24] He testified there is no consistency of lot areas and lot frontages. Rather, there is a mixture of lot frontages and lot areas scattered throughout the neighbourhood, which show smaller lot frontages and smaller lot areas.

[25] Mr. Ryuck stated there are lot frontages and lot areas similar to the proposed frontage and lot area of the subject property. He also stated there are similarities present with existing homes, which are not the result of the severance and variance process. He stated 31 Bexhill Avenue, 44 Bexhill Avenue, 129 Bexhill Avenue, and 133 Bexhill Avenue, 26 Westbourne Avenue, 42 Westbourne Avenue, 44 Westbourne Avenue, 63 Westbourne Avenue and 63A Westbourne Avenue have similar and smaller lot frontages of 7.62 metres. He further stated there are other properties with similar frontages along Westbourne Avenue.

[26] Mr. Ryuck testified that new developments in the area also point to similarities with the proposal. He stated 68A and 68B Bexhill Avenue are single-detached homes, with flat roofs, created by way of severance. He stated these homes have similar lot areas and frontages as to what is being proposed for 80 Bexhill Avenue. He further stated 61A and 61B Bexhill Avenue are two-storey single-detached homes with integral garages and smaller frontages as with the proposal. He testified that 57B and 59 Westbourne Avenue are also examples of newly created single-detached homes.

[27] I inquired of Mr. Ryuck the side yard setbacks for 63 and 63A Westbourne Avenue. Before he answered, he helpfully explained to the Parties and Participants what a side yard setback is: a setback from a dwelling to the side yard lot line. He stated 63A Westbourne Avenue is almost at 0 metres to the side yard while 63 Westbourne Avenue is approximately 0.2 metres or 0.3 metres.

[28] He testified that the pattern of development seems to be that side yard setbacks of existing and newer homes do not comply with the zoning by-law on at least one side. He stated that 66 and 66B Westbourne Avenue, which were created by severance, each have a similar lot coverage as to what is being proposed. He pointed out these homes have reduced side yard setbacks in between them and on their outer sides. Mr. Ryuck stated 70A and 70B Westbourne Avenue are also newly created lots by way of severance. He explained these are both single-detached two-storey dwellings with integral garages and with lot frontages of 7.62 metres, and reduced side yard setbacks.

[29] Mr. Ryuck discussed 149A and 149B Westbourne Avenue. He stated these are flat-roof dwellings which had approved built form variances for height, lot coverage and lot frontage as with the proposal, were approved by the TLAB. Mr. Ryuck then discussed 144 Westbourne Avenue about which there was recent TLAB decision, and review decision. Mr. Ryuck pointed out 144 Westbourne Avenue is directly across the street from 149 Westbourne Avenue, and is similar to the proposal in terms of built form, lot frontages and lot areas. Mr. Ryuck pointed to 76A and 76B Pitt Avenue, which were created by way of severance. These homes have pitched roofs, integral garages, and have a similar lot frontage and lot area as with proposal. He pointed to 78A and 78B Pitt Avenue, which were also approved by way of severance, illustrate a lot frontage and lot area similar to the proposal.

[30] He testified about more properties along Pitt Avenue, which have a similar lot area and similar frontage. Mr. Ryuck described properties on Maybourne Avenue as evidence to support the applications for consent for severance and variance before the TLAB. He pointed to 27 Maybourne Avenue and 85B Maybourne Avenue, which are existing dwellings, each with a lot frontage of 7.62 m and a similar lot area. He discussed 30A and 30B Maybourne Avenue, and 46A and 46B Maybourne Avenue as properties which have approved severances, and which share a similar lot frontage and lot area.

[31] Mr. Ryuck indicated that the proposed homes are consistent with the existing context and do not in any way destabilize the neighbourhood.

[32] I asked Mr. Ryuck what destabilization means in the context of this neighbourhood. Mr. Ryuck testified that destabilization means something completely out of character. He stated a request to sever the land in question into three lots, for example, would not fit into the character of this area's neighbourhood. He opined that stability, according to the OP, ensures that new developments maintain the existing character of the neighbourhood, and the existing context. He further opined that neighbourhoods are stable but not static. He explained change is expected to occur over time in the neighbourhood provided that proposed development generally fits the neighbourhood characteristics.

[33] Mr. Bronskill asked Mr. Ryuck to opine about compatibility. Mr. Ryuck stated there is variation in the area of the subject property. He testified there is evidence of a two-storey dwelling next to a one-storey dwelling, and a one-storey dwelling next to a one-storey dwelling. He stated there is also a variation of heights in the area. He explained there are height differences along Bexhill Avenue because of a downward northerly slope.

[34] Mr. Ryuck stated the proposal would not be a departure from what is existing in the area. He opined the proposal is consistent with the neighbourhood. He further opined that single-detached homes reflect the built form pattern for setbacks and heights. He noted there is no building length variance request. He stated the roofline and streetscape would be consistent with the existing homes across the street and on either side of the property. He stated this is possible because the front yard mound, with its northerly slope, will be adjusted.

[35] Mr. Ryuck stated there would be no adverse or new unacceptable impacts in an urban context.

[36] Mr. Ryuck testified the proposal is consistent with PPS and conforms to the Growth Plan. He further testified that the request for consent for severance shall have regard to among other matters, to health, safety convenience, accessibility for persons with disabilities and welfare of the present and future inhabitants of the municipality and to the criteria of Section 51(24) of the *Planning Act*.

[37] Mr. Ryuck helpfully opined about most of the criteria contained in Section 51(24). I have generally summarized his points with respect to each criterion.

[38] Mr. Ryuck stated the proposal is:

- representative of new, small construction
- reflective of what is existing on the ground
- in the public interest
- compatible within the neighbourhood context
- not premature
- not destabilizing for the neighbourhood
- in conformity with the OP and adjacent plans
- sensitive to the existing character of the neighbourhood and the 4.1.5 OP development criteria
- suitable for severance
- considerate of the height, massing, and streetscape and within the range of lot frontages and area both within the immediate and overall neighbourhood context
- conservative of heat and electricity because it uses newer materials

[39] Mr. Ryuck added that the test for consent for severance is whether the request respects the existing character or existing pattern of development. He stated there is a peppered pattern of lot frontages and lot area and a mix of new homes and existing ones. Mr. Ryuck restated that a destabilizing outcome could arise if a lot was severed into three parcels. He opined this situation would completely be against the policies.

[40] Mr. Ryuck testified that he did not believe the application would be a tipping point for the neighbourhood. He stated that further consent applications would appear. He cautioned there may be differences in those applications, which warrant either approval or refusal by the TLAB or the LPAT.

[41] Mr. Ryuck discussed the OP's Development Criteria in Section 4.1.5 and related them to the proposal. He relied on criteria before the amendments from OPA 320. I have summarized his commentary about the criteria he found applicable to the proposal:

(b) size and configuration of lots – *the proposed lot areas are consistent with others found throughout the neighbourhood*

(c) heights, massing, scale, and dwelling type of nearby residential properties – *the proposal is the opposite of over-development; the building height is consistent with adjacent dwellings on the street; the proposal seamlessly integrates into the neighbourhood from a streetscape perspective*

(d) prevailing building type(s) – *single detached dwellings are proposed and consistent in form and massing with other homes in the area*

(e) setbacks of buildings from the street or streets – *the front yard setback is consistent with street and adjacent dwellings*

(f) the prevailing pattern of rear and side yard setbacks and landscaped open space – *the proposed side yard setbacks are reflective of the prevailing building setbacks*

[42] He stated that the following criteria are not applicable to the proposal: (a) – patterns of streets, blocks and lanes, parks and public sites (g) – continuation of special landscape or built-form features that contribute to the unique physical character of a neighbourhood, and (h) – conservation of heritage buildings, structures and landscapes.

[43] Mr. Ryuck stated that the proposed variances individually and cumulatively meet the general intent and purpose of the OP. On this point, he indicated, among other things, that the proposal would result in a consistent streetscape and same building envelope, which would reinforce the physical character of the neighbourhood.

[44] He stated the proposal would individually and cumulatively meet the general intent and purpose of the Zoning By-law. He provided there will be no introduction of an inappropriate building form which would create any adverse impacts on the neighbourhood.

[45] Mr. Ryuck stated the proposal meets the test for appropriateness and desirability. On this point, he indicated that the design and size elements of the proposal sensitively considered the proposal's relationship to adjacent properties and the neighbourhood.

[46] He testified the proposed variances for the proposed severed lots would not test the limits of what constitutes unacceptable impacts. He concluded the consent and variance applications represent good planning.

[47] Mr. Bronskill added that if City Council were concerned about application activity in the neighbourhood, it would have pursued neighbourhood studies or area studies for this particular area. He stated there are no concerns from City Planning. He stated there are no secondary plans in place which show this form of development would be inappropriate from a City Planning perspective.

[48] Ms. Nicholas asked some questions during the cross-examination of Mr. Ryuck. Mr. Ryuck was asked how many times he had visited the subject property and area, and to provide dates for these visits. Mr. Ryuck said he visited the site and surrounding area more than three times for this application. He could not recall the dates on which he visited the site.

[49] Ms. Nicholas asked Mr. Ryuck to elaborate on the instances when the Applicant corresponded with the neighbours to discuss the proposal. Mr. Ryuck stated the owner met with neighbours, once or twice, and while there were discussions, there was no resolution, and the application remained contested.

[50] Ms. Nicholas asked if there is any support for the application. Mr. Ryuck stated there is one letter of support available in the online application filing record. He confirmed there are no participants to show support for the application before the TLAB.

[51] Ms. Nicholas challenged the accuracy of Mr. Ryuck's Witness Statement on several occasions. She questioned paragraph 14 in Exhibit 3, which should have read that a neighbour subsequently appealed the approved COA application to the TLAB, not the applicant. She questioned paragraph 15 in the same exhibit, which should have read that the driveway access of subject property is via Bexhill Avenue, not Westbourne Avenue. She questioned paragraph 32, which indicated the subject property site is relatively flat. She stated that if the site is flat, what about the large mound in the front of the existing dwelling which would be dug into if the application is approved. Mr. Ryuck replied that this is not a major grade change on the property in his professional opinion. She questioned paragraph 79, which refers to 3-storey dwellings in respect of the application whereas the appeal application request is to create 2-storey dwellings. Mr. Ryuck stated that it should have stated a 2-storey dwelling.

[52] Ms. Nicholas asked Mr. Ryuck whether he is familiar with Official Plan Amendment 320 (OPA 320). Mr. Ryuck acknowledged his familiarity with OPA 320. Ms. Nicholas stated that Mr. Ryuck did not refer to the word "prevailing" while under direct examination. Mr. Ryuck testified the prevailing form or pattern is one that has a mixture of lot areas, frontages, design elements, and varying heights both in the immediate and broad context.

[53] I asked Mr. Ryuck to generally describe OPA 320 and its applicability to the proposal at hand. Mr. Ryuck stated that OPA 320 provides refinement because it looks at the immediate block of where the subject property is located, and its surrounding area. He testified it is a two-tiered analysis. He started from an "immediate" viewpoint: there is a house on the opposite side of the subject property, which has a lot frontage similar to the proposal. He added that this house is removed by one block from the subject property. From a broader viewpoint, Mr. Ryuck said what the proposal is asking for is not dissimilar from what exists in the neighbourhood.

[54] Ms. Nicholas challenged the accuracy of Exhibit 4, Mr. Ryuck's Subject Site and Area Pictures. She pointed out on page 3, the photograph of 101 Westbourne Avenue is different from the photograph of the Subject Site and Area Pictures that Mr. Ryuck displayed at the hearing. At issue here were the properties of 149A and 149B Westbourne Avenue. Mr. Ryuck stated that 101 Westbourne Avenue should not have been in Exhibit 4 because it was "never approved." Ms. Nicholas asked Mr. Ryuck if he is sure about that? He corrected himself to state 103 Westbourne Avenue was the property which was not approved. Mr. Ryuck apologized.

[55] Ms. Nicholas asked whether the proposal should be approved because of prior approved consents in the community. Mr. Ryuck stated that there are smaller lots distributed throughout this neighbourhood in no particular pattern. These lots are not found in a contiguous form such as with rows of smaller lot frontages and areas.

[56] Ms. Nicholas asked Mr. Ryuck to explain what an unacceptable adverse impact might look like. Mr. Ryuck said if the proposal were seeking to build a ten-storey structure on the site, this would be considered unacceptable from a perspective of height, massing, shadowing, and use. Mr. Ryuck stated the proposal would not result in undue or unacceptable impacts in terms of views or shadows that would be expected in a neighbourhood of this sort. He stated the Zoning By-law intends to arrive at a built form that would be deemed acceptable and to ensure no resultant adverse impacts. Mr. Ryuck said this proposal through the COA and City Planning staff review is deemed acceptable in terms of height and massing. Mr. Ryuck testified he does not believe the proposal would be an anomaly on the street. He opined the proposal is an appropriate built form that would be consistent in the neighbourhood.

[57] Ms. Nicholas challenged Mr. Ryuck's characterization of what might be the tipping point of an unacceptable impact. She stated that placing the tipping point of an unacceptable impact to the extent of a ten-storey building situation or severing lot into three lots is an "extreme" example.

[58] Ms. Nicholas asked Mr. Ryuck whether there is a professional definition of 'enjoyment of a property'. Mr. Ryuck testified it is necessary to look at impacts, views, and privacy in terms of what is reflective in the neighbourhood. He stated there is no legal definition. He opined that with respect to the proposal there are no material changes to privacy and views. He stated the proposal, therefore, does not create any new adverse impacts.

[59] Ms. Nicholas asked Mr. Ryuck if this proposal could be placed elsewhere. Mr. Ryuck replied that growth is anticipated and there will be appropriate intensification in these areas of growth.

Ms. Reka Nicholas, Party

[60] Ms. Nicholas was sworn in as a witness. She relied on her Witness Statement – Form 12, which included a supplement. She indicated that she appealed a Scarborough COA decision which had approved consent for severance at 103 Westbourne Avenue. She stated the TLAB denied the severance on appeal. She indicated that she was involved in the severance matter of 144 Westbourne Avenue, which was refused at the COA, and, then, approved at the TLAB. She stated she is concerned about the effects of what she calls "over-intensification" in her neighbourhood.

[61] Ms. Nicholas defined her version of the neighbourhood as not just the homes adjacent to her dwelling but as bordered by Victoria Park Avenue, St. Clair Avenue East, Pharmacy Avenue and the Dentonia Golf Course.

[62] Ms. Nicholas stated that she could not deny lot severances exist in her neighbourhood. She testified she is concerned that many severances have been granted over a short period. She stated that before 2014, the neighbourhood had approximately 540 homes of varying lot sizes, building width and height with only three sets of these matching row houses. Since 2014, Ms. Nicholas stated at least thirty-four new homes had been added in the matching row house style as a result of lot severances. She further stated that twenty-three new homes had been added to the neighbourhood within the last eighteen months alone, as of the date the Participant statements were due. Ms. Nicholas stated since the deadline of these statements, a couple of more homes have been added to the neighbourhood.

[63] Ms. Nicholas generally referred to a chart in her Witness Statement, where she identified severed properties along Pitt Avenue, Maybourne Avenue, Westbourne Avenue, Bexhill Avenue, and Donside Avenue as at November 2017. She stated the chart also identified other severed properties on these avenues as at May 1, 2019. I asked Ms. Nicholas what her research methodology was in developing this chart. She stated that she developed this chart by visual inspection, and by searching a City website for proposals.

[64] Ms. Nicholas testified the intensification is excessive for the neighbourhood. She stated that some neighbourhoods to the west of Victoria Park Avenue do not have severed lots. She stated neighbourhoods to the east, closer to Pharmacy Avenue, have a limited number of severed lots. She opined about developments in the broader area, which was not directly related to the matter at hand.

[65] Ms. Nicholas stated that the proposal is an insensitive change contrary to Chapter 4 of the Official Plan. She opined that homes could be rebuilt or renovated into new larger homes to ensure the neighbourhood does not stay frozen in time. She stated that the subject property could have a second storey for added space, which would be in keeping with the Zoning By-law.

[66] She stated that the shape and feel of the neighbourhood had been destroyed because of infill housing. She further stated there is a lack of respect for the existing character and open spaces around homes, which she indicated is contrary to OP Section 4.1.5.

[67] Ms. Nicholas opined that granting a few requests for severance are acceptable. She testified there are now, however, too many in her neighbourhood. She further testified many consents had been approved in the last twelve months. She stated the changes flowing from the grants of consent are not in keeping with the original character of the neighbourhood. She further opined her neighbourhood subdivision has been in existence for more than eighty years. She acknowledged that some homes in the neighbourhood have existing frontages of 7.62 metres. She distinguished this by stating these homes are not in row-style housing.

[68] She also referred to her Photobook, Exhibit 8, which indicated that the Ontario Municipal Board (OMB) denied a severance request of an interior lot at 121 Bexhill Avenue. She pointed out that there are no severed lots on either side of Bexhill Avenue on the subject block. Ms. Nicholas stated there are homes which have been improved by renovation on the east side of the subject block. She stated improvements had been made on the west side with replacements and by rejuvenation. She highlighted the space between the homes on the subject block, and that the homes are of modest size and mixed style.

[69] Ms. Nicholas opined about the intent and purpose of the Official Plan. She referred to Chapter 1 of the OP. However, I note that Chapter 1 of the OP is constitutive of non-policy background commentary really to assist with understanding the intent of the OP policies. Mr. Bronskill was very helpful to remind the Parties of this too.

[70] Drawing from Chapter 1 of the OP, Ms. Nicholas highlighted that a city of stewards is one where individuals and communities actively participate in decisions affecting them. She pointed out that people have appeared today to oppose the matter. She also pointed out that this area has strong neighbourhood participation.

[71] Ms. Nicholas also described Official Plan Amendment 320 (OPA 320). She stated the refined language means prevailing character in the same block and the broader neighbourhood. She stated there is nothing on the same block or opposite block that the proposal seeks to do. She pointed out that prevailing in this respect strictly means keeping the character of this block unchanged.

[72] Mr. Bronskill cross-examined Ms. Nicholas. He asked Ms. Nicholas whether she is aware that councillors can enact resolutions at City Council directing the City Solicitor to attend TLAB hearings to oppose a variance or consent application they do not like. Ms. Nicholas said she is aware of this.

[73] Mr. Bronskill stated that what the City often does when there is a negative City Planning staff report is direct the City Solicitor to call City Planning staff to be present at the TLAB hearing. Mr. Bronskill further stated those City planners who review COA applications only write reports when there are concerns with the application. He asked Ms. Nicholas if she could confirm that City planners did not write a report outlining concerns with the application. Ms. Nicholas confirmed this.

[74] Mr. Bronskill asked whether Ms. Nicholas had any concerns about Mr. Ryuck using his Area Context Map, or Exhibit 5. Ms. Nicholas said she had no concerns.

[75] Mr. Bronskill stated that for each of the thirty-four severed lots, Ms. Nicholas was referring to, either the COA, OMB, LPAT or TLAB, found that the proposed consent for each of these proposals did not require a plan of subdivision and met all of the required criteria under 51(24) of the *Planning Act*. He further stated that for each of the thirty-four instances with variances associated with them, either the COA, OMB, LPAT or TLAB found that those variances maintained the tests under Section 45(1) of the *Planning Act*.

[76] Ms. Nicholas stated that she is not suggesting that the severed lots in the area were created illegally. She testified she (and some of the Participants) are concerned about the cumulative impact of intensification. Mr. Bronskill stated that each of the thirty-four severed lots was found to respect and reinforce the existing character of the neighbourhood.

[77] Mr. Bronskill talked about the proposal before the TLAB being *an* example of infill housing. He stated that if Mr. Ryuck is right about this example, does Ms. Nicholas agree that the OP is black and white in how it defines infill housing. Ms. Nicholas hesitantly agreed. I recognize the OP provides for special infill criteria to help deal with infill projects.

[78] Mr. Bronskill stated that in fairness, the next step is to evaluate the proposal in terms of whether it reinforces the existing character of the neighbourhood, the stability of the neighbourhood. He asked Ms. Nicholas if this is the test. Ms. Nicholas agreed.

[79] Referring to 121 Bexhill Avenue, Mr. Bronskill asked of Ms. Nicholas: suppose there was a 1.2 metre gap directly down the middle of this property, that would be two homes which would seem to have the same massing effect as one home. The proposal, then, would therefore be imperceptible from the street in terms of massing. Ms. Nicholas disagreed with this statement. She said 121 Bexhill Avenue is one house – not a row house or a townhouse - and that there is quite a bit of space between the homes on both sides.

[80] Mr. Bronskill asked Ms. Nicholas whether she disagreed with the finding of the decision-maker in 144 Westbourne Avenue and the finding of the decision-maker in 149 Westbourne Avenue that the severance would not destabilize the neighbourhood fabric, pattern or streetscape. Ms. Nicholas said she disagreed with these findings.

Ms. Irene Hilden, Appellant

[81] Ms. Hilden was sworn in as a witness. She concurred with what Ms. Nicholas had already stated. Ms. Hilden stated that she observed severances occurring in the neighbourhood, but not on her particular block, or adjacent block.

[82] She testified that when the original owners of the home sold their home last year, she became concerned that the new owners would want to sever and erect the same style of row houses that she had witnessed happen over time.

[83] She said she observed homes being rejuvenated by adding a second storey to accommodate growing families, which keeps the neighbourhood stable but not static. She provided that her own home experienced an addition.

[84] Ms. Hilden opined that in the past five years there has been relentless destabilization of the neighbourhood with thirty-four lots, and two row-style houses erected on each lot.

[85] With respect to the proposal, Ms. Hilden stated she is concerned about the construction work that would be required to cut into the front lawn mound. She is also concerned about the effects from shading: the reduced views from her backyard. Ms. Hilden relied on Exhibit 9: Photo of Backyard Green Space. She explained the recent photo illustrated a fifty-year-old tree growing on the fence line of 80 Bexhill Avenue.

[86] Mr. Bronskill questioned Ms. Hilden. He stated that there is no side yard setback variance being requested. He offered a situation: if someone were to build an as-of-right structure, the Zoning By-law would permit a wall to be erected with a length of seventeen metres, which is exactly what the proposal purports to do. He asked Ms. Hilden would the By-law permit the wall to be there. Ms. Hilden replied: "Yes, I assume so."

Mr. Joseph Roy, Participant

[87] Mr. Roy was sworn in as a witness. He resides at 76 Bexhill Avenue. He said he is concerned about the foundation being removed right down to the footing. He suggested an adequate shoring plan if the proposal is accepted.

[88] Mr. Bronskill asked Mr. Roy whether the construction of the retaining wall would be subject to a Building Code review. Mr. Roy agreed.

Mr. Charles Hasse, Participant

[89] Mr. Hasse was affirmed as a witness. He has lived at 74 Bexhill for sixty-eight years. He said he has seen the neighbourhood change. He testified that severances are sprouting up all over the place.

Ms. Hilda Johannsen, Participant

[90] Ms. Johannsen was sworn in as a witness. She has lived at 79 Bexhill Avenue since 2003. She stated her concern is about more cars than usual in the neighbourhood, which she attributed to severances in the neighbourhood. She stated that children could no longer play in the front yards of the neighbourhood.

ANALYSIS, FINDINGS, REASONS

[91] Among other things, I must be satisfied, first, that the application for consent to sever conforms to the Official Plan and is compatible with adjacent uses of land. I must also be satisfied that the land is suitable for the application's purpose, considering the dimensions and shapes of the proposed lots. Then, I must be satisfied that the severance request is compliant with the Zoning By-law. If the consent is founded, an analysis of the proposed variances for each severed part should follow.

[92] I heard professional land-use planning evidence from one person, Mr. Ryuck. I heard Mr. Ryuck testify there is a 'peppering pattern' of severed lots in the neighbourhood. I do not disagree with his observation. There is evidence of severed lots along Maybourne Avenue, Westbourne Avenue, Pitt Avenue, and Bexhill Avenue. I can appreciate a consent approval of a given parcel of land in a neighbourhood might be deployed as a reason to advance further consent approvals in that neighbourhood. However, development in established neighbourhoods must respect and reinforce the existing physical character of the neighbourhood. Physical changes in these neighbourhoods must be sensitive and gradual.

[93] I observed that in Exhibit 3 at paragraph 52, Mr. Ryuck provided Development Criteria as it were before OPA 320 was in effect. Relying on these criteria would appear to be consistent with the *Clergy Principle* – planning policies applicable to an application are judged as they were at the time the application was made. In this case, the COA application was dated November 05, 2018 by the Applicant's agent. OPA 320 came into effect on December 7, 2018, and incorporated the word 'prevailing' into the majority of development criteria. For this appeal, I have considered the intent of OPA 320, and acknowledge that it is not determinative to my decision.

[94] I should point out the non-policy textual commentary of the Official Plan provided by Ms. Nicholas will not be afforded any independent status in the interpretive analysis of the Official Plan. I give less weight to these non-policy items than to policy items of the OP, which had been discussed. I should also point out there are no secondary plans, and no site and areas specific policies applicable to the subject property.

[95] The *Neighbourhoods* designation of the subject property is to be tested on defined criteria considered holistically. Mr. Ryuck talked about the OP Policies 2.3, 4.1.5 and 4.1.8 and, to some extent, how these policies relate to the proposal. Ms. Nicholas also talked about Official Plan policies and how they relate to the proposal. I prefer the evidence of Ms. Nicholas and Ms. Hilden, the Appellant.

[96] I accept Ms. Nicholas' contention that Mr. Ryuck made several careless errors in Exhibit 3 - Witness Statement and in Exhibit 4 – Subject Site and Area Pictures. I do not need to repeat them here as they are evidenced above. I will say that it might have been somewhat helpful of Mr. Ryuck to have provided a well-balanced explanation, with qualitative and quantitative considerations, about the proposal. The provision of this would not be determinative, of course.

[97] Mr. Ryuck correctly stated that the neighbourhood, as he had studied it, is characterized by primarily single-detached homes of one and two storeys. This characterization is evident along Bexhill Avenue between St. Bede's Road and Bolster Avenue. I find, however, that within this subject block, there are no severed lots on either side. The physical character of this block has a good degree of uniformity of the streetscape. I accept Ms. Hilden's comment that there is a sense of place, which is related to the comments I heard from Participants who attended the hearing.

[98] I am aware that intensification is a provincial goal. I find that intensification has occurred and continues to occur in this neighbourhood. At least one goal of the Official Plan is that change in Neighbourhoods is to be sensitive and gradual. I prefer the evidence of Ms. Nicholas and Ms. Hilden because they both demonstrated to me, among other things, that intensification is occurring in their neighbourhood at an excessive rate, not unlike a robust wave of change.

[99] I accept Ms. Nicholas' assertion that the size of the proposed lots, the height, massing, and scale do not fit the existing character of the neighbourhood, and do not meet the intent and purpose of the Official Plan.

[100] I find that the proposal would result in a destabilizing arrangement of lot sizes, frontages, height manifestations, coverage and separation distances, which would not be consistent with the physical characteristics of the neighbourhood.

[101] I find the proposed severance would create two considerably undersized lots, as per the Zoning By-law performance standards. The proposed lots would result in narrower frontages and smaller lot areas.

[102] I conclude that the Applicant's proposed severance does not satisfy the legislative criteria set out in Section 51(24) of the *Planning Act*, and in particular subsections (c) and (f). I find that the proposed severance does not conform to the Official Plan and its *Neighbourhood* policies. I also find that the proposed lot severance does not have regard for the dimensions and shapes relative to the lot patterns which currently exist in the surrounding area. The proposal is not an example of sensitive and gradual change.

[103] As I have made these findings, I feel compelled to write that neighbourhoods are without a doubt, not frozen in time. Change is expected to occur. I believe the pace of this change is a vital sign of health for a neighbourhood. Surely, there will be additional applications in the future as some physical changes will occur over time, including those of enhancements and additions. Those applications will also be decided on their own merits and, I would hope, with a holistic consideration of the cornerstone policy of the Official Plan.

[104] I found the Parties and Participants to be respectful of each other. I found the Representative of the Owner/Party, Mr. Bronskill, to be respectful, professional, courteous, and not without good argument.

DECISION AND ORDER

[105] The appeal is allowed. The severance in Attachment A is not granted. The variances in Attachment B are not approved. The application is at an end.

X



Sean Karmali
Panel Chair, Toronto Local Appeal Body

ATTACHMENT A - CONSENT FOR SEVERANCE REQUEST

- This application is for consent to sever the land into two lots, as shown on the attached Site Plan. Lot to be created Part 1 and Part 2 would have a frontage of 7.6 metres and a lot area of 241 square metres. In order to facilitate the proposed development, relief from the provision of the Zoning By-law was requested, as outlined in A0379/18SC and A0380/18SC.

ATTACHMENT B - VARIANCE REQUESTS

- **PART 1, 80 Bexhill Avenue**

PURPOSE OF THE APPLICATION:

The applicant is seeking relief from the provisions of the Zoning By-law to construct a new two storey single family residential dwelling.

REQUESTED VARIANCE(S) TO THE ZONING BY-LAW:

By-law No. 569-2013

1. To permit the proposed 0.6 metres south side yard setback;
whereas the Zoning By-law requires a minimum 0.9 metres side yard setback.
2. To permit the proposed 241 square metres lot area'
whereas the Zoning By-law requires a minimum 371 square metres lot area
3. To permit the proposed 7.6 metres lot frontage;
whereas the Zoning By-law requires minimum 12 metres lot frontage.
4. To permit the proposed 44% lot coverage;
whereas the Zoning By-law permits maximum 33% lot coverage.
5. To permit the proposed 8.4 metres building height;
whereas the Zoning By-law permits maximum 7.2 metres building height for a dwelling with a flat roof.
6. To permit the proposed 8.4 metres parapet wall height;
whereas the Zoning By-law permits maximum 7.5 metres parapet wall height.
7. To permit the proposed two dwellings per one lot;
whereas the Zoning By-law permits maximum one dwelling per one lot.

- **PART 2, 80 Bexhill Avenue**

PURPOSE OF THE APPLICATION:

The applicant is seeking relief from the provisions of the Zoning By-law to construct a new two storey single family residential dwelling.

REQUESTED VARIANCE(S) TO THE ZONING BY-LAW:

By-law No. 569-2013

1. To permit the proposed 0.6 metres north side yard setback;
whereas the Zoning By-law requires a minimum 0.9 metres side yard setback.

2. To permit the proposed 241 square metres lot area'
whereas the Zoning By-law requires a minimum 371 square metres lot area
3. To permit the proposed 7.6 metres lot frontage;
whereas the Zoning By-law requires minimum 12 metres lot frontage.
4. To permit the proposed 44% lot coverage;
whereas the Zoning By-law permits maximum 33% lot coverage.
5. To permit the proposed 8.51 metres building height;
whereas the Zoning By-law permits maximum 7.2 metres building height for a dwelling with a flat roof.
6. To permit the proposed 8.51 metres parapet wall height;
whereas the Zoning By-law permits maximum 7.5 metres parapet wall height.
7. To permit the proposed two dwellings per one lot;
whereas the Zoning By-law permits maximum one dwelling per one lot.