

DECISION AND ORDER

Decision Issue Date Friday, February 28, 2020

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

Appellant(s): BORISLAV KARAN

Applicant: SETLESS ARCHITECTURE

Property Address/Description: 79 BRENTCLIFFE RD

Committee of Adjustment Case File: 17 269349 NNY 26 CO, 17 269356 NNY 26 MV, 17 269360 NNY 26 MV

TLAB Case File Number: 18 217361 S53 26 TLAB, 18 217364 S45 26 TLAB, 18 217368 S45 26 TLAB

Hearing dates: January 15, 2019, June 17, 21 and 26, August 19, Dec 12 and 20, 2019. Jan 7 and 20, 2020

DECISION DELIVERED BY TED YAO

APPEARANCES

Borislav Karan	Owner/Appellant	Amber Stewart
Franco Romano	Expert Witness (for Mr. Karan)	
City of Toronto	Party	Ben Baena
Simona Rasanu	Expert Witness (for the City of Toronto)	
Gary Brewer, Mark Garner	Parties	Andrew Biggart
John Lohmus	Expert Witness (for Messrs. Garner and Brewer)	
Leaside Residents Assn.	Party	Geoff Kettel

Carolyn Fowler, Michael Fowler, Zita Petrak, Mark Lerohl, Brita Lerhol, Gail Kirkwood, Peter Pille, Linda Delaney, Denise Del Conte, Babak Derakhshani, Kelly Brewer, Wolfgang Stumpf, Veronica Best, Tom Fife, Steven Strong, Noreen Stumpf, Michael Harvey, Michael Hakes, Heather Margach, Dale Gardiner, John Starasts, Deborah Browne, Denise Bertram, Ann Jefferies, John Speller, Douglas Delaney, Mary Wiktorowicz
Participants

BACKGROUND

Mr. Karan intends to sever an existing lot at 79 Brentcliffe Rd and build two new two storey homes. The proposed lots consist of a new corner lot with the other to the south, adjacent to the existing house at 77 Brentcliffe. The resulting lots and buildings will need four variances for the corner lot and five for the other lot:

Table 1. Variances from Zoning By-law 569-2013			
	Required	Corner lot	Other lot
Lot area	370 m ²	337.67 m ²	337.67 m ²
Interior side yard setback	1.2 m	.9 m	.9 m
Flanking side yard	3.0 m	2.0 (west side) m	There is no flanking side yard
Frontage	12 m	11.91 m	10.73 m
Floor Space Index	0.6 times the lot area	complies	0.6698
Coverage	35%	complies.	35.27%

On August 9, 2018, the Committee of Adjustment refused the applications, Mr. Karan appealed, and so this matter comes before the TLAB.

MATTERS IN ISSUE

The main issue is whether the severance should be granted. The Planning Act asks me to consider whether the **severance** conforms to the Official Plan; while the

variance test requires that the variances individually and cumulatively “**maintain the general intent and purpose of the Official Plan.**” Both then require application of the Official Plan policy, particularly s. 4.1.5:

4.1.5. Development in established Neighbourhoods will **respect and reinforce** the existing physical character of the neighbourhood, including in particular . . . size and configuration of lots . . .

Accordingly, the fundamental issue is whether the proposed **frontages** and **areas** meet the tests under s. 4.1.5. for an established neighbourhood such as Leaside. A related Official plan policy is whether this proposal would have a destabilizing effect. While the word “destabilizing” is not in the Plan, this concept may be inferred from the development criteria in Chapter 4.¹

The proposed lots’ frontage deficiencies are 9 cm and 1.27 m (4.2 ft) less than 12 m (which is the minimum required under the City by-law). I note #79 Brentcliffe’s starting frontage is 24.9 m, seemingly wide enough for two 12 m lots, but both proposed lots need frontage variances because of the technicalities of the definition of “frontage”.

Other Planning Act considerations include:

- adherence to higher level Provincial Policies; and
- matters of provincial interest in section 2 of the Planning Act.

Specific matters of Provincial interest in section 2 would include the location of growth, the promotion of development designed to support public transit, and the adequate provision of a full range of housing, including affordable housing. Although this is not affordable housing, Mr. Karan proposes to rough-in elevator shafts so that the two new buildings might be more conducive to disabled or elderly owners.

The variances must also:

- 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.

¹ The **stability** of our Neighbourhoods’ physical character is one of the keys to Toronto’s success. While communities experience constant social and demographic change, the general physical character of Toronto’s residential Neighbourhoods endures. Physical changes to our established Neighbourhoods must be sensitive, gradual and “fit” the existing physical character. A key objective of this Plan is that new development respect and reinforce the general physical patterns in a Neighbourhood. (4.1 Development Criteria in Neighbourhoods, my bold)

EVIDENCE

I heard from Franco Romano (Mr. Karan's planner); Simona Rasanu (the City's planner); and John Lohmus (the residents' planner); all of whom I qualified as expert planning witnesses. Kelly Brewer and Mary Wiktorowicz, (each immediate neighbours of Mr. Karan), David Martin and Tom Fife (other neighbours) testified on their own behalves. Geoff Kettel, president of the Leaside Residents Association testified on its behalf.



ANALYSIS, FINDINGS, REASONS

The proposal

Mr. Karan proposes two flat roofed houses that are designed to “fit into” the neighbourhood (Figure 2). The two new homes will continue the regular pattern of front wall setbacks on the west side of Brentcliffe. The top diagram shows the new massing, with the proposed corner house (left) partly obscured by an existing silver maple in good condition. Mr. Karan proposes to maintain this private but prominent tree. The bottom demonstrates that the new flat roof lines up with 77 Brentcliffe to the right and will be lower than the house on the extreme right (75 Brentcliffe). I have omitted a similar rendering of the Broadway streetscape.

There is much to commend the proposal:

- the floor plates are trapezoidal to make the best use of the unusual shape of the parent lot.
- The inner lot has a floor plate of 107 m², with an integral garage facing Brentcliffe; the outer house has a floor plate of 119 m² with a detached garage facing Broadway. Although the latter garage was criticized as creating a traffic hazard it has the advantage of locating the main building as far from the Broadway neighbor as possible.
- The new houses will be slightly lower than the existing house (11 cm) and lower than 77 Brentcliffe (1.3 m) and much lower than 75 Brentcliffe (rightmost building in Figure 2). This last house was rebuilt without requiring ~~minor~~ variances.
- No side yard variances are proposed with respect to the existing adjacent houses at 77 Brentcliffe and 643 Broadway.
- Both private trees will likely be spared.

Historic Leaside

By way of background, Mr. Lohmus, the residents' planner, wrote in his Witness Statement:

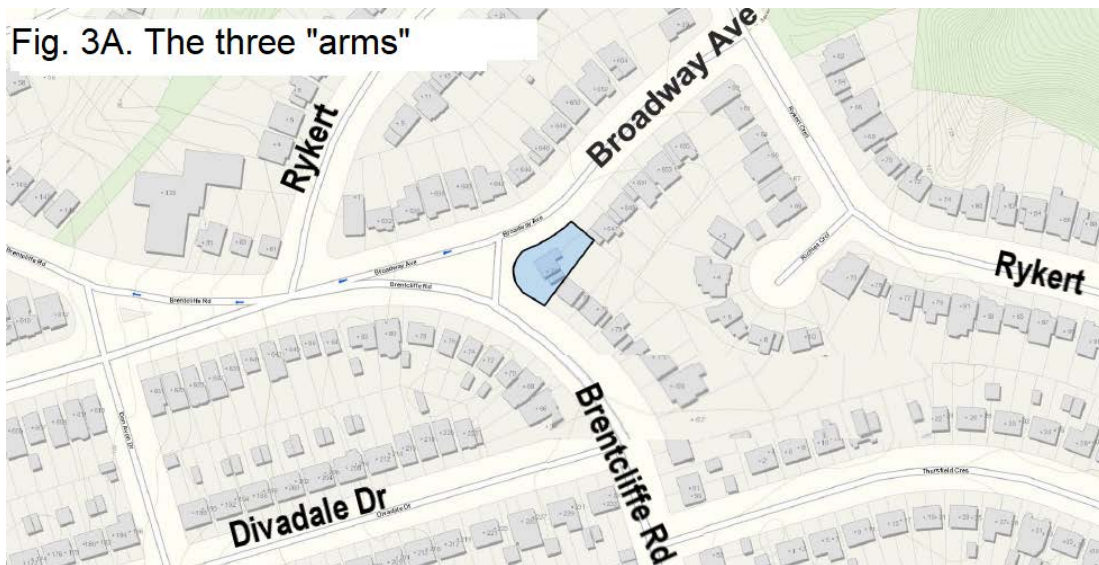
90. The neighbourhood study area is part of the historic Leaside neighbourhood designed as a modern family-oriented suburb based on the garden city concept featuring, among other elements, a curvilinear road network to discourage through traffic, a sense of scale and consistency in design, picturesque streets and neighbourhood parks . . . Most of the original neighbourhood design is still evident today in the form of moderate to large lots, mostly two-storey houses, and extensive greenery that is visible from the street.

The property is not the usual rectangular or pie shape, but more like a lightbulb. It also sits at the intersection of three streets (please see Fig 3A, below, "The three arms"). The three are:

- Broadway to the east;
- Brentcliffe to the south (this is the street view depicted in Figure 2); and

² Prior to revisions carried out during the hearing to avoid removal of the Eastern Larch tree.

- A curved arm to the west, north of the traffic island, consisting of both Broadway numbering (631, 633, 635...) and Brentcliffe numbering (west to east, 86, 84, 82. Broadway).



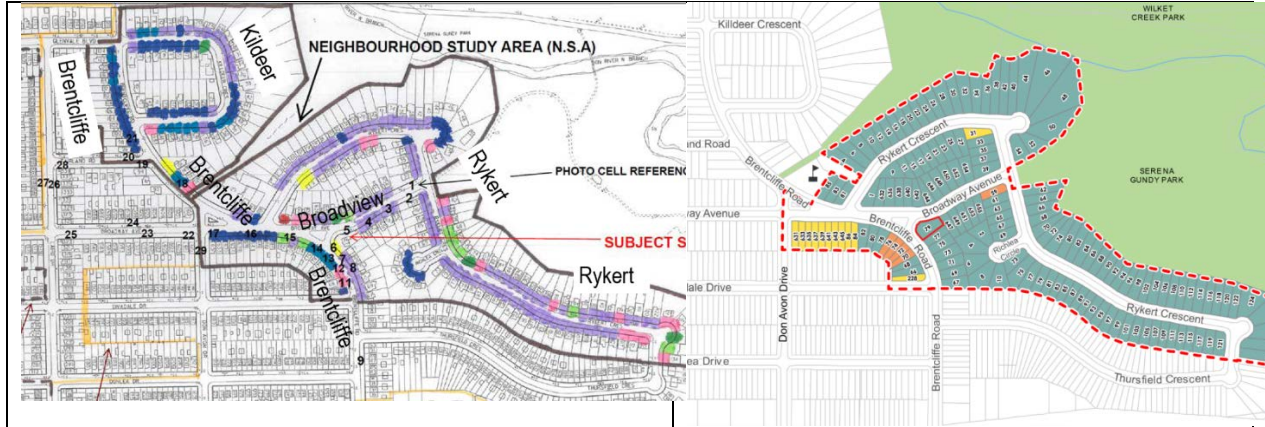
The centrality of 79 Brentcliffe was described by Mr. Lohmus (the residents' land use planner) as occupying "centre stage". Ms. Wiktorowicz (neighbour on the Broadview arm) said that it was in a sensitive location, "on a sweeping rounded corner." Indeed, the property has the second largest frontage and 35th largest lot area (out of the 156 lots in Ms. Rasanu's spreadsheet, provided on behalf of the City).

Ms. Stewart's argument, which I ultimately reject, is that ~~that~~ with such an outside starting frontage, **any** severance would bring 79 A and B closer to the by-law minimums. This is not the test. The consent and variances must **reinforce** the existing physical characteristics which include "prevailing size of lots".

The two study areas

To determine neighbourhood characteristics each planner must first determine the study area. Mr. Romano's (Mr. Karan's planner's) study area took Ms. Rasanu's chosen area and added an additional area that is comprised of an entirely new street, Kildeer Cr, and an extension that I will call "upper Brentcliffe Rd."

Figure 4. Study areas: Romano left, Rasanu right



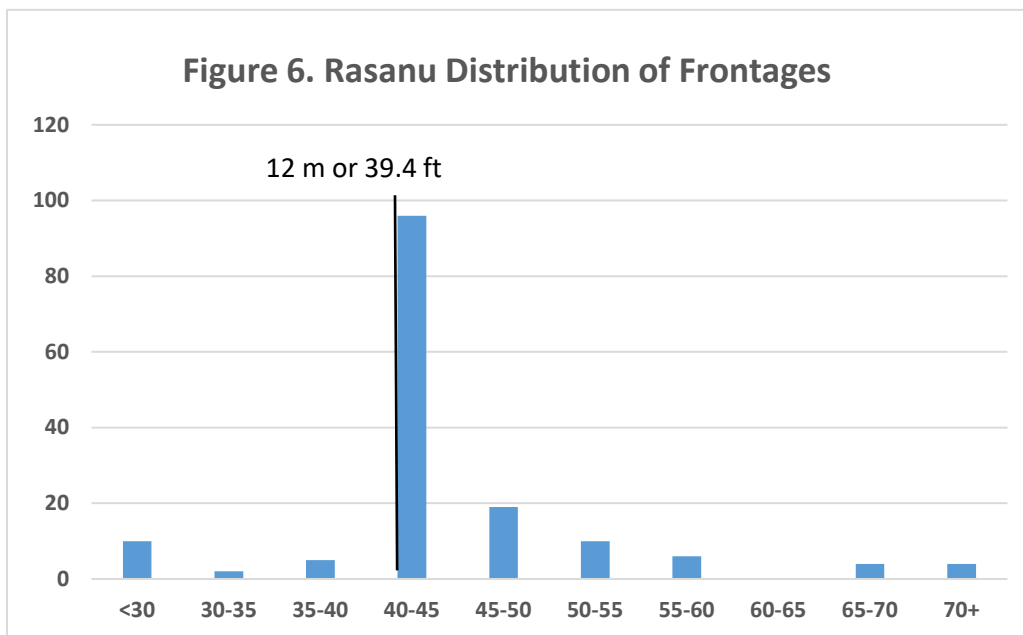
In Figure 4, Mr. Romano’s study area is on the left (225 properties) and Ms. Rasanu’s (156 properties) on the right. Mr. Romano’s additional area adds 69 properties. They are all north of Northlea United Church and the addition contains many more undersized frontage properties than does the Rasanu area common to both study areas.

My charts (Figures 6 to 9) are drawn from Ms. Rasanu’s spreadsheet data. Ms. Rasanu’s distribution of frontages (Figure 6) shows a heavy preponderance of **exactly** 40-foot frontages (83 lots out of 156). The present frontage for 79 Brentcliffe at 24.9 m (81.7 feet) is anomalous; it is the second largest in both study areas and is one of only four 70+ feet lots. Table 5 shows the numeric conclusions:

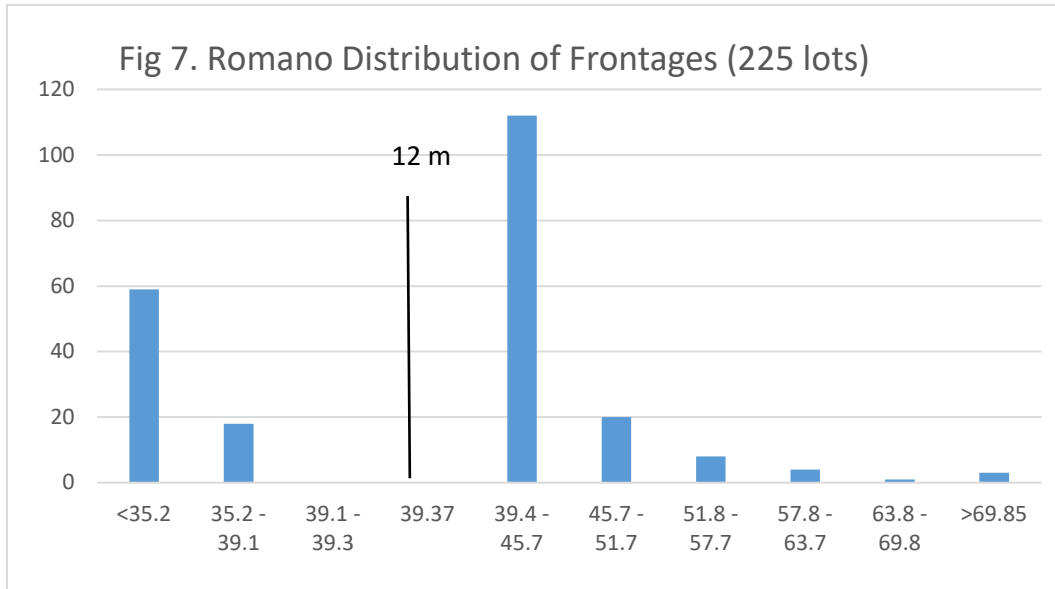
Figure 5 Comparison of each planner’s frontages and areas	
Category	Frequency
Romano	
Lots less than 12 m frontage	77 out of 225 (34.2%)
Lots greater than 12 m	148 out of 225 (65.8%)
Most prevalent frontage range: 39.7 ft – 45.7 ft	112 out of 225 (49.8%)
Second most prevalent range: Smaller than 35 ft	59 out of 225 (26.2%)
Lots less than 370 m ²	6 out of 225 (2.9%)
Lots greater than 370 m ²	219 out of 225 ³ (97.1%)

³ In par 19, Mr. Romano refers to the total lot count as 225 in one place and 210 in another. The number 210 appears to be a typo.

Rasanu	
Lots less than 12 m frontage	17 out of 156 (10.9%)
Lots greater than 12 m	139 out of 156 (89.1%)
Most prevalent interval:39.7 ft – 45.7 ft	99 out of 156 (63.5.8%)
Second most prevalent interval: 45 ft – 50 ft	22 ⁴ out of 156 (14.1%)
Rasanu - areas	
Lots less than 370 m ² lot area	5 out of 156 (3.2%)
Lots greater than 370 m ² lot area	151 out of 156 (96.8%)



⁴ After completing this analysis, I noticed that Ms. Rasanu’s counts exceeded those of Mr. Romano’s by one or two properties in several ranges. This cannot be correct as he used Ms. Rasanu’s study area and added 69 properties. However, I rounded up in making metre-to-foot conversions and this may be the source of the small discrepancies. These are not critical to the evidentiary conclusions.

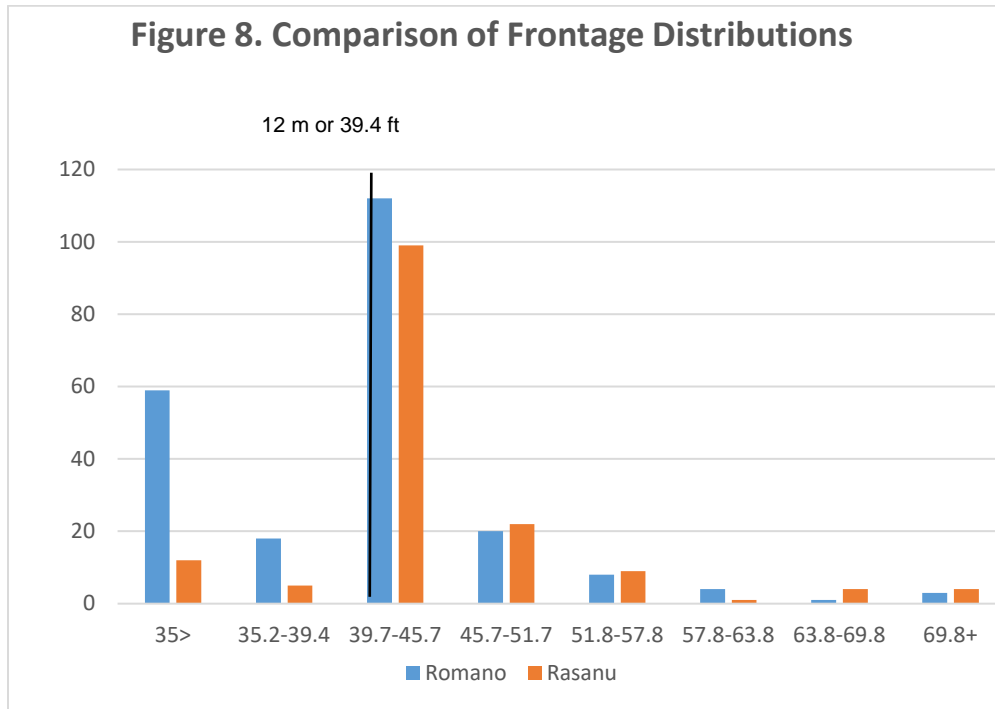


Figures 6, 7 and 8 show frontage distributions and Figures 9 and 10 show lot area distributions. I have recast the frontages in feet rather than metres to be able to better, ascertain the original intent of the designers of the plans of subdivision. I have also used regular intervals (5 ft increments for frontage and 100 m² increments for area) as I believe this is easier for the reader to take in a lot of information immediately. I could not use regular increments for Mr. Romano’s data conclusions. Some of his frontage intervals did not make sense to me; “29.1 to 39.3 feet” would contain frontages in a .2 foot range—a very narrow range. The interval of “exactly “39.37 feet” is even narrower. Both Romano intervals contain no entries.

Lot frontage conclusions

Chart 8 shows the two planners’ distributions, side by side (using Mr. Romano’s ranges, which are in metres.) Both show a strong peak at 40 feet (12.2 m). However, Mr. Romano shows a secondary peak at under 35.2 feet, (10.73 m). Even for Mr. Romano’s study area, about 34% are undersized frontage — a significant number but not a “prevailing” characteristic in his neighbourhood, in my view. Under a “most frequently occurring” meaning of the word “prevailing”, I find that there are insufficient numbers to justify a severance from either the Romano or Rasanu study area.

Mr. Romano has added 69 lots with 72% undersized frontages⁵, suggesting that the added area considered by itself is materially different from Ms. Rasanu’s area (10.9% undersized). But the Official Plan gives us specific guidance in this situation:



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.⁶

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And so, the Official Plan instructs me not to consider the 72% of smaller frontage lots (upper Brentcliffe and Kildeer Cr area) when determining the physical characteristics of

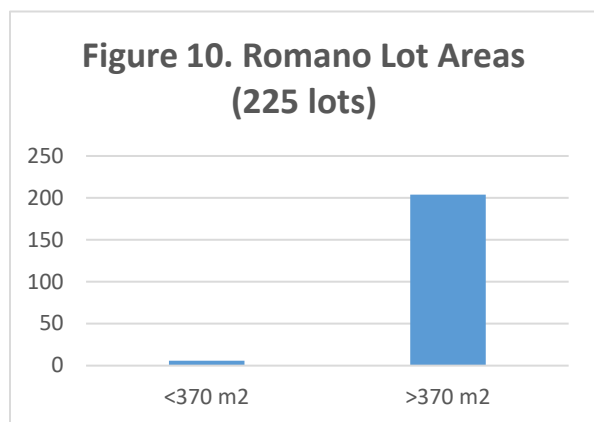
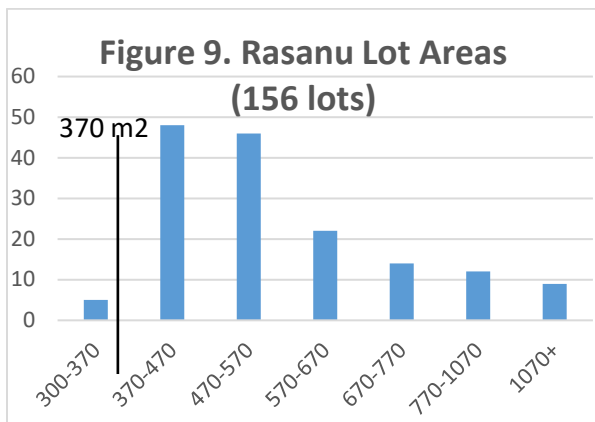
⁵ Both planners have the same Broadway lots. All Kildeer is new; 33 out of 51. For all Brentcliffe Rd, Mr. Romano has 23 undersized out of 39 lots and Ms. Rasanu 6 out of 21. This leaves “upper Brentcliffe”, which was not reported separately by Mr. Romano, for me to determine. 23 minus 6 = 17. The number of added Brentcliffe properties is 39 (Romano) – 21 (Rasanu) = 18 and thus 17 out of 18 for just upper Brentcliffe. Adding the Kildeer properties makes 50 out of 69 or 72%.

⁶ 7th paragraph of 4.1.5 Development Criteria

the Rasanu study area. The Rasanu area contains the subject lot and is common to both, so if I were forced to choose one of the two study areas, I would choose Ms. Rasanu's, but I do not think that is necessary. I have already determined that the 34% smaller frontage lots in the Romano area is insufficient to justify a 'respect and reinforce' conclusion. I find that when frontage alone is considered, the proposed severance fails to conform to the Official Plan.

Lot area conclusions

The Official Plan requires also requires consideration of lot area. Here the situation more clearly fails the Official Plan tests. It is apparent that Mr. Romano's distribution of lot areas is less detailed than Ms. Rasanu's and even his final number (2.9% undersized lot areas) does not bolster his case. Ms. Rasanu's witness statement states:



76 .The overwhelming majority (i.e. 89.10%) of the lots meet or exceed the Zoning By-law 569-2013 frontage requirements while 96.79% of the lot areas meet or exceed the same.

48. With respect to lot area, 96.79% of the lots in the neighbourhood study area have an area that meets or exceeds the Zoning By-law's 370 m2 minimum requirement. Only one (1) property (i.e. 72 Brentcliffe Road) has an area below 337.6 m2, which is the lot area proposed by the Applications. Approximately 55% of the lots have an area greater than 500 m2, suggesting that the neighbourhood lot fabric is characterized by deep lots with large lot areas. The average lot area is 638.4 m2.

In his oral testimony on June 17, 2019, Mr. Romano said:

So OPA 320, when it says “prevailing”, it talks about “most commonly occurring”. In paragraph 18 I say regardless of lot sizes, regardless of location within the neighbourhood study area, **it is quite common to find lots that are undersized** relative to the zoning by-law standard for lot frontage and/or for lot area.

Mr. Biggart then challenged him:

If you couldn't calculate the lot areas how are able to make that statement, sir? Your evidence the other day was that you couldn't calculate the lot areas, then you make a statement about what's the prevailing lot area. You can't do both sir.

Mr. Romano replied that for several reasons, lot areas were difficult to calculate and misleading because of the inclusion of non-table land⁷. I reject both propositions. If the measuring stick, (i.e. the City's frontage and lot data) are incorrect, or misleading or require interpretation, then that doesn't mean the decision maker is at liberty to decline consideration. The decision maker must look to the best available evidence.

Second, the ravine features all occur on one side of the street; so, it is possible to hive off those properties and compare only those properties completely on table land. When I did so, the average lot area dropped from 637 m² to 483 m² which is still well above the minimum.

Mr. Romano's primary numeric conclusions are:

- **2.9% [of 210 lots] appear to be smaller than 370 m² lot area** (6 of 210 lots. 2 of these 6 lots are on Brentcliffe Road).

⁷Mr. Romano's testimony on this point was: "I didn't make the statement that you couldn't calculate lot areas. I said that the lot area data. OK hold on, I'm going to come back and answer that question that you just interrupted me on? I'm going to go back to paragraph 17 with respect to lot area. (reads) 17. A similar lot area graphic has not been prepared" . . . 'cause you asked me about a graphic. And I said I didn't prepare a graphic. (goes back to reading) . . .for numerous reasons that include the fact that the **proposed lot areas are very near to zoning compliant** with a modestly negligible difference. The available lot area data is not as accurate as lot frontage data due to missing information such as surveys, the irregularity of lot configurations and an abundant supply of deeper ravine-like lots within the neighbourhood study area. Further, the deeper/larger ravine lots are within the TRCA-regulated area – Natural Heritage System -- which will have some hazard assessment involved which altogether will reduce the actual lot area available for development. Consequently, these lot areas are exaggerated **and help to skew lot area study depictions.**"

- Lot areas range from 348 m² (footnote 8⁸) to 2483.6 m²

The 2.9% conclusion suggests an undersized lot area is not a neighbourhood characteristic, even if Mr. Romano's study area is preferred over Ms. Rasanu's. Mr. Romano went on to say that:

"So, getting back to "prevailing". In paragraph 18, "prevailing" means most commonly occurring." So, it's commonly occurring to have lots that are undersized.

He concluded by reading paragraph. 4 of his Witness Statement:

. . .OPA 320 does not alter the planning evaluation to one of a mathematical exercise that would render, for example, a singular majority attribute(s) to be determinative (i.e., the majority of lot sizes are X, therefore any new lot must be at least the equivalent of size X in order to respect and reinforce the physical context). In fact, the term majority is absent within the policy document. OPA 320 continues to solicit a planning evaluation that includes a balanced consideration of all physical character elements recognizing that development **need not replicate** or maintain what exists. (my bold)

Mr. Romano advocated a "balanced consideration of all the physical character elements." The Plan provides criteria and arguably does not weight their application and so this is certainly one place to start. However, I find that Mr. Romano does not have enough examples of undersized lots in terms of area meet the Official Plan test through either the lens of "replication" or "balanced consideration". He filed his witness statement prior to the Dec 2018 coming into force of OPA 320, at which time he expected those policies would be relevant but not determinative but the TLAB decision of April 23, 2019 (10 Lake Promenade), which he reluctantly accepted, "upset twenty years of settled practice".

The test is that the lot pattern and variances proposed must be considered individually and cumulatively. I have found the applicant has failed with respect to the single characteristic of frontages. When we consider whether the development respects the pattern of lot areas, the evidence is even stronger that it does not do so. Similarly, since physical characteristics of neighbourhoods to which the variances apply are

⁸ I am unable to determine which property his is referring to. The two smallest properties in Ms. Rasanu's spreadsheet are 72 and 74 Brentcliffe, at 319 and 344 m².

cumulative, the failure with respect to frontages and lot areas separately means that variances fail the test when considered together.

Broader and Immediate context

In this section I look at the concepts of “immediate context”⁹ in the Official Plan and configuration of lots in the Planning Act. The immediate context is the block and the opposite side of the block. The Plan states that the development must be “materially consistent” with both the immediate and broader context, and I interpret “materially consistent” to be a somewhat lower standard than “consistent”. With Ms. Rasanu’s delineation of the study I have already found that the development is neither consistent nor materially consistent in terms of frontage or area.

Mr. Romano added the Kildeer/upper Brentcliffe lots, which comprise majority undersized lots (71% undersized frontage) and a “two peak” distribution”. Ms. Rasanu’s equivalents are 10.9% undersized and a “one peak” distribution (Charts 6 and 7). So, his added area appears to have some different physical characteristics. The residents said that people do not venture north of Northlea Church and that Kildeer consists of “mansions”; both statements I find are only partial truths. In other words, I do not simply discard the added area but in fairness to Mr. Romano, I look to see what his area can tell me. Is there a physical characteristic that is consistent for his entire study area? I find his area has many characteristics that are largely similar to Ms. Rasanu’s.

In both study areas, blocks of undersized frontages occur in two situations:

- pie shaped lots in cul-de-sacs or where a street makes a sharp bend and backs onto a ravine lot (e.g. Richlea Circle or the crooks of Rykert and Killdeer Crescents; or
- a contiguous strip of lots, such as on the upper Brentcliffe in Mr. Romano’s area or the 631 to 645 Brentcliffe, which is common to both study areas.

The proposed lot is neither; in fact, it is the **opposite** of the typical pie shaped lot on a circular cul-de-sac with generally the radius of the turning circle of a fire truck. Those pie shaped lots fan out at the back and have very little frontage, whereas Mr. Karan’s lot

⁹ The proposed development within a Neighbourhood will be **materially consistent** with the prevailing physical character of properties in both the broader and immediate contexts. In instances of **significant difference** between these two contexts, the immediate context will be considered to be of greater relevance. (Official Plan page 4-6)

has an “excess” of frontage and a “deficiency” of rear yard. Nor is it part of a contiguous row of more or less uniform deficient frontages. However, in these situations, uniformity helps make each undersized lot “fit in” and fitting in is part of Official Plan policy.

The six smallest Rasanu lots are in Table 12. The bolded addresses occur in a contiguous row of four:

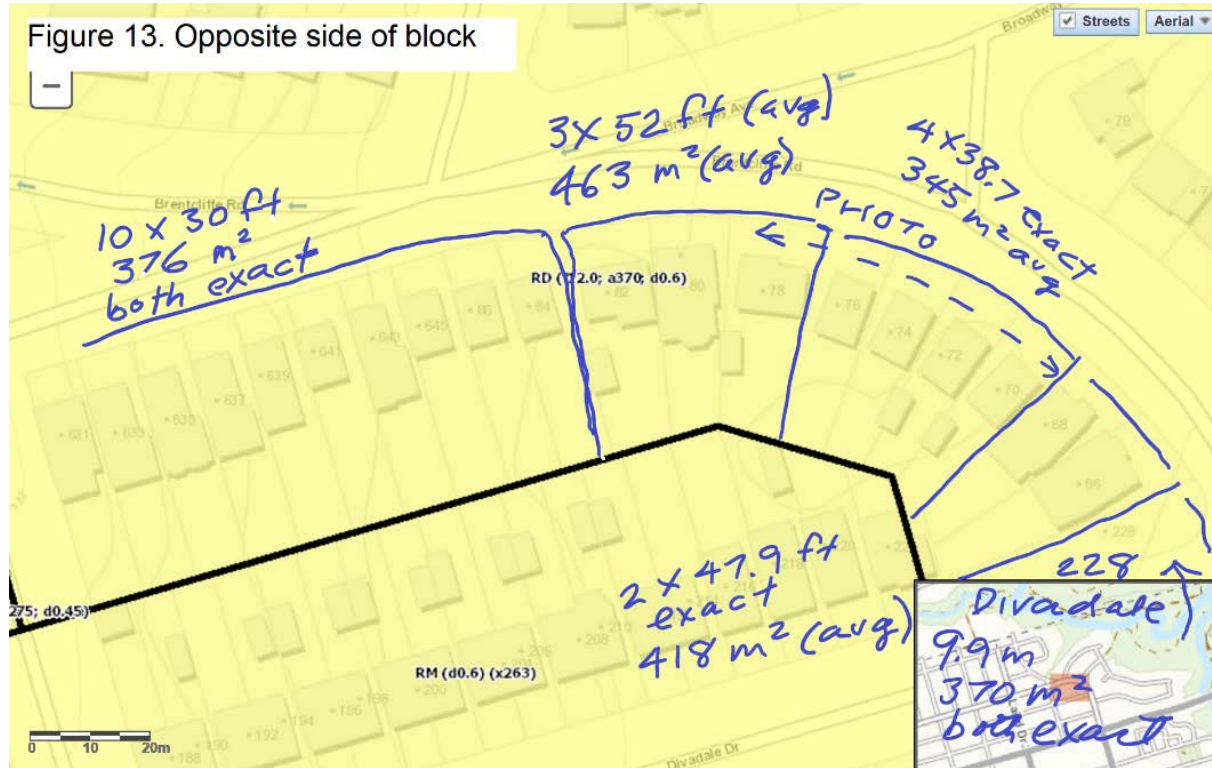
Table 12. Ms. Rasanu’s smallest lots by lot area		
	Frontage (m)	Lot area (m ²)
72 Brentcliffe	11.8	319.1
74 Brentcliffe	11.8	344.1
70 Brentcliffe	11.8	351
84 Brentcliffe	9.1	365.1
76 Brentcliffe	11.8	365.3
228 Divadale Dr	9.9	370

Numbers 70 to 76 Brentcliffe are directly across from the subject and a fifth one (84

In Figure 13 (next page), I have reproduced the opposite side of the block, with my handwritten summaries of dimensions. Where the numbers are exact, I use the word “exactly”. Otherwise I have taken the average. I now take the reader on a tour of this block, from west to east:

- The westernmost group is a block of ten lots, each with 9.1 m (29.8 feet and rounded up to 30 feet) and 376 m², both exact numbers. Although the frontages are undersized, the areas are above the minimum.

- The next three properties have well-above-minimum frontages and areas. The average numbers (52 feet and 463 m²) do not conceal any undersized lots; each is above minimum.



- Then there are four bolded properties catalogued in Table 12. They are each **exactly** 11.8 m (38.9 feet, which is 6 inches below 12 m) and average 345 m² -- smaller than the minimum, although a whisker larger than the proposed 337 m².
- Then there are two oversized lots exactly 47.9 feet frontage and averaging 418 m².
- Finally, there is #228 Divadale, which is the second smallest frontage at 9.9 m and yet it is exactly the minimum lot area (my notation for this property is scribbled in the box at the bottom right corner).

Of these 20 lots, 15 are undersized in terms of frontage, but only four in terms of lot area. Fourteen of the 15 undersized frontage lots occur in contiguous strips. I find that the uniformity of frontage is not an accident but a deliberate town planning decision.

These strips make the individual houses look like they “belong” together, contributing to an overall repetitive neighbourhood character. Number 228 Divadale is the exception, but it occurs on a corner lot, which one expects would be different.

Only the four bolded properties are deficient in both frontage and area; the rest meet one of those standards. These formed the crux of Ms. Stewart’s case for severance. I should say before I begin this discussion that Mr. Lohmus concentrated on policy issues, while Ms. Rasanu undertook a research project to ascertain the lot areas of many irregularly shaped lots. While I have not discussed this evidence in any detail, this preparatory work and Ms. Stewart’s cross examination of Ms. Rasanu gave her the factual basis to concentrate on this stretch of Brentcliffe, which I will now discuss.

In Figure 15, I have taken a photo montage of these (70 to 76 Brentcliffe) plus the oversized property to the southeast, #68. We are starting two houses north of 228 Divadale and moving counterclockwise, and the street addresses are ascending. From left to right in Figure 15, we have one frontage of 47.9, then four which are exactly 11.8 m (38.7 feet). Recall that 12 m = 39.36 ft, and Mr. Karan seeks 11.91 m and 10.73 m or 39.07 and 35.20 ft, so one lot will be 11 centimeters greater than 11.8 m and one about a meter smaller. These four lots were placed around the bend with each lot fanning out like the fingers of an outstretched hand.

For reverse pies, like the bolded and subject lots, the width shrinks as one walks from front to rear¹⁰, and the reverse as one goes from rear lot line to the street. Thus, for the four bolded 38.7 foot frontage lots will **appear** larger to an observer on the sidewalk since the front yard splays toward the street. This illusion will also be at work for the severed lots, but since Mr. Karan has only two lots to work with, there are fewer lots to create a continuous streetscape.

¹⁰ Frontage is measured at a point on the centre line of the lot at that front yard setback. For an “end” lot, such as the Karan proposed inner lot, the front yard setback is the front yard setback of the abutting building, 77 Brentcliffe, or 7.01 m. The architect has indicated that the frontage at the street is 11.73 m at the street. Neither proposed lot seeks a front yard setback variance.



Figure 15. 68 to 76 Brentcliffe, with frontages in feet

12. 68, 70 Brentcliffe Rd.

13. 72 Brentcliffe Rd.

14. 74, 76 Brentcliffe Rd.

I conclude that there is an overall physical pattern in strips of undersized lots in this part of North Leaside, with careful placing that is sensitive to curves in the streets. This is true for both study areas. I find as well that this pattern is not replicated by the Karan proposal, even though one of the proposed frontages is larger and one smaller than 38.7 feet, and the lot areas are nearly identical (337 m² as compared with 345 m²).

I also note, as did all the witnesses that there are generally wide building-to-building setbacks, typically with a driveway leading to an attached garage to the side, and that while tight setbacks do exist (e.g. 631-633 Broadway, 82-80 Brentcliffe), they are infrequent. I conclude from the photographs and the above analysis that the respect and reinforce test is not met in the immediate context. Nor does the proposal respect and reinforce the existing “configuration of lots”.

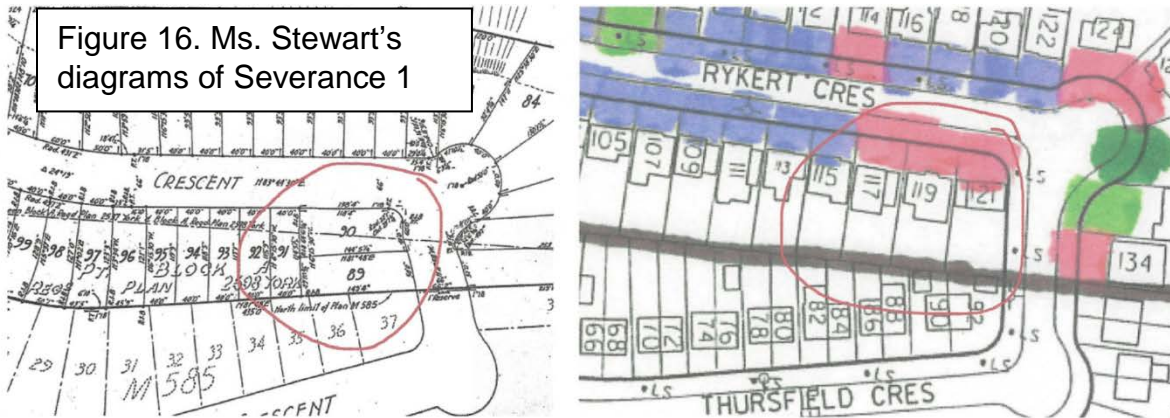


Figure 16. Ms. Stewart's diagrams of Severance 1

Does this application create a precedent?

Every case creates a “precedent”, in the sense that TLAB reasons are public, and their appropriateness or lack thereof can be compared to any other decision. If granted, this proposal would be the third severance in this neighbourhood; the first at an unknown date and the second in 2001.

Severance 1

Severance 1 (Figure 16 previous page) is an assembly and re-severance of two lots to create three — present day 117, 119, and 121 Rykert Cr. The original two lots had frontages of 50 and 69 feet. They became frontages of 46.3, 46.3 and 47.9 feet and lot areas of 486, 493 and 508 m². They abut smaller but still compliant lots of approximately 12.2 m (40 feet) frontage and areas of 427 m². This situation is not comparable to 89 Brentcliffe, if done today no variances would be needed.

Severance 2

Figure 17 to the right shows severance number 2, which split off the rear yard of 45 Kildeer to create 161 Brentcliffe Rd. The original lot measured approximately 9,000 sq ft (836 m²), became two lots of 447 and 386 m², both of which are above the by-law minimum. There are no photos of the resulting streetscape.

This severance occurred at a contested hearing before the OMB. Mr. Krushelnicki wrote:

The Board notes that the lots in the area generally range from 3,500 square feet to 6,000 square feet, [325 to 557 m²] with the average in the vicinity of about 5,000 square feet [464 m².] The lots to the west are smaller and those in the Killdeer Crescent development to the east tend to be larger and, as [a neighbour] observes, more spacious. There are a few large corner lots like the subject lot, giving rise to a view among the neighbours that this may be the first of several applications. Nevertheless, the subject lot is the largest in the vicinity.¹¹



To be fair to Ms. Stewart, this case was not submitted to be a “precedent”, but simply to show that little has changed since Frederick Todd’s original design, based on Garden City concepts. I agree that overall, two or three new lots over a 70 year period is not “destabilizing”. But if this proposal is granted, Mr. Baena argued that it might encourage other corner lot owners to redevelop their rear yards.

¹¹ 2001 CarswellOnt 6958, Ontario Municipal Board. Unfortunately the public website of OMB decisions <https://elto.gov.on.ca/tribunals/lpat/e-decisions/> does not contain this case.

Mr. Baena identified six possible corner lots. This was in my view, an “on the fly” submission, without any underpinning from Ms. Rasanu’s witness statement. However, I can double check Mr. Baena’s submissions from the City’s zoning maps and Ms. Rasanu’s spreadsheet statistics.

Only one of these corner lots seems to be capable of creating a new rear lot with dimensions comparable what Mr. Karan seeks. Number 54 Rykert’s is 694 m², which divided by 2 is 347 m², which is larger than 337 m². It also appears to need no frontage variance. But we don’t know anything more about 54 Rykert, whether it is a newly built larger home or the historical building.



Table 20. Mr. Baena’s possible vulnerable properties

	Frontage (m)	Frontage (feet)	Area (m2)
54 Rykert	16.1	52.8	694
79 Brentcliffe (subject)	24.9	81.7	675
39 Rykert	13.5	44.3	609

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73Rykert	14.3	46.9	605
121 Rykert	14.6	47.9	508
69 Rykert	13.6	44.6	478
59 Rykert	11.7	38.4	396

I conclude that without further information Mr. Baena's six possible future severance applications are too speculative to draw any conclusions.

Conclusion

The development does not **reinforce** the prevailing lot sizes or configuration of lots in the neighbourhood, whether the neighbourhood is Ms. Rasanu's, Mr. Romano's or is taken to consist of the immediate proximity to 79 Brentcliffe Rd. Accordingly, the application fails the test of conforming to the Official Plan.

DECISION AND ORDER

Mr. Karan's appeals are dismissed, and the consent and variances not granted or authorized. The decision of the Committee of Adjustment is confirmed.



X

Ted Yao
Panel Chair, Toronto Local Appeal Body