

# DECISION AND ORDER

**Decision Issue Date** Thursday, February 04, 2021

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

Appellant(s): GEOFF KETTEL

Applicant: MPLAN INC

Property Address/Description: 16 KENRAE RD

Committee of Adjustment Case File: 18 258780 NNY 26 CO, 18 258784 NNY 26 MV, 18 258785 NNY 26 MV

**TLAB Case File Number: 19 170600 S53 15 TLAB**

**Hearing date:** Friday, August 28, 2020

**DECISION DELIVERED BY JOHN TASSIOPOULOS**

## APPEARANCES

Name	Role	Representative
MPLAN Inc.	Applicant	
Bitra Mehrin Rajaei	Owner/Party	
Mohammad Reza Hajighazi	Primary Owner/Party	Ian Flett
Michael Mannett	Expert Witness	
Geoff Kettel	Appellant	
Aileen Keng	Expert Witness	
City of Toronto	Party	Lauren Pinder
Leaside Property Owners Assoc.	Party	
Andrea Villiers	Participant	

## **INTRODUCTION & BACKGROUND**

This is an appeal to the Toronto Local Appeal Body (TLAB) from a decision of the City of Toronto (City) Committee of Adjustment (COA) dated Thursday May 23, 2019, approving the consent application to create two new lots at 16 Kenrae Road (subject property). As a result of the approval, Mr. Geoff Kettel on behalf of the Leaside Property Owners Association (LPOA) appealed the decision to the TLAB, which set a Hearing date originally for October 28, 2019 but on the consent of the Parties to this matter it was set aside and new Hearing dates were set for March 20, 2020. This Hearing was then postponed again due to the Covid-19 pandemic and the Government of Ontario's Emergency Order (O.Reg. 73/20). As a result, the TLAB suspended hearings from March 16 to May 29, 2020 with a further suspension period ending on August 14, 2020, following which an electronic Hearing date was set for August 28, 2020.

The proposal is to sever the subject property into two residential lots at 16 Kenrae Road, which is located on the east side of Kenrae Road, just west and of Laird Road, east of Randolph Road and north of Millwood Road. It is designated *Neighbourhoods* in the City Official Plan (OP) and zoned RD (f9.0; a275; d0.45) under Zoning By-law No. 569-2013 and R1A under the former Leaside Zoning By-law No. 1916.

At the Hearing, the Applicant / Owner was represented by Mr. Ian Flett (counsel) and Mr. Michael Manett, an expert planning witness, who provided land use planning evidence in support of the application. The Appellant Mr. Geoff Kettel, on behalf of the LPOA, was present in opposition as was the City who elected Party status in opposition to the application and was represented by Ms. Lauren Pinder (counsel) and Ms. Aileen Keng, who provided expert land use planning evidence in the appeal Hearing. Participant Andrea Villiers was also in attendance in opposition to the application. Ms. Villiers had requested Participant status two days prior to the Hearing, August 26, 2020. I asked the Parties present if there was any objection to this late request. There was no objection the Parties noted to her taking part as a Participant to this matter.

Ms. Pinder also noted that Ms. Keng would be providing land use planning evidence in place of Ms. Rasanu, who was originally scheduled to appear on behalf of the City, but who is on parental leave and not available to attend the Hearing. Ms. Pinder explained that the Parties were aware of this change and had raised no objection; I confirmed that Ms. Keng would be considered for qualification to provide land use planning evidence in the course of the Hearing.

I disclosed to those in attendance that I had reviewed the pre-filed materials in the Hearing file and had visited the subject property site and the surrounding neighbourhood in preparation for the Hearing but that the evidence to be heard is of importance.

## **MATTERS IN ISSUE**

Given the *de novo* nature of the TLAB Hearing, is the consent to sever the property sought by the Applicant / Owner supportable?

Does the requested consent to sever meet the applicable policy and statutory requirements as outlined in Section 53 of the *Planning Act*?

## **JURISDICTION**

### **Provincial Policy – S. 3**

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

### **Consent – S. 53**

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

- (a) the effect of development of the proposed subdivision on matters of provincial interest as referred to in section 2 of the Planning Act;
- (b) whether the proposed subdivision is premature or in the public interest;
- (c) whether the plan conforms to the official plan and adjacent plans of subdivision, if any;
- (d) the suitability of the land for the purposes for which it is to be subdivided;
  - (d.1) if any affordable housing units are being proposed, the suitability of the proposed units for affordable housing;
- (e) the number, width, location and proposed grades and elevations of highways, and the adequacy of them, and the highways linking the highways in the proposed subdivision with the established highway system in the vicinity and the adequacy of them;
- (f) the dimensions and shapes of the proposed lots;

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

(h) conservation of natural resources and flood control;

(i) the adequacy of utilities and municipal services;

(j) the adequacy of school sites;

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

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

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

## **EVIDENCE**

Mr. Flett, in his opening statement, reminded the Chair that the appeal was specifically related to the consent to sever under Section 53 of the *Planning Act* and that the minor variances have already been approved and were not part of the appeal to be considered by the TLAB. Mr. Flett explained that he was confirming this because in the review of the witness statements submitted by the Appellant and the City, there were numerous references to the variances being sought previously, which have already been approved by the COA. He then provided a brief introduction and noted that the evidence to be provided would demonstrate that the subject property is in a unique location within the Leaside community, more broadly, and the block, immediately, and that the application for the severance was appropriate.

Ms. Pinder's opening statement acknowledged that the City was present at the Hearing to appeal only the consent to sever, and were not appealing the variances that had already be approved and were final and binding. She did, however, request that the application and the associated variances approved be considered cumulatively with respect to the proposal in the context of neighbourhood character.

Following the opening statements, Mr. Flett called upon Mr. Manett as an expert witness and he was affirmed. Mr. Manett provided a synopsis of his planning experience, stating that he is a Registered Professional Planner and Full Member both of the Ontario Professional Planners Institute and the Canadian Institute of Planners and that he has appeared before TLAB and similar tribunals in the past. Given his experience, outlined verbally and in his witness statement (Exhibit #1), and his signed

acknowledgement of expert's duty (Exhibit #2), I qualified Mr. Manett to provide professional opinion evidence in the area of land use planning.

Mr. Flett asked if the City's document books could be entered as exhibits and Ms. Pinder noted she had no objection to this request (Exhibits #3a and #3b). In addition, the following were submitted as exhibits:

- a letter from the COA noting that the variances sought were final and binding as of June 13, 2019 (Exhibit #4);
- Mr. Manett's witness statement (Exhibit #5); and,
- Mr. Manett's Neighbourhood Map (Exhibit #6).

Mr. Mannett provided a description of the subject property and the surrounding neighbourhood emphasizing that the street pattern design of this part of Leaside was curvilinear which create different block shapes that often lead to lot shapes that are not rectangular. He described Kenrae Road as a short curved street that meets and turns into Randolph Road noting that the block within which the subject property is "teardrop" shaped and its curved design leads to it having block frontages on these two streets.

In describing the subject property and its context he noted it had a frontage of 12.18 metres, a depth of 35.16m and a lot area of 331.47m<sup>2</sup> and is currently occupied by a one storey detached dwelling. The site is adjacent to a four-storey apartment building to the east, a two-storey single detached dwelling to the west, and backs onto the commercial properties fronting onto Laird Drive. Mr. Manett turned to his photobook (Exhibit #7 – August 2020) he described, through aerial views, illustrates the built form context on Kenrae Road, the subject property, and the rest of the block within which it is located. Describing the proposal to sever the lot, he indicated that it would result in Part 1 of the lot having a frontage of 6.09m and lot area of 170.08m<sup>2</sup> and Part 2 having a frontage of 6.09m and lot area of 161.32m<sup>2</sup>.

He described the character of the neighbourhood indicating that the original developments include modest sized detached bungalows, side splits, semi-detached dwellings, two-storey detached dwellings, and the adjacent four storey apartment building and further noted that there was a significant amount of reinvestment in the area, including renovations and rebuilds, that have resulted in larger residential dwellings replacing the smaller homes built in the original subdivision. Mr. Manett referred to the original subdivision plan (Exhibit #3b, p.33) and indicated that the block lot pattern had changed and provided an exhibit overlaying the current lot pattern onto the original plan for comparison (Exhibit #8). He concluded that over the years there had been an evolution of changes to the lot pattern in the block resulting in the current arrangement.

Mr. Manett stated that in his analysis of the neighbourhood he was able to establish that the semi-detached built form was characteristic of the neighbourhood and appropriate, and indicated this on his neighbourhood map (Exhibit #6). He opined that when considering land use 'fit', the proposal of a semi-detached built form adjacent to the existing apartment building is not only appropriate for the subject property, but also for the block because of the variety of built form on Kenrae Road.

Mr. Manett described the boundary of the neighbourhood study area noting that it included areas within a fifteen minute walk from the subject property and that it only included the residential areas to the north south and west and did not include commercial and employment areas on Laird Drive because the land uses and lot sizes were not relevant to the analysis. He noted that his study area was comprised of 458 properties, was consistent with the study area indicated by the City in their analysis and was bounded by Rumsey Drive to the west, Laird Drive to the east, Millwood Road to the south, and McRae Drive to the north. He further acknowledged that the lot areas proposed would be amongst the smallest in the neighbourhood.

Looking at the immediate area boundary that was comprised of the block in which the subject property was situated, Mr. Manett opined that the proposal would not produce any adverse impact to the immediate properties or the neighbourhood through the construction of a semi-detached. Given its context of being in between an apartment building and two storey detached dwelling and backing onto commercial uses on Laird Avenue, the proposal was appropriate.

Mr. Manett referred to his lot frontage analysis map (Exhibit #9) and concluded the following:

- 42 properties with a lot frontage between 6.09m-6.5m;
- 47 properties with a lot frontage below 6.08m;
- 164 properties with a lot frontage between 6.5-9m;
- there are 253 (55.2%) properties in the neighbourhood study area with a lot frontage below the Zoning By-law minimum of 9.0 metres; and,
- the smallest lot frontage is 4.65m and largest is 19.96m which is a property with an apartment building.

With respect to lot area sizes within the neighbourhood study area he concluded that :

- there are 97 properties that have a total lot area below the Zoning By-law minimum of 275 m<sup>2</sup>; and
- there are 33 properties that have a lot area below 170m<sup>2</sup>.

He opined that the severance will create lot sizes that *“are of adequate size to accommodate the proposed development of semi-detached dwellings, which are a modest size...of 1500 square feet each”* (Hearing excerpt).

Referring to Section 51(24) of the Planning Act with respect to the consent application, he indicated that the most relevant criteria with respect to the application were 51(24) b), c), and f). With respect to whether the consent was premature he stated they are within the range of lot sizes found within the neighbourhood and can support the proposed semi-detached use, and that the COA had approved the variances for lot area and lot frontage, and the consent would allow for the creation of the two lots associated with the variances for the subject property.

With respect to the plan conforming to the Official Plan and adjacent plans of subdivision, Mr. Manett stated that the proposed consent Application respects and reinforces the physical character of the neighbourhood. Based upon the proposed dimensions and shapes of the lots, which are within the range of lot frontages and lot areas found in the area, he stated that the proposed semi-detached residential use was consistent with the range of uses and built form types in the neighbourhood.

He concluded that the dimensions and shape of the proposed lots are similar to other lots in the neighbourhood and on the same block, and that they comply with the site specific requirements of the approved variances for the subject property.

Mr. Manett indicated that the consent to sever was not at a scale that would fall within the parameters of the PPS or the Growth Plan. However, he noted that the proposal supported the Provincial policy which encourages intensification at appropriate locations and use of existing services and infrastructure and was therefore consistent with the PPS and the Growth Plan.

Mr. Manett indicated that the OP policies most relevant to the consent included:

- *2.3.1 Healthy Neighbourhoods* – a cornerstone policy of ensuring new development respects the physical character and reinforces the stability of the neighbourhood. He opined that the use and sizes of the proposed lots are consistent with other lots in the neighbourhood and on the same block, there are 10 semi-detached residential dwellings located on similar sized lots within the immediate neighbourhood. He further explained that in the particular case of the subject property, the shape of the block results in a reduction of the depth when one moves from the north end of the block to the south because of the curved shape. He pointed out that the lot area and lot shape would not be apparent from the street and that physical character is usually determined by what is apparent from the street view and frontage;
- *4.1.1 Neighbourhoods* – he noted that semi-detached is identified as an appropriate residential use in *Neighbourhoods* and the proposed consent will permit result in semi-detached residential dwellings similar to those found in the surrounding neighbourhood; and,
- *4.1.5 Development Criteria in Neighbourhoods* – Mr. Manett explained that the proposal predated the adoption of OPA 320 and resulting amendments to the OP but that he was prepared to speak to the section as it related to the consent and in particular prevailing size and lot configuration (4.1.5 b) (Exhibit 3a, p.210). He acknowledged that although the resulting lots would be the smallest in the immediate neighbourhood, it did not mean that the lot sizes were inappropriate for the neighbourhood. He opined that the intent of the policy was to ensure stability in the neighbourhood and that “*physical changes to the neighbourhood are sensitive, gradual and fit the existing neighbourhood character and to respect and reinforce the general patterns in the neighbourhood*” (Hearing excerpt).

Based on the neighbourhood study area, Mr. Manett concluded that there is no prevailing physical character as it related to the subject property in the immediate or broader neighbourhood area because of the wide variety of property shapes and sizes resulting from curvilinear streets and odd shaped blocks.

Mr. Manett concluded that the proposed development was compatible with the nearby properties and character of the neighbourhood, that the proposed severance will not result in adverse impacts to the neighbourhood, and it will create lots that accommodate the associated variances previously approved for the subject property. He opined that the proposal met the requirements of Section 51(24) of the *Planning Act*, that it represented good planning and should be approved.

Ms. Pinder cross-examined Mr. Manett and asked him if his quoting of policy 2.3.1 was from the formal policy area that is greyed out in the OP. He answered that the policies in grey were implementation policies but that the overarching comment about there being a cornerstone policy is indicated in the section text and that the OP must be read as a whole not just specific policies. When asked if he differentiated between the greyed out policies and the rest of the OP, Mr. Manett responded that he didn't and that there is no reference in the OP that directs one to give more importance to some policies over others. Ms. Pinder asked whether 4.1.5 b) was the most important policy to consider. He responded that in the case of the consent this was the most relevant policy to consider. Ms. Pinder asked if building type must also be considered and not just the "two dimensional" lot. Mr. Manett responded when considering the appropriateness of the consent to sever and in this case it was appropriate for the provision of a semi-detached building.

Ms. Pinder asked if the PPS and Growth Plan indicate that the OP will determine where intensification can and should occur. Mr. Manett agreed but noted that intensification can occur through infill or redevelopment and is permitted in *Neighbourhoods*. When asked if this was a goal for the *Neighbourhoods* designation he responded that it wasn't specifically but that there is the encouragement to maintain stability of neighbourhoods through reinvestment and redevelopment.

Ms. Pinder asked if it was essential to consider the proposal specifically in the context of OPA 320 and Mr. Manett responded that it needed to be addressed but that the "clergy principle" must also be considered where the application predates the adoption of the OPA. He, however, agreed that given his evidence he believed that OPA 320 should be addressed and considered with respect to the application.

Ms. Pinder asked for clarification on whether he suggested that it was okay that the proposed lots did not fit into the prevailing lot character. Mr. Manett disagreed and opined that the lots will fit the character but that their tapering shape towards the rear was a result of the block lot arrangement and the curvilinear street pattern which combined result in a smaller lot area. He noted that this did not adversely impact the use of the semi-detached dwellings proposed because the approved variances.

When asked if he had determined a prevailing lot size in his study area, Mr. Manett responded that he had not done that analysis but because it depended on the



dwelling type and that it would be different to compare with single-detached lots. He noted that the semi-detached properties further north on the block were larger than the subject property proposed lots but that it was due to their rectangular shape.

Ms. Pinder asked if there was a prevailing lot frontage in either the immediate or broader neighbourhood Mr. Manett responded that because of the variety of dwelling types it was difficult to determine what constituted prevailing but that many of the frontages were below the required minimum 9.0m frontage outlined in the Zoning By-law. When asked for a range he responded that his evidence noted 42 properties with a lot frontage between 6.09m-6.5m, 47 with a lot frontage below 6.08m and 164 properties with a lot frontage between 6.5-9m amounting to 253 or 55% of the properties below the 9.0m Zoning By-law minimum. When asked if townhouse frontages were included Mr. Manett responded that if they were within the neighbourhood they would have been included because it was part of the lot frontages in the area. When asked if some of the areas within the study area may have lower frontage requirements he confirmed that they could because of other By-law that may govern some of the properties.

Ms. Pinder referred Ms. Rasanu witness statement (Exhibit #10) to confirm the address numbering and to determine which properties are on Kenrae Road and which are on Randolph Road. She asked why Randolph Road was included in the immediate study area when the OP notes that it should be properties facing the same street as well as the same block. Mr. Manett responded that there may be a change of street name but that physically the block extends up to Lea Road regardless of the street name change and that the block, from a pedestrian view would be experienced as a continuous curve of the same block. Ms. Pinder asked if the south side of Kenrae Road should also be included as part of the immediate context and Mr. Manett agreed it was applicable in accordance with OPA 320.

Ms. Pinder asked if the difference between the immediate context and broader context is related to zoning difference between the RD and RD designation and Mr. Manett responded that although there is a change of zoning it isn't apparent as what one experiences "on the ground" and defines the character of the neighbourhood. He was further asked if the experience of walking up Kenrae Road would be one of from larger to smaller lots and. responded that it would not be gradual and it would not be homogenous in character but would be a varied mix of lots and uses.

Ms. Pinder referred to the site plan in the August 2019 Notice of Motion to Dismiss (Exhibit #11, p.18) by Mr. Flett and asked that it be considered for illustrative purposes, and wanted to confirm that the parking proposed on the lots would be located in the front yard as indicated. Mr. Manett confirmed they would and that it was a condition that existed in the neighbourhood.

Ms. Pinder proceeded to review the variances in Mr. Manett's Witness statement and Mr. Flett objected to the review, given that the variances had been approved and he did not understand the relevance. Ms. Pinder explained that she wanted to ask what FSI means with respect to the relationship between dwelling and lot size, and that the variance for FSI would suggest that the lots were too small even though Mr. Manett

described the dwellings as modest. In considering the objection, I ruled that the review of the variances was not relevant as they were not before the TLAB in this matter although the capability to erect and accommodate dwellings on the proposed new lots, if the severance was approved, would be a consideration if the variances were in dispute.

Ms. Pinder asked that given his assertion that change continues to occur in the neighbourhood, was it not true that there had only been two other applications for a consent to sever. Mr. Manett agreed that based on the City's data that would be correct, but that there was no data for the neighbourhood to determine if there were any more prior to 2009. He suggested that the future Eglinton Crosstown LRT (ECLRT) will introduce a need for more intensification in the area but when asked to highlight policy direction from Council regarding the intensification of the Neighbourhoods, he could not.

On cross-examination by Mr. Geoff Kettel, Mr. Manett was asked about the neighbourhood map study area and if he could speak to the character and nature of the semi-detached lots. Mr. Manett responded that he had spoken to the character and that the aerial images provided during his testimony showing a mix of uses in the immediate and broader neighbourhood area. Mr. Kettel asked if there were other examples where there was a singular semi-detached property amongst single detached lots and wasn't it typical for them to be in groupings of lots. Mr. Manett answered that the location of semi-detached lots was identified on the neighbourhood map (Exhibit #6).

Mr. Kettel referred to the markup of the original subdivision plan Mr. Manett provided as part of his evidence (Exhibit #8) and asked if there were any examples of consents illustrated on his markup. Mr. Manett responded that the purpose was not to indicate consents to sever but rather to indicate that the lots on the block had been reconfigured over time and that the subdivision of the block had indeed changed over time. Mr. Kettel asked if these were substantive changes and Mr. Manett stated that the exhibit was provided to show how the current lot configuration differed from the original plan and that there were changes that had occurred historically but he did not have a timeline when the changes occurred.

Ms. Pinder called Ms. Aileen Keng as an expert witness and she was affirmed. Ms. Keng provided a summary of her land use planning education and experience, and described her role as an Assistant Planner in the North York District City Planning. She also mentioned previous experience at the COA in the Toronto and East York District and that she was a candidate member of both the Ontario Professional Planners Institute (OPPI) and the Canadian Institute of Planners and she was qualified to give expert evidence in land use planning. Mr. Flett asked if Ms. Keng had been qualified to give professional opinion evidence previously at TLAB or LPAT and she responded she had not.

Mr. Flett then asked if she understood that the Acknowledgement of Expert's Duty required her to provide non-partisan opinion and she confirmed that she did. Finally, Mr. Flett asked if she was aware of the obligations in the OPPI's code of conduct and whether she would abide by them. She confirmed that she was aware and would abide by those obligations. I qualified Ms. Keng to provide opinion evidence in the area of land use planning.

She provided a summary of how she became involved with the matter and after reviewing the application and Ms. Rasanu's witness statement, she indicated that she could adopt the position presented within it and agreed to provide evidence on the matter at TLAB. In preparation for the Hearing, Ms. Keng described that she had reviewed the disclosure documents, witness statements and conducted site visits of the subject property and neighbourhood. She adopted and concurred with the position taken by Ms. Rasanu in her witness statement with the exception that the Lot Study Results needed to be updated to include a few missing properties.

Ms. Keng also noted that paragraph 44 of the witness statement would need updating, based on these additional lots, to note that the smallest lot area found in the neighbourhood was approximately 163.6m<sup>2</sup> and not 211m<sup>2</sup>. Ms. Keng stated that even with this addition, given the 380 properties that comprised the neighbourhood study area, it did not change her opinion that the consent application should be refused.

Ms. Keng concurred with Mr. Manett's description of the neighbourhood area and did not provide any additional description. She summarized her opinion that the consent should be refused as it did not have regard for the criteria outlined in Section 51(24) of the *Planning Act*. In particular she identified the following criteria:

*c) Whether the plan conforms to the Official Plan and adjacent plans of subdivision, if any; and*

*f) The dimensions and shapes of the proposed lots.*

Ms. Pinder asked if Ms. Keng could provide her opinion on the lots study undertaken by Ms. Rasanu; she explained that she had reviewed the lot study area to confirm the information provided in the analysis. Referring to the neighbourhood study area in Exhibit #10 (p.36-39) she explained the extent of the area studied and that Laird Drive was excluded because they were designated for mixed-use and that both McCrae Drive and Millwood Road frontages were excluded due to their distinct zoning and permission for higher density residential uses. She concurred with the neighbourhood study area (NSA) boundary indicated by Ms. Rasanu that was comprised of residential areas within these boundaries. Ms. Keng indicated that although the NSA is comprised of five different zoning designations with a variety, it is predominantly zoned RM and RD.

Ms. Keng provided an overview of the physical characteristics of the neighbourhood noting it was mainly comprised of single and semi-detached two-storey dwelling with some single detached one-storey buildings as per 16 Kenrae. She noted that of the 380 properties analyzed and that single detached dwellings were the prevailing building type but that there was a significant number of semi-detached dwellings (152 of 380 dwellings, or approximately 40%) in the study area. She further indicated that a cluster of semi-detached properties were found on Airdrie, Sutherland, Rumsey, and Randolph Roads.

She stated that 75% of the lots in the study area complied with the Zoning By-law lot size requirement of 275m<sup>2</sup> and that within the RM zone the requirement was for

230m<sup>2</sup> and that the prevailing lot area size was equal to or greater than 230m<sup>2</sup> which comprised approximately 92% of the study area.

She stated that lot frontages in the study area were diverse, the minimum lot frontage for semi-detached units was 7.5m, 68% of the properties had a lot frontage equal or greater, and 88% had a frontage of 6.2m or greater. She indicated that the lot study revealed that only a minority of the lots had a frontage similar to those of the proposal. She further indicated that almost all the properties on Kenrae Road had a lot frontage equal or greater than 9.1m and that the lots proposed would be some of the smallest lots in the study area.

Ms. Keng referred to Mr. Manett's analysis of the immediate context and his inclusion of the properties on Randolph Road indicating that in her site visit in her opinion the two streets are distinct given the present intersection, and one doesn't naturally flow from one to the other. She opined that the OP in section 4.1.5 provides direction as to what constitutes the immediate context and that it would include both sides of the same street and the block, and opined that the immediate context would only include the lots with addresses on Kenrae Road.

In reference to Mr. Manett's response to how the OP should be read, she indicated that in the OP Chapter 1 the unshaded text is considered non-policy textual commentary and that the *"non-policy textual commentary is not to be afforded any independent status of in interpreting the Plan and is to take on meaning only as an explanation of the policies, maps and schedules."*

Speaking to Section 51(24) of the *Planning Act*, she first considered whether the plan conforms to the Official Plan and indicated that policy 2.3.1 speaks to new development respecting and reinforcing the physical character of the neighbourhood, and that policy 4.1.5 b) indicates size and configuration of lots as an important consideration. She opined that although the proposal is located within the OP *Neighbourhoods* designation and semi-detached lots are permitted, it was not appropriate for this specific lot on Kenrae Road because the lot frontage proposed would not respect and reinforce the lot pattern and fabric of the neighbourhood or its physical character. Although there are properties with lot frontages of 6.1m or less in the study area, they were not substantial in number and, where they do exist they are in clusters.

With respect to OPA 320 and the proposal, Ms. Keng indicated that the OP defines prevailing as the most frequently occurring form of development in that neighbourhood. She opined that the proposed lot size does not meet the prevailing lot size or pattern in the study area.

Speaking to Section 51(24) f), Ms. Keng opined that the proposed consent to sever would result in the creation of two undersized lots that do not currently exist in the neighbourhood and that this was contrary to policy 4.1.5 b) of the OP. She concluded that the proposal did not meet the criteria of Section 51 (24) c) and f) of the *Planning Act* and that it does not conform with OP policies regarding respecting and reinforcing the prevailing lot size or lot frontage and the consent should be refused.

Mr. Kettel asked in cross-examination of Ms. Keng about the semi-detached properties being in clusters in the study area and how they related to zoning and the lot size in the neighbourhood. Ms. Keng indicated that some of the semi-detached properties were not in compliance with the lot frontage zoning requirement but many of them meet the lot area requirement.

Mr. Flett began his cross-examination of Ms. Keng by asking her if the subject property was at the edge of her study area and she agreed. Referring to her characterization of the study area being a grid pattern, Mr. Flett asked if the “tear drop” shape of the block on which the subject property is located was unique and she agreed it was, in comparison to the other grid patterned blocks. Mr. Flett asked if the intersection had been recently altered with a “bump out” was, to create a safer intersection. Ms. Keng responded that she was not able to confirm the reason for the alteration and when asked if the intersection had been changed to delineate Kenrae Road from Randolph Road, she responded that that was unlikely.

Mr. Flett asked if her site visit was only by vehicle and Ms. Keng said she had walked the neighbourhood and also experienced by car on three different occasions. He asked if a pedestrian would experience the frontages along Kenrae Road and turning into Randolph as one continuous street frontage and Ms. Keng agreed they would. When asked if a pedestrian wouldn't be able to discern the difference in frontage width between 0.5m to 1.0m along the street, Ms. Keng agreed they would probably not be able to notice the difference.

Mr. Flett, referring to the historical subdivision plan for the area (Exhibit 3b, p.33), asked Ms. Keng whether there had been some changes to the lots on Kenrae Road. She confirmed there appeared to have been adjustments with respect to 1 Kenrae Road.

Mr. Flett, referring to Mr. Manett's “Structural Characteristics for Selected Properties” table (Exhibit #12), took Ms. Keng through the lot frontages on Kenrae Road and asked if the variety suggested there was no prevailing lot frontage in the immediate area. She responded that the frontages for the immediate context should include properties on both sides of Kenrae Road; that there was a range of lot frontages; and there was no prevailing lot width. Mr. Flett asked if the more *“appropriate experience of Randolph and Kenrae is that of a pedestrian and that it is actually one block, notwithstanding it has two different names of a street”*? Ms. Keng responded that the landscaped feature/median at the intersection would alter that pedestrian experience but that neighbours would consider this being the same block. Mr. Flett suggested that even though the street names may differ, the block itself is the same and that based on policy 4.1.5 of the OP that block would be what one experiences as their neighbours. Ms. Keng responded that policy 4.1.5 also indicated the street itself as immediate context as well as the block. When asked if the change in street names is an appropriate way to delineate physical character, Ms. Keng responded that it may not be specifically but that the OP provides direction with respect to what constitutes immediate and broader context. She also indicated that the properties on Randolph Road would not be excluded in a review of the immediate context but would be taken into consideration in its analysis. Mr. Flett, referring to the lot analysis (Exhibit #12)

asked if the lot frontages of 6.25m for the semi-detached properties was not similar to the proposal. Ms. Keng responded that the semi-detached properties on Randolph were found in a cluster of properties but that the proposal frontage widths were of a similar frontage.

Mr. Flett asked if the severance would have a negative impact on, or if it was incompatible with, the adjacent apartment building. Ms. Keng opined it would not, but that a single-detached dwelling would also be compatible as a transition. He asked if the term 'consistent' was a higher standard than the term 'materially consistent' and she agreed it was, but that materially consistent was with respect to all the criteria under policy 4.1.5 of the OP.

Following the testimony of Ms. Keng, Mr. Kettel was affirmed and provided testimony on behalf of the LPOA and noted the appeal that they filed was specific to the consent application.. He explained that because many months had passed since the original Hearing date, he had submitted a supplementary witness statement to TLAB on August 26, 2020 to clarify that the appeal was with respect to the consent, providing case law in the form of another recent severance application in Leaside that had been addressed by TLAB, and to indicate the LPOA was in agreement with the City's expert witness statement.

Mr. Kettel mentioned that the only item he disagreed with from Ms. Keng's testimony was the notion of the neighbourhood being a "grid" pattern and that Leaside is really comprised of a curvilinear street pattern influenced by the "Garden City" movement of Frederick Todd. He indicated that the plan was not of a grid pattern and that there were no standard lots in a "*broad sense but standard in a specific sense*" (Hearing excerpt). Nevertheless, he stated that the LPOA was opposed to the proposed severance because changes to the lot fabric will impact the physical character of a community. He explained that "*Leaside's lot fabric is an historical artifact that remains key to its unique physical character*" (Hearing excerpt).

He stated that there had been "*slight changes to the lot boundaries but not substantive changes in the number of lots*" (Hearing excerpt). He indicated that part of the historical artifact in the area were the clear groupings of semi-detached lot type that were created to accommodate semi-detached buildings. He further suggested that there were no examples of "*severances to transform lots for single detached houses to become lots for semi-detached houses.*"

Mr. Kettel indicated that because one of the Section 51 (24) test for the consent is whether or not it conforms to the Official Plan, it is a more onerous test than the Section 45 (1) test of maintaining the intent and purpose of the Official Plan. Mr. Kettel indicated that this was reflected in a decision by TLAB Chair Ian Lord with respect to a Review Request Order on a decision for 9 *Thirty Eighth Street* (p.13). He further indicated that the OP considers lot fabric as central to neighbourhood character and he stated that "*the severance of an isolated single detached lot is detrimental to the physical character established over 100 years ago*" (Hearing excerpt). He explained that the proposal did not establish another grouping of built form with similar character but rather something which doesn't fit on Kenrae Road. He concurred with the City's expert

witness that the severance would result in undersized lots and that both in terms of physical size and neighbourhood character, the severance failed the test of conformity to the OP.

Mr. Kettel concluded his testimony by stating that the LPOA *“believes that the integrity of the lot fabric and the official plan needs to be maintained, not undermined, one property at a time”* and asked that TLAB refuse the application for consent of the subject property.

Ms. Andrea Villiers, a Participant at the Hearing, was affirmed and provided a brief presentation of her opposition to the proposed consent to sever. She noted that she had been a resident of Kenrae Road for over 40 years and explained that the differentiation between Kenrae and Randolph Roads was the “bump out” that has been installed at the intersection and that pedestrians would notice they were different streets. She explained that her perception of the subject property is of a very small lot and not appropriate for a semi-detached dwelling; that there was general concern in the neighbourhood regarding redevelopment and that it would be more appropriate if a single detached dwelling was developed.

## **ANALYSIS, FINDINGS, REASONS**

The consideration of only the consent to sever and not the variances associated with the severance, or those variances having already been approved, is rather unique. Both Mr. Manett and Ms. Keng provided a thorough assessment of the subject property and the neighbourhood, identified that the key criteria to be considered for this proposal from Section 51(24) of the *Planning Act* were:

- c) *Whether the plan conforms to the Official Plan and adjacent plans of subdivision, if any; and*
- f) *The dimensions and shapes of the proposed lots.*

My analysis while considering these criteria at a broad level will also assess the specific and the context of the subject property as it exists on Kenrae Road. Having visited the subject property and the surrounding neighbourhood blocks and considering the evidence heard, I am of the opinion that the location of the subject property and the block in which it is situated are unique within the Leaside community and within the broader neighbourhood context.

With respect to the broader neighbourhood context, both of the expert witnesses were generally in agreement with respect to the boundary and extent of their study areas but where they differed was with respect to the immediate context area. While Mr. Manett initially indicated only include the lots on the block contiguous with the subject property and extending along Randolph Road as part of his immediate study area, Ms. Keng only considered the lots facing exclusively onto Kenrae Road and excluded the lots on Randolph Road. Although Mr. Manett agreed that the lots opposite should also be considered part of the immediate context, Ms. Keng was of the opinion that the lots

facing onto Randolph Road could not be considered because they were not on the same street which she indicated was a direction from policy 4.1.5 of the OP.

Having considered the unique shape of the block illustrated in Figure 1 below, I find that the immediate context should include both sides of Kenrae Road and the continuation of the lots on the west side of the described “teardrop” block along Randolph Road.



Figure 1: Kenrae Road Block in the Context of Neighbourhood Area (Exhibit #10 excerpt – block outline added)

The OP in policy 4.1.5 does provide direction on how to determine the immediate context area:

*“the physical characteristics of the properties that face the same street as the proposed development in the same block and the block opposite the proposed development (the immediate context)...”(my emphasis added);*

I find that the unique shape of the lot and curvilinear road pattern suggest, especially when experienced on foot, that this is part of the same block. It is too narrow an interpretation of the OP to suggest that the recent introduction of the landscaped median “bump-out” should not be a determinant for delineating the immediate context when it is obvious while walking the area that the lots fronting onto Randolph Road are indeed part of the same block within which the subject property is located. I find that a narrower interpretation of the OP direction, regarding immediate context, would be more applicable to any of the other street and block relationship found in the broader context



as illustrated in Figure 1, above but not in the case of this particular block and related street pattern. Looking at the broader neighbourhood context in Figure 1, it illustrates the unique shape and road pattern associated with the subject property block. I find that this was supported by the evidence provided by both expert witnesses. The broader context and immediate context are very different from each other and the OP policy 4.1.5 indicates:

*“In instances of significant difference between these two contexts, the immediate context will be considered to be of greater relevance. (my emphasis added)*

This direction and the immediate context area that I have indicated above provides a basis from which to consider the consent to sever within this unique block and road pattern.

There was evidence and closing submissions regarding OPA 320 and the inclusion of the term ‘prevailing’ with respect to the proposed severance, both Parties’ counsels as well as Ms. Keng and Mr. Manett agreed that the notion of prevailing would be applicable. Ms. Keng’s evidence relied on a quantitative analysis of the broader geographic area to determine the most frequently occurring form of development in that neighbourhood and she indicated that the results of this analysis were that the resulting lot sizes and frontages do not meet the prevailing lot size or pattern in the study area. Mr. Manett acknowledged that the resulting lots would be the smallest in the immediate neighbourhood but that it did not mean that the lot sizes were inappropriate for the neighbourhood. Mr. Manett concluded that there was no prevailing physical character in the immediate or broader neighbourhood area, regarding the subject property, due to the variety of property shapes and sizes resulting from curvilinear streets and oddly shaped blocks.

Mr. Kettel in his testimony also noted that there were no standard lots in the “*broad sense but standard in a specific sense*” (Hearing excerpt). I find that the suggestion that there is no prevailing physical character in the broader neighbourhood to be incorrect as there was ample quantitative analysis that did indicate a prevalence of single and semi-detached lot types in the neighbourhood study area. However, determining ‘prevailing character’ through quantitative analysis needs to be tempered by undertaking a qualitative analysis as well, and given the unique nature of the block and variety of lot types and sizes in the immediate neighbourhood, prevailing must also be considered at this more focused level. Furthermore, with respect to such variety, OP policy 4.1.5 provides direction to look beyond a quantitative exercise of determining most frequently occurring:

*“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.” (my emphasis added)

The evidence provided during the Hearing by Mr. Manett indicated that there was a significant number of semi-detached lots, as indicated in Figure 2 below. He also noted that there were semi-detached properties, in the immediate context, in the portion of the block that faced onto Randolph Road and further south on the same road.



Figure 2: Neighbourhood Map with Semi-detached identified in blue (Exhibit #6 excerpt)

Both Ms. Keng and Mr. Kettel during their testimony raised the concern that semi-detached properties in the study area were typically found in groupings and that the proposed severance would create a singular, semi-detached property amongst single detached lots. Figure 2 indicates that although groupings or clusters of semi-detached properties are indicated, examples of singular or two semi-detached properties are also shown in between. I agree with Mr. Flett who asserted in his closing submission, that they did not occur in a consistent pattern suggesting that this was germane to the physical character of the neighbourhood. I find that there is no evidence provided that would suggest that the grouping of semi-detached properties was a



predetermined objective of the original plan of subdivision. I agree that the variety of lot types on the majority of the blocks and in different locations is indicative of the physical character of the neighbourhood and indicate there are similar but not standard lots as Mr. Kettel had mentioned in his testimony.

Moving from the broader to the immediate neighbourhood, the introduction of a semi-detached lot in between a low-rise apartment building and a single detached dwelling would be an appropriate response to the adjacent properties. Although we are considering the consent to sever and not the variances that have been approved, and Ms. Pinder in her closing submissions asked that they not be determinative in reaching a decision, I must consider the results from the variances and how the semi-detached building will fit into the block and immediate neighbourhood. The image in Figure 3, below, shows the adjacent context to the subject property as it currently exists. From both this image, the site visits I've conducted, and the evidence heard at the Hearing, I find that there was nothing to suggest that the introduction of a semi-detached property and building would not 'fit' into the immediate context.



*Figure 3: Image of Adjacent Built Form Context (Exhibit #7 excerpt – red outline of subject property added)*

I prefer Mr. Manett's evidence that the intent of the policy 4.1.5 and the application of prevailing was to ensure stability in the neighbourhood and that physical changes would fit the neighbourhood while respecting and reinforcing the general patterns in the neighbourhood. He opined that the proposed severance would fit in the neighbourhood and that the subject property's tapering shape to the rear of the lot was a result of the block lot arrangement and the curvilinear street pattern, which combined results in a

smaller lot area. I agree with his assessment that it would not destabilize the neighbourhood study area. I find that when considering land use 'fit', the proposal of a semi-detached property and built form adjacent to the existing apartment building to be appropriate for the subject property for Kenrae Road and the immediate neighbourhood context.

Mr. Kettel in his testimony had noted that the only other recent consent application in Leaside, heard by the TLAB, was for *79 Brentcliffe Drive* by Member Yao and that the consent and variances sought were refused. I have reviewed that decision, I find that the immediate context and built form relationship to be very different and not an appropriate comparison or precedent for the subject property. The proposal for 79 Brentcliffe Drive was on a highly visible corner, on a significant street with a generally consistent lot pattern and building types. The proposal for the subject property is within a very short curved block with a variety of built form and residential tenure as well as being on an irregular or "teardrop" shaped block that results in the reversed pie shaped lot. I agree with Mr. Manett that the subject property is unique in its situation due to the surrounding uses and lot sizes, and the approval of the severance for this property could not be replicated in other parts of the neighbourhood and would not destabilize the neighbourhood.

Furthermore, the lot fabric has not been changed but the consent to sever will allow for a building type that exists in large number within the neighbourhood and will provided an appropriate transition from the apartment building to the other single and semidetached dwellings on Kenrae Road.

With respect to the approval of the consent creating a precedent, I refer to Member Yao in his decision on *79 Brentcliffe Drive* stated:

*"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."*

Though the number of consent applications approved appears to be low, I am aware that this decision could potentially be referred to as a precedent for this neighbourhood. I address this potential by noting that each application must be considered on its own merits and within its particular existing location, condition, and context.

Given these reasons above, having considered the evidence presented at the Hearing and having considered the consent criteria in section 51 (24) of the *Planning Act*, I find that the proposed severance meets the criteria and in particular conforms to the Official Plan and that the dimension and shape of the proposed lots is appropriate for the and suitable for the purpose of constructing semi-detached residential dwellings.

## DECISION AND ORDER

The appeal of the Committee of Adjustment decision dated May 23, 2019, is dismissed. The consent is allowed, and shall be in accordance with the survey submitted as **Attachment 1**, and is subject to the standard consent conditions as outlined in the attached **Schedule 'A'**.

---

X

John Tassiopoulos  
Panel Chair, Toronto Local Appeal Body

**Schedule 'A': Conditions of Consent Approval**

The Consent Application is Approved on Condition.

The TLAB has considered the provisions of Section 51(24) of the Planning Act and is satisfied that a plan of subdivision is not necessary. The TLAB therefore consents to the transaction as shown on the plan filed with the TLAB or as otherwise specified by this Decision and Order, on the condition that before a Certificate of Official is issued, as required by Section 53(42) of the Planning Act, the applicant is to fulfill the following conditions to the satisfaction of the Deputy Secretary-Treasurer of the Committee of Adjustment:

- (1) Confirmation of payment of outstanding taxes to the satisfaction of the Revenue Services Division, in the form of a statement of tax account current to within 30 days of an applicant's request to the Deputy Secretary-Treasurer of the Committee of Adjustment to issue the Certificate of Official as outlined in Condition 6.
- (2) Municipal numbers for the subject lots, blocks, parts, or otherwise indicated on the applicable registered reference plan of survey shall be assigned to the satisfaction of the Supervisor, Surveys, Engineering Support Services, Engineering and Construction Services.
- (3) One electronic copy of the registered reference plan of survey integrated to NAD 83 CSRS (3 degree Modified Transverse Mercator projection), delineating by separate Parts the lands and their respective areas, shall be filed with, and to the satisfaction of, the Manager, Land and Property Surveys, Engineering Support Services, Engineering and Construction Services.
- (4) One electronic copy of the registered reference plan of survey satisfying the requirements of the Manager, Land and Property Surveys, Engineering Support Services, Engineering and Construction Services shall be filed with the Deputy Secretary-Treasurer of the Committee of Adjustment.
- (5) Prepare and submit a digital draft of the Certificate of Official, Form 2 or 4, O. Reg. 197/96, referencing either subsection 50(3) or (5) of the Planning Act if applicable as it pertains to the conveyed land and/or consent transaction to the satisfaction of the Deputy Secretary-Treasurer of the Committee of Adjustment.
- (6) Once all of the other conditions have been satisfied, the applicant shall request, in writing, that the Deputy Secretary-Treasurer of the Committee of Adjustment issue the Certificate of Official.
- (7) Within ONE YEAR of the date of the giving of this notice of decision, the applicant shall comply with the above-noted conditions.

REPRESENTATIVE FOR LAND  
REGISTRAR FOR THE LAND TITLES  
DIVISION OF THE TORONTO  
REGISTRY OFFICE (No. 66)

PART	LOT	REGISTERED PLAN	ALL OF PIN	AREA sq.m
1	PART OF 581	2120	10383-0165 (LT)	170
2				161

SCALE 1 : 150

DISTANCES AND COORDINATES SHOWN ON THIS PLAN ARE IN METRES  
AND CAN BE CONVERTED TO FEET BY DIVIDING BY 0.3048.

□	DEBITS	SURVEY MONUMENT PLANTED
WIT	*	WITNESS MONUMENT
SB	*	STANDARD IRON BIR
SSB	*	SHORT STANDARD IRON BIR
B	*	IRON BIR
CP	*	CONCRETE PIN
CC	*	CLIP CROSS
NSWE	*	NORTH SOUTH, EAST, WEST
ORC	*	CALCULATED
FP	*	REGISTERED RUN 2120
PI	*	SURVEYORS REAL PROPERTY REPORT BY
		UNIMMURPHY AND EBRON LITDATED JULY 7, 1983.
FZ		PLAN 08A-23207
CLF		CHIN LINK, EVIDE

I CERTIFY THAT :

1. THIS SURVEY AND PLAN ARE CORRECT AND IN ACCORDANCE WITH THE SURVEYS ACT, THE SURVEYORS ACT, THE LAND TITLES ACT AND THE REGULATIONS MADE UNDER THEM.
2. THE SURVEY WAS COMPLETED ON

**ALEX MARTON**  
ONTARIO LAND SURVEYOR  
ONTARIO LAND SURVEYORS

 **ALEX MARTON LIMITED**  
ONTARIO LAND SURVEYORS  
180 APLEWOOD CRESCENT, UNIT 8,  
CONCORD, ONTARIO, L4K 4H2  
PHONE: 905-879-9889 FAX: 905-879-0770  
E-MAIL: [alex@amsurveying.ca](mailto:alex@amsurveying.ca)  
WEBSITE: [www.amsurveying.ca](http://www.amsurveying.ca)

PARTY CHIEF: YH	FILE NAME: 2017-185_RP.DWG
DRAWN : LA, UK	PLOT SCALE: 1:150
CHECKED : AM	PROJECT No. 2017-185

OBSERVED REFERENCE POINTS (ORP's) DERIVED FROM GPS  
REAL TIME NETWORK OBSERVATIONS AND ARE REFERRED TO MIM  
ZONE 10, NAD 83 (CSRS) (1997.0).  
COORDINATE VALUES ARE TO URBAN ACCURACY PER SECTION 14 (2) OF  
O. REG 216/10

THE MIM COORDINATES CANNOT, IN THEMSELVES, BE USED  
TO RE-ESTABLISH CORNERS OR BOUNDARY SHOWN ON THIS PLAN.

POINT ID	NORTHING	EASTING
CRP 1	4840541.03	315917.01
CRP 2	4840548.12	4840541.05

FOR BEARING COMPARISON, THE FOLLOWING ROTATION WAS APPLIED:  
RP-1'00'30" CLOCKWISE

BEARINGS SHOWN ARE GRID BEARINGS AND DERIVED FROM OBSERVED REFERENCE POINTS (ORPS) 1 AND 2 BY REAL TIME NETWORK OBSERVATIONS, MIM ZONE 10, NAD 83 (CSRS) (1997.0 EPOCH).

DISTANCES SHOWN ON THIS PLAN ARE GROUND DISTANCES AND CAN BE CONVERTED TO GRID DISTANCES BY MULTIPLYING BY THE COMBINED SCALE FACTOR OF 0.99989.

