Toronto Local Appeal Body

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DECISION AND ORDER

Decision Issue Date Thursday, June 03, 2021

PROCEEDINGS COMMENCED UNDER section 45(12), subsection 45(1) of the Planning Act, R.S.O. 1990, c. P.13, as amended

Appellant(s):	MAGID PAZUKI
Applicant(s):	RUBINOFF DESIGN GROUP
Property Address/Description:	101 ROBERTA DR
Committee of Adjustment File Number(s):	19 259554 NNY 08 CO, 19 259620 NNY 08 MV, 19 259623 NNY 08 MV
TLAB Case File Number(s):	**20 178455 S53 08 TLAB, 20 178457 S45 08 TLAB, 20 178458 S45 08 TLAB**

Hearing date: Thursday April 15th, 2021

Raw data filed: April 29, 2021

DECISION DELIVERED BY T. Yao

REGISTERED PARTIES AND PARTICIPANTS

Applicant	Rubinoff Design Group
Appellant	Magid Pazuki
Appellant's Legal Rep.	Amber Stewart
Expert Witness	Franco Romano
Participant	Brinah Weintrop
Participant	Lisa Keshen

Participants Jennifer and Dale Romanovsky

BACKGROUND

Magid Pazuki wishes to sever 101 Roberta Drive into two equal lots and build a new dwelling on each. His property is the second from the corner of Roberta Dr and Prince Charles Dr in the Eglinton-Lawrence neighbourhood. As well as the severance, he needs the following variances under s. 45 (1) of the *Planning Act* to accomplish his proposed development:

Table 1. Variances sought for 101 Roberta Drive			
Zoning By-law 569-2013			
	Required	Lot A (Farthest from corner)	Lot B (Nearest to corner)
Lot area	370 m^2	338.5 m^2	338.5 m^2
Frontage	12 m (39.4 ft)	10.53 m (34.5 ft)	11.27 m (37.0 ft)
Deck side yard setback	1.2 m	.9 m to east lot line	.9 m to west side lot line
Side main wall heights	7.5 m	9.0 m	9.0 m
Building length	17 m	17.98 m	17.98 m
Side yard setback	1.2 m	.9 m to east lot line	.9 m to west side lot line
Coverage	35% of lot area	Complies	35.32%

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Zoning By-law 7625[1]

[1] By-law 569-2013 is still under appeal, so proposals have to be tested under two by-laws, resulting in two additional variances. For example, the former North York By-law 7625 measured height differently from By-law 569-2013. Under the first the height of main wall is

Max. finish first floor height	1.5 m	1.8 m	2.08
Building Height	8.80 m	9.77 m	10.04 m

On July 23, 2020, the Committee of Adjustment refused his applications; Mr. Pazuki appealed, and so this matter comes before the TLAB.

MATTERS IN ISSUE

The main issue is whether the severance should be granted, and Section 51(24)(f) of the *Planning Act* requires me to consider the **dimensions** and **shape** of the proposed lots.

S. 45(1) of the *Planning Act* requires that variances individually and cumulatively:

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

Both sets of tests then require consideration of the size of the new lots; the Planning Act through .s 51(24)(f) and the variances through s. 4.1.5 of the Official Plan, referring to prevailing **size** and **configuration** of lots. The Official Plan also requires me to consider "patterns of streets, blocks, lanes, and parks". So overall, lot sizes and the shape of the lots have to be considered for both the severance and variances.

In addition to the above, a TLAB decision shall be consistent with and conform to Provincial policy statements and plans that are in effect. The 2020 Provincial Policy Statement and the Growth Plan for the Greater Golden Horseshoe discuss high level issues such as land use coordination, employment, housing infrastructure, climate change and resource management. The proponent's planner gave ample evidence that the proposal meets the intensification and settlement policies in both documents. However, I did not find these policy statements were helpful in deciding this case, because of the more local and neighbourhood specific issues in this situation.

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measured from the road surface; under the second, (the City-wide by-law), height is measured from established grade.

EVIDENCE

I heard from Franco Romano (Mr. Pazuki's planner); whom I qualified as an expert planning witness. Mr. Romano's written report also contained a City Planning staff report which he referred to in support of the application. However, the City did not attend the hearing . I also heard from residents who live across the street: Brinah Weintrop, Lisa Keshen and Dale and Jen Romanovsky. As required by the TLAB, I attended at the site prior to the hearing for the sole purpose of better understanding the evidence presented at the hearing.

ANALYSIS, FINDINGS, REASONS

The delineation of the neighbourhood

The intent of the Official Plan is to allow change but limit it to development that "**respects and reinforces the physical character** of the surrounding area. The following are statements from the Official Plan:

> 2.3.1 Some physical change will occur over time as enhancements, additions and infill housing occurs on individual sites. A cornerstone policy is to ensure that new development in our neighbourhoods respects the existing physical character of the area, reinforcing the stability of the neighbourhood.

And:

> 4.1.5. Development in established Neighbourhoods will respect and reinforce the existing physical character of the neighbourhood, including in particular
> a) patterns of streets, blocks and lanes, parks and public building sites;
> b) prevailing size and configuration of lots;

In order to apply these sections, there is a two-part preliminary fact gathering. The planner must first "delineate" a geographic area (the "neighbourhood") and second, ascertain its physical characteristics. Two neighbourhoods are to be delineated: an "immediate" (i.e., the block containing 101 Roberta.) and "broader" neighbourhood, and the new lots should comply with the prevailing physical characteristics of both areas.

Mr. Romano's "broader" area is in Figure 2, below, Mr. Romano conceded that his broader area might be larger than "conventionally associated with an evening

stroll"[2], but it was adequate for him to conclude the proposed Pazuki frontages fall within the range disclosed in the study areas.

Fig. 2 Broader Study Area

The planner is required to consider zoning when drawing the boundaries. Mr. Romano' zoning map is shown in Figure 3, next page left. However, this map only does not show different zones. The Pazuki lot is an RD f12 zone; f12 stands for minimum 12 m frontage. Both north and south of 101 Roberta are strips of RD f15 (minimum frontage 15 m), which Mr. Romano notes in his text:

> Lot frontages and lot areas are not uniform within the area, **neither in terms of zoning permission** nor in terms of lot fabric. The permitted lot frontage in terms of zoning is a base permission of 12m **and 15m** while all smaller (sic.) lot frontages are also permitted by the zoning by-law (61.3% are smaller than 15m). Lot areas follow a similar pattern,

I accept both of Mr. Romano's study areas.

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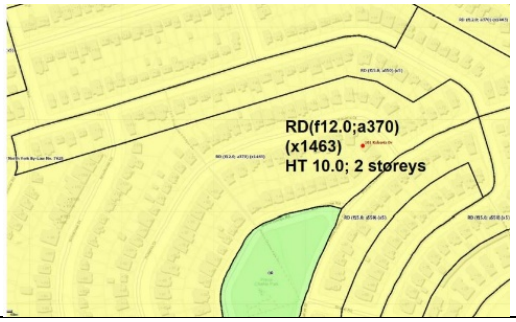
[2] I acknowledge that the neighbourhood is represented by a broader area that would be, for example, more conventionally associated with how one experiences the varied physical contexts during an evening stroll or a social encounter in a nearby neighbourhood amenity, dwelling or retail commercial enterprise. The purpose of establishing a boundary, however, is to assist in reviewing the character attributes of the area in a manageable, illustrative manner, as envisioned by the Official Plan. (Romano Witness Statement)

Figure 3. Romano zoning map



Overview of the frontage analysis

I will start with **frontage** because Mr. Romano felt this was his strongest argument. I shall later go on to conclude tha**t lot area** is equally important and here the application conclusively fails to meet the Official Plan and *Planning Act* tests.

Mr. Romano found that the most frequently occurring frontage was 13.7 m (45 feet). This finding, which was for both neighbourhoods, refers to frontage measured at the street, which I will call "**street** frontage". He then concluded:

> 2.26 Lots compatible and complementary to the proposal **are well represented and occur in substantial numbers** within the geographic neighbourhood and within the immediate and adjacent context. They are nearby and in close proximity to the Subject Site.
>
> 2.27 In my opinion, the proposed lot size and configuration respects and reinforces the Subject 101 Roberta Avenue Site's physical contexts in terms of lot size and configuration physical character. The proposed lot size and configuration certainly contributes to the area's lot size and configuration physical character, and its physical form, in a manner that respects and reinforces it. It is not necessary for a lot to be the same lot size and configuration as the most commonly occurring (numerically) lot size and configuration in order to respect and reinforce the physical character of the lot size and configuration.

He then concluded the new **zoning** frontages of 10.53 m (34.5 ft) and 11.27 m (37.0 ft) respected and reinforced the neighbourhood's physical character.

I agree that 13.7 m being most frequently occurring street frontage. Where I depart from his conclusion is the use of street frontage as a reliable proxy for zoning frontage in all cases. Many of the lots in the relevant neighbourhood are roughly rectangular and in those cases the street frontage may be a reasonable proxy, but not so for tapered lots, such as 101 Roberta.

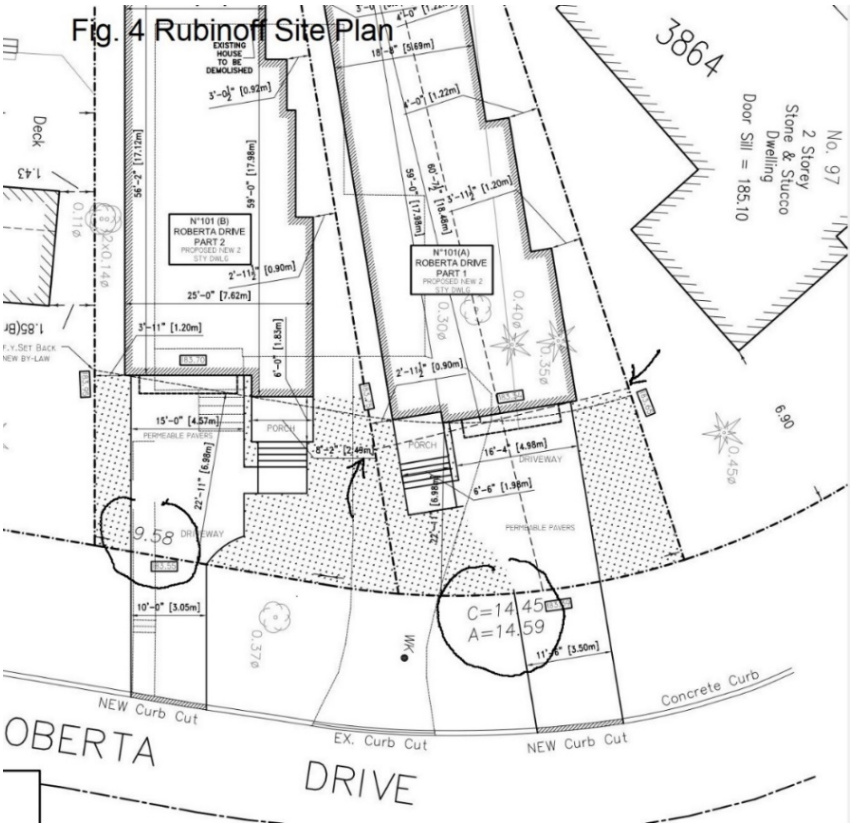
I shall first discuss how frontage is measured. I will then look at the raw data (from the City) for street frontages, which are the only data available. I find a mistake in the overstating of street frontage for lot A. The other lot's number (closer to corner) is correct. If the correct number for lot A was used it would not be as "well represented".

I then look at the original Plan of Subdivision, which was part of the neighbour Dale Romanovsky's document disclosure. This depicts the same street frontages as in the City data, but in pictorial form. The Plan's lotting pattern shows the geometric consequences of tapered lots; which contribute to the character of the neighbourhood.

Street frontages and zoning frontages

"Zoning frontage", which the zoning bylaw calls "lot frontage" is a technically complex term. I have footnoted[3] the key definitions. Zoning frontage can be described as the width of the lot measured about 23 feet back of the street. The reason it is not measured at the street is to ensure a consistent zoning comparison for undulating streetscapes, where not every house has the same front yard setback.

Fig. 4 Rubinoff Site Plan

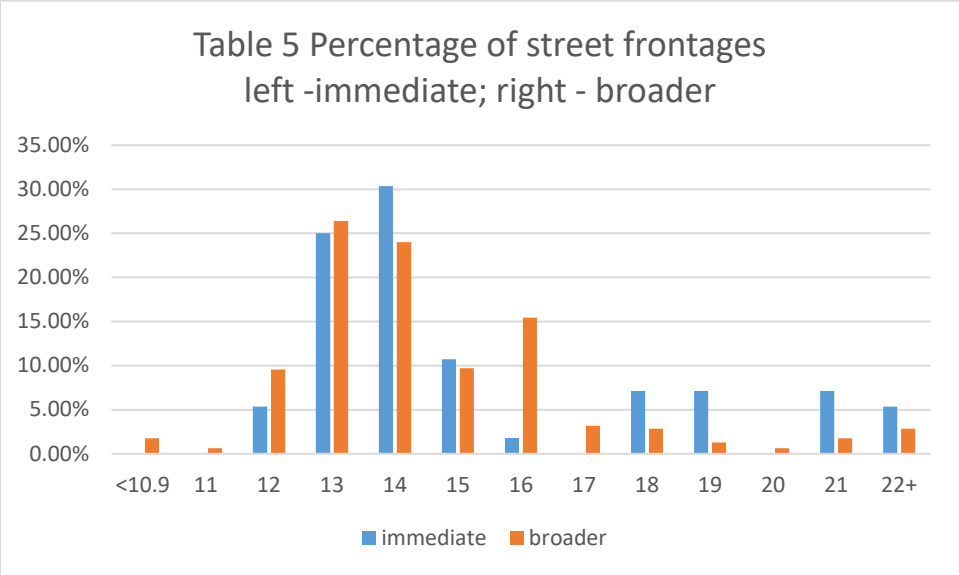


The only diagram showing where you measure zoning frontage is architect Rubinoff's site plan (Figure 4). I have placed arrows on the end points for the zoning frontage for the right-hand lot (Lot A). Note that the two frontages are unequal in length but also cross at an angle. The Rubinoff site plan does not give a dimension for Lot A's zoning frontage; it is 10.53 m. The circled numbers will be referred to when I discuss the math error (page 10).

Since zoning frontage analysis cannot be done without a survey, Mr. Romano had to research the neighbourhood in terms of street frontages only. These numbers

[3] Lot Frontage means the horizontal distance between the side lot lines of a lot, or the projection of the side lot lines, measured along a straight line drawn perpendicular to the lot centreline at the required minimum front yard setback. Lot Centreline means a straight line joining the midpoint of the front lot line and the midpoint of the rear lot line.

are available for every lot in Toronto. Mr. Romano produced tables of street frontages in .1 m intervals. I made a bar graph from his data but grouped it in 1 metre intervals.



The bars are percentages, with 56 lots in the immediate area and 629 in the broader area. To repeat, the x axis has a bar for each street frontage, counting in one metre increments, and the y axis are percentages that each separate frontage bears, compared to the entire universe of lots.

Mr. Romano's discussion begins:

a) Severance to create two lots with dimensions of:
   i) 10.53 m and 11.27 m lot frontages (being 13.99 m and 12.45 m at the front lot line), . . .

He then goes on to deduce a neighbourhood physical characteristic was "modest sized" lots by which he means a category of around 9 to 15 m frontages. He wrote:

2.25 As illustrated by the following, the lot sizes found in the area respect and reinforce a **modest sized lot size.** The prevailing lot size is modest-sized ranging from 9.1 to less than 15m (61.2% of lots within geographic neighbourhood and 60.7% within the immediate context). The range is 6.4m to 32.4m within the geographic neighbourhood and 12.2m to 26.4m within the immediate context.

a) Geographic neighbourhood
   i) Lot frontage ranges from 6.4m to 32.4m. . . .
b) Immediate context:
   i) Lot frontage ranges from 12.2m to 26.4m (the Subject Site). . .
. . .

iii) . Each of these numeric measurements respect and reinforce the prevailing lot size and rectangular to irregular configuration character.

Assuming that 13.99 and 12.45 m street frontages for lots A and B are correct, they would fall in the 13 m and 12 m bars.

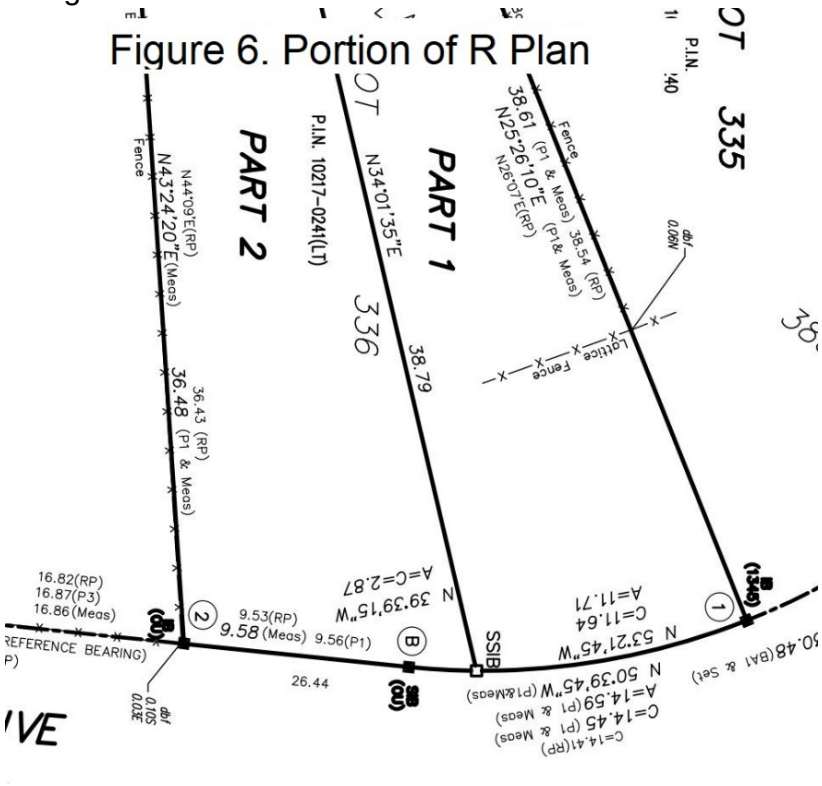
The errors

Mr. Romano states the specific street frontages: "being **13.99m** and 12.45m at the front lot line" and describes the range:

> 2.26 The range is . . .12.2m to **26.4m** within the immediate context.

I believe the bolded numbers are not correct. To the right, I have reproduced a portion of the R Plan, a legal document that shows the new lots. Mr. Pazuki could have instructed his surveyor to divide the frontages in half or the areas in half or any other division; from the fact that the two new lots are equal sized, I infer his instructions were to create two equal area lots. The consequence was that the street frontages would be different.

Figure 6. Portion of R Plan



At this point I wish to comment on use of my own specialized knowledge, which is permitted by the *Statutory Powers Procedure Act*[4]. What follows is based on experience dealing with frontage analyses and do not purport to be arguments made by the residents, who were confused by the difference between street frontage and zoning frontage. However, I have an independent duty to make planning judgments that will

[4] 16. A tribunal may, in making its decision in any proceeding, (a) take notice of facts that may be judicially noticed; and

(b) take notice of any generally recognized scientific or technical facts, information or opinions within its scientific or specialized knowledge

affect persons other than the litigants, irrespective of the quality of the opposition to an applicant.

Figure 6 shows three black squares: “2”, “B” and “1”, each within a circle. The original surveyor (Speight van Nostrand) used an extra monument “B” to better describe a curved line and thus they represent the three historical markers in the ground. Ertl (Mr. Pazuki’s surveyor) added the **fourth** marker, the **white** square with SSIB written next to it. The street frontage for the left lot is composed of two distances: 9.58 and 2.87 (written upside down) = 12.45 m. This is the source of the second number in Mr. Romano’s “being 13.99m and 12.45m at the front lot line”.

I believe Mr. Romano made an error in calculating the other lot’s street frontage (the distance between the white square SSIB to the black square “1”). He calculated it, instead of reading the number directly off the survey. Perhaps he thought the existing lot’s street frontage is 26.44 — this is in small writing below the heavy line.

26.44 (101 Roberta’s supposed street frontage) minus 12.45 (left hand lot) = 13.99

However, Ertl has marked this number as: chord = 11.64 and arc = 11.71. The arc can be double checked by subtracting the 2.87 (“B” to white square) from the longer arc 14.59:

14.59 – 2.87
= 11.72 (which differs from 11.71 by a rounding error).

I now go back to the distribution of frontages in Table 5 (page 6). Assuming I am correct, the true street frontages are 11.71 m (38.4 ft) and 12.45 m (40.8 ft) instead of 13.99 (45.9 ft) and 12.45 (40.8 ft). The 13.99 should actually be in the 11 m bar. Table 5 shows 13 and 14 m frontages are most common (together about 55%), a 12 m street frontage is uncommon and 11 m extremely uncommon. The error would move one street frontage from 13-14 m bar to 11 m and that one frontage would not be “well represented” as a neighbourhood characteristic.

The other possible error is in the number 26.4 in the sentence, “The range is . . .12.2m to **26.4m** within the immediate context”, referring to the largest lot on Roberta, 101 Roberta. I agree with Mr. Romano that his client’s lot is the largest street frontage on the street. Mr. Romano did not get this from the City data, the City lists it as 23.95 m.

There is evidence that the City figure is close to what surveyor Ertl found. Ertl’s number is the sum of all the arcs, which is 24.16, close to the City number of 23.95. At

this point I will switch to feet and show all the numbers, including twice f12, just for comparison. Mr. Romano's estimate appears to be an outlier from the other numbers, all between 78.5 to 79.3 feet.

Table 7 Comparison of the street frontage of 101 Roberta from different sources (measured in feet)

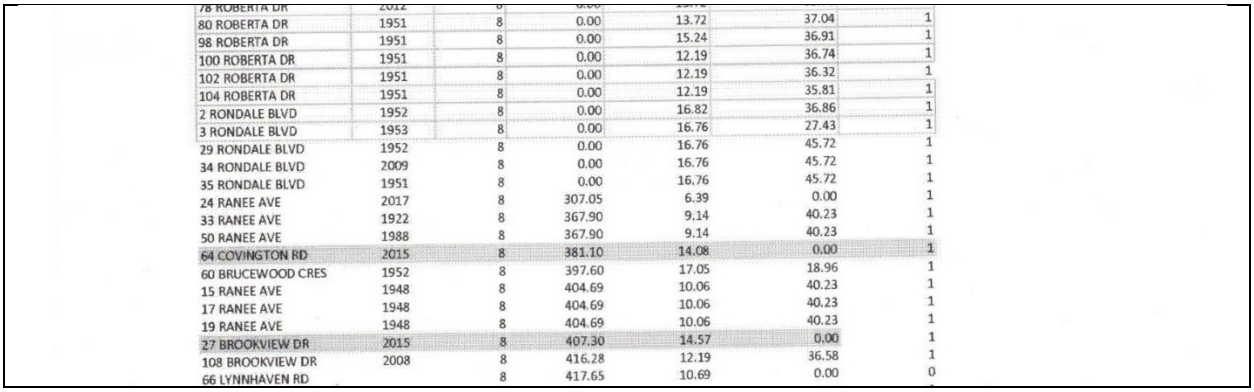
		Distance in feet	notes
1	Romano estimate, using 26.4 m	86.7	
2	Survey (arcs)	79.3	This is also my estimate based on the above discussion.
3	Survey (chords)	79.0	
4	Registered Plan	78.56 ft	47 ft 3.5 in + 31 ft 3.25 in
5	City data	78.5	From 23.95 m

Before I conclude the issue of street frontages, I wish to switch topics and discuss lot areas.

Lot areas

The size of lots is one characteristic that must be respected and reinforced under the *Planning Act* test for severance, and size includes both frontage and lot area. Mr. Romano found lot areas ranged from 307.05 to 894.4 m^2 and 439.52 to 881.42 m^2 for the two study area contexts. He did not supply the number for the "most frequently occurring" area, but if I eyeball his data, most fall in the 500s and 600s, and certainly over 400.

Table 8. Portion of raw data, sorted by lot area



78 ROBERTA DR	2012	8	0.00	13.72	37.04	1
80 ROBERTA DR	1951	8	0.00	15.24	36.91	1
98 ROBERTA DR	1951	8	0.00	12.19	36.74	1
100 ROBERTA DR	1951	8	0.00	12.19	36.32	1
102 ROBERTA DR	1951	8	0.00	12.19	35.81	1
104 ROBERTA DR	1952	8	0.00	16.82	36.86	1
2 RONDALE BLVD	1953	8	0.00	16.76	27.43	1
3 RONDALE BLVD	1952	8	0.00	16.76	45.72	1
29 RONDALE BLVD	2009	8	0.00	16.76	45.72	1
34 RONDALE BLVD	1951	8	0.00	16.76	45.72	1
35 RONDALE BLVD	2017	8	307.05	6.39	0.00	1
24 RANEE AVE	1922	8	367.90	9.14	40.23	1
33 RANEE AVE	1988	8	367.90	9.14	40.23	1
50 RANEE AVE	2015	8	381.10	14.08	0.00	1
64 COVINGTON RD	1952	8	397.60	17.05	18.96	1
60 BRUCEWOOD CRES	1948	8	404.69	10.06	40.23	1
15 RANEE AVE	1948	8	404.69	10.06	40.23	1
17 RANEE AVE	1948	8	404.69	10.06	40.23	1
19 RANEE AVE	2015	8	407.30	14.57	0.00	1
27 BROOKVIEW DR	2008	8	416.28	12.19	36.58	1
108 BROOKVIEW DR		8	417.65	10.69	0.00	0
66 LYNNHAVEN RD						

His raw data (Table 8, above[5]) was supplied to me after the hearing at my request[6]. It sorts the lots by lot area, 24 Ranee being the smallest lot area at 307.05 m^2 and 68 Lynnhaven Rd being the largest at 894.4 m^2. The City's data show 101 Roberta being the very largest: 922.82 m^2, which is incorrect, because we know that it is 677 m^2. However, before 24 Ranee, the sorted list contains about 50 addresses with a zero lot area, including 16 of them on Roberta Drive. I think this is because the City's algorithm cannot calculate irregularly shaped lots. However, this does not mean that useful information cannot be revealed.

The lot areas in Table 8 are in the fourth column. We see one of the new 64 Covington lots (one of Mr. Romano's four comparables) is the fourth smallest, assuming that the previous listed lots such as 100 and 102 Roberta have a lot area greater than zero. These are the addresses of the neighbours Brinah Weintrop and Lisa Keshen, who attended the hearing. While I do not fault Mr. Romano for using data with zero lot areas, I do fault him for not drawing this to my attention. Moreover, there are only five properties below 400 m^2 out of some 600 plus lots in the broader study area. Mr. Pazuki is asking to create two 339 m^2 parcels. I find that these cannot possibly respect and reinforce the physical characteristics of the neighbourhood in terms of lot area. Since the variances must cumulatively and individually meet the four tests, failure to meet the test with respect to lot area would indicate that the proposal fails to maintain the intent of the Official Plan in s. 4.1.5 (b)

[5] The highlighting is Mr. Romano's not mine. This is the way I received it, I have not manipulated the raw data list but used it to establish the gray line in Figure 2, page 4.
[6] When Ms. Stewart supplied the raw data, Mr. Romanovsky wrote to ask to reopen the hearing. Because of the result there would be no point in doing so.

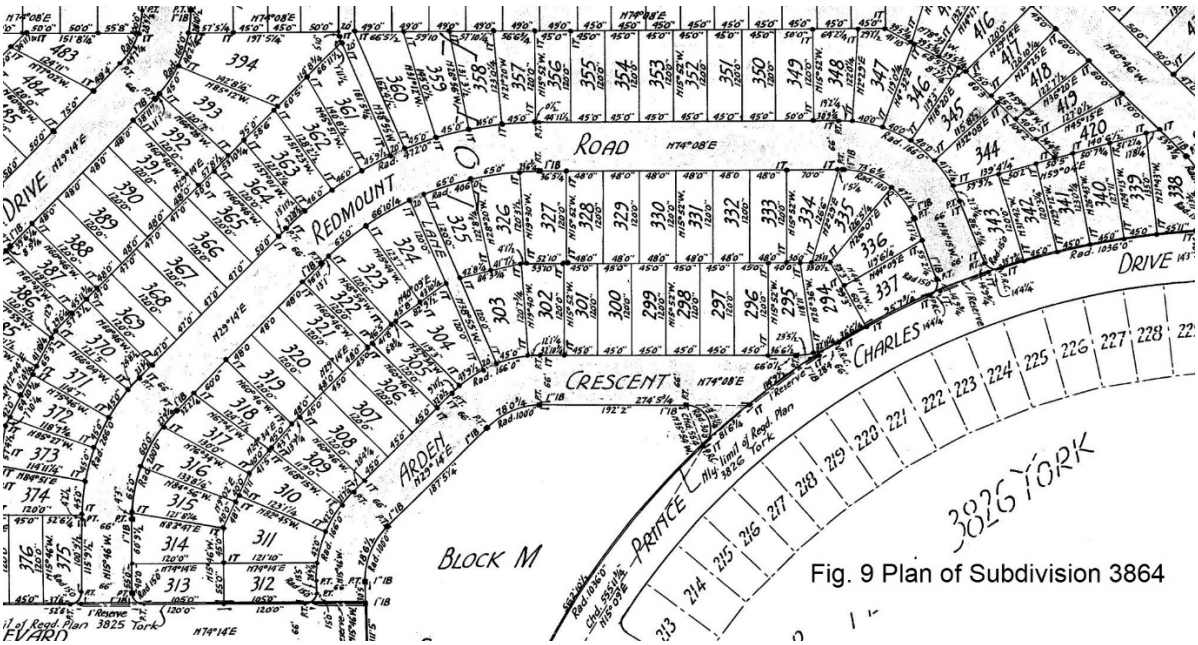


Fig. 9 Plan of Subdivision 3864

Pattern of streets

I now return to how the linkage between street frontage and zoning frontage breaks down when the street is curved. Section 4.1.5 (a) refers to "patterns of streets" but the word "pattern" only occurs in reference to streets not to densities, lot size etc. This section is typically ignored since most of Toronto is already built up and except for very isolated cases, plans of subdivision creating new streets do not come up. I think I am to look at this clause broadly and consider both where the street is placed and how that placement affects prevailing lot sizes and configuration.

Figure 9, above, is part of the Plan of Subdivision for this area, containing 534 lots (registered in 1951), furnished by Mr. Romanovsky[7]. This is the work of Speight van Nostrand, previously mentioned, and comprises roughly the upper half of Mr. Romano's broader study area.

Plan 3864 along with its companion Plan 3826, created a unique pattern of circular streets. Along with this street pattern there was an effort to keep all lots roughly the same size and shape, easy to do for a grid pattern but hard for curved streets.

[7] Mr. Romanovsky used these to assert that the two new frontages 35 and 37 feet were less that the average of the north side lots. I will note that the south side has a higher average and that the numbers 35 and 37 refer to zoning frontages so this is not an apples-to-apples comparison.

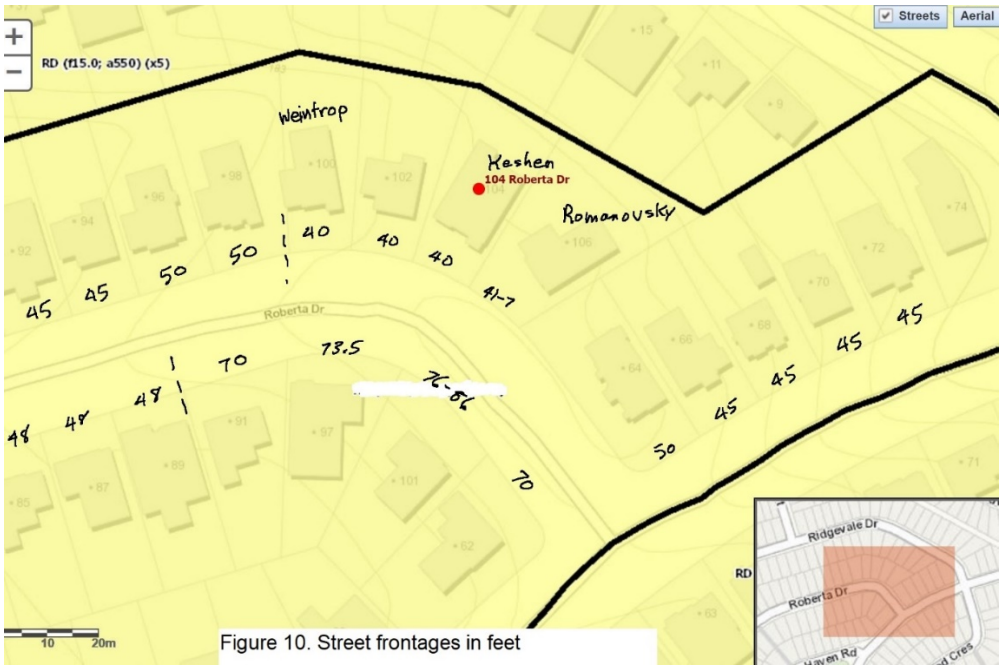


Figure 10. Street frontages in feet

In Figure 10 I have reproduced the information from the Plan of Subdivision on a small blow up of the area of Roberta where Mr. Pazuki and the neighbours live. As we go from 9 o'clock to 2 o'clock for the even numbers, (north side of Roberta), there are blocks of 45's, then 47s, a 50, then a long block of 45s. all this is off to the left outside of Figure 10 but can be read from the Plan if you blow up the numbers. On the south (odd numbers) are 48-foot lots. For both patterns, I find any Increase or decrease in street frontage from one lot to the next is in small increments.

How the designer handed a corner is seen in Figure 10. For the north side, the row of 45's becomes two 50-foot lots before three 40's ending with the Romanovsky lot[8]. The row of 48's, south side, is ended by the 70-foot lot at 91 Roberta. I put dotted lines to show the break points.

The bottom row 's (odd numbers) dotted line is between 89-91 Roberta — a 22 ft difference. This happens to be the largest "jump" or pattern change on Roberta and yet is fairly imperceptible to the casual observer. If the Pazuki severance is approved, there will be a new jump or pattern change, first from 73.5 ft to a 38-foot or 45-foot street

[8]I marked the Romanovsky lot's street frontage "41 to 70". The smaller number is taken from the Plan of Subdivision while the larger number is from the City data. I believe from an eyeball measurement that the City number 70 is too high.

frontage (from 97 Roberta to Lot A) — a 27.7 to 35-foot difference, depending on whether Mr. Romano's or my estimate of Lot A's number is used. From lot B to the corner lot will be a jump of 29 feet.

The Official Plan requires change to be "sensitive, gradual and to fit the existing neighbourhood"[9]. "Gradual" implies that the change is not abrupt or a marked departure. Not only is the new "jump" greater in magnitude than what exists, it doesn't seem sensitive to the existing pattern of small increments.

I now turn to the pie shapes. When Ms. Stewart cross examined Ms. Weintrop, she (Ms. Stewart) tried to show Ms. Weintrop how her 40-foot lot would fit comfortably in the much larger expanse of Ms. Stewart's client's lot. But this would not be true for zoning frontages; Ms. Weintrop's **zoning frontage** would be larger than her street frontage and Mr. Pazuki's zoning frontage smaller. I find that regularity of spacing apparent to the casual observer is a physical characteristic. People judge houses not lot boundaries.

All of this is consistent with a finding that when the designer had an opportunity, as in the north side of Roberta or on the north side of Prince Charles just around the corner from the subject property, they would "default" to a uniform frontage, sometimes 45 sometimes 48 ft. Smaller frontage lots, such as those for the Keshen and Weintrop houses, they would be compensated by a larger rear yard. This would not be so for the 38 and 41 feet new lots.

To conclude, both the Official Plan and Section 51(24)(f) of the *Planning Act* require regard for the shape of the lots as well as their dimensions. I find on full consideration of the wording of the documents the two smaller Pazuki lots will be contrary to the general intent of the Official Plan for this neighbourhood.

The four previous severances

Mr. Romano relied on four cases he wished me to consider persuasive, as they are other approved severances in the broader study area. I have summarized them in Table 11 below.

Table 11. Other decisions relied on by Mr. Romano

[9] Physical changes to our established Neighbourhoods must be sensitive, gradual and "fit" the existing physical character.

			Legal frontages (m)	Starting lot areas (m^2)
1	64 Covington	OMB 2012	No variance necessary	788 (No lot area variances required for severance)
2	16 Brookview	COA 2015[10]	11.5, 11.7	788.4 (No lot area variances required for severance)
3	100 Brookview	2018, TLAB Member McPherson	Both 10.6	765 (No lot area variances required for severance)
4	98 Brookview	COA 2019	Both 10.5	810 (No lot area variances required for severance)
	101 Roberta (Subject)	2021 TLAB	10.53, 11.27	677

64 Covington: The decision reads:

> The Applicant/Appellant's planner (M. Goldberg) testified that the subject property is the largest reverse, pie-shaped lot in the neighbourhood. The consent will result in two lots that comply with the frontage and lot area standards of the zoning by-law.

This is not a good comparable since the Covington property complied with both the frontage and lot area standards and Mr. Pazuki does not. The resulting two buildings at 64 Covington look quite unlike Mr. Pazuki's proposal. Instead of two narrow lots and two forward facing buildings, the wider frontages and the convex corner location allow the two buildings to face the street in slightly different directions and a passer-by might not notice this was a recent severance, suggesting that the OMB severance resulted in a built form that "fitted into" the neighbourhood, as is required under the tests for a severance.

16 Brookfield

[10] In 2017, the owner or subsequent owner was refused a further variance for each of the new lots for a three-storey dwelling unit. He or she asked for heights of 11.09 and 10.88 m, where 8.88 is permitted.

The Committee of Adjustment granted variances for frontages of 11.75 and 11.7, both of which were closer to the 12 m standard than for the subject property. In addition, the new lot sizes of 381 and 407 did not require variances. In short this was a much stronger candidate than the subject as lot sizes conformed and the frontage variance requested was minor.

100 Brookview and 98 Brookview

TLAB Member McPherson wrote:

> The property information provided demonstrated that there are a wide range of lots of frontages in the area. The subject lands have a frontage of over 20 m and a lot area of over **765 m2** which is unusually large for the street and the neighbourhood. Planning staff indicated in their report to the Committee "it is the opinion of planning staff that the proposed lots meet the intent of the Zoning By-laws and Official Plan. Staff indicate in their lot study that less than 3% of the lots in the study area have a frontage over 19.8 m with an area over 700 m2, such as the subject lands.

The figure 765 is greater than twice the minimum lot size of 370 m^2 so 100 Brookfield needed no lot area variances. For the subject property, the parent parcel is much smaller. On page 4 of her Decision Member McPherson writes:

> There were no other Parties to the Hearing. There was one Participant, a neighbour, who withdrew his Participant status as his concerns were addressed by the Applicant by switching the style of dwelling that would be adjacent to his house.

To summarize, 64 Covington was a much larger lot. Numbers 100 and 98 Brookview do contain frontages close to what Mr. Pazuki seeks, but the subject application would be the first application to be granted **both** frontage and lot area variances.

The City's planning report.

I now wish to deal with the City Planning report referenced in Mr. Romano's report that concluded:

> Staff conducted a review of lot frontages and lotting patterns for nearby residential properties on Roberta drive and the surrounding neighbourhood. The proposed lots have a pattern that is consistent with the existing physical pattern of the immediate block. While the proposed lots do not comply with the zone requirements for frontage and area, the proposed lots are consistent with the character of existing lots in the surrounding neighbourhood.

My reasons for rejecting this report are since staff did not appear at the TLAB hearing so I do not know how they determined the surrounding neighbourhood. Nor do I know what the zoning expectations were, since staff mention only the f12 zone and not the f15 zones that are a block away. Staff have concluded that the lots are "consistent" with the character, not that they "respect and reinforce" the character, which is a stronger standard and one that I need to follow by law. Had staff appeared, I could have clarified their conclusions about "consistent with" and since they did not, I cannot rely on this report.

The variances other than frontage and lot area

Having found that lot area and lot frontage variances should not be granted, I wish for completeness to look at the other variances in the event that I am in error. While some of these appear to be small if viewed in isolation, I feel the proposal is one that must be viewed as one package.

First, I would like to discuss the Applicant's Disclosure, which is a TLAB procedure for telling others about changes made to the original application. The Plans examiner advised on May 12, 2020, prior to the Committee of Adjustment decision, regarding the side exterior main walls:

> The permitted maximum height of all side exterior main walls facing a side lot line is 7.50 metres. The proposed height of the side exterior main walls facing a side lot line is 9.0 metres. [10.20.40.10.(2) Maximum Height of Specified Pairs of Main Walls]

A similar notation was made for the other lot and the Committee of Adjustment decision of July 23, 2020, noted these same variances. After the Committee of Adjustment decision, Mr. Romano advised Mr. Pazuki to eliminate the building height variance and thus the new plans had to undergo a second zoning examination. The second Notice (November 4, 2020) repeated the same 9.0 m variance required for the main walls. On November 6, 2020, Mr. Pazuki's lawyer, Ms. Stewart, wrote to the parties, enclosing the new plans and the new notices. Her summary said:

> The Applicant intends on making the following revisions to the proposal: On Part 1, Lot A (east): (1) The height of the building has been reduced from 10.3 m to 10.0 m, in compliance with By-law 569-2013. As such, variance #4 (height under By-law 569-2013) has been deleted, and variance #9 (height under By-law 7625) has been reduced to 9.77 m. (2) The driveway has been reduced from 4.98 m to 3.05 m within the City's right-of-way. (3) Materiality and fenestration on the facade has been revised to provide for differentiation between the two dwellings. (4) The rear deck has been revised to provide for a small upper landing, with steps leading down to a larger deck that is proximate to grade (approximately 1.0 m).

There is nothing incorrect.

Mr. Romano says in December 2020:

> Wall heights of **7.9m and 9.0m**. This complies with the North York zoning by-law. The Toronto zoning by-law permits 10.0m for one pair of walls and 7.5m for the second pair of walls, although 10.0m for all walls is permitted if they are provided in conventional and dormer format.

I think Mr. Romano is saying that while most of the wall heights are 7.9 m, while some portions reach 9.0 m; both need a variance and this has not changed. However, I think a reader would be confused. In his report, Mr. Romano discussed main wall heights:

> The proposed main wall height meets the general intent and purpose to limit the height of main walls thereby achieving a context suitable low-rise residential building. It is intended to minimize the extent to which walls may rise to create inappropriate upper levels (such as third storeys in areas where two storeys are regulated, or disproportionate flat roofs where pitched roofs are encouraged). The proposed dwelling has a low rise wall height that is also varied in height with the associated eaves reference point of measurement maintaining an appropriate low rise, two storey height level in this area. The 9.0m is measured to the window portion that goes through the eaves which produces an otherwise lower wall height of 7.9m. It should be noted that the wall height provision is still under review and not in force. Further, the by-law regulates wall height only for pairs of walls. Wall heights that are not regulated can be as tall as the by-law allows for building height, namely 10.0m to the top of the roof in this instance.

I don't understand what is "a context suitable low rise residential building" when such a building can plainly be built within the 7.5 m limit. He then seems to go on to say that anything short of a third storey (rejected in 2017 by the Committee of Adjustment in 16 Brookfield) is therefore minor and desirable. He stated correctly in his oral testimony that the former by-law contained no main wall provisions.

I have some doubts about the main wall heights evidence and whether there is any point to considering whether the other variances should be authorized when the most important one, lot frontage and lot area cannot be authorized. The proponent has the ultimate burden of demonstrating that all variances individually and cumulatively meet the tests.

Conclusion

The severance must "conform" to the Official Plan and variances must "maintain the general intent and purpose of the Official Plan and zoning". I am unable to conclude that Mr. Pazuki has met the onus on him to demonstrate this. There are only a tiny number of comparable cases and few relevant severances; too few to establish a pattern of lots in the below 12 m street frontage and below 370 m^2 lot area range.

Mr. Romano cautioned against over reliance on a determinative mathematical exercise, but I find that there is reliance almost entirely on the most prevalent street frontage. An analysis of lot areas was part of the legal test but was not performed. I find that it would not have shown a pattern of 339 m^2 lots. Although the prevailing street frontage is exactly 13.71 m, this is in furtherance of an elegant and unusual street pattern and the proposed lot would not respect or reinforce this pattern.

The combination of an undersized lot with an undersized frontage magnifies the constraint of each and precipitates a set of variances that altogether does not result in development that fits the character of the neighbourhood.

Accordingly, the statutory tests for severance and variances were not met, and the appeal is denied.

Decision and Order

The severance is not granted, and the variances are not authorized. The Committee of Adjustment decision of July 23, 2020 is confirmed.

X

Ted Yao
Panel Chair, Toronto Local Appeal Body