

DECISION AND ORDER

Decision Issue Date Wednesday, November 03, 2021

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

Appellant(s): P&R DEVELOPMENTS INC

Applicant(s): P&R DEVELOPMENTS INC

Property Address/Description: 2165 GERRARD ST E

Committee of Adjustment File

Number(s): 20 147022 STE 19 CO (B0035/20TEY)

TLAB Case File Number(s): 20 229849 S53 19 TLAB

Deadline date for Undertakings: July 13, 2021

Hearing date: June 8, 2021

DECISION DELIVERED BY C. KILBY

REGISTERED PARTIES AND PARTICIPANTS

Applicant/Owner/Appellant	P&R DEVELOPMENTS INC
Appellant's Legal Rep.	DAVID BRONSKILL
Party	MARK POSTILL
Participant	LILIAS MACDONALD
Participant	DAINA DRAUGELIS-GRAYDON
Participant	KATHLEEN O'KEEFE
Participant	PATRICIA O'KEEFE
Participant	JEFF MONEO
Participant	JASON PICHONSKY
Participant	CHAD HENNINGTON
Participant	JOSEPH CUMMINGS
Expert Witness	SEAN GALBRAITH

INTRODUCTION

This is an application for consent to sever the lot at 2165 Gerrard Street East (**Subject Property**) into two lots upon which the Applicant proposes to develop a semi-detached multi-unit building and two laneway suites (**Application**). No variances are required or sought for the Application.

The Committee of Adjustment, Toronto and East York District (**COA**) refused the Application in a decision mailed on December 8, 2020. P&R Developments Inc., the owner and Applicant, appealed to the Toronto Local Appeal Body (**TLAB**).

The TLAB convened a virtual Hearing on June 8, 2021 using the City's WebEx platform. The Applicant was represented by David Bronskill and Expert Witness Sean Galbraith. Jacob Rothberg and Rolf Paloheimo, principals of the Applicant, attended as observers. Party Mark Postill lives adjacent to the Subject Property. He opposed the Application largely on the grounds that it represents too much density for the lot. Victor Lam, a neighbour of the Subject Property who also opposed the Application, attended the Hearing and was granted Participant status.

Other Participants and neighbours attended the Hearing for the purposes of observing but did not give evidence. The City of Toronto did not participate in this Appeal.

BACKGROUND

Mr. Lam, a neighbourhood resident, sought to speak at the Hearing in spite of not having elected Participant or Party status in advance. I allowed Mr. Lam to be a Participant in the Hearing on the basis that he had written a letter of objection to the COA which was contained in the Appellant's Expert Evidence package (Exhibit 1, Tab 15, page 256) and had filed a statement with the TLAB on March 8, 2021 and therefore, the Appellant had notice of his evidence.

It was evident that Mr. Postill invested time and effort into this Appeal. Early in the Hearing Mr. Postill indicated that he had additional documents that he wished to enter into evidence. The material was described as analyzing the evidence of the Appellant's Expert Witness. Mr. Bronskill opposed the request. I denied permission to enter new evidence on the basis that it would be unfair to the Appellant. Mr. Postill understood that his cross-examination of the Expert Witness would offer an opportunity for him to test the Expert's evidence.

None of the registered Participants testified at the Hearing, although some attended to observe. As a result, their Witness Statements were not entered into evidence. In light of opposition from the Applicant, I did not allow the Participant Witness Statements of those individuals not at the Hearing to be entered as Exhibits in their absence, because the Applicant could not test the Participant evidence through cross-examination.

There was also an issue around a neighbourhood petition referenced by Mr. Lam (**Petition**). The document was appended to the Witness Statement of a Participant who did not attend the Hearing. As such, Mr. Bronskill could not test the methodology used to gather signatures nor ask clarifying questions about the Petition. On this basis Mr. Bronskill argued that the Petition should not be received as evidence. Alternately, Mr. Bronskill argued that the Petition ought to be given little weight. I allowed the Petition to be entered into evidence as an Exhibit and permitted Mr. Bronskill to make submissions as to the weight it should receive.

MATTERS IN ISSUE

The issue to be determined in this Appeal is whether the Application meets the criteria for granting consent to sever the Subject Property. For the reasons detailed below, I have determined that the Application satisfies the applicable criteria for approval.

While the TLAB's jurisdiction in this matter is limited to the statutory test for granting consent to sever land, many other issues were canvassed during the Hearing and are addressed in this Decision.

JURISDICTION

Provincial Policy – S. 3

A decision of the TLAB must be consistent with the 2020 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 *Planning Act* (**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 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, ANALYSIS AND FINDINGS

The following materials were entered into evidence at the Hearing:

Exhibit 1 – Combined Appellant Document Disclosure and Expert Witness Statement of Sean Galbraith

Exhibit 2 – Party Witness Statement of Mark Postill

Exhibit 3 – Mark Postill Document Book Part 1

Exhibit 4 – Mark Postill Document Book Part 2

Exhibit 5 – Mark Postill Letter of Opposition to COA

Exhibit 6 – Letter from Victor and Ann Lam filed March 8, 2021

Exhibit 7 – Petition attached to D. Draugelis-Graydon Disclosure dated March 8, 2021

Expert Witness

The Appellant proposed Sean Galbraith as an Expert Witness in the area of land use planning. Mr. Lam raised concerns about Mr. Galbraith's involvement with the Application at the COA proceeding as a potential conflict of interest. I did not permit Mr. Lam to make further submissions on the issue as he was a Participant and not a Party.

Mr. Bronskill countered that Mr. Galbraith had executed TLAB Form 6, the Acknowledgment of Expert's Duty. Combined with his ethical obligations as a Registered Professional Planner (**RPP**), Mr. Bronskill submitted that this indicated that Mr. Galbraith took his obligations as an independent expert seriously and was qualified to offer expert evidence to the TLAB.

I found that Mr. Galbraith being retained by the Appellant prior to the COA hearing did not disqualify him from acting as an Expert Witness in this Appeal or lessen the weight of his evidence. I reviewed his professional experience and qualifications as set out in Exhibit 1. On that basis, combined with his execution of Form 6 and understanding of its implications, I qualified Mr. Galbraith to act as an Expert Witness in the area of land use planning for this Appeal.

During the Hearing Mr. Galbraith answered Mr. Postill's questions about land use planning and the interplay of the various planning policy documents in an effort to provide information and clarity about the Application. I believe this effort demonstrates Mr. Galbraith's commitment to assisting the TLAB as an independent Expert Witness.

The Neighbourhood Context

The Subject Property is located in the East Danforth area of Toronto on Gerrard Street East, west of Main Street. The area is designated as *Neighbourhoods* by the City Official Plan (**OP**).

As required by the OP, Mr. Galbraith identified a geographic neighbourhood study area (**NSA**) for the purposes of analyzing the Application. The NSA is bound by the railway tracks to the north, Kingston Road to the south, Woodbine Avenue to the West, and Hannaford Street to the East, and contains 2505 lots (para. 4.3 of Expert Witness Statement, Exhibit 1; Tab 1 of "Visual Exhibits" Section of Exhibit 1).

Mr. Galbraith described the neighbourhood as containing a range of housing, including semi- and detached houses, rooming houses, small apartments, and other low rise multi-residential dwellings. His opinion was that there are a range of residential uses in proximity to the Subject Property. Mr. Galbraith indicated that new construction and reinvestment is ongoing in the neighbourhood through renovations, additions and new builds consistent with the character of the area.

Mr. Galbraith described the existing physical character of the neighbourhood as comprising a variety of residential, commercial/mixed use, and institutional properties. He indicated that there is also a variety of lot sizes, with the Subject Property representing a larger lot compared to those nearby. The lots form a grid-like pattern and many have narrow side yard conditions.

Proposal

Severance

On the draft Reference Plan at p. 172 of Exhibit 1, Part 1 is proposed to be conveyed and Part 2 retained. Parts 3 and 4 set out a 22cm deep strip at the rear of the proposed lots to be conveyed to the City in order to widen the laneway behind the Subject Property.

The Subject Property has a lot frontage of 15.24m and a depth of 38.32m. If consent to sever is granted, each of the two resulting lots will have a lot frontage of

7.62m and a lot area of 292.0m². Mr. Galbraith's evidence is that these dimensions satisfy the City harmonized Zoning By-law 569-2013 (**Zoning Bylaw**) standards for lot area and lot frontage, so no variances are required to facilitate the severance. The Application is exempt from site plan control.

Development

The Subject Property currently hosts a first generation single detached dwelling with a secondary suite. If the consent to sever is granted, the Applicant proposes to demolish the existing dwelling and to construct a new semi-detached, three-storey fourplex and laneway suite on each of the two resulting lots, for a total of 10 dwelling units. The proposed development requires no variances from the Zoning Bylaw. The evidence is that each unit will contain at least two bedrooms, with the laneway suites containing three bedrooms each. The Applicant relies on the creation of these residential units as demonstrating the Application's fulfilment of policy objectives.

The Zoning Certificate provided in Exhibit 1 corresponds to plans dated July 14, 2020. New plans dated January 27, 2021 are included at Tab 27 of Exhibit 1. Mr. Galbraith advised that the primary change was the redesign and relocation of an entrance to the front of the property. His opinion was that the revision makes no difference to the Application, is minor and would not result in a different zoning review outcome.

Mr. Galbraith indicated that there has been extensive consultation with the City, including City Planning, about this Application. Mr. Galbraith advised that there is no opposition or concern from City Planning about this Application. There was no evidence to the contrary.

Mr. Galbraith's opinion was that the Application satisfies all applicable criteria under section 51(24) of the Act. His view was that the Application, if granted, will facilitate the development of multiple, modern, family-sized residential units on an under-utilized site that is well suited for that purpose. The Application would generally support the City's goals as expressed in documents such as the City study into Expanding Housing Options into Neighbourhoods.

During cross-examination, Mr. Postill questioned Mr. Galbraith about the suitability of the proposed development for families, and Mr. Galbraith indicated that the units in the proposed development will range in size from approximately 736 ft² to 1366 ft², sizes that are appropriate for families. He pointed out that the laneway suites are planned to have three bedrooms but agreed that this could change. There was some discussion about the meaning of the term "missing middle."

Opposition to the Application

Impact on Neighbours

Mr. Postill and Mr. Lam participated in this Appeal because they take the view that the Application will have a negative impact on neighbouring properties. Mr.

Galbraith acknowledged that the Application will impact adjacent properties, but his opinion was that any such impacts do not rise to the level of undue negative or adverse impacts of a planning nature because the Application complies with the Zoning Bylaw.

Mr. Postill is concerned about the proposed development's impact on his enjoyment of his home. He believes the walkways to side entrances of the proposed development will encroach onto his property. He is also concerned that the exterior stairs at the rear of the fourplex will "clutter the view" from his deck and negatively impact his privacy (Exhibit 2). Mr. Postill referred the TLAB to photographs at pages 16-19 of Exhibit 4 showing the side and rear of his property and its relationship to the Subject Property. Mr. Lam raised a concern about the absence of adequate passage for, and storage of, garbage bins for the new dwellings.

Mr. Bronskill submitted that the stairs and side yard setback comply with Zoning Bylaw requirements and that the proposed side yard setback of 1.2m is an improvement over the existing condition. Accordingly, he argued, the concerns about garbage bins, access, and encroachment onto Mr. Postill's property are adequately addressed by the design.

I am satisfied that the proposed side yard setbacks will offer sufficient separation between the properties. I agree that the staircases and balconies proposed for the rear of the property are a change from what currently exists. I find that the design's placement of the balconies in the centre of the building, behind the staircases, reduces potential overlook into Mr. Postill's rear yard. I am also mindful that no variances are required for the side yard setbacks or to build the staircases and balconies. While I appreciate that the proposed development will impact Mr. Postill, I cannot find that the impact is unduly adverse from a planning perspective in these circumstances.

Criticisms of the Proposed Development

Mr. Postill is critical of the proposed design, arguing that it will be to the detriment of future tenants and neighbours. His Witness Statement sets out a critique of the proposed development against what he refers to as the "Urban Design Guidelines." The document referenced is not included in Mr. Postill's disclosure and these guidelines were not discussed in detail during the Hearing. Mr. Galbraith's evidence was that there were no concerns raised by the City's Planning Department which reviewed and approved the Application. I find that the particulars of the site plan design for the proposed development are not within the jurisdiction of this Tribunal, and there are no variances required for the construction of the proposed development.

Mr. Postill also took issue with the Applicant's proposed building methods. I find that any standards issues relating to the construction of the proposed development are subject to oversight from the City Building Department as part of the building permit process.

Parking

With respect to the laneway suites, Mr. Postill considered the proximity of the laneway suites' entrances to the laneway to be dangerous. He also asserted that it is not appropriate to build laneway suites on the same property as a multi-unit dwelling, particularly when doing so will eliminate parking spaces. Mr. Postill's evidence was that there is a shortage of street parking in proximity to the Subject Property, which the proposed development would exacerbate, causing issues for local residents. Mr. Postill indicated during the Hearing that the apartment building at the southwest corner of Norwood Road and Gerrard Street East does not have dedicated parking, which already puts pressure on street parking. He referred the TLAB to photographs of the parking situation near the Subject Property at pages 12-14 of Exhibit 4.

Mr. Galbraith responded that at the time they were asked, the parking permit office advised that permits continue to be available in this area. He also described the absence of parking spaces in the proposed development as consistent with the City's interest in reducing car usage. Laneway suite developments are not required to provide onsite parking. Mr. Galbraith indicated that tenants of the proposed development will be informed about the lack of parking spaces onsite prior to leasing a unit in the proposed development.

I cannot assign great weight to the hearsay evidence about the availability of parking permits in the area. I accept that parking may be affected by the influx of new residents to the proposed development, regardless of the Applicant's ideals. However, in the absence of opposition from the City departments charged with oversight of parking and transportation, I find that the potential for greater congestion on local streets is not sufficient to defeat the Application. The permission to eliminate parking on lots where laneway suites can be built is a policy decision.

Density

It is clear from Mr. Postill's evidence before the TLAB and before the COA (see Exhibit 5) that above all, he is opposed to the density proposed for the Subject Property. He does not agree that the proposed development will address the "missing middle" by offering housing options for families with children. In his view, the existing dwelling is better suited for families with growing children than the proposed development. Mr. Postill also disputes that the proposed development represents a diversification of housing options in the neighbourhood. Rather, he sees it as duplicating the existing mix of apartments and rental rooms. What is needed, Mr. Postill argued, is more houses for families. Removing the existing dwelling on the Subject Property does not help achieve that goal.

Even if the proposed development complies with the Zoning Bylaw, Mr. Postill argued that the standards under the Zoning Bylaw are more suitable for a lower density development. That is, the performance standards to which the Application conforms are contemplated for a single, double, or triple-unit dwelling, but do not appropriately "fit" a development of the scale proposed in this Application. The counterargument raised by

the Applicant was that the Zoning Bylaw permits precisely the intensity that is proposed in this case.

Mr. Lam echoed Mr. Postill's concerns about the density proposed for the Subject Property. He expressed the view that intensification could be achieved through renovation of the existing dwelling. Mr. Lam is also concerned about the demolition of the existing dwelling on the Subject Property, which he described as an 1890s well-maintained brick building. Mr. Lam's view was that the house is part of the "living memory" of the old East Toronto Village and contributes to the walkability of the neighbourhood (Exhibit 6). To demolish the dwelling, in Mr. Lam's view, would be to deprive the neighbourhood of richness and context. Mr. Lam also felt that such a demolition would not further sustainability or environmental principles.

Mr. Galbraith's response was that the OP requires a wide variety of housing, and the Application contributes to a range and mix of housing types in an established neighbourhood. The existence of other high density housing types in the area does not close off the possibility for other similar types of development. He further indicated that the existing dwelling does not have status under the *Ontario Heritage Act* and is not protected from demolition.

I will address the density argument in greater detail below.

The Petition entered as Exhibit 7 repeats as a preamble most of the concerns articulated by Mr. Postill and Mr. Lam. Thirty-nine names representing twenty-three addresses are listed on the Petition but there are no physical signatures. All of the Participants listed on the People List are "signatories" to the Petition, as are Mr. Postill and Mr. Lam. Mr. Bronskill pointed out that it is unclear from the document itself to whom the Petition was presented and what material or information the signatories had at the time of signing the Petition.

I find that without the opportunity to understand details about the Petition's creation, including the methods used to gather signatures and information about the "signatories," such as whether or not they are all adults, it is difficult to assign much weight to it. However, I am prepared to find that the Petition demonstrates that there are residents in the neighbourhood who want to register their objection to the Application.

Statutory Test for Approval

In order for the Application to be approved, it must meet the criteria set out in the Act. This is multi-step analysis.

First, the TLAB must be satisfied that a plan of subdivision of the land is not necessary for the proper and orderly development of the municipality (s. 53(1)). I am satisfied that no plan of subdivision is required in this case, as the Subject Property is situated in an existing built-up area that is well-serviced.

Second, the TLAB must have regard to the matters listed in section 51(24) of the Act, reproduced above under "Jurisdiction" (s. 53(12)). This analysis will follow.

Finally, subsection 51(24)(a) requires the TLAB to consider the effect of the proposal on “matters of provincial interest” referenced in section 2 of the Act. In addition, section 3(5) of the Act requires any TLAB decision to be consistent with provincial planning policy. I will address these considerations first, since they are central to the disagreement between the Applicant and those opposed to the Application.

Policy

Subsection 51(24)(a) directs the TLAB to have regard to the effect of development of the proposed subdivision on matters of provincial interest referred to in section 2 of the Act. Mr. Galbraith opined that the Application appropriately addresses matters listed in that section as follows:

- the orderly development of safe and healthy communities;
- the appropriate location for growth and development by virtue of its location in a developed area. Mr. Galbraith emphasized that intensification is encouraged around transit-rich areas as this achieves the policy goals of using existing infrastructure and avoiding outward growth;
- the efficient use and conservation of energy through the proposed Passive House design;
- the promotion of development that is designed to be sustainable, to support public transit and to be oriented to pedestrians due to its location in close proximity to public transit and the absence of any associated parking spaces in the proposed development;
- the adequate provision of a full range of housing by contributing 10 dwelling units of at least two bedrooms each to the neighbourhood; and
- the promotion of built form that is well designed, uses the land efficiently, and encourages a sense of place.

I accept Mr. Galbraith’s evidence as supportive of the conclusion that the proposed development would have a positive effect on the matters of provincial interest he identifies. I am satisfied that other policy considerations listed under section 2 of the Act are less applicable based on the evidence.

Provincial Policy

Section 3(5) of the Act requires a TLAB decision to be consistent with the Provincial Policy Statement, 2020 (**PPS**) and conform with the Growth Plan for the Greater Golden Horseshoe, 2020 (**GP**). The PPS and GP are high level provincial policy documents that are not typically engaged by a local consent application, but which are relevant to this Appeal in light of the higher density proposed for the Subject Property.

Mr. Galbraith opined that the Application is consistent with the policy objectives of the PPS, which directs development to established built-up areas with existing infrastructure. His view was that the PPS encourages intensification, redevelopment, and a mix and range of housing types and densities. Mr. Galbraith asserted that if the Application is approved, it will contribute to the mix and range of housing options in the area, which is a key goal of the PPS.

Mr. Galbraith identified the GP policies relating to intensification in built-up areas and the provision of a complete range of housing as most salient to this Application. He characterized the GP as being concerned with avoiding the outward expansion of communities by intensifying within existing urban areas. In his view, the Application conforms to the GP in light of the location of the Subject Property in an area with access to existing public services and the proposed compact built form that will create a variety of housing options in the neighbourhood.

Analysis and Finding

I find that the proposed development aligns with the policy goals articulated in the PPS and the GP. For example, Policy 1.1.3.3 of the PPS directs planning authorities to promote opportunities for transit-supportive development that accommodates a range of housing options through intensification and redevelopment.¹ Intensification under the PPS means the development of a property at a higher density than currently exists. The PPS also discusses increasing the use of active transportation (walking, cycling) and transit before other modes of travel. Similarly applicable are the GP policies favouring the development of a diverse mix of housing options within settled areas and in proximity to transit.

Increasing density and creating additional residential units are provincial policy goals which would be met by severing the Subject Property. I find that the Application is consistent with the PPS and conforms to the GP.

Test for Consent to Sever

Having come to the above conclusions as to the Application's conformity to matters of provincial policy under sections 3(5) and 51(24)(a) of the Act, I turn now to the analysis of the remaining factors the TLAB must consider before granting consent to sever. I find subsection 51(24)(d.1) to be inapplicable to the present Application. I will address the Application's conformity to the OP first.

i. Conformity to the OP and Any Adjacent Plans of Subdivision

Mr. Galbraith asserted that the Application conforms to the OP because the proposed development is consistent with permitted built forms in the neighbourhood. To the extent the Application would introduce a change to the neighbourhood, Mr. Galbraith asserted that a proposed development need not mimic what is nearby in order to exist harmoniously with its context, pointing out OP Policy 2.3.1 which states that infill housing on individual sites is one type of physical change contemplated for Neighbourhoods. Mr. Galbraith pointed out that *Neighbourhoods* are considered physically stable under the OP, but not frozen in time.

Mr. Galbraith's opinion was that because the proposed development complies with the Zoning Bylaw, it is deemed to comply with the OP. He relied on Policy 4.1.8 as

¹ "Transit-supportive", "housing options", "intensification" and "redevelopment" are all specific terms defined in Section 6.0 of the PPS.

support for the claim that if a proposed development meets the applicable zoning standards, then it is compatible with the established neighbourhood.

During his cross-examination of Mr. Galbraith, Mr. Postill suggested that the proposed development represents a significant, not a gradual, change to the Subject Property. Mr. Galbraith responded that the proposed change was contemplated by the Zoning Bylaw.

With reference to the Lot Study Data included at Tab 28 of Exhibit 1, Mr. Postill also suggested that the Application does not have many peers in the neighbourhood in terms of the number of units on this size of lot. Mr. Galbraith agreed that the number of units proposed for the Subject Property represents a higher density than what exists in large numbers in the neighbourhood, but reiterated that the Zoning Bylaw contemplates and permits the level of density proposed.

Analysis and Finding

I decline to rely on the Application's compliance with the Zoning Bylaw as the main validation of its conformity to the OP. Section 51(24)(c) specifically requires the TLAB to consider the OP when assessing a consent application, whether or not that application entails a variance from the Zoning Bylaw. I have regard to Policy 4.1.8 of the OP, but my analysis must go beyond the Application's compliance with the Zoning Bylaw. The only exception is the proposed laneway suites, which are a relatively new form of development. As they are permitted by the Zoning Bylaw, and are generally consistent with the open space patterns created in this neighbourhood by properties with garages and other ancillary buildings at the rear of the lots, I accept their conformity to the OP.

OP Policy 2.3.1 requires that development in *Neighbourhoods* respect and reinforce the existing physical character of buildings, streetscapes and open space patterns. Policy 4.1.5 of the OP lists specific characteristics that development in *Neighbourhoods* must respect and reinforce, including the prevailing size and configuration of lots, the prevailing scale, density and dwelling type of nearby residential properties, and the prevailing building type(s). Policy 4.1.5 defines prevailing as "most frequently occurring."

Exhibit 1 contains Visual Exhibits (pages 512-537) which offer insight into these characteristics of the Subject Property's neighbourhood. Based on the Visual Exhibits and Mr. Galbraith's evidence, I find that the proposed development satisfies Policy 2.3.1 in that it will respect and reinforce the existing physical character of buildings, open space patterns, and the streetscape in its context. I also find that the proposed severed lots would respect and reinforce the prevailing lot configuration patterns in the neighbourhood.

With respect to OP Policy 4.1.5, the evidence indicates that the Application does not represent the prevailing, or most frequently occurring, physical character of the neighbourhood in terms of the relevant factors set out in that policy. Mr. Galbraith's evidence included a Lot Frontage map at Tab 9 of the Visual Exhibits in Exhibit 1. While

the number of lots in each size category was not provided, a visual review suggests that the severed lots would not be of the prevailing size, although they are within Zoning Bylaw standards. Similarly, the proposed density, dwelling and building type represented by the Application does not align with what is prevailing in the neighbourhood based on the evidence presented. However, this is not fatal to the Application.

OP Policy 4.1.5 recognizes that some geographic neighbourhoods contain a mix of physical characters, and I find this neighbourhood to be such a place. In these neighbourhoods, development whose physical characteristics are not the most frequently occurring can still take place in certain circumstances.² I find that the circumstances described in the OP apply in this case.

I am satisfied that the proposed severed lot dimensions, while not the most frequently occurring, exist in substantial numbers in the neighbourhood based on the Lot Frontage Map in Exhibit 1.

The proposed development does not reflect the prevailing physical character of the neighbourhood in terms of density, dwelling and building type. Yet multi-unit dwellings similar to the proposed development do exist in substantial numbers as contemplated by Policy 4.1.5. Based on Mr. Galbraith's evidence at Tab 11 of the Visual Exhibits in Exhibit 1, there are 396 multi-unit dwellings in the neighbourhood, most of them containing 2-4 units. On the basis of Mr. Galbraith's evidence, I find the Application has physical characteristics which exist in substantial numbers in the neighbourhood, as required by OP Policy.

Finally, in order for the OP policy relating to "substantial numbers" to apply, I must assess whether the physical characteristics of the proposed development are materially consistent with the physical character of the neighbourhood and have a significant presence in its immediate context. I find on the evidence that for scale, dwelling and building type, the Application meets this requirement. The neighbourhood includes many residential building typologies. Multi-unit dwellings exist throughout the NSA (Tab 11, Visual Exhibits, Exhibit 1). In the immediate context, there are several rooming houses directly across the street from the Subject Property, as well as a triplex on the same side of the street as the Subject Property (Tab 8 of Visual Exhibits in Exhibit 1). On the same side of Gerrard Street East on the adjacent block are multi-unit apartment buildings and a fourplex. Therefore, this policy is appropriate for the Application.

² OP Policy 4.1.5 describes these situations in more detail: "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."

This Application represents change. The demolition of the existing dwelling will represent a shift in the style of building on the Subject Property, and the proposed density is high. Yet the OP contemplates change in established Neighbourhoods. I find that the Application represents gradual and sensitive change to the neighbourhood that is consistent with policy goals. I also find that the proposed development respects and reinforces the existing physical characteristics of the neighbourhood. Altogether, I find that the Application conforms to the OP.

ii. Premature or in the Public Interest

Mr. Galbraith opined that the Application is not premature because the neighbourhood is well-established and not the subject of any study or review. It is fully serviced by infrastructure and transit. His opinion was that the Application is in the public interest because it provides additional housing in a built-up area, which reinforces the OP, supports transit, reduces dependency on cars, and complies with the Zoning Bylaw.

Mr. Postill disagreed that the Application is in the public interest. His view was that the proposed development is too dense for the context and would negatively impact on neighbouring residents in general, and particularly in terms of parking and safety in the laneway. Mr. Postill felt that the public interest in creating housing for families favours something less dense than what is proposed in this Application.

Analysis and Finding

I find that the Application is not premature, as the neighbourhood is well-serviced and there are a variety of transit options available to the Subject Property. In terms of the public interest, while I understand the concerns raised by Mr. Postill, I must evaluate the Application's adherence to planning policy rather than assessing the merits of the policy itself.

I have found for the reasons explained above that the Application is consistent with provincial policy as set out in the PPS, GP and section 2 of the Act. With regard to City policy, the chief source of information as to what the City regards as in the public interest is the OP. Subsection 51(24)(c) addresses the Application's conformity to that document and my findings in that regard are above. Having found that the Application meets the policy goals of the province and of the OP, I find that the Application is in the public interest.

iii. Suitability of the Land for the Purpose for which it is Being Divided

Mr. Galbraith described the purpose of the severance as facilitating additional residential development that is consistent with the Subject Property's zoning and current use. He pointed out as further evidence of suitability the 14 consent applications granted in the neighbourhood in the past 10 years, including one consent across the street at 2170 Gerrard Street East. Mr. Postill argued that prior consent applications granted in the neighbourhood were not for developments of comparable density.

I agree with Mr. Postill that the prior consent approvals provided in Exhibit 1 are of limited application to this case. However, in light of the Subject Property's zoning, intended use for residential dwellings, and the presence of other multi-unit dwellings of various sizes in the NSA, I find that the Application meets this criterion.

iv. Adequate Highways

Mr. Galbraith opined that the area is well served by existing municipal roads and public transit, which aligns with the proposed development's goal of discouraging car use. The Zoning Bylaw permits the proposed development to be constructed without onsite parking spaces. Mr. Galbraith indicated that the City's Transportation Services Department did not express concerns about the Application.

Mr. Postill believes this criterion is not met by the Application because of limited parking and the number of dwellings proposed for the Subject Property.

I have addressed the parking issue above. I find that the existing roads and transportation options available to the Subject Property are adequate to serve the needs of the additional lot and dwellings proposed for the Subject Property.

v. Dimensions and Shapes of Proposed Lots

Mr. Galbraith provided a lot study at Tab 9 of his Visual Exhibits in Exhibit 1. The proposed lots are within the range of existing lot dimensions in the neighbourhood and comply with the Zoning Bylaw. The lots are larger than their immediate neighbours to the east. The lots are rectangularly shaped and consistent with other lots in the neighbourhood.

Mr. Postill submitted that multi-unit buildings in the neighbourhood generally have larger lot frontages than what is proposed in this case, and that the dimensions of the lots should reflect the density of the proposed buildings.

I cannot accept the argument that higher density buildings require larger lots on the evidence before the TLAB. The Zoning Bylaw contemplates a range of residential building types in this zone, as well as a minimum lot frontage, which the proposed lots meet. There is no separate category of lot frontage or area requirements for a development of the density proposed in this case.

I find that the proposed shapes and dimensions for the severed lots are consistent with the surrounding neighbourhood, both in the broader and immediate contexts. The severed lots would not be undersized in their context, nor introduce an irregular lot shape or pattern to the block on which the Subject Property is located.

vi. Restrictions or Proposed Restrictions on Land, Buildings

I accept Mr. Galbraith's evidence that there are no restrictions that would impact the Application's proposed development.

vii. Conservation of Natural Resources and Flood Control

Mr. Galbraith's evidence was that there are no natural resources on, or floodplain considerations affecting, the Subject Property. He indicated that the oak tree at the rear of the lot will be conserved through the use of helical piles to construct the laneway suites without damaging the tree's roots, under arborist supervision. Mr. Galbraith explained that the construction of a laneway suite is not a permissible basis for removing a tree and that the Applicant is interested in preserving the tree.

Mr. Postill is concerned that the construction of the laneway suites will jeopardize the oak tree. There was some confusion about the position taken by Urban Forestry on the matter. One Staff Report dated November 18, 2020 (Tab 18, Exhibit 1) expressed no objection to the consent application, but highlighted the potential that a permit to injure the oak tree will likely be refused, and the laneway suites might require modification to ensure the tree's protection. Certain conditions were proposed. Another Urban Forestry Staff Report dated November 25, 2020 (Tab 19, Exhibit 1) addresses the Application in conjunction with other properties in a more formulaic manner. In that report, the Subject Property is assigned a condition indicating that Urban Forestry requests denial of the Application.

I accept Mr. Galbraith's evidence that the tree cannot be removed to facilitate construction of the laneway suites, as this is consistent with the November 18, 2020 Urban Forestry Staff Report. That report is more specifically engaged with the details of this Application and I find it to be a more reliable source of information about the City's views about the oak tree and proposals to protect it than the November 25, 2020 report. Accordingly, I give the latter less weight. On the basis of Urban Forestry's oversight of the Application, and the involvement of an arborist, I am satisfied that the Application adequately provides for the conservation of natural resources.

viii. Adequacy of Utilities and Municipal Services

Mr. Galbraith indicated that the existing municipal utilities and services in the area of the Subject Property will be available to, and sufficient for, the proposed development. His evidence was that City staff did not make comments indicating concern about a deficiency in services available for the development planned for the Subject Property. There are conditions requested by City staff which are designed to manage the Subject Property's engagement with municipal services which were discussed during the Hearing and will apply if the consent to sever is granted. For those reasons, I find this criterion is met.

ix. Adequacy of School Sites

Mr. Galbraith's view was that the addition of one lot to the Subject Property will not have a measurable impact on the capacity of existing schools in the area. During the Hearing Mr. Galbraith noted that attempts to confirm capacity at the local school(s) were frustrated by the COVID-19 pandemic.

I am satisfied that the proposed development will be adequately served by local schools given the relatively small number of dwelling units to be added by the proposal.

x. Area of Land to be Dedicated Public Purposes

The draft R-Plan for the proposed severance includes provision for a 0.22m deep strip of land across the rear of the Subject Property to be dedicated to widening the rear laneway at the City's request.

xi. Optimization of Energy

The proposed development will be constructed to Passive House standards, which Mr. Galbraith described as an environmental standard exceeding the City's requirements for new construction. The proposed development will be optimized to maximize energy conservation, according to Mr. Galbraith. On cross-examination by Mr. Postill, Mr. Galbraith agreed that a variety of housing types could conform to the Passive House standard.

I find that the proposed development will optimize the available supply, means of supplying, efficient use and conservation of energy, as set out in subsection 51(24)(l) of the Act.

xii. Site Plan

Mr. Galbraith testified that the Subject Property is exempt from site plan control, even though it is located in a site plan control area. This exemption is confirmed by the Zoning Certificate (Tab 12, p. 193, Exhibit 1).

xiii. Other Considerations

Section 51(24) also includes a requirement for the TLAB to have regard "to the health, safety, convenience, accessibility for persons with disabilities and welfare of the present and future inhabitants of the municipality" when considering a severance application. On the evidence presented, I am satisfied that there will not be adverse impacts on these interests arising from the proposed development.

There were a variety of conditions proposed by City departments should the consent to sever be granted. Mr. Galbraith answered questions about some of these conditions and opined that all proposed conditions, including the standard conditions in TLAB Practice Direction 1, were appropriate. A comprehensive list of all proposed conditions, including standard consent conditions, was compiled by Mr. Galbraith and submitted to the TLAB, on notice to all Parties and Participants, following the Hearing.

Conclusion: s. 51(24) Criteria

I have considered both Mr. Galbraith's evidence and the arguments raised by Mr. Postill and Mr. Lam, as described above. I find that for the reasons set out in my analysis above, the Application satisfies the criteria set out by subsection 51(24).

CONCLUSION

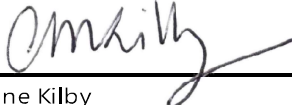
The Applicant claims that the proposed development will increase density while respecting the need for Neighbourhoods to remain stable and preserve their character. What makes this Application slightly more complex than a traditional consent to sever application is the degree to which the density of the intended use of the severed property differs from its current use. This shift in density on the Subject Property must be considered in light of the Subject Property's location in a well-established, well-serviced neighbourhood that contains numerous multi-unit dwellings, as well as land use planning policies highlighting intensification as a goal. For the reasons articulated above, I find that the Application satisfies the applicable statutory requirements for approval.

DECISION AND ORDER

The Appeal is allowed and the decision of the COA mailed on December 2, 2020 is set aside.

Consent to sever the Subject Property in accordance with the draft Reference Plan filed with the TLAB as page 172 of Exhibit 1 is granted, subject to the conditions identified in Schedule A following.

If difficulties arise in the implementation of this Order, the TLAB may be contacted on notice to all Parties and Participants.

X 

Christine Kilby
Panel Chair, Tor

SCHEDULE A: CONSENT CONDITIONS

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 most recent 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 No. 8.
- (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) 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.
- (4) Prepare all documents and convey to the City, prior to the issuance of the Certificate of Official for nominal consideration, 0.22 metres of the site abutting the public lane for lane widening purposes. Such lands to be free and clear of all encumbrances, save and except for utility poles, and subject to a right-of-way for access purposes in favor of the Grantor until such time as the said lands have been dedicated for public highway or lane widening purposes, all to the satisfaction of the Chief Engineer & Executive Director, Engineering & Construction Services and the City Solicitor.
- (5) 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.
- (6) Submit to the Chief Engineer & Chief Engineer & Executive Director, Engineering & Construction Services, for review and approval prior to depositing in the Land Registry Office, a Draft Reference Plan of Survey in metric units and integrated into the Ontario Coordinate System with coordinate values shown on the face of the plan, and delineating thereon by separate parts 3 and 4, the lands to be conveyed to the City

identified in Condition No. 4 the remainder of the site, and any appurtenant rights-of-way or easements.

(7) Each separate parcel of land must be served with its own individual water and sewer service. There is no information on file submitted with the consent application to indicate how municipal servicing is to be provided for the retained and newly created parcels. Revised drawings are required to show how the two parcels of land will be individually serviced with water and sewer connections (T-connections are not permitted).

(8) Once all of the above 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.

(9) Any building permit involving the laneway suites requires a clearance from Urban Forestry to confirm that the proposed structures will not negatively affect the existing significant Oak tree.

(10) Submission of a complete application for a permit to injure or remove a City owned tree(s), as per City of Toronto Municipal Code Chapter 813, Trees Article II Trees on City Streets.

(11) Where there is no existing street tree, the owner shall provide payment in lieu of planting one street tree on the City road allowance abutting each of the sites involved in the application. The current cash-in-lieu payment is \$583/tree.

(12) Within ONE YEAR of the date of the giving of this notice of decision, the applicant shall comply with the above-noted conditions.