

# DECISION AND ORDER

**Decision Issue Date** Monday, June 21, 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): BETULA DEVELOPMENTS INC

Applicant(s): BERNARD H WATT ARCHITECT

Property Address/Description: 60 WINCHESTER ST

Committee of Adjustment File

Number(s): 20 149777 STE 13 CO (B0034/20TEY)

**TLAB Case File Number(s): 20 220478 S53 13 TLAB**

Hearing date: April 13, 2021

**DECISION DELIVERED BY C. KILBY**

## APPEARANCES

NAME	ROLE	REPRESENTATIVE
BERNARD H WATT ARCHITECT	APPLICANT	
BETULA DEVELOPMENTS INC	APPELLANT/OWNER	IAN FLETT
CHRISTIAN CHAN	EXPERT WITNESS	
ORESTES PASPARAKIS		

## INTRODUCTION

This is an appeal to the Toronto Local Appeal Body (**TLAB**) by Betula Developments Inc. (**Appellant**) from a decision of the Deputy Secretary-Treasurer of the Committee of Adjustment, Toronto and East York Panel (**COA**) (**Appeal**).

In a decision mailed on October 27, 2020, the COA refused an application for consent to sever a portion of the rear yard of 60 Winchester Street (**Subject Property**) for conveyance as a lot addition to the north abutting property at 46 Metcalfe Street (**Application**).

The TLAB set a 'virtual' Hearing date of April 13, 2021 and the sitting was convened by way of the City's WebEx platform. Ian Flett, counsel for the Appellant, Christian Chan, the Appellant's Expert Witness, and Orestes Pasparakis, owner of 46 Metcalfe Street, all attended the Hearing. A junior planner from Mr. Chan's office also attended to observe. The City of Toronto did not participate in this Appeal and there were no other Parties or Participants in attendance.

## **BACKGROUND**

A preliminary matter arose at the outset of the Hearing. Mr. Pasparakis, who was not listed on the People List but who attended the Hearing, identified himself as the intended purchaser of the land proposed to be severed. Mr. Pasparakis made it clear for the record that he and the presiding Member were acquainted as former colleagues, having previously worked together at the same law firm for several years. I confirmed the relationship as described and indicated that it had been nearly five years since I was employed by the law firm where Mr. Pasparakis is a partner. I sought submissions from Mr. Flett, who stated that he had no concerns about a reasonable apprehension of bias given the circumstances. Mr. Flett took no issue with my continuing to preside over the Appeal, citing the duties and obligations I have accepted as a Member of the TLAB and the passage of time. I ruled that I could continue to preside over the Appeal.

The Application seeks consent to sever an undeveloped rear portion of the Subject Property in order to convey it to the owners of 46 Metcalfe Street. The intended use of the conveyed lands is as an undeveloped landscaped buffer between the rear yard of 46 Metcalfe Street and a two-storey laneway suite to be constructed on the Subject Property. There are no zoning variances required for the purposes of the Application. Mr. Chan indicated that should consent to sever be granted, the approval of the lot addition to 46 Metcalfe Street will proceed by way of a separate application to the COA.

The Appellant previously applied to the COA for consent to sever these lands, in conjunction with another application for zoning variances. That consent application was refused following an oral hearing, in a decision mailed on February 18, 2020. The current Application was made in May 2020 and delegated to the Deputy Secretary-Treasurer. The Application was decided based on written submissions, without holding an oral hearing. The Appellant points out in its Notice of Appeal that it was not given advanced notice of the COA's concerns with its Application, or an opportunity to provide a response in advance of the decision.

## MATTERS IN ISSUE

The issue in this Application is whether to grant consent to sever a portion of the Subject Property for conveyance to the north abutting lot. There are no associated variances sought in this Application and no development has been proposed for the lands under consideration.

## JURISDICTION

A decision on an application for consent to sever is governed by the following:

### Provincial Policy – S. 3

A decision of the 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**

The Appellant's evidence was provided by Christian Chan, whom I qualified to provide expert opinion evidence in the area of land use planning on the basis of his professional credentials and experience. As the Application was unopposed, Mr. Chan was the only expert evidence before the TLAB. Mr. Chan and Mr. Pasparakis, whom I permitted to speak to the Application, were affirmed.

Mr. Chan filed extensive and thorough materials, marked as Exhibit 1 to the Appeal. In detailed oral testimony with reference to Exhibit 1, Mr. Chan provided the basis for his opinion that this Application meets the requisite legislative and policy considerations and standards set out above under 'Jurisdiction.' I have summarized the most salient elements of Mr. Chan's evidence below, but have had regard to all that was put into the record.

### **The Subject Property**

The Subject Property fronts onto Winchester Street in the Cabbagetown North Heritage Conservation District (**HCD**), with rear laneway access from Mickey Lane. The Subject Property is zoned R(d1.0)(x851). On the lot is a three-storey home containing three units. The Appellant secured building permits to construct an additional dwelling unit in the home and a new laneway suite, none of which requires a variance from the applicable City of Toronto Zoning By-law 569-2013, according to the Zoning Certificate included in Exhibit 1 at Tab 22.

Mr. Chan's evidence is that the lot is double the size of a normal residential lot in the City of Toronto. The relevant lot dimensions for this Application are as follows:

<b>Dimension</b>	<b>Current</b>	<b>If Consent to Sever is Granted</b>
Lot Frontage	7.49m	7.49m
Lot Depth	62.54m	51.88m
Lot Area	464 sq. m (approx.)	396.23 sq. m

The land proposed to be severed from the Subject Property is described by Mr. Chan as 8.03m wide, bordering Mickey Lane for 10.67m, and having an area of 82.34 sq.m. It is presently undeveloped and contains trees and shrubs, which Mr. Pasparakis intends to maintain should the Application be approved. Mr. Pasparakis indicated that he has already planted trees on the lands proposed to be severed.

The lot to which the proposed severed parcel would be added is 46 Metcalfe Street. A 7.72m segment of the southern lot line of 46 Metcalfe Street borders with 60 Winchester Street. The potential for overlook into Mr. Pasparakis' backyard from the 2-storey laneway suite to be developed motivates this Application. There are letters of support from the owners of 40 and 44 Metcalfe Street. Mr. Pasparakis indicated that he also has the verbal support of the neighbours at 42 and 38 Metcalfe Street, although that evidence can be given limited weight as it is hearsay. In any event, the Appeal was unopposed and Mr. Chan was not aware of any concerns raised by City staff about the Application.

### **Neighbourhood Study Area**

With reference to the Official Plan (**OP**) and the factors elaborated upon at paragraph 34 of his Expert Witness Statement, Mr. Chan selected a geographic area within Cabbagetown surrounding the Subject Property as a Planning Study Area (**Study Area**). The Study Area, comprising both immediate and broader contexts, is illustrated in Figure 1, Tab 19 of Exhibit 1.

Mr. Chan's evidence is that there is no prevailing dwelling type in the Study Area as the neighbourhood is comprised of a mix of low-rise residential buildings ranging from detached homes to four storey apartment buildings. In general, the built form of the Study Area is low-rise residential with a mix of building types. An important feature of the neighbourhood is mature tree cover. His opinion is that the existing lot pattern in the Study Area varies "greatly" from the lot patterns in the original plan of subdivision.

### **Plan of Subdivision**

Mr. Chan drew the TLAB's attention to the existing historic Plan of Subdivision applicable to the Subject Property, which was dated 1868, attached to Exhibit 1 at Tab 13.

## Policy

The PPS and Growth Plan have limited application to the circumstances of the present Application. However, the OP offers helpful guidance as to the implementation of the relevant provincial policies in respect of the Application. Conformity to the Plan is one of the applicable criteria to be assessed under section 51(24)(c) of the *Planning Act*.

### Section 51(24) Criteria

Mr. Chan opines that s. 51(24) (d.1), (e), (i), (j), (k), (l), (m) of the *Planning Act* are inapplicable to this Application as there is no intention to develop the lands proposed to be severed, and no servicing is required for the proposed new lot. Mr. Chan's evidence on the remaining relevant criteria is summarized below.

#### (a) Effect of development on matters of provincial interest as referred to in section 2 of the *Planning Act*

Mr. Chan identified the relevant matters of provincial interest listed in section 2 of the *Planning Act* as (a), (d), (h), and (n). In the absence of any proposed development for the subject lands, and with reference to the current and future character of the subject lands as treed and soft landscaped, undeveloped space, Mr. Chan is of the view that these matters of provincial interest will not be affected. Insofar as the proposed severance furthers a private transaction between adjacent land owners, and because there would be no interference with the rights of adjacent property owners, Mr. Chan opines that there is no planning conflict involving public and private interests in this case.

#### (b) Whether the proposed subdivision is premature or in the public interest

Mr. Chan opines that the proposed consent is not premature. The proposed severance is internal to the block and will not affect street frontage on Winchester or Metcalfe.

#### (c) Whether the plan conforms to the official plan and adjacent plans of subdivision

## The OP

The Subject Property is located in an area designated as *Neighbourhoods* in the OP. Mr. Chan highlighted policies 2.3 and 4.1, emphasizing policy 4.1.5(b), (g), and (i) as most applicable in this case.

### 2.3.1 – *Neighbourhoods*

The OP requires development in *Neighbourhoods* to be consistent with the objective of maintaining physical stability, and to respect and reinforce the existing physical character of buildings, streetscapes and open space patterns in the area. No development is proposed in this case.

With respect to the open space patterns in the area, and with particular regard to the lotting fabric of the neighbourhood, Mr. Chan reviewed the HCD Plan, historical surveys, and the most recent Property Index Map (Tab 14 of Exhibit 1).

Mr. Chan also directed the TLAB's attention to prior severance applications in the Study Area. Unusually, in his view, many of the severance applications were not related to new development, but rather, sought consents to sever for parking, rights of way, or the reestablishment of lot lines. Accordingly, Mr. Chan's view is that the Application seeks precedented relief.

*4.1.5(b) – prevailing size and configuration of lots*

There is no prevailing size or configuration of lots that the Application must respect and reinforce. Mr. Chan is of the opinion that the immediate block is distinct in that it lacks a prevailing lot size or configuration, in contrast to the rest of the geographic neighbourhood. On the immediate block, 58 and 60 Winchester Street are larger lots than others fronting onto Winchester Street. Nearby 52 Metcalfe Street is another larger lot on the block. Mr. Chan opines that irregularly-shaped lots occur throughout Cabbagetown, consistent with the Cabbagetown HCD Plan's description of the area as comprising a variety of lot sizes. Mr. Chan was able to point out other "L-shaped" lots in the Study Area at my request, including 46 Metcalfe Street.

*4.1.5(g) – prevailing patterns of rear and side yard setbacks*

With respect to this criterion, Mr. Chan focused on the prevailing patterns of landscaped open space in the neighbourhood. Most of the open space in the neighbourhood is in rear yards, however, there is no prevailing pattern of open spaces in the rear yards of the lots on the block that the Application must respect and reinforce.

*4.1.5(i) – the conservation of heritage buildings, structures and landscapes*

Mr. Chan's opinion is that the nature of the proposed severance would respect and reinforce the conservation of nearby listed and designated heritage buildings and structures and would fit within the landscape of varying lot sizes. I note that neither 60 Winchester Street nor 46 Metcalfe Street is identified as a listed or designated heritage building in the HCD Plan at Tab 9 of Exhibit 1.

*Conformity to Original Plan of Subdivision*

Mr. Chan's evidence is that the original Plan of Subdivision applicable to the Subject Property, dated 1868, is no longer reflected in the existing lot pattern or configuration in the immediate block. There have been many subdivisions since the original Plan of Subdivision was created, and there is no consistent lot configuration. Therefore, there is no specific lotting pattern to which this Application must conform.

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

Mr. Chan's opinion is that the lands are suitable for the purpose for which they are proposed to be severed, as the proposed use will not change and no variances are required.

(f) the dimensions and shapes of the proposed lots

Mr. Chan's view is that the proposed severance will not materially alter the dimensions and shapes of any other lot in the immediate block or of the directly affected lots. No public realm or streetscape considerations apply. The retained lot at 60 Winchester Street will maintain its existing rectangular shape and will not become a substandard lot in the neighbourhood if the consent to sever is granted.

(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

Mr. Chan takes the view that the relevant restrictions are those contained in the applicable Zoning Bylaw. As no development is proposed or required, and no zoning variances are triggered by this Application, Mr. Chan's opinion is that the proposed consent has regard to the relevant restrictions on the land proposed to be subdivided.

(h) conservation of natural resources and flood control

Mr. Chan's opinion is that this criterion is largely inapplicable to the Subject Property, and highlighted the retention of trees on the Subject Property as an example of the proposal's regard for the conservation of natural resources.

### **Conclusion of Expert Witness**

On the basis of his evidence, summarized above and supplemented by Exhibit 1, Mr. Chan expressed the opinion that the Application meets all the applicable criteria for consent to sever, represents good planning and is in the public interest. He recommended that the TLAB grant consent to sever in this case.

## **ANALYSIS, FINDINGS, REASONS**

### **Section 3**

I accept Mr. Chan's opinion that the PPS and Growth Plan do not directly apply in this case. As a result, I find that this Application does not raise any inconsistency or conflict with the relevant provincial policy statements and plans.

### **Section 53**

As the Subject Property is in an existing Plan of Subdivision, I find that no new plan of subdivision is required.



## **Section 51(24)**

I find that the scope of the Application is so narrow that it is unlikely there will be negative impacts on the health, safety, convenience, accessibility for persons with disabilities and welfare of the present and future inhabitants of the municipality.

On the basis of the evidence presented and the nature of the Application, I accept Mr. Chan's opinion that the criteria in subsections 51(24) (d.1), (e), (i), (j), (k), (l), (m) are inapplicable to this case.

With respect to subsection 51(24)(b), I find that the proposed severance is not premature. There is no change planned for the use or character of the lands proposed to be severed. I accept Mr. Flett's submissions that if the proposed use of the space is important, then the beneficiary of the "buffer" space between 46 Metcalfe Street and the laneway suite at 60 Winchester Street is best suited to control that space.

In terms of the public interest, Mr. Flett noted that there was no opposition from neighbours to the proposed consent to sever, which he submits is a good indication of the public interest. The City, which Mr. Flett describes as the "primary defender of the public interest," has not taken an interest in the Appeal or asked for any specific conditions.

In terms of subsection 51(24)(c), whether the Application conforms to the OP, specifically in regard to the existing lot sizes and configurations in the neighbourhood, Mr. Chan spent considerable time on this issue at the Hearing. I have not analysed the shape or size of 46 Metcalfe Street, as this Application is only concerned with the proposed severance of lands from 60 Winchester Street. The impact of the proposed addition to 46 Metcalfe Street, if any, will be dealt with in a separate application.

I find prior severance applications in the neighbourhood to be of limited precedential value. The "respect and reinforce" test requires more than simply quantifying other recent severances; they must be considered in a spatial and policy context. Nevertheless, I accept Mr. Chan's assertion that consents to sever have been granted in the neighbourhood for purposes other than new development.

With respect to the existing physical character of the neighbourhood, I accept that a variety of lot sizes is an existing condition within the Study Area. Although there is no single lot size or shape in the neighbourhood, in many parts of the Study Area, adjacent properties tend to share a similar lot size and depth. For example, properties fronting onto Amelia Street tend to align at the rear lot line.

Mr. Chan's evidence was that the immediate context differs from the broader neighbourhood in terms of lot size and configuration. Indeed, the properties in the immediate context of the Subject Property exhibit a variety of lot sizes, particularly on the immediate block as defined in paragraph 43 of the Expert Witness Statement (see Figure A below). In addition, those properties in the immediate context fronting onto Winchester Street on the subject block (bound in green on Figure A) do not share a consistent lot depth.

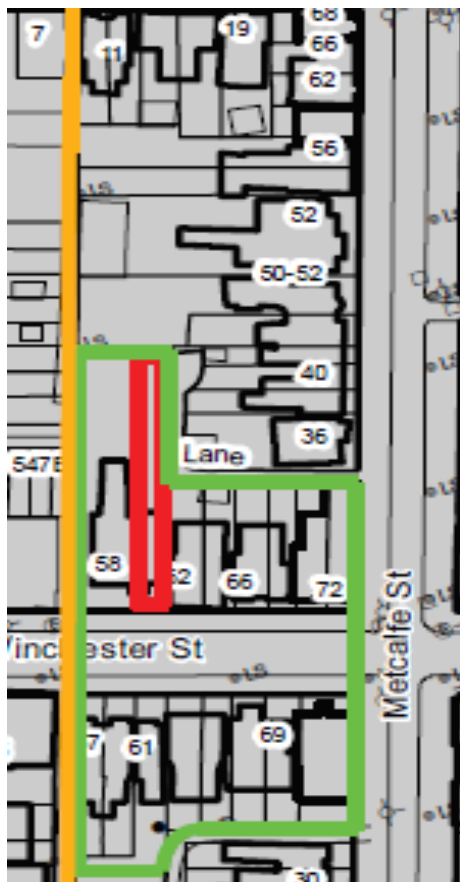


Figure A, excerpted from Figure 2, Tab 19 of Exhibit 1, “Property Data Map of Study Area”

Policy 4.1.5 of the OP provides that in instances of significant difference between the broader and immediate contexts, the immediate context will be considered to be of greater relevance. Since the immediate context consists of a variety of lot sizes and shapes, I find that the proposed severance will respect and reinforce this element of the existing character of the neighbourhood.

Moreover, I find the proposed severance would not result in an irregular retained lot. At Tab 18 of Exhibit 1, there is a table of lot dimensions for the immediate block surrounding the Subject Property, marked as page 239 in the Exhibit. This table demonstrates that 60 Winchester Street is an outlier in terms of lot depth and lot area in the table. This supports Mr. Chan’s assertion that the proposed severance of the identified portion of the Subject Property can be achieved without it becoming an unusually small lot in its immediate context.

Tab 13 shows the original Plan of Subdivision dated 1868 for the immediate block, which comprises seven parcels of land. The current lotting fabric for that block, shown at Tab 14, confirms Mr. Chan’s evidence that this area has undergone substantial change through multiple subdivisions such that conformity to the original Plan of Subdivision is unrealistic.

Altogether, I find that subsection 51(24)(c) is met in this Application.

With regard to the remaining criteria in section 51(24), I am satisfied with Mr. Chan's evidence as summarized above and I accept the opinions he has expressed about those criteria.

In view of the reasons discussed above, and having weighed the evidence presented at the Hearing in the context of the relevant statutory framework, I find that this Application meets the requirements for consent to sever.

## DECISION AND ORDER

The appeal is allowed and the COA decision is set aside. Consent to sever the subject property in accordance with a Reference Plan to be created, but which will generally reflect the Proposed Site Plan for 60 Winchester Street attached hereto as Attachment A<sup>1</sup> is granted, and such consent is approved subject to the conditions identified in Schedule A following.

Mr. Flett submitted that the municipal numbering condition typically imposed in these cases is not applicable here. Since this severance application is the first step in the process of changing the ownership of the proposed lands, with a lot addition application to follow, I have not removed the condition. However, I have added language to the effect that the Supervisor, Surveys, Engineering Support Services, Engineering and Construction Services may deem the condition to be unnecessary.

If difficulties arise in the implementation of this disposition, the TLAB may be spoken to.



Christine Kilby  
Panel Chair, Toronto Local Appeal Body

<sup>1</sup> Taken from Exhibit 1, page 1105 of the consolidated document; stamped page number 1082.

## **SCHEDULE A: STANDARD 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 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) Should it be deemed necessary, 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.

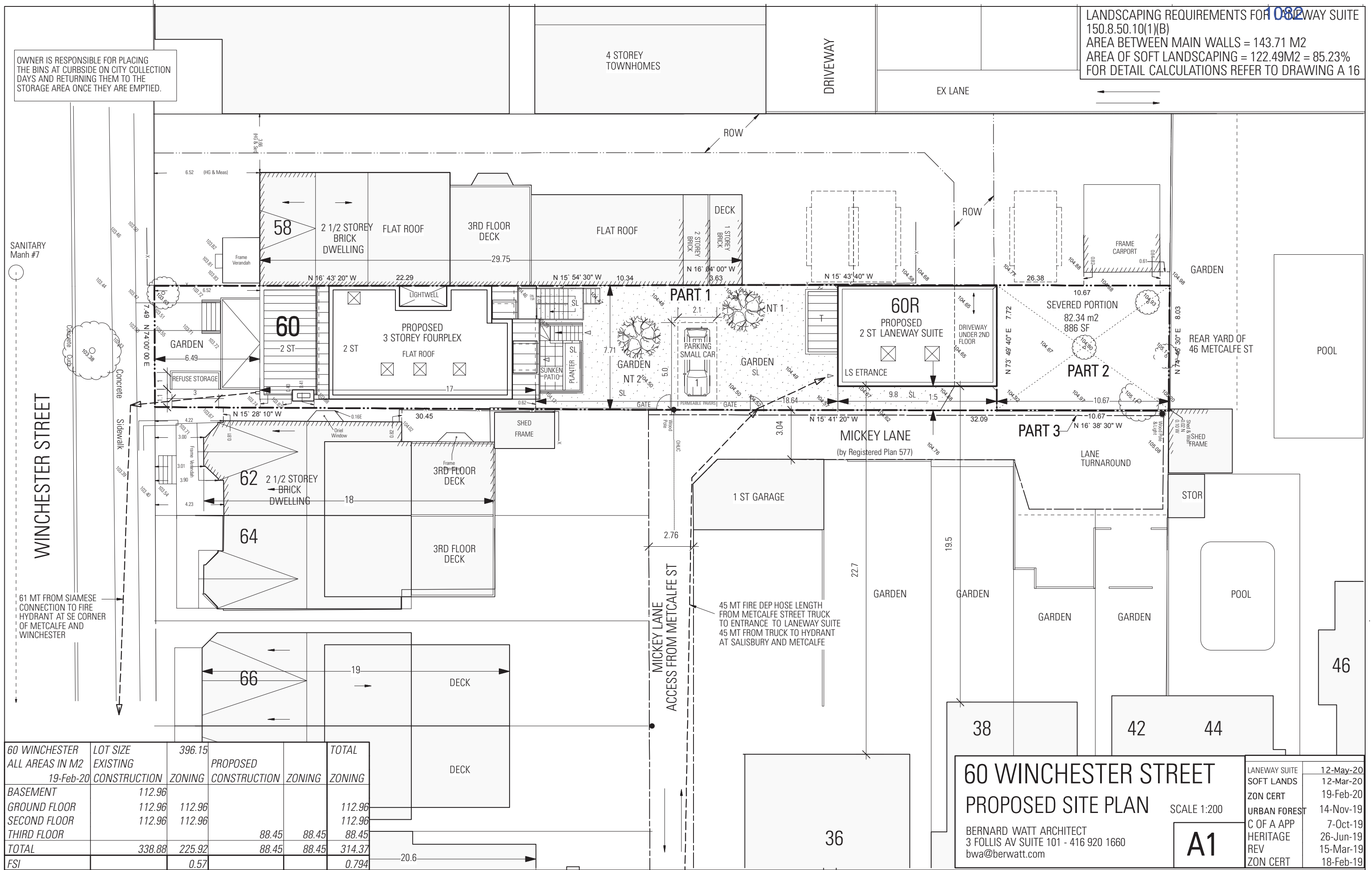
(5) Prepare and submit a digital draft of the Certificate of Official, Form 2 or 4, O. Reg. 197/96, referencing either subsection 50(3) or (5) of the Planning Act if applicable as it pertains to the conveyed land and/or consent transaction to the satisfaction of the Deputy Secretary-Treasurer of the 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.

OWNER IS RESPONSIBLE FOR PLACING THE BINS AT CURBSIDE ON CITY COLLECTION DAYS AND RETURNING THEM TO THE STORAGE AREA ONCE THEY ARE EMPTIED.

LANDSCAPING REQUIREMENTS FOR 1082 LANEWAY SUITE  
 150.8.50.10(1)(B)  
 AREA BETWEEN MAIN WALLS = 143.71 M2  
 AREA OF SOFT LANDSCAPING = 122.49M2 = 85.23%  
 FOR DETAIL CALCULATIONS REFER TO DRAWING A 16



60 WINCHESTER	LOT SIZE	396.15	TOTAL	
ALL AREAS IN M2	EXISTING		PROPOSED	ZONING
19-Feb-20	CONSTRUCTION	ZONING	CONSTRUCTION	ZONING
BASEMENT	112.96			
GROUND FLOOR	112.96	112.96		112.96
SECOND FLOOR	112.96	112.96		112.96
THIRD FLOOR			88.45	88.45
TOTAL	338.88	225.92	88.45	88.45
FSI		0.57		0.794

**60 WINCHESTER STREET**  
**PROPOSED SITE PLAN** SCALE 1:200

BERNARD WATT ARCHITECT  
 3 FOLLIS AV SUITE 101 - 416 920 1660  
 bwa@berwatt.com

**A1**

LANEWAY SUITE	12-May-20
SOFT LANDS	12-Mar-20
ZON CERT	19-Feb-20
URBAN FOREST	14-Nov-19
C OF A APP	7-Oct-19
HERITAGE	26-Jun-19
REV	15-Mar-19
ZON CERT	18-Feb-19