

DECISION AND ORDER

Decision Issue Date Friday, August 19, 2022

PROCEEDING COMMENCED UNDER Section 53, subsection 53(19), Section 45(12), subsection 45(1) of the Planning Act, R.S.O. 1990, c. P.13, as amended (the "Act")

Appellant(s): JOSEPH KENNEDY

Applicant(s): MARCO VIERA

Property Address/Description: 8 YORKLEIGH AVENUE
Committee of Adjustment File

Number(s): 21 114965 WET 02 CO (B0017/21EYK), 21 114972 WET 02 MV (A0103/21EYK), 21 114973 WET 02 MV (A0105/21EYK)

TLAB Case File Number(s): 21 190170 S53 02 TLAB, 21 190171 S45 02 TLAB, 21 190172 S45 02 TLAB

Hearing dates: March 29, July 25, July 26, 2022

DECISION DELIVERED BY TLAB Panel Member T. Yao

REGISTERED PARTIES AND PARTICIPANTS

Appellant	Joseph Kennedy
Kennedy's Legal Rep.	Brendan Ruddick
Kennedy's Expert Witness	Allan Ramsay
Applicant	Marco Viera
Party	Marquis Manors Ltd. (Paul Mior)
Marquis's Legal Reps.	David Neligan, Aliza Kwinter
Marquis's Expert Witness	Franco Romano
Participant	Maria Tihotchi* ¹

¹ Asterisk indicates that the participant spoke at the hearing

Participant	Anthony Ruggiero
Participant	Sabine Smith*
Participant	Anthony Gallippi
Participant	Louise Santos
Participant	John Sulek
Participant	Anthony Vlassopoulos*
Participant	Antonietta Santogrossi
Participant	Manny Baltazar

INTRODUCTION

Marquis Manors Limited wishes to sever its lot and build two new houses. In order to do so, it requires permission for a severance and additionally for the variances as shown in Table 1. This is the second application by Marquis in two years. A previous application for a similar project but needing Floor Space Index variances was refused by the Committee of Adjustment in 2020 and an appeal to the TLAB was withdrawn because Marquis failed to appeal all three files.

Table 1. Variances Sought For 8 Yorkleigh Ave			
	Required	Part 1 (North)	Part 2 (South)
VARIANCES FROM ZONING BY-LAW 569-2013			
1	Minimum frontage of 21 m	18.5 m	20.3 m
2	Rear deck; Min. south side yard of 7.5 m	1.8 m	Not Applicable
3	Rear deck; Min north side yard setback of 7.5 m	4.7 m	Not Applicable
4	Minimum lot area of 695 m ²	Complies	646.45 m ²
5	Driveway from front instead of flanking street	Not Applicable	From Freemount instead of from Yorkleigh (flanking street)

MATTERS IN ISSUE

This second application was granted by the Committee of Adjustment on July 13, 2021. The City Planning Department stated the property was “oversized” in comparison with the zoning standards and the application met the *Planning Act* tests. Mr. Kennedy, the neighbour across the street, appealed, and so this application comes before the TLAB.

This case involves a request for a severance and variances and the *Planning Act* has separate tests for each.

Higher level documents must be considered for both the Provincial Policy Statement and the Greater Golden Horseshoe Growth Plan, but these contain a high level of generality. For example, the Provincial Policy Statement discourages lot creation on prime agricultural land and prefers municipal water and sewage over private systems; I find these policies offer little guidance or are not applicable for a severance of one lot in a settlement area.

Severance criteria - s 51(24) of the *Planning Act*

The test for a severance is found in a combination of 53(12) and 51(24) of the *Planning Act*. S. 53(12) permits an owner of land to apply to the Committee of Adjustment for a severance (called a “consent”), using the same criteria as if the owner were applying for a plan of subdivision. S. 51(24) lists fifteen factors the Committee must have “have regard to”, but the extent of this regard is left to be weighed in the particular circumstances of each severance. Some of the other factors to be considered are also stated in a very general way, such as “the welfare of the present and future inhabitants”. I find others are inapplicable, such as the adequacy of municipal services. Still others are rarely a deciding factor, such as the adequacy of school sites. The relevant factors that must be considered in this case are s. 51(24)(c), (f) and (g) of the *Planning Act*:

- (c) Official Plan conformity; and
- (f) the “dimensions and shapes” of the lots.
- (g) the restrictions or proposed restrictions (which I interpret in this context as zoning 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.

Variance tests - s 45(1) of the *Planning Act*

The variances from Zoning By-law 569-2013 must cumulatively and individually:

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

Official Plan

The *Planning Act* requires compliance with the Official Plan for both issues. For a severance, I must have regard whether it “conforms” to the Official Plan, whereas for the variances, I should be of the opinion that the variances “maintain the general intent of the Official Plan”. Second, the “dimensions” of the lots appear specifically as a criterion in 51(24)(f) of the *Planning Act*, whereas for the variances, I am to consider the “prevailing size and configuration of lots” with respect to the test in 4.1.5 of the Official Plan of the City of Toronto. The tests are similar but not identical.

No right to a severance or a variance

The obligation is on Marquis to demonstrate to the decision-maker that the tests are met on the balance of probabilities; there is no right to a severance or a variance.

EVIDENCE

I heard from Franco Romano, Marquis’s planner, and Allan Ramsay, Mr. Kennedy’s planner, both of whom I qualified as expert witnesses. Ms. Tihotchi, Mr. Vlassopoulos and Ms. Smith testified on their own behalves. I visited the site prior to the hearing. What I saw on the site visit is not evidence but enabled me to better understand the evidence given at the hearing.

ANALYSIS, FINDINGS, REASONS

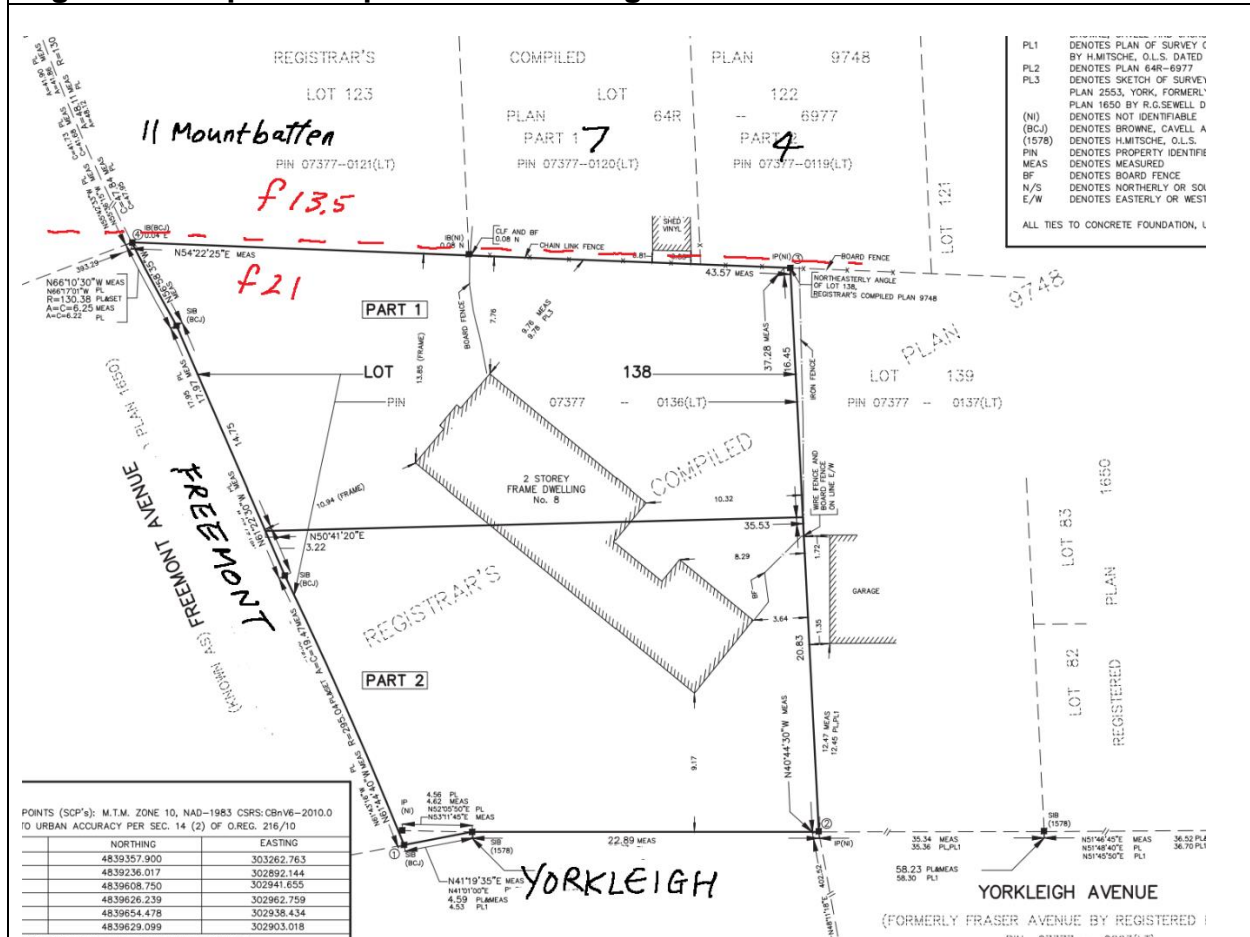
Executive summary of my reasons

The key issue is the **severance** and part of the considerations for granting the severance are the **two frontage** variances and **one lot area** variance. To deal with these, I am required to consider the intent of the zoning by-law, which in this case could not be clearer. It is to prevent creation of new lots under 21 m frontage, which are the size proposed.

I followed the process mandated in s. 4.1.5 of the Official Plan. I compared each planner’s study area and looked at their distribution of lot sizes to determine the character of the neighbourhood. I decided, after considering the historical context, a

2021 planning report on severance activity and the neighbourhood character findings that the development will **not** “respect and reinforce” this character. Meeting this Official Plan test and the companion and zoning intent tests are necessary and so the application fails.

Figure 2. Proposed R-plan for 8 Yorkleigh



The location

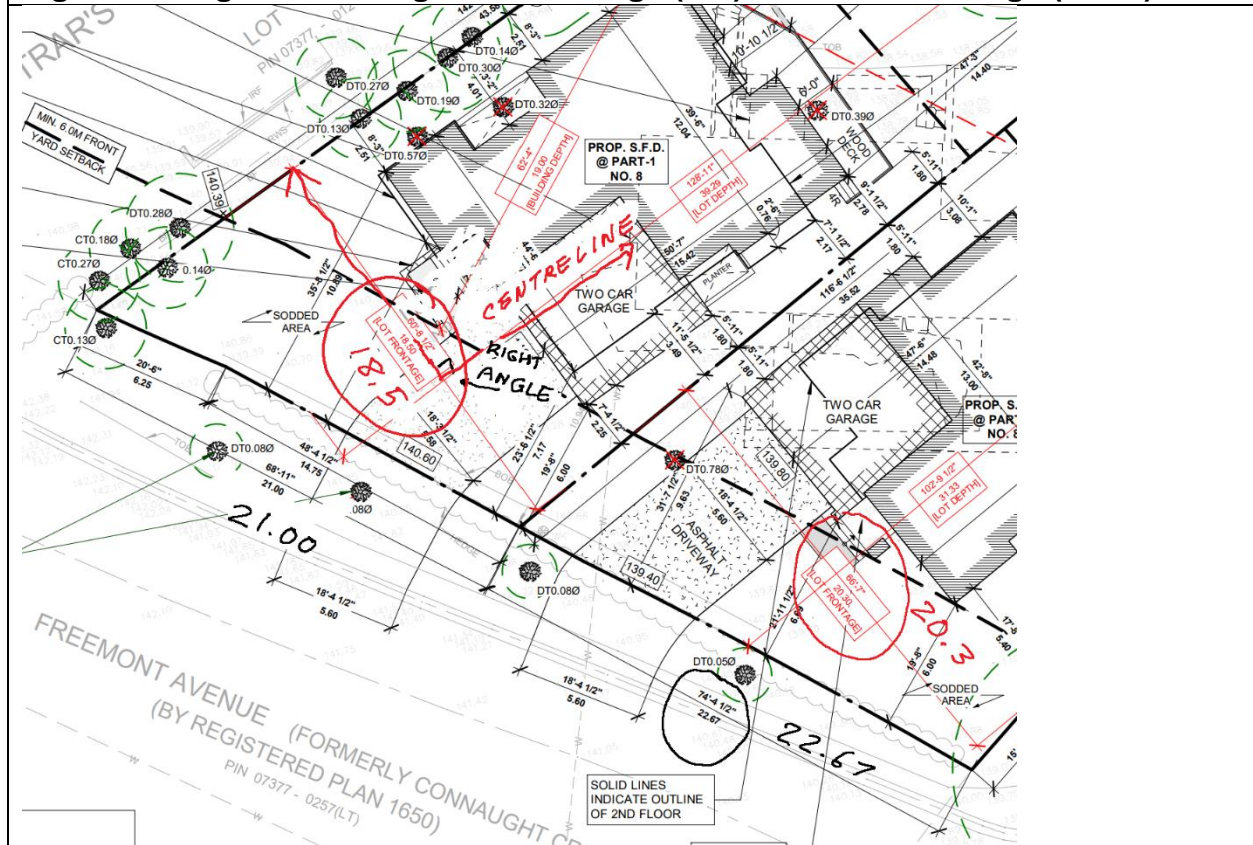
Number 8 Yorkleigh is located in the area south of Lawrence Ave West, between Royal York and Scarlett Road in the former City of Etobicoke. The lot has a Yorkleigh address (the east-west street) and flanks on Freemont (north-south street). Marquis proposes to divide the lot so that both new lots will be Freemont-facing (Figure 2, previous page), and have driveways from Freemont Ave. A driveway location variance is required for one lot (part 2) and Mr. Ramsay, Mr. Kennedy’s planner, concedes that it (No 5 in Table 1) meets the four tests under the *Planning Act*.

“Street Frontage” vs “lot frontage”

The City's geographic data base contains three important numbers: the lot area, "frontage" and depth. Frontage" in the City data is not the "lot frontage" for which Marquis needs a variance. Both planners used City data because that is the only source of information.

"Lot frontage" is a geometrical and legal construction that is calculated by the architect from the R plan (Figure 2). They cannot be exact without a survey. Moreover, where lots are irregular, the difference between street frontage and lot frontage can be misleading.

Figure 3. Diagram showing street frontage (red) and street frontage (black)



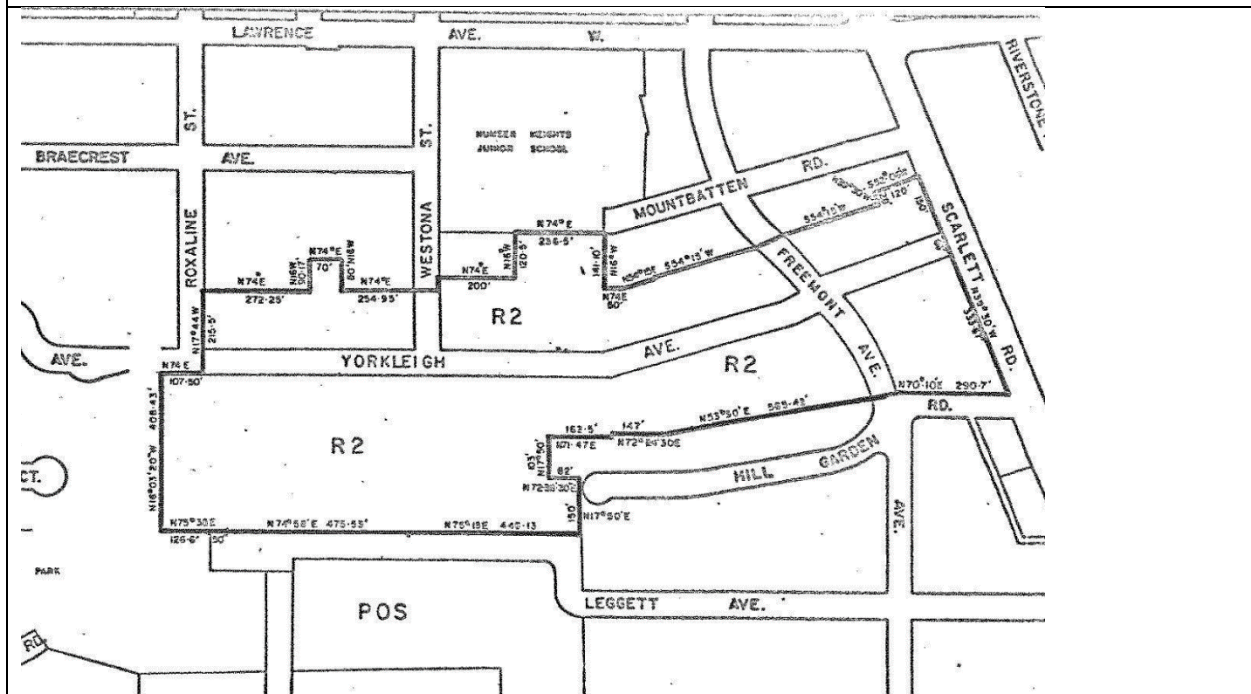
The new legal frontages (in red) are 18.5 m (60.7 ft) and 20.3 m (66.6 ft). the architect has calculated the new street frontages as 21 m (68.9 ft) and 22.67 m (74.4 ft)², shown in black in Figure 3, above.

² These measurements are taken from the EPIC Design's (Marquis's architect's) plans. The numbers do not add up because the lot lines have slight crooks in them.

In his cross examination of Mr. Ramsay (opposing planner), Marquis's lawyer, Mr. Neligan, elicited the admission that the street frontages of 21 m and 22.67 m were within the f21 minimum. Mr. Neligan called this "fatal". I don't agree. The 21 m is significant because of the zoning minimum and may not follow when street frontages are considered. But it points to the difficulty facing both planners who must "bridge" the gap from street frontages to legal frontages. In this case, the discrepancy for the 18.5 m lot is in the order of 12%.

By-law 3184 (Sept 9, 1974)

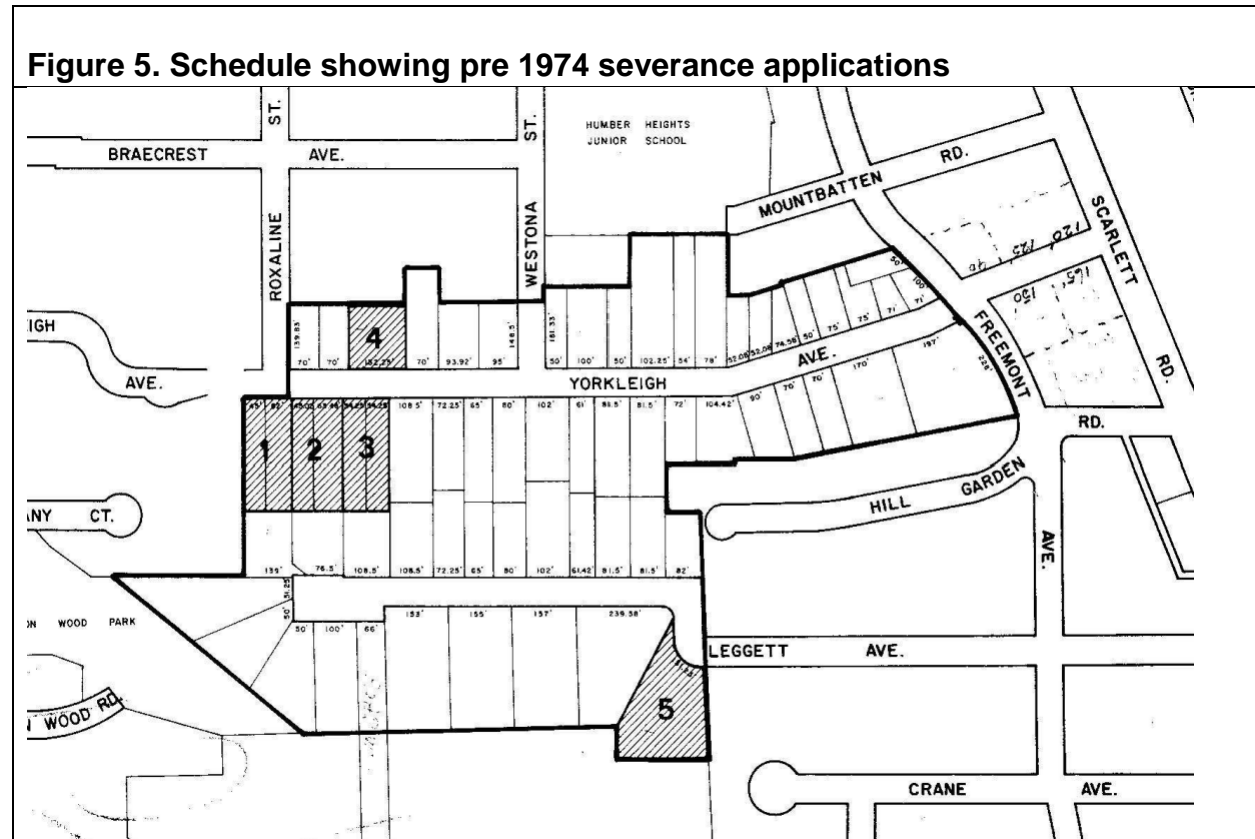
Figure 4. Appendix to By-law 3184 showing the boundaries of the "Preservative Area"



In Figure 2 (page 4), I marked a dotted red line along 8 Yorkleigh's northern boundary. This demarcates two zones: f13.5 to the north and f21 to the south. The "f" stands for "frontage" and denotes either 13.5 m (44.3 ft) or 21 m (68.9 ft), being minimum frontage for the zone. What is unusual in this case is that the f21 zone has its own name: the "Preservative Area". These 63 properties³ (Figure 6B) are f21, an enclave of higher frontages and lot areas.

³ Mr. Romano's statistics refer to 62 properties; I assume he deletes the subject property as its properties are to be changed.

Formerly, this whole area was f13.5. This enclave was “up-zoned” in 1974 by By-law 3184, after some concerns were expressed about severance activity.⁴ I am simplifying some of the history. However it appears that By-law 3184 imposed a new minimum frontage of 21 m (68.9 ft) and a new minimum lot area 695 m² (7,481 sq ft), as well as a minimum depth (not relevant here). I find it significant that it attempted to “tie down” dimensions by imposing the three types of limits. I find these communicate a clear zoning intent, which is one of the important tests for consideration.

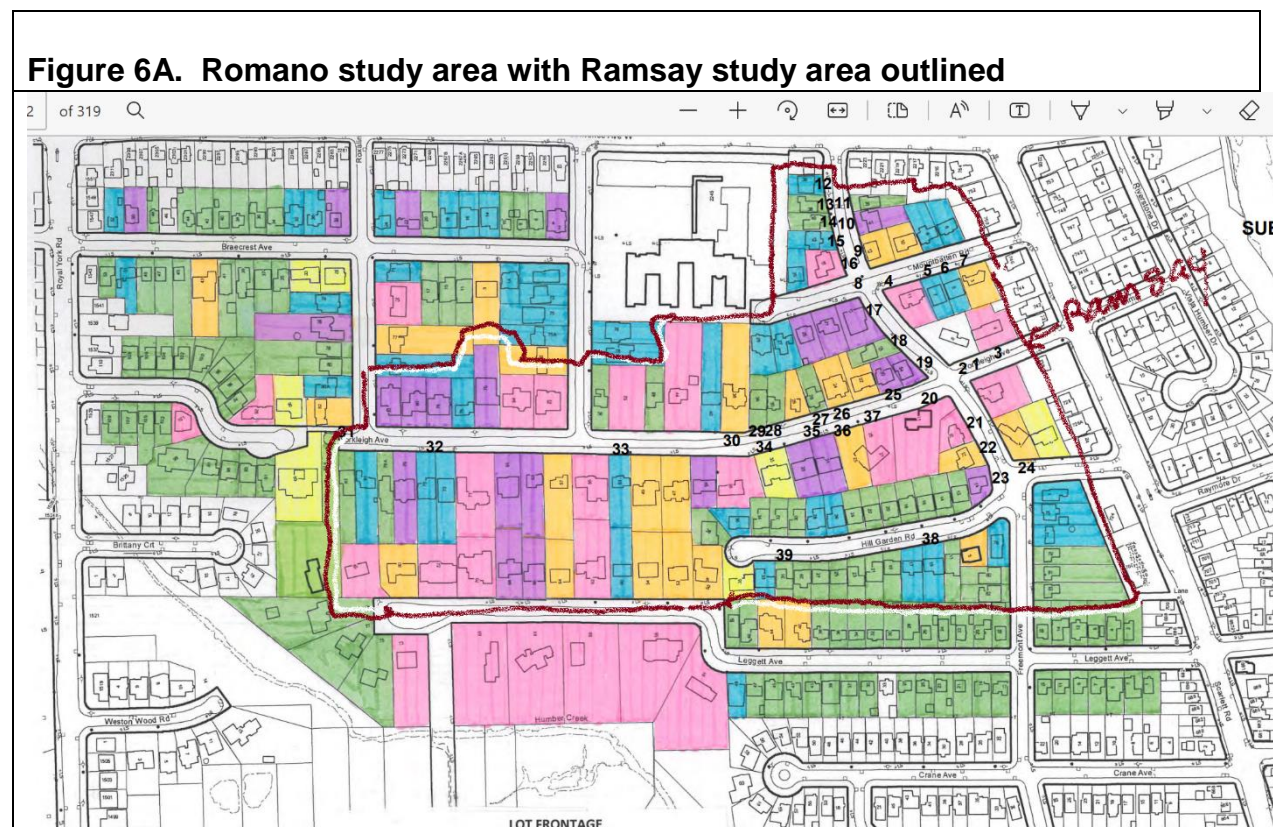


⁴ Although the concern expressed was from other owners than the Yorkleight area. “Neighbourhood support for special zoning. While it is generally recommended that special preservative zoning be enacted only in those neighbourhoods that indicate clear support for such action, it is sometimes difficult to ascertain just what the views and concerns of all residents will be on such a matter. In the case of the North Drive or Westmount Park Road studies recently discussed by the Board, there was a recorded interest on the part of the respective Homeowner's (sic.) associations in special zoning provisions for the areas. In the subject case, **there is no such indication of interest** and it will remain for a public hearing, to be convened by the Board to determine if this essential criterion can be satisfied.” (Study of Desirability of Special Zoning, W. L. Sorensen, Planning Commissioner, Borough of Etobicoke, Dec. 18, 1973)

The report points to four recent severances granted by the Committee of Adjustment (marked 1 to 4 in Figure 5) with dates mostly in 1972. The new lots were in 45-to-70-foot range, the same as Marquis proposes. The Planning Commissioner noted that most lots in the enclave were in the “60-to-85-foot range”. The purpose of the new zoning standard was therefore to deter the creation of new lots in the range under 21 m (68.9 ft), and Marquis’s new lots of 60.7 and 66.6 f would be contrary to that intent.

Moreover, I find from the manner in which the preservative area was drawn, seen more clearly in Figure 5, shows Council was anxious to “right-size” the area, not to include too many lots nor too few. Again, this points to the intent of the preservative area zoning, to prevent creation of new lots precisely in the range Marquis seeks.

The study areas

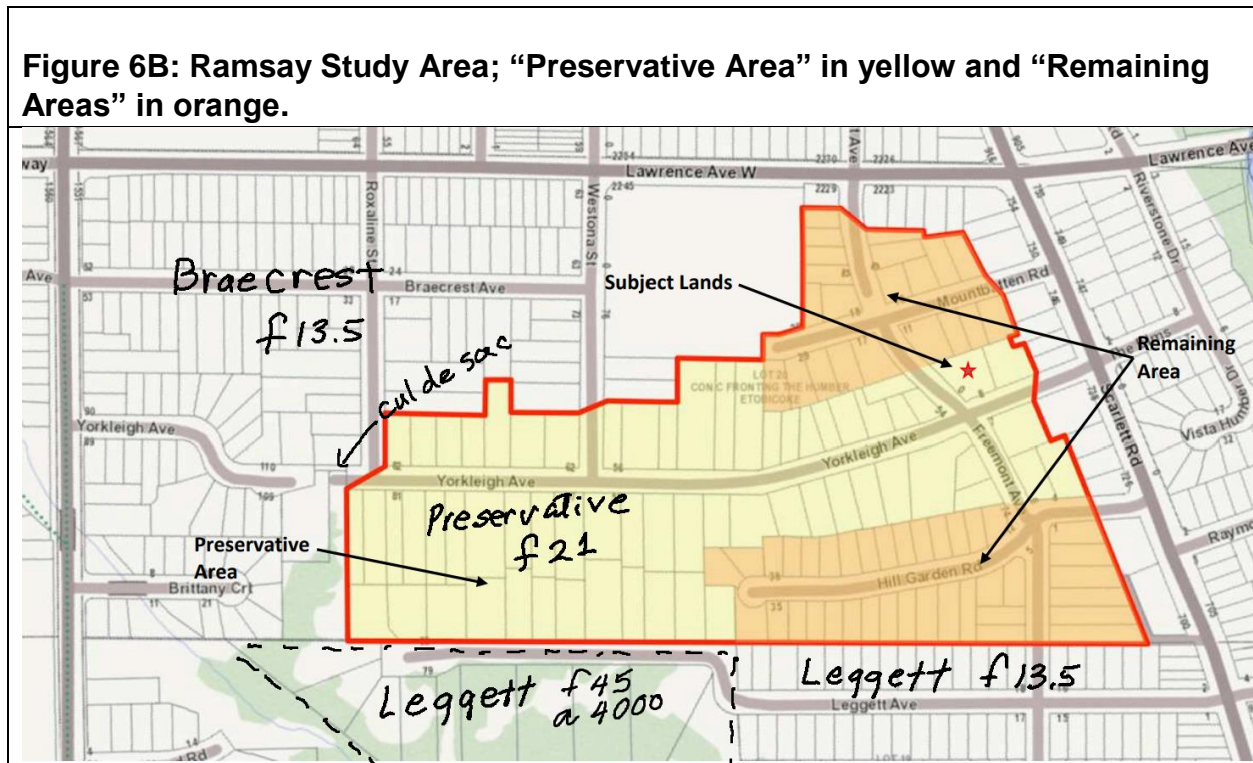


Mr. Romano’s (planner for Marquis) study area is about twice the size of Mr. Ramsay’s (planner for the opposing neighbour Mr. Kennedy) and differs from it by inclusion of three areas:

- an area centered around the intersections of **Braecrest**, Roxaline and Westona. These are zoned f13.5 (44.3 ft).

- A tier of lots on both sides of eastern Leggett, called “f13.5” (44.3 ft minimum frontage).
- A tier of 10 properties on the south side of western Leggett: “f45” (147.6 ft minimum frontage) estate lots.

The following Figure 6B shows the Ramsay study area (coloured). I note the three bulleted areas with handwritten notations.



I find just from examining the lotting patterns that these three areas chosen by Mr. Romano are not needed because they are dissimilar to the particular location of 8 Yorkleigh. I shall get into these particularities on a “walk” later in this decision. Mr. Romano stated that if this proposal was on Hill Garden, another subarea, he (Mr. Romano) would be “against [it]”. Most Hill Garden houses are uniformly 15.24 m frontages.

OP Policy 4.1.5 includes guidance for defining the geographic neighbourhood and includes consideration of the zoning and the lot size and configuration of areas in proximity to a proposed development.

I find the unusually large f45 lots not suitable for inclusion either, given their distance from the property and atypical large areas. I can appreciate that Mr. Romano’s delineation exercise was premised on straight line boundaries and included areas with substantially larger lots as well as those with small frontages.

I accept Mr. Ramsay's study area as an appropriate one for planning analysis. It consists of two parts:

- The Yorkleith corridor "preservative area", marked f21 (68.9 ft) and coloured in yellow.
- Two "remaining areas" coloured in orange, north and south of the preservative area zoned f13.5 ((44.3 ft). Upper Freemont is connected by a pedestrian access only to the Mountbatten T" intersection.

What conclusions did the planners draw from their respective study areas?

The key test is to determine whether the proposed severance will "respect and reinforce" the prevailing pattern of lot frontages and lot areas.⁵ I will concentrate on frontages, as they illustrate the main idea.

Figure 7. Romano frontages; by various areas					
	Broad	Immediate	Immediate-adjacent	Immed. plus adjacent	Preserv. Area
< 16	120 (48%)	1	4	5	8
16.1 < 19	46		2	2	7
19.1 < 22	24 (10%)	2 (50%)	4 (22%)	6 (27%)	14 (23%)
22.1 < 25	26		3	3	15
25.1 < 28	7				2
>28	27	1	5	6	16
total	250	4	18	22	62

Figure 7 above shows Mr. Romano's results. He produced breakdowns of frontages for the broader area, immediate (same block), immediate-adjacent (next block) and preservative area. I created new column by adding the immediate and adjacent to create a combined three-block subarea. Planners typically produce a coloured map coloured to display the results and this Mr. Romano did.

The most relevant cohort is third from the top, with the proposed frontages of 18.5 and 20.3 m. The percentages show a range from 10% to 50%, although Mr. Romano conceded that the small sample size (4 properties) of column 2 "did not show

⁵ 4.1.5 Development in established *Neighbourhoods* will respect and reinforce the existing physical character of each geographic neighbourhood, including in particular:

- b) prevailing size and configuration of lots;
- c) prevailing heights, massing, scale, density and dwelling type of nearby residential properties;
- g) prevailing patterns of rear and side yard setbacks and landscaped open space; ...

much of anything”. At this point, Mr. Romano did not claim to make any more than a preliminary finding that the broader area had a “mix of characters”, ranging from “large to estate sized”.⁶ **Ultimately, he concluded that there was no prevailing lot frontage or lot size.**⁷

A criticism I have of Mr. Romano’s methodology is that frontages are mixed together in the same cohort; the sought-for frontage of 20.3 m is mixed in with 21 m and beyond. This makes drawing a conclusion from this cohort number difficult.

Figure 8. Ramsay frontages			
	Preservative	Remaining	Combined (Broader)
< 13.5	0	1	1
13.5-20.99	18 (29%)	47 (81%)	65 (53%)
21.0-30.99	33 (52%)	8	41
31.0-40.0	9	2	11
>40	3	-	3
	63	58	121

On the other hand, Mr. Ramsay’s cohorts use the relevant zoning numbers as bookends for his cohorts (Figure 8, above). He agreed that his study area contained a “mix of lot areas and frontages”, but that **the “prevailing character of the preservative was one of larger lots”**. He illustrated this by comparing its average frontage, 24.2 m, (21 required) versus for the remaining area’s 17.8 m (13.5 required).

⁶ So, if we look at this map, from a lot frontage perspective, we see that his consists of a mix, lot frontage character. There is a mix of physical characters as it relates to lot frontage. When we look at the table, that helps to inform, well, what is that mix? What does the mix consist of? And that mix consists of ah large . . . or. . . to estate-sized lots. So, it’s not a single prevailing lot frontage. (Romano oral testimony)

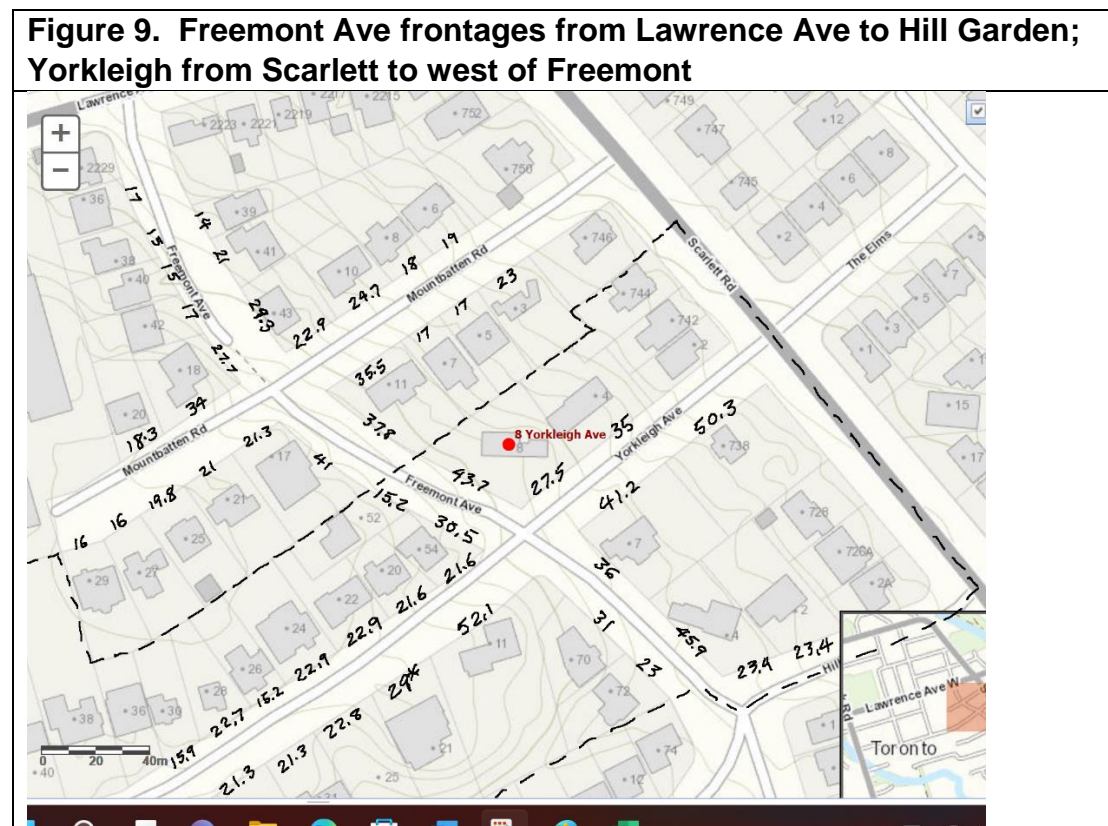
⁷ [Looking south of Yorkleigh, along Freemont to Hill Garden Rd.] “.so, see in this condition, there’s also ah different colours, pink, orange, purple [>28, 22.1 to 25, 19.1 to 22, this is my interpolation] you if we look at it the other way, the immediate adjacent block at, at ah along Yorkleigh, that would take us all the way to Roxaline. . . . [This] is not a compact neighbourhood. It’s . . . there are large to estate sized lots within the broader context. The. . . you really can’t look at this solely by itself either, right? ‘Cause lot size is more than lot frontage. That’s reaffirmed when we look at lot area. ‘Cause lands that are less than 510 m². . . [you] see there’s 5%, so there’s a half decent representation . . . , there’s probably not a significant number, but there’s a half decent representation of lots that are less than 510, there’s a large number at 510 to less than 695, **42%**. So once again this lot area reaffirms what’s happening from a lot frontage perspective; that you’ve got moderately large too large to estate sized lots and there is more than one prevailing lot size within the broader context.

I noted previously that I thought Mr. Romano's areas were overlarge. When areas are excluded, this puts into question Mr. Romano's conclusion that "42%" of properties are similarly sized to Marquis's proposal (see Footnote 5).

At this point the numbers are ambiguous, as both planners agree on the word "mix" but with different slants being placed on the term. I turn now to see if the word "mix" can be elucidated with respect to the respect and reinforce test by examination of the photographs.

The character of the neighbourhood

A numerical examination is not the end, but a means to the end. The goal is to determine the physical character, which includes numeric information but also visual data from which the finder of fact can add a verbal description. To achieve this, I will "walk" the neighbourhood, and integrate the evidence from the hearing with the photographs. I will work with the planners' maps' previously shown as Figures 6A and 6B. In Figure 9 below I have replaced Mr. Romano's colours with numbers; these are derived from his raw data.



To identify the properties in Figure 9, I use Mr. Romano's photo reference numbers instead of addresses, as they are more readable.

Figure 9. Romano map, with photos inset.; architect's elevation for 8 Yorkleigh



I start my walk just north of the subject property, along the flankage of "4", which is the pink property with a street frontage of 37.8 m on the east side of Freemont. If I turn the corner at Mountbatten, I will see the view in the photograph 4. It shows a wide lot (35.5 m), a two-car driveway, attached garage, mature trees. If I continue down

Mountbatten (no photos), I will see smaller frontages, (17, 17, 23 m), but since this is in the f13.5 zone, these smaller frontages are by-law compliant and, in any case, the lots are not in the adjacent study area.

I now return to Freemont and go north. At this point vehicular traffic cannot enter, but there is a pedestrian passage, and continuing north, the two corner properties (9, 3 dormers with wide side yard to the north, and 16 triple garage), both have large frontages, 27 and 29 m. There are a number of smaller properties at the end of upper Freemont, and I reproduce one, photo number 14. It has a driveway width of one car and integral garage, like the one Marquis proposes — but these smaller frontages are still By-law compliant, unlike Marquis. Compliance is important because the official plan character is not only what exists physically, but what is legally permissible (i.e., the “planned context”).

Continuing south, I traverse the 41 m frontage for the house at photo 17, across the f21 zone boundary and look at number 18, a lovely house, built before By-law 3184 and undoubtedly contributing to the “mix” of frontages. With its frontage of 15.2 m (50 ft), it will be one of the smallest lots to be encountered and is the only non-compliant frontage out of 17 or so properties. I emphasize compliance again because the “photo14” property in upper Freemont, although also a 15 m frontage, is in a different zone. I note that to the right there is dense vegetation, but from the map, it appears that 18 has a tight side yard interfacing the rear yard of 17.

Marquis may question that I take into account zoning lines when observing the neighbourhood. I believe this is the correct approach; the Official Plan refers to zoning lines as a consideration when delineating the “broader” or geographic neighbourhood. I continue south along the 30.5 m flankage of 19 and look to my right down Yorkleigh at 25, 26 and 27.

Past these lots is another noncompliant lot on the north side of Yorkleigh (6th from my vantage point) and I presume it can barely be seen from the intersection. I note as well that Yorkleigh appears to have much longer blocks than Freemont, and this contributes the physical character, according to s. 4.1.5 of the Official Plan.

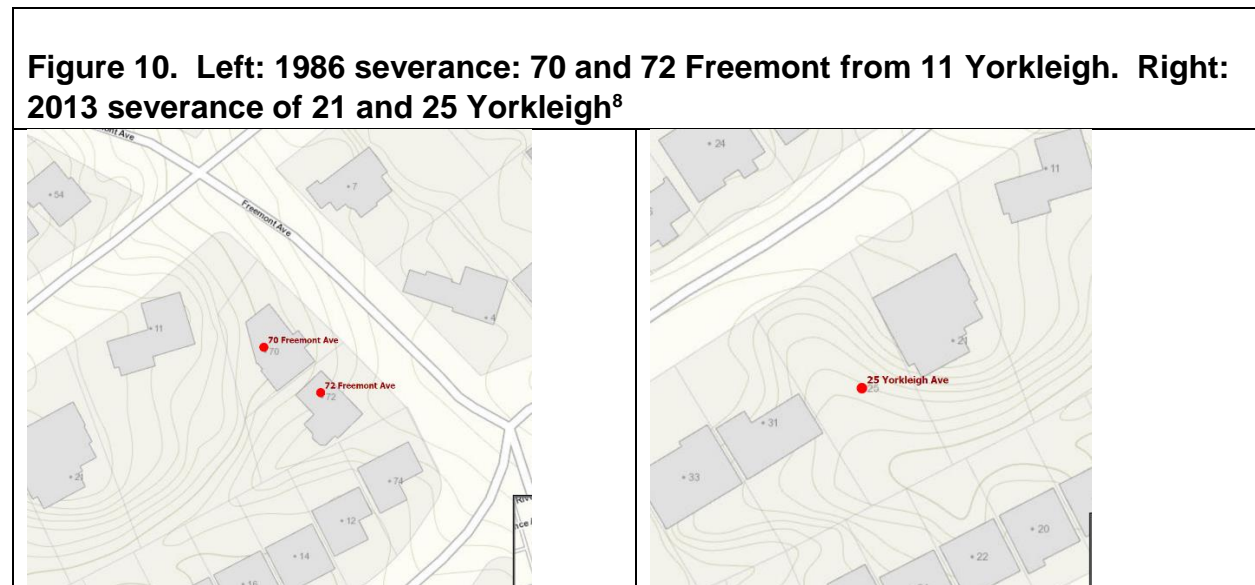
On the southwest corner is a house at 20 which was apparently the original farmhouse, frontage of 52.1. Numbers 21 and 22 were severed from 20, with frontages of 31 and 23 m. The severance date was 2013 and no variances were needed (this severance is referred to again on page 16, next section). I continue down “lower” Freemont to Hill Garden. Hill Garden is clearly a different plan of subdivision. I turn around and go north along the east side of Freemont, observing numbers 22 and 21 (frontages of 45.9 and 36 m) and come back to the start, at 8 Yorkleigh.

Integration of all the evidence displays a character of short blocks, long frontages and flankages, and many corner lots (more than half). The abundance of corner lots gives the immediate context a different “feel” than a long street of interior lots. I found mature trees and wide driveways. Above all, I found **wide front yards** and generous side yard setbacks. I did not find developments similar to this proposal, namely a pair of sub f21 frontages together.

Having made this finding, I conclude that the proposal would not reinforce the prevailing character and thus fails the intent of the Official Plan. I now examine the historical pattern of granting and refusal of severances.

History and 2021 Planning Report

I have already discussed the lead-up to By-law 3184. Since 1974, there have been two approved severances (Figure 11). Both were “as of right” and both are the “adjacent” context to 8 Yorkleigh. I have already indicated the Freemont severance on the walking tour; the size of the remainder lot (2218 m²) is more than three times the minimum and underscores the fact that no variances were needed.



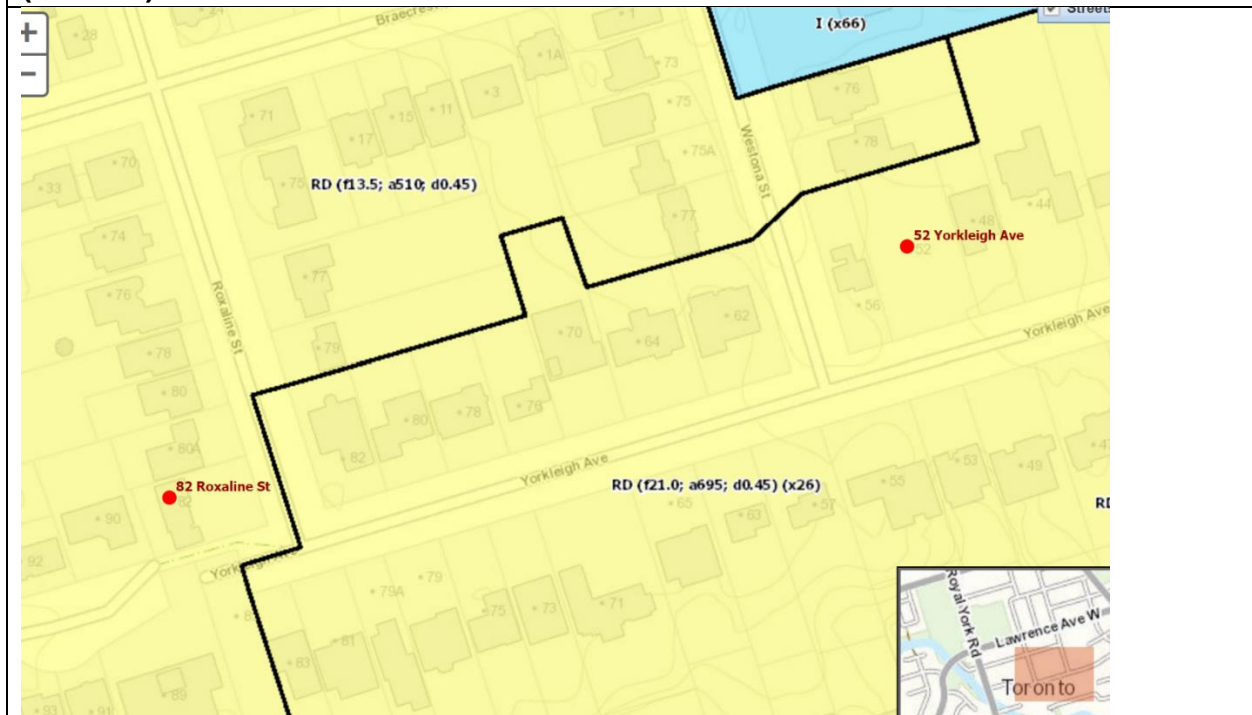
There are also two refusals: 52 Yorkleigh (2008) and 82 Roxaline (2017).

The earlier one is located between Westona and Roxaline in the Preservative Area, but outside the three-block area considered earlier. This was an owner appeal from a Committee of Adjustment refusal. The facts were that the owner sought to divide

⁸ Mr. Ramsay labels this as 23 and 25 Yorkleigh. I believe these are the proper addresses from City data.

a 100-foot lot (30.4 m) into two 15.2 m lots (21 m required). Although Mr. Romano (retained by the City Solicitor in opposition to the severance) made statements about the essential character of the area that are helpful for Mr. Kennedy, I do not consider that this is of consequence. Mr. Romano set forth his planning opinion to the best of his ability on behalf of his client. This case is of lesser value as an example of a refusal, owing to its early date and the owner not hiring a planner who could test the opposing position.

Figure 12. Location of 52 Yorkleigh (inside preservative area) and 82 Roxaline (outside)



The second case, 82 Roxaline, like this one, is a Committee of Adjustment approval with the City taking “no objection”.⁹ Roxaline is outside the Preservative Area, and the OMB accepted Mr. Ramsay’s evidence on behalf of the objecting neighbours

⁹ Neither the planning staff, nor the engineering department for the City, had any objections or concerns with respect to the proposed severance or variances. The Appellant, who resides nearby at 76 Roxaline Street appealed the decisions of the Committee (“Decisions”). [4] Six neighbours who reside in close proximity to the Subject Property on Yorkleigh Avenue (“Yorkleigh”) attended the hearing to support the Appellant in his appeal and requested participant status. There were no objections, and the Board accordingly recognized the following persons (with their respective addresses noted) as participants (collectively, the “Participants”): Ana De Pede (83 Yorkleigh), Ralph Grittani (82 Yorkleigh), Valerie Magi (75 Yorkleigh), Lena Di Carlo (80 Yorkleigh), Karl Huska (80A Roxaline Street), and Michael Parzei (95 Yorkleigh

that the policy thrust for the Preservative Area “spilled over” (my words) to prevent severance of an f13.5 m lot located just outside the preservative boundary.¹⁰

In short, the Preservative Area’s larger frontages and more stringent zoning parameters has been accepted and applied consistently, even when City Planning staff have no objections to the original application.

I now turn to the City Planning report of June 4, 2021. The significance is that this report was in response to a Council request asking for ways to “protect residential estate lots from being severed and also options to protect estate lots in the Etobicoke York District”. By “estate lots”, the author meant lots from 21 m to 45 m frontages, mostly in the twenties, and not just at the larger end. The author reviewed six other Golden Horseshoe municipalities but, in my view, none of them was similar to the Yorkleight Avenue neighbourhood with its specific history. The report noted: “The estate lots in Etobicoke York District are unique. . . as they represent a rural form of development found in a very urban setting”. Staff concluded:

It is the opinion of staff that the current policies in the Official Plan, particularly the Neighbourhoods policies, are sufficient to protect estate lots from severances that are out of keeping with the character of the area. Staff will continue to monitor development trends for a period of three years on estate lots to see if there is any increased pressure to sever these lots and to report back if this pressure is increased.

The report is helpful for understanding the Official Plan direction, “Neighbourhoods are considered to be physically stable”. While Marquis may disagree whether Council should continue to uphold rural type lots in an urban setting, this is clearly Council’s current intent and is reflected in its Official Plan and f21 zoning. The *Planning Act* directs me to look at those documents because the intent and purpose of the Official Plan and zoning are specific tests.

As I concluded the Marquis proposal does not reinforce the neighbourhood character, the severance test of Official Plan conformity and the variance test of maintaining the intent of the Plan area are not met.

¹⁰ [25] Second, the delineated lot fabric shown within Mr. Kemal’s study area, and the table of Property Characteristics (Exhibit 8), in my view are, together, more persuasive in demonstrating **that the central area** of his Context Plan, which represents an area of larger lots along the Humber Creek and the Yorkleight Corridor, (that includes the residential lots on both sides of Roxaline and Westona) **is quite different from the peripheral portions of his Context Plan which contain narrower and smaller lots**. The visual appearance of the lot fabric, and the numerical data presented, more logically demonstrate that the periphery areas included by Mr. Kemal should be excluded because they are different in size and frontage. Mr. Kemal has included, within his Context Plan area, those more condensed, and outlying residential lots fronting on Lawrence Avenue West and Scarlett Road, and within the contained Brittany Court enclave, which are commonly excluded by Planners when identifying a neighbourhood for study and analysis. (2017 CanLII 36403 (ON LPAT) 12 PL160574)

Decision and Order

The consent is not granted, and the variances are not authorized.



X

T. Yao
Panel Chair, Toronto Local Appeal Body