

# DECISION AND ORDER

**Decision Issue Date**      Wednesday, September 28, 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): 549 INDIAN ROAD LTD

Applicant(s): MHBC PLANNING

Property Address/Description: 549 INDIAN RD

Committee of Adjustment File

Number(s): 21 129635 STE 04 CO (B0036/21TEY), 21 129637 STE 04 MV (A0435/21TEY), 21 129638 STE 04 MV (A0434/21TEY)

**TLAB Case File Number(s): 21 215471 S53 04 TLAB, 21 215475 S45 04 TLAB, 21 215476 S45 04 TLAB**

**Hearing date: January 21, 2022**

**Deadline Date for Closing Submissions/Undertakings:**

**DECISION DELIVERED BY TLAB Panel Member J. Tassiopoulos**

## REGISTERED PARTIES AND PARTICIPANT

Applicant	MHBC PLANNING
Appellant	549 INDIAN ROAD LTD
Appellant's Legal Rep.	IAN FLETT
Participant	TERESA BARBARA BECKER
Participant	JANINA ZAK
Participant	ALICE TSENG
Expert Witness	MICHAEL MANETT

## **INTRODUCTION**

On September 1, 2021, the City of Toronto (City) Committee of Adjustment (COA) refused the consent requested for the COA file number B0036/21TEY, for the property located at 549 Indian Road (subject property). The property fronts onto Indian Road and its rear lot line is on Edna Avenue. The Appellant / Applicant seeks to sever the subject property at 549 Indian Road creating two lots, maintaining the frontage of Indian Road on the north and building a new single detached dwelling on the severed parcel that fronts onto Edna Avenue along the south side of the property.

The subject property is located north of Bloor Street West and west of Dundas Street West on the south side of Indian Road. The existing three-storey detached dwelling with five residential units will be retained, and the proposed severance is to create a lot that fronts onto Edna Avenue with a new two-and-one-half-storey detached dwelling. The variances sought are with respect to the severance and both the existing and proposed building on the resulting lots.

The COA's refusal of the consent application was appealed to the Toronto Local Appeal Body (TLAB) by Mr. James Bruner, the Appellant (549 Indian Road Ltd.), on September 20, 2021. The TLAB issued a Notice of Hearing setting a Hearing date for January 21, 2022.

In attendance at the Hearing were:

- Mr. Ian Flett, legal counsel for the Appellant;
- Expert Witness Michael Manett (Land Use Planning);
- Brandon Couldrey, 549 Indian Road Ltd.;
- Teresa Becker, Participant;
- Alice Tseng, Participant; and,
- Mark Pellar, neighbour.

I advised those in attendance, as per Council direction, that I had visited the site and surrounding neighbourhood and reviewed the pre-filed materials in preparation for the Hearing, but it was the evidence to be heard that was of importance.

At the beginning of the Hearing, Mr. Flett indicated that there was an error in the Zoning Notice and that the City's Examiner had incorrectly identified the FSI for the proposed retained lot (Part 1) as 0.77 times the lot area. The corrected variance is for an FSI of 1.3 times the lot area. Mr. Manett, having been affirmed to provide expert evidence in land use planning, confirmed that during his review of the proposal he had noticed this discrepancy. He explained that the FSI had been incorrectly determined as the lot was divided by the existing buildings' gross floor area as opposed to dividing the gross floor areas of the retained building (221.37 m<sup>2</sup>) by the retained lot area of Part 1 (170.98 m<sup>2</sup>); this generates an FSI of 1.3 times.

He explained that this change had no impact on the physical nature or built form proposed but was rather a correction of an error in FSI. Mr. Manett further indicated that all of the evidence in the disclosure documents was undertaken with the understanding that an FSI of 1.3 times would be sought for both the retained and conveyed lots of the proposal.

Having noted that the change in FSI did not alter any of the architectural drawings, site plan, or survey plan that had been submitted as part of the application, I found that the change was minor and did not require the recirculation of the Application by way of a new Notice pursuant to S.45 (18.1.1) of the *Planning Act (Act)*.

Another housekeeping matter that arose prior to commencing the Hearing was the Participant Ms. Teresa Becker's request that she have the opportunity to present on the morning of the Hearing as she would not be able to be present for the whole Hearing. Mr. Flett did not object to this request and indicated that Ms. Becker's concerns centred on parking impact. He suggested that Mr. Manett be given the opportunity to speak to that matter and that Ms. Becker follow, in case the evidence provided information that would address her concerns. I agreed to this chronology of testimony.

## **BACKGROUND**

### **THE CONSENT REQUESTED**

To obtain consent to sever the residential lot into two undersized residential lots.

#### **Retained (Part 1) - 549 Indian Road**

Part 1 has a lot frontage of 5.68 m on Indian Road and an area of 170.898 m<sup>2</sup>. The existing three-storey five-unit detached dwelling will be maintained and will require variances to the zoning by-law, as requested through Minor Variance application A0435/21TEY.

#### **Conveyed (Part 2) - Address to be assigned**

Part 2 has a lot frontage of 7.18 m on Edna Avenue and an area of 134.28 m<sup>2</sup>. A new two-and-one-half-storey detached dwelling will be constructed and will require variances to the zoning by-law, as requested through Minor Variance Application A0434/21TEY

### **REQUESTED VARIANCES TO THE ZONING BY-LAW**

#### **549 Indian Road (Part 1)**

##### **1. Chapter 10.10.40.70.(2), By-law 569-2013**

The minimum required rear yard setback is 7.5 m.

The detached dwelling will be located 1 m from the south rear lot line.

**2. Chapter 10.10.40.40.(1)(A), By-law 569-2013**

The maximum permitted floor space index of a detached dwelling is 0.60 times the area of the lot (102.59 m<sup>2</sup>).

The detached dwelling will have a floor space index equal to 1.3 times the area of the lot (221.37 m<sup>2</sup>).

**3. Chapter 10.5.50.10.(3)(A), By-law 569-2013**

A minimum of 50% (10 m<sup>2</sup>) of the rear yard must be maintained as soft landscaping.

In this case, 0% (0 m<sup>2</sup>) of the rear yard will be maintained as soft landscaping.

**4. Chapter 10.10.30.10.(1)(B), By-law 569-2013**

The minimum required lot area is 180 m<sup>2</sup>.

The area of the residential lot will be 170.98 m<sup>2</sup>.

**5. Chapter 200.5.10.1.(1), By-law 569-2013**

A minimum of 4 parking spaces are required to be provided on-site.

In this case, zero parking spaces will be provided on-site.

**Edna Avenue (Part 2) – address to be assigned**

**1. Chapter 10.5.40.70.(1)(A), By-law 569-2013**

The minimum required front yard setback is 1.18 m.

The new detached dwelling will be located 1.03 m from the south front lot line.

**2. Chapter 10.10.40.40.(1)(A), By-law 569-2013**

The maximum permitted floor space index of a detached dwelling is 0.60 times the area of the lot (80.57 m<sup>2</sup>).

The detached dwelling will have a floor space index equal to 1.3 times the area of the lot (174.7 m<sup>2</sup>).

**3. Chapter 10.10.30.10.(1)(A), By-law 569-2013**

The minimum required lot area is 180 m<sup>2</sup>.

The area of the residential lot will be 134.28 m<sup>2</sup>.

**4. Chapter 10.5.50.10.(1)(D), By-law 569-2013**

A minimum of 75% (6.96 m<sup>2</sup>) of the required front yard landscaped open space must be in the form of soft landscaping.

In this case, 36% (3.37 m<sup>2</sup>) of the required front yard landscaped open space will be in the form of soft landscaping.

**5. Chapter 10.5.40.60.(3)(A)(iii), By-law 569-2013**

Exterior stairs providing pedestrian access to a building or structure may encroach into a required building setback if the stairs are no closer to a lot line than 0.6 m. The front stairs will be located 0.06 m from the south front lot line.

**6. Chapter 10.5.40.60.(7), By-law 569-2013**

Roof eaves may project a maximum of 0.9 m provided that they are no closer than 0.30 m to a lot line. The roof eaves will be located 0.16 m from the west side lot line.

**7. Chapter 10.5.40.60.(1)(A)(i), By-law 569-2013**

A platform without main walls, attached to or less than 0.3 m from a building, with a floor no higher than the first floor of the building above established grade may encroach into the required front yard setback 0.59 m if it is no closer to a side lot line than the required side yard setback. The front platform will encroach 1.28 m into the required front yard setback.

**8. Chapter 10.10.40.70.(2), By-law 569-2013**

The minimum required rear yard setback is 7.5 m. The new detached dwelling will be located 0.78 m from the north rear lot line.

**9. Chapter 200.5.10.1.(1), By-law 569-2013**

A minimum of one parking space is required to be provided on-site. In this case, zero parking spaces will be provided on-site.

## **MATTERS IN ISSUE**

Does the application for the proposed severance meet the criteria set out in s. 51(24) of the *Planning Act*?

Of the criteria regarding consents to sever listed under s.53 of the *Planning Act*, only the criteria set out in 51(24)(c) and (f) are pertinent for this application - whether the application conforms to the Official Plan and the dimensions and shapes of the proposed lots. The primary issue in the Appeal is whether consent to sever the subject property into two undersized lots “will respect and reinforce the existing physical character of the neighbourhood” as required by section 4.1.5 of the Official Plan.

Are the variances sought for the retained building fronting Indian Road and those to permit the construction of the proposed dwelling on the conveyed lot, fronting Edna Avenue, individually and collectively, meet the policy considerations and the four statutory tests under s.45(1) of the *Planning Act*?

## **JURISDICTION**

### **Provincial Policy – S. 3**

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

### **Consent – S. 53**

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

- (a) the effect of development of the proposed subdivision on matters of provincial interest as referred to in section 2 of the Planning Act;
- (b) whether the proposed subdivision is premature or in the public interest;
- (c) whether the plan conforms to the official plan and adjacent plans of subdivision, if any;
- (d) the suitability of the land for the purposes for which it is to be subdivided;
  - (d.1) if any affordable housing units are being proposed, the suitability of the proposed units for affordable housing;
- (e) the number, width, location and proposed grades and elevations of highways, and the adequacy of them, and the highways linking the highways in the proposed subdivision with the established highway system in the vicinity and the adequacy of them;
- (f) the dimensions and shapes of the proposed lots;
- (g) the restrictions or proposed restrictions, if any, on the land proposed to be subdivided or the buildings and structures proposed to be erected on it and the restrictions, if any, on adjoining land;
- (h) conservation of natural resources and flood control;
- (i) the adequacy of utilities and municipal services;
- (j) the adequacy of school sites;

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

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

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

### **Variance – S. 45(1)**

In considering the applications for variances from the Zoning By-laws, the TLAB Panel must be satisfied that the applications meet all of the four tests under s. 45(1) of the Act. The tests are whether the variances:

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

### **EVIDENCE**

A summary of evidence is presented here for the purpose of providing some context for the following sections of this Decision. All of the evidence and testimony in this matter has been carefully reviewed and the omission of any point of evidence in this summary should not be interpreted to mean that it was not fully considered, but rather that the recitation of it is not material to the threads of reasoning that will be outlined in the *Analysis, Findings, Reasons* section below.

#### **Expert Land Use Planning Witness Michael Manett**

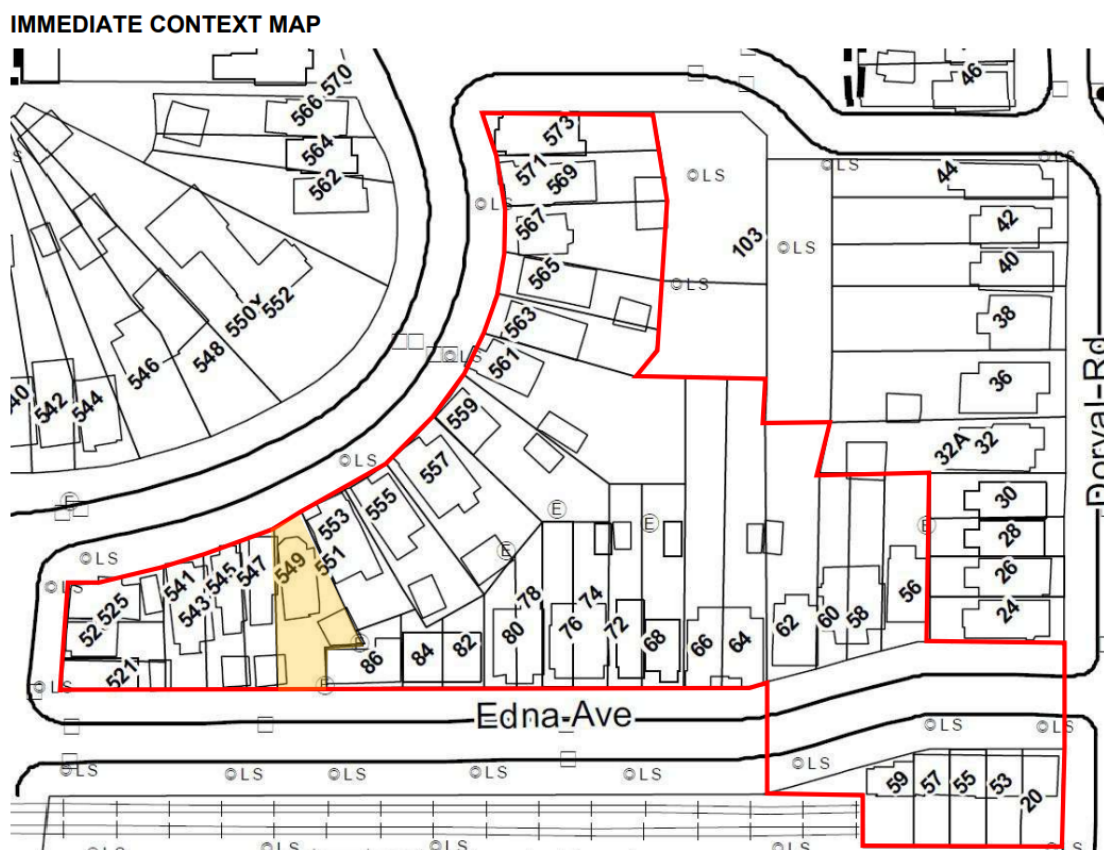
Mr. Flett called Mr. Michael Manett as an expert witness, and he was affirmed. Mr. Manett was qualified to provide opinion evidence in land use planning. Mr. Flett's Appellant Disclosure documents (Exhibit #1) and Expert Witness Statement and supporting materials (Exhibit #2) were entered into the record as exhibits.

Mr. Manett began his evidence with respect to parking in the area as it was the concern that Ms. Teresa Becker, Participant, had expressed in her witness statement. He explained that the application sought parking variances for both Parts of the proposed lots, noting Part 1 requires 4 parking spaces and Part 2 would require 1 parking space; none will be provided for either.

Mr. Manett noted that the subject property is in very close proximity and walking distance to the Dundas West and Keele TTC subway stations, 460 metres and 315 metres respectively. He mentioned that in the broader neighbourhood, 73 properties or 47% of the properties, had fewer parking spaces than residential units and that none of the current tenants in the existing five-unit building make use of the existing on-site parking. He opined that this was due to the proximity and accessibility of nearby transit.

He explained that there was sufficient off-site parking in the area. The City's Transportation Services indicated that in the permit parking area 1B, in which the subject property is located, 80% is subscribed with 1,605 permits issued out of 2,016 parking spaces. He further indicated that the review of Transportation Services data revealed that close to the subject property, 76% of spaces on Indian Road and 48% of spaces on Edna Avenue are subscribed and parking on the street was more than sufficient.

In speaking to the broader and immediate neighbourhood used in his analysis of the area surrounding the subject property, he noted that the area is composed of an eclectic mix of lot sizes and shapes as a result of the curving portion of Indian Road and that the irregular block shape leads to through lots such as the subject property (Fig. 1).





Speaking to the subject property, he indicated that the proposed building would be located fronting onto Edna Drive, the existing garage for 549 Indian Road would be removed, and this area to the side of the proposed new building would serve as the yard space for the conveyed lot.

Mr. Manett indicated that the neighbourhood and immediate context included a wide variety of lot sizes, shapes and frontages, and that there was no consistent lot pattern with respect to physical character. He opined that both the retained lot and proposed lot, resulting from the severance, "*would fit within the character of the lot sizes shapes and patterns*" (excerpt from Hearing recording, 1:28:35).

In his analysis of lot sizes, Mr. Manett indicated that there were 12 properties in the immediate context that are below the required minimum of 180m<sup>2</sup> and that 9 of those properties that are closest to the proposed lot (Part 2) had areas smaller than the proposed lot area of 134.28m<sup>2</sup>.

Referring to section 4.1.5 of the OP, he explained that it requires that all new development takes into account the prevailing neighbourhood characteristics and that in particular subsections 4.1.5 b), c), d), f) and g), the proposed development meets these requirements.

In his review of section 51(24) of the *Planning Act*, he stated the proposed lot areas and configurations are not premature and that their irregular shapes and dimensions are consistent with broader and immediate neighbourhood context, which includes many irregular shaped sized and shaped lots. The proposed lot to be conveyed "respects and reinforces the prevailing character of the neighbourhood based on the proposed dimensions and shapes of the lots..." (Exhibit #2, para. 45). He concluded that the severance meets the requirements of s. 51(24) because it is suitable for the neighbourhood and the purpose for which the severance is being requested.

### **Teresa Becker, Participant**

Ms. Becker expressed concern about the development and stated that it is an overdevelopment of the property and that there are many resulting impacts to the neighbours of this property and in the neighbourhood. She explained that the parking situation in the neighbourhood was problematic and that in her experience, parking is deficient, and the proposal's variance to not provide any on-site parking spaces will further exacerbate this condition.

She was also concerned that the proposed construction would introduce five units on Part 2 fronting Edna Avenue. When Mr. Manett explained that the Part 2 proposal was in fact only one residential dwelling. Ms. Becker indicated that regardless, the proposal was an overdevelopment of the site.

### **Alice Tseng, Participant**

Ms. Tseng mentioned that a typical characteristic in the neighbourhood is properties with driveways that lead to garages and parking.

She indicated that the rear parking area for 549 Indian Road is being utilized for parking and that there are cars parked there frequently. She is concerned that there is already an issue with parking on Edna Avenue and that the proposal would worsen this condition as it will not include parking on the proposed new lots.

Ms. Tseng was concerned about the configuration of the lot and that the proposed dwelling on the conveyed lot extends beyond the rear wall of her home, which would impact privacy as the windows on the side of the proposed dwelling would be directed towards her rear yard and deck area.

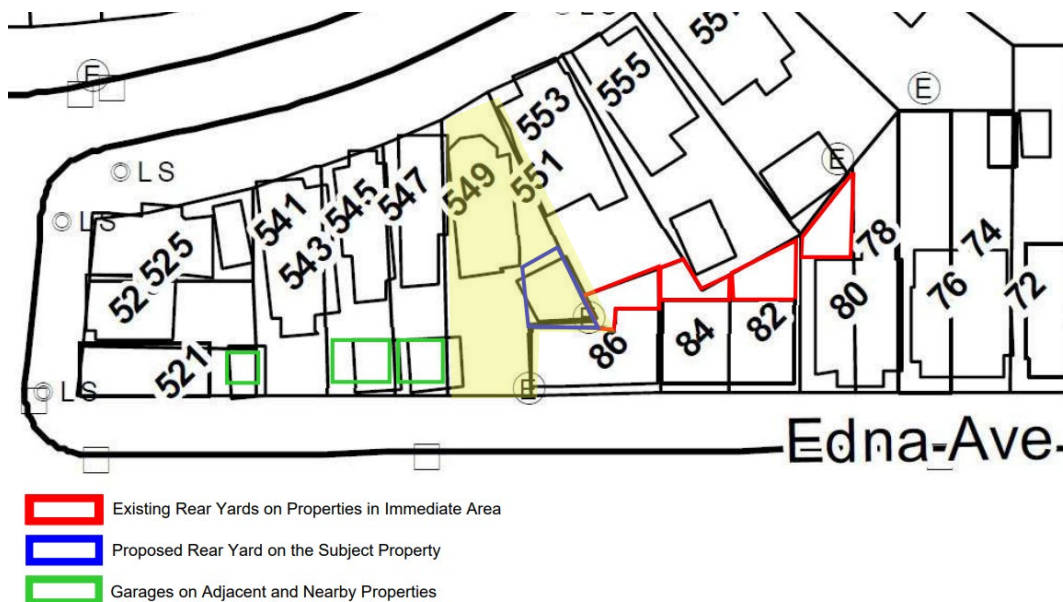
## **ANALYSIS, FINDINGS, REASONS**

During the Hearing the concerns of the Participants centred on the issue of parking and that both the retained part and the proposed severed part of 549 Indian Road would not provide any on-site parking exacerbating the lack of available parking.

I understand that this is an existing condition observed by the Participants and that they are earnest in their concerns, however, Mr. Manett did clearly illustrate in his evidence that permit parking in the neighbourhood was undersubscribed and that transit stations and parking lots are in very close proximity to the property. Before the parking and other variances can be considered, however, the proposed severance must conform to the provisions of section 51(24) of the *Planning Act* and meet the requirements of the development criteria for *Neighbourhoods* in section 4.1.5 of the Official Plan.

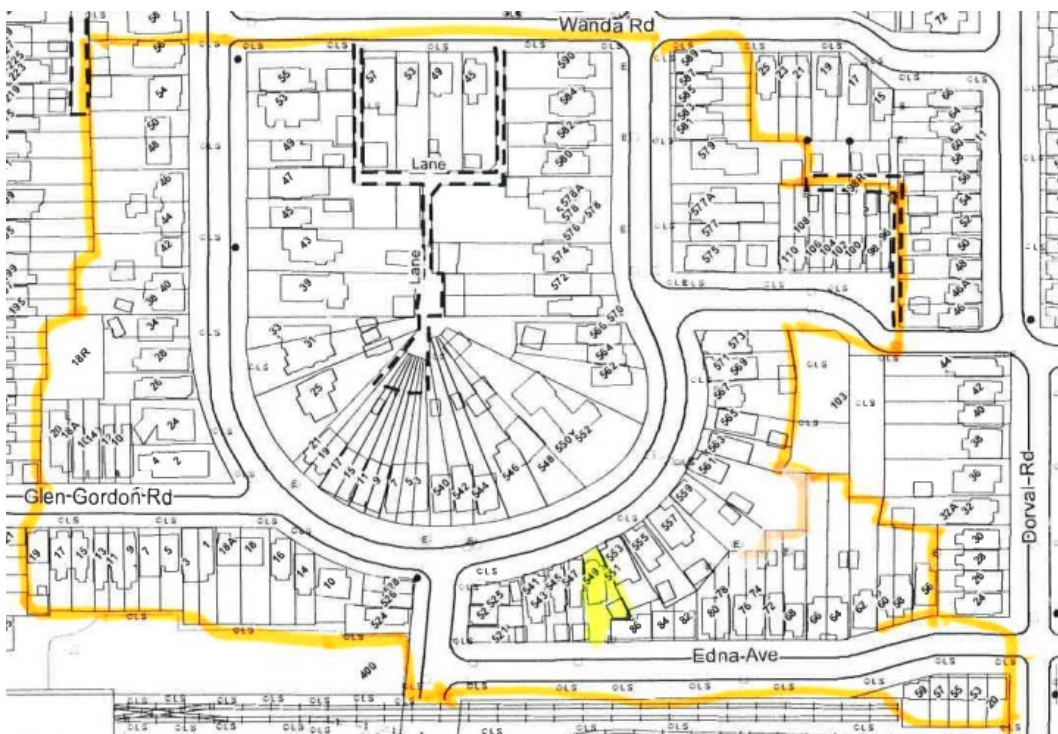
Although there are lots in the immediate area with small rear yards, it is their relationship with the lots they back onto that is distinct from what is being proposed. Mr. Manett opined that the site was underutilized from a planning perspective; however, seeing the proposed building footprint on the proposed new lot, the proposal results in overdevelopment and creates adverse impacts on both 86 Edna Avenue and the five-unit building on the part of 549 Indian Road that is to be retained.

In Mr. Manett's analysis of the immediate context, in which he illustrates the relatively small rear yards of 80 through 86 Edna Avenue properties, he compares their relative lot size but he does not speak to the unique lot shape that the proposed new lot would introduce. It also does not address the distinct 'side yard as rear yard' relationship which is a departure from these neighbouring properties and to the broader context; these properties still maintain the 'rear yard to rear yard' relationship with the properties they back onto (Fig. 2).



**Figure 2 – Immediate Context Map indicating the proposed and existing rear yard relationships; subject property in yellow (Exhibit #1)**

The side yard proposed as a rear yard for the conveyed lot is a relationship to the proposed building not characteristic of the prevailing rear yard patterns and lot shapes that are present in the area (Fig. 3).



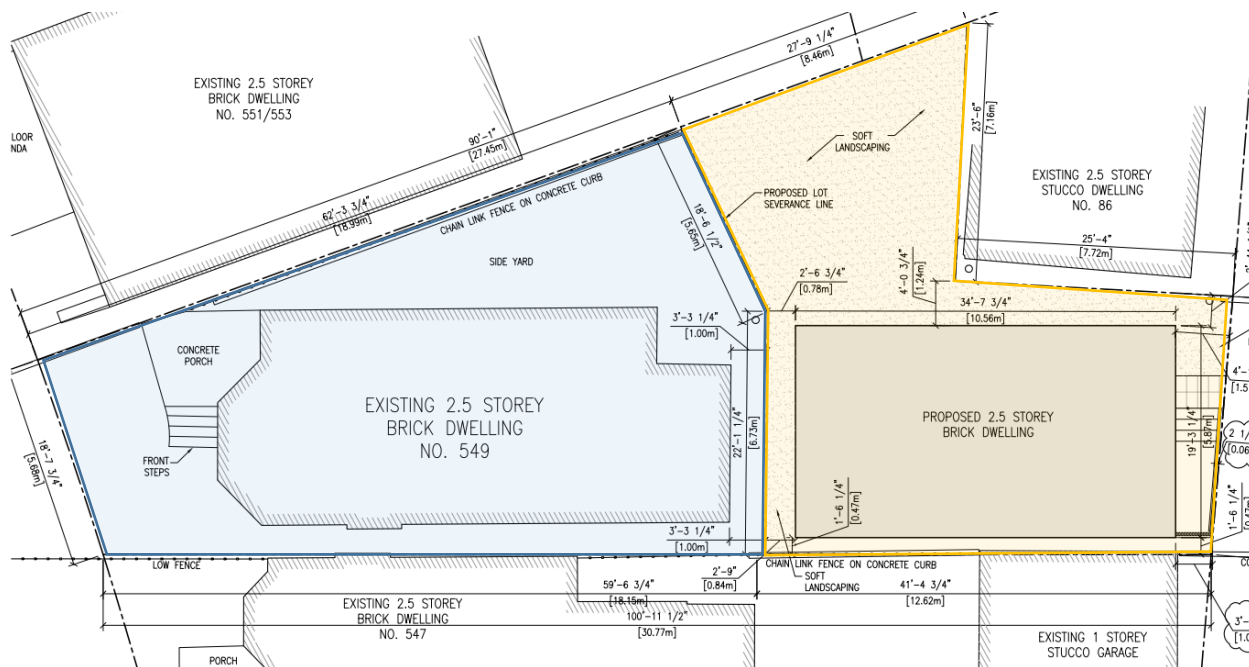
**Figure 3 – Broader Neighbourhood Map illustrating rear yard relationships; subject property in yellow (Exhibit #1)**

I agree that there are a variety of lot frontages, lot sizes and lot shapes, but their configuration or the placement of built form in relation to the adjacent properties is consistent; the prevailing character and relationship between properties is rear yard to rear yard and they are located at the rear of the property and dwelling. What is proposed is a side yard condition, and no evidence was provided of any other instances, or similar examples, that would suggest this relationship is present and representative of the physical character of the immediate or broader neighbourhood.

Therefore, I do not find that the severance and the variances requested would *"fit within the character of the lot sizes, **shapes and patterns**"* as per Mr. Manett's testimony (bold text, my emphasis).

In addition, if I consider the variances for the rear yard setback sought for both Parts 1 and 2, the rear wall- to- rear wall condition created between the two dwellings provides a separation of 1.78 to 1.84 metres. I find that this is a condition that is not found anywhere else in the immediate or broader neighbourhood context. Although the properties at 80 through 86 Edna Avenue properties have small rear yards and rear yard setbacks to the property line, their 'rear wall face to rear wall face' distance with the dwellings they back onto are at a much greater distance than that proposed.

There are also no other examples in the neighbourhood that present the residential dwelling to residential dwelling relationship that is proposed between Parts 1 and 2 of the proposal (Fig. 4).



**Figure 4 – Excerpt from site plan illustrating relationship between Part 1 – retained (blue) and Part 2 – conveyed (light orange)(Exhibit #1)**

From a planning perspective, the argument that this is an underutilized property and, therefore, a new residential building should be approved to address this and make more efficient use of the land, does not "hold water." The evidence presented to the TLAB has not convinced me that other forms of intensification were considered (e.g. an addition to the existing building on 549 Indian Road, the provision of a residential unit over the garage, etc.). Mr. Manett could have highlighted other forms of intensification that maintain and increase the utilization of the subject property without resulting in the adverse impacts that would be incurred by the proposed severance and dwelling. He did not.

In his evidence, Mr. Manett indicated that the retained and conveyed parts would require a variance to the FSI to permit 1.3 times the lot area whereas 0.6 times is permitted. Although his neighbourhood study area analysis illustrates that 61% (75 of 123) and 58% (21 of 36) of the properties in the broader and immediate context, respectively, only 6% (7 of 123) and 11% (4 of 36) have an FSI over 1.3 times (Exhibit #2, para. 32). None of the properties had an FSI of 1.3 times (Exhibit #1, pgs. 78-82).

Again, having reviewed these statistics, I find that the proposed FSI variance is not in keeping with the prevailing densities that are found in the immediate and broader neighbourhood. Not only do I conclude that these numerical variances suggest overdevelopment of the property, but I also find that the dwelling relationships that will result if the severance is granted will result in qualitative and adverse impacts that suggest the proposal is not suitable or appropriate for the development or use of the property it seeks to sever.

With respect to the other variances sought for the retained Part 1, the 0% rear yard soft landscaping proposed is not supported and is not in keeping with the physical character of the neighbourhood. The variance for lot size would typically be minor, but in the proposed configuration and resulting deficient rear yard setback this variance cannot be supported.

I find that the variances sought for the proposed conveyance of Part 2, with respect to the front yard setback, front yard landscaped area, and exterior steps encroachment into the front yard setback (variances 1, 4, and 5), continue the established streetscape edge on Edna Avenue; they are minor in nature and maintain the general intent and purpose of the Official Plan and Zoning By-law. However, the variances for FSI, lot area, and the deficient rear yard setback proposed are not supported and are not in keeping with the physical character of the neighbourhood.

## **Conclusion**

The severance sought must conform to the provisions of Section 51(24) of the *Planning Act* and to the Official Plan, namely policy 4.1.5. The proposed severance, if granted, will result in the creation of undersized lots that are irregular and do not maintain the prevailing pattern or built form relationship and configuration that comprise the physical character of the neighbourhood. Furthermore, the proposed severance will result in

variances that, both individually and cumulatively, do not maintain the general intent and purpose of the Official Plan and the Zoning By-law.

Therefore, I find that the statutory tests for severance and variances have not been met and the appeal is denied.

## **DECISION AND ORDER**

The severance is not granted, and the variances are not authorized. The Committee of Adjustment decision of September 1, 2021 is confirmed.



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John Tassiopoulos  
Panel Chair, Toronto Local Appeal Body