

# DECISION AND ORDER

**Decision Issue Date: Thursday, October 06, 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): SHUFIQUR RAHMAN

Applicant(s): ROCK KIM, SHUFIQUR RAHMAN

Property Address/Description: 399 ROUGE HIGHLANDS DR

Committee of Adjustment File Number(s): 21 159734 ESC 25 CO (A0187/21SC),  
21 159735 ESC 25 MV (A0188/21SC), 21 159736 ESC 25 MV (B0034/21SC)

**TLAB Case File Number(s): 22 151344 S45 25 TLAB,  
22 151345 S45 25 TLAB,  
22 151347 S53 25 TLAB**

**Hearing date: Friday, September 30, 2022**

**DECISION DELIVERED BY** TLAB Panel Member G. Swinkin

## REGISTERED PARTIES AND PARTICIPANTS

Appellant / Primary Owner	SHUFIQUR RAHMAN
Appellant's Legal Representative	ARKADI BOUCHELEV
Applicant	ROCK KIM
Alternate Owner	SARZIL RAHMAN
Party (TLAB)	CITY OF TORONTO
Party's Legal Rep.	ADAM WARD
Party (TLAB)	MEAGHAN BENINI
Party's Legal Rep.	JULIANNE LEE KITEVSKI

Expert Witness

JONATHAN BENCZKOWSKI

Expert Witness

JULIUS DE RUYTER

## **INTRODUCTION AND CONTEXT**

Shufiqur Rahman (the “Owner” or “Appellant”) is the owner of 399 Rouge Highlands Drive (the “Property”). The Property is presently improved with a one and half storey dwelling which presents as a bungalow style single family detached dwelling. The Owner wishes to demolish this dwelling, sever the parcel in two and construct two new two-storey dwellings, one on each of the resultant lots.

For this purpose, the Owner made application to the Committee of Adjustment (the “Committee”) for a consent to sever and for two sets of variance relief pertaining both to lot frontage and lot area as well as to various aspects of the zoning regulations which would apply to the proposed dwellings.

The Committee heard and refused all of the three applications. As he is entitled, the Owner has appealed to the Toronto Local Appeal Body (the “Tribunal”).

The Tribunal held a one day hearing and heard evidence from the Owner’s land use planning witness as well as evidence in opposition from the City of Toronto’s (the “City”) land use planning witness, both of whom were qualified to offer opinion evidence on land use planning matters, and from the next door neighbour to the Property, Meaghan Benini, also in opposition, who was not qualified to offer expert opinion evidence.

## **THE LEGISLATIVE AND POLICY FRAMEWORK**

### **Provincial Policy – S. 3**

A decision of the Tribunal must be consistent with the 2020 Provincial Policy Statement (‘PPS’) and conform to the Growth Plan for the Greater Golden Horseshoe, 2020 (‘Growth Plan’).

### **Consent – S. 53**

The Tribunal 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 Tribunal 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.

## **SUMMARY OF EVIDENCE**

The Tribunal took in the following exhibits from the Appellant and the City:

Exhibit 1 - The expert witness statement of Jonathan Benczkowski

Exhibit 2 - The Appellant Document Book

Exhibit 3 - The expert witness statement of Julius DeRuyter

Exhibit 4 - The visual evidence of Julius DeRuyter

Exhibit 5 - The City Document Book

### **The Property and its Zoning**

The Property is located on the south-east corner of Rouge Highlands Drive and Kirkdene Drive. The Property has a frontage of 30.48 metres (“m”) and a depth of 30.45 m. The Property is thus effectively square (save for the corner rounding at the intersection of Rouge Highlands Drive and Kirkdene Drive).

According to Jonathan Benczkowski, the land use planning consultant retained by the Owner, the existing topography slopes down considerably from the highpoint along Rouge Highlands Drive to the low point at the rear approximately 1.72 m (5’6”) if measured along the proposed interior new lot line.

The planners both advised that the Property is designated “Neighbourhoods” in the City of Toronto’s Official Plan (“OP”),

The Property is zoned RD – Residential Detached, (f18.0; a696)(613) under Zoning By-law 569- 2013. Overlay maps permit a maximum height of 9 m (2 Storeys) and permit a coverage of 40%.

The lands, or a portion thereof, are subject to the following Site-Specific Provisions, Prevailing By-laws, and Prevailing Sections.

Site Specific Provisions:

- (A) The minimum building setback from a side lot line is 0.9 metres; and  
(B) These lands must comply with exception 900.3.10 (1462), which exception prescribes a maximum floor area dependent on lot area.

### **The Evolution of the Applications**

The redevelopment proposal evolved as time went by over the course of these applications.

What remained constant was the intended division of the existing parcel. This takes the following form:

PART 1 (interior lot) – Frontage of 15.24 m and a lot area of 464.1 sq.m.

PART 2 (corner lot) – Frontage of 15.24m and lot area of 459.5 sq.m.

For the record, the original variance applications before the Committee sought the following variances:

#### **Part 1 – Conveyed Lot**

1. Chapter 10.20.30.20.(1), By-law 569-2013 The minimum required lot frontage is 18 m. The proposed lot frontage is 15.24 m.
2. Chapter 10.20.30.10.(1), By-law 569-2013 The minimum required lot area is 696 sq.m.. The proposed lot area is 464.1 sq.m.
3. Chapter 10.20.30.40.(1)(A), By-law 569-2013  
The maximum permitted lot coverage is 40% of the lot area (185.64 sq.m). The proposed lot coverage is 40.3% of the lot area (187.08 sq.m).
4. Exception RD 1462.(A)(ii), By-law 569-2013  
The maximum permitted floor area is 0.5 times the lot area (232.05 sq.m). The proposed floor area is 0.67 times the lot area (307.82 sq.m).
5. Chapter 10.20.40.10.(1)(A), By-law 569-2013  
The maximum permitted height of a dwelling is 9 m.  
The proposed dwelling height is 9.79 m above established grade.
6. Chapter 10.20.40.10.(2)(B)(ii), By-law 569-2013  
The maximum permitted height of the exterior portion of side main walls is 7 m. The proposed height of the side main walls is 8.02 m.
7. Chapter 10.20.40.70.(2)(A), By-law 569-2013  
The minimum required rear yard setback is 25% of the lot depth (6.94 m). The proposed rear yard setback is 7.61 m.

8. Chapter 10.5.40.60.(1)(C), By-law 569-2013

A rear platform with a floor no higher than the first storey of the building may encroach into the required rear yard setback a maximum of 2.5 m, if it is no closer to a side lot line than 1.01 m.

The proposed rear platform will encroach 3.05 m into the rear yard setback and is 1.82 m from the side lot line.

9. Chapter 10.5.40.60.(2), By-law 569-2013

A canopy above a platform may encroach into a required building setback to the same extent as the platform it is covering (1.5 m).

The proposed front canopy encroaches 1.83 m into the required front yard setback.

10. Clause VI, Provision 16.1, By-law 12077

The maximum permitted height of a dwelling is 9 m.

The proposed dwelling height is 9.72 m above mean grade.

Part 2 – Retained Lot (Corner)

1. Chapter 10.20.30.20.(1), By-law 569-2013 The minimum required lot frontage is 18 m. The proposed lot frontage is 15.24 m.

2. Chapter 10.20.30.10.(1), By-law 569-2013 The minimum required lot area is 696 m<sup>2</sup>. The proposed lot area is 459.5 sq.m.

3. Chapter 10.20.30.40.(1)(A), By-law 569-2013

The maximum permitted lot coverage is 40% of the lot area (183.8 sq.m). The proposed lot coverage is 40.7% of the lot area (187.08 sq.m).

4. Exception RD 1462.(A)(ii), By-law 569-2013

The maximum permitted floor area is 0.5 times the lot area (229.75 sq.m). The proposed floor area is 0.67 times the lot area (307.82 sq.m).

5. Chapter 10.20.40.10.(1)(A), By-law 569-2013

The maximum permitted height of a dwelling is 9 m.

The proposed dwelling height is 9.73 m above established grade.

6. Chapter 10.20.40.10.(2)(B)(ii), By-law 569-2013

The maximum permitted height of the exterior portion of side main walls is 7 m. The proposed height of the side main walls is 8.02 m.

7. Chapter 10.20.40.70.(2)(A), By-law 569-2013

The minimum required rear yard setback is 25% of the lot depth (7.61 m). The proposed rear yard setback is 6.94 m.

8. Chapter 10.5.40.50.(4)(C), By-law 569-2013

The portion of a rear platform located beyond 2.5 metres from the rear main wall shall be no higher than 1.2 m above the ground at any point below the platform. The

proposed rear deck projects 3.05 m from the rear main wall and is 1.94 m above the ground below it.

9. Chapter 10.5.40.60.(1)(C), By-law 569-2013

A rear platform with a floor no higher than the first storey of the building may encroach into the required rear yard setback a maximum of 2.5 m, if it is no closer to a side lot line than 1.01 m.

The proposed rear platform will encroach 3.05 m into the rear yard setback and is 1.82 m from the side lot line.

10. Chapter 10.5.40.60.(2), By-law 569-2013

A canopy above a platform may encroach into a required building setback to the same extent as the platform it is covering (1.5 m).

The proposed front canopy encroaches 1.83 m into the required front yard setback.

11. Chapter 10.5.80.40.(3)(B), By-law 569-2013

Vehicle access to a parking space must be from a flanking street that is not a main street (Kirkdene Drive).

The proposed driveway is from the front street (Rouge Highlands Drive).

12. Clause VI, Provision 16.1, By-law 12077

The maximum permitted height of a dwelling is 9 m.

The proposed dwelling height is 9.66 m above mean grade.

Mr. Julius DeRuyter, the land use planning consultant proffering evidence on behalf of the City, advised that at the hearing before the Committee, the applicant's representative requested amendment of the applications to delete the following heads of relief:

- Delete Variance #3 relating to lot coverage
- Reduce the floor space index and floor area noted in Variance #4 from 0.67(307.82 m<sup>2</sup>) to 0.65 (299 m<sup>2</sup>)
- Delete Variance #7 relating to the minimum rear yard setback
- Amend Variances #8 and #9 by reducing the encroachment of the rear platform into the required rear yard setback from 3.05 m to 2.5 m.

Mr. Benczkowski, who was approached to provide professional advice to the Appellant after the Committee hearing, informed the Tribunal that after his review of the proposal, apparently as a condition of his retainer, he recommended withdrawal of all variance requests except the following:

- Minimum Lot Frontage
- Minimum Lot Area

- Maximum Floor Area (FSI)
- For only PART 2 the entrance of the driveway from Rouge Highlands Drive

The Owner accepted that recommendation so that the Owner's counsel was now requesting amendment of the variance applications to be adjudicated by the Tribunal as follows:

#### PART 1 – INTERIOR LOT

Chapter 10.20.30.20.(1), By-law 569-2013 The minimum required lot frontage is 18 m. The proposed lot frontage is 15.24 m.

Chapter 10.20.30.10.(1), By-law 569-2013 The minimum required lot area is 696 m<sup>2</sup>. The proposed lot area is 464.1 m<sup>2</sup>.

Exception RD 1462.(A)(ii), By-law 569-2013

The maximum permitted floor area is 0.5 times the lot area (229.75 m<sup>2</sup>). The proposed floor area is 0.61 times the lot area (282.82 m<sup>2</sup>).

#### PART 2 – CORNER LOT

Chapter 10.20.30.20.(1), By-law 569-2013  
The minimum required lot frontage is 18 m. The proposed lot frontage is 15.24 m.

Chapter 10.20.30.10.(1), By-law 569-2013 The minimum required lot area is 696 m<sup>2</sup>. The proposed lot area is 459.5 m<sup>2</sup>.

Exception RD 1462.(A)(ii), By-law 569-2013

The maximum permitted floor area is 0.5 times the lot area (229.75 m<sup>2</sup>).  
The proposed floor area is 0.615 times the lot area (282.82 m<sup>2</sup>).

Chapter 10.5.80.40.(3)(B), By-law 569-2013

Vehicle access to a parking space must be from a flanking street that is not a main street (Kirkdene Drive).

The proposed driveway is from the front street (Rouge Highlands Drive).

Counsel for the Owner moved to request permission to so amend the respective variance applications and suggested that these amendments should be treated as minor within the meaning of Section 45 (18.1.1) of the *Planning Act* so as to not require further notice of the amendments, the premise for that position being that the variances identified were all being withdrawn and thereby not prejudicing any person who may have had original notice. As neither counsel for the City nor for the other Party,



Meaghan Benini, opposed this request, the Tribunal allowed the amendments without further notice.

### **Planning Policy**

Both planners acknowledged that the applications did not result in any inconsistency with the Provincial Policy Statement, 2020 or any non-conformity with the Growth Plan for the Greater Golden Horseshoe, 2020.

The real policy engagement over the proposal arises out of the application of Policy 4.1.5 of the OP, the development criteria applicable in the Neighbourhoods designation.

This policy requires that two particular study areas be delineated, the geographic neighbourhood (or broader context) and the immediate context. The delineation of these respective areas was somewhat different as circumscribed by the two planners.

Mr. Benczkowski circumscribed his general neighbourhood by Blue Anchor Trail to the north, Ravine Park Crescent to the south, East Avenue to the east, and Port Union Road to the west. He suggests that the study area is reflective of what a person would experience in their day-to-day lives.

He then goes on to describe this broader area as being made up of a mix of lot frontages, lot areas and built form, and that the study area is comprised of a mix of one-, and two-storey detached dwellings. The area is undergoing reinvestment, with additions and replacement homes. He declares that there is significant diversity in built form and lot sizes. Original dwellings are often bungalows with driveways leading to parking in integral garages. Newer replacement dwellings are scattered throughout the study area and are larger in both livable area as well as massing.

His immediate context embraces lots on Rouge Highlands Drive running from Fanfare Avenue in the south, crossing Kirkdene Drive, up to Donshire Court, but also including the lots on the west side of Rouge Highlands from Donshire Court up to Blue Anchor Trail. In all, this comprises 45 lots.

Mr. DeRuyter's geographic neighbourhood mirrored Mr. Benczkowski's in its northerly, southerly and westerly extents but extended east of East Avenue over to Friendship Avenue and Flagstone Terrace. Although both geographic neighbourhoods are described by the planners as being within a five minute walk of the Property, Mr. DeRuyter's captures a greater number of lots and reaches further east. In the end, this is not material as the crucial examination comes down to the immediate context.

Mr. DeRuyter's immediate context is more circumscribed than Mr. Benczkowski's in that it too captures both sides of Rouge Highlands Drive from Fanfare Ave but terminates at Kirkdene Drive. This encompasses 31 lots.

As the policy task under Policy 4.1 is to ascertain the character of the area, Mr. DeRuyter took a somewhat more refined and nuanced tack. He identified what he

described as a Heritage Character Neighbourhood. This is not a term of art but rather the label which Mr. DeRuyter assigned to what he believed to be a more useful area reflective of the unique area character within which the Property lies.

He said that a large portion of the Geographic Neighbourhood containing most of Rouge Highlands Drive and Decimal Place exhibit unique neighbourhood characteristics that distinguish the area from the surrounding Rouge Neighbourhood. The Heritage Character Neighbourhood radiates out from the immediate context..

The quantity of properties within these three delineated areas of his is that within the Geographic Neighbourhood there are 371 properties. Within the Heritage Character Neighbourhood there are 57 properties. Within the Immediate Context there are 31 properties.

He advised the Tribunal that the unique traits that this Heritage Character Neighbourhood experiences include the following:

- 1 Large residential lot frontages;
- 2 Large residential lot areas;
- 3 Many of the lots are square-shaped with lot frontages similar in dimension as the lot depth;
- 4 Shallower than usual lot depths at 30.48 m;
- 5 Road constructed to a rural cross-section with no curbs or sidewalks and with roadside gutters to handle storm drainage;
- 6 The prevailing built-form is one-storey ranch-style bungalows where the dwelling is long along the front lot line and shallow in depth;
- 7 The dwellings are small in scale with small building mass and low height;
- 8 Area was developed long before the surrounding neighbourhoods.

Mr. DeRuyter advised that he collected property data from City records regarding the buildings on the area properties. This property data reports the year the structure was built. Within the Immediate Context and the Heritage Character Neighbourhood, most of the dwellings were constructed in 1958 or 1959. Only 4 properties were reported being constructed within the 1960's. There is a newly constructed two-storey dwelling across

from the Property at 396 Rouge Highlands Drive. It appears that no minor variance was obtained to permit this construction.

Within the surrounding Rouge Neighbourhood, only 91 properties, representing 28.6%, were reported to be constructed in the 1950's while the remaining dwellings were constructed between 1960 and 1990. The median year of construction in this area was 1973.

The results demonstrate that the Immediate Context and the Heritage Character neighbourhood were constructed prior to most of the surrounding Rouge Neighbourhood.

Mr. DeRuyter advised that the property data shows that within the Immediate Context and the Heritage Character Neighbourhood, most of the lots fall within the range of 20.0 to 24.9 m, with the median lot frontage being 22.86 m and 22.9 m, respectively.

Within the surrounding Rouge Neighbourhood, the lot frontages do vary significantly, with most of the lots falling within the range of 15.0 to 19.9 m. The median lot frontage in this area is 17.35 m. Mr. Benczkowski leans heavily on this fact, that the proposed lots will be in keeping with lots found in the geographic neighbourhood.

However, Mr. DeRuyter underlines that the proposal is to create two new lots having lot frontages of 15.24 m each and that while lots having a frontage of 15.24 m do exist within the surrounding Rouge Neighbourhood, they do not exist at all within the Immediate Context or the Heritage Character Neighbourhood. The proposed 15.24 m lot frontage is 33.4% smaller than the median lot frontage within the Immediate Context and the Heritage Character Neighbourhood.

The analysis of lot areas turns up a similar outcome. Within the Surrounding Rouge Neighbourhood, the lot areas do vary significantly, with the median lot area being 687.9 m<sup>2</sup>. But while the Rouge Neighbourhood has significantly smaller lot frontages, the lots are typically much deeper than exists within the Immediate Context and the Heritage Character Neighbourhood where the typical lot depth is only 30.38 m.

He again asserts that the proposal is to sever the Property into two equal size lots having lot areas of 464.1 m<sup>2</sup> for the new corner lot (Part 1) and 459.5 m<sup>2</sup> for the new interior lot (Part 2). Lot areas at the size proposed do not exist within the Immediate Context or the Heritage Character Neighbourhood. The proposed lot areas are approximately 33.9% smaller than the median lot area within the Immediate Context and the Heritage Character Neighbourhood. Within the Surrounding Rouge Neighbourhood, there are only 23 lots at the size proposed, or smaller, representing only 7.3% of all lots within this area.

In his view, based both on the lesser frontages and areas, the creation of these lots will work to destabilize the character of the area, which is contrary to OP policy.

The proposed lots are so small that they do not exist within the Immediate Context and the Heritage Character Neighbourhood and are not represented in significant numbers within the Surrounding Rouge Neighbourhood. The outcome was put frankly on his observation that the Property would go from being the largest in the Immediate Context to being the smallest.

Both planners spoke to the matter of gross floor area/floor space index. What the Tribunal learned is that within the Immediate Context and the Heritage Character Neighbourhood, the median floor space index is only 0.14.

Within the surrounding Rouge Neighbourhood, the floor space index of the dwellings does vary, with the median floor space index being 0.19.

The existing dwelling on the Property has a floor space index of 0.21, which is one of the largest floors space indices on the street.

The floor space index of the dwellings as proposed are 0.61 and 0.615. The proposed floor space index is substantially larger than what exists within the Immediate Context and the Heritage Character Neighbourhood.

Mr. DeRuyter also advised the Tribunal that from the property data for all three neighbourhoods, there are no dwellings reported with a floor space index as proposed. The highest reported floor space index is only 0.52.

Evidence was given by both planners on the obligation under Section 53(12) of the *Planning Act* to have regard for the criteria set forth in Section 51(24) of the *Planning Act* where a severance is being sought. That evidence will not be detailed in these reasons except to focus on the specific obligation in clause (c) regarding whether the proposed severance conforms to the OP.

#### The Neighbour Party - Meaghan Benini

Meaghan Benini resides immediately to the south of the Property at 393 Rouge Highlands Drive. She elected to take Party status and was represented by counsel.

Ms. Benini filed a Witness Statement which, although careful not to be styled as an expert witness statement, could easily have been mistaken for one as she properly isolated all of the relevant planning policy, supported by data, and then proceeded to

draw conclusions that essentially represented opinion on all of the relevant land use questions. However Ms. Benini came to prepare such a piece of work is not known to the Tribunal but it was clear from the background information regarding her education, work experience and lack of accreditation, that she did not rise to meet the necessary elements to secure status to present expert opinion evidence before the Tribunal.

Although Mr. Bouchelev objected to the introduction of her witness statement due to the copious degree of opinion in it, the Tribunal on its own initiative at the outset of the hearing advised Ms. Benini and her counsel that the Tribunal would not qualify Ms. Benini as a land use planning expert and cautioned her to tailor her oral evidence to avoid proffering any such opinion evidence. The Tribunal responded to Mr. Bouchelev that her witness statement and supplementary material would be taken in as it also contained a great deal of factual matter that she could speak to and it laid out her position with respect to the approvals that were being sought, and that the Tribunal would disregard any opinion evidence in it that properly belongs in the domain of qualified planners.

Ms. Benini's witness statement was taken in as Exhibit 6 and her visual evidence as Exhibit 7.

Ms. Benini and her husband moved into their house in 2018. Ms. Benini described Rouge Highlands Drive as a quiet street in the sense that there was little through traffic.

Ms. Benini spoke about the character of the street, being one of the few streets in the area without sidewalks. The lots are large and the mass of the dwellings is limited. In her view, this creates a special character distinct from the other streets in the area. With respect to the two newer dwellings on the street, she advised that they did not require zoning variances and although two storey, they have retained their trees and grass and spacing. She described the street as a community within a community.

Her view is that with the smaller lot frontages and areas, the proposal will disrupt the unique landscape of the street and its openness around the buildings.

She indicated that the proposed lots would be substantially different from the existing lots on the street and that this could pose a significant threat in the form of a precedent that may affect future applications.

## **ISSUES AND ANALYSIS**

As noted at the outset of this Decision, this case really turns on the application of OP policy as particularly found in Policy 4.1.5.

Following the delineation of characteristics which are to be taken account of and assessed with respect to proposed development in Neighbourhoods, the text of this policy gives direction, which is expressed as follows:

“The physical character of the geographic neighbourhood includes both the physical characteristics of the entire geographic area in proximity to the proposed development (the broader context) and the physical characteristics of the properties that face the same street as the proposed development in the same block and the block opposite the proposed development (the immediate context). Proposed development within a Neighbourhood will be materially consistent with the prevailing physical character of properties in both the broader and immediate contexts. In instances of significant difference between these two contexts, the immediate context will be considered to be of greater relevance. The determination of material consistency for the purposes of this policy will be limited to consideration of the physical characteristics listed in this policy.”

Based on the evidence adduced in this hearing, the Tribunal is satisfied that the immediate context, whether as described by Mr. DeRuyter or Mr. Benczkowski, is significantly different from the broader context and should be taken as the controlling context. As the evidence very clearly bore out, there is a very obvious homogeneity in the lot frontages and lot areas on Rouge Highlands Drive, where the median frontage is 22.7m and the median lot area is 696.77 sq.m. Add to this that the median floor space index in the immediate context is 0.14 as against the floor space index of 0.61 proposed here by the Appellant.

As such, the Tribunal finds that the proposed severance runs afoul of the policy expressed in Policy 4.1.5, that 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; and c) prevailing heights, massing, scale, density and dwelling type of nearby residential properties.

With this determination, the Tribunal then determines that the proposed severance fails to conform with the OP and thus, mindful of Section 51(24)(c) of the *Planning Act*, is not appropriate for approval.

This same rationale applies equally to the test with respect to the variance applications concerning the obligation for the requested reduced frontages and lot areas to maintain the general intent and purpose of the OP. It is the finding of the Tribunal that they will not and that therefore the applications fail this test. As the success of any variance depends upon it satisfying all four tests in Section 45(1), a failure on any one of those tests is fatal to the application.

The Tribunal does wish to comment on the fear expressed by Ms. Benino that the approval of these applications may prove to be a precedent for future applications that would further erode the character of this street. The basic math bears this out as a legitimate concern. The OP does anticipate the possibility of land assemblies and that the tests in Policy 4.1.5, as well as the policy in Policy 9, would be applied to such proposals. The evidence in the hearing demonstrated that the common lot frontage in the immediate context is 22.86m. Taking two adjacent lots on Rouge Highlands Drive into an assembly and dividing them into three new lots would yield lots with 15.24m frontages, precisely the frontages being sought here,

## CONCLUSION

Based upon the foregoing review of the evidence in the hearing and the Tribunal's findings that there is a failure of OP conformity with respect to the proposed severance and the associated variance applications, the applications must fail.

## DECISION AND ORDER

The Tribunal ORDERS that the appeals of the Decisions of the Committee with respect to the consent application and the two variances applications regarding the Property are dismissed.

X



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G. Swinkin  
Panel Chair, Toronto Local Appeal Body