

**CITATION:** Marquis Manors Ltd. v. Kennedy, 2023 ONSC 1134  
**DIVISIONAL COURT FILE NO.:** 502/22  
**DATE:** 20230216

**SUPERIOR COURT OF JUSTICE – ONTARIO  
DIVISIONAL COURT**

**RE:** MARQUIS MANORS LIMITED, Moving Party

**AND:**

JOSEPH KENNEDY, Responding Party

**BEFORE:** Nishikawa J.

**COUNSEL:** *David P. Neligan & John George Pappas*, for the Moving Party

*Christopher Lee & Amanda J. Pilienci*, for the Responding Party

**HEARD at Toronto:** January 31, 2023 (by videoconference)

**ENDORSEMENT**

**Nishikawa J.**

**Overview**

[1] The moving party, Marquis Manors Limited (“Marquis”), seeks leave to appeal to a full panel of the Divisional Court from the decision of Member T. Yao of the Toronto Local Appeal Body (the “TLAB”) dated August 19, 2022.

[2] The decision allowed the appeals of the Respondent, Joseph Kennedy, and denied Marquis’ applications for severance and variation of a certain property in Etobicoke. Marquis, the registered owner of the property, had proposed to sever the lot into two lots and build two single family homes. The Respondent is the owner of a property across the street from the Marquis property.

[3] The motion for leave to appeal is dismissed. The court does not ordinarily give reasons on motions for leave to appeal. Whether to give reasons is at the discretion of the motion judge, which should be exercised sparingly: *Westhaver Boutique Residences Inc. v. Toronto*, 2020 ONSC 3949. In this case, I find it appropriate to give brief reasons for denying leave to appeal.

## **Analysis**

### **The Applicable Test for Leave to Appeal**

[4] Subsection s. 115(9) of the *City of Toronto Act, 2006*, S.O. 2006, c. 11, Sched. A, provides that an appeal lies from the TLAB to the Divisional Court, with leave, on a question of law.

[5] In order to obtain leave to appeal a decision of the local appeal body, the moving party must establish the following:

- (a) An extricable question of law;
- (b) Good reason to doubt the correctness of the decision appealed from with respect to the question(s) of law raised; and
- (c) That the question of law is of sufficient general or public importance to merit the attention of the Divisional Court.

*Regional Municipality of Waterloo v. Grerei Investment Ltd.*, 2020 ONSC 5613, at para. 29.

[6] The three above elements are conjunctive; failure to satisfy any one of them means that leave to appeal is properly refused: *CAMPP Windsor Essex Residents Association v. Windsor (City)*, 2020 ONSC 4612 (Div. Ct.) at para. 31.

[7] In *Frontenac Heritage Foundation v. Homestead Land Holdings Ltd.*, 2022 ONSC 3613, at para. 33, this Court held that an extricable question of law is one “that is, separate and distinct from any mixed question of fact and law[.]”

[8] In determining whether the proposed appeal raises a question of law, the court must keep in mind that doubt as to legal correctness must be based on the totality of the tribunal’s decision, not one isolated paragraph or phrase. It is not appropriate to select fragments of the decision and parse them under microscopic scrutiny to the detriment of an overall analysis of the decision as a whole: *CAMPP v. Windsor*, at para. 37.

[9] In respect of the third element, the moving party must demonstrate that the alleged error is one that relates to matters of public importance beyond the dispute in question and that is relevant to the development of law and the administration of justice more generally. In this context, the court may consider the frequency with which the legal question will arise and whether the issue has an effect for most municipalities in Ontario: *CAMPP v. Windsor*, at para. 38.

### **Application**

[10] In this case, Marquis alleges two errors of law on the part of the TLAB Member. First, Marquis submits that the Member applied the wrong statutory test for a minor variance under s.

45(1) of the *Planning Act*, R.S.O. 1990, c. P.13, by: (i) applying the intent and purpose of the wrong zoning by-law; and (ii) requiring strict adherence to the numerical standards in a zoning by-law in order to maintain the intent and purpose of that by-law. Second, Marquis submits that the Member misapprehended the expert land use planning evidence relevant to the distinction between street frontage and lot frontage.

[11] In my view, Marquis' motion for leave to appeal fails because the grounds raised either do not raise a question of law or there is no reason to doubt the correctness of the Member's decision.

[12] On the first issue, Marquis alleges that the Member applied the wrong legal test. However, in the decision, the Member stated the correct test under s. 45(1) of the *Planning Act* and then proceeded to apply the four parts of that test. I disagree with Marquis' position that the Member applied the intent and purpose of the wrong zoning by-law. While the Member refers to the 1970 zoning by-law for the purposes of historical context, it is clear that he applied the applicable by-law, By-Law 569-2013.

[13] Similarly, the Member did not require strict adherence to the numerical standards in the zoning by-law in order to maintain the intent and purpose of that by-law. As is evident from the decision, the Member considered other factors relevant to the intent and purpose of the by-law, including the character of the neighbourhood and historical context. The Member conducted a walk-through of the neighbourhood because he was aware that a numerical examination was insufficient to determine its physical character. As a result, I find that in respect of the first issue, there is no good reason to doubt the correctness of the decision.

[14] The second error that Marquis relies on pertains to the Member's misapprehension of expert land use planning evidence regarding street frontages and lot frontages. An error in the assessment of evidence is not an extricable question of law unless it played an essential part in the reasoning process resulting in the ultimate decision: *CAMPP v. Windsor*, at para. 142. The frontage issue was but one element of the tests applied by the Member. As such, it does not raise an extricable question of law. Moreover, the Member was alert to the distinction between street frontage and lot frontage, which can only be calculated with a survey, but was constrained by the information that was available to him for the neighbouring lots, which was street frontage.

[15] Finally, neither issue raised by Marquis is of sufficient general or public importance to warrant granting leave. Marquis submits that the Member ought not to be permitted to interpret the *Planning Act* in a manner that renders the statutory right to seek a minor variance illusory, especially in view of a housing "crisis." However, the issues raised relate to the Member's application of s. 45(1) of the *Planning Act* to the circumstances, as opposed to the proper interpretation of that provision. There is no suggestion that the decision has any precedential impact. The issues are specific to the parties and do not engage broader issues concerning the development of the law or administration of justice.

**Conclusion**

[16] Accordingly, the motion for leave to appeal the decision to a full panel of the Divisional Court is dismissed.

[17] Pursuant to the parties' agreement that the successful party be entitled to costs of the motion in the amount of \$10,000, the Respondent is entitled to costs of \$10,000, all inclusive.



---

Nishikawa J.

**Date:** February 16, 2022