

DECISION AND ORDER

Decision Issue Date Monday, September 25, 2017

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

Appellant(s): City of Toronto

Applicant: Steven Lindy

Counsel or Agent: Cigdem Iltan, Matt Schuman

Property Address/Description: 241 Poyntz

Committee of Adjustment Case File Number: 17 126206 NNY 23 (A0227/17NY)

TLAB Case File Number: 17 175495 S45 23

Hearing date: Tuesday, September 12, 2017

DECISION DELIVERED BY Laurie McPherson

INTRODUCTION AND BACKGROUND

On May 18, 2017, the Committee of Adjustment approved certain variances and modified and approved certain variances to permit the development of a new two-storey dwelling with detached garage in Committee Application A0227/17NY respecting 241 Poyntz Avenue (Exhibit 1, Notice of Decision).

The City of Toronto (the "City") filed a Notice of Appeal of the Variance Decision dated June 7, 2017 to the Toronto Local Appeal Body ("TLAB")(Exhibit 2, Notice of Appeal).

In response to the Notice of Appeal, the TLAB set a hearing date of September 12, 2017 to hear the appeal. On September 8, 2017, the City filed a Notice of Motion (Form 7, Exhibit 7) seeking an order from TLAB, further to the provisions of Rule 9 of the TLAB's Rules, allowing the City's appeal and refusing the requested variances without a hearing.

The basis of the Motion was that the Counsel for the Applicant and Respondent had notified the City that they no longer wish to seek the variances, do not oppose the City's appeal and will not be attending the scheduled hearing for the matter.

MATTERS IN ISSUE

The motion is to allow the City's appeal and refuse the variances without a hearing before the TLAB.

JURISDICTION

The under Rule 9 of TLAB's Rules of Practice and Procedure, in the case of an Appeal under subsection 45(12) of the Planning Act, the TLAB may, upon Motion, dismiss all or part of a Proceeding without a Hearing on a variety of grounds.

ANALYSIS, FINDINGS, REASONS

Mr. Mathew Schuman, the Solicitor and Representative for the City provided as Exhibit 5 an email, dated September 8, from the Representative for the Applicant, Mr. Paul DeMelo (see Exhibit 3, Authorized Representative Form) which confirms that his client no longer wishes to proceed with the proposed variances as they have decided not to proceed with the redevelopment of their home at this time. This was in response to an email from Mr. Schuman (Exhibit 6) requesting confirmation from Mr. DeMelo regarding his client's position.

Mr. DeMelo confirms in the email that he and his client will not be attending the TLAB meeting and will not be opposing the City's motion to allow their appeal. Mr. DeMelo notes that should his client decide to move forward with redevelopment in the future and seek any new variances that the City will not consider their withdrawal at this time as a bar to a future application.

In the Notice of Motion, Mr. Schuman provides the following grounds for the Motion:


1. Counsel for the Applicant has notified the City that they no longer wish to seek the variances, do not oppose the City's appeal, and will not be attending the scheduled hearing for this matter.
2. The City is prepared to attend on September 12th, should the TLAB wish to proceed with the hearing. However, since the Applicant has advised that they do not intend to appear and present evidence in support of the variances at the hearing, the City respectfully requests that the TLAB issue an order administratively refusing the variances.
3. An administrative dismissal will not result in undue prejudice in this matter as there are no parties or participants other than the Applicant and the City (see Exhibit 4, People List).

4. Under Rule 9 of the TLAB's Rules of Practice and Procedure, the TLAB may dismiss an appeal without a hearing. As a corollary, the TLAB may also allow an appeal when an applicant no longer wishes to proceed with the underlying decision of the Committee of Adjustment.
5. Proceeding with a hearing on this matter would not be an efficient use of resources of the Parties or the TLAB.

On the strength of the Motion, it would be appropriate to allow the appeal and dismiss the variances without a hearing on consent of the parties. The Applicant is no longer proceeding with the underlying decision. There would be no prejudice to future applications for Minor Variance by the Applicant.

DECISION AND ORDER

1. The appeal of the City of Toronto (the "City") in TLAB Case File No. 17 175495 S45 23 TLAB, respecting the property municipally known as 241 Poyntz Avenue (the "Property") is allowed.
2. The minor variances requested for the Property are refused.

X 

Laurie McPherson
Chair, Toronto Local Appeal Body