

DECISION AND ORDER

Decision Issue Date Wednesday, January 10, 2018

PROCEEDING COMMENCED UNDER subsection 53(14), subsection 45(1) of the Planning Act, R.S.O. 1990, c. P.13, as amended

Appellant(s): DAVID DRUTZ

Applicant: STANLEY MARCOVICI

Property Address/Description: 1755-1757 BAYVIEW AVE

Committee of Adjustment Case File Number: 17 120049 NNY 26 CO, 17 120053 NNY 26 MV, 17 120055 NNY 26 MV

TLAB Case File Number: **17 221749 S53 26 TLAB, 17 221752 S45 26 TLAB, 17 221753 S45 26 TLAB**

Hearing date: **Monday, January 08, 2018**

DECISION DELIVERED BY L. McPherson

INTRODUCTION AND BACKGROUND

On August 3, 2017, the Committee of Adjustment (“the Committee”) deferred applications for consent and minor variance for the property at 1755 – 1757 Bayview Avenue to allow for the development of two three-storey semi-detached houses. The owners appealed the decision of the Committee to the Toronto Local Appeal Body (“TLAB”). The TLAB scheduled a hearing for February 7, 2018. In September 2017, the City Solicitor (“Solicitor”) was directed to attend the TLAB hearing for the appeals and disclosed the intent for the City to be a Party. The primary basis was heritage preservation. There are two other Parties and a number of Participants

In September 2011, Heritage Preservation Services (“Heritage”) of the City of Toronto (“the City”) received a nomination for the property at 1755-1757 Bayview Avenue (the “subject site”) for its heritage designation from the North York Preservation Panel. The Toronto Preservation Board subsequently endorsed this nomination.

In October 2017, Heritage staff determined that they did not have the information or the resources to assess whether the subject property had heritage value in advance of the TLAB document disclosure and witness statement deadlines as set out in the Notice of Hearing. Given the timing of the disclosure deadlines and the hearing itself, it was determined that no staff from Heritage would be able to provide evidence at the TLAB hearing for the Applications.

As a result, the Solicitor withdrew from the TLAB proceedings on October 23, 2017. The other Parties and Participants proceeded filing their documents on this basis. Subsequent to the City's withdrawal, additional information was provided to staff related to the heritage merits a similar and proximate property. As a result, City staff determined that the subject property has heritage value. As a result of this determination, City Council instructed the City Solicitor in December 2017 to re-enter the TLAB hearing process and oppose the consent and minor variance appeals.

Since City staff was not given new instructions until an advanced stage in the disclosure process, they did not meet the dates of November 1, 2017 and November 16, 2017 respectively for filing documentary evidence and witness statements. The City is requesting to be reinstated as a Party and to disclose its documentary evidence and expert witness statement no later than January 15th, 2018, or at such other time and in such other manner as the TLAB orders.

The City recognizes that the appellant and the other parties require the opportunity to respond to the City's documents and witness statement. The City, therefore has consented to any changes other Parties may make to their documentary evidence and witness statements and propose a deadline for such filings to be January 22, 2018, or at such other time as the TLAB orders.

The Motion states that the filing of the City's documentary evidence and witness statement by January 15, 2018 and a reply date of January 22, 2018 will give all parties sufficient time to prepare for the hearing and would not require a change to the hearing day fixed by the TLAB. It is suggested that this would enable the TLAB to adjudicate the issues, including heritage preservation, in a just, expeditious and cost effective manner, in accordance with the TLAB rules.

The City states it has a genuine and valid interest in participating in the appeals of these applications and would make a relevant contribution to the TLAB's understanding of the issues in this proceeding. The Motion states that the harm to the City if prohibited from participating in the hearing of this matter far outweighs the inconvenience to the applicant resulting from the City's late involvement.

The City would consent to any reasonable adjustments in disclosure deadlines or an adjournment of the hearing date in order to accommodate the other Parties or Participants to the hearing.

Further, the Motion states that given Heritage staff's intention to recommend adding the subject site to the Heritage Register at the next Toronto Preservation Board and City Council meetings, the City would not object to the adjournment of the TLAB hearing on the Applications to allow the designation process to unfold in advance of the hearing on the Applications.

The City relies on Toronto Local Appeal Body Rules of Practice and Procedure, Rules 2.10, 4.4, 4.5, 12.1, 16.2, 16.3, 16.6, 17, 24.1 and 24.6.

The Leaside Property Owners' Association ("LPOA") is a registered Party. It has responded that it does not oppose and indeed supports the City's intention to become a Party. In its opinion there are important planning policy matters at issue and the City should be present for the consideration of these matters. The LPOA further indicates that it would not object to a deferral of the hearing date and the date be used to hear the City's Motion. Ms. Michelsen, also a Party, indicated support for the City's intention to be a Party and supported the reasons set out in LPOA's letter.

The Appellants, through their solicitor Mr. Andres, responded to the City's intention to bring a Motion. They object to the City being made a Party and any such motion being scheduled or considered by the TLAB. The Appellant's prepared their case on the basis that the City would not be participating in the proceedings and the only other Parties would be LPOA and Ms. Michelsen. Mr. Andres argues that it would be highly prejudicial to his clients if the TLAB were to permit the City to reverse its position at this late stage. Further, he argues, as a non-party and a non-participant, the City does not have the right to bring a motion in these proceedings and that there is insufficient time to schedule an oral or written hearing to consider the motion. Mr. Andres states that it would be grossly unfair to his client to allow the City to flout the TLAB's Rules and his clients should not be forced to incur the expense of responding to the motion. He requests that the TLAB deny the City's request to bring a motion to reinstate its Party status.

MATTERS IN ISSUE

The TLAB has set a date of January 8, 2018 to consider the City's Motion as a written hearing. The matters at issue are whether the City can and should be made a Party to the proceedings and if so, what is an appropriate scope and date for filings and responses given Mr. Andres' unavailability until January 19, 2018.

JURISDICTION

Under Rule 2.10, the TLAB may grant all necessary exceptions to the Rules, or grant other relief as it considers appropriate, to enable it to effectively and completely adjudicate matters in a just, expeditious and cost-effective manner. In addition, under Rule 4.4, the TLAB may extend or reduce the time limits provided by the Rules. It is important to note that, under the Planning Act, TLAB has the responsibility to apply the Provincial Policy Statement and the Official Plan on all relevant matters including

heritage matters but the TLAB has no jurisdiction under the Ontario Heritage Act. This responsibility extends to both the severance and variance appeal matters.

EVIDENCE

The affidavit of Mary McDonald, Senior Manager, Heritage Preservation Services, indicated that she was contacted by the Manager of Environmental Programs and Assessments for Metrolinx who advised that 1783-1785 Bayview Avenue, which is owned by Metrolinx and is in close proximity to the subject site, had undergone a heritage evaluation and was in the process of being declared a Provincial Heritage Property (PHP). Further, Heritage staff was asked by Metrolinx staff if the City would be willing to designate its property under Part IV of the Ontario Heritage Act because Metrolinx would like to dispose of the property. Metrolinx follows provincial Standards and Guidelines protocols. These require it to secure some form of heritage protection for PHPs prior to their sale or transfer. Ms. McDonald states that it is typical for a provincial ministry to contact a municipality for assistance in this regard.

Ms. McDonald reviewed the draft Cultural Heritage Evaluation Report commissioned by Metrolinx. She indicated that 1783-1785 Bayview Avenue and 1755-1757 Bayview Avenue are part of the same set of ten buildings contemporaneously constructed by architect, builder and former Leaside Mayor Henry Howard Talbot, with like materials, craftsmanship and a similar design vernacular. Heritage staff reviewed the information provided by Metrolinx in order to determine its relevancy to the subject site and the request by Metrolinx to designate 1783-1785 Bayview Avenue under Part IV of the Ontario Heritage Act. Based on this review and additional research, Heritage staff believes that 1755-1757 Bayview Avenue has heritage value in three categories: Design, Associative and Contextual. She indicates that it is Heritage staff's intention to recommend that 1755-1757 Bayview Avenue be added to the Heritage Register at the next available meeting of the Toronto Preservation Board and City Council. The next Toronto Preservation Board meeting is scheduled for February 8, 2018.

Ms. McDonald indicates that she would like to give evidence at the TLAB hearing in opposition to the applications based on her assessment of the heritage value of the subject property, the City of Toronto's Official Plan Heritage Policies, the Planning Act and the Provincial Policy Statement.

ANALYSIS, FINDINGS, REASONS

The TLAB agrees that there may be important policy and procedural matters on which the City can contribute in assisting the TLAB in undertaking its mandate. I am concerned that if the City's request for Party status is denied, the TLAB may not be able to effectively and completely adjudicate the matter in a just manner. This concern must be balanced with TLAB's responsibility to adjudicate the matter in an expeditious and cost-effective manner and without undue prejudice to persons appearing before it.

The City's motion indicates its request would enable the TLAB to adjudicate the issue of heritage preservation in a just, expeditious and cost effective manner, in accordance with the TLAB rules. The TLAB is concerned that the City's evidence could be dependent on third party research on a proximate site and absent original research or that it may be focused on the merits of the subject site for designation. Neither circumstance would at this stage appear to be appropriate. A designation under the Ontario Heritage Act is an external process which has its own distinct obligations, procedures, rights, privileges and responsibilities. The TLAB has no jurisdiction over the advancement of heritage status of the subject site, let alone proximate property. The issue of designation or potential designation is separate from the matters before the TLAB.

These are matters to which the TLAB expects the Parties to pay close attention and avoid. The matters for consideration are the severance and variance appeals and the statutory tests applicable thereto.

However, it is recognized that there could be heritage evidence relevant to the issue of the planning merits of the proposal and the appeals before the TLAB. These would include matters related to the Provincial Policy Statement and the Official Plan but based on the current status of the subject site.

The TLAB recognizes that the Appellant has filed the required materials on time and in good faith based on the understanding that the City was no longer a Party. The TLAB does not think it is fair to the Applicant to delay the hearing and does not think it is necessary. It is noted that the onus is on the Applicant/Appellant to provide evidence to support the proposed variances and consent request. The TLAB must have regard for the decision of the Committee of Adjustment which deferred the applications. It should come as no surprise to the Applicant that some aspect of heritage matters could be an issue at the TLAB hearing based on the disclosures to date.

Based on the above, I conclude that it would be desirable for the TLAB to hear all relevant evidence in order to make the best decision possible. It would be in the public interest to do so. It is emphasized that this decision is based on the understanding that the TLAB has only the jurisdiction afforded to it under the Planning Act; it will not embark upon an assessment of the merits of a potential future heritage designation of the property that is the subject of a separate statute.

DECISION AND ORDER

The TLAB allows the Motion by the City in part. The City is granted Party status. The City shall deliver document disclosure and any supporting witness statements by no later than January 15, 2018. The Appellant and all other Parties shall deliver reply documentary disclosure and expert witness statements, if any, no later than January 29, 2018.

X 

Laurie McPherson
Panel Chair, Toronto Local Appeal Body