

## MEDIATION SUMMARY

**Mediation Summary Date:** Wednesday, March 28, 2018

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

Appellant(s): NARENDRA ARMOGAN

Applicant: VELTA MUSSELLAM

Property Address/Description: 31 MAPLE AVE

Committee of Adjustment Case File Number: 16 248550 STE 27 MV

TLAB Case File Number: 17 188180 S45 27 TLAB

**Mediation Date: Friday, March 02, 2018**

**MEDIATION SUMMARY DELIVERED BY DINO LOMBARDI**

### APPEARENCES

Dr. Narendra Armogan (Appellant)

Jason Park (Appellant's Solicitor)

Michael Goldberg (Appellant's Land Use Planner)

Peter and Heather Senst (Party – reside at 33 Maple Avenue))

Alan Heisey (Senst's Solicitor)

Michael Labrecque (Party – resides at 29 Maple Avenue))

### INTRODUCTION

On February 6, 2018, Counsel for the Appellant contacted the Toronto Local Appeal Body (the 'TLAB') to advise that some of the Parties had expressed interest in participating in a TLAB-led mediation process to resolve outstanding issues related to the appeal of the

Committee of Adjustment denial of the variances for 31 Maple Avenue. After canvassing the Parties, the Appellant's legal counsel advised the TLAB that only the owners of 33 Maple Avenue were open to engaging in mediation. The TLAB issued a Notice of Appointment for Mediation, setting a date for March 2, 2018 pursuant to Rule 20 (Form 17).

The purpose of the mediation, as stated by the Appellant's legal counsel, is three-fold: attempt to resolve the issues between the Appellant and the owners of 33 Maple Avenue (the Sensts); arrive at a settlement with this Party; and, to release them as a Party at the three-day Hearing scheduled in April, 2018.

Attendees at the Mediation were expected to include: the Appellant, legal counsel and land use planner, Peter and Heather Senst and their lawyer, Mr. Alan Heisey.

On March 1, 2018, the day before the scheduled Mediation proceeding, Michael Labrecque (resident at 29 Maple Avenue) and a Party to the Hearing, contacted the TLAB and the Parties scheduled to attend the March 2nd Mediation, by email, indicating that he would be attending the mediation proceeding as well. Further, that he was waiving his right to legal representation only for the Mediation scheduled for March 2<sup>nd</sup>. Additionally, he requested that all parties, their legal representatives, and the TLAB mediator communicate directly with him prior to and during the scheduled Mediation.

Under Rule 2.10, the TLAB is empowered to grant exemptions or other relief under the Rules as it considers appropriate, to enable it to effectively and completely adjudicate matters before it in a '*just, expeditious and cost effective manner.*' In addition, pursuant to Rule 20.2, the TLAB permits Parties to engage in Mediation where it is satisfied that there is good reason to believe one or more of the issues in dispute may be resolved through Mediation. The TLAB can direct the parties to attend the mediation, the process itself is both non-binding and confidential.

At the commencement of the Mediation proceeding, neither of the other attendees raised objections to the inclusion of Mr. Labrecque at the Mediation and, in fact, welcomed his participation in hopes of including this Party in any possible settlement outcome. Since Mr. Labrecque had not been initially identified by the Appellant's legal counsel nor TLAB as a Party willing to participate in this Mediation proceeding, the Member deferred to the Rules of Practice and Procedure for guidance on this allowance. Since the Rules do speak to Parties, prima facia, it is the Member's interpretation that all are swept into the proceedings. However, as the TLAB can vary the Rules, I concluded that the conditions for holding this Mediation as permitted under Section 20.2 of the "Rules of Practice and Procedure" had been properly constituted and that it was possible to proceed with the scheduled Mediation, with Mr. Labrecque fully participating.

## **BACKGROUND**

Subject to any subsequent clarification, I recite the following factual matters:

The Site was purchased by the Appellant, Dr. Narendra Armogan, in 2013 and consisted of two buildings:

1. A three-storey detached multi-occupancy residential dwelling, facing Maple Avenue. The main dwelling is designated under Part V of the Ontario Heritage Act, R.S.O 1990, c. 0.18, and is located within the South Rosedale Heritage Conservation District (the "SRHCD"); defined as a Category "C" heritage building in the SRHCD.
2. A two-storey uninhabitable coach house at the rear of the property adjacent to a rear laneway that includes a four-car garage.

Between 2013 and 2015, the Appellant applied for and obtained permits for the following construction/renovations, and completed the work on the Site;

- Interior renovations to the coach house to convert the building to a primary residence for their elderly parents, as well as external work to remove a paved area and two parking spaces within the garage;
- Interior renovations to the main dwelling thereby converting the dwelling into a single-occupancy residential dwelling and expanding the basement;
- Construction of an outdoor, concrete swimming pool and pool enclosure in the rear yard, and;
- Removal of an existing tree that had caused damage to the main dwelling foundation.

In 2015, the Appellant made an additional application to demolish an existing one-storey conservatory on the west side of the main dwelling in order to construct a three-storey addition in the footprint of the demolished conservatory. The proposed side addition is to consist of a two-storey brick portion with a partial third-storey glass and aluminum conservatory. In support of this architectural feature, the Appellant retained a heritage consultant and project architect to prepare a Heritage Impact Assessment (the "HIA") to assess the proposed side addition and renovation work in the context of the SRHCD. The conclusion contained in the HIA found that the existing one-storey conservatory was not a significant or authentic element of the original dwelling and, in fact, has been replaced and altered in the past, making it a suitable location for the proposed addition.

The original minor variance application was submitted in November of 2016, with a public hearing before the Committee of Adjustment scheduled for February 28, 2017. Due to opposition from a number of neighbours as well as the South Rosedale Residents' Association (the "SRRA"), the Appellant requested deferral of the February 28th Committee of Adjustment hearing to allow time to redesign the proposed side addition in order to respond to the concerns of neighbours and the SRRA. Ensuing revisions to the plans included the addition of more rear and front yard landscaping, a reduction in the width of the proposed side addition to maintain existing setbacks, the elimination of second floor platforms, and the reduction of floor space index.

As a result of these revisions, the number of requested variances was reduced from 15 to 13, and a new Committee of Adjustment Hearing was scheduled for June 7, 2017. Eight of the total 13 variances identified below are in relation to existing elements of the property, most of which date back to the main dwelling's original construction in the 1880's and renovations prior to 1944.

At the June 7th Committee of Adjustment Hearing, the SRRA, the Heritage Protection Service Staff and City Planning did not oppose the minor variance application. However, three days prior to the hearing date, Urban Forestry recommended that due to concerns regarding injury to certain trees, the required variances for the driveway should be denied. The Appellant has continued to work with Urban Forestry in an attempt to resolve issues raised by that Department.

On June 7, 2017, the Committee of Adjustment refused the minor variance application and the Appellant subsequently appealed this decision to the Toronto Local Appeal Body (the "TLAB") on June 27, 2017. The following neighbours and individuals elected Party Status:

- Michael Labrecque and Cecilia Ramos (reside at 29 Maple Avenue)
- Peter and Heather Senst (reside at 33 Maple Avenue)
- James Carr (resides at 24 Maple Avenue)
- Robert Henderson (resides at 74 Glen Road)
- John Emery (President of Fairmont Properties)

In addition, 23 other persons and organizations filed statements electing to be recognized as Participants.

The formal variances requested by the Appellant will not be listed verbatim in this summary, but are combined and collapsed in a summary sense, into the following categories:

- Length and Depth of the existing dwelling;
- Height of the proposed side addition;
- Setbacks of the proposed side addition from the west property line as well as the existing pool and fence enclosure;
- Floor Space Index and Gross Floor Area;
- Landscaping; and,
- Driveway Width

On November 27, 2017, the TLAB responded to Motions made by the Appellants and others requesting relief from the TLAB Rules and adjourning the date of the Hearing scheduled for November 27<sup>th</sup>. The resulting Decision and Order from the TLAB vacated the November 27<sup>th</sup> Hearing Date and rescheduled the Hearing through a Notice of Hearing, setting aside April 10, 11 and 12, 2018 to hear this appeal.

## **CONFIDENTIALITY**

At the commencement of the March 2, 2018 Mediation, all parties in attendance were advised that the respective interests and position on matters discussed in the Mediation would remain confidential, as per Sections 20.2 and 20.6 of the Rules.

Specifically, under Rule 20.6, 'any information or Documents provided or exchanged during a Mediation and any discussion or exchanges relating to the resolution of issues or offers to settle are and shall remain confidential and shall not be disclosed or entered into evidence in the same or any other proceeding. Any notes of a Mediation made by a Member shall remain confidential and shall not be released to any Person or admitted into evidence in any proceeding.'

Furthermore, the Appellant was advised that whether or not the Mediation was successful, as Applicant, the Appellant remains responsible at the "Hearing" of the appeal to carry the burden of demonstrating that all of the variances currently being sought meet the statutory tests, due to the obligations of the TLAB and the fact that outstanding Parties remain.

## **STATUS OF MATTERS DURING THE MEDIATION**

Rule 19.1 of the TLAB's Rules of Practice and Procedure underscores that the TLAB is committed to encouraging Parties to settle some or all of the issues by informal discussion, exchange and Mediation. Under Rule 19.2, Parties who arrive at a settlement shall serve the terms of the proposed settlement on all other Parties and Participants and File same with the Toronto Local Appeal Body at the earliest possible date.

The Parties in attendance at the Mediation participated in considerable dialogue and various 'in camera' breakout sessions. Ultimately, the Parties failed to arrive at a settlement during the March 2<sup>nd</sup> Mediation.

There was general agreement amongst the Parties present, to continue dialoguing with each other outside of the TLAB Mediation process in order to determine if any of the issues identified in the Mediation proceeding can be narrowed or resolved.

The Parties acknowledged that without a settlement in place, they would be proceeding to the contested Hearing scheduled on April, 10, 11 and 12, 2018 in accordance with the Rules. I am not seized of this matter and consider myself excluded on the Hearing Date(s).

If there is any settlement arrived at, including any that has the consensus of shortening the Hearing, the Parties are reminded of the disclosure obligation and requested advice to the TLAB at the earliest practical opportunity.

X 

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Dino Lombardi  
Panel Chair, Toronto Local Appeal Body