

DECISION AND ORDER

Decision Issue Date Monday, April 09, 2018

PROCEEDING COMMENCED UNDER section 45(12), subsection 45(1) of the Planning Act, R.S.O. 1990, c. P.13, as amended (the "Act")

Appellant(s): NICOLAS TYERS

Appellant's Legal Rep.: CALVIN LANTZ

Applicant: TERRENCE TYERS

Property Address/Description: 43 INDUSTRIAL ST

Committee of Adjustment Case File Number: 17 243636 NNY 26 MV (A0889/17NY)

TLAB Case File Number: 17 273448 S45 26 TLAB

Hearing date: Tuesday, May 08, 2018

DECISION DELIVERED BY G. BURTON

INTRODUCTION

This is a Motion held in written form, brought by the appellant owner Industrial Street Developments Inc. (or 2498000 Ontario Inc.), which seeks to amend the application for variances before the Toronto Local Appeal Body (TLAB) by adding a variance inadvertently omitted by Committee of Adjustment staff.

BACKGROUND

On October 5, 2017, the appellant filed an application for minor variances to the Committee of Adjustment (COA) for its approval. This application requested certain variances to permit the construction of an industrial condominium on the parcel at 43 Industrial Street in the East York area. It is within the existing Leaside Industrial Park, an area long developed with both light and heavy industrial uses and some employment

uses. It is zoned M2 (2) Industrial under the (only applicable) East York Zoning By-law, No. 1916 (the City of Toronto Bylaw No. 569-2013 does not apply to this parcel as there was an existing site plan application – it was therefore by the new By-law’s terms exempt from its provisions). The surrounding area is zoned Employment Industrial (E 1.0) in the new By-law.)

The variances requested at the COA related to the required front and north side yard setbacks (and other variances not relevant to this Motion.) The City Staff inadvertently omitted the requested **north** side yard setback, which was not included in either the COA Public Hearing Notice or its Notice of Decision of November 21, 2017.

The variance omitted was:

“ Section 8.3.2, By-law No. 1916

The minimum required side yard setback is 6.00 m.

The proposed side yard setback is 2.50 m.”

MATTERS IN ISSUE AND JURISDICTION

By subsection 45(18.1) of the Planning Act, the TLAB has the power to amend an application for minor variances when it is considering an appeal, if further notice is given of this intention to those who received notice of the hearing. The issue here is whether additional notice of this proposed change is required prior to the scheduled hearing on May 8, 2018. Subsection 45(18.1.1) provides that no further notice is required if in the TLAB’s opinion, the amendment is minor.

EVIDENCE

The minor variances now being requested, including the variance for the north side yard setback (see #3 in bold below), are:

1. Section 5.19, By-law No. 1916

The minimum required number of loading spaces is two (2).

The proposed number of loading spaces is zero (0).

2. Section 8.3.2, By-law No. 1916

The minimum required front yard setback is 6.00m.

The proposed front yard setback is 2.50m.

3. Section 8.3.2, By-law No. 1916

The minimum required side yard setback is 6.00m.

The proposed side yard setback is 2.50m.

4. Section 8.3.1, By-law No. 1916

To permit vehicle storage in the units.

5. Section 8.2.1, By-law No. 1916

An Office use is not a permitted use in a M2(2) zone.
To permit Offices in 25.00% of the complex.

This side yard setback is located to the north of the property, next to Industrial Street. This measurement can be seen clearly in the Site Plan and other Plans filed with the COA on October 5, 2017, and with the TLAB in Volume 1, Document Book, # 10 at p. 133. The plans have not changed.

In paragraph 8.3.4 of her Expert Witness Statement, Ms. Lorelei Jones, Planner for the applicant, states:

“With respect to the front and side yard setbacks, the Committee previously approved those variances and it will be my evidence that the setbacks continue to be minor. In addition, the setbacks from the street are also consistent with the setbacks on the street. A list of front yard setback is provided in Appendix C and illustrates that 53% of the properties on Industrial Street have a setback of 1 m or less. The setbacks are also similar to the new standards that will be implemented on the street by the new Zoning By-law 569-2013.”

ANALYSIS, FINDINGS, REASONS

I find that the variance proposed to be added is indeed minor in the context of section 45 (18.1.1). Ms. Jones' list of setbacks from Industrial Street referred to above shows many 1 m or 0 m setbacks from Industrial Street in these blocks. Parties and participants to the matter who plan to attend the TLAB hearing on May 8, 2018, will have had the proposed plans and measurements shown thereon since the COA hearing. The original application to the COA for approval of the variances clearly indicates the intention to seek a variance for the north yard setback (p. 2, and in the October 3, 2018 covering letter.)

Whether this proposed variance is minor in the context of the applicable tests is a matter for evidence at the Hearing.

Therefore I see little prejudice to anyone if I agree that the amendment by addition of the variance is minor, requiring no additional notice. All persons who would normally receive notice of the hearing have been or should have been aware of the setbacks required from consulting the plans.

This Motion decision will be served on all of the existing persons identified as interested.

DECISION AND ORDER

The TLAB orders that:

1. The Application is amended to include as Variance 3, the following:

“3. Section 8.3.2, By-law No. 1916

The minimum required side yard setback is 6.00m.

The proposed side yard setback is 2.50m.”

2. If any other person intends to seek party or participant status in the hearing after Notice of this Motion Decision is served, and arising only from this additional variance matter, they must submit:

- Notice of Intention to be a Party as per Rule 12 (Form 4) DUE not later than April 13, 2018 ; or

- Notice of Intention to be a Participant as per Rule 13 (Form 4) DUE no later than April 13, 2018.

- Document Disclosure as per Rule 16 DUE no later than April 27, 2018

- Witness Statement as per Rule 16.4 (Form 12) DUE no later than April 27, 2018.

- Participant Statement as per Rule 16.5 (Form 13) DUE no later than April 27, 2018.

- Expert Witness Statement as per Rule 16.6 (Form 14) DUE no later than April 27, 2018.

X 

G. Burton

Panel Chair, Toronto Local Appeal Body