

DECISION AND ORDER

Decision Issue Date Thursday, May 03, 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): NARGES EHSANI-ARMAKI

Applicant: ALI SHAKERI

Property Address/Description: 476 BRIAR HILL AVE

Committee of Adjustment Case File Number: 17 260559 NNY 16 MV (A0997/17NY)

TLAB Case File Number: 18 111613 S45 16 TLAB

Hearing date: Wednesday, May 02, 2018

DECISION DELIVERED BY S. Gopikrishna

INTRODUCTION AND BACKGROUND

Narges Ehsani-Armaki is the owner of 476 Briar Hill Ave., located in Ward 16 of the City of Toronto. She applied to the Committee of Adjustment (COA) to construct a new detached dwelling with a garage after demolishing the existing house. The application was heard and refused by the COA on 30 January, 2018. The Applicants, appealed the decision to the Toronto Local Appeal Body (TLAB) on 30 January, 2018. The TLAB scheduled the Appeal to be heard on 31 May, 2018. While there were many community members who elected to be Participants, Mr. Warren Clark and Mr. David McKinnon elected to be Parties.

On 16 April, 2018, the Appellant submitted a Motion returnable on 2 May, 2018, requesting for an Order that would permit the Appellants to submit new disclosure materials to be relied upon at the time of the oral hearing on 31 May, 2018. The Moving Party invokes Sections 2.2, 2.10, 4.4 and 4.5 of the TLAB's Rules (The Rules) for the requested relief.

MATTERS IN ISSUE

The Moving Party requests:

- An Order of the Toronto Local Appeal Body ("TLAB") permitting the Applicant to file additional Applicant's Disclosure materials that may be relied upon by the Applicant and the witnesses in this proceeding in respect of the proposed minor variances for 476 Briar Hill Avenue in the context of Appeal Number 18 111613 S45 16 TLAB (the "Appeal"), which TLAB is scheduled to hear on May 31, 2018 (the "Hearing")
- Such further and other relief as counsel for the Applicant may request and TLAB may permit.

As noted earlier, the Motion is returnable on the 2nd of May, 2018.

JURISDICTION

Interpretation of these Rules

2.2 These Rules shall be liberally interpreted to secure the just, most expeditious and cost-effective determination of every Proceeding on its merits.

Relief and Exceptions to the Rules

2.10 The Local Appeal Body may grant all necessary exceptions to these Rules, or grant other relief as it considers appropriate, to enable it to effectively and completely adjudicate matters before it in a just, expeditious and cost effective manner

Extension or Reduction of Time

4.4 The Local Appeal Body may on its own initiative, or, on a Motion by a Party, extend or reduce a time limit provided by these Rules on such conditions as the Local Appeal Body considers appropriate.

4.5 The Local Appeal Body may exercise its discretion under Rule 4.4 before or after the expiration of a time limit and with or without a Hearing.

EVIDENCE

As stated earlier, in the Motion submitted on 16 April, 2018, the Moving Party requests:

1. An Order of the Toronto Local Appeal Body ("TLAB") permitting the Applicant to file additional Applicant's Disclosure materials that may be relied upon by the Applicant and the witnesses in this proceeding in respect of the proposed minor variances for 476 Briar Hill Avenue in the context of Appeal Number 18 111613 S45 16 TLAB (the "Appeal"), which TLAB is scheduled to hear on May 31, 2018 (the "Hearing")
2. Such further and other relief as counsel for the Applicant may request and TLAB may

permit.

The Motion was accompanied by updated Site Plans and an affidavit signed by the Appellants' Expert Witness, Mr. Andrew Ferancik. The Motion and Affidavit discuss how these modified plans address issues raised by the Participants opposed to the proposal. The Appellants explained that the changes made to the site plans include :

- Relocation of the driveway entrance to the east side of the property,
- Reduction of the driveway to approximately 3 metres,
- Reduction of the garage from a double to a single car garage and
- Reduction of the length of the house resulting in reductions to Gross Floor Area.

The Appellants assert that the variances in the modified proposal have been reduced from the original proposal. They also assert that the changes don't prejudice the other Parties who would have had a fair opportunity to review the changes before the hearing.

Of special interest to this decision is Paragraph 24 in the Affidavit of Mr. Andrew Ferancik, Expert Witness for the Appellants and Paragraph 21 in the Motion, both dated 16 April 2018. These paragraphs state that the proposed variances fulfill Section 45 (1) of the Planning Act.

In his response dated 24 April, 2018, Mr. Warren Clark filed a Notice of Response to the Motion to acknowledge receipt of the Motion with the Revised Plans and to state that:

2) This acknowledgement SHALL NOT be construed as:

- i) acceptance of the Revised Plans or*
- ii) agreement with any assertions made in the applicant's motion; including but not limited to paragraph 21 which asserts satisfaction of the four tests of s45(1) of the Planning Act.*

3) This response to the motion MAY BE construed as the willingness on the part of the Participants, should the Appellant so choose, to explore mutually acceptable solutions to issues that numerically and/or subjectively exceed the definition of 'minor', so as to foster harmonious neighbourhood relations, to expedite the proceedings of the TLAB process and to preserve the unique jewel that the Briar Hill neighbourhood has become within the City of Toronto.

I note that there is no Response on record from Mr. David McKinnon, nor is there a Reply to the above Response from the Appellants.

ANALYSIS, FINDINGS, REASONS

The Moving Party essentially request relief from the TLAB rules to introduce the updated Site Plan, and rely on these plans during the oral hearing scheduled for 31

May, 2018. The Rules relied upon by the Appellants are listed and the nature of requested relief is explicit.

The Response from Mr. Clark dated 24 April, 2018, does not explicitly request for relief, nor does it oppose the relief requested by Appellants. This Response acknowledges receipt of the Motion and their continued opposition to the Appeal notwithstanding the revised Plans. The Response also expresses a desire to explore mutually acceptable solutions, "*at the initiative of the Appellants*". The Response states explicitly that they oppose the Moving Party's assertion about the updated proposal's compliance with Section 45(1).

The lack of assertion of prejudice by the Respondent is significant in my analysis of the requested Relief by Appellants. I note that the Respondent does not request any relief; their Response, if anything, demonstrates an active interest in further discussion and updating of plans through mutual agreement. The Parties are welcome to have discussions and narrow their differences, if not arrive at a Settlement, on their own initiative.

On the basis of the analysis presented above, I conclude that it would be appropriate to grant the Motion put forward by the Moving Party, dated 16 April, 2018, in its entirety.

The Opposition has expressed an interest in settling with the Appellants- the process of settlement may go forward without any explicit Order from the TLAB.

DECISION AND ORDER

The Toronto Local Appeal Body orders that:

- 1) The Motion dated 16 April, 2018, put forward by the Appellants, is allowed in its entirety.
- 2) All documents and submissions submitted by the Appellants, on 16 April, 2018, form part of the TLAB file for proof and reference at the Hearing of this matter.
- 3) No other relief is requested, nor granted.

X



S. Gopikrishna
Panel Chair, Toronto Local Appeal Body