

DECISION AND ORDER

Decision Issue Date Monday, June 18, 2018

PROCEEDING COMMENCED UNDER section 53, subsection 53(19), and section 45(12), subsection 45(1) of the Planning Act, R.S.O. 1990, c. P.13, as amended (the "Act")

Appellant(s): 167 Armour Boulevard Inc

Applicant: Urbanscape Group

Property Address/Description: 167 Armour Blvd

Committee of Adjustment Case File Number: 17 258482 NNY 10 CO (B0067/17NY), 17 258497 NNY 10 MV (A0981/17NY), 17 258505 NNY 10 MV (A0982/17NY)

TLAB Case File Number: 18 131328 S53 10 TLAB, 18 131324 S45 10 TLAB, 18 131326 S45 10 TLAB

Motion Hearing date: Monday, June 04, 2018

DECISION DELIVERED BY G. Burton

INTRODUCTION AND BACKGROUND

This is a decision on a written Motion, supported by affidavits, brought by Tara Piurko, solicitor for the applicant and appellant, 167 Armour Boulevard Inc. This written motion was provided the return date of June 4, 2018 with **responses by June 13**. The Motion was made in the context of a March 19, 2018 appeal to the Toronto Local Appeal Body (TLAB) from the February 28, 2018 decisions of the Committee of Adjustment (COA). The decisions had refused applications for a consent and variances to permit the severance of the property, and construction of a two storey dwelling on each of the severed lots. The present lot is triangular in shape, with frontage on both Armour Boulevard and Westgate Boulevard.

There were three types of relief sought in the Motion.

1. Amendment to Variance 5 as shown in the COA decision.

The Appellant stated that the minor variance application for 167 Armour Boulevard – **Part 2** had requested a lot frontage of 12.63 m. This was identified as variance #5 on the Notice of Decision dated February 28, 2018. The Part 2 Application had been filed with measurements based on the usual Zoning Notice issued by the City, dated October 26, 2017. Subsequent discussions with Planning staff and Transportation Planning staff then resulted in a revised application before the COA, to meet staff's request for a reorientation of the new dwelling on Part 2. The dwelling was shifted to front on Armour Boulevard, with driveway access to Armour rather than the original exit to Westgate Blvd. The lot dimensions did not change, only the orientation of the dwelling and the location of the proposed driveway.

However, in reviewing with the Zoning Examiner the Feb. 28 COA decision for this appeal to TLAB, the Applicant's planner was informed by the Examiner that the lot frontage dimension had been miscalculated by the City on the original Zoning Notice. The correct lot frontage is **12.02** metres for Part 2. A new Zoning Notice of April 4, 2018, confirmed the corrected lot frontage of 12.02 metres.

Therefore the Applicant has moved to alter the requested variance to reflect this corrected amount for the appeal, and with no further notice.

2. Change from Parties to Participants

The motion also requests the alteration in the status of three persons who had sought Party status in the appeal, Stacey Matthew Cohen, Joseph Salvaggio and Angela Salvaggio. They have not met the requirements in the TLAB's Rules of Procedure for pre-filing of materials for the hearing (document disclosure and witness statements), either by the dates in the Notice of Hearing or subsequently.

3. Appeal to be determined on the basis of the (properly filed) the proponent's expert witness statements only, without requiring the oral hearing now set out for July 10, 2018.

The applicant also sought an order that the consent and minor variance relief sought (as amended), be granted based on the affidavit evidence of the expert planning and transportation planning witnesses, as set out in their expert witness statements and other document disclosure.

4. It is not necessary to make a finding on the other relief sought by the applicant, an order abridging the time for service of the Notice of Motion. It was properly served.

JURISDICTION

The TLAB has the authority under subsection 45(18.1) of the Act to make a decision on an amended application, if all who received notice of the original application receive

notice of the amendment. This notice does not have to be provided if the TLAB determines that the amendment is a minor one [45(18.1.1)].

Under its Rule of Practice and Procedure, Rule 2.10 permits:

“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.”

By Rule 2.11, the TLAB has the authority to grant relief where a Party or Participant has not complied with a requirement of the Rules. While by Rule 2.9 substantial compliance is sufficient, Rule 2.7 requires that the Rules be interpreted in a manner which facilitates the introduction and use of electronic filing and the use of digital communication and storage media.

EVIDENCE

Ms. Piurko submitted that, respecting the change in lot frontage for Variance No. 5 of Part 2, there has been no physical change to the proposal. The lot configuration and size are identical to that filed with the COA, presented to the community and discussed at the COA hearing on February 28, 2018. The change is minor and no further notice is required.

As also argued by Ms. Piurko, a Party has responsibilities prior to the hearing of an Appeal as set out in the TLAB's Rules. These are also described in Part 3 of the TLAB's Public Guide. The Rules and the explanatory Guide set out the responsibilities of a party to an appeal. A Party is required to provide a copy to the TLAB and to all parties and participants of all the documents and witness statements which they wish to present and rely on at the hearing of an Appeal.

The only materials on file for this appeal have been filed by the appellant.

These are the variances sought in this appeal (the amended variance is #5, for Part 2):

Part 1 –

1. Chapter 900.3.10.(5), By-law No. 569-2013

The minimum required side yard setback is 1.80m.

The proposed south side yard setback is 1.22m.

2. Chapter 10.5.40.50.(2), By-law No. 569-2013

A platform without main walls, such as a deck, porch, balcony or similar structure, attached to or within 0.3 m of a building, must comply with the required minimum building setbacks for the zone; 1.80m.

The proposed rear deck is setback 1.22m from the south lot line.

3. Chapter 10.20.30.10.(1), By-law No. 569-2013
The minimum required lot area is 600.00 sq. m.
The proposed lot area is 437.9 sq. m.

4. Chapter 10.20.30.40.(1), By-law No. 569-2013
The maximum permitted lot coverage is 30.00% of the lot area.
The proposed lot coverage is 33.81% of the lot area.

5. Chapter 10.5.50.10.(1), By-law No. 569-2013
The minimum required front yard landscaping is 60.00%.
The proposed front yard landscaping is 51.70%.

6. Chapter 10.20.40.70.(1)(B), By-law No. 569-2013
The minimum required front yard setback is 6.00m.
The proposed front yard setback is 1.33m.

7. Section 12.4(a), By-law No. 7625
The minimum required front yard setback is 6.50m.
The proposed front yard setback is 1.33m.

8. Section 12.4(c), By-law No. 7625
The minimum required rear yard setback is 9.50m.
The proposed rear yard setback is 5.93m.

9. Section 12.4(b), By-law No. 7625
The minimum required side yard setback is 1.80m.
The proposed south side yard setback is 1.22m.

Part 2 –

1. Chapter 900.3.10.(5), By-law No. 569-2013
The minimum required side yard setback is 1.80m.
The proposed north side yard setback is 1.22m.

2. Chapter 900.3.10.(5), By-law No. 569-2013
The minimum required side yard setback is 1.80m.
The proposed south side yard setback is 1.57m.

3. Chapter 10.5.40.50.(2), By-law No. 569-2013
A platform without main walls, such as a deck, porch, balcony or similar structure, attached to or within 0.30m of a building, must comply with the required minimum building setbacks for the zone; 1.80m.
The proposed rear deck is setback 1.22m from the north lot line.

4. Chapter 10.20.30.40.(1), By-law No. 569-2013

The maximum permitted lot coverage is 30.00% of the lot area.
The proposed lot coverage is 32.93% of the lot area.

5. Chapter 10.20.30.20.(1), By-law No. 569-2013
The minimum required lot frontage is 15.00m.
The proposed lot frontage is 12.02m.

6. Chapter 10.20.30.10.(1), By-law No. 569-2013
The minimum required lot area is 600.00 sq. m.
The proposed lot area is 437.7 sq. m.

7. Chapter 10.20.40.10.(2), By-law No. 569-2013
The maximum permitted height of all side exterior main walls facing a side lot line is 7.50m.
The proposed height of the west side exterior main walls facing a side lot line is 8.53m for 12.90% of the width of the wall.

8. Section 12.4(b), By-law No. 7625
The minimum required side yard setback is 1.57m.
The proposed north side yard setback is 1.22m.

9. Section 12.5A, By-law No. 7625
The maximum permitted building length is 16.80m.
The proposed building length is 17.61m.

The intended Expert Witnesses David Brown (Land Use Planning) and Alun Lloyd (Transportation) have properly filed both their Expert Witness Statements in Form 14, and their Acknowledgement of Expert's Duty in Form 6.

ANALYSIS, FINDINGS, REASONS

1. I accept the applicant's request to modify Variance 5 for Part 2 as proposed, with no further notice required. Neither Planning nor Transportation staff had objections to the minor alteration. Neighbours had no direct notice of the proper measurement until the Notice of Motion was filed on May 18, 2018. However, I find that this makes no perceptible difference to the application as appealed. None of the existing Parties as filed had any objection, as they did not respond to the Motion.

2. I also accept the submission to alter the status of the three persons who had sought Party status in the appeal, Stacey Matthew Cohen, Joseph Salvaggio and Angela Salvaggio. They did not meet the requirements in the TLAB's Rules of Procedure for pre-filing of materials for the hearing, that is, document disclosure and witness statements, either by the dates in the Notice of Hearing or even after, including any


responses to the Motion. I suspect that the objectors did not fully realize the requirements of Party status, and really intended to seek Participant status. However, this does not cancel their obligations to be aware of the consequences of this choice. A phone call to staff would have elucidated this, in case of doubt.

3. The applicant's request to determine its appeal essentially in written form, based on the affidavits sworn by the two professional witnesses, is denied. The appeal will continue orally on the date set for the hearing, July 10, 2018. (While this Motion was brought well before this hearing date, the return date for Responses was June 15.)

I find that because this is a hearing *de novo*, arguments both in favour and opposed to the applications must be fully heard. It would not be fair to refuse to hear the case to be put forward by the neighbours here, and rely only on the arguments made by the applicants in affidavit form. The TLAB default rule is for an oral hearing. Video- or teleconference hearings (as originally requested in the Motion) are part oral, but are not normally held unless the only party is the Applicant or perhaps one additional person. Here, the evidence of the applicant may only be called "uncontroverted" as set out in the Notice of Motion, because the opponents have indeed failed to respond by proper filing of statements. They may be expecting an opportunity to oppose this evidence in an oral hearing. I will make an exception under TLAB Rule 2.10 and recognize that, despite this failure, the TLAB has notice of their intent to participate, and should hear their case.

DECISION AND ORDER

1. The request to modify Variance 5 for Part 2, without further notice, is granted.
2. The oral hearing of this appeal will proceed as scheduled on July 10, 2018.
3. The status of the three persons who had sought Party status in the appeal, Stacey Matthew Cohen, Joseph Salvaggio and Angela Salvaggio, will be altered to Participant.



G. Burton
Panel Chair, Toronto Local Appeal Body