

DECISION AND ORDER

Decision Issue Date: Friday, September 14, 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): MARIO QUINTIERI

Applicant: FAUSTO CORTESE ARCHITECTS LTD

Property Address/Description: 37 HATHERLEY RD

Committee of Adjustment Case File Number: 18 115003 WET 17 MV (A0136/18EYK)

TLAB Case File Number: **18 184039 S45 17 TLAB**

Written Hearing date: Tuesday, September 11, 2018

DECISION DELIVERED BY G. BURTON

INTRODUCTION

This is a decision on a Motion brought by the owner of the property at 37 Hatherley Road, east of EarlsCourt Avenue, in the former municipality of York. The owner is Ms. Maria Del Pilar Diaz Cabezas. The Motion was for dismissal of the appeal without holding a hearing, as permitted under Rule 9.1a) of the Rules of the Toronto Local Appeal Body (TLAB). This Rule authorizes the TLAB to dismiss a proceeding without a hearing if the reasons set out in the appeal do not disclose any apparent land use planning ground upon which the TLAB could allow the appeal.

BACKGROUND

On June 7, 2018, the Committee of Adjustment (COA) considered the owner Ms. Diaz Cabezas' application for several variances to permit the construction of a duplex following the demolition of the existing two storey dwelling. It would have parking in a front yard space and retain an existing shed to the rear. The COA approved the application, subject to a Transportation Services' requested condition that the site plan be revised to include the notation that "The applicant must obtain a paving permit from Off Street Parking Section of Transportation Services." A revised site plan as required in the condition was filed by the applicant that same day.

The appellant Mr. Mario Quintieri, resides next door at 39 Hatherley Road to the west. His reasons for the appeal were addressed only to the side yard setback authorized by the COA decision, next to his property. This was granted at 0.44 m, rather than the By-law requirement of 1.8 m.

The reasons set out in the Notice of Appeal were:

- “1. This will block my only access to my backyard for 4 to 5 months according to the architect.
2. It is also a safety issue, due to the mutual right of way being the only access in case of fire or emergency situation.
3. Danger to myself because of my visual impairment due to possible construction site extension on to my property.
4. Having to bring lawn mower, garbage bins, bikes and snow shovel through the indoor living space, because of no outdoor access.
5. Possibilities of damage to my property as mentioned in the presented agreement such as removing the existing fence and trees from my back patio, in order to extend the construction site.”

MATTERS IN ISSUE

While it appears that Mr. Quintieri has raised a legitimate objection on a planning ground, i.e. the side yard setback is too small, potentially posing a safety hazard, are there other factors in this situation which would mitigate against accepting the appeal as valid? What is the effect of his later withdrawal of the appeal, but only on certain conditions?

JURISDICTION

As mentioned, the TLAB Rule 9.1 a) permits the dismissal of the appeal without holding a hearing. This authorizes the TLAB to dismiss a proceeding without a hearing if the reasons set out in the appeal do not disclose any apparent land use planning ground upon which the TLAB could allow the appeal. If this Rule is accepted as applicable, it relieves the other parties from having to prepare for an oral hearing where there is no statutory basis for the appeal.

EVIDENCE

The applicant's counsel, Mr. Martin Mazierski, had filed the Motion to Dismiss, supported by the affidavits of the applicant/owner Ms. Diaz Cabezas, the applicant's architect Mr. Fausto Cortese, and by Mr. T. J. Cieciora, the proposed planning witness. Mr. Cieciora stated that in his opinion there was no planning ground provided in the Notice of Appeal. There had also been no Planning Department report to the COA, and the only Transportation comment concerned a revised site plan. This site plan revision was filed the day of the COA decision, as Mr. Cortese confirmed. He added that the

councillor had not commented. The only Forestry comment was for a standard requirement for payment in lieu for a street tree.

The Owner's affidavit stated that the disputed side yard setback had actually been increased in the application, from 0.38 cm to 0.44 cm, to better satisfy Mr. Quintieri next door. She pointed out that his objections were addressed to the construction period, and not to the actual setback. In fact, the **present actual setback is 0.36 cm**, and this has existed for 5 years (Affidavit, paragraph 10). A setback of 0.44 m for the proposed structure was approved by the COA.

Mr. Quintieri replied by Notice of Response to the Motion (Form 8). He withdrew his appeal of the COA decision. In law and practice, this would terminate the TLAB's jurisdiction. However, he made the withdrawal conditional upon a written undertaking before construction begins, that the walkway between the properties would be cleared of debris at the end of the workday, and that any damage would be immediately repaired with the same materials.

ANALYSIS, FINDINGS, REASONS

The appellant did specifically object to one variance granted, the side yard setback next to his property. This would in other circumstances be a legitimate land use planning ground for an appeal. Thus the Motion might not have succeeded initially, as some land use planning evidence was possible directed to the size of the setback. The TLAB might have had to consider this issue, no matter the subsequent rationale given directed to the safety question.

However, there are two reasons for accepting the Motion at this time. First, the facts as attested are that the contested west side yard setback will in fact increase from the actual setback now present, leaving only remote success for any appeal. The appellant's safety concerns will be reduced. The second reason is the appeal has now been withdrawn in the Notice of Response. I find that the withdrawal of the appeal ends the TLAB's jurisdiction. Further, that the withdrawal cannot be conditional upon the written agreement that the appellant seeks. The TLAB has no jurisdiction over and thus cannot deal with construction issues. These are a matter of private contract between the parties. Therefore once the appeal is withdrawn, as this has been, any such agreement would have to be reached outside of the TLAB process.

It appears from the affidavit evidence that that the owner has made concessions in the past in favour of her neighbour Mr. Quintieri. Perhaps the promises that he has requested will be met by her in any event.

DECISION AND ORDER

In the event that I am wrong as to the withdrawal, I find that the Motion should succeed and that the appeal should be dismissed. On the arguments presented in the Motion, I

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find that there is no land use planning basis upon which the appeal could be allowed. The Motion succeeds, and the appeal is dismissed.

The Committee of Adjustment decision dated June 7, 2018 is final and binding, and the file of the Toronto Local Appeal Body is closed.

X 

G. Burton

Panel Chair, Toronto Local Appeal Body