

DECISION AND ORDER

Decision Issue Date Tuesday, October 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): DAVID MATOC

Applicant: MARK DAVIDSON

Property Address/Description: 70 LABURNHAM AVE

Committee of Adjustment Case File: 18 158568 WET 06 MV

TLAB Case File Number: **18 205231 S45 06 TLAB**

Motion Hearing date: Tuesday, September 25, 2018

DECISION DELIVERED BY L. MCPHERSON

APPEARANCES

Name	Role	Representative
DAVID MATOC	Appellant	
MARK DAVIDSON	Owner/Applicant/Party	MARISA KEATING
ROB THOMPSON	Participant	

INTRODUCTION AND BACKGROUND

On July 18, 2018 the Committee of Adjustment (Committee) approved minor variances for the lands at 70 Laburnham Ave. The decision was appealed by one person, Mr. David Matoc (the Appellant). The TLAB scheduled a Hearing for December 12, 2018 with the following timelines:

- **Applicant Disclosure** as per Rule 11 (Form 3) **DUE** no later than September 05, 2018
- **Notice of Intention** to be a Party as per Rule 12 (Form 4) **DUE** no later than September 10, 2018
- **Notice of Intention** to be a Participant as per Rule 13 (Form 4) **DUE** no later than September

10, 2018

- **Document Disclosure** as per Rule 16 **DUE** no later than September 20, 2018
- **Witness Statement** as per Rule 16.4 (Form 12) **DUE** no later than October 05, 2018
- **Participant Statement** as per Rule 16.5 (Form 13) **DUE** no later than October 05, 2018
- **Expert Witness Statement** as per Rule 16.6 (Form 14) **DUE** no later than October 05, 2018
- **Notice of Motion** as per Rule 17 (Form 7) **DUE** no later than October 29, 2018

The variance application was to permit the construction of a two- storey rear addition, a two-storey west side addition which will include a car-port, and to create a secondary suite. The Committee approved the following variances:

1. Section 10.20.40.40.(1)(A), By-law 569-2013

The maximum permitted floor space index is 0.35 times the area of the lot (132.63 m²). The altered dwelling will have a floor space index equal to 0.51 times the area of the lot (191.38 m²).

2. Section 10.20.40.70.(3)(C), By-law 569-2013

The minimum required side yard setback is 1.2 m.

The altered dwelling will be located 0.93 m from the west side lot line.

3. Section 200.5.10.1.(1), By-law 569-2013

A total of 2 on-site parking spaces are required.

One additional parking space will be provided.

4. Section 200.5.1.10.(2)(A)(ii), By-law 569-2013 and Section 330-9 A.(1)(c) & (3)

The minimum required parking space width is 3.2 m. The proposed obstructed parking space within the attached carport will have a width of 2.8 m.

5. Section 150.10.40.1(1), By-law 569-2013

A secondary suite is permitted provided the dwelling is more than 5 years old. The entire building was not constructed more than 5 years prior to the introduction of the secondary suite.

This decision was subject to the following condition(s):

1. Submission of a complete application for a permit to injure or destroy a City-owned tree(s). A Contractor's Agreement to Perform Work on City-owned Trees will be required prior to the removal/injure of the subject tree(s). Form located at www.toronto.ca/trees/pdfs/contractor_services_agreement_information.pdf. Submission of a tree protection guarantee security deposit to guarantee the protection of City-owned trees according to the Tree Protection Policy and Specifications for Construction Near Trees or as otherwise approved by Urban Forestry. Accepted methods of payment include debit or card, certified cheque or money order payable to the Treasurer of the City of Toronto, or Letter of Credit.
2. Submission of a complete application for permit to injure or destroy privately owned trees.
3. The applicant shall submit an application for permit to injure or remove City trees to Urban Forestry, as per City of Toronto Municipal Code Chapter 813, Article II.

This is a decision arising from a Motion brought by Mr. Mark Davidson (the Applicant) to dismiss the appeal by the Appellant without holding a Hearing on the basis that the appeal is vexatious and commenced in bad faith pursuant to Rule 9.1(b) of the TLAB Rules of Practice and Procedure (TLAB Rules). As part of the Motion, the Applicant requested relief from Rule 16.2 and 16.6 dealing with the timelines for document and witness statement disclosure until a decision on the Motion was released. Ms. Marisa Keating attended the oral Motion Hearing on behalf of the Applicant and Mr. David Matoc attended on his own behalf.

JURISDICTION

The Motion requests an Order pursuant to Rule 9.1(b), the basis of which is set out in Section 45(17) of the Planning which states:

(17) Despite the *Statutory Powers Procedure Act* and subsection (16), the Tribunal may dismiss all or part of an appeal without holding a hearing, on its own initiative or on the motion of any party, if,

- (a) it is of the opinion that,
 - (i) the reasons set out in the notice of appeal do not disclose any apparent land use planning ground upon which the Tribunal could allow all or part of the appeal,
 - (ii) the appeal is not made in good faith or is frivolous or vexatious,
 - (iii) the appeal is made only for the purpose of delay, or
 - (iv) the appellant has persistently and without reasonable grounds commenced before the Tribunal proceedings that constitute an abuse of process.

TLAB Rule 9- Adjudicative Screening By Member, states as follows:

9.1 In the case of an Appeal under subsection 45(12) of the Planning Act the Local Appeal Body may propose to, or upon Motion, dismiss all or part of a Proceeding without a Hearing on the grounds that:

- a) The reasons set out in Form 1 do not disclose any apparent land use planning ground upon which the Local Appeal Body could allow all or part of the Appeal;
- b) the Proceeding is frivolous, vexatious or commenced in bad faith;
- c) the Appeal is made only for the purpose of delay;
- d) the Appellant has persistently and without reasonable grounds commenced Proceedings that constitute an abuse of process;
- e) the Appellant has not provided written reasons and grounds for the Appeal;

- f) the Appellant has not paid the required fee;
- g) the Appellant has not complied with the requirements provided pursuant to Rule 8.2 within the time period specified by Rule 8.3;
- h) the Proceeding relates to matters which are outside the jurisdiction of the Local Appeal Body;
- i) some aspect of the statutory requirements for bringing the Appeal has not been met; or
- j) the submitted Form 1 could not be processed and the matter was referred, pursuant to Rule 8.4, for adjudicative screening.

9.3 Where the Local Appeal Body proposes to dismiss all or part of an Appeal under Rule 9.1 or 9.2 it shall give Notice of Proposed Dismissal, using Form 16, in accordance with the Statutory Powers Procedure Act, and to such other Persons as the Local Appeal Body may direct.

9.4 A Person wishing to make written submissions on a proposed dismissal shall do so within 10 Days of receiving the Local Appeal Body's notice given under Rule 9.3.

9.5 Upon receiving written submissions, or, if no written submissions are received in accordance with Rule 9.4, the Local Appeal Body may dismiss the Appeal or make any other order.

9.6 Where the Local Appeal Body dismisses all or part of an Appeal, or is advised that an Appeal is withdrawn, any fee paid shall not be refunded.

SUBMISSIONS

The Applicant

The Motion Materials and Book of Authorities filed by Ms. Keating were marked as Exhibits 1 and 2. In Ms. Keating's submission, the Appellant, as the interim chair of the Resident's Association Vibrant Long Branch, was motivated to file the Appeal by the belief that the Applicant is a member of the opposing Resident's Association – the Long Branch Neighbourhood Association (LBNA). She submitted that whether the Appellant was a member of the LBNA or not is completely irrelevant. Ms. Keating submits that the Appeal is vexatious and commenced in bad faith. Referring to the Black's Law Dictionary (Tab 14 -Exhibit 2), she indicated that vexatious is defined as "(Of conduct) without reasonable or probable cause or excuse; harassing; annoying. Ms. Keating referred to an OMB decision Midland (Town) Zoning By-law 94-50 (Tab 1 –Exhibit 2) in which Member Melling similarly defines vexatious: "Vexatious, particularly in legal parlance, describes actions "instituted without sufficient grounds for the purpose of causing trouble or annoyance" to another party"....."Thus in the colloquial, we have the.."nasty"... And it appears to this member that to be either "silly" or "nasty" in this

context requires some deliberateness of purpose; one is trying not to be serious or is trying to be bad”.

Ms. Keating referred to the letter from the Appellant to the Committee (Tab C- Exhibit 1) in which Mr. Matoc refers to the Applicant’s membership in the LBNA four times and refers to a “double standard” because the LBNA has opposed similar applications. She submitted that the letter speaks to creating trouble and expense for her client and in the Appellant’s view her client has views and opinions that are different from those of Vibrant Long Branch.

Ms. Keating further referred to letters to the editor of a newspaper by her client and the Appellant (Exhibit E of Affidavit) which in her view calls into question the Appellant’s real reasons for the Appeal. With respect to Mr. Matoc’s Affidavit in response to the Motion, she points out inconsistencies in the Appellant’s letters to the City in which he supported developments such as variances in excess of her client’s and for secondary suites as proposed. She submitted that the Appellant is targeting her client because his views accord with the LBNA, which the Appellant is opposed to. This has placed her client in a costly appeal process. She referred to an OMB decision *Smith v. Toronto (City) Committee of Adjustment* (Tab 2- Exhibit 2) in which member Krushelnicki, in relation to the tests in Section 45(17) of the Planning Act, states “ Taken as a whole the emerging practice of the Board in applying this section has been to consider whether the appeal is genuine, whether it is authentic and whether, in its wording and intent, the appeal is advanced for legitimate reasons and is not merely an abuse of process”. The Board reviewed the Appellant’s conduct and stated:

“ Taken individually, none of these circumstances by themselves is fatal. But taken together:

1. the distance from the site;
2. the lack of concrete impact on the appellant or her property;
3. failure to object to similar proposals in closer proximity to her home and neighbourhood;
4. an unexplained reluctance to discuss resolution; and
5. a coincident relationship with a person who works for a competitor of the applicant.

... they suggest a pattern that seriously questions the credibility or sincerity of the grounds for appeal.”

The Member found that “Even after giving the benefit of the doubt to the appellant – because every appellant merits such a benefit- and to the prospect that the appellant may be sincere, I find that taken together the circumstances do not suggest that the notice of appeal discloses any apparent land use planning ground, at least not that is genuine or authentic. Instead I am persuaded that taking the steps of appeal were motivated by other intentions not wholly apparent to the Board, but unrelated to land use planning grounds”. The motion to dismiss was granted.

Ms. Keating indicated the similarities with the above case and the Appeal: the Appellant lives 3 blocks from the site; his concerns were not shared by others closer to

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the site; there is lack of concrete impact on him; his failure to object to similar projects in closer proximity even along Laburnham Ave that are larger in scale; and his unexplained reluctance to engage in discussion to narrow or scope the issues. Further she noted that the Appellant was absent from the Committee meeting. In her view, this behavior casts doubt that his letter identifies a legitimate planning concern and suggests that the Appeal was motivated by other intentions and not land use planning grounds.

Ms. Keating identified issues in his Appeal letter that she does not consider to be legitimate planning concerns. One relates to a variance that may have been missed by the Zoning Examiner and therefore the Committee. I give this issue no weight as the Applicant did not appeal the Committee decision and therefore was prepared to accept the variances as approved. The Appellant was of the opinion that the Committee erred in not giving reasons for its decision other than the standard reason that the variances meet the tests. I give this issue no weight. The TLAB is not the forum to determine whether the Committee's decisions are appropriately detailed. The form of the decision was the standard decision that the Committee renders.

Ms. Keating noted that the Appellant raised issues in his response to this Motion to dismiss such parking, tree removal and public safety, which were not identified in his appeal letter, furthering her view that the appeal was insincere.

Ms. Keating raised other issues related to the legitimacy of the planning issues raised which this decision will not detail as the purpose is not to visit the merits of the proposal but the legitimacy of the Appeal. She summarized that the TLAB has the ability to look beyond the issues raised to determine if the action, words and conduct and all the circumstances sustain the legitimacy of the appeal. She requested that the Appeal be dismissed without further hearing.

The Appellant

Mr. Matoc stated that there is a fundamental right for an appeal which is a vital right afforded to the general public. In his opinion, if the Appeal is dismissed today, it is not fair to the community or to the other Participants hoping to state their views. Further, in his view a dismissal would not meet the test of natural justice. He indicated that he lives around the corner from the site. He indicated that he is opposed to the Long Branch Neighbourhood Character Guidelines. He feels he has raised valid land use planning grounds. He noted some of the concerns with the proposal related to front yard parking and an existing tree. He confirmed that he plans on calling witnesses at the Hearing and has summonsed a number of City staff for the Hearing including transportation staff who did not support the parking variance, urban forestry staff and planning staff. He has also summonsed the Zoning Examiner as he was concerned that a variance for a deck was not identified by the Zoning examiner although it was shown on the plans. Mr. Matoc indicated that decks and overlook issues were concerns for the neighbourhood. He was also concerned that the number of parking spaces on site was not clear to the Committee. He could not attend the Committee meeting but sent in a letter supporting a deferral which was originally asked for by planning staff.

In the Appellant's view, a dismissal would prejudice the Participants that have signed the requisite Form. He noted that witnesses have not been called and document

disclosure has not been completed and as a result the full merits of the case have not been heard. Mr. Matoc does not agree fully with the planning report and he was concerned that it used standard and common language and did not go into any level of detail. He does not think that planning staff have applied the Guidelines in a consistent and fair way and in his view the proposal contravenes specific aspects of the Guidelines for corner lots. He would like to question staff on why they did not raise concerns. He noted that an arborist report had not been submitted regarding the health of the tree.

In Mr. Matoc's opinion, it is in the public interest to have a hearing on the case and examine all of the evidence. In his view, if the Appeal is dismissed, residents will be reluctant to get involved in community planning. A full hearing would provide for a full and complete explanation of the concerns. He noted that Committee and TLAB decisions affect the neighbourhood and are used across the City as precedent. The tree and parking issues are issues within Long Branch. Mr. Matoc made reference to other TLAB decisions regarding Motions to dismiss, but I do not consider them relevant to the current Motion. He considers the Motion to dismiss to be premature given that Witness Statements and Participant Statements must still be filed. Mr. Matoc encouraged the TLAB to dismiss the Motion.

ANALYSIS, FINDINGS, REASONS

I have given careful consideration to the Motion to dismiss. I agree with the submission that the right of Appeal is accompanied by a responsibility of the Appellant to act in a manner that demonstrates a genuine concern related to a legitimate planning issue. In this case, I am not convinced that the Appellant is acting in good faith for a number of reasons:

- the original letter to the Committee did not raise any planning concerns but was focused on the fact that the Applicant was part of a residents group that opposed other variances in the area
- the Appellant does not live in close proximity to the site
- the Appellant did not attend the Committee meeting. He advised the TLAB that he has summonsed the City planner because he had questions regarding their report while acknowledging that those questions may have been answered at the Committee meeting
- the Appeal letter did not mention the planning issues now being raised in response to this Motion
- the first ground for appeal simply states that the requested variances do not meet the tests without providing any reasons
- the only issue raised in the Appeal is concerning the second floor platform which is not before the TLAB as it was not included in the variances that went before the Committee and is not included in the Notice of Decision – if the Committee decision were not appealed, the Applicant would not have a variance to permit the deck. It is not logical to appeal a decision for a variance that was not identified nor granted
- the requests to summons 4 City staff were made 2 days after the Motion to dismiss was filed

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While I am hesitant to dismiss the Appeal given that there are a number of Participants who have registered with the TLAB, I do not find that the grounds for the Appeal set out any valid land use planning grounds. The concerns regarding a deck were not before the Committee and would not be before the TLAB. The Participant who attended the Motion Hearing was particularly interested in the deck issue as well. An attempt to raise planning issues in a response to a Motion questions the motives and validity of the original Appeal and whether the Appeal is based on legitimate, authentic and sufficient land use planning grounds.

Consequently, pursuant to 45(17) of the Planning Act, I am granting the Motion and dismissing the Appeal.

DECISION AND ORDER

The Motion to dismiss the Appeal is granted. The decision of the Committee of Adjustment dated July 18, 2018 is final and binding.

The file of the TLAB on this matter is closed and the Secretary Treasurer of the Committee is to be advised accordingly.

X 

Laurie McPherson
Panel Chair, Toronto Local Appeal Body