

DECISION AND ORDER

Decision Issue Date Monday, October 1, 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): FELIX LEICHER

Applicant: FELIX LEICHER

Property Address/Description: 33 FERNWOOD PARK AVE

Committee of Adjustment Case File Number: 17 239907 STE 32 MV (A1046/17TEY)

TLAB Case File Number: 18 144824 S45 32 TLAB

Hearing date: Thursday, September 06, 2018

DECISION DELIVERED BY S. MAKUCH

REGISTERED PARTIES AND PARTICIPANTS

| | |
|------------------------|------------------|
| Appellant/ Owner | FELIX LEICHER |
| Appellant's Legal Rep. | MARC KEMERER |
| Expert Witness | PAUL JOHNSTON |
| Party (TLAB) | ALLAN VENEMA |
| Party (TLAB) | GORD HOLTAM |
| Party's Legal Rep. | KATHLEEN COULTER |
| Expert Witness | ROBERT BROWN |
| Witness | JANET MOORFIELD |
| Witness | MICHAEL MCHENRY |

**Decision of Toronto Local Appeal Body Panel Member: S. MAKUCH
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| Witness | GARRY CARR |
| Participant | MICHAELA JERGENTZ |
| Participant | JAMES LIM |
| Participant | REBECCA MOLLEMANN |
| Participant | DAVID SWADDEN |
| Participant | SANDY WALKER |
| Participant | DONALD SCOTT COLLINSON |
| Participant | MICHAEL MCHENRY |
| Participant | BARBARA COOPER |
| Participant | STEVE BAIN |
| Participant | RACHEL BEATTY |
| Participant | MICHAEL O'SULLIVAN |
| Participant | MARTIN RALPH |
| Participant | LINDA SPEERS |
| Participant | KRISTIN HOLTAM |
| Participant | JOHN COWDERY |
| Participant | JANINE DE VRIES |
| Participant | ELAN DESROCHERS-O'SULLIVAN |
| Participant | ADRIANUS VAN DEN END |
| Participant | FRANK YEE |
| Participant | DANIELLE TELFORD |
| Participant | RUTH HAYES |
| Participant | DAVID TOTO |
| Participant | SUSAN WALKER |
| Participant | LISE DESROCHERS |
| Participant | GARY CARR |

**Decision of Toronto Local Appeal Body Panel Member: S. MAKUCH
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|-------------|--------------------------|
| Participant | KAREN MACMILLAN-WUEBBOLT |
| Participant | ELISA MOOLECHERRY |
| Participant | RALPH DETKO |
| Participant | MAISAA ABDALRAHMANALARAJ |
| Participant | LUANNE PUCCI |
| Participant | MAUREEN MCKEE |
| Participant | JUDITH WELLS |
| Participant | ALEXANDRA JACOBS |
| Participant | DAVID WUEBBOLT |
| Participant | ADRIANE LAM |
| Participant | NAZIFA DJAFAROVA |
| Participant | DANI PETCH |
| Participant | MARY LENORE HIRON |
| Participant | MICHAEL PILLON |
| Participant | MARIA CRAWFORD |
| Participant | DIANE CARR |
| Participant | JUNE CLARK |
| Participant | VALERIE BOURNE |
| Participant | TODD WILSON |
| Participant | JANET MOORFIELD |
| Participant | JUDY OLENIUK |
| Participant | KELVIN YU |

INTRODUCTION

A motion was brought by the solicitor of the participants in opposition to the above appeal brought by the applicant. The motion was brought, without notice, after the commencement of the hearing, for the dismissal of the appeal. The Committee of Adjustment refused to approve a number of minor variances which would permit the construction of a pair of semi-detached dwellings on one lot. The dwellings would be

largely located one behind the other with each having frontage on the street. One of the variances provided: “The minimum required lot frontage for a semi-detached dwelling is 6.0 m for each dwelling unit. A total of 12.0 m lot frontage is required. In this case the lot frontage will be 9.48 m.”

The variance requested accurately reflects the language of the Zoning Notice. It makes no reference to the frontage of each dwelling unit and thus no reference to the variance required for each dwelling unit.

BACKGROUND

After the evidence of the applicant’s planner was heard and during the evidence of a participant in opposition respecting a concern that there are no semi-detached dwellings on the same lot in the neighbourhood, it became clear that there was no notice of the variances, if any, required with respect to the frontage of each dwelling unit and no evidence of the frontage of each unit. Therefore, although the variance required for the total lot frontage was clear, the variance required for each unit was not known as the footage of each unit was unknown. The opponent’s solicitor moved for the dismissal of the appeal based on the lack of notice of these variances and the lack of knowledge of the frontages themselves.

MATTERS IN ISSUE AND EVIDENCE

The matters in issue related to whether the motion should be granted. The opponent’s solicitor argued that the motion should be granted on a number of grounds, both stated and implied. They all related to the lack of proper notice which meant the application was incomplete and could not be approved without a variance for the frontage of at least one of the units. The opponents had raised the issue of two dwellings on the same lot but were at a disadvantage in not being informed of the frontage of each. They were, thus, unable to accurately compare the dwelling frontages with other such frontages in the area. The failure to include this variance resulted in two dwellings on the same lot being “slid in under cover”. They also argued that there was a larger public interest in proper notice being provided of this variance as an important policy of “eyes on the street” was being advanced by the provision.

The appellant’ solicitor argued that the variances required are determined by the zoning examiner and that TLAB should not and, indeed, could not determine the required variances as that was the function of the zoning examiner and not within TLAB’s authority. “It is not for me to decide what the variances are to be”. Furthermore, there was no notice of motion filed as this issue was discovered at the hearing and was simply being used to delay approval of the application. There was no prejudice as a result the failure to identify this variance, because the opponents were able to prepare their case and were ready to proceed; having seen on the plans that two dwellings fronted on the same lot. If they had a true concern they could have raised it earlier. Finally he pointed out that his client would be prejudiced if the motion were granted because of the cost spent in of preparing for and participating in the hearing thus far.

JURISDICTION

TLAB has jurisdiction to hear motions at any time during the proceedings.

ANALYSIS, FINDINGS, REASONS

I find that the motion to dismiss the appeal should be refused. However, this hearing must be adjourned as all the evidence has not been heard. During the period of the adjournment the appellant is to request from the Zoning Examiner a revised notice which includes a variance with respect to the frontage of each dwelling. My reasons are as follows.

The hearing has already commenced and there would be serious prejudice to the appellant in terms of time and cost to require that a new application be commenced before the Committee of Adjustment. The opponents failed to raise this issue until after the hearing commenced and the applicant's evidence was heard. Moreover, no members of the general public have raised the issue and this is not a variance that the public was not, at least, aware of.


Nevertheless, in my view there is a significant omission from the variances being sought. While it is not TLAB's function to determine the required variances, it is its function to ensure the public has been properly notified of the variances. In this case omitting the frontage of each dwelling unit when the bylaw requires that it be 6 m results in the public not being given complete notices. The participants, therefore, are entitled to know what the frontage I also note that any future application which includes a variance for frontage of two dwellings on the same lot should include those frontages when they are to be varied. However, since there is no change in this application and no one else has raised this issue I do not believe it necessary to dismiss the appeal. Finally, the addition of this information in this case, is a minor amendment to the variances sought.

DECISION AND ORDER

This hearing is adjourned to December 14, 2018 at 9:30 a.m. On or before October 15, 2018, the applicant will obtain a revision to the zoning notice to include the lot frontages for each of the two dwelling units. On or before November 15, 2018 the applicant will file a witness statement addressing the issue of the frontage of the two

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dwellings. On or before December 1, 2018 the participants will file reply witness statements addressing the issue of the frontage of the two dwellings.

X 

S. Makuch

Panel Chair, Toronto Local Appeal