

DECISION AND ORDER

Decision Issue Date Friday, November 02, 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): MORDECHAL DEUTSCH

Applicant: SARAH IFRAH ARCHITECT INC

Property Address/Description: 45 FRONTENAC AVE

Committee of Adjustment Case File Number: 18 167345 NNY 16 MV

TLAB Case File Number: **18 202656 S45 16 TLAB**

Motion Hearing date: Wednesday, October 31, 2018

DECISION DELIVERED BY G. BURTON

INTRODUCTION

This is a decision on a Motion brought by Mordechai Deutsch, one of the owners and the Appellant to the Toronto Local Appeal Body (TLAB) from a decision of the Committee of Adjustment (COA) dated July 12, 2018. This decision refused his application for a total of 19 variances under both Zoning By-law 569-2013 (the New By-law) and the former North York Zoning By law 7625 (the Old By-law). The proposal was to permit a new three-storey dwelling with a rear deck and walk-out basement.

BACKGROUND

Subsequent to the COA refusal, the owner/Appellant commenced a redesign that would reduce both the number and the magnitude of the variances required. Because of delay in obtaining a final certificate from the Zoning Examiner for what became a necessary series of revisions, the owner now requests an adjournment of the TLAB hearing scheduled for November 27, 2018 to January 28, 2019, the date provided by the TLAB.

JURISDICTION

The TLAB Rules permit both an adjournment and the setting of a new hearing date, following a Motion for an adjournment. Rule 23.4 (b) allows both the granting of a motion for adjournment, and the fixing of a new date for the hearing. By Rule 16.1 (b), the TLAB may, at any stage of a proceeding, make an order for the exchange of witness statements and reports of expert witnesses.

MATTERS IN ISSUE

Because of alterations in both the design and in the Zoning Examiner's responses, as submitted for the required Zoning Certificate or ZCC, is it advisable to delay the hearing date so that there is certainty in the requested variances before the TLAB on the appeal?

EVIDENCE

After the COA decision, the plans were revised to reduce and remove a number of the variances. These revisions were filed with the TLAB in an Applicant's Disclosure Form 3 on August 29, 2018. This was accompanied by a revised set of plans, reflecting the revisions as understood at that time. The revised plans were also submitted to the City's Zoning Examiner to obtain an updated Zoning Examiner's Notice (ZCC) to confirm that all variances had been correctly identified.

However, at the time of filing the Applicant's Disclosure in August, the Appellant had not yet received the updated ZCC. As a result, the Form 3 submitted by the Appellant had included a note:

*"*The above-noted variances are being verified by City Building Official staff. Final confirmation will be provided as soon as it is available from staff."*

On September 21, 2018 the Appellant received the updated ZCC. It identified **additional** variances required to permit the proposal as reflected in the revised plans. These additional variances were not anticipated by the Appellant, and so were not identified in the Form 3, Disclosure. As a result of these unexpected results, the Appellant wished to further revise the plans and the Application, again to eliminate variances and reduce the magnitude of relief requested.

These revisions are currently underway. Once the new plans have been prepared, they will be re-submitted to the City Zoning Examiner to confirm that all necessary variances have now been correctly identified. It is expected to be approximately two months from the date of submission of the new plans to the Zoning Examiner for the new ZCC to be obtained.

Thus the Appellant is seeking an adjournment of the TLAB Hearing scheduled for November 27, 2018 to allow additional time for updated plans to be prepared and reviewed by the Zoning Examiner. The Appellant argues that delaying the hearing date to allow for the new plans to be prepared and checked by the Zoning Examiner ensures that the most up-to-date and accurate information and plans are presented to the TLAB Member.

ANALYSIS, FINDINGS, REASONS

As submitted by the Appellant, he is the only party to the proceeding. Therefore no other person would be prejudiced by adjourning the hearing date. At no time since the filing of the Appellant's appeal has any party - including the City - expressed any interest in seeking party or participant status at the hearing. Awaiting an updated ZCC and new plans, if necessary, would permit the TLAB to adjudicate the proceeding in a more just and cost effective manner, both for the Appellant and for the TLAB's process. The updated ZCC will confirm the variances required, thus providing certainty.

DECISION AND ORDER

1. The hearing of this Appeal is adjourned to January 28, 2019. The date of November 27, 2018, is abandoned and no appearance is required.
2. The Appellant shall provide the TLAB with an updated Disclosure Form and Zoning Examiner's Notice, and a replacement Witness Statement from the Appellant's land use planner, on or before January 14, 2019.

X 

G. Burton
Panel Chair, Toronto Local Appeal Body