Toronto Local Appeal Body

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REVIEW REQUEST ORDER

Review Issue Date: November 28, 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): SOLANGE DESAUTELS

Applicant: MELISSA MANDEL

Property Address/Description: 56 SEYMOUR AVE

Committee of Adjustment Case File Number: 17 259357 STE 30 MV

TLAB Case File Number: **18 157227 S45 30 TLAB**

Decision Order Date: Monday, October 01, 2018

DECISION DELIVERED BY Ian James LORD

REVIEW REQUEST NATURE AND RULE COMPLIANCE TO INITIATE

This is a request for a review (Request/ Request for Review) under Rule 31.1 of the Rules of Practice and Procedure (Rules) of the Toronto Local Appeal Body (TLAB) made by Melissa Mandel, owner, Applicant and a Party to the above noted matter (Requestor). The Request was made by affidavit (Form 10) sworn October 29, 2018.

The Request relates to the decision of the TLAB by Member T. Yao issued October 1, 2018 (Decision).

The Request was apparently served on the Appellant, Solange Desautels. However, the only response received was from Andrea Macecek, a Participant to the Hearing.

Service is a condition precedent to a validly constituted Request.

There is no obligation on a Party to respond to a Review. However, by service all Parties are on Notice that the Decision has been challenged and a right exists under the Rules to contribute to that consideration.

There is no prohibition in the Rules against a Participant filing materials on a Review. However, it is to be noted that, because of the election made, a Participant cannot initiate a Review and a Participant enjoys only prescribed and limited privileges within the Rules of the Toronto Local Appeal Body (TLAB), at the original Hearing.

I have reviewed the material supplied in the Request and concluded, for the reasons set out below, that it has sufficient merit to warrant relief.

The grounds for relief and the available remedies under Rule 31.6, are below recited under 'Jurisdiction'.

BACKGROUND

This matter was heard September 5, 2018. It involved a single variance request granted by the COA applicable to 56 Seymour Avenue (subject property). The requested variance was to the floor space index (FSI), from that permitted under the zoning by-law at .60 times the lot area, to: .71x. The COA approval was appealed by the abutting owner to the north, Ms. Desautels.

The Decision allows the Appeal and refuses the variance.

A property owner to the south of the subject property, Ms. Macecek, also attended and spoke at the Hearing as indicated above, as a Participant in opposition to the variance.

The Decision makes one solitary reference to the Appellant wherein the Member describes her concern to be of a closer building such that "her sunlight hours will be reduced".

It is instructive to note that the Applicant had not requested relief from any of the specific performance standards under zoning that would affect massing, such as: building length, building depth, or any reductions in landscaped open space, rear yard or side yard setbacks, or height.

FSI is a measure of floor space within a building or structure. The location of the requested increase in FSI is unspecified until building plans are submitted. The Applicant here proposed a rear wrap around building addition, 'L' shaped, extending to the north and largely filling a portion of a generous north side yard on the subject property, but still retaining the mandatory side yard setback.

JURISDICTION

Below are the TLAB Rules applicable to a request for review:

> "**31.4** A Party requesting a review shall do so in writing by way an Affidavit which provides:

a) the reasons for the request;

b) the grounds for the request;

c) any new evidence supporting the request; and

d) any applicable Rules or law supporting the request.

31.6 The Local Appeal Body may review all or part of any final order or decision at the request of a Party, or on its own initiative, and may:

a) seek written submissions from the Parties on the issue raised in the request;

b) grant or direct a Motion to argue the issue raised in the request;

c) grant or direct a rehearing on such terms and conditions and before such Member as the Local Appeal Body directs; or

d) confirm, vary, suspend or cancel the order or decision.

31.7 The Local Appeal Body may consider reviewing an order or decision if the reasons and evidence provided by the requesting Party are compelling and demonstrate grounds which show that the Local Appeal Body may have:

a) acted outside of its jurisdiction;

b) violated the rules of natural justice and procedural fairness;

c) made an error of law or fact which would likely have resulted in a different order or decision;

d) been deprived of new evidence which was not available at the time of the Hearing but which would likely have resulted in a different order or decision; or

e) heard false or misleading evidence from a Person, which was only discovered after the Hearing, but which likely resulted in the order or decision which is the subject of the request for review.
31.8 Where the Local Appeal Body seeks written submissions from the Parties or grants or directs a Motion to argue a request for review the Local Appeal Body shall give the Parties procedural directions relating to the content, timing and form of any submissions, Motion materials or Hearing to be conducted."

CONSIDERATIONS AND COMMENTARY

Rule 31.7, above, lists five (5) grounds upon which a request can be founded. The Request raises three of these: b), c), and d).

It appears that no grounds have been advanced that raise the issue of whether Mr. Yao acted outside his jurisdiction. Each of the grounds allege both a violation of the rules of natural justice and errors of fact or law.

The Rule, as drafted, does not require that a violation of the rules of natural justice would likely have resulted in a different order. However, an error of fact or law or the presence of new evidence requires Ms.Mandel to provide reasons and evidence that are compelling and demonstrate that the error would likely have resulted in a different decision.

It is not the purpose of engaging a review to permit the re-argument of the matter that was the subject of a TLAB Hearing except in accordance with the eligible grounds of a Review.

I deal with each assertion, below as set out in the Review Request:

"***A. Errors in Fact and Law, and New Evidence that would have resulted in a different decision.***

These submissions by the Requestor are set out in six paragraphs related to the following subject matter:

1) Two 'factual' errors:
    a. A finding that the Macecek property to the south of the proposed addition had recently obtained a variance of "even higher" than 1.25x lot area. In fact, the Request states that the Macecek variances were:
        i. 1.46x lot area FSI;
        ii. Height to 10.5 m
        iii. Rear yard reduction to <6 m.
    b. Four photographs of the now built addition, not available at the time of the addition, show "a large, imposing structure on the small lot at 76 Shudell (Macecek property) that looms not only over my backyard but over the neighbouring properties on Shudell".

The request asserts: there was, by the Member, a misunderstanding of this adjacency information; no reference is made to any measure of impact of the Applicants' variance to .71x FSI; there is a different treatment of the property information; and a failure to consider/provide reasons.

In response, Ms. Macecek confirms the range of variances obtained on her property but that the rear yard setback was 'maintained' (at 5.8 m from the required 7.5 m). She asserts (that-sic) there is a three-fold differential in lot size as between the two properties. With respect to Ms. Mandels photographs of the now built structure: "the built works adhere to the new drawings approved by the Committee of Adjustment,

which were publically available prior to the June 22, 2018 deadline for the disclosure of documents for the TLAB hearing."

On these matters, the Member makes a number of statements:

1. (related to the Macecek variance to FSI):

   "2. Ms. Macecek is seeking or has obtained an even higher variance. I am not ignoring the Macecek GFA number but hers is a "straight-up" addition and based on a smallish lot. In any case, as I state, raw numbers have to be placed in site-sensitive context."
2. (related to the impact on Macecek property):

   "Ms. Macecek resides at 76 Shudell, the east-west street south of Ms. Mandel's house. **She speculated** that in the original layout of the Seymour/Shudell neighbourhood, that 56 Seymour was an "afterthought", being created from the rear yards of numbers 72 to 82. **If this is true**, Shudell properties' rear yards, instead of being 15 m, became instead 5.8 m (rear yard setback requirement 7.5 m). Ms. Mandel's property has an awkward spatial relationship to the Shudell properties, presenting a side wall to numbers 80 and 78 as an existing condition. **The addition will create a massing across 90% of Ms. Macecek's rear lot line. If this was a "standard" side to side orientation, the massing would (have- sic) a more limited adverse impact, primarily on the side to side neighbours." (**emphasis added**)**

   "Being the last house and abutting the rear yards of the Shudell houses, any GFA increase, even as of right, will impact Ms. Macecek's property disproportionately**.(**3) f.n.(3) i.e. **I dealt with a similar situation in 90 Mona Drive and also refused a GFA variance, even though the owner had retained a lawyer and planner**."(emphasis added)

   "A larger lot of course has a larger entitlement to gross floor area, but nonetheless the test is the same; it must respect and reinforce the existing physical character of the neighbourhood. **And since the addition is already large or largish, at least in absolute terms, it is a challenge for this addition to respect and reinforce the existing physical character of somewhat smaller additions and build-outs. (**emphasis added**)**

   " Ms. Macecek analyzed the adjacent land uses, north, south, east and west for all the properties on a lot by lot basis in area (b). The typical lot had: one property on each side, one in the rear and the front abutting a street, although in many cases the property abutted a lane, railway and in two cases, open space. By comparison, the Mandel property abuts 6 properties to the south. So, **the challenge of**

> **meeting the Official Plan test mentioned in the previous paragraph is made more difficult** by the side yard to rear yard relationship to Ms. Macecek's lot. (emphasis added)

I find that the Member provides no assessment of the relationship between the Shudell properties (or any of them) and the requested variance, or its consideration, as distinct from as-of-right construction. While the obligation of a Party is to produce evidence upon which there can be reliance to meet the relevant policy and tests of the Planning Act, I am not comfortable that the role afforded this Participant, Ms. Macecek, can justify an expectation of response in the manner she and the Member suggest, as an onus - both with respect to production of the Participants own plans and the definitive incremental impact, if any, of the FSI variance sought.

The Member references a stated Official Plan test that the variance, *inter alia,* is to 'respect and reinforce'. This pertains to the existing physical character of the area. The Member appears to restrict that test to the size of the built form of additions on smaller lots of record and again makes no distinction or finding as to the incremental impact of the variance sought as a contributing factor; rather, the Member imposes a value judgment that the addition (whether as-of-right or proposed is unclear) "**is already large or largish".**

Moreover, there is a reference to an earlier decision (*90 Mona Drive)*, but no reference as to whether that decision was brought to the attention of the Applicant or anyone else, let alone an opportunity to address it. The relevance of that reference, including the presence of a lawyer and planner, is lost on the reader and left to speculation.

I am satisfied on this first claim, that there is sufficient doubt as to the robustness of the reasons, that a compelling case is made out that there may have been a misunderstanding of the facts and law through the references, sufficient to raise the spectre of an "error of law or fact which would likely have resulted in a different order or decision".

2) A second factual error is asserted relating to 'as-of-right' construction.

The Request asserts that as- of- right construction can extend 17 feet deep by 15 feet in width, over two storeys "without requiring a single variance." Further that the proposal is to build 16.5 feet in depth.

The sun/shadow assertion is that the variance can have no impact on properties to the south and that three shadow studies demonstrated 'as-of-right' construction will have minimal impact to the north

.

Ms. Macecek provides no comment. Her property is located south and out of the sun angles.

On these aspects the Member makes the following observations:

> "Ms. Mandel then filed a number of as-of-right diagrams showing that she could build an addition with a by-law compliant FSI that would have similar impacts on the neighbours, particularly Ms. Macecek. The existing FSI is 41.33%, whereas it could be 60%, which means she can build a further 52.84 m2 (570 sq. ft.) of interior space as of right. **This translates into an addition that will project back about 8.6 ft (2.63 m) instead of the 16.6 feet currently sought (5.03 m).** Her diagrams demonstrate that she could also build in the direction of the other objector Ms. Desautels, with some of the same exterior dimensions, which Ms. Mandel argues, will cause the same adverse impact as the proposed addition." (Decision, p.3) (emphasis added)
>
> Ms. Mandel's spreadsheet shows FSI's (sic: in the neighbourhood) averaging 0.94, generally well above her request of 0.71x; however, the numbers are derived from lots in a side-to-side relationship with neighbours. Ms. Mandel's house is the end property in a row of houses on a north-to south street. Being the southernmost house, **an addition will cast shadow over the house to the north.** Being the last house and abutting the rear yards of the Shudell houses, any GFA increase, even as of right, will impact Ms. Macecek's property disproportionately.3 (Decision, p5.) (emphasis added)

I find it is unclear in the Decision as to whether there was a misapprehension or misconstruction of the 'as-of-right' construction permission. What is clear is that such evidence was called as well as sun-shadow studies, themselves somewhat unusual and not normally attendant or a requirement of a variance application.

I do not see either category of evidence on these two matters (as-of-right entitlement; shadow analysis) applied anywhere in the Decision as they may relate to the variance sought. Yet there is a finding of casting a shadow over the house to the north.

I am satisfied on this second claim that there is sufficient doubt as to the robustness of the reasons that a compelling case is made out that there may have been a misunderstanding of the facts and references sufficient to raise the spectre of an "error of law or fact which would likely have resulted in a different order or decision".

3) The Applicant cites in this paragraph several instances whereby the Member may have misapprehended a chart of the FSI variances granted in the neighbourhood, averaging an area character FSI of .94 x, considerably greater than the variance under appeal. As well, the Applicant mentions that a property is raised that is not addressed in the Decision: 9 Queen Victoria Avenue.

   Ms. Macecek provides no comment on these assertions.

The matters by the review requestor raised are directly in relation to statistics placed in evidence and their consideration. The Member makes a considerable number of references to density area measurements and properties.

As indicated above, the Review is not a proper forum to argue disagreement on the use and interpretation of discrete evidence to which no specific error is attributed. It is not necessary, in reaching a decision, that the Member make specific reference to every property, principle or piece of evidence raised, so long as the reasons provide a replicable roadmap as to how the decision was derived. At the end of the day, the decision is an administrative decision based on the evidence but also the application of law and policy. As such, there is an element of applied discretion and the decision is not in error because it may fail to refer to one or more stops along the way. On this ground, I am not satisfied the Applicant has established a clear causal or compelling connection between the discussion of area FSI and its application in a manner that would give rise to an error.

4) For the reasons found in paragraph 3), above, I come to the same resolution with respect to the photograph description references considered in the Hearing. While it may be that photographs depicted a significant amount of the evidence, the fact that these discrete references were brought to the Members attention yet were not minutely recognized - or all addressed in the Decision, is not grounds to challenge the Decision. I agree that they can be evidence of the proposal keeping within the physical character of the area; however, the perception of the Member on such evidence is not such as to amount to either an error or the prospect of a different decision. This evidence is but one factor that is appropriate to go into a final determination on the Application.

5) In her fifth paragraph, the Applicant identifies that certain categories of evidence were based on 'hearsay', an absence of 'actual evidence' on lot sizes or a failure to reference direct evidence on density variances to two properties, 9 Queen Victoria and 65 Seymour, across the street from the subject property. In challenging the reliance placed on the unsupported 'zoning analysis', the Applicant also suggests the fact that its acceptance by the Member should have led to the conclusion that the average area standard for FSI variances , acknowledged at an FSI of .94, would yield, for the Applicants lot, an FSI of .71x as "exactly correct for a property my size".

The Participant, Ms. Macecek, addresses this challenge to the integrity of the evidence. She states that instead of submitting the source documents as the Applicant did, she:

> "transcribed the property sizes from publically available **assessment roll data** for the Zoning analysis…and from COA Notices…" and other mapping from the City.(emphasis added)

She describes how identified errors had been corrected and responds to a Member concern as follows:

> "The TLAB notice of decision refers in a footnote to errors in the spreadsheet; however, the properties in question , 69 Condor and 69 Seymour are 1 and 1.5 storey homes, respectively, and would

have lower grade despite having building footprints comparable to those surrounding it)."

I note that the Member, on several occasions, is reliant on assumptions or the acceptance of evidence for which no or questioned substantiation exists. This appears in the following extracts:

i) Ms. Macecek resides at 76 Shudell, the east-west street south of Ms. Mandel's house. **She speculated** that in the original layout of the Seymour/Shudell neighbourhood, that 56 Seymour was an "afterthought", being created from the rear yards of numbers 72 to 82. **If this is true**, Shudell properties' rear yards, instead of being 15 m, became instead 5.8 m (rear yard setback requirement 7.5 m). Ms. Mandel's property has an awkward spatial relationship to the Shudell properties, presenting a side wall to numbers 80 and 78 as an existing condition. The addition will create a massing across 90% of Ms. Macecek's rear lot line. **If this was a "standard" side to side orientation**, the massing would (have-sic) a more limited adverse impact, primarily on the side to side neighbours. (page 4, emphasis added)

ii) "**One can draw other inferences** from the larger neighbourhood that also do not support the variance."(page 6, emphasis added)

iii) "**I would assume** that the addition at no. 36 Seymour should be updated by the City's mapmakers to be in line with no. 34 in Diagram 4. (page 7, emphasis added)

iv) "**If the City's property data map showing outlines of buildings is to be relied on**, the rear wall of no. 48 Seymour does not stick out at all." (page 7, emphasis added)

v) "Comparison (b) showed that the Mandel lot is 1.3 times larger than the average lot that is a recipient of a minor variance. **If the variance were granted** for the subject the resulting building would be 1.1 times the average. **Presumably the average building that has been added to** is larger than the average of all buildings, (ones with additions and without). (page 8, emphasis added)

vi) "5. **There appears to be an error somewhere**. The most visibly small buildings are at 79 Condor (66 m2) and 74 Seymour (59 m2). Here, the numbers and pictures line up. However, 69 Seymour (54 m2) and 69 Condor (53 m2) have small house sizes in Ms. Ma(c)ecek's spreadsheet but appear to be average sized in the map (Diagram 3)." (page 8, emphasis added)

I confess a discomfort on the extent of such subjective cumulative assumptions as a proper basis upon which to advance the Decision. The TLAB has frequently rejected Municipal Property Assessment data as a proper

substitute for statistical information on parcel characteristics. Here, as well, the Decision uses extensive clear reliance on mapping from City sources to draw setback lines and that depict building areas that show instances on their face that are obviously are not accurate in their depiction of lot/dwelling boundaries, and that lack the authenticity of any degree of being grounded in truth on site.

The Member is alert to the inadequacies of the evidence but nevertheless uses the same to adjudicate Official Plan area physical character non-compliance. Later, no mention is made of the zoning test, and the tests of appropriateness and minor, without any analysis attributable to the variance, are accepted as not being met by association, and are swept into an omnibus conclusion:

> "I find the evidence demonstrates that the application does not meet all the statutory tests."

It appears the Member reached the conclusion that the proposal, undifferentiated as to the actual variance sought, did not meet the first test, respecting the Official Plan, and from there, concluded that the evidence did not meet all the tests, without getting into the details of the other 3 tests. I am not satisfied with the analysis; there is simply no analysis of the other 3 tests or a significant word about the relevance of Provincial Policy.

I am not satisfied that this role as to the importance of evidence has been properly applied in respect of applicable policy and the requisite tests. I am satisfied on this aspect that there is sufficient doubt as to the robustness of the reasons that a compelling case is made out that there may have been a misunderstanding of the facts and references sufficient to raise the spectre of an "error of law or fact which would likely have resulted in a different order or decision".

6) The Applicant argues that: "The Decision did not point to a single undue adverse impact from my plan, only generalizations."

The Participant states in reply that there is an inconsistency in the Applicant stating the proposed addition would have no impact on the property to the north while raising impacts from the now constructed addition to the south. There had, apparently, been no objection by the Applicant to the Macecek variances.

A tribunal is entitled to draw conclusions from its appreciation of the facts, law, policy and evidence. The fact that a Party does not agree with the conclusion or thinks it to be based on 'generalizations' is not in itself a compelling basis sufficient to mount a challenge to the Decision.
In the Decision, the Member found Official Plan non-conformity based on the discussion of evidence raised. It is sufficient to find that any one policy or statutory test is not met in order to refuse a variance.

I do not see this aspect or its response raising a triable issue. While the Applicant challenges the Decision findings, nothing new is raised; the response is not developed and I see no possibility of error arising from this challenge or commentary.

B. Breach of the Rules of Natural Justice.

The Request, in three paragraphs raises arguments based on the above ground, for relief:

7) The Applicant raises that the Member had indicated a 'hearing' difficulty. Namely, that the Member's admission "I was on his 'bad' ear side" explains the alleged misconceptions, above referenced, and the failure to recite or accurately describe or reference her evidence. She also raises deficiencies in the Digital Audio Recording (DAR) as being of no assistance to the Member as the microphone was not near her and was unlikely to pick up the submissions. As such, she asserts she was denied a fair hearing.

The Participant responded by saying that the Member: "Simply asked us to repeat ourselves when he was unable to clearly hear what was said".

While this can be important consideration, it is not one upon which there is sufficient justification to warrant a determination, even in the absence of the additional burden on the Applicant to show it would have "likely resulted in a different decision", on whether a denial of natural justice has occurred. The Member has written a comprehensive decision and nowhere in it does he allude or admit to a gap in the evidence or a lack of specificity arising from inaudible comments or a need to re-examine the DAR and being frustrated from doing so.

Indeed, I am not convinced that the Applicant in making this assertion has had appropriate regard and respect for the Ontario Human Rights Code.

In any event, I am not prepared to attribute anything to this aspect.

8) In this paragraph the Applicant asserts that an unfair procedure evolved in the elevation of the Participant, Ms. Macecek, to effective party status: giving over rights of cross-examination; personally giving evidence; being allowed to make closing submissions; having the right to have the 'final word'. In addition, she alleges that personal information entered the consideration of the Member arising from her employment and family characteristics. The Applicant had provided answers in response to direct questions from the Chair for which she "felt I had no choice but to answer when he asked about ourselves."

The Participant, Ms. Macecek acknowledges being granted the permissions which she felt was in keeping with TLAB Rules 2.10 and 13.8c.

The Member alludes to these privileges being granted but not further. There is no discussion of practical compulsion.

I confess a degree of discomfort with what has happened in this instance but cannot condemn it as neither was I present , nor was their evidence of a Motion that might have shed light on these and other aspects of procedures unfolding in the Hearing.

I have not referenced the DAR transcript on this point (or any other) as the need to is not apparent to reach a finding that addresses the areas of discomfort identified.

I find it peculiar that the actual Appellant played so little a role in the proceeding. It gives rise to some credence in the statement of the Applicant that she believed resolution could have been reached with the Appellant.

The Appellant declined (by non-participation) to respond to the request for Review. Instead, it appears that the entire opposition to the Application granted by the COA was led by the Participant who was afforded full Party status rights.

While citing significant participation by the Appellant, the Member went on, contrary to the Rule on Participants, to allow cross-examination and argument, two elements expressly denied a Participant.

That said, I was not there; no were there any lawyers; nor was there a Motion to enforce the Rules. The Member is the master of the procedure at a Hearing and the TLAB frequently allows Participants the right to 'ask questions' and, occasionally, make submissions. It is rare that a Participant can be given full Party status in the absence of a request or a Motion and in the course of a Hearing, let alone the 'final word'. The protections of a Witness Statement and disclosure of evidence are incumbent on a Party. The Member is the 'gatekeeper' on a fair hearing process and is entitled to make procedural decisions.

There is no evidence that this Participant did not perform the disclosure obligations set out in the Rules. Also, as a qualified architect, there may well have been reasons not apparent in the Review to relax the normal Rules.

While this aberration is an important consideration, again it is not one upon which there is sufficient justification to warrant a determination, even in the absence of the additional burden on the Applicant to show it would have "likely resulted in a different decision", on whether a denial of natural justice has occurred.

I do note that a significant number of the references to presumptions and conjecture in the evidence that was contrary to the Applicant originated from the Participant.

I do find here as well, that the discomfort index is at such sufficient a level as to ensure that this Request is disposed of in a manner that avoids re-argument of these types of issues, in this fact circumstance.

9) The final ground raised by the Applicant is that the Member referenced a prior decision of his indicating a prejudgement of the issues on her Application.

This is raised and briefly discussed above.

The Member wrote:

"3 I dealt with a similar situation in 90 Mona Drive **and also refused a GFA variance,** even though the owner had retained a lawyer and planner."(page 3, emphasis added)

The Participant made no comment on this ground.

It is difficult to know the true import of this reference. It is not disclosed as to whether the Member raised and discussed any of its perceived parallels in the Hearing.

By the point in the Decision that the above quotation is mentioned, the Member had concluded to 'reject the application', albeit with the reasons to follow. This is within the realm of reasonable explanation to explain the emphasized language in the extract, above.

I take the reference to being little more than an acknowledgement that the Member had recently dealt with a 'side yard to rear yards' relationship, in the circumstance of at least an FSI variance request, which had been identified as the issue before him. More, I think, would be required to show that a reasonable apprehension of bias was present.

I find that on this issue of an alleged denial of natural justice, as well, I am not prepared to send it through a separate vetting process by additional submissions or directing a Motion.

DIRECTION

The Review requests that the Decision of Member Yao be reconsidered on specified grounds of error and natural justice considerations.

I am satisfied that a compelling case for relief has been made out sufficient to warrant a new hearing, an available remedy under the Rules. There are sufficient elements, above described, that create the uncertainty as to whether the Decision contained errors that could result in a different decision. I also find that the pictorial evidence supplied by the Applicant of construction occurring after the Decision constitutes a sufficiency of new evidence to be considered. I have not found a denial of natural justice or procedural fairness, but I have expressed reservations as to whether the TLAB standard of not just 'doing justice but to be seen to be doing justice', has fully and transparently prevailed.

Despite the direction, this Review has not - and should be seen to have - transgressed on the issue of the variance sought itself.

Nothing in the comments/text/findings herein is intended to reflect on the merits or the demerits of the variance itself, and its appeal. That finding is to be remitted to a different Member.

I am therefore selecting from the relief vehicles available, section 31.6 c), d):

> "c) grant or direct a rehearing on such terms and conditions and before such Member as the Local Appeal Body directs;
> d) confirm, vary, suspend or cancel the order or decision.

A rehearing is to proceed without the benefit of the Decision.

DECISION AND ORDER

The Request for Review by the Applicant submitted October 30, 2018 is granted. A rehearing is directed before a different Member.

As such, the Appeal continues.

The Hearing shall be *de novo*; all file materials shall be brought forward with the exception of the Decision dated October 1, 2018 (18 157227 S45 30 TLAB).

A new Notice of Hearing shall issue at the earliest opportunity; new filings shall be permitted in accordance with the Notice of Hearing.

All Parties and Participants are requested to review and comply with the Rules of the Toronto Local Appeal Body. Should mediation, a Settlement Hearing or withdrawal of the Appeal be requested prior to the new Hearing Date, the Secretary is to be advised at the earliest opportunity.

X 

Ian Lord
Panel Chair, Toronto Local Appeal Body
Signed by: Ian Lord