

DECISION AND ORDER

Decision Issue Date Tuesday, December 04, 2018

PROCEEDING COMMENCED UNDER section 53, subsection 53(19), section 45(12), subsection 45(1) of the Planning Act, R.S.O. 1990, c. P.13, as amended (the "Act")

Appellant(s): YURI KHOLODOV

Applicant: FRANCO ROMANO

Property Address/Description: 76 POPLAR PLAINS CRES

Committee of Adjustment Case File Number: 18 117320 STE 22 CO, 18 117330 STE 22 MV, 18 117331 STE 22 MV

TLAB Case File Number: **18 200993 S53 22 TLAB, 18 200994 S45 22 TLAB, 18 200995 S45 22 TLAB**

Hearing date: Tuesday, December 04, 2018

DECISION DELIVERED BY Ian James LORD

APPEARANCES

Name	Role	Representative
Franco Romano	Applicant	
Elana Kholodov	Owner	
Yuri Kholodov	Appellant	Amber Stewart
Ian Graham	Expert Witness	
Franco Romano	Expert Witness	
City of Toronto	Party	Sara Amini/Ben Baena
Josef Zankowicz	Party	Sylvain Rouleau
William Gagnoli	Party	

Decision of Toronto Local Appeal Body Panel Member: I. LORD

TLAB Case File Number: 18 200993 S53 22 TLAB, 18 200994 S45 22 TLAB, 18 200995 S45 22 TLAB

Name	Role	Representative
Anthony Cohen	Party	
Arnold Englander	Party	
Tony D'Addario	Party	
Steven Fried	Party	
Timothy Draimin	Party	
Sonia Fried	Party	
Teresa Brzozowski	Party	
James Appleyard	Party	
Tamara Rebanks	Party	
Grace Zepelli	Party	
Fern Baird	Party	
Robert Mah	Party	
Jennifer Van Der Put	Party	
John Shaw	Party	
Trevor Eagleson	Participant	
Kendra Thompson	Participant	
William Bassel	Participant	

INTRODUCTION

These appeals originate from refusal decisions by the Toronto and East York District Panel of the City of Toronto (City) Committee of Adjustment (COA) in respect of a severance and two associated minor variance applications related to 76 Poplar Plains Crescent (subject property).

The subject property is located on the north side of Poplar Plains Crescent, west of Avenue Road at the north end of the 'Republic of Rathnelly'.

A consent was requested to sever the subject property into two residential lots, one of which will be undersized. The two separate variance applications would permit

the construction of a new two-storey detached dwelling on the proposed undersized (westerly) lot and the maintenance of an existing two and one-half storey detached dwelling on the retained (easterly) proposed lot, but subject to partial demolition (Applications).

Counsel in attendance included Ms. Stewart for the Applicants, Mr. Rouleau for a list of named Parties and Mr. Baena and Mr. Elmadany for the City. As well, several professionals, clients, residents and associates were in attendance.

BACKGROUND

As Mr. Rouleau is with a Firm of my prior association, I asked counsel into chambers to discuss the proceeding. No objection was taken to proceeding with administrative matters. Counsel had previously discussed a possible resolution course which would seek an adjournment of the proceeding.

The matter reconvened in public session with a summary advisory of the foregoing.

Ms. Stewart advised that the Parties had reached a settlement in principle; however, the gestation of that settlement would require an adjournment, a discussion on built form and the production of new plans.

Counsel were in agreement to pursue the matter on two fronts:

- a) a revised application involving an equal lot division and demolition of the existing dwelling with revised variance provisions for the construction of two new detached dwellings, the parameters of which remained for discussion;
- b) should a) fail for any reason, the Applicant sought reservation of the right that the Applications be brought back on for a Hearing on the merits.

In this regard, two scheduled Hearing events were discussed:

- 1) a teleconference update and possible settlement Hearing;
- 2) a three (3) day appointment for Hearing.

To facilitate the discussion and a timely opportunity to address the matters, the City requested production of the revised plans, if any, by a date certain in January, 2019.

MATTERS IN ISSUE

Objections to the Applications are well documented through the extensive filings and postings on the Toronto Local Appeal Body (TLAB) website for the subject property, found at www.toronto.ca/tlab.

The proposed settlement offers an opportunity to address the subject property in a comprehensive manner employing the statutory considerations applicable to the jurisdictions below noted.

Constructively, the Parties have agreed to discuss matters of built form, an even division of the lots, and to prepare and discuss a revised site, survey and elevation plans.

JURISDICTION

The TLAB Rules of Practice and Procedure, in particular Rule 2, provides ample authority for the TLAB to vary procedures and to further dispute resolution in a just, expedient and cost efficient manner.

The Parties and Participants are reminded that the Applications engage statutory relief under the following statutory directions and tests. Further, that a Hearing before the TLAB is *de novo*, meaning essentially in the first instance, and the TLAB is required to address and be satisfied in respect of the Application's compliance in accord with the language of the statute.

Provincial Policy – S. 3

A decision of the Toronto Local Appeal Body ('TLAB') must be consistent with the 2014 Provincial Policy Statement ('PPS') and conform to the Growth Plan of the Greater Golden Horseshoe for the subject area ('Growth Plan').

Consent – S. 53

TLAB must be satisfied that a plan of subdivision is not necessary for the orderly development of the municipality pursuant to s. 53(1) of the Act and that the application for consent to sever meets the criteria set out in s. 51(24) of the Act. These criteria require that " regard shall be had, among other matters, to the health, safety, convenience, accessibility for persons with disabilities and welfare of the present and future inhabitants of the municipality and to,

Decision of Toronto Local Appeal Body Panel Member: I. LORD
TLAB Case File Number: 18 200993 S53 22 TLAB, 18 200994 S45 22 TLAB, 18 200995
S45 22 TLAB

- (a) the effect of development of the proposed subdivision on matters of provincial interest as referred to in section 2 of the Planning Act;
- (b) whether the proposed subdivision is premature or in the public interest;
- (c) whether the plan conforms to the official plan and adjacent plans of subdivision, if any;
- (d) the suitability of the land for the purposes for which it is to be subdivided;
- (d.1) if any affordable housing units are being proposed, the suitability of the proposed units for affordable housing;
- (e) the number, width, location and proposed grades and elevations of highways, and the adequacy of them, and the highways linking the highways in the proposed subdivision with the established highway system in the vicinity and the adequacy of them;
- (f) the dimensions and shapes of the proposed lots;
- (g) the restrictions or proposed restrictions, if any, on the land proposed to be subdivided or the buildings and structures proposed to be erected on it and the restrictions, if any, on adjoining land;
- (h) conservation of natural resources and flood control;
- (i) the adequacy of utilities and municipal services;
- (j) the adequacy of school sites;
- (k) the area of land, if any, within the proposed subdivision that, exclusive of highways, is to be conveyed or dedicated for public purposes;
- (l) the extent to which the plan's design optimizes the available supply, means of supplying, efficient use and conservation of energy; and
- (m) the interrelationship between the design of the proposed plan of subdivision and site plan control matters relating to any development on the land, if the land is also located within a site plan control area designated under subsection 41 (2) of this Act or subsection 114 (2) of the City of Toronto Act, 2006. 1994, c. 23, s. 30; 2001, c. 32, s. 31 (2); 2006, c. 23, s. 22 (3, 4); 2016, c. 25, Sched. 4, s. 8 (2).

Minor Variance – S. 45(1)

Decision of Toronto Local Appeal Body Panel Member: I. LORD
TLAB Case File Number: 18 200993 S53 22 TLAB, 18 200994 S45 22 TLAB, 18 200995 S45 22 TLAB

In considering the applications for variances from the Zoning By-laws, the TLAB Panel must be satisfied that the applications meet all of the four tests under s. 45(1) of the Act. The tests are whether the variances:

- maintain the general intent and purpose of the Official Plan;
- maintain the general intent and purpose of the Zoning By-laws;
- are desirable for the appropriate development or use of the land; and
- are minor.

EVIDENCE

This is a circumstance of a consent adjournment being requested in the absence of Notice or a formal Notice of Motion. No evidence was called. The consent submissions of counsel are as above recited. No one spoke contrary to the representations by counsel.

I enquired as to whether the revisions to the Applications would or could be completed before the COA. In response, Ms. Stewart indicated that the existing three applications provided the scope of jurisdiction for revisions, alterations, modifications. There were no observations or contested submissions. She noted that if events transpired to require additional proceedings, there was a strong likelihood that the Applications alone could be pursued in a rescheduled Hearing.

ANALYSIS, FINDINGS, REASONS

Counsel have worked together to scope out a process for further consultations, amendment and revisions to the Applications, including envisaging a more elaborate project than that currently on appeal. Regrettably, that scoping lacked detail and assumed a seamless flow.

The TLAB is disposed to assisting dispute resolution where a consensus can be achieved as between those persons having an interest in the matters and where the public interest is appropriately protected.

This assistance includes adjournments for fair and constructive purposes, mandated dispute resolution via non-binding mandatory mediation and, of course, the finality of the Hearing process.

I agree that the willingness to discuss the dispute resolution that is proposed in the above two scenarios is appropriate and should be supported. I remind counsel that the jurisdiction of the TLAB is limited by statute and that revisions, at least to the variance Applications, will need to consider section 45(18.1) of the Planning Act. As well, should the revisions envisaged by the revised lot pattern be pursued, that a revised evidence base will be needed to be given by the Parties, their consultants and consultative Boards, Agencies and Commissions, as appropriate.

Decision of Toronto Local Appeal Body Panel Member: I. LORD
TLAB Case File Number: 18 200993 S53 22 TLAB, 18 200994 S45 22 TLAB, 18 200995 S45 22 TLAB

To ensure a fair process of disclosure, additional timelines need to be inserted. If these need to be addressed further, the Motion Rules are available.

In that regard, a teleconference/ settlement Hearing may not be as simple as counsel has expressed. That will be for the Member Hearing the matter to decide.

DECISION AND ORDER

The Hearing scheduled for December 4, 2018 in respect of 76 Poplar Plains Crescent is adjourned.

The following matters are ordered:

1. The Hearing is adjourned until **May 1, 2 and 3, 2019**, (three consecutive Hearing days) before a different Member. A Notice as specified in paragraph 7 will be provided.

2. The Applicant shall serve and file on all Parties and Participants any revised site plan or plan of survey and built form elevation drawings for a proposed new two residential building lots scenario, involving demolition of the existing residence on the subject property (Revised Plans) on or before **January 28, 2019**. The Revised Plans shall be accompanied by specific particulars of all and any revised variances (Revised Variances) required. The Applicant shall convene a teleconference with counsel and unrepresented Participants, where available, to discuss any questions arising from the Revised Plans and the Revised Variances.

3. The Applicant shall provide on or before **February 25, 2019** any supporting Witness Statements, documents, City Staff assessments or materials upon which it is intended to rely in respect of the Revised Plans and the revised variances.

4. Any Party or Participant that opposes the Revised Plans or the Revised Variances shall provide on or before **February 25, 2019** any supporting Witness Statements, documents City Staff assessments or materials upon which it is intended to rely in respect of the Revised Plans and the Revised Variances.

5. A teleconference Hearing is scheduled before a different Member on **March 19, 2019** at 9:30 am for the purposes of:

- a). an update on the Applications and the adjournment;
- b). an update on the status of the Revised Plans and the Revised Variances, the disclosure required under paragraphs 2 and 3 hereof and the prospect of a settlement Hearing;
- c). the conduct of a settlement Hearing or the scheduling thereof;

Decision of Toronto Local Appeal Body Panel Member: I. LORD

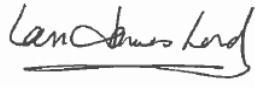
TLAB Case File Number: 18 200993 S53 22 TLAB, 18 200994 S45 22 TLAB, 18 200995 S45 22 TLAB

d). the determination of any other matter that a Party, Participant or the Member may, at the discretion of the Member, allow to be addressed.

6. The TLAB shall provide a reminder Notice and post the particulars of the teleconference on or before **March 5, 2019**.

7. Subject to any settlement reached in paragraph 5, the TLAB shall provide and post on or before **April 5, 2019** a Notice of Hearing for the **May 1, 2 and 3, 2019** Hearing, which Notice shall provide particulars supplied by the Applicant as to whether the Hearing shall be convened to consider the Applications OR the Revised Applications and the Revised Variances, or their modification, and the particulars of either.

I am not seized.

X 

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