

DECISION AND ORDER

Decision Issue Date Wednesday, January 09, 2019

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

Appellant(s): HOMAYOUN NABAVI

Applicant: TJ CIECIURA

Property Address/Description: 36 CLISSOLD RD

Committee of Adjustment Case File Number: 18 130490 WET 05 CO, 18 130498 WET 05 MV, 18 130499 WET 05 MV

TLAB Case File Number: **18 214914 S53 05 TLAB**

Motion Hearing date: Friday, January 04, 2019

DECISION DELIVERED BY Ian James LORD

INTRODUCTION

This matter involves a Motion for Adjournment (Motion) brought by the City of Toronto (City), a party to the Applicant's appeal of the Etobicoke and York Panel of the Committee of Adjustment's (COA) refusal of a consent to sever 36 Clissold Road (subject property).

The Motion was directed to be heard in writing returnable January 4, 2019. The Motion was served in accordance with the Notice of Hearing timelines and supported by the requisite affidavit, sworn December 17, 2018.

A timely Response to Motion (Response), inclusive of an affidavit sworn December 27, 2018, was also received.

No Reply to the Response was forthcoming.

The Notice of Hearing of the Toronto Local Appeal Body (TLAB) set February 11, 2019 as the date for hearing this Appeal.

BACKGROUND

The affidavits are clear to the circumstances surrounding the appeal and a related set of minor variance applications to the proposed two new lots sought to be created by the consent Application, and its appeal.

The COA refused those associated variances and confirmed in its Notices of Decision, prepared August 2, 2018 and mailed August 10, 2018, that the last date for appeal was August 22, 2018, applicable to both of the variance application files.

The last date for the appeal of the consent refusal was confirmed in the Notice of Decision also prepared August 2, 2018 and mailed August 10, 2018, as August 30, 2018.

The Applicant instructed and perfected a timely appeal of the consent Application, the TLAB file for which is the subject of the Motion.

The Applicant asserts the intention and submission of a timely appeal of the variance Applications. However, the COA did not accept the appeals, and no appeal file on either variance application request has been forwarded to the TLAB.

MATTERS IN ISSUE

There appear to be two issues: adjournment and jurisdiction.

The Motion requests that it be heard in writing and that the Hearing scheduled for February 11, 2019 be adjourned. The Motion asserts that the variances refused by the COA are final and binding, that considering the consent appeal in the absence of the required variances to permit construction on the lots 'is premature', and that the TLAB is without jurisdiction or authority to grant the necessary variances.

The Motion requests an adjournment "until such time as the Appellant has brought new Minor Variance Applications associated with the Consent Application."

The Response asserts all matters were appealed and, but for circumstances, the variance appeals were not received by the Secretary Treasurer of the COA within the period established for receipt of appeals. Further, it asserts that the consent appeal, which was forthcoming in a timely manner, "includes the variances required for land severance such as frontage and area without further requirement of appeal for Minor Variance applications."

The Response clarifies that once a consent is given "then I will file Minor Variance applications for the buildings based on old or new design and drawings suitable for the severed lands."

The Response says the consent appeal is mature and requests denial of the Motion.

The jurisdictional issue appears to the TLAB to be whether the variance matters were appealed and whether they are before the TLAB in any form. Ancillary to that is whether the consent appeal can proceed in all the circumstances.

JURISDICTION

As this is a Motion in writing, the Rules of Practice and Procedure of the TLAB are germane. Both parties assert the application of Rules 2.2, 2.3 and 2.11, 23.2 and 23.4.

EVIDENCE

I have read carefully the Affidavits and submissions of both parties.

The salient points of the Motion, in addition to the factual recitation under 'Background', above, include:

- a) There were 16 variances applied for at the same time as the consent application; they were refused and are not before the TLAB on appeal;
- b) It would be premature to proceed with the consent appeal in the absence of associated variances.

The Motion does not assert that there is no jurisdiction to proceed with the consent application; rather, it indirectly invokes the statutory test on the merits of a consent consideration (section 53 (b) of the *Planning Act*, namely "whether the proposed subdivision is premature or in the public interest". The support rationale behind that submission is not provided.

The salient points of the Response, in addition to the factual recitation under 'Background', above, include:

- a) That due to special extenuating circumstances (the father's passing), the Applicant "forgot about appealing the Decisions til the last day".
- b) Herculean efforts were made over long distances to tender an appeal on August 22, 2018; however, circumstances mitigated against the ability to do so: the COA would not accept credit card payment; delivery of documentation and payment could not be achieved before 4:30 pm, office closing time; delivery was confirmed by an email of 5:59 pm that the appeal material was left in a common mail depository, not that of the COA office; that physical

- receipt was not acknowledged before August 23, 2018 and was never accepted, entered or forwarded to the TLAB.
- c) It is asserted that the consent appeal is mature and that hardship, measured both in delay and additional cost, warrants the consent Hearing to proceed to permit “my only opportunity to defend the appeal in person after four years...of constant stress...and thousands of dollars of...cost for this project so far...(and)...where justice will be served.”
 - d) The Affidavit material attached reveals the exchanges between counsel and, earlier, the COA representative; it sets out where the Applicant makes the conscious decisions:
 - i. To proceed with the severance appeal (on August 23, 2018) after receiving advice that the variance appeals will not be accepted; and
 - ii. To proceed with the severance Hearing date despite the City exchanges identifying its position on the prematurity of proceeding with the consent appeals in the absence of the variances and the suggestion the Applicant seek an adjournment.

No case authority or legal argument accompanied either the Motion or the Response.

ANALYSIS, FINDINGS, REASONS

I find that the consent Appeal is mature and, but for the Motion, is scheduled to be heard February 11, 2019. I also find that it is premature and not in either the public interest or that of the Parties to proceed on that date.

The TLAB has no authority to extend a filing date for an appeal of matters heard and determined by the COA. Appeal dates are limitation periods that are set by statute and regulation and in the absence of anything further, the TLAB is without authority to second guess or sit in review of the decision of the COA Secretary Treasurer that a timely appeal was not received or that its procedures were in some way in error.

I have considered and apply the case of *Garvis v. Toronto (City)* 68 O.M.B.R.238 (O.M.B) as a non-binding precedent. In *Garvis*, a consent and minor variance were considered and refused by the Committee of Adjustment and the minor variance appeal period expired before that of the consent. The minor variance appeal was filed three days late. The Board would not proceed with the minor variance appeal as it was not filed within the statutory time frame. In that case, the consent appeal was dismissed as premature and not in the public interest.

There are parallels to the fact circumstances herein. I equate the inability to review the COA decision to not accept the Applicant’s variance appeal to being “three days late”. In any event, there is no variance appeal file before the TLAB.

There is, also, no request by the City at this point seeking a dismissal of the consent appeal. That is a matter to be considered and determined on its merit.

I can give no weight to the submission of the Applicant that certain variances, to lot frontage and to lot size, are *de facto* a component of the consent appeal. There is no doubt that the requisite *Planning Act* approval jurisdictions overlap on these subject areas; however, distinctly different considerations arise and are to be applied despite the similarity of subject matter.

Separating the consideration of these matters risks duplication and the potential for inconsistent findings.

It is the case that the TLAB has proceeded to hear consent appeals in the absence of associated variance applications. While none have specifically been referenced, such a proceeding could be expected to and has occurred, where only the consent has been appealed and an approval of variances by the COA left in place.

I find that the Applicant has acknowledged the need for variances to support development on the proposed lots. It is no answer to state that, once approved, variance applications will be brought on 'old or new' drawings, to pave the way for building permits. That procedure, while perhaps compelling to the lay person or resultant from expediency in this circumstance, is simply not viable. It bifurcates overlapping decision making processes, lacks certainty, duplicates evidence, inconveniences the public in multiple engagements, and projects a total disregard for the efficiency of public agencies in decision making.

I find it somewhat excusable in the special circumstances extant in this matter that the related files were not properly conjoined. The history does not however, justify, even on alleged grounds of cost and convenience that a proper consideration not be given to the Applicant's matters in a comprehensive manner and in a single Hearing.

The City has suggested that the variance matters be reinstated and properly brought before the TLAB, and I agree. That position could have been of a much more severe nature to the Applicant and may yet be. However, at the moment, it affords a clear path for the Applicant to follow, if it so determines. The additional cost and inconvenience to all with an interest in these matters is indeed regretful. In the circumstances, it cannot be conclusively visited on any action, conduct or individual.

The Applicant will have the opportunity of a Hearing, subject to fulfilling the matters herein and the Rules of the TLAB.

DECISION AND ORDER


The request for a written Motion is allowed.

Decision of Toronto Local Appeal Body Panel Member: I. LORD
TLAB Case File Number: 18 214914 S53 05 TLAB

The request for an adjournment is granted. The Hearing scheduled for February 11, 2019 is cancelled and no attendance is required.

The Supervisor is directed three (3) months from the date of issuance of this Decision to canvass the parties on the status of the matter, unless earlier in receipt of the requisite variance appeals or a notice of abandonment of the consent appeal.

In the event that the Supervisor's canvass shows no progress in the matter of scheduling a hearing, the TLAB will, on Notice, schedule a teleconference hearing to show cause why the matter of the consent appeal should not be dismissed.

X 

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