

DECISION AND ORDER

Decision Issue Date Monday, February 25, 2019

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): KEN ZUCKERMAN

Applicant: KEN ZUCKERMAN

Property Address/Description: 121 AVENUE RD

Committee of Adjustment Case File: 18 153123 STE 27 MV

TLAB Case File Number: 18 246813 S45 27 TLAB

Motion Hearing date: Wednesday, February 20, 2019

DECISION DELIVERED BY Ian James Lord

APPEARANCES

NAME	ROLE	REPRESENTATIVE
ALDERGREEN ESTATES INC	OWNER	
KEN ZUCKERMAN	APPLICANT/APPELLANT	CALVIN LANTZ MARY FLYNN-GUGLIETTI
ALUN LLOYD	EXPERT WITNESS	
LOUIS TINKER	EXPERT WITNESS	
ROBERT GLOVER	EXPERT WITNESS	
MICHAEL MCCLELLAND	EXPERT WITNESS	
ABC RESIDENTS ASSOC.	PARTY (TLAB)	ANDREW BIGGART
DANIEL LUBLIN	PARTY (TLAB)	ANDREW BIGGART
AARON MITCHELL	PARTY (TLAB)	ANDREW BIGGART
CHRISTOPHER WEIN	PARTY (TLAB)	ANDREW BIGGART
MARIE FOSS	PARTY (TLAB)	ANDREW BIGGART
RONALD FREIMAN	PARTY (TLAB)	ANDREW BIGGART
HEATHER RIDER	PARTY (TLAB)	ANDREW BIGGART
ELEANOR HIRSHFELD	PARTY (TLAB)	ANDREW BIGGART
JOHN LOHMUS	EXPERT WITNESS	
CITY OF TORONTO	PARTY (TLAB)	MARC HARDIEJOWSKI NATHAN MUSCAT
ALAN YOUNG	EXPERT WITNESS	

INTRODUCTION

This matter involves the request for a written motion which, if granted, would permit the recognition of several revised and new variances to an appeal matter in which the disclosure period had passed.

The Motion (on Form 7) was filed in writing by Ms. Flynn-Guglietti on behalf of her client, Ken Zuckerman (Zinc Developments Inc.) and is supported by an affidavit of Louis Tinker, a Registered Professional Planner (Form 10), sworn February 5, 2019.

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The Motion was served on the City (Nathan Muscat, counsel) and the ABC Residents Association (Andrew Biggart, counsel) on February 5, 2019 with a return date of February 20, 2019. Mr. Biggart is shown, above, to represent additional named Parties.

There was no response to the Motion from any Party.

The appeal itself is scheduled for Hearing, as above noted, on March 20, 2019.

BACKGROUND

The Affidavit of Mr. Tinker recites the evolution of application particulars, waivers and Examiners' Notices received. In brief, application for variances was refused by the Committee of Adjustment applicable to 121 Avenue Road (subject site). As a result of discussions with the City of Toronto (City), amended plans were filed with the COA on September 9, 2018 involving a reduction in gross floor area from the original application. The plans had always envisaged an automated garage parking system.

Following the COA refusal, Mr. Tinker, on his retainer, recommended a further Zoning Examination (Project Plan Review –'PPR') be conducted of the revised plans.

A complete PPR was not received until February 5, 2019, the same date as the Motion herein was launched.

The PPR revealed that two of the original variances had been amended to recognize the reduction in gross floor area. However, three variances were added related to the automated garage parking system. These were apparently 'missed' in the earlier assessments of required permission, and were not before the COA.

A total of eight (8) variances are now sought; five (5) in various form, had been before the COA.

MATTERS IN ISSUE

The request in the Motion is for an Order under Rule 16.1 of the Rules of Practice and Procedure (Rules) of the Toronto Local Appeal Body (TLAB) to permit the disclosure of the late arriving PPR dated February 5, 2019. Since the Rules require timely disclosure, late arriving evidence is excluded without leave of the TLAB.

JURISDICTION

The Rules permit requests to be considered in writing.

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The Rules, particularly Rule 2, permits relief being granted where it is fair, reasonable and expedient to permit a full consideration of matters before the TLAB. The considerations of late admission include prejudice to the Parties.

Section 45 (18.1) of the *Planning Act* permits the consideration of changed or additional variances requested in circumstances where the tribunal considers the request to be minor. The tribunal must decide whether additional Notice is required; ancillary to that consideration is whether an adjournment is appropriate to conduct additional Notice.

All of the above considerations warrant a consideration of prejudice.

EVIDENCE

There is no objection to the request for a written consideration or that the disclosure be permitted despite the late date of filing.

ANALYSIS, FINDINGS, REASONS

Disclosure is required to be timely. I am satisfied in this circumstance that the request for a PPR was prudent. Both the TLAB and the Parties benefit from the degree of certainty afforded by a PPR rather than a waiver and own assessment. The fact that a final PPR was delayed is not the responsibility of the Applicant/Appellant, on the evidence.

The PPR received reveals a confirmation of some original variances, a confirmation of some planned reductions in areas arising from discussions and some variances not initially identified in an earlier PPR.

The new variances relate entirely to a physical parking solution that, on the attestations, was disclosed in the original plans, calling for an 'automated garage'.

It seems prudent that the project and all associated variances be considered at once and in the same Hearing.

The Applicant/Appellant on the evidence has acted in a timely fashion to bring the revised PPR to the attention of the Parties.

Without prejudice to any evidence and argument that may pertain to these revisions, it is appropriate they be considered in the context of the March 20, 2019 Hearing.

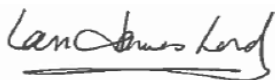
DECISION AND ORDER

The request for a written Motion is granted.

The request to admit the disclosure by the Applicant/Appellant of the PPR dated February 5, 2019 (Exhibit 'F' to the affidavit of Mr. Tinker), is allowed.

The scheduled Hearing is to proceed on the basis of the variances set out in the attached **Schedule A**, attached hereto.

X



Ian J. Lord

Panel Chair, Toronto Local Appeal Body

Signed by: Ian Lord

Schedule A

Zoning bylaw Notice

ITEM DESCRIPTION

Toronto Zoning by-law

Your property is located in the former municipality of Toronto and is subject to Zoning By-law No. 438-86, as amended and By-law 1279-2007(OMB). Based on Zoning By-law No. 438-86, the property is zoned CR T2.0 C2.0 R2.0.

Project Description: Construct an 8-storey mixed-use building containing 11 dwelling units and commercial at grade.

1. The by-law requires a building to be located within the areas delineated by heavy lines on Map 2. The proposed building will be located outside of the heavy lines on Map 2. [By-law 1279-2007(OMB), Section 1(2) - Building Envelope]
2. The by-law allows a building to have a height not exceeding the heights shown on Map 2. The proposed building will have a height exceeding the heights shown on Map 2. [By-law 1279-2007(OMB), Section ((3) - Building Height]
3. The by-law requires a parking space to be readily accessible at all times for the parking and removal of a motor vehicle without the necessity of moving another motor vehicle. The proposed parking spaces will be located in an automated parking system which will need to move motor vehicles in order to access another. [2(1) - Parking Space Dimensions]
4. The by-law requires that the combined non-residential gross floor area and residential gross floor area be not more than 2,509.0 square metres. The proposed building has 2,706.0 square metres of combined non-residential gross floor area and residential gross floor area. [By-law 1279-2007(OMB), Section 1(4) - Combined Density]
5. The by-law requires that the residential gross floor area be not more than 702.0 square metres. The proposed residential gross floor area of the building is 2,483.0 square metres. [By-law 1279-2007(OMB), Section 1(6) - Residential Gross Floor Area]
6. The by-law requires a maximum of 8 parking spaces to be provided on the site. The number of proposed parking spaces is 35 on site spaces. [By-law 1279-2007(OMB), Section 1(13) - Maximum Parking Spaces]
7. The by-law requires a parking stacker to have minimum dimensions of at least 5.6 metres in length by 2.7 metres in width. The proposed parking stackers will have dimensions of 5.31 metres in length by 2.17 metres in width. [By-law 1279-2007(OMB), Section 1(14) - Parking Space Dimensions]

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8. The by-law requires a parking facility to be accessible by a driveway having a minimum width of 5.5 metres, for two-way operation. The proposed parking facility will be accessed by a passageway (car elevator) with a width of 3.5 metres. [By-law 1279-2007(OMB), Section 1(7) - Driveway, 5.5 m Width]