

DECISION AND ORDER

Decision Issue Date Tuesday, February 12, 2019

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

Appellant(s): NAVIDI MEHRSHAD

Applicant: ARCICA INC

Property Address/Description: 90, 92 JOHNSTON AVE

Committee of Adjustment Case File Number: 17 134874 NNY 23 CO, 17 134858 NNY 23 MV, 17 134868 NNY 23 MV

TLAB Case File Number: **17 221529 S53 23 TLAB, 17 221530 S45 23 TLAB, 17 221531 S45 23 TLAB**

Hearing date: Wednesday, August 01, 2018

DECISION DELIVERED BY Ian James Lord

INTRODUCTION AND BACKGROUND

This matter was heard as above noted and a decision was issued by Member L. McPherson, as she then was, on August 16 , 2018 (Decision) in respect of 90-92 Johnston Avenue (subject property).

Subsequently, the Toronto Local Appeal Body (TLAB) received correspondence to the effect that one of the conditions imposed on the consent granted by the Member is problematic, from a timing perspective.

The relevant consent condition reads as follows:

“ (3) Prior to the issuance of a building permit, the applicant shall satisfy all conditions concerning City owned trees, to the satisfaction of the Director, Parks, Forestry & Recreation, Urban Forestry Services.”

Planning Staff of the City of Toronto (City) advised the Applicant, in email correspondence of January 22, 2019, that issues relating to building permits and clearances in relation thereto are normally attached to the variances granted, and are

'outside the consent process'. Further, that the owner "will never be able to fulfill (the condition) at the consent stage".

It is also apparent, from the exchange of communications presented as between the owner and Urban Forestry, that the substance of addressing Urban Forestry condition is well in hand and no issue arises or is requested to be addressed, in that regard.

MATTERS IN ISSUE

A condition imposed on the consent approval is not directly related to the process of confirming and perfecting lot division and title passage but is more properly germane, to secure its satisfaction, as a condition of variance approvals and the permit issuing process. The request, in effect, is to transfer Condition 3 to the severance approval to be a condition of the variance approvals also granted in the Decision.

JURISDICTION

The TLAB Rules of Practice and Procedure, notably Rules 2 and 30, permit the issuance of minor and technical correcting orders in a timely fashion, where appropriate.

EVIDENCE

The City and the owner's representative are in agreement that the proper location of Condition 3, above recited to the consent approval, should be made as a condition of the variances requested and granted, to be cleared at the stage of building permit issuance.

If the Condition is not satisfied, the building permit cannot issue.

It is submitted that there is no nexus between the Condition 3 and perfecting lot creation or holding up that process for clearance of the condition.

Indeed, it is asserted that permit issuance can only be advanced on creation of the lots and that is difficult or impossible to fulfill building permit conditions for issuance until the lots are created.

ANALYSIS, FINDINGS, REASONS

I am satisfied that there is a sequence anticipated in the City's administrative processes of implementing development in this circumstance that anticipates the formalities of lot creation being completed prior to permitting construction on the lots.

The formalities of lot creation are independent of construction on the lot.

Decision of Toronto Local Appeal Body Panel Member: I. Lord
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I am satisfied that Condition 3 is more properly affixed to the permit issuance process and is required to be cleared before the City can permit construction on the subject property. Placing it as a condition of the variance approvals accomplishes that and assures its satisfaction before construction is allowed.

In my view, nothing is served by the condition creating an interference with the substance or process of the approved lot creation documentation.

DECISION AND ORDER

The Decision is revised by amending Exhibit 1 to the Decision and deleting Consent Condition 3 to the consent approval and transferring it on the same terms as Condition 3 to the variances approvals.

All other terms of the Decision remain unchanged.

If there are difficulties arising from this decision, the TLAB may be spoken to.

X



Ian Lord

Panel Chair, Toronto Local Appeal Body

Signed by: Ian Lord