

REVIEW REQUEST ORDER

Review Issue Date: Friday, March 08, 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): JESSIE TUITT

Applicant: VALDIMIR DOUNIN

Property Address/Description: 54 MARESFIELD DR

Committee of Adjustment Case File Number: 18 117404 ESC 41 MV (A0050/18SC)

TLAB Case File Number: 18 141276 S45 41 TLAB

Decision Order Date: Thursday, December 27, 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) brought by Vladimir Dounin, a Party and owner of 54 Maresfield Road (subject property). The Request consists of a covering e-mail, an affidavit on Form 10 of Mr. Dounin (Requestor) sworn February 5, 2019, an accompanying elaboration entitled "This is my statement on corruption and lawlessness in TLAB", a multitude of photographs consisting of Google images, and a series of more or less related communications, the most substantive of which is in an e-mail dated March 1, 2019.

The Request relates to the decision of TLAB Member T. Yao issued January 16, 2019 (Decision).

The Request was served on the sole Appellant, Ms. Jessie Tuitt. Service on a Party is a prerequisite to a validly constituted Request.

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No submissions were made by the Appellant. There is no obligation on a Party to respond to a Review. However, by service, a Party is on Notice that the Decision has been challenged.

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

Pursuant to Council's instruction to all TLAB Member's, I have conducted a site visit, including the subject property and surrounding vicinity.

BACKGROUND

This matter has something of a lengthy history for all concerned, often cited by the Requestor in communications to the TLAB, and others.

At issue is the Requestor's application for approval of a single variance made to the Scarborough Panel of the City of Toronto (City) Committee of Adjustment (COA) to increase the permitted floor area of the subject property by approximately 10-12 square metres (Application).

The COA decision, dated March 27, 2018, identified, described and approved the Application, subject to one condition, as follows:

"By-law No. 569-2013:

- 1) The proposed floor area is $0.64 \times \text{lot area} = 195 \text{ m}^2$ Whereas the maximum permitted floor area is $0.6 \times \text{lot area} = 183 \text{ m}^2$.

The Committee of Adjustment considered the written submissions relating to the application made to the Committee before its decision and oral submissions relating to the application made at the hearing.

In so doing, IT WAS THE DECISION OF THE COMMITTEE OF ADJUSTMENT THAT: The Minor Variance Application is Approved on Condition.

It is the decision of the Committee of Adjustment to authorize this variance application for the following reasons: • The general intent and purpose of the Official Plan is maintained. • The general intent and purpose of the Zoning By-law is maintained. • The variance(s) is considered desirable for the appropriate development of the land. • In the opinion of the Committee, the variance(s) is minor.

This decision is subject to the following condition(s):

1. The Owner shall build in accordance with the Site Plan, Drawing No. A101, and the Elevations, Drawing No. A106-109, prepared by,

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BuilDesign, stamped and received by the Committee of Adjustment on February 14, 2018, as it relates to the front porch and second storey addition (see Attachments 1 through 5)." (my underlining)

The plans attached to the COA decision are a subset of the plans that Mr. Dounin had had prepared by I. Ahmed, BuilDesign, variously dated in April and August 2016 (Plans). A full set of the Plans is on the TLAB website, as forwarded by the COA, following the appeal by Ms. Tuitt.

Four TLAB Members have since had attention to the file:

1. Member S. Gopikrishna adjudicated appeal irregularities by the Appellant, Ms. Tuitt, in a Decision issued June 29, 2018;
2. Member G. Burton conducted an initial sitting, but in an Interim Order and Decision issued November 29, 2018 stated:

"Prior to my issuing a decision in this matter, correspondence in the nature of a complaint came to my attention. The complaint came from the Applicant to the Chair and concerned this panel.

In the circumstances I find that I am now unable to issue a decision in this matter."

3. Member T. Yao conducted a new hearing with the Decision issued January 16, 2019, being the subject of this Review Request.
4. As Chair, I accepted responsibility to consider the Review as described in correspondence to the Requestor dated February 19, 2019, **Attachment 1** hereto.

The consideration of the Request requires the separation of matters raised by the Requestor. In **Attachment 1**, the Requestors' concerns respecting the conduct of the tribunal, various Members and the Chair have been forwarded to the City Integrity Commissioner for further pursuit by Vladimir Dounin, should he wish to pursue those allegations and complaints. The Office of the Integrity Commissioner is the appropriate vehicle to pursue complaints of the nature alleged, not the TLAB.

The land use planning matters engaged by the Review are appropriate for consideration under the TLAB Rules. Despite the mixed content of the Requestor's submissions, it is possible to easily separate land use planning and associated relief requests from the other conduct complaint assertions.

It is perhaps trite, but worth recalling, to recite that a Review Request under TLAB Rule 31 is not a forum to re-argue a case that was or could have been made out by the full participation available in the Hearing leading to the Decision.

Rather, a Review Request must respect the grounds and remedies set out in the Rule as it existed at the time of the Request. These are recited below.

I am confident that the Requestor is well aware of the provisions of Rule 31. Not only the Affidavit supporting the Request but also the other submissions reference and are framed under the language of the Rule.

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

The Request asserts that the Decision:

- a) Exceeded the jurisdiction of the TLAB by taking into consideration an irrelevant consideration, namely, the Appellant’s appeal related to a ‘porch addition’ of two storeys, for which a valid building permit had been issued and which had subsequently been constructed;
- b) Violated the rules of natural justice and procedural fairness through the mistaken consideration of alternative options or extraneous considerations for the distribution of the available and COA approved space allocation, as between ‘a porch addition of two storeys’ and ‘a bedroom addition above an existing garage’;
- c) made an error of law or fact or was deprived of evidence, by inadvertence, omission or exclusion, which would likely have resulted in a different order or decision in the failure to consider a relevant consideration, namely, the presence of multiple examples of productive space above garage structures in the immediate vicinity as a common element of area character;
- d) made an error of law by failing to address whether the space approval requested to complete the bedroom addition (10 square meter ‘strip’) above the garage met the statutory tests for variance approval.

In this Request, I am obliged to confine the Review to the Decision.

In the Decision, the Member presents in the penultimate paragraph something of an ambivalence as to the outcome:

“Accordingly, I am refusing the minor variance and the result is that Mr. Dounin may complete his half-finished project under that building permit, which will result in a structure without the “strip” and which no-one wants.

If he wishes to have the whole second floor bedroom plus a one storey front porch and if he needs a minor variance and if he is willing to pay his architect to redraft such plans, I will reopen this hearing to grant any necessary minor variance. This would require going back to Mr. Small at the City Buildings Department and Mr. Small should be given sufficient time to do his job.

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If this is Mr. Dounin's intended course of action, he should advise the TLAB and Ms. Tuitt by February 1, 2019 and submit the new plans plus a new zoning notice to the TLAB by March 30, 2019. If this is unclear, he should write to the TLAB and copy Ms. Tuitt. Assuming no unexpected difficulties, I should be able to amend this order upon receipt of a simple email from Mr. Dounin plus those enclosures and I will amend the order granting any variance flagged by Mr. Small on condition that Mr. Dounin construct in according with those revised plans. Otherwise the final order below stands, and Mr. Dounin is at liberty to continue construction under the permit 16 175 355.

Decision and Order

The appeal is allowed, and the decision of the Committee of Adjustment is set aside. The variance is not authorized. However, I am willing to set aside this Decision and Order on the above terms, if Mr. Dounin so desires."

In reading the Decision closely, I cannot help but conclude that the Member sought to advance a determination that could serve as an aid to the Requestor.

I find the following extracts from the Decision to be instructive in this regard, as well:

- a) "I infer this meant Mr. Dounin could satisfy Mr. Small in two ways — either reduce the gross floor area by 11 m² (194 m² minus 183 m²) or by supplying Mr. Small with a Committee of Adjustment decision giving him a minor variance approval". (page 2 of 5)
- b) "Ms. Tuitt has stated that she does not oppose the second-floor master bedroom over the garage, but she does not want a two storey "wall" three feet from her lot line. But the two storey wall does not by itself seem to require any minor variance; it meets height and side yard setback limits and it is only when considered in conjunction with the bedroom that the gross floor area variance is triggered." (page 4 of 5)
- c) "If he wishes to have the whole second floor bedroom plus a one storey front porch and if he needs a minor variance and if he is willing to pay his architect to redraft such plans, I will reopen this hearing to grant any necessary minor variance." (page 4 of 5)
- d) "If this is Mr. Dounin's intended course of action, he should advise the TLAB and Ms. Tuitt by February 1, 2019 and submit the new plans plus a new zoning notice to the TLAB by March 30, 2019. If this is unclear, he should write to the TLAB and copy Ms. Tuitt. Assuming no unexpected difficulties, I should be able to amend this order upon receipt of a simple email from Mr. Dounin plus those enclosures and I will amend the order granting any variance flagged by Mr. Small on condition that Mr. Dounin construct in according with those revised plans". (page 5 of 5)

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Independent of their specific content, I find these references demonstrate a conscientious effort on the part of the Member to resolve the issues perceived by him for resolution. Far from being any of the apprehensions and concerns expressed by the Requestor, I find these efforts to be genuine and constructive, if limited, in their effort to achieve finality.

I also find that the Member made an unusual effort, in good faith, to provide creative direction to the Applicant, through a discussion of a series of options and alternatives.

Regrettably, none of that discussion appeared as satisfactory to the Applicant and the result is the Review Request.

That said, I find that the Decision may have proceeded partly on a misapprehension as to the relevance of the neighbour's appeal. I accept the fact, asserted by the Applicant and acknowledged in the Decision, that the porch addition was within the as-of-right maximum gross floor area (gfa) allowed on the subject property. Indeed, an uncontested building permit approval for this space was issued based on approved plans. Those building permit plans showed the bedroom addition above the garage but truncated to the maximum limit of gross floor area, a fact necessary to achieve issuance to permit the porch and to frame the COA application.

This plan aptly demonstrates the additional needed space to achieve build out; that space is the essence of the application before the COA.

I see no issue with this approach. The building permit approval plans, on the evidence, fully complied with zoning. The shortfall in gfa (10 square meter 'strip') to complete the bedroom was the subject of the Application and consideration by the COA.

I do not read the underlined component, above, of the COA Decision to reference anything more than the Plans with which it had been provided. The decision was to allow the additional space.

There is no basis to conclude the COA entertained or had before it the issue of a porch addition. It had, for certain, the objection of the neighbour, Ms. Tuitt, the Appellant to the COA decision, concerned about the porch. However, the porch addition was lawful, within the parameters of as-of-right zoning and had a validly issued building permit. It is asserted that the porch is now built; however, my site visit was unable to confirm that aspect.

I have no basis but to conclude that the COA properly focused its decision on the residual gfa required, some 10 square meters, and approved that on all relevant considerations which it clearly announced, above.

A Motion to Dismiss the appeal, had it been brought, might have assisted to test the relevance of the appeal, based on the concern and focus of the Appellant being on the porch addition. It would have clarified what was before the TLAB for decision.

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I accept the Member's finding, in b) above, that the Appellant was not interested in the above garage bedroom addition. That component is furthest removed from the Appellant and would extend, vertically, the existing garage; in any event, the Appellant did not participate in this Review Request. I can reasonably assume that since the porch addition is permitted (if not constructed) despite being contrary to her wishes, a continuing appeal for the gfa variance for the 'strip' is perhaps moot.

The Requestor, for his part, is adamant that the Member's discussion - identifying an option of having construction of "the bedroom stopping 2.1 m from the south edge of the front of the garage and this reduces the gross floor area by 11 square meters" - is incredulous, unreasonable, without jurisdiction and out of character with the neighbourhood.

I disagree. It is often said that 'builders can build anything'.

I find, however, that there is nothing to be gained in the discussion of the construction merit of a foreshortened bedroom. It is the case that the Official Plan test that the variance must 'respect and reinforce the neighbourhood', is real.

The Member did not have the benefit of objective, professional assessment evidence of neighbourhood character - from either of the Parties. The Member is correct that it is the Applicant's responsibility to demonstrate compliance with all applicable tests. The TLAB, however, is frequently faced with lay citizen evidence as to character, and no professional assessment by any party. It must fully consider those matters relevant to making a decision and exclude irrelevant considerations. In this case, I am satisfied that the Member did have evidence and, as well, the decision of the COA which, above, had made a direct finding of Official Plan conformity.

The Member is to have visited the site. The evidence as to 'only two examples of bedrooms above garages'; was challenged. A site visit and consideration of the surrounding neighbourhood would confirm that such design options, while infrequent, are readily apparent on local streets in the near vicinity, as aptly attested to, as well, in the Google photography filed.

In this neighbourhood, whether as defined by the Member or as described by the Applicant, there is a compelling design similarity. That aspect consists of front yard garages. Garages dominant the streetscape; residential entrances are ancillary to the predominance of one and two-storey garage structures. These garages are, variously, accompanied by sloped roof designs, sled designs to the peak of the main roof, second storey rooms above garages and, even more occasionally, half garages recessed, in part, into the dwelling units. Perhaps most of the projecting garages have sloped roofs that are also unusually high, extending well into the level of the second storey building they screen, often partially blocking light, windows and dwelling visibility. In many instances, the garage structures far exceed in height the reasonable needs of even large cars; standard single and double car garage doors extend nearing twice as high in external façade, than necessary to accommodate the access portal.

Clearly, in the main, the architect/subdivider constructed and elected that the residences remain screened behind prevalent front yard garages; indeed garage

structures in regimented pattern march up and down both sides of the street, some narrow, some occupying the bulk of lot frontage, but with a visual regularity that is certainly unique, concentrated, and unusual. The neighbourhood by any measure demonstrates a physical character dominated by garages with a classic period emphasis that, in planning schools of years gone-by, were actively discouraged.

I find that the occasional variation in roof design demonstrates visual relief, and can be 'attractive' if tastefully executed, and offers an escape from the regimented and oppressive regularity of protruding garage structures, especially in instances where the dwelling entrance itself is brought closer to the street, as proposed.

I accept the Google photography as important new evidence. While arguably available at the time of the Hearing, the issue then appeared to have been framed entirely differently to focus on the porch addition. I find as well that the limited three street definition of the 'neighbourhood' used by the Member and the reference to '2 homes out of about a hundred', without planning evidence, may have deprived the Member of the acceptability or admissibility of this descriptive photographic evidence. There are streets in close proximity to those identified by the Member that demonstrate a compellingly representative sample (more than 30 on the evidence) of the built form proposed by the 'strip'. The relief requested to complete the proposed bedroom addition, considered on its own, is clearly identified as being present in substantial numbers, on the foregoing considerations.

I consider this aspect of the evidence to be a factual consideration that would likely have resulted in a different decision. It is appropriately corrected in the Review by the Requestor; it is focused on the proper location and the required amount of space requested in the strip.

I find that the Member made every effort to direct the Applicant to accomplish the full bedroom addition but regrettably connected that effort to the space occupied by the porch. The Decision leads me to conclude that there was sufficient uncertainty demonstrated, as to the location of what was properly before the TLAB for decision (approximately 10 square meters of gfa), as to warrant relief.

I find that there is sufficient support in the factual evidence and the Member's own efforts at resolution, to warrant that the Decision should be varied, without further attendances, submissions, Motions, mediation, new plans, a renewed application or a new hearing.

I find that the decision of the COA and the constructive efforts by the Member result in a more correct and supportable finding of satisfactory compliance with all applicable tests.

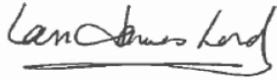
DECISION AND ORDER

The Decision is varied. The appeal is dismissed. The decision of the Committee of Adjustment is confirmed, including its Condition.

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If difficulties arise in the implementation of this Decision and Order, the TLAB may be spoken to.

X

A handwritten signature in black ink that reads "Ian Lord". The signature is written in a cursive style and is positioned above a horizontal line.

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

Date: Tuesday, February 19, 2019

To: Vladimir Dounin
By Email: vladimir54maresfield@gmail.com

Subject Matter: TLAB Case File Number: 18 141276 S45 41 TLAB
Property Address: 54 Maresfield Drive, Toronto, ON M1V 2X1

Dear Sir,

I wish to acknowledge several communications from you in respect of the above variance appeal.

Your correspondence and attachments have been received. They have been brought to my attention in a succession of instances related to proceedings instituted by the appeal, as those events transpired.

I appreciate that the lack of substantive responses may be frustrating to you and have the appearance of the communications going unanswered. I understand that TLAB Staff have, on occasion, advised you of receipt.

By way of explanation, it is the policy of the TLAB not to forward correspondence to a Member that is received during the course of a Hearing or during the period of the Member's deliberations until a final decision is rendered. This applies to positive, negative or neutral communications. This is an attempt to provide an assurance to the public that such communications not be seen in any way to have the potential to influence the decision making process.

In this case, it was my instruction that your earlier communications concerning Member Burton and, subsequently, Member Yao, be retained, pending their respective Decisions. As well, I, as Chair of the tribunal, have defined responsibilities, specified in detail in Rule 31 applicable for a 30 day period following a Member's Decision, during which period any Party aggrieved by the Decision has the right to request a review of the Decision and Order. That presents an additional period where communications of substance are suspended by the Chair while the Parties determine whether the right of a Review will be exercised and pursued.

It is tribunal policy that direct engagement with a Party during these periods is to be avoided. Where a Review is instituted, service is required on all the Parties of the Review Request and formal submissions are thereby invited. Only the Review Request materials, supplied and exchanged in affidavit form, are generally considered from the Parties in conducting the Review.

Formal consideration to communications from a Party can be made during any of these periods by way of formal Notice of Motion, under the Rules, where all Parties (and Participants) are served with the communication. The tribunal, TLAB, can then schedule a teleconference, written or oral motion date to consider the matters raised, responses and reply's, if any.

No formal Motion was brought in respect of this matter. However, your request for a Review was received in January, 2019.

The TLAB Decision of Mr. Yao was issued January 16, 2019 and while the period under Rule 31 continues at the time of writing, I wish to acknowledge receipt by the TLAB from you of a timely and complete Request for Review (Review) under TLAB Rule 31. This request must be served on any other Party to the Decision and any response received will be considered as a component of the Review Request.

The TLAB is also in receipt of complaint material against the TLAB, various Members and the Chair, including for lack of responsiveness to the earlier communications (Complaint).

The Complaint has been received by the TLAB directly from you and, separately, from the City of Toronto Office '311toronto', on January 22, 2019.

Although the written materials in the Request and the Complaint contain some similar and overlapping elements, they comprise two separate considerations under relevant provincial and City processes.

The Review is instituted under the TLAB Rule 31 as a process available for the final determination of an application under section 45 of the Planning Act. That determination is remitted by the City of Toronto Act to the TLAB.

Under TLAB Rule 31, I will be considering the Review request on relevant land use planning considerations, all as framed by the eligible grounds set out in Rule 31 of the TLAB.

With respect to the Complaint, as it pertains to matters raised respecting the integrity of the tribunal, various Members and the Chair, those matters are under City legislation to be addressed not by the tribunal but through the Office of the Integrity Commissioner for the City.

Consequently, I am referring those aspects, the Complaint, to the Integrity Commissioner and have directed TLAB Staff to compile the complete record of those communications to accompany this letter.

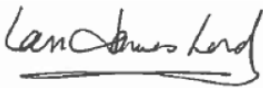
Please be assured that both matters, the Review and the Complaint, will be fully explored, considered and reported upon to you, separately and earliest.

If there are any further submissions on the Review, may I ask that they be forwarded to the TLAB for my consideration, with an attestation as to proof of service on any other

Party, all at your earliest convenience. The Review will proceed whether or not further communications are provided to be considered, subject to confirmation of the initial service on any other Party.

I trust the foregoing is satisfactory and regret any inconvenience or apprehensions that the delay caused by these processes may have occasioned.

Yours Truly,

X 

Ian James Lord

Chair, Toronto Local Appeal Body

Signed by: Ian Lord