

MEDIATION SUMMARY

Mediation Summary Date: Monday, March 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): THEODOSIOS MARGARITIS

Applicant: THEODOSIOS MARGARITIS

Property Address/Description: 83 PEARS AVE

Committee of Adjustment Case File: 18 139417 STE 27 MV (A0358/18TEY)

TLAB Case File Number: 18 239143 S45 27 TLAB

Mediation Date: Thursday, March 07, 2019

MEDIATION SUMMARY DELIVERED BY G. BURTON

APPEARANCES

NAME	ROLE	REPRESENTATIVE
Theodosios Margaritis	Appellant	Amber Stewart
ABC Residents Association	Party	Andrew Biggart
Mary Spence	Party	Andrew Biggart
Rachael Rafelman	Participant	
Stefan Coolican	Participant	
Don Milne	Participant	
Munaza Chaudhry	Participant	
Mike Jackson	Participant	
Michael Killinger	Participant	

Peter Wynnyczuk	Expert Witness
John Lohmus	Expert Witness
Michael Spaziani	Expert Witness

INTRODUCTION

This was an appeal to the Toronto Local Appeal Body (TLAB) from a Decision of the Committee of Adjustment (COA), dated September 26th, 2018, that refused the owners' application for two minor variances involving property at 83 Pears Ave. in the Avenue Road and Davenport Road area of Toronto. It is zoned R (f5.0; d1.0) (x485) under Zoning By-law No. 569-2013, as amended. The owners plan to alter the existing two-storey townhouse by constructing a rear two-storey addition, and a complete third storey addition with a rear third storey deck.

This would require two variances from the By-law, for planned building depth and for increased FSI. The TLAB set March 7, 2019 as the date for a hearing of the appeal.

As may be seen for the list above, there were many persons interested in this appeal. Principal among these is the ABC Residents Association, which takes an active interest in developments in their area of concern.

BACKGROUND

On March 6, 2019, the day before the hearing, Ms. Stewart wrote to the TLAB:

"Mr. Biggart [representing ABC] and I have been engaging in discussions about this matter, which is scheduled for a hearing tomorrow. We are both in agreement given that the matter is contested and given the number of witnesses anticipated that the matter will not be completed in one day.

However, we are both in agreement that based on the nature of the application, there may be a possibility of settling the matter. We note that this is not a consent application, but relates to a rear two-storey and third storey addition.

We agree that the settlement potential is greater if we are assisted formally by the TLAB. On this basis, we are writing on consent to request that the TLAB convert tomorrow's hearing to a formal mediation, to be conducted by the TLAB. We note that Rule 20.1 requires mediation to be conducted at least 30 days before the hearing, unless the TLAB directs otherwise. We also note that Rule 20.2 indicates that the TLAB may direct the parties and other persons to attend non-mediation if there is good reason to believe one or more of the issues in dispute may be resolved through mediation.

As noted above, the nature of the issues is such that there is a good possibility of partial or full resolution. In light of the parties' willingness to attempt to resolve the matter, we believe that a mediation would be a better use of the TLAB's and the parties' resources

than commencing a hearing that will not likely be completed.

We understand that Mr. Biggart is keeping the other parties and participants apprised of this request.”

It was determined at the outset of the Hearing, following a full examination of the willingness of all parties to proceed in this manner, that the parties would undertake a mediation process instead of a hearing, together with the Member.

JURISDICTION

Rule 20 of the TLAB Rules permits a process of mediation, as this method of alternate dispute resolution can result in a solution more satisfactory to all, rather than one or more parties feeling as if they have “lost” their case. The TLAB Rules are:

“20. MEDIATION

Date by which Mediation shall be Held

20.1 No Mediation conducted by the Local Appeal Body shall be held later than 30 Days before the Hearing, unless the Local Appeal Body directs otherwise.

Mediation

20.2 Where the Local Appeal Body is satisfied there is good reason to believe one or more of the issues in dispute may be resolved through Mediation the Local Appeal Body may direct the Parties, and such other Persons as the Local Appeal Body may direct, using Form 17, to attend non-binding Mediation. Mediation shall be confidential.

20.3 The Local Appeal Body shall set the location, date and time of any Mediation to be conducted and direct how notice of the Mediation will be given to the Parties.

Local Appeal Body appoints Member as Mediator

20.4 If Mediation is to be conducted, the Local Appeal Body will appoint a mediator who is a Member of the Local Appeal Body and the mediator may make use of any appropriate dispute resolution techniques to assist the Parties in resolving some or all of the issues in dispute.

Member to Preside at Hearing with Parties’ Consent

20.5 A Member who conducts a Mediation in which one or more of the issues have not been resolved may not preside over any Hearing relating to those unresolved issues unless all of the Parties consent and the Member agrees.”

CONFIDENTIALITY

The TLAB Rules 20.6 to 20.9 stress that mediation and settlement discussions are strictly confidential. This preserves the freedom to make suggestions that may not be part of a final settlement, should one be reached. The Rules state:

“Mediation and Settlement Discussions Confidential

20.6 Any information or Documents provided or exchanged during a Mediation and any discussions or exchanges relating to the resolution of issues or offers to settle are and shall remain confidential and shall not be disclosed or entered as evidence in the same or any other proceeding. Any notes of a Mediation made by a Member shall remain confidential and shall not be released to any Person or admitted into evidence in any proceeding.

20.7 Nothing in Rule 20.6 affects the disclosure of the settlement terms and conditions that are proposed to be approved by the Local Appeal Body.

20.8 Nothing in Rule 20.6 affects the obligations of Parties to make disclosure as otherwise required by these Rules.

20.9 A Member who participates in Mediation is not competent or compellable in any proceeding to give evidence or produce Documents regarding the Mediation. “

STATUS OF MATTERS DURING THE MEDIATION

The day-long Mediation did not succeed in reaching a settlement. Thus the Hearing was adjourned to **July 29, July 30, and July 31, 2019.**

I am not seized of this matter and consider myself excluded on the above-noted Hearing Dates.

X 

G. Burton

Panel Chair, Toronto Local Appeal Body