Toronto Local Appeal Body

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DECISION AND ORDER

Decision Issue Date Monday, April 15, 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): SAMAD RASHID

Applicant: JOHN RAMIREZ representing owner Madia Raja

Property Address/Description: 13 DENTON AVE

Committee of Adjustment Case File: 18 232646 STE 31 MV

TLAB Case File Number: **19 114147 S45 19 TLAB**

Motion hearing date: April 1, 2019

DECISION DELIVERED BY JUSTIN LEUNG

APPEARANCES

Name	Role	Representative
John Ramirez	**Applicant**	
Madia Raja	**Owner/ Party**	**Christina Kapelos**
Samad Rashid	**Appellant**	

INTRODUCTION AND BACKGROUND

John Ramirez, an agent acting on behalf of Madia Imran Raja, owner of 13 Denton Avenue, in the former municipality of East York, now part of the City of Toronto, had applied for a minor variance to permit an already constructed second storey addition to an existing one storey detached dwelling unit. This addition encompasses a rear two storey addition, front covered porch and a rear deck which had been constructed in a manner which resulted in it not conforming to the building permit which had initially been issued by the City Building Department. The applicant elected to pursue a minor variance application to legalize this constructed addition.

A minor variance application was submitted to the Toronto East York Committee of Adjustment (COA) on October 15, 2018. The COA staff deemed the application complete, as per *Planning Act* requirements, and issued a Notice of Public Hearing to neighbouring residents (within 60 metre radius of the subject property) by mail informing them of a scheduled COA meeting on January 13, 2019. Signage outlining this request was also posted on the property. The variances that were requested are outlined as follows:

By-law 569-2013	
Permitted	Proposed
A) Lot coverage of 35% of the lot area (93.48 m^2)	Lot coverage of 39% of the lot area (104.05 m^2)
B) Height of first floor above established grade is 1.20 m.	Height of first floor above established grade is 1.29 m.
C) Maximum permitted floor space index of detached dwelling is 0.75 times the area of the lot (200.31 m^2)	Floor space index equal to 0.78 times the area of the lot (208.1 m^2)
D) Roof eaves project project maximum of 0.9 m provided they are no closer than 0.3 m to the lot line	Roof eaves located 0.14 m from west side lot line
E) Minimum one parking space is required to be provided behind front main wall	Parking not provided as required but by means of front yard parking pad.
By-law 6752	
A) (i) Minimum front yard setback of 6 m.	Altered detached dwelling 4.98 m from front lot line

B) (i) Lot coverage 35% of lot area (93.48 m^2)	Lot coverage equal to 41% of lot area (109.45 m^2)
C) (i) Permitted floor space index for detached dwelling is 0.75 times area of the lot (200.31 m^2)	Altered detached dwelling has floor space index equal to 1.17 times area of the lot (313.16 m^2)
D) (i) Permitted building height for detached dwelling is 8.5 m.	Altered detached dwelling has building height equal to 8.61 m.
E) (i) Minimum one parking space provided behind front main wall	Parking not provided as required but by means of front yard parking pad
F) (i) Minimum required west side lot line setback of 0.45 m.	Altered detached dwelling located 0.22 m. from west side lot line

Planning staff did not prepare a report with regards to this application. Consequently, Transportation staff did submit a report, dated January 17, 2019, which provides a review and assessment of the transportation related variances (variances E) and E) (i)), specially pertaining to the allocation of parking on the front portion of the property. The report states that the original parking configuration at the front of the property was permitted through a licensing procedure. This provision was to allow for one vehicle to be parked at the front location of the property. However, this recently submitted application appears to depict a change in the parking configuration. Staff recommended that if these variances are approved by the COA, that the applicant work with Transportation staff in re-positioning the parking to the front of the porch steps of the detached dwelling with a parking dimension of 5.9 x 2.6 m.

Three letters of concern were submitted to the COA, Russell Irwin and Steven Hutchinson of 15 Denton Avenue, Abeer Ch of 8 Saynor Drive of Ajax, Ontario and Samad Rashid of 72 Clonmore Drive. With the information and materials as received by COA, the Committee rendered a decision to approve this application at the January 13, 2019 COA meeting. The application was then subject to a 20 day appeal period, which would end on February 12, 2019, whereby any interested party could appeal the decision of the Committee to the TLAB. On February 11, 2019, the TLAB received an appeal from Samad Rashid with regards to this application. Mr. Rashid contends that the application does not conform to the four tests for a minor variance, as stipulated in s. 45(1) of the *Planning Act*. This appeal was tentatively scheduled to be heard on June

14, 2019 at the TLAB offices. Legal counsel Christina Kapelos of Ritchie Ketcheson Hart & Biggart LLP, acting on behalf of the minor variance application property-owner Madia Imran Raja, submitted a request on March 18, 2019 seeking dismissal of this appeal, pursuant to *TLAB Rule* 9.1 and s. 45(17) of the *Planning Act.* In the requisite *Motion to Dismiss* materials submitted to TLAB, Ms. Kapelos argues that the appeal as filed by Mr. Rashid is frivolous or vexatious in nature and had been submitted as an attempt to stymie her client's proper participation in the Planning process. A hearing to formally present this request was held on April 1, 2019 at the TLAB offices where Ms. Kapelos and Mr. Rashid were in attendance to provide Planning evidence to the presiding TLAB member.

JURISDICTION

This Motion requests an Order pursuant to Rule 9.1(b), which is further delineated under Section 45(17) of the *Planning Act* which states:

> (17) Despite the Statutory Powers Procedure Act and subsection (16), the Tribunal may dismiss all or part of an appeal without holding a hearing, on its own initiative or on the motion of any party, if,
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> (a) it is of the opinion that,
>
> (i) the reasons set out in the notice of appeal do not disclose any apparent land use planning ground upon which the Tribunal could allow all or part of the appeal,
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> (ii) the appeal is not made in good faith or is frivolous or vexatious,
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> (iii) the appeal is made only for the purpose of delay, or
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> (iv) the appellant has persistently and without reasonable grounds commenced before the Tribunal proceedings that constitute an abuse of process.
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> TLAB Rule 9- Adjudicative Screening By Member, states:
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> 9.1 In the case of an Appeal under subsection 45(12) of the Planning Act the Local Appeal Body may propose to, or upon Motion, dismiss all or part of a Proceeding without a Hearing on the grounds that:
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> a) The reasons set out in Form 1 do not disclose any apparent land use planning ground upon which the Local Appeal Body could allow all or part of the Appeal;
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> b) the Proceeding is frivolous, vexatious or commenced in bad faith;
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> c) the Appeal is made only for the purpose of delay;
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> d) the Appellant has persistently and without reasonable grounds commenced Proceedings that constitute an abuse of process;

e) the Appellant has not provided written reasons and grounds for the Appeal;

f) the Appellant has not paid the required fee;

g) the Appellant has not complied with the requirements provided pursuant to Rule 8.2 within the time period specified by Rule 8.3;

h) the Proceeding relates to matters which are outside the jurisdiction of the Local Appeal Body;

i) some aspect of the statutory requirements for bringing the Appeal has not been met; or

j) the submitted Form 1 could not be processed and the matter was referred, pursuant to Rule 8.4, for adjudicative screening.

9.3 Where the Local Appeal Body proposes to dismiss all or part of an Appeal under Rule 9.1 or 9.2 it shall give Notice of Proposed Dismissal, using Form 16, in accordance with the Statutory Powers Procedure Act, and to such other Persons as the Local Appeal Body may direct.

9.4 A Person wishing to make written submissions on a proposed dismissal shall do so within 10 Days of receiving the Local Appeal Body's notice given under Rule 9.3.

9.5 Upon receiving written submissions, or, if no written submissions are received in accordance with Rule 9.4, the Local Appeal Body may dismiss the Appeal or make any other order.

9.6 Where the Local Appeal Body dismisses all or part of an Appeal, or is advised that an Appeal is withdrawn, any fee paid shall not be refunded.

EVIDENCE

The applicant had submitted a *Book of Authorities* (received by TLAB offices April 1, 2019) which outlines several legal precedence's which were used to posit Ms. Kapelos argument that the appellant's filed appeal was frivolous or vexatious in nature. One of the cases referenced was the *East Beach Community Association v. Toronto (City)* which had been brought before the Ontario Municipal Board (OMB; recently reorganized as the Local Planning Appeal Tribunal (LPAT)) in December 4, 1996. This case surmises that any appeal which is brought forward must address legitimate planning concerns relating to a Planning application. It further conceives that the planning rationale and terminology contained within an appeal application package must provide clear, rational and incontrovertible planning arguments as to why a particular appeal should be accepted and considered by the tribunal in question. This case law has been subsequently cited in other planning related matters, such as OMB appeal case *Reid and Evans v. Aurora (Town) and Whitwell Developments Ltd.,* which had an

oral decision delivered on November 17, 2005. The case relates to an appeal filed with the OMB by Michael Evans and Betty Reid in relation to a Zoning By-law Amendment (Zoning By-law 4669.05.D) passed by the Town of Aurora. The presiding OMB member states that the power and authority for tribunals to dismiss an appeal is relatively new in nature. The member continues by referencing 'three tests' which had been established within the context of *East Beach Community Association vs. Toronto (City)* case:

i) Authenticity of the reasons stated;
ii) Are there issues that would affect a decision on a hearing; and
iii) Are the issues worthy of the adjudicative process

Here, the OMB found that the two appellants did raise planning related issues which were pertinent, such as potential increase in vehicular traffic, market impact relating to the local economy, proposed use which is divergent from the original Official Plan designation for these lands and potential impact to the Aurora Historic Downtown. However, the other items which they raised such as potential for low wage jobs to emerge due to the re-designating of these lands, not previously disclosing to the public that Wal-Mart was an intended tenant on these lands and possible inability to provide hydro power services to these lands were seen to be outside the purview of the OMB. Ultimately, the request to dismiss the appeal by Whitwell Developments Ltd. was allowed as the OMB did not feel these three tests were sufficiently met. This case correlates to the arguments made by the applicant to articulate their position that this appeal should be dismissed as such.

The applicant also commented on geographic proximity as a 'test' or determinant factor in accessing the merits of impact of property development. This item is cited in the *Book of Authorities* case law of *Smith v. Toronto (City Committee of Adjustment, 1998* brought before the OMB*.* As the appellant's property is actually located in the former municipality of Scarborough, it is not situated in the immediate neighbourhood of the subject property in question. With this, Ms. Kapelos contends that there is no direct impact on the appellant with regards to this minor variance application and thereby acts to weaken the merits of this appeal. The previously referenced OMB case further develops upon this argument by outlining the following factors which act to diminish the veracity of a party's appeal:

1) The distance from the site;
2) The lack of concrete impact on the appellant or her property;
3) Failure to object to similar proposals in close proximity to her home and neighbourhood;
4) An unexplained reluctance to discuss resolution; and
5) A coincident relationship with a person who works for a competitor of the applicant.

The appellant, Samad Rashid, had submitted a completed TLAB *Notice of Appeal Form 1* on February 11, 2019, a day before the appeal period for this related minor variance application was to end. No other evidentiary material in support of this appeal was submitted to the TLAB within the prescribed timelines as stipulated by this tribunal. As outlined within the appeal documents, Mr. Rashid argues that the applicant

has acted inappropriately by applying for a minor variance application after constructing an addition illegally, or in this instance constructing a structure which was beyond what had been inspected and approved as part of an issued building permit by City Building staff. He further contends that the intent of the Zoning By-law and Official Plan have not been met, as per the four tests for a minor variance as stated in the *Planning Act*, while not providing any additional commentary or justification with regards to these statements.

At the TLAB hearing on April 1, 2019, Mr. Rashid reiterated the items which had previously been outlined while also asserting that the applicant has previously engaged in similar inappropriate behavior with other building projects in the City. This was described in the letter of concern Mr. Rashid had previously submitted to COA, dated January 16, 2019. Mr. Rashid claims the applicant, in other building projects, would initially obtain a building permit and then proceed to build a structure which exceeded the approved drawings relating to that permit. The applicant would then approach the COA to obtain Planning approval for their as built structure. Mr. Rashid did explain that he had previous business dealings with the applicant which had not concluded in a cordial manner. When the presiding tribunal member inquired of the appellant how this application were to be assessed within a planning context, Mr. Rashid responded that the floor space index variance request was quite significant and not in keeping with the four tests for a minor variance. When asked to describe their property's location (72 Clonmore Drive) to the subject property (13 Denton Avenue) in question and how they were notified of this minor variance application initially, Mr. Rashid responded that it would be over 10 minutes if he were to walk from his property to the subject property and that he does not have direct line of sight of this subject property from his own property. In terms of notification, as his property is not within the 60 metre circulation radius as stipulated by the *Planning Act*, Mr. Rashid became aware of this minor variance application by searching the City of Toronto's Application Information Centre (AIC) website by using the applicant's name as a search option. He further contended that he does 'watch out' or observe other building or planning related projects undertaken by the applicant to ensure they comply with requisite City By-laws, procedures and regulations.

In response, Ms. Kapelos commented that Mr. Rashid did have a previous business relationship with the applicant. Due to a deterioration in their relationship, Ms. Kapelos argues that Mr. Rashid now is attempting to utilize mechanisms such as COA and TLAB as the means by which to delay or intercede in her client's building/contractor business. She also reiterates that Mr. Rashid is not residing in the immediate neighbourhood of this subject property and as such is not directly impacted by this minor variance application. No further submissions were made after Ms. Kapelos comments in relation to Mr. Rashid's statements to the tribunal.

ANALYSIS, FINDINGS, REASONS

Taking into account all materials and submissions which have been made to this tribunal, I have taken careful consideration to the TLAB appeal and the M*otion to Dismiss* in this instance. It must be noted the TLAB's duty is to assess any matter brought before it in a *prima facie* manner meaning that it can only review the minor variance application which relates to said appeal as it was initially submitted to the City. Any other issues which are not planning related are peripheral in nature and cannot be directly assessed by this tribunal as it does not have such authority under the *Planning Act.* Moreover, it appears that the appellant is not acting in good faith by submitting this appeal for several reasons:

- The *Notice of Appeal Form 1* does not provide comprehensive and well-articulated planning arguments pertaining to their opposition to the initial approval of this minor variance application
- The appellant does not provide additional rationale as to how the four tests for a minor variance threshold has not been met with this application
- Appellant's written and oral submissions on perceived inappropriate business activities of the applicant are speculative in nature. Furthermore, the TLAB is empowered to hear appeals of Consent and Minor Variance applications whereas issues relating to business irregularities and possible Building Code violations may be more appropriately assessed in forums such as Small Claims Court or the Building Code Commission
- Appellant's statements that he is 'watching over' the building activities of the applicant in the City appears to be a retaliatory action and is not provisioned for within Ontario's planning regime
- The appellant's property not being located within the immediate vicinity of the subject property negates any immediate impact he may possibly endure. It is noted that geographic proximity is not always the determinant factor in assessing planning merits. For example, a resident in a neighbouring municipality could be impacted by a coal fired plant being proposed in an adjacent municipality due to the emissions from the plant potentially traversing in the air to this residents' property. However, in this instance as it is a minor variance, or minor zone change, the construction of a residential addition would be assessed to have impact for the immediate neighbourhood and would typically not infringe upon an adjacent municipal district.

Within the context of planning, Part 6 of the *Notice of Appeal Form 1* outlines the specific items which the appellant feels the proposal is not appropriate from a planning perspective. An assessment of these elements is provided below:

- That the lot coverage increased from 35% to 39% (Variance A) does not conform; the increase which is being sought represents an overall increase of 4% which could be considered minor in nature and would not create a massing which would interrupt the overall neighbourhood rhythm.
- Reduction in front yard setback from 6 metres to 4.98 metres (Variance A (i)) does not conform; here, the decrease is approximately a difference of 1.0 metre.

Typically, it is alterations to side and rear yard setbacks which could necessitate further analysis. With side yard setback reductions, this could possibly infringe on the privacy of neighbouring properties and also potentially interrupt drainage patterns which exist between existing properties. With rear yard setback reduction, the useable backyard space could be compromised affecting resident enjoyment and other related uses for their property. It could also possibly impact neigbhouring properties use of their backyard space as this structure may be more visible to the neighbor to the rear of this subject property. With the front yard setback, while the visual massing could be affected along the street line, the impact would be more intermittent (i.e. for residents passing by) whereas along the side and rear of the properties there is a more daily intrusion which could occur.

- It should be noted that, while not raised by the appellant, this minor variance application did have a request pertaining to side yard setback on westerly side of the property (Variance F (i)). This occurs only on one side of the property and would still preserve the drainage pattern. The request appears to attempt to achieve a more consistent building design.
- Floor space index exceeding 100 $m^{2;}$ (Variance C (i)); here, the different between Zoning By-law requirement and requested variance for floor space index is approximately 0.42 times. It should be noted that while this number appears more significant, it is still below half or 50% of the original zoning requirement. In terms of the overall context of the proposal, the change is still minor within overall context of the neighbourhood.
- Owner did not follow proper Building or planning procedures; as commented on earlier, while this constructed structure was done in manner which exceeded the approved building permit, the applicant did take steps to legalize the situation by applying for a minor variance. Such an occurrence is not uncommon with development projects across the Greater Toronto Area (GTA) and the rules and regulations are established to ensure that so long as subsequent steps towards compliance are achieved, them the building structure would be considered legal in nature.
- General intent of Zoning By-law and Official Plan not being met; the Official Plan contemplates for changes to occur within existing residential neighbourhoods on individual residential lots. These alterations can be done to recognize the changing needs and living arrangements of Toronto residents. The Zoning By-law is also amended to conform to the provisions of the Official Plan by allowing for such flexibility in construction on residential lots. As such, this minor variance application is consistent with the overall planning direction as envisioned by the City.

However, it should be noted that if, and outside the confines of the TLAB, the applicant does have outstanding business related issues with other external parties that it may be in their interest to address such concerns within the appropriate context. This may act to prevent any future such appeals from appearing before this tribunal. This would allow for the TLAB to properly allocate its resources to reviewing appeals which contain legitimate planning concerns which acts to ensure that the overall public interest is being secured.

DECISION AND ORDER

The Motion to Dismiss the appeal is granted. The decision of the Committee of Adjustment dated January 13, 2019 is final and binding.

The file of the TLAB on this matter is closed and the Secretary-Treasurer of the Committee of Adjustment is to be advised accordingly.

X

Justin Leung
Panel Chair, Toronto Local Appeal Body