

DECISION AND ORDER

Decision Issue Date Friday, May 24, 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): MARLENE HACIOGLU

Applicant: URSULA ANNE WISZNIEWSKI

Property Address/Description: 33 ABBOTT AVE

Committee of Adjustment Case File Number: 18 240668 STE 14 MV (A0954/18TEY)

TLAB Case File Number: 19 127786 S45 04 TLAB

Written Motion Hearing date: Friday, May 17, 2019

DECISION DELIVERED BY G. Burton

REGISTERED PARTIES AND PARTICIPANTS

Appellant	Marlene Hacioglu
Party	Peter Wiszniewski
Representative	Reena Basser
Party	Richard Hope
Party	Nadine Hacioglu

INTRODUCTION AND BACKGROUND

This is a Decision on a Motion to Dismiss an Appeal without holding a hearing, as permitted by the Planning Act and the TLAB Rules. The Hearing of the appeal is set for July 31, 2019. The Motion was made on May 2, 2019 by the representative of the

owner of 33 Abbott Avenue, in the Bloor Street West and Dundas St area of Toronto. The owner, Mr. Wiszniewski, had been successful in obtaining conditional approval from the Committee of Adjustment (COA) on March 6, 2019 for five variances to enable the construction of a two-storey laneway house. It would be ancillary to the existing two-storey detached dwelling at the front of the property. The laneway house would contain two parking spaces. A one storey garage has already been constructed there, under an earlier approval and building permit.

The COA decision to approve of the variances for a laneway house was appealed by Ms. Marlene Hacioglu, owner of 31 Abbott Avenue, next door to the east of the subject. The grounds for appeal cited in her Notice of Appeal are set out below under Evidence.

The TLAB is permitted to dismiss an appeal without holding a hearing, if warranted, under subsection 45(17) et seq. of the Act, and the TLAB Rules (see below, Jurisdiction).

MATTERS IN ISSUE

The issue in the Motion is whether the facts of this appeal as cited in the Motion materials fall within the language of the Act set out below, which allows for dismissal without a hearing in certain situations.

JURISDICTION

Subsections 45(17), (17.1) and (17.2) of the Act state (some text not applicable in this matter has been deleted):

(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,

(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,

(ii) the appeal is not made in good faith or is frivolous or vexatious,

(iii) the appeal is made only for the purpose of delay, or...

(b) the appellant has not provided written reasons for the appeal;.....

(17.1) Before dismissing all or part of an appeal, the Tribunal shall notify the appellant and give the appellant the opportunity to make representation on the proposed dismissal

(17.2) The Tribunal may dismiss all or part of an appeal after holding a hearing or without holding a hearing on the motion under subsection (17), as it considers appropriate.

Similar powers are found in Rule 9 of the TLAB Rules.

EVIDENCE

As mentioned, the Hearing of this appeal is set for July 31, 2019. According to the Notice of Hearing (issued April 11, 2019), Witness Statements are to be filed Monday, May 27, 2019. This requirement for Witness Statements is being waived until Monday, June 3, 2019. The reason is that Ms. Bassar, representative of the owner, Mr. Peter Wiszniewski, did not serve a copy of the Motion to Dismiss on the other party, Mr. Richard Hope, of 35 Abbott Ave, as of that date. He had earlier sought party status in the appeal (April 26), and should have received the Motion and responses. Ms. Nadine Hacıoglu requested party status as well, but on the very date the Motion was filed, May 2, 2019.

The grounds for the owner's requested dismissal without a hearing, in summary, were:

1. The soft landscaping variance (52% rather than 85% required), bears no relationship to the flooding of the appellant's basement, which is due to construction on her own property;
2. The side yard setback variance [1.14 m from the east (appellant's) side lot line rather than the 1.5 m required] will not result in excessive density, lack of privacy and sunlight as claimed. The first floor of the subject structure is already legally built, without any extension from lot line to lot line, and there are no windows on the west side of the appellant's dwelling.
3. The variance for increased height from 6 m (permitted) to 6.21 m is only for the skylights. The claim that this is too high and more sunlight will be lost is incorrect. The claim that the drawings are not to scale is also incorrect. These were reviewed and approved by City Planning staff and are to scale.

The Appellant Ms.Hacıoglu filed a Response to this Motion on May 9, 2019. She addressed many issues in this Response:

- there was no consultation with the appellant prior to the application to the COA;
- windows on the second floor of the laneway structure would adversely affect the privacy of the backyard and doors and windows in her home;
- the second storey would block their afternoon sunlight;
- construction noise will interfere with their backyard use;
- the side yard setback variance might be inappropriate because of a possible encroachment of the mutually constructed fence between the properties, yet to be determined;
- she would like to know the height of the main residence for comparison purposes;
- the owner/applicant has not maintained his eavestrough; this is the source of the basement flooding she has experienced;

- she refuses to permit access to her property for construction of the second suite unit.

Subsequently, the owner 's representative, Ms. Bassar, filed a Notice of Reply to Response to Motion, Form 9. She refuted all of the claims made in the Response.

The variances granted by the COA are:

1. Chapter 150.8.50.10.(1)(B), By-law 569-2013 as amended by By-law 810-2018 A minimum of 85% (89.85 m²) of soft landscaping is required to be provided between the rear main wall of the residential building and the front main wall of the ancillary building.

In this case, 52% (55.08 m²) of soft landscaping will be provided between the rear main wall of the residential building and the front main wall of the ancillary building.

2. Chapter 150.8.50.10.(1)(C), By-law 569-2013 as amended by By-law 810-2018 A minimum of 75% (3.89 m²) of soft landscaping is required to be provided between the ancillary building containing a laneway suite and the lot line abutting a lane, excluding a permitted driveway.

In this case, 46% (2.41 m²) of soft landscaping will be provided between the ancillary building and the lot line abutting a lane.

3. Chapter 150.8.60.20.(2), By-law 569-2013 as amended by By-law 810-2018 The minimum required rear yard setback for an ancillary building containing a laneway suite 1.5 m.

In this case, the ancillary building will be located is 0.3 m from the rear lot line.

4. Chapter 150.8.60.20(3)(C), By-law 569-2013 as amended by By-law 810-2018 The minimum required side yard setback for a laneway suite containing side wall opening is 1.5 m.

In this case, the laneway suite will be located 1.14 m from the east side lot line.

5. Chapter 150.8.60.40.(1)(B), By-law 569-2013 as amended by By-law 810-2018 The maximum height for an ancillary building containing a laneway suite is 6 m. In this case, the ancillary building containing a laneway suite will have a height of 6.21 m, measured to the skylight.

ANALYSIS, FINDINGS, REASONS

The TLAB has carefully considered the evidence and submissions presented on this Motion, including the Notice of Appeal and the Replies provided by the parties. To sum up, the usual reason that Motions to Dismiss an appeal without a hearing are granted is that they prove that there is no planning ground on which the appeal can succeed. In order to do this, the planning validity of the objections must be assessed. If it is found that there is any planning issue that could succeed on the appeal, the Motion must be refused and a hearing held.

As mentioned, the purpose of this Motion to Dismiss is not to make findings on the merits of the proposal, but on the legitimacy and authenticity of the appeal. If the appeal is dismissed without a hearing, this eliminates an appellant's statutory right to a hearing on the merits. Therefore, the exercise of this jurisdiction must be carefully considered to ensure that appeal is not prematurely dismissed. As the courts have said in the past, the legislation and related jurisprudence make it clear that it is not enough that appellants merely raise land use issues in the Notice of Appeal. Such issues must be worthy of adjudication.

Here, no matter how minor the variances appear, I am satisfied that, as in subsection 17(a)(i) of the Act, the reasons set out in the Notice of Appeal do disclose at least some land use planning ground upon which the TLAB could allow all or part of the appeal. I make no finding on the other references there to 'bad faith' or 'delay'. In examining Ms. Hacioglu's objections to the variances granted, there are some planning issues she raises that could be the subject of an appeal. These are the soft landscaping, side yard setback and height. I do not believe that the appeal can be dismissed without hearing sworn evidence on these issues. In other words, the appeal cannot be dismissed without an oral hearing related to these variances. I find no merit at all in her references to lack of consultation, construction access or noise, building maintenance or a possible encroachment of the mutual fence. None of these are land use planning issues, and, as such, cannot be addressed at the hearing of the appeal.

DECISION AND ORDER

1. The Motion is denied, and the Hearing of this appeal will proceed as scheduled on July 31, 2019.
2. According to the Notice of Hearing (issued April 11, 2019), Witness Statements are to be filed Monday, May 27, 2019. This requirement is being waived until Monday, June 3, 2019 because of the lack of service of the Motion on some appellants.

X 

G. Burton

Panel Chair, Toronto Local Appeal Body