

MEDIATION SUMMARY

Mediation Summary Date: Tuesday, May 07, 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): GRACE PALUMBO-EREMITA

Applicant: ARMANDO BARBINI

Property Address/Description: 11 BRAEMAR AVE

Committee of Adjustment Case File Number: 17 145980 STE 22 MV

TLAB Case File Number: 18 114194 S45 22 TLAB

Mediation Date: Monday, May 06, 2019

MEDIATION SUMMARY DELIVERED BY DINO LOMBARDI

APPEARANCES

Name	Role	Representative
William He Chen	Co-Owner/Party	Steve Baklarian
Grace Palumbo-Eremita	Appellant	Esther Connors
Jeffrey Sprang	Participant	

INTRODUCTION AND BACKGROUND

On January 17, 2018, the Committee of Adjustment (COA) approved a total of nine variances, with conditions, to permit the construction of a new two-storey detached dwelling with an integral garage at 11 Braemar Avenue (subject property).

The Appellant, Ms. Grace Palumbo-Eremita, who resides at 7 Braemar Avenue, immediately to the south of the subject property, appealed the decision of the COA to the Toronto Local Appeal Body (TLAB). The TLAB issued a Notice of Hearing pursuant to the TLAB's Rules of Practice and Procedure (the Rules) setting a Hearing date for June 14, 2018.

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At that Hearing, it became apparent that communication between the Appellant (Ms. Palumbo-Eremiti) and the representative of the owner (Mr. Steven Baklarian) had been inconsistent and insufficient due to a prolonged illness to the Applicant. The Appellant submitted that she was open to mediation to address a number of issues she had raised with the Applicant regarding the proposed development. As a result, Mr. Baklarian expressed the owner's willingness to participate in a mediation process if one could be accommodated through the TLAB.

As the presiding Member at that Hearing, I advised the parties that mediation, as a dispute resolution strategy, is contemplated in the TLAB Rules (Rule 20) and is encouraged where the TLAB is satisfied that there is good reason to believe one or more of the issues in dispute can be resolved. I believed that to be the case in this matter.

Since all parties expressed interest in attending non-binding mediation in order to narrow the outstanding issues and in the hope of arriving at a settlement of the issues in dispute, the June 21, 2018 Hearing was adjourned in order for TLAB staff to canvass the parties for a date for a mediation session.

A Notice of Mediation (Form 17) was issued by the TLAB on July 6, 2018, setting a Mediation date for September 26, 2018. That Mediation session was attended by the same parties and representatives that attended the June 14, 2018 Hearing regarding this matter. While I would characterize the Mediation session as positive and productive, there were, nevertheless, a number of issues that remained outstanding amongst the parties in attendance that necessitated the possibility of considering further Mediation to address those issues. The parties indicated their interest and willingness to continue to communicate outside of the TLAB Mediation process and suggested the potential for a second mediation session with the TLAB, if warranted, in the event of future positive progress.

In late 2018, the Appellant contacted TLAB staff and requested, with the consent of the other parties, that a second Mediation date be scheduled. The TLAB was advised that further progress had been achieved amongst the parties on outstanding issues but that a second mediation session with a TLAB Panel Member presiding could be of further assistance to the parties in resolving the issues still outstanding.

Subsequently, the TLAB set a half-day Mediation session for March 8, 2019. Unfortunately, due to scheduling issues amongst the parties, they requested that the session be rescheduled. As a result, the TLAB rescheduled the session to May 6, 2019. In response to this request, I directed TLAB staff to forward the following email, dated February 11, 2019, to the parties with instructions to be completed prior to the May 6, 2019 session:

"Mediation is available under Rule 20 of the TLAB's Rules of Practice and Procedure where there is a prospect of shortening or eliminating a Hearing on the matter. A one-half day **mandatory Mediation session** is scheduled for **March 8, 2019**, as outlined in the Notice of Mediation (Form 17) issued December 18, 2018, pursuant to Rule 20.3.

Procedure on Mediation

The Appellant and the Applicant shall prepare a Mediation Brief within seven (7) days of

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progress made to date, if any, in resolving those issues. This brief shall be submitted, in confidence, to the Panel Member assigned to the Mediation as background and context for the March 8th Mediation session.

On the day of the Mediation, the Appellant and the Applicant in the matter shall be provided with an opportunity to provide a brief opening statement. The Mediator may request of each Party and Participant an opportunity to address the identification and resolution of matters of general or specific interest to the Party or Participant. Discussions may take place individually or in a caucus.

Mediation is an informal discussion for the purpose of identifying and, where possible, eliminating issues not worthy of debate or beyond the jurisdiction of the TLAB. Mediations are **entirely confidential**. Where there is no resolution, the TLAB Rules provide for the protection of matters discussed and other limitations.

In the event Mediation cannot resolve any or all the issues on appeal, the Parties and Participants will be canvassed for their availability for a new Hearing date to be confirmed by the TLAB.

The Mediator will provide a synopsis of the Mediation and may provide a Procedural Order for the conduct of a Hearing.

Attendance at a Mediation event is **mandatory**, including the Owners of 11 Braemar Avenue (as identified in the TLAB records). In the event of non-attendance, the TLAB may proceed in your absence and you will be bound by any resolution or procedural direction that may be issued.”

In response, the parties, through the Appellant, submitted a number of documents to the TLAB on March 1, 2019, as directed in the above-referenced email and in anticipation of the May 6, 2019 Mediation session. The documents included a memorandum outlining discussions undertaken at a separate meeting held by the parties on December 17, 2018, regarding the issues in dispute and areas of agreement with the owner of 11 Braemar Avenue. The memorandum outlined nine points of agreement relating to fenestration treatment on the south elevation, fencing, driveway materials, trees and drainage.

CONFIDENTIALITY

At the commencement of the Mediation session, all parties in attendance were advised that the respective interests and positions on matters discussed in the Mediation would remain confidential, as per Section 20.2 and 20.6 of the Rules.

Specifically, under Rule 20.6, “any information or documents provided or exchanged during a Mediation and any discussion or exchange relating to the resolution of issues or offer to settle are and shall remain confidential and shall not be disclosed or entered into evidence in the same or

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any other proceedings. 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.”

Furthermore, the Applicant was advised that whether or not the mediation was successful, as the Applicant, he remains responsible at the “Hearing” of the appeal to carry the burden of demonstrating that all of the variances currently being sought meet the statutory tests, due to the obligations of the TLAB.

The parties acknowledged this TLAB duty to confidentiality but acquiesced to allow some of the information to be noted in any Mediation Summary prepared by the presiding Member.

STATUS OF MATTERS DURING THE MEDIATION

Rule 19.1 of the TLAB’s Rules of Practice and Procedure underscores that the TLAB is committed to encouraging Parties to settle some or all of the issues by informal discussion, exchange and Mediation. Under Rule 19.2, Parties who arrive at a settlement shall serve the terms of the proposed settlement on all other Parties and Participants and File same with the Toronto Local Appeal Body at the earliest possible date.

The Parties in attendance at the Mediation session participated in considerable dialogue and various ‘in camera’ breakout sessions. I also note that this is the second Mediation session at which the parties have been in attendance in addition to the considerable dialogue amongst the parties outside of the TLAB Mediation process.

It became apparent very early in this session that there were only two outstanding issues remaining and that those did not appear to be insurmountable. As a result, and after a very brief caucus that included the Appellant, her representative, and Mr. Jeffrey Sprang, the Appellant advised the Member that a settlement had been reached and all of the outstanding issues had been resolved to the satisfaction of the parties. She also advised that she was considering withdrawing her appeal of this matter.

The parties agreed to exchange additional documentation to memorialize the matters agreed to and the issues resolved at this Mediation session within a two week timeframe. The parties were reminded that Mr. Sprang should be carbon copied on any document exchange.

I must thank the parties for their civility and cooperation throughout this process and their willingness to work towards resolving the issues that had arisen in this matter.

X 

Dino Lombardi
Panel Chair, Toronto Local Appeal Body