

AMENDING DECISION AND ORDER

Decision Issue Date Friday, May 24, 2019

PROCEEDING COMMENCED UNDER Section 53, subsection 53(19), and Section 45(12), subsection 45(1) of the Planning Act, R.S.O. 1990, c. P.13, as amended (the "Act")

Appellant(s): JONATHAN BENCZKOWSKI

Applicant: SOL ARCH

Property Address/Description: 130-132 SEARS ST

Committee of Adjustment Case File: 17 256890 STE 32 CO, 17 256894 STE 32 MV, 17 256895 STE 32 MV, 17 256896 STE 32 MV, 17 256897 STE 32 MV, 17 256898 STE 32 MV, 17 256899 STE 32 MV

TLAB Case File Number: 144511 S53 32 TLAB, 18 144512 S45 32 TLAB, 18 144513 S45 32 TLAB, 18 144514 S45 32 TLAB, 18 144515 S45 32 TLAB, 18 144516 S45 32 TLAB, 18 144517 S45 32 TLAB

Hearing date: Thursday, August 16, 2018

AMENDING DECISION DELIVERED BY Ian James LORD

APPEARANCES

Name	Role	Representative
SOL ARCH	Applicant	
Jonathan Benczkowski	Appellant/Owner	David Bronskill
Jane McFarlane	Expert Witness	
Yves Lavigne	Participant	
Douglas Wilkins	Participant	
Richard Serrao	Participant	
Katherine Kim	Participant	

INTRODUCTION

This is a matter of a written request to the Toronto Local Appeal Body (TLAB) by the owner of 130-132 Sears Street (subject property) expressing concern as to the potential for the expiry of an approval received in the TLAB Decision and Order in this matter, dated August 29, 2018 (Decision).

BACKGROUND

The Decision allowed applications for consent and variance approval, with conditions, related to the subject property. The request is to remove a condition to the consent approval and add it as a condition related to the approved variances.

MATTERS IN ISSUE

The request asserts that the condition at issue is, effectively, misplaced and acts as an impediment to the clearing of the consent conditions. The owner asserts there is no substantive diminution in the Decision by the transfer of the condition. Rather that the transfers permits a timely fulfillment of the consent obligations as intended in the Decision approval.

JURISDICTION

The TLAB Rule 30.1 permits for minor or technical revisions to the Decision and to provide such relief in the interpretation and application of the Rules as may be just, expedient and consistent with the intent and purpose of the disposition in the public interest.

EVIDENCE

The requested Condition to be relocated reads as follows:

“Schedule A : Standard Consent Conditions

(9) And further that prior to building permit issuance, the Chief Building Official is in receipt of a satisfactory and formal record of site condition from the Ontario Ministry of the Environment or other authorized regulatory authority attesting to the suitability of the lands for residential use and building purposes.”

Decision of Toronto Local Appeal Body Panel Member: I. LORD
TLAB Case File Number: 144511 S53 32 TLAB, 18 144512 S45 32 TLAB, 18 144513 S45
32 TLAB, 18 144514 S45 32 TLAB, 18 144515 S45 32 TLAB, 18 144516 S45 32 TLAB, 18
144517 S45 32 TLAB

Mr. Benczkowski, in his undated correspondence asserts that receipt of a formal 'record of site condition' (RSC) is required because of the proposed change in use for the subject property from automotive to residential. Further, that it can take in excess of the year prescribed to perfect the consent approval and certification, including for preparation of the RSC, filing and approval.

ANALYSIS, FINDINGS, REASONS

The RSC is a prudent requirement of the Decision and a necessary obligation placed on the owner. That said, by its language, Condition 9 is policed through the office of the Chief Building Official and it is therefore appropriate as a condition to building permit issuance, enforceable on the whole of the subject property, as a variance condition.

There is no need to strain the consent issuance process via a condition that may not be able to be completed within the timeframe governing the consent process. If the RSC is not ultimately attainable, that may have implications for an aspect of the utility of the consent; however, any such consequence does not appear to mandate that the condition attach to the consent when the objective is equally secured as a condition to the variance approval.

Ms. McFarlane's evidence on the point, as summarized in the Decision, does not address where the condition is situate:

"A Phase 1 and 2 soils contamination report of the property had been completed advising of contamination that was required to be satisfactorily addressed prior to building permit issuance. While a Record of Site Condition had not been completed, efforts were underway to satisfy a residential development standard that could be addressed by an appropriate condition of approval."

DECISION AND ORDER

The Decision is amended:

- a) Schedule A is amended by the deletion of Condition 9.
- b) Following the text of Schedule B, a new Schedule C is added introduced by the words: "Variances granted as per Schedule B are subject to the condition in Schedule C."
- c) Add: "Schedule C: Minor Variance Condition Applicable to the Subject Property"

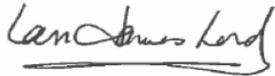
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d) The following condition is added to the content of Schedule C to read as follows:

“1. Prior to building permit issuance, that the Chief Building Official is in receipt of a satisfactory and formal record of site condition from the Ontario Ministry of the Environment or other authorized regulatory authority attesting to the suitability of the lands for residential use and building purposes.”

In all other respects, the Decision issued August 29, 2018 remains the same.

X



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