Toronto Local Appeal Body

40 Orchard View Blvd, Suite 253
Toronto, Ontario M4R 1B9

Telephone: 416-392-4697
Fax: 416-696-4307
Email: tlab@toronto.ca
Website: www.toronto.ca/tlab

DECISION AND ORDER

Decision Issue Date Tuesday, June 18, 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): MARIA-ANTONIA GROSSI

Applicant: ANTHONY ABATE

Property Address/Description: 24 Carousel Crt.

Committee of Adjustment Case File Number: 18 263209 NNY 15 MV (A0822/18NY)

TLAB Case File Number: 19 120034 S45 08 TLAB

Written Motion Date: Thursday, June 13, 2019

DECISION DELIVERED BY G. Burton

REGISTERED PARTIES AND PARTICIPANTS

NAME	ROLE	REPRESENTATIVE
ANTHONY ABATE	APPLICANT	
GINO GROSSI	PRIMARY OWNER	
MARIA-ANTONIA GROSSI	APPELLANT	AMBER STEWART
MICHAEL GOLDBERG	EXPERT WITNESS	

INTRODUCTION

This is a decision on a Motion made May 29, 2019, by the owner and appellant requesting that the Toronto Local Appeal Body (TLAB) determine her appeal on written materials only, that is, hold a written Hearing. The Committee of Adjustment COA) hearing for this application was held on February 7, 2019. The purpose of the application was expressed by COA staff to be “To construct an addition over the

existing dwelling." This required 9 variances at that time. These were refused by the COA, without extensive reasons. The applicant/owner then appealed to the Toronto Local Appeal Body (TLAB). Notice was issued for an oral Hearing set for July 17, 2019. On May 28, 2019, Ms. Stewart, counsel to the owner, filed a Notice of Motion seeking a written Hearing instead, for the reasons stated therein. This was supported by an affidavit from Mr. Michael Goldberg, land use planner for the owner.

BACKGROUND

Despite Notices of Hearing having been sent to seven interested persons as shown in COA files, no other person indicated any interest in the TLAB Hearing. Ms. Stewart had filed the Applicant's documentary disclosure on April 12, 2019, and the Expert Witness Statement of Mr. Goldberg on April 29, 2019. Still, no persons filed a desire to participate in the appeal.

MATTERS IN ISSUE

Can an appeal be decided in a written "hearing", based only on an expert witness' report, where there is no other interest indicated in the TLAB file?

JURISDICTION

Rule 24.1 states (subject to the general rule in 24.2, which favours oral hearings):

24.1 The TLAB may hold an Oral Hearing, Electronic Hearing or Written Hearing.

There is a further procedural possibility where any existing Party can object to a written hearing:

Objection to a Written Hearing
24.5 A Party who objects to a Written Hearing shall bring a Motion within 5 Days of Service of the notice of Written Hearing.

In considering whether to approve a written hearing (as here, rather than a scheduled oral one), the following Rule applies:

Factors Considered for Holding a Written Hearing
24.6 The TLAB may consider any relevant factors in deciding to hold a Written Hearing, including:
a) the convenience to the Parties and the TLAB;
b) the likelihood of the process being less costly, faster and more efficient;
c) whether it is a fair and accessible process for the Parties;
d) the desirability or necessity of public participation in or public access to the TLAB's process;

e) whether the evidence or legal issues are suitable for a Written Hearing;
f) whether credibility may be an issue or the extent to which facts are in dispute; or
g) whether a Written Hearing is likely to cause significant prejudice to any Party or Participant.

EVIDENCE

Mr. Goldberg, the expert witness for the owner provided, as usual in preparation for the Hearing, his Expert Witness Statement (EWS). This was filed on April 29 in compliance with the date provided in the Notice of Hearing. Ms. Stewart argues that this Report constitutes sufficient documentary evidence to support the application, so as to enable the TLAB to make a decision on the application without the need for an oral Hearing. Specifically, his EWS and additional documents and evidence on the file demonstrate that the proposed minor variances are appropriate, and meet all of the tests under s. 45 of the Planning Act.

In his EWS, Mr. Goldberg pointed out the lack of response from persons potentially interested in the appeal. Community Planning Staff had provided a report to the COA dated January 29, 2019 which recommended refusal of the requested height variances for a flat roof. They indicated no concern with a variance for a third storey since, in the circumstances, it remains a 2-storey dwelling in appearance. The applicant complied with the suggestion to reduce the roof height at the COA, also agreeing to the condition that the proposed be constructed in accordance with the elevations submitted.

This was the extent of Planning's comments prior to the COA hearing. No other comments were received from other City departments. Mr. Goldberg affirmed that City protocol is that City staff do not comment on a COA application unless they have concerns or objections to the application.

Two letters of concern were received by the COA from area residents. One was the owner of 26 Carousel Court (immediately to the east of the subject site, whose concerns have been dealt with via reductions or deletions) and 10 Carousel Court (particularly a front yard setback). The latter is located six lots southwest of the subject site. No formal comments were received from the local councillor or any of the other neighbours (to the north and to the west).

In his EWS, Mr. Goldberg refers to alterations made to the application following the COA decision. These constituted reductions (reduced height of flat roof, removal of rear balcony and thus two variances), and additional variances. The additional variances are necessary because of the fact that some variances were not identified by the zoning examiner prior to the COA hearing. A new Zoning Notice of April 25, 2019 would require variances for lot coverage (an existing shed) and for a front porch canopy. Both are existing conditions, and variances would legitimize them. There would be one additional variance requested before TLAB, for an eaves projection for the one-storey addition.

Having reviewed the record before the TLAB, there are no other parties or participants who have expressed an intention to participate in the TLAB Hearing. Given that the application has been further improved since it was before the Committee, and based on the foregoing, I am satisfied that the residents' concerns that were submitted to the Committee have been appropriately addressed. As such, I am of the opinion that it would be appropriate to convert this Hearing to a written Hearing, to be decided on the basis of the written record.

ANALYSIS, FINDINGS, REASONS

As can be seen by the TLAB file, there is no other Party to this appeal. Thus, there is no need to give further notice of the intention to hold a written Hearing, as provided for in Rule 24.5. It is not a given that interested persons will request formal participation in TLAB appeals. Here, however, both persons who objected to the proposal before the COA received notice of their right to participate, and neither did. I do not believe that the owner/appellant should be prejudiced by proceeding to an oral hearing in this circumstance. There is extensive evidence in the EWS on the file, sufficient in my opinion to enable a determination of compliance or otherwise with the statutory tests.

There is no need to consider in this Motion the actual variances requested, but only to determine, essentially, if further notice of proposed changes would be a fair approach in this appeal. Would the neighbours who had expressed concerns object to the proposed written format, and/or would their rights be curtailed if they could provide no further comments on the proposed changes to the application (additional variances)?

I consider that this must be answered in the negative. The TLAB has the power to accept alterations to an application, if the changes are minor [subsection 45(18.1.1) of the Act. In so far as it is necessary to determine this on this Motion, I decide that the changes requested are indeed minor. No further notice is required. This is especially so where no other person sought either Party of Participant status in this appeal.

As for the factors to be considered in Rule 24(6) above, many appear to apply only where there are several persons already involved in a Hearing, and not just one. I agree with Ms. Stewart that a Hearing in writing here would provide the most efficient use of the TLAB's and the single Party's resources, and is appropriate given the circumstances. It would resolve the appeal at an earlier date. This would be desirable for the applicant, as it would facilitate an earlier building permit application if the proposal is approved. Updated variances and proposed plans have been filed. The issues are generally uncontentious and are suitable for a written hearing. It would be fair to the applicant, who is the only Party. There will be no prejudice to any Party or Participant if a written hearing is held, since there are none other than the owner.

DECISION AND ORDER

The Motion is granted. The Hearing will be held in written form, based on the materials now filed. Should the appellant desire to file additional materials, TLAB approval must be sought by telephone conference call or otherwise.

X

G. Burton
Panel Chair, Toronto Local Appeal Body