

DECISION AND ORDER

Decision Issue Date Friday, July 26, 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: 17 145980 STE 22 MV

TLAB Case File Number: 18 114194 S45 22 TLAB

Teleconference date: Thursday, July 25, 2019

DECISION DELIVERED BY DINO LOMBARDI

APPEARANCES

Name	Role	Representative
Armando Barbini	Applicant	
Grace Palumbo-Eremita	Appellant	Esther Connors
Wen Hong Chen De He	Party/Owner	Steve Baklarian
William Wu	Party's Spouse	
Jeffrey Sprang	Participant	

Memorandum of Telephone Conference Call

INTRODUCTION

This matter was convened by way of Teleconference as an update to the variance appeal respecting 11 Braemar Avenue (subject property) and the subsequent

request by the Appellant, Grace Palumbo-Eremita to withdraw her appeal given the successful finalization of a Settlement Agreement (Agreement) with the Applicant.

Present on the teleconference were the Applicant's representative, Steve Baklarian, the owner's husband, William Wu, the Appellant's representative, Esther Connors, and Jeffrey Sprang, the sole Participant in the matter. Unfortunately, the Appellant, Grace Palumbo-Eremita, was away and unavailable to participate in the call.

There are no other Parties or Participants in this matter.

BACKGROUND

The purpose of the Teleconference was to more completely understand the private Agreement recently achieved with the owners of the subject property and, correspondingly, to review the revised elevation drawings and accompanying visual materials/exhibits submitted to the Toronto Local Appeal Body (TLAB) forming part of the said Agreement.

The Appellant appealed the Committee of Adjustment's (COA) January 17, 2018 decision approving nine minor variances to permit the construction of a new two-storey detached dwelling with an integral garage in place of the existing dwelling and detached garage on the subject property.

On June 14, 2018, the Hearing Date set by the TLAB to hear the appeal, the Parties and Participant in the proceeding agreed to non-binding TLAB Mediation and the Hearing was adjourned. A Mediation session was scheduled for May 6, 2019, during which the Parties reached agreement related to a number of issues regarding the proposed development and agreed to memorialize the matters agreed to. In doing so, the Appellant advised the Panel Member verbally, at the end of the Mediation session, that she intended to withdraw her appeal of the application. She was directed to provide written confirmation to the TLAB in this regard so that a Decision and Order could be issued.

On July 9, 2019, the Appellant forwarded to the TLAB an email that included a final Settlement Agreement mutually agreed to by all Parties. In essence, the said Agreement consisted of ten (10) items addressing the outstanding issues identified by the Appellant at the May 6th Mediation as problematic including, a revised south exterior main wall elevation, the elimination of three windows on the south elevation and the installation of opaque/frosted window treatment on the fenestration on this elevation, the inclusion of wood fencing along both side yard lot lines of the subject property, and piping to address on-site drainage.

In addition, and in the same email, the Appellant also formally requested that her appeal of the application be withdrawn.

I informed the participants during the Teleconference that prior to issuing a Decision and Order on the withdrawal request, the TLAB must be assured that all Parties are alert to the circumstances and that any relevant considerations for

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disposition to the Committee of Adjustment are clear and correct. I advised that the assurance of the presiding TLAB Member in issuing the Order is best achieved by conducting a Teleconference, on proper Notice, prior to actually issuing the Order with all present; ergo, the reason for requesting Mr. Sprang's participation in the call. Having all the parties in attendance and participate in this manner aids openness, inclusiveness, clarity, and provides a forum in which to ask clarifying questions regarding the process.

With respect to the issuance of a withdrawal decision of the appeal, I clarified that the TLAB's Decision and Order would read as follows, "*This appeal having been abandoned, the appeal is dismissed, the Committee of Adjustment decision mailed on (the date to be inserted), is final and binding, and the file of the Toronto Local Appeal Body is closed.*" Also, I confirmed that any Hearing Date(s), if scheduled, would be vacated and no further attendance or further submissions would be required.

I further explained, however, that if, as a result of the Agreement achieved, the COA decision is to be amended in any way, a different procedure would be necessary pursuant to Rule 19.3 of the TLAB's Rules of Practice and Procedure (Rules) which would require the scheduling and undertaking of a Settlement Hearing with all of the Parties present.

In response, Ms. Connors advised that the Appellant was unaware of this possibility but thanked the Member for the clarification.

I noted that if the Appellant intends to proceed with the withdrawal of her appeal, I must be satisfied that there is no public interest issue that could, if made known, reflect badly on the TLAB, the City of Toronto or the Committee of Adjustment. I also stated that the Appellant must be satisfied and feel assured that the Agreement reached with the Applicant and filed with the TLAB on July 9th, will be implemented not through the TLAB process but the building permit process and, therefore, she must be confident that the enforcement of the Agreement will be ensured through that route.

Ms. Connors advised that in the Appellant's absence, she was unable to make a determination on how to proceed or to confirm her client's position and requested an opportunity to confer with Ms. Palumbo-Eremita in order to receive final instructions in this regard. On the consent of all the Parties I agreed to this latitude. On being queried as to the anticipated timeframe for such a response, Ms. Connors suggested she might have direction within a week.

While it is somewhat regretful that this matter did not determine a final direction at the Teleconference, a course of action was determined and agreed upon by the attendees. As a course of action resulting from the discussion in the Teleconference, I directed the Parties to forward the following documents to the TLAB:

- The Agreement is to be resubmitted to the TLAB by the Appellant incorporating a 'date', to be included at the bottom of signature page;
- Mr. Sprang is to forward correspondence to the TLAB confirming his knowledge of the said Agreement (as he is not a signatory to the Agreement)

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and acknowledge no further objections with the subject application as stated orally during the Teleconference; and

- The Appellant is to advise the TLAB in writing whether she wishes to proceed with the withdrawal of her appeal to the TLAB of the January 17, 2018 COA decision to approve the subject variances.

DECISION AND ORDER

The above-referenced documents are to be filed with the TLAB within seven (7) days of the date of the Teleconference call.

The Appellant is to advise the TLAB whether she will be withdrawing her appeal of the COA decision by no later than August 7, 2019. If difficulties arise in meeting this timeframe, the TLAB may be addressed on request with notice to the Parties and Participant.

In the event that the Appellant does not withdraw her appeal, then a Settlement Hearing will be scheduled for which separate notice will be given. A date for that Hearing will be issued by the TLAB following consultation with the Parties and the Participant.

X 

Dino Lombardi
Panel Chair, Toronto Local Appeal Body