

DECISION AND ORDER AND SUPPLEMENTARY ORDER

Decision Issue Date Friday, July 12, 2019

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

Appellant(s): HOMAYOUN NABAVI

Applicant: TJ CIECIURA

Property Address/Description: 36 CLISSOLD RD

Committee of Adjustment Case File: 18 130490 WET 05 CO, 18 130498 WET 05 MV, 18 130499 WET 05 MV

TLAB Case File Number: 18 214914 S53 05 TLAB

Teleconference date: Friday, June 14, 2019

DECISION DELIVERED BY Ian James LORD

APPEARANCES

Name	Role	Representative
TJ Cieciora	Applicant	
Soheila Borghei	Owner	
Homayoun Nabavi	Appellant	
City of Toronto	Party	Aderinsola Abimbola
Olivia Antonel	Expert Witness	
Max Dida	Expert Witness	
Valentyna Shevchenko	Participant	

Jennifer Kosiw	Participant	
Boris Horciak	Participant	
Name	Role	Representative
Lynn Zalany	Participant	
Mohammad Zeidi	Participant	
Paul Leunissen	Participant	
Ivan Kraljevic	Participant	

INTRODUCTION

This matter was convened by way of teleconference as an update as to how the matter of the consent appeal respecting 36 Clissold Road (subject property) might proceed.

Present on the teleconference were the Appellant, Homayoun Navabi, counsel for the City of Toronto (City) also attended, Aderinsola Abimbola.

There were no other Parties or Participants present.

The matter has been the subject of a Motion by the City and a Review Request on that Motion. The Review Request, by Member Burton, confirmed the Chair's earlier Decision and Order on the City Motion.

That Decision and Order was to the effect that the appeal of the application to sever the subject property could not proceed to a Hearing on the merits in the absence of associated variance requests respecting the proposed lots. These variance had been refused by the Committee of Adjustment (COA) and no timely appeal had been taken or received by the Toronto Local Appeal Body (TLAB).

BACKGROUND

The purpose of the teleconference was to follow-up on my earlier Motion disposition which had left a period to June 30, 2019, for the owner to provide direction as to whether the consent appeal was to be abandoned, or a fresh variance application would be made with a view to a future consolidation, as required.

In the interim, apart from the Review Decision, two e-mails were received from Mr. Nabavi. On May 3, 2019, an e-mail referenced the decision to abandon the appeal. However, it was unclear whether this was a commitment or a consideration.

On June 3, 2019, following the TLAB Staff prompt for a teleconference, Mr. Nabavi by e-mail included the following:

"At this stage, since there are no indications or signs about approval of our appeal, we have decided to stop putting more money in this project and for this reason I wrote the 3rd of May e-mail of abandonment."

He concluded by indicating a readiness to participate in a teleconference.

MATTERS IN ISSUE

At issue is the final disposition of the City Motion, a request for adjournment pending receipt of the necessary variance appeals to enable joint consideration, or a dismissal of the consent appeal as premature, under section 51 (24) (b) of the *Planning Act*.

JURISDICTION

Provincial Policy – S. 3

A decision of the Toronto Local Appeal Body ('TLAB') must be consistent with the 2014 Provincial Policy Statement ('PPS') and conform to the Growth Plan for the Greater Golden Horseshoe for the subject area ('Growth Plan').

Consent – S. 53

TLAB must be satisfied that a plan of subdivision is not necessary for the orderly development of the municipality pursuant to s. 53(1) of the Act and that the application for consent to sever meets the criteria set out in s. 51(24) of the Act. These criteria require that " regard shall be had, among other matters, to the health, safety, convenience, accessibility for persons with disabilities and welfare of the present and future inhabitants of the municipality and to,

- (a) the effect of development of the proposed subdivision on matters of provincial interest as referred to in section 2 of the Planning Act;
- (b) whether the proposed subdivision is premature or in the public interest;
- (c) whether the plan conforms to the official plan and adjacent plans of subdivision, if any;
- (d) the suitability of the land for the purposes for which it is to be subdivided;

- (d.1) if any affordable housing units are being proposed, the suitability of the proposed units for affordable housing;
- (e) the number, width, location and proposed grades and elevations of highways, and the adequacy of them, and the highways linking the highways in the proposed subdivision with the established highway system in the vicinity and the adequacy of them;
- (f) the dimensions and shapes of the proposed lots;
- (g) the restrictions or proposed restrictions, if any, on the land proposed to be subdivided or the buildings and structures proposed to be erected on it and the restrictions, if any, on adjoining land;
- (h) conservation of natural resources and flood control;
- (i) the adequacy of utilities and municipal services;
- (j) the adequacy of school sites;
- (k) the area of land, if any, within the proposed subdivision that, exclusive of highways, is to be conveyed or dedicated for public purposes;
- (l) the extent to which the plan's design optimizes the available supply, means of supplying, efficient use and conservation of energy; and
- (m) the interrelationship between the design of the proposed plan of subdivision and site plan control matters relating to any development on the land, if the land is also located within a site plan control area designated under subsection 41 (2) of this Act or subsection 114 (2) of the City of Toronto Act, 2006. 1994, c. 23, s. 30; 2001, c. 32, s. 31 (2); 2006, c. 23, s. 22 (3, 4); 2016, c. 25, Sched. 4, s. 8 (2).

EVIDENCE

At the commencement of the teleconference I reviewed the above factual history and recited the obvious options available to the Parties, crudely phrased as a 'without prejudice abandonment', a disposition of the Motion or moving to a disposition of the consent appeal on its merits.

The City maintained its position that if the Appellant sought to bring another application for variance approvals, it would consent to waiting for a consolidation of such matters. Ms. Abimbola confirmed that the City had opposed the consent and variances requested

For his part, Mr. Nabavi was very frank and clear. That the decision on abandonment was a decision based on economics and the costs incurred to date in prosecuting the original applications. He expressed appreciation for the considerations given his file and asked, on the TLAB conducting a review of filings in support of the variances, for a 'leanings' decision on the merits of the variances, as that would be helpful in his determination as to whether to proceed. He wished to know whether there is a 'good chance' the appeals would succeed, if fresh applications for variances were filed.

Ms. Ambimbola had no submissions on the request other than to allow further time, to express understanding for the costs incurred to date and to express the need for a determination on the direction of further consideration.

As the Member presiding, I reconfirmed that the TLAB was not in possession of any materials on the variance applications. Further, that even if it were, it would be improper to formulate any expression of opinion prior to the trial of the matter. Namely, that only on the consolidation of the appeal files and the exhaustion of evidence thereon, would the TLAB be in a position to render a Decision and Order.

Mr. Nabavi indicated he understood the position and requested one week to collaborate with family and provide a decision.

ANALYSIS, FINDINGS, REASONS

While it is somewhat regretful that this matter did not determine a final direction at the teleconference, a clear course of action was determined: Mr. Nabavi is to confirm, by **e-mail received on or before Friday June 21, 2019** whether he formally abandons the consent appeal (for file closing on a without prejudice basis) OR he asks deferral and an adjournment pending the filing of associated variance applications related to the proposed lots, for their disposition.

In the event the latter course is elected, notice of that progress is to be shared by regular updates to the TLAB and counsel for the City.

DECISION AND ORDER

The decision on this matter is as follows:

In the event that the consent appeal is abandoned by correspondence from Mr. Nabavi received on or before June 21, 2019, the Supervisor is authorized to close the TLAB file and so advise the Secretary Treasurer of the Committee of Adjustment, including that the TLAB file closure is on a without prejudice basis.

In the event that the consent appeal is requested by correspondence from Mr. Nabavi received on or before June 21, 2019 to be further deferred pending application for associated variance approvals, the Owner is directed on three (3) week intervals

post June 21, 2019, to apprise the TLAB Supervisor and the counsel for the City, by-email, of the progress of those applications.

In the event that there is no response or no direction on either of the foregoing from Mr. Nabavi on or before June 21, 2019, the consent appeal is premature and is considered abandoned and the file of the TLAB is closed on a without prejudice basis, in which event the Supervisor shall advise the Parties accordingly.

SUPPLEMENTARY DECISION AND ORDER

On June 20, 2019 the TLAB received correspondence from the Applicant supplementary to the above disposition. That correspondence indicated the intention to pursue the second option, revised variance applications and, if necessary, their appeal. The consent appeal was requested to be further deferred pending that outcome.

Counsel for the City responded by requesting an end date by which the process would need to be advanced.

Mr. Nabavi included the following statement in his June 20, 2019 e-mail:

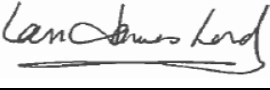
“I respectfully request the TLAB to approve my proposal in order to file the new minor variance application asap.”

If this request asks confirmation of the proposed procedure, I am prepared to accept it and order a further deferral for a period to complete the variance application process.

If it is a request to comment on the merits of the severance appeal, I respectfully decline to do so. To date, all matters in respect of the subject property have been efforts of a procedural nature to see that any appeal hearing is comprehensive, consistent with the Rules, and appropriately timely. Nothing in the considerations to date warrant any comment on the merits of applications and appeals that may ultimately be the subject of a Hearing before the TLAB.

The following additional terms are ordered:

1. The consent appeal file herein is further adjourned subject to the interval reporting obligation specified above, and
2. If final decisions on requested variances or their appeals is not received by the TLAB on or before December 30, 2019, the consent appeal herein shall be deemed abandoned, the City motion granted, the consent appeal dismissed, an order to that effect issued and the TLAB file closed.
3. A status teleconference is anticipated to be required and TLAB Staff are requested to diarize that for late November, 2019.

X 

Ian Lord

Panel Chair, Toronto Local Appeal Body

Signed by: Ian Lord