

DECISION AND ORDER

Decision Issue Date Monday, August 19, 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): VINCENZO RACCO

Applicant: VICTOR HIPOLITO

Property Address/Description: 983 DOVERCOURT ROAD

Committee of Adjustment Case File: 18 104614 STE 19 MV

TLAB Case File Number: 19 129421 S45 09 TLAB

Written Motion Date: Tuesday, August 13, 2019

DECISION DELIVERED BY JUSTIN LEUNG

INTRODUCTION

This decision is in relation to a requested motion for dismissal as proffered by the party Eloisa Slimmon-Negrini for the above-noted matter, dated August 13, 2019. The party argues that the minor variance application which has been appealed has not been changed by the Applicant to address local resident concerns. Further, that the appeal as filed is vexatious in nature as a means of exhausting the resources of the party and thereby reducing the level of opposition they could provide to this minor variance proposal. The party does indicate that if a motion for dismissal is not granted by the Toronto Local Appeal Body (TLAB), that alternatively she requests the TLAB provide an extension of filing deadlines which are outlined in the *Toronto Local Appeal Body – Rules of Practice and Procedure*.

MATTERS IN ISSUE

At issue is whether the components as described by the party which relate to landlord and tenant law are pertinent to this motion for dismissal. Namely, that if the subject property currently has full occupancy/tenancy, is it within the purview of the landlord to pursue a minor variance proposal to increase the density of this subject building. Also at issue to be considered is if the TLAB elected to not permit this Motion

to Dismiss, if an extension of filing deadlines would be appropriate at this juncture of the appeal process.

JURISDICTION

This Motion requests an Order pursuant to Rule 9.1 (*Toronto Local Appeal Body-Rules of Practice and Procedure, effective date May 6, 2019*), which is further delineated under Section 45(17) of the *Planning Act* which states:

(17) Despite the Statutory Powers Procedure Act and subsection (16), the Tribunal may dismiss all or part of an appeal without holding a hearing, on its own initiative or on the motion of any party, if,

(a) it is of the opinion that,

(i) the reasons set out in the notice of appeal do not disclose any apparent land use planning ground upon which the Tribunal could allow all or part of the appeal,

(ii) the appeal is not made in good faith or is frivolous or vexatious,

(iii) the appeal is made only for the purpose of delay, or

(iv) the Appellant has persistently and without reasonable grounds commenced before the Tribunal proceedings that constitute an abuse of process.

TLAB Rule 9- Adjudicative Screening by Member, states:

9.1 In the case of an Appeal under subsection 45(12) of the Planning Act the Local Appeal Body may propose to, or upon Motion, dismiss all or part of a Proceeding without a Hearing on the grounds that:

a) The reasons set out in Form 1 do not disclose any apparent land use planning ground upon which the Local Appeal Body could allow all or part of the Appeal;

b) the Proceeding is frivolous, vexatious or commenced in bad faith;

c) the Appeal is made only for the purpose of delay;

d) the Appellant has persistently and without reasonable grounds commenced Proceedings that constitute an abuse of process;

e) the Appellant has not provided written reasons and grounds for the Appeal;

f) the Appellant has not paid the required fee;

g) the Appellant has not complied with the requirements provided pursuant to Rule 8.2 within the time period specified by Rule 8.3;

h) the Proceeding relates to matters which are outside the jurisdiction of the Local Appeal Body;

i) some aspect of the statutory requirements for bringing the Appeal has not been met; or

j) the submitted Form 1 could not be processed and the matter was referred, pursuant to Rule 8.4, for adjudicative screening.

9.3 Where the Local Appeal Body proposes to dismiss all or part of an Appeal under Rule 9.1 or 9.2 it shall give Notice of Proposed Dismissal, using Form 16, in accordance with the Statutory Powers Procedure Act, and to such other Persons as the Local Appeal Body may direct.

9.4 A Person wishing to make written submissions on a proposed dismissal shall do so within 10 Days of receiving the Local Appeal Body's notice given under Rule 9.3.

9.5 Upon receiving written submissions, or, if no written submissions are received in accordance with Rule 9.4, the Local Appeal Body may dismiss the Appeal or make any other order.

9.6 Where the Local Appeal Body dismisses all or part of an Appeal, or is advised that an Appeal is withdrawn, any fee paid shall not be refunded.

The other relevant legislation prescribes to TLAB's *Rules of Practice and Procedure* as outlined:

Matters Not Dealt with by the Rules

2.6 Where procedures are not provided for in these Rules the TLAB may do whatever is necessary and permitted by law to enable it to effectively and completely adjudicate matters before it in a just, expeditious and cost-effective manner.

Relief and Exceptions to the Rules

2.11 The TLAB may grant all necessary exceptions to these Rules, or grant other relief as it considers appropriate, to enable it to effectively and completely adjudicate matters before it in a just, expeditious and cost-effective manner.

Disclosure of Documents

16.2 Parties and Participants shall Serve on all Parties a copy of every Document they intend to rely on or produce in the Hearing, except: a) any Document previously Filed with the Committee of Adjustment; b) any Public Document listed on the TLAB's List of Public Documents; and, c) any Document previously Filed by a Party or Participant, and File same with the TLAB not later than 60 Days after a Notice of Hearing is Served.

TLAB may Require Motions to be in Writing or Electronically

17.5 The TLAB may require a Motion to be held in writing upon such terms as the TLAB directs.

17.6 Where a Motion in writing is requested by a Party and where the TLAB agrees, the TLAB will provide the Moving Party with a date by which the Motion is to be Served. The Moving Party and any Responding Parties shall thereafter comply with the Rules (Rules 17.8-1712) relating to the Service and Filing of any needed responses or replies.

EVIDENCE

Eloisa Negrini, a party to this appeal, filed a Notice of Motion, dated August 1, 2019. Accompanying this Motion request was a series of documents as outlined below:

- Excerpt from Constitution of the World Health Organization (WHO)
- Excerpt from Toronto's Official Plan
- Decision related to her tenancy rendered by Landlord and Tenant Board (LTB)
- Excerpt from the Growth Plan for Greater Golden Horseshoe
- Photographs of properties similar to that of subject property
- Copy of letter provided by Ward 9 Davenport Councillor Ana Bailao, dated March 6, 2019, relating to this minor variance application
- Copy of commercial lease
- Letter of objection, dated February 24, 2019, from resident of 121 Hallam Street
- Copy of plans for the subject property

These documents act to articulate the arguments as presented by the party in their Notice of Motion. Namely, in requesting that the appeal which has been submitted by the agent (Russell Cheeseman of Municipal Law Chambers on behalf of the owner Vincenzo Racco) be dismissed by the TLAB as the proposal does not constitute 'good planning' and that, if the proposal were to be allowed to proceed, would conflict with continued use and enjoyment of the property by existing tenants and adjacent residents.

ANALYSIS, FINDINGS, REASONS

It is pertinent to outline the background of this minor variance appeal. Initially, the owner Vincenzo Racco had submitted a minor variance application, dated May 14, 2019, to permit the following, as described on the City of Toronto Application Information Centre (AIC):

"To establish a second dwelling unit inside an existing two-storey mixed-use building by constructing a front second storey balcony, a third storey addition with a front balcony, and a rear three storey addition with second and third storey balconies. The basement and ground floor will continue to be used by the commercial use,

dwelling Unit 1 will be located on the second floor, and dwelling Unit 2 will be located on

This application was brought to the March 6, 2019 meeting of the Toronto and East York District Committee of Adjustment (COA) where this series of 17 variance requests were refused by COA. Subsequently, the owner submitted an TLAB appeal, dated March 22, 2019, describing their belief that the COA had erred in the decision it rendered and requested the TLAB review and the consider the proposal once more.

As part of this appeal, in addition to the party Ms. Negrini, there are 6 participants listed. However, this Motion decision is concentrated on the party Ms. Negrini's dismissal request. Ms. Negrini's filed documents do contain several references to issues relating to tenancy in the property. She contends that this proposal by the owner/landlord would interrupt her existing tenancy. This party and the landlord subsequently attended the Landlord and Tenant Board (LTB) whereby the landlord had attempted to terminate the party's tenancy in the building with which the LTB did not so permit.

At this point, the TLAB will clearly state that issues relating to landlord-tenant matters should be addressed in their appropriate forum, such as the LTB; they would not typically be accounted for in the TLAB variance appeal process. The TLAB focuses specifically on the planning merits of the proposal to determine if an appeal should be permitted or not. Ultimately, an owner of a property can make decisions on how they wish to use it. While an owner may consult with tenants of the property, that is voluntary in nature. All interested parties to this appeal would be focusing on planning issues as stipulated by the *Planning Act*.

In Ms. Negrini's Motion to dismiss materials, she comments that the Appellant has not revised its minor variance proposal. She cites provincial and municipal policies, as part of her submitted documents, which delineate principles of 'good planning' and 'complete communities'. While the TLAB has reviewed these materials, the party does not appear to have clearly indicated how such principles support her argument that the Appellant should not be allowed to submit a substantially similar minor variance proposal to the TLAB as the owner had initially to the COA. The TLAB does not have the authority to require an Appellant alter their proposal in submitting an appeal. The nature and content of an appeal is determined by the Applicant/Appellant. Some may, prior to submitting an appeal, engage in discussions with interested parties to potentially alter their appeal. However, this is not a mandated exercise.

The moving party goes on to contend that the appeal is vexatious in nature to further justify that this appeal should be dismissed by the TLAB. Again, the party states that as the property is fully tenanted, that the minor variance proposal should not have proceeded. As described earlier, landlord-tenant issues and planning merits are not inter-connected and should be handled separately. In a free market capitalist system, a

¹ Toronto Development Applications: 983 Dovercourt Rd, Ward 09- Tor & E. York District (2018, January 12) Retrieved from <http://app.toronto.ca/DevelopmentApplications/associatedApplicationsList.do?action=init&folderRsn=4541772&isCofASearch=false&isTlabSearch=true>

landlord or property-owner can elect to use their land or property as they feel is most efficient and profitable, subject to applicable laws.

For example, along Finch Avenue East, bounded by Yonge Street to the west and Bayview Avenue to the east in the North York district, there have been a series of townhouse developments constructed more recently. Prior to this, these lands had mostly detached residential dwellings on them. The landowners elected to submit Planning applications to change the uses on these lands. These were subsequently approved by Toronto City Council. The TLAB would not weigh in on such matters as they are not within its scope or mandate.

In this circumstance, the contention that the Appellant has filed an appeal to stymie tenants and adjacent residents appears unfounded as the Appellant has submitted a comprehensive set of documents, including a Witness Statement by a land use planner, to clearly articulate their planning rationale formulating the basis of their appeal.

The cited case law of *Lofaro v. Toronto (City) Committee of Adjustment* is provided by the moving party in outlining adjudicative principles that tribunals such as LPAT and TLAB should adhere to. The party argues that the prescriptive criteria of this Ontario Municipal Board (OMB, now reorganized as the Local Planning Appeal Tribunal or LPAT) reinforces the contention that this appeal is inappropriate and would have grounds for dismissal. The Motion to Dismiss outlines that the TLAB should not accept an appeal for a minor variance proposal which is fundamentally unchanged from the original proposal that had been submitted and considered by the COA.

With respect to this matter, this minor variance proposal had not previously been addressed by either the TLAB or LPAT (which would have heard appeals of COA applications prior to the formation of the TLAB in March 29, 2017). As such, this is the first instance by which an appeal has been filed for this proposal. It is clearly be within the purview of the TLAB to hear and consider this appeal.

Assessing all statements and materials as provided by the party cumulatively, the TLAB does not find the arguments as presented persuasive in their request to dismiss this appeal. The material as submitted focuses more on the merits for opposition to this appeal and are thus beyond a scope of typical Motion to Dismiss. The minor variance proposal at hand contains legitimate planning issues which, at this stage, should be adjudicated by the TLAB unless extenuating circumstances - such as a request for mediation were interceded by the parties involved. As the TLAB is a recently created adjudicative body within the City of Toronto, the party's comment that this matter was being taking out of municipal decision-making process is inaccurate. This matter will be assessed in a fair, balanced and fact-based manner by the presiding TLAB member.

In not granting the request for dismissal, the TLAB does recognize the alternative request by the moving party that there be permitted an extension in the prescribed deadlines to submit materials, such as document disclosure and witness statements, relating to this appeal, if a dismissal request were not entertained.

The TLAB, recognizing there are interested parties to this appeal irrespective of the Appellant himself, should act to ensure that these parties are properly engaged and prepared for the impending TLAB hearing. As such, and consistent with TLAB Rules, there will be a permission extended to allow this party additional time to file documents to the TLAB. However, the party is also advised that the TLAB hearing date is currently scheduled for September 9, 2019. As the TLAB practice is to retain and not alter hearing dates, this party is encouraged to file such documents within ten (10) days from the date of issuance hereof to ensure an uninterrupted appeal process.

DECISION AND ORDER

The request for a Written Motion is allowed.

The request to dismiss this appeal is denied.

The request to allow an extension in filing deadlines to submit appeal related documents is allowed; filing by other than the Appellant must be completed within ten (10) days of the issue date of this Decision and Order.

The hearing set for September 9, 2019 will proceed as originally scheduled.

X



Justin Leung
Panel Chair, Toronto Local Appeal Body