

DECISION AND ORDER

Decision Issue Date Wednesday, September 18, 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): ABDUR ROUF

Applicant: JOHN BENCZKOWSKI

Property Address/Description: 8 MIDBURN AVE

Committee of Adjustment Case File: 18 132201 STE 31 CO, 18 132209 STE 31 MV, 18 132216 STE 31 MV

TLAB Case File Number: 18 239516 S53 31 TLAB, 18 239517 S45 31 TLAB, 18 239518 S45 31 TLAB

Hearing date: Thursday, July 04, 2019

DECISION DELIVERED BY J. TASSIOPOULOS

APPEARANCES

NAME	ROLE	REPRESENTATIVE
JOHN BENCZKOWSKI	APPLICANT	
ABDUR ROUF	APPELLANT/OWNER	JOHN BENCZKOWSKI AMBER STEWART
CITY OF TORONTO	PARTY (TLAB)	MARC HARDIEJOWSKI
JULIUS DE RUYTER	EXPERT WITNESS	
EUNICE HONG	PARTICIPANT	
HYEON SOOK HONG	PARTICIPANT	
SHARON SMITH	PARTICIPANT	

EMILY MOLSON WEINMANN PARTICIPANT

MELISSA VERGE PARTICIPANT

INTRODUCTION & BACKGROUND

The Hearing for 8 Midburn Avenue had been set for two days, July 4 and 5, 2019. During the introduction at the Hearing on July 4, 2019, the Appellant's representative, Ms. Amber Stewart, mentioned that she wanted to bring up a preliminary matter with respect to the whether a recirculation of Notice was required due to the revised plans that would be presented at the Hearing.

BACKGROUND

Ms. Stewart explained that when the Appellant's Expert Witness, John Benczkowski, filed his Witness Statement on May 1, 2019, it included revised plans that were not part of the original circulation of Notice for the Hearing. Ms. Stewart mentioned that she had received an email from the other Party in the matter, City of Toronto representative, Mr. Roman Ivanov, concerning the revised plans. Ms. Stewart mentioned that although she had not had a chance to review the email she had spoken to Mr. Ivanov about whether the revised plans necessitated a recirculation of Notice with the new plans as per Section 45 (18.1) of the *Planning Act*.

Previously a Motion for an Adjournment of the Toronto Local Appeal Body (TLAB) hearing of this Appeal had been brought, originally scheduled for March 5, 2019. The City of Toronto (City) filed a Motion to Dismiss on January 19, 2019 and that it be heard orally on February 14, 2019. On February 13, 2019 a Notice of Response to Motion was filed by Ms. Stewart requesting that the Motion to Dismiss be refused, that the hearing scheduled for March 5, 2019 be adjourned to a date after mid-April and that a new exchange date be set for the Witness Statement by Mr. John Benczkowski. Prior to the Hearing on February 14, 2019, both Mr. Ivanov and Ms. Stewart had reached an agreement: the City consented to the adjournment of the hearing to a date after mid-April 2019; a condition that a deadline be set for the submission of the Witness Statement by Mr. Benczkowski; and that the City be afforded the right of reply evidence to Mr. Benczkowski's Witness Statement.

In my decision, dated March 19, 2019, I indicated that the Motion to Dismiss by the City had been withdrawn and that the Hearing date of the appeal was adjourned and to be heard on Thursday July 4 and Friday July 5, 2019, as agreed to by both Parties at the Hearing on February 14, 2019. I also indicated that the Appellant's Witness Statement was to be filed by May 1, 2019 and the City was afforded the right of response to be filed by June 3, 2019.

MATTERS IN ISSUE

Do the revisions to the plans as submitted necessitate the recirculation of Notice as per Section 45 (18.1) or are the revisions minor in nature and do not require further Notice as per Section 45 (18.1.1)?

JURISDICTION

Amended Application – S. 45 (18.1)

On an appeal, the Tribunal may amended from the original application if, before issuing its order, written notice is given to the persons and public bodies who received notice of the original application under subsection (5) and to other persons and agencies prescribed under that subsection. 1993, c. 26, s. 56; 1994, c. 23, s. 26 (7); 2017, c. 23, Sched. 5, s. 80.

Exception to Notice Requirement – S. 45 (18.1.1)

The Tribunal is not required to give notice under subsection (18.1) if, in its opinion, the amendment to the original application is minor. 2017, c. 23, Sched. 5, s. 98 (5)

Notice of Intent - S. 45 (18.2)

Any person or public body who receives notice under subsection (18.1) may, not later than thirty days after the day that written notice was given, notify the Tribunal of an intention to appear at the hearing or the resumption of the hearing, as the case may be. 1993, c. 26, s. 56; 1994, c. 23, s. 26 (8); 2017, c. 23, Sched. 5, s. 98 (6).

EVIDENCE

Ms. Stewart recounted that on May 1, 2019, Mr. Benczkowski's Witness Statement had been submitted to TLAB as per the deadline indicated in my decision of March 19, 2019 and that it included revised plans and revised zoning notices. She noted that Mr. Ivanov had emailed her on June 26, 2019 indicating a concern with respect to the revised plans potentially requiring recirculation of Notice. She went on to explain that she felt that the revisions were minor and that it would fall under Section 45 (18.1.1) which indicates that Notice would not need to be recirculated. She indicated that in past Hearings, with similar applications and revisions to plans that they had been accepted as minor and that further Notice was not requested. She further noted that the changes to the plans were an improvement to the requested variances and that in her experience the reason

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for not requiring further circulation was because of the improvement and/or reduction of variances and that “anybody who would object to the new application would also equally have objected to the original application.” She concluded that if the revisions were not considered minor and that recirculation was required then there is a need for recirculation then the requirement of Section 45 (18.2) be considered in the decision.

Mr. Ivanov explained that the City did not feel the changes to the plans were not minor because of there is a change in the built form proposed which has removed the integral garage of the original application and that the basement had been removed from the FSI calculation. He explained that although the FSI variance was reduced from 1.51 to 1.05 FSI, it still exceeded the permitted 0.75 FSI. Furthermore, Mr. Ivanov indicated that two new variances were now proposed : 1) to allow for a parking pad in the front yard which is expressly prohibited by the Zoning By-law; and 2) a reduction to the minimum soft landscaping required because of the proposed parking pad.

Mr. Ivanov explained that the changes to the plans were not minor and that the revised plans be recirculated to allow residents in the neighbourhood to be aware of the proposed change to the front yard condition and provide them the opportunity to speak to this change if it is of concern to them at the Hearing.

Ms. Stewart responded by providing a synopsis of the changes that had been made to the plans and indicated that:

- Variance 1 - front yard setback had not changed (4.22m);
- Variance 2 - lot area required had not changed (185m²);
- Variance 3 - lot coverage slightly reduced from 55% (81.3m²) to 54% (80.8m²) had been reduced had not changed;
- Variance 4 - floor space index reduced from 1.51 (225.3m²) to 1.05 (157.12m²);
- Variance 5 - rear yard setback had not changed (4.2m); and,
- Variance 6 - side yard setback had not changed (0.45m).

Ms. . Stewart mentioned that these variances were the same for both Parts 1 and 2 of the severed property. She then went on to explain the two additional variances sought based on the revised plans:

- Soft landscaping variance to reduce the required landscaping from 75% to 34% however she mentioned that the change was technical because the driveway is included in the calculation but there is no reduction in the soft landscaping from the previous submission; and,
- By-law does not permit parking in the front yard, but the proposed parking pad is in the front yard.

ANALYSIS, FINDINGS, REASONS

I have carefully considered the issue of whether the changes to the plans would be considered minor and whether they would require further notice as well as taken into consideration the Participants that had attended the Hearing and the time they took out of their schedule to attend the hearing.

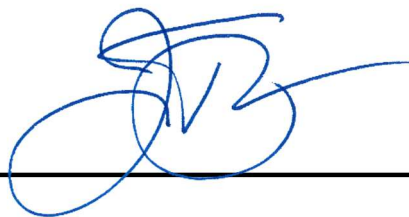
Although I may consider the changes in variances to those of the original application to be minor, I do not feel that the two new changes can be construed as minor. Whereas some of the neighbouring residents may have not objected to the original application because of the integral garage proposed, they may potentially have a concern and may object to the elimination of the garage and the introduction of only a front yard parking pad. Quantitatively the changes to the original variances may appear minor but I believe that the changes to the front elevation are of a significant qualitative difference.

Furthermore, during the Hearing I asked the Participants in attendance whether they had a concern with a potential adjournment of the hearing. Some wanted to proceed while others felt that the new proposal was different enough that it should be recirculated. Generally, I did not have a sense that the Participants felt this would prejudice their ability to attend new Hearing dates.

DECISION AND ORDER

The Hearing is adjourned and new hearing dates for this matter have been set for September 19, 2019 and October 25, 2019 and new Notice shall be provided by the Appellant. Should any new participants intend to appear at the resumption of the TLAB Hearing dates, they shall indicate that intention within the due dates that will be provided in the Notice of Hearing.

X



John Tassiopoulos
Panel Chair, Toronto Local Appeal Body