

AMENDING DECISION AND ORDER

Decision Issue Date Monday, September 30, 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): ALEX BROGANTZ

Applicant: CHRISTIAN CHAN

Property Address/Description: 294 RONCESVALLES AVE

Committee of Adjustment Case File Number: 18 206864 STE 14 MV

TLAB Case File Number: 18 268724 S45 04 TLAB

Hearing date: Monday, May 06, 2019

AMENDING DECISION DELIVERED BY G. BURTON

APPEARANCES

Name	Role	Representative
Christian Chan	Applicant/Expert Witness	
Alex Brogantz	Appellant	Alan Heisey

INTRODUCTION

The Toronto Local Appeal Body (TLAB) issued its decision on an appeal from a refusal by the Committee of Adjustment (COA) dated November 28, 2018, for minor variances for the subject property. The variances would permit the continued use of the existing florist shop in the first floor and basement of the existing single dwelling, as well as related variances. There was also a variance to authorize the existing second dwelling unit on the third floor, whereas only one is permitted. The variances were approved in the TLAB decision of June 5, 2019, with certain conditions.

BACKGROUND

In its Public Hearing Notice, the COA staff had described the application as follows:

“To legalize and to maintain the commercial use operating on the main floor of a three-storey detached dwelling. The remainder of the dwelling is occupied by two residential units. No external alterations will be done.”

The evidence at the hearing was addressed principally to the question of the existence of a more extensive non-conforming use, first in the main floor, and then later in the basement as well. In the Decision of June 5, 2019, the existing commercial use was accepted as a still-protected use, and in both floors of the structure, basement and first or main floor.

JURISDICTION

TLAB Rule 30 provides:

Correcting Minor Errors

30.1 The TLAB may at any time and without prior notice to the Parties correct a technical or typographical error, error in calculation or similar minor error made in a Decision or order. There is no fee if a Party or Participant requests such corrections.

30.2 Where any Party, after giving notice to all Parties, requests a clarification with respect to the meaning or intent of a decision the TLAB may provide such clarification.

EVIDENCE

These were the TLAB’s Decision and Orders on the appeal:

“1. The appeal is allowed, and the minor variances as set out in Attachment 1 are authorized, subject to the condition in No. 2 below. The existing commercial use of the basement and main floor of the detached dwelling as a florist is approved. No further notice of this decision is required.

If there is any clarification needed, the TLAB may be spoken to.

2. There shall be no expansion of the use beyond the present size of the commercial space.

3.. There shall be no outdoor sale of goods or services.”

However, upon the owner’s application for a building permit, the Zoning Examiner by message to the TLAB on September 10, 2019, requested clarification of certain issues and language in the Conditions. The Examiner stated:

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"I note on page 7 of 22 of the Decision" the purpose of the application for variances is to recognize and maintain the two rental apartment units on the upper floors of the existing 2.5 storey residential dwelling and as well, to continue an existing non-conforming commercial use, a florist shop, in the main floor and basement."

On page 20, the decision notes if any clarification is needed the TLAB may be spoken to.

I have questions related to the decision and order on page 20 and 21, specifically:

1) the existing commercial use of the basement and main floor of the detached dwelling as a florist is approved.

"commercial service use" does not appear to be defined in the Decision notice. Is this "commercial service use" approval limited to the florist/ florist shop? If another type of "commercial service use" is proposed could this decision be relied upon?

2) there shall be no expansion of the use beyond the present size of the commercial space .

Was the "present size" considered to be the proposed basement plan?

Existing basement floor plans submitted under the zzc shows an (unauthorized) dwelling unit # 3 in a portion of the basement where the walk in cooler unit and flower preparation area is shown on proposed basement plan. The remainder of the existing basement is identified as commercial use.

Was this approval condition intended to apply to the whole of the basement as shown on the proposed basement plan – or only for the portion shown as existing commercial on the existing floor plan ?"

These are the responses to the Examiner's questions:

1. I see no reference in the decision to "commercial service use" as stated by the Examiner, except in the wording of Variances 1 and 4. This wording is as was stated by the COA staff in their original Notice of Hearing. It seems to have originated in the original Zoning Notice (ZZC) as the wording of the variance that was required. **Thus, this description of the variance as one for a "commercial service use" originated in the conclusions reached by the Zoning Examiner in the Zoning By-law Notice (ZZC) dated May 22, 2018, prior to the COA hearing.**

These variances will be amended to read, "**commercial use**". It is just a "commercial use" that is authorized. From the evidence tendered in the Hearing, such a use had been present there for a very long time. However, the intention was to limit the use to the **existing florist use**, since the variance approval was granted based on this relatively non-impactful use (i.e. little parking demand, low customer attendance, floral arrangement preparation rather than activities of a typical retail store, as defined, etc.). Thus, the variance approval is to be limited to the existing florist use only, and not to extend past its cessation.

2. The intention was to limit the authorized commercial use to the basement AND the main floor, where it exists now. The first order in the June decision, as set out above, seems clear on this point. I saw no residential unit in the basement in the plans, as stated by the Examiner. This reference to the questionable plans was to those submitted for a ZC, presumably before the COA hearing, and not to recent plans. Variances 1 and 4 referred only to **two** residential units, even before the COA hearing. Had I seen another residential unit in the basement, I would have explicitly excluded a third unit there, in addition to approving of the additional unit authorized in the third floor.

I rely on Rule 30 above to authorize a clarification of the intent of the Decision. There was only the one party, so any notice requirement has been met.

The Decision and Order in the June 5, 2019 Decision are replaced by the following. All other elements of the Decision remain the same:

“DECISION AND ORDER

1. The appeal is allowed, and the minor variances as set out in Attachment 1 below are authorized, subject to the conditions in Nos. 2 and 3 below. The existing commercial use as a florist in the basement and main floor is approved. This approval does not extend to any other commercial use. The second existing residential unit in the third floor of the detached dwelling is approved. No further notice of this decision is required.

2. There shall be no expansion of the existing commercial use beyond the present size of the commercial space in the basement and main floor of the dwelling.

3.. There shall be no outdoor sale of goods or services.

If there is clarification needed, the TLAB may be spoken to.

ATTACHMENT 1 – VARIANCES

1. Chapter 10.10.20.10.(1), Chapter 10.10.20.20.(1) and Chapter 10.10.20.40, Bylaw 569-2013

A detached single family dwelling containing an accessory doctor's office on the ground floor is permitted.

In this case, the building has been converted to a mixed-use building containing a commercial use and two residential dwelling units, which is not permitted.

2. Chapter 200.5.10.1, By-law 569-2013

Five parking spaces are to be provided – one for each dwelling unit, and three for the retail store.

In this case, one parking space will be provided for the entire building.

3. Chapter 10.0.40.40.(1), By-law 569-2013

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The maximum permitted floor space index is 0.6 times the area of the lot (184.88 sq. m.)

The floor space index of the building will be 1.23 times the area of the lot (380.03 sq. m.)

4. Section 6(1), By-law 438-86

A single family dwelling is permitted to contain an accessory doctor's office on the ground floor.

In this case, the building has been converted to a mixed-use building containing a commercial use and two residential dwelling units, which is not permitted.

X 

G. Burton

Panel Chair, Toronto Local Appeal Body