

DECISION AND ORDER

Decision Issue Date Wednesday, September 11, 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): ELLIOT BALBOUL

Applicant: ELLIOT BALBOUL

Property Address/Description: 47 STRADER AVENUE

Committee of Adjustment Case File: 18 268107 STE 12 MV (A0849/18NY (TEY), 18 268095 STE 12 CO (B0060/18NY (TEY), 18 268111 STE 12 MV (A0848/18NY (TEY)

TLAB Case File Number: 19 162557 S45 12 TLAB, 19 162556 S53 12 TLAB, 19 162558 S45 12 TLAB

Written Motion Hearing date: Friday, September 06, 2019

DECISION DELIVERED BY JUSTIN LEUNG

APPEARANCES

NAME	ROLE	REPRESENTATIVE
Elliot Balboul	Appellant	Johathan Benczkowski of Sol-Arch
City of Toronto	Seeking Party Status	Michael Mahoney

Elliott Balboul, applicant for 47 Strader Avenue, had initially submitted concurrent consent (severance) and minor variance applications for this subject property, which is under the ownership of Corell Homes Inc. The proposal is to sever the property to create two residential lots. The two associated minor variance applications relate to lot frontage and lot area reductions due to the creation of two undersized lots. The other variances (10 variances for the conveyed lot and 9 variances for the retained lot) pertain to building standards for the proposed houses to be built on the two lots. The Toronto and East York Committee of Adjustment (COA) heard and refused these applications at the Wednesday, May 15, 2019 COA meeting. The applicant subsequently appealed the

decision of the COA to the Toronto Local Appeal Body (TLAB) which has resulted in the matter being accessed in this instance.

A TLAB Notice of Hearing was sent out on July 5, 2019 which set out 2 consecutive hearing dates of October 29 and 30, 2019. The Notice also indicated that the deadline to declare intention to be a party to these proceedings should be received by TLAB offices no later than August 6, 2019. Here, the City Solicitor indicates that the City Council provided direction that they should attend the TLAB hearings at the July 16, 2019 Council meeting. The City Solicitor then acted to prepare the Motion documents which were then submitted to the TLAB offices by August 14, 2019, 9 days after the deadline as outlined on the Notice of Hearing. As such, they contend this is why this late request for party status has occurred. It is noted that at this juncture, no *Notice of Reply to Response to Motion Form 9* has been submitted with respect to this request.

Planning matters such as this can have a wider community implication. As such, the TLAB can assess such requests within context of the broader neighbourhood interests. The elements as presented here are similar to those as commented on in the Motion Decision for 135 Milton Street dated May 8, 2019 delivered by TLAB member Ted Yao. Member Yao assesses a similar circumstance where the City had submitted a late request to be a party to this TLAB proceeding. Here, the issue of public interest was considered to determine if this would continue to be upheld if the City were allowed to participate at this late stage of the appeals process. The Motion decision ultimately permits the City party status with the underlying rationale as stated here:

“In my view it is in the public interest for City Council to be a party because as a decision-making body under the Planning Act, it represents the wider community. This public interest has a bearing despite any position taken by its professional staff or even in cases where staff have failed to comment.”¹

The measure as stipulated above would be applicable for this request as well. In review of the appeal materials, the City’s Engineering & Construction Services and Transportation Services departments did provide comments with respect to these COA applications. The comments were of a technical nature relating to the proposal and did not indicate a professional opinion to the merits of the proposal. Moreover, it appears that Planning staff did not provide formal comments for this matter. While this is the case, this does not detract from City Council’s ability to review and consider this appeal and to determine whether they wish to take a position relating to this issue. In this circumstance, City Council has elected to defend the decision as rendered by the COA in refusing these applications and to have the City Solicitor provide representations on this to the TLAB at the scheduled hearing dates. Here, it should be noted that the City appears to have taken just under a month’s (29 days) time to prepare Motion documents seeking party status. The TLAB would surmise that the City’s Legal Services, in balancing a significant workload, required a certain amount of time to prepare these documents. While the TLAB can understand such circumstances, it is

¹ Toronto Local appeal Body-Scheduled Hearings & Decisions (2019, August). Decision and Order-135 Milton Street. Retrieved from https://www.toronto.ca/wp-content/uploads/2019/05/965d-TLAB_19-117682-S53-03-TLAB_135-Milton-St_Motion-Decision_TYao.pdf

encouraged that all parties to a TLAB proceeding should strive to submit related documents to the TLAB offices at their earliest possible convenience to ensure an uninterrupted tempo to the appeal process.

With the material as presented and with no response to this request from the other parties to this matter, the TLAB finds that there is a potential public interest for this issue which would be articulated most appropriately through the participation of the City. This public interest dimension would act to outweigh other issues which could arise. A prospective severance to create two undersized lots could be seen to be changing the neighbourhood fabric of an established residential street. As such, the City could be compelled to be party to such a proposal to ensure community interests are properly accounted for. This would ensure all relevant perspectives to this appeal are represented at the TLAB hearing.

DECISION AND ORDER

The Motion is allowed. The City is granted Party status and, as such, is equally subject to adhere to the *Toronto Local Appeal Body-Rules of Practice and Procedure*.

X 

Justin Leung
Panel Chair, Toronto Local Appeal Body
Signed by: Leung, Justin