

DECISION AND ORDER

Decision Issue Date Monday, November 11, 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): Elizabeth Manikas

Applicant: Enzo Loccisano

Property Address/Description: 48 Marilyn Cres

Committee of Adjustment Case File: 19 125205 STE 19 MV (A0256/19TEY)

TLAB Case File Number: 19 181390 S45 19 TLAB

Hearing date: Thursday, October 31, 2019

DECISION DELIVERED BY D. Lombardi

REGISTERED PARTIES AND PARTICIPANTS

Appellant	Elizabeth Manikas
Party	Arch DWG Inc (Enzo Loccisano)
Owner	Dinesh Singh Christendat
Owner	Viviane Saridakis

INTRODUCTION

This is a decision on a Motion brought by Dinesh Singh Christendat and Viviane Saridakis (Owners) of the property at 48 Marilyn Crescent (subject property), in the former municipality of East York. The Notice of Motion (Form 7) requested dismissal of the appeal by Elizabeth Manikas (Appellant) without holding a hearing, as permitted under Rule 9.1 of the Toronto Local Appeal Body's (TLAB) Rules of Practice and Procedure (Rules).

Rule 9.1 authorizes the TLAB to dismiss a proceeding without a hearing on several grounds. For the subject Motion, the most relevant grounds are:

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- a) the reasons set out in Form 1 do not disclose any apparent land use planning ground upon which the TLAB could allow all or part of the Appeal;
- b) the Proceeding is frivolous, vexatious or not commenced on good faith;
- c) the Appeal is made only for the purpose of delay; and
- h) the Proceeding relates to matters which area outside the jurisdiction of the TLAB.

BACKGROUND

On June 12, 2019, the Committee of Adjustment (COA) considered the Owners' application for the following two variances:

1. Chapter 10.5.40.60(7), By-law 569-2013

Roof eaves may project a maximum of 0.9 m provided that they are no closer than 0.3 m to a lot line.

The roof eaves will project 0.2 m and will be 0.21 m from the west side lot line.

2. Chapter 10.20.40.70.(3)(C), By-law 569-2013

The minimum required side yard setback is 1.2 m.

The altered two-storey detached dwelling will be 0.98 m from the east side lot line and 0.41 m from the west side lot line.

The application would permit the alteration of the existing two-storey detached dwelling by constructing rear one- and two-storey additions, as well as an attached garage.

The COA approved the requested variances and Elizabeth Manikas, the Appellant who resides next door at 50 Marilyn Crescent to the east of the subject property, appealed and the TLAB set a Hearing date for October 31, 2019. Her reasons for the appeal as set out in the Notice of Appeal (Form 1) were:

- *Due to the close proximity of the dwelling, the additional height creates material overlook and loss of privacy to our home. We have windows on the side wall facing the dwelling at 48 Marilyn Crescent.*
- *The proximity of the roof eaves to the west side lot line results in overflow flooding onto our property.*
- *The proximity of the now much larger dwelling causes incremental shadow on our property and reduces our view lines.*

The Notice of Hearing (Form 2) indicates due dates for filing submissions in accordance with the TLAB Rules. Of relevance to this Motion are the following dates:

- Document Disclosure, Witness Statement, and Expert Witness Statement **due** no later than **September 9, 2019**.
- Response to Witness Statement **due** no later than **September 23, 2019**.
- Reply to Response to Witness Statement **due** no later than **October 2, 2019**.

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I note these dates as they are set pursuant to the TLAB Rules and are to be adhered to by all the Parties. While the Applicant submitted the requisite documents by the due dates above recited, the Appellant did not and, in fact, filed no materials at all to this proceeding by the October 31, 2019 Hearing date.

More importantly, the Appellant failed to attend the Hearing as well and provided no reasons to the TLAB staff for her absence either before, on the day of, or after the Hearing.

MATTERS IN ISSUE

Has the Appellant raised any legitimate objections on planning grounds or any other matters in this situation which would support the reasons for the appeal being valid? Also, should the Motion to Dismiss the proceeding be allowed given that the Appellant has not pre-filed any supporting documentation or attended the Hearing of this matter as required by the Rules?

JURISDICTION

As above recited, TLAB Rule 9.1 permits the dismissal of the appeal for various grounds without holding a hearing. Rule 9.1 a) specifically authorizes the TLAB to dismiss a proceeding without a hearing if the reasons set out in the appeal do not disclose any apparent land use planning ground upon which the TLAB could allow the appeal. If this Rule is accepted as applicable, then it relieves the other parties from having to prepare for an oral hearing where there is no statutory basis for the appeal.

EVIDENCE AND ANALYSIS, FINDINGS, REASONS

At the commencement of the Hearing, at 9:30 am, on October 31, 2019, both Owners of the subject property, Dinesh Singh Christendat and Viviane Saridakis, were in attendance as was their authorized representative, Enzo Loccisano. I noted for the record that the Appellant had not arrived and in view of the inclement weather that morning I asked Mr. Loccisano if we could allow an additional 15 minutes for Ms. Manikas to arrive before starting the Hearing. Mr. Loccisano agreed to this indulgence.

At 9:45 am the Appellant still had not made an appearance and I conferred with TLAB staff to determine if she had contact staff to explain her tardiness. She had not, so I indicated that the Hearing would move forward and I would hear the Owners' Motion.

I advised the Parties that pursuant to Rule 17.4, a Motion is to be heard by Oral Hearing and the Moving Party will obtain a Motion date prior to Service of the Notice of Motion, unless the TLAB directs otherwise. The Motion, dated September 30, 2019, included the requisite affidavit and proof of service to the Appellant as per Rule 17.7. On inquiry of TLAB staff as to why a Motion Hearing had not occurred prior to the actual appeal Hearing scheduled for October 31st, I was informed that a Motion date could not

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be established prior to the scheduled Hearing and the Moving Party was advised that the matter would be dealt with at the commencement of the appeal Hearing.

This brings us to the Motion to Dismiss that is before the Tribunal.

Mr. Loccisano argued that the Appellant has not provided any evidence to justify the appeal and, in fact, has shown a 'total lack of respect' (his words) for the entire hearing process. He submitted that the appeal is actually a delay tactic meant to force the Owners to negotiate with the Appellant for ownership and/or acknowledgement of an easement over a small triangular parcel that is currently part of the corner of the front yard of the subject property which also forms part of the driveway for 50 Marilyn Crescent. He submitted that there is currently no such easement and that the Appellant is not the owner.

He advised that the Owners of the subject property have had numerous discussions with Ms. Manikas regarding this matter without success and blame the Appellant for her continued insistence that she be the ultimate owner of that parcel.

He confirmed that the subject proposal maintains the existing context and that the requested variances have no impact on the lands in dispute. To support this assertion, he highlighted an updated survey, dated February 15, 2019, prepared on Owners` behalf which indicates where the proposed rear one- and two-storey addition to the existing home will be located on the property.

Mr. Loccisano concluded his remarks by suggesting that the Application requesting relief for the two simple variances before the Tribunal meets the four statutory tests in the *Planning Act* and represents good planning. He reiterated that the COA approved the subject Application and there was significant neighbourhood support at that hearing. In contrast, the Appellant filed a petition in opposition which he asserted was signed only by individuals who were all part of the Appellant`s family. He posited that this added no value for the Committee in arriving at their decision to approve the variance application.

He briefly and concisely addressed the grounds outlined in the Appellant`s Notice of Appeal. With respect to Point 2, he submitted that the addition of the rear one-and two-storeys to the existing house will not result in material overlook impact on the neighbouring properties as Ms. Manikas contends, as her home is set back significantly. He noted that this fact also applies to Point #4 in which the Appellant submitted that the proximity of the much larger dwelling on the subject property will cause incremental shadows on her property and reduce her view lines.

Additionally, the Owners are not proposing any windows on east elevation of their altered dwelling, the elevation that faces the west elevation of Ms. Manikas` house.

With respect to Point #3, he noted that the Appellant`s concern regarding the proximity of the roof eaves of the proposed second storey rear addition relative to west lot line of her property which she argued would result in overflow flooding on her property is unfounded. He confirmed that ground water currently flows towards the Owners` east wall and that the existing driveway between the subject property and the

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Appellant's lot is sloped to direct water west toward 48 Marilyn Crescent and away from 50 Marilyn.

Additionally, he submitted that the Owners had landscaped and graded the east side yard of the subject property to direct ground water south end of their property towards the street.

Mr. Loccisano concluded his remarks by requesting that the appeal be dismissed, the Committee of Adjustment's decision be confirmed, and the two variances be approved. He also asked that the Owners be awarded costs in this matter.

After an extensive review of the file and listening to the Owners' representative, Mr. Loccisano, and in consideration of Ms. Manikas' failure to appear at the Hearing and failure to file any documents, I accept the Motion to Dismiss this matter for several reasons (pursuant to Rule 9.1).

- a) *Form 1 does not disclose any apparent land use planning ground upon which the TLAB could allow all or part of the Appeal.*

The only possible land use planning grounds raised by the Appellant in Form 1 relate to shadowing, loss of privacy and reduced views as a result of the "additional height" of the proposed development. Firstly, there is no variance requested for the height of the dwelling nor are there variances for side yard setbacks. I note that the Appellant's pie-shaped lot, the sitting of her home on that lot, and the width of the driveway between the two properties results in a wide buffer measuring 6.0 m at the rear in the vicinity of the proposed rear addition.

And, secondly, I agree with Mr. Loccisano that there will be no overlook or loss of privacy for the Appellant and that concerns about 'impact' from overlook and the potential for compromise to privacy are more illusory than real. Additionally, there is no fenestration or opening proposed on the east elevation of the subject dwelling which would counter Ms. Manikas' submission that her home has "windows on the side wall facing the dwelling at 48 Marilyn Crescent" and her privacy would be compromised. (Notice of Appeal (Form 1), p. 4)

As to the issue of incremental shadow suggested by the Appellant, she has provided no documentation to support that assertion nor has she proffered any expert witness to attest to that supposition.

The Appellant raised a concern regarding overflow flooding as a result of the proximity of the roof eaves requested in Variance 1. Given that the Owners have attempted to address any potential ground water runoff from their property, I agree that this is not a legitimate issue. Nevertheless, this is not a planning ground and I agree that there is reliance on the building permit process to police discharges of surface water and I accept this principle.

Therefore, I find that the Appellant has failed to disclose any land use planning ground upon which the appeal could allowed.

- c) *the Appeal is made only for delay*

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The Appellant has not submitted or filed any documentation with the TLAB in support of the appeal and did not attend on the Hearing day, providing no reason(s) for her absence. In view of the information provided by Mr. Loccisano as to the discussions between the Owners and Ms. Manikas regarding a land dispute/driveway easement, coupled with no opportunity to query the Appellant regarding this disagreement, I must agree with the Owners' assertion that a case could be made that the appeal has been made only for the purpose of delay. However, I make no finding in this regard at this time as the Appellant has not had an opportunity to be deposed.

h) *the Proceeding relates to matters which are outside the jurisdiction of the TLAB.*

It appears that the underlying issue in this matter is a land dispute between the owners of the subject property and the Appellant, the abutting neighbour to the east. I note that the Owners have prepared an updated, legal survey supporting their contention that the parcel in question (on the front eastern portion of the subject property forming a small component of the driveway for 50 Marilyn Crescent) has no easement and the Owners have submitted that it does not reflect that the Appellant has ownership.

Nevertheless, this is a matter that must be addressed through a separate legal process outside of the TLAB proceedings as the Tribunal has no jurisdiction.

With respect to the issue of awarding costs in this matter, the Applicant is directed to Motion requirements of the TLAB respecting the awarding of costs pursuant to Rule 28 of the TLAB's Rules.

DECISION AND ORDER

On the arguments presented in the Motion and at the Hearing on October 31, 2019, I find there is no land use planning basis upon which the appeal could be allowed.

The Motion is allowed; the appeal is dismissed.

The Committee of Adjustment decision, dated June 12, 2019, is final and binding, and the file of the Toronto Local Appeal Body is closed.

X 

D. Lombardi
Panel Chair, Toronto Local Appeal Body