Toronto Local Appeal Body

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DECISION AND ORDER

Decision Issue Date Monday, January 13, 2020

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): INES FERRI

Applicant: AJT DESIGN

Property Address/Description: 362 RUSTIC RD

Committee of Adjustment Case File: 18 262105 WET 12 MV

TLAB Case File Number: 19 114668 S45 05 TLAB

Motion for Cost Hearing date: Friday, November 29, 2019

DECISION DELIVERED BY DINO LOMBARDI

APPEARANCES

Name	Role	Representative
CAROLINA FIORINO	Owner/Participant	ALISSA WINICKI
AJT DESIGN	Applicant	
INES FERRI	Appellant	FRANK DI GIORGIO
DIANA FERRI	Party	
DINO FERRI	Party	
AJT DESIGN	Party	ALISSA WINICKI
CHRISTIAN CHAN	Expert Witness	
CAROLINA FLORINO	Participant	

INTRODUCTION

This is a Motion for costs arising from a Toronto Local Appeal Body (TLAB) Hearing granting two variances for 362 Rustic Road (subject property). The variances permit the construction of a new detached garage in the rear yard of the subject property and to convert the existing attached garage to habitable space.

The Owners of the subject property, Carolina Fiorino and Eddy Ribeiro (Owners) sought relief to permit an increase in lot coverage and a reduction in the percentage of required soft landscaping in the rear yard. In the result, the application proposed to eliminate and grade the existing reverse slope driveway with soft landscaping.

The hearing of the appeal consumed three non-consecutive Hearing Days – June 19, 2019, September 5, 2019, and September 18, 2019. The September 18th date was conducted as a Teleconference call at which all the attendees noted in the 'Appearances' section, above, participated.

The Owners assert that the Appellant's attempt to delay the initial Hearing date by referencing inapplicable and missing variances, broadening the scope of under which the application should be assessed under the *Planning Act (Act)*, and the failure by the Appellant to provide any planning evidence to substantiate that the statutory tests under s. 45(1) of the *Act* that were not satisfied; collectively, these directly contributed to the Owners' bearing additional costs. The Owners now seek costs as contemplated under the TLAB Rules of Practice and Procedure (Rules).

The Motion asserts that because of the actions of the Appellant, above recited but addressed in more detail later in this Decision, the Owners were forced to retain a lawyer, a land use planner, and an architectural technologist at a total cost of $20,599.35.

As detailed to an extent in the 'Evidence' section, below, there is a history to the Application that requires charting which is recited more fulsomely in the following section.

BACKGROUND

On January 24, 2019, the Committee of Adjustment (COA) approved the two requested variances subject to the following condition which reflects the remediation of the reverse slope driveway, all as imposed by the COA:

1. *The existing driveway (leading to the attached garage to be converted into habitable space) shall be restored with soft landscaping.*

Subsequent to the Committee's approval, Ms. Ines Ferri (Appellant) the owner of the property abutting the rear of the subject property to the north appealed the decision to the TLAB and a Hearing date was set for June 19, 2019.

For context, I note that prior to the requisite March 28, 2019 deadline for disclosure in the Notice of Hearing, Dino and Diana Ferri, the Appellant's son and daughter-in-law, respectively, and Parties to the proceedings, submitted numerous emails to the TLAB on behalf of the Appellant related to the appeal grounds identified in the Appellant's Notice of Appeal form. In essence, the Appellant asserted certain 'irregularities' (her words) surrounding the subject application and suggested that the Zoning Examiner had overlooked a number of violations of the new Zoning By-law.

The Appellant's authorized representative, Mr. Frank Di Giorgio, submitted correspondence on her behalf requesting direction from the TLAB in this regard. In a June 5, 2019 reply, TLAB Chair Lord provided two possible options to the Parties: one being a meeting between the Parties to explore compromise opportunities; and the other that the Applicant support the Appellant's request to adjourn the Hearing.

The Applicant did not wish to adjourn and so the Hearing proceeded as scheduled.

At the commencement of Hearing Day 1 (June 19th), the Parties agreed to participate in non-binding Mediation pursuant to Rule 20 of the TLAB's Rules as a means of fostering more positive dialogue and exploring an opportunity to resolve some or all of the outstanding issues related to the application. As the presiding Member, I temporarily adjourned the Hearing to facilitate the Mediation session.

Unfortunately, after a lengthy session that lasted much of Hearing Day 1 the Parties conceded that the issues were too great to overcome in Mediation and requested the Hearing recommence. Given the late hour on that day, and on consent, a second Hearing date was secured for September 5, 2019, to continue hearing the appeal. However, prior to adjourning Hearing Day 1, Mr. Di Giorgio reiterated the Appellant's contention that the subject application was being processed incorrectly and requested that the Tribunal consent to varying its procedures to enable processing the application in accordance with either s. 45(2)(a) or (3) of the *Planning Act* (*Act*).

I directed Mr. Di Giorgio to formally file a Notice of Motion in this regard which he did on June 28, 2019. In addition to requesting the above recited relief, he also requested that the two variances be denied and that any incremental development on the subject property be limited to a smaller, attached garage set back farther from the Appellant's property.

The Owners responded with a Notice of Response to Motion which addressed the Appellant's Motion and filed a separate Notice of Motion requesting, among other relief, an order from the TLAB dismissing the appeal with costs or in the event that was not granted, an extension of the deadline for filing Document Disclosure and an Expert Witness Statement.

By Order of August 9, 2019, I denied the Appellant's Motion, denied the Applicant's request to dismiss the appeal with costs but allowed the Applicant's Motion, in part, allowing the filing extension deadlines requested.

Following a rather lengthy Hearing Day 2 and a subsequent half-day Teleconference Hearing on September 18, 2019, I approved the two requested variances subject to the following conditions of approval:

> "A. The proposed development shall be constructed substantially in accordance with site, elevation and roof plan drawings prepared by AJT Design, dated January 21, 2019, identified as drawing #'s AS (SITE Plan), A1 (Garage Foundation), A2 (Level 1), A3 (South Elevation), A4 (North Elevation), A5 (West Elevation), A6 (East Elevation), and A8 (Roof), set out in Attachment 2, attached. Any other variances that may appear on these plans but are not listed in this written decision are NOT authorized.
>
> B. The existing reverse-slope driveway (leading to the attached garage to be converted into habitable space) shall be removed and restored with soft landscaping prior to the occupancy of the new garage for its intended purposes.
>
> C. The proposed driveway leading to the new detached garage shall be constructed of permeable interlocking pavers."

On November 6, 2019, the Owners filed a Notice of Motion (subject Motion) and the requisite documentation pursuant to Rule 28 of the TLAB's Rules as they were constituted prior to May 6, 2019 (after which the new Rules now apply). The Motion requests an Order for costs given the Appellant's failed Motion addressed in my decision of August 9, 2019, in addition to costs related to the Appellant's failed appeal.

The submitted documents include an Affidavit from Eddy Ribeiro, sworn November 5, 2019, a 13-page Schedule "A" consisting of 72 paragraphs outlining the reasons for the request, Exhibits A, B, and C detailing the costs incurred by the Owners, and case law in the form of an August 7, 2018 decision issued by Member Makuch relating to a Motion for costs for *15 Nelles Avenue* (TLAB Case File # 17 208355 S45 13).

MATTERS IN ISSUE

The matter in issue on this Motion is whether costs should be awarded and, if so, in what amount. The Moving Party has indicated that the cost award being sought encompasses costs for the Appellant's previous failed Motion as well as the failed appeal. Regardless, both costs amounts are reflected in the total cost amount being requested and are addressed as such.

JURISDICTION

The TLAB has authority to order costs subject to the Rules of Practice and Procedure as set out below.

28. COSTS

Who May Request an order for Costs

28.1 Only a Party or a Person who has brought a Motion in the Proceeding may seek an award of costs.

28.2 A request for costs may be made at any stage in a Proceeding but in all cases shall be made no later than 30 Days after a written decision is issued by the Local Appeal Body.

Member Seized to Consider Costs Order

28.3 The Member who conducts or conducted the Proceeding in which a request `for costs is made shall make the decision regarding costs.
Submissions Respecting Costs

28.4 Notwithstanding Rule 17.3 All submissions for a request for costs shall be made by Motion by Written Hearing and served on all Parties and Filed with the Local Appeal Body, unless a Party satisfies the Local Appeal Body that to do so is likely to cause the Party significant prejudice.

28.5 Submissions for a request for costs shall address:

a) the reasons for the request and the amount requested;

b) an estimate of any extra preparation or Hearing time, and a breakdown of all associated rates, fees and disbursements, caused by the conduct alleged to attract costs and specifically any of those matters outlined in Rule 28.6;

c) copies of supporting invoices for expenses claimed or an Affidavit of a Person responsible for payment of those expenses verifying the expenses were properly incurred; and

d) attach an Affidavit in which the Party swears the costs claimed were incurred directly and necessarily.

Considerations for Costs Award

28.6 Notwithstanding the Local Appeal Body's broad jurisdiction to award costs the Local Appeal Body is committed to an approach to awarding costs that does not act as a deterrent to Persons contemplating becoming a Party or continuing

to be a Party to a Proceeding. In determining whether to award costs against a Party the Local Appeal Body may consider the following:

a) whether a Party failed to attend a Proceeding or to send a Representative when properly given notice, without giving the Local Appeal Body notice;

b) whether a Party failed to co-operate with others or the Local Appeal Body, changed a position without notice or introduced an issue or evidence not previously disclosed;

c) whether a Party failed to act in a timely manner;

d) whether a Party failed to comply with the Local Appeal Body's Rules or procedural orders;

e) whether a Party caused unnecessary adjournments, delays or failed to adequately prepare for a Proceeding;

f) whether a Party failed to present evidence, continued to deal with irrelevant issues, or a Party asked questions or acted in a manner that the Local Appeal Body determined to be improper;

g) whether a Party failed to make reasonable efforts to combine submissions with another Party with similar or identical issues;

h) whether a Party acted disrespectfully or maligned the character of another Party or Participant; or

i) whether a Party presented false or misleading evidence.

Threshold relating to Costs

28.7 In all cases a Member shall not order costs unless the Member is satisfied that the Party against whom costs are claimed has engaged in conduct, or a course of conduct, which is unreasonable, frivolous, vexatious or in bad faith.

Interest on Award of Costs

28.8 Costs bear interest at the same rate as provided in the Courts of Justice Act.

EVIDENCE

The Moving Party, in bringing this Motion, submits that the amount of $20,599.35 represents the amount of additional legal and other expenses incurred by the Owners as a direct result of the combined conduct of the Appellant, her family, and her authorized representative, Mr. Di Giorgio. The Owners submit that the Appellant's

conduct surpasses the Rule 28.7 threshold of unreasonable, frivolous and vexatious, for the reasons set out below.

In the Motion for costs, the Owners' solicitor, Alissa Winicki, addresses the request for costs and the Appellant's conduct from two perspectives: first, arising from what Ms. Winicki asserts is Ms. Ferri's 'premature attempts to thwart the processing of the subject application'; and second, the Appellant's failure to present "any argument or qualified land use planning evidence upon which the TLAB could find reasonably in favour of the appeal" (Schedule "A", para. 25).

The subject Motion asserts that approximately two months prior to the initial scheduled Hearing date (June 19, 2019), the Appellant attempted to delay the application through various means including claiming that the Applicant had overlooked or missed three variances and that the processing of the application fell more appropriately under s. 45(2)(a) and 45(3) of the *Act* rather than s. 45(1). This, despite additional correspondence from City of Toronto Zoning Examiner, Marseel Shehata, explicitly re-confirming that "no variances are missed" (Schedule "A", para. 16)

Furthermore, Ms. Winicki notes that following the first Hearing Day, and after an unsuccessful attempt at TLAB-led mediation, the Appellant filed a Motion to vary the Tribunal's procedures requesting that the application proceed under s. 45(2)(a) or (3) of *the Act*. The Applicant cross-motioned for dismissal of the appeal with costs.

In a decision dated August 9, 2109, the TLAB issued a decision denying the Appellant's Motion but granting the Applicant's Motion, in part, extending the due dates for disclosure and filing Expert Witness Statements.

The Owners' contend that this series of maneuvers required their planner to expend additional time and effort to re-examine the Zoning Examiner's opinion, at increased cost to them. Also, Ms. Winicki contends that the Appellant's Motion "undoubtedly" (her word) further delayed the proceeding.

With respect to the actual appeal of the variances sought by the Owners, Ms. Winicki asserts that the Appellant entirely failed to "provide one shred of useful evidence" (Schedule "A", para. 58) to substantiate the four grounds of appeal that were recorded and summarized in the Final Decision as follows:

- The proposed development is not appropriate for the site and represents an unacceptable level of intensification on the subject property;
- The variances are not minor and will negatively impact on the Appellant's property;
- The proposed garage will be too close to the Appellant's home; and
- The grade between the two properties will result in groundwater run-off due to reduced rear yard landscaping.

Ms. Winicki highlights paragraphs (b), (d), (e), (f), (h) and (i) under TLAB Rule 28.6, above recited, in considering how the Appellant's conduct impacted the additional costs incurred by the Owners and how the TLAB should review the request for costs.

The Motion addresses each of these failed grounds directly indicating the level of impact each contributed to the additional costs incurred by the Owners of the subject property.

1. Unacceptable Intensification

Ms. Winicki contends that the Appellant provided no reasonable evidence in this regard. Instead, the Appellant's representative continued to question the alleged missing variances in addition to suggesting that, overall, there could be as many as 17 missing variances (outlined in a September 18, 2019 resubmitted email) despite explicit direction from the presiding Member at the Hearing that there was to be no further discussion surrounding this issue.

In the Motion, Ms. Winicki concludes that the Appellant had no intention of arguing the appeal on its merits and that this conduct can only be regarded as "wholly unreasonable and borderline vexatious…the Appellant's actions in this regard directly contributed to the need for a third hearing day" (Schedule "A", para. 39).

2. The Variances are Not Minor

The Appellant's daughter-in-law, Ms. Gisone-Ferri, filed an extensive photo book illustrating properties with detached garages within what she termed the 'neighbourhood'. Ms. Winicki suggests that the boundaries of Ms. Gisone-Ferri's neighbourhood are not comparative when compared with the study area employed by the Applicant's planner. She also submits that the photographic evidence contained in that photo book did not show examples analogous to the proposed. development. In this regard, Ms. Winicki suggests the Appellant failed to support her position that the proposed garage constitutes 'overbuilding' and this typology is non-existent in the neighbourhood.

3. The Proposed Garage is too Close to the Appellant's Property

The Motion outlines that although no variances are required for side yard setback to accommodate the proposal the Owners agreed to incorporate a slope or 'hip' roof and false window/fenestration treatment on the north garage elevation which abuts the Appellant's home to minimize the visual impacts of the massing of the structure relative to Ms. Ferri's property given the tight setback.

In arguing the Appellant's uncooperative conduct, Ms. Winicki highlights a statement in my August 9th decision where I state that *"Ms. Ferri was neither enthusiastic about these design improvements nor willing to consider their effectiveness in mitigating impacts on her property"* (Schedule "A", para. 48). She submits that this supports the Owners' contention that the Appellant failed to negotiate or consider other design options in good faith.

4. Increased Groundwater Run-Off to the Appellant's Property

The Motion contends that the Appellant alleged that the proposed development would result in adverse impacts to her property related to an increase in groundwater run-off from the subject property. However, Ms. Winicki asserts that Ms. Ferri failed to submit any evidence from a qualified expert in this regard nor did she commission or obtain a drainage report to support the allegation.

Ms. Winicki asserts that the Appellant's concerns with respect to increased groundwater run-off were "purely speculative" (Schedule "A", para. 52) and only complicated the disposition of the appeal.

Finally, the Motion maintains that the hearing of this matter was unduly lengthened by what Ms. Winicki termed *'red herrings'* (her words) persistently and relentlessly put forward on behalf of the Appellant. This included, but was not limited, to the Appellant's representative, Mr. Di Giorgio, attempting to introduce hearsay evidence regarding discussions that occurred at the COA hearing suggesting the Applicant was directed to consider an attached garage as well as complaints about the length of the hearing itself, and the Appellant blaming the Owners for not reaching a settlement acceptable to Ms. Ferri.

Additionally, Ms. Winicki raised the specter of whether the Appellant had indeed written her 3-page Witness Statement and her attempts to offer planning opinion which necessitated repeated objections from counsel and the presiding Member.

In support of the Motion for costs, counsel appended and cited the Decision and Order of Member Makuch, dated August 7, 2018, regarding a Motion for costs for *15 Nelles Avenue.* Ms. Winicki argues that the Cost Decision in that matter shares similar characteristics with the case at bar in that in both cases the appeal was "unrelated to the variances."

Furthermore, she argues that similarities also include the fact that the parties were of equal bargaining strength (disagreeing neighbours), the applicant retained professional advice and bore substantial costs due to the appellant's actions, and *"the appellant was argued to have failed to file and serve documents in accordance with TLAB Rules, failed to act in a timely manner, failed to adequately prepare for the hearing, failed to present evidence at the hearing and continued to deal with irrelevant issues"* (Schedule "A", para. 69).

In concluding remarks in the Motion, Ms. Winicki submits that in the case at bar the Appellant was in no way serious about offering any salient planning evidence, she completely misinterpreted the ambit of subsection 45(1) of the *Act*, at great prejudice to the Owners and expended no costs of her own in frustrating the proceedings.

The Respondent Ms. Ferri

The Appellant filed a Reply to Costs submission consisting of an Affidavit (Form 10) sworn by Ms. Gisone-Ferri, and a 12-page Response to Motion (Response) document comprising some 67 paragraphs, dated November 21, 2019. Much of the

Response is, in my view, an attempt to re-litigate the appeal disposition which I am not prepared to deal with in this decision.

As well, there are several paragraphs in which the Appellant makes some contentious allegations against the Owners, their solicitor and expert witnesses based on what can only be characterized as inuendo and insinuation. These are found throughout the document but specifically in paragraphs 11, 14, 26, 32, 55, and 65.

Paragraph 65 is particularly troublesome in that it relates to a private civil matter between the Parties that is beyond the purview of this Tribunal. These types of statements have overtones that are, in my opinion, irrelevant to this matter and should not have been included in the Response document.

Nevertheless, the Appellant does not believe that her conduct, or that of her family and representative, during this lengthy process has been unreasonable, vexatious and/or undertaken in bad faith. She notes that she has been a long-time resident of the neighbourhood, is a retiree and was not in a position to retain a lawyer or qualified experts to bolster her appeal case. She and her family are not at all familiar with the TLAB appeals process and did not retain an expert to assist when she filed the appeal. Instead, she chose to in her words *"pursue her right and take the respected "lay citizen" route, that is NOT discourage by TLAB"* (Response, para. 3).

After filing the appeal and realizing that perhaps a more experienced representative might be helpful in assisting the family, the Appellant did retain the services of Mr. Di Giorgio, a long-time, former City of Toronto Councillor who she notes *"based on his experience as a Councillor is well versed with the Planning Act, By-laws, four tests and building permits"* (Response, para. 54).

The Appellant asserts that Owners were the ones who did not proceed through the appeal process in good faith and presented misleading information by omitting an accurate survey of her property and produced iterations of site plan drawings that were not accurate, "false" (her word) and inconsistent. She submits that the Applicant was less than transparent with information which contributed to the Hearing consuming three days.

Ms. Ferri submits that throughout the proceedings she was unable to provide any evidence to address her issues and *"was disallowed on several occasions from stating her opposition"* (Response, para. 53). Furthermore, she asserts that the Owners were unwilling to consider either other planning approaches to processing the application identified by her Representative or design options to address improving the subject development.

The Appellant asserts that she was genuinely concerned about how the proposed development would impact the enjoyment of her property. She respectfully submits that her pattern of behavior during the disposition of this matter was not unreasonable or vexatious and did not create unnecessary delays or costs for the Applicant.

With respect to the case law cited by the Applicant, the Appellant strongly believes that it is *"unsuitable and irrelevant to the case at bar"* (Response. Para. 57). She submits that in that case the appellant did not argue that the variances negatively impacted his property and that the variances were very different in numerical size. She also noted that the TLAB decision cited by the Applicant includes the retention of a lawyer who failed to make submissions in a timely manner thereby contributing to additional cost borne by the property owner.

ANALYSIS, FINDINGS, REASONS

I believe that it is important to note that the TLAB is a relatively new body with Rules and procedures that differ from the recently reconstituted Local Planning Appeal Body (formerly the Ontario Municipal Board) in many ways. As has been acknowledged by my collogues in many TLAB decisions decision since the Tribunal's inception, it is expected that residents, who are likely participating in a Tribunal hearing for the first time and who choose to participate without expert guidance, would not have in-depth knowledge of the Rules or, for that matter, expertise in planning matters.

I am mindful, in addressing any request to award costs as a result of a disposition of an appeal, that in awarding costs, the TLAB is "committed to an approach in awarding costs that does not act as a deterrent to Persons contemplating becoming a Party or continuing to be a Party to a proceeding."

The test in the TLAB Rule 28.7 is the essence of what must be addressed here. Costs should not be awarded unless the Party has engaged in "conduct, or a course of conduct, which is unreasonable, frivolous, vexatious, or in bad faith."

In this regard, the Appellant is correct somewhat in that I addressed this matter as it relates to Ms. Ferri in my August 9, 2019 Motion Decision. In that decision I discussed Ms. Winicki's assertion that the appeal, at that stage in the proceedings, could be considered to meet the standard of 'frivolous, vexatious and/or commenced in bad faith', and for the purpose of causing trouble or annoyance. I found that it had not.

In addition, I wrote "*I believe the Appellant to be a sincere and forthright individual and I believe her concerns with the proposed development to be worthy of consideration."* Furthermore, I stated that *"as the neighbour most potentially impacted by the subject application, I suspect that Ms. Ferri initiated the appeal anticipating adverse impacts to the enjoyment of her property from the proposed detached garage…I respectfully disagree with Ms. Winicki that the appeal was made only for the purpose of delay…I see it more as an inexperienced member of the public unfamiliar with the TLAB process receiving additional input following a 'sober second look' of the matter from the lens of her recently retained and more knowledgeable representative."*

I continue to hold that view and have not been swayed by the Motion for costs submission and request to award costs filed by the Owners.

While I certainly agree with Ms. Winicki that the Appellant's representative consistently referred to 'missed variances' and an applicable By-law, I disagree with her assessment that it was Appellant's "intention to derail the proceedings" (Schedule "A", para. 38). I believe that Ms. Ferri was genuinely apprehensive given that the proposed detached garage would be 0.30 m away from her front property line and the south main wall of her home.

She was concerned about the adverse impacts of this development on the enjoyment of her property given the location of the detached garage in the rear yard of the subject property and impacts on views, shadowing and snow removal, which I consider to be relevant planning issues. These are legitimate concerns of a homeowner and merit consideration as was accorded through the Tribunal's hearing process.

Additionally, the Application involved an increase in overall density on the subject property; again, a legitimate planning matter. In this regard, one must remember the adage that 'a variance is not a right but a privilege'. I agree with the Appellant that the *"onus should not rest on the Appellant having to defend herself by hiring a lawyer or a professional"* (schedule "A", para. 54) since the application was initiated by the neighbours who wish to improve their property. TLAB hearings are a *'trial de novo';* while the *Planning Act* requires Tribunal Members to give consideration to a litany of prescribed matters including the decision on the initial consideration, the matter is reviewed anew.

The Appellant relied on the position of her Representative who was of the opinion that the subject application should more appropriately be processed under s.45(2)(a) and (3), as opposed to s.45(1). Given his professed experience as a former City Councillor, Ms. Ferri chose to rely on his direction. While this may be considered an imprudent approach in the circumstances, it does not rise to the level of being considered unreasonable behavior, vexatious or intended to cause delay.

With respect to the assertion that the Appellant caused unnecessary delay related to her failure to raise issues that could have been raised at the initial COA hearing and that she was not properly prepared, I do not agree. She arrived at the Hearings on time and the Parties were prepared to provide evidence. Some contributing factors to the 'delay' that led to additional Hearing dates being scheduled can also be attributed, although certainly not completely, to the inaccurate and iterative process required to deal with the constant revisions to the site plan drawings prepared by the Applicant's architectural technologist, Mr. Trotter.

With respect to the TLAB case, above, cited by the Applicant, I must agree with the Appellant that there are more differences than similarities to the case at bar. In *15 Nelles Ave.*, the appellant hired a solicitor but did not explicitly argue the adverse impact of the variances on his property or how he would be negatively affected. In addition, the appellant in that matter failed to file submissions in a timely manner. The variances were also numerically different, and one significantly so.

In arriving at his decision, Member Makuch considered the purpose of a costs award noting it is *"(1) to deter certain conduct; and/or (2) to compensate parties for the*

need to respond to the inappropriate conduct of an opposing party" (Decision re *15 Nelles Ave.*, p. 6). Further, he wrote at Page 7 that the successful applicant was entitled to costs as *"the appeal was unrelated to the variances."*

In the case at bar, I find that the Appellant was diligent in preparing for the Hearings, did speak to the variances being requested, and did attempt to present pertinent and relevant evidence during the proceedings as evidenced by her daughter-in-law's rather detailed photo book.

As to her conduct and that of her representative and her family, I must admit that I did admonish the participants at times for what I would term animated exchanges with the Owners. However, all Parties were at fault and I would characterize those interactions as impassioned attempts by Ms. Ferri to defend her position.

Also contributing to the length of this proceeding was the Mediation session that the Parties consented to which consumed much of Hearing Day 1 as well as the examination-in-chief and cross-examination of both the Applicant's expert witnesses which consumed much of Hearing Day 2. The Teleconference call, which occurred on Hearing Day 3, was required and agreed to in order to provide an opportunity for the Appellant to provide her testimony proportional to the time given to the opposing Party.

In this regard, I do take umbrage with the Appellant's assertions in her Response that she was left with minimal opportunity to express her evidence and analysis either by the supposed strategy employed by the Applicant's solicitor or by the presiding Member. I note that Ms. Ferri was given every opportunity to provide testimony as were the other members of her family who elected Party status.

To conclude my thoughts on the assertion of delay tactics by the Appellant, I note and thank Dino Ferri, the Appellant's son, for agreeing to designate his wife, Ms. Gisone-Ferri, his proxy to provide evidence in opposition to the application in order to assist in shortening the overall length of the proceeding.

As previously recited, I must consider the criteria set out in Rule 28.6 to determine whether costs should be awarded in this matter. However, I note that I am restricted by Rule 28.7, which clearly states that I shall not order costs unless I am satisfied that the Party against whom costs a claimed has engaged in conduct, or a course of conduct which is unreasonable, frivolous or in bad faith.

I find that Ms. Ferri did not engage in any conduct, or a course of conduct that can justify an award of costs. At the most, I believe her conduct during the proceedings reflects inexperience and frustration with the process and a lack of planning acumen. As a result, the Appellant was not successful at the Hearing. This, however, does not justify or necessitate an award of costs.

As I reiterated in my earlier Motion decision of August 9th, 2019, I find the Appellant was genuinely concerned about the adverse impacts of the proposed development on her property and enjoyment of life. The TLAB is a forum were the public can raise their concerns about development in their neighbourhood and how that

they believe that development may impact their lives. In many cases, as in this matter, members of the public may not be financially able to retain experts to support their opinions and may not have the expertise to address tests for approval of variances. There is an expectation that any person appearing before the Tribunal as a Representative, Party or Participant should be diligent in making themselves familiar with the TLAB Rules and its procedures, which is different than having an in-depth understanding of the legal tests for variances or consent.

If a person is unreasonable or acts in bad faith and does not adhere to the TLAB Rules, then a cost award can be considered, as the TLAB Member sees fit, based on the evidence provide in the Motion for costs. It is a higher threshold for unreasonableness, frivolous, vexatious or bad faith behavior or conduct to be made out. Based on the above, I am not satisfied that threshold has been proven or reached, for that matter.

I agree with the Appellant that the intent was to provide relevant evidence to show that the Application failed to meet the statutory tests, that the variances requested were not minor in nature and her appeal was directly related to the variances that were of concern. I agree that the Appellant did not attempt to unjustly delay the Owners from constructing the proposed detached garage.

Further, I find that imposing costs in this situation could be interpreted as a deterrent to Persons contemplating becoming a Party or continuing to be a Party to a Proceeding.

DECISION AND ORDER

The request for an award of costs is denied.

X

Dino Lombardi
Panel Chair, Toronto Local Appeal Body