

DECISION AND ORDER

Decision Issue Date Wednesday, January 22, 2020

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): CITY OF TORONTO, SANDRE YOUNG MACDONALD

Applicant: GLENN RUBINOFF DESIGN GROUP

Property Address/Description: 74 THIRTY EIGHTH ST

Committee of Adjustment Case File: 18 214034 WET 06 MV (A0655/18EYK), 18 214025 WET 06 CO (B0071/18EYK), 18 214035 WET 06 MV (A0656/18EYK)

TLAB Case File Number: 19 119206 S53 03 TLAB, 19 119208 S45 03 TLAB, 19 119209 S45 03 TLAB

Hearing date: November 19, 2019

DECISION DELIVERED BY J. TASSIOPOULOS

APPEARANCES

NAME	ROLE	REPRESENTATIVE
MATTHEW DAVID GISMONDI	Owner/Party	
GLENN RUBINOFF DESIGN GROUP	APPLICANT	
SANDRE YOUNG MACDONALD	APPELLANT	
CITY OF TORONTO	APPELLANT	MARC HARDIEJOWSKI
ALAN YOUNG	Expert Witness	
SVETLANA VERBITSKY	Expert Witness	
LONG BRANCH NEIGHBOURHOOD ASSOC.	PARTY	
JOHN MACDONALD	Participant	

RON JAMIESON	Participant
CHRISTINE MERCADO	Participant
DOTTIE IRVINE	Participant
LULU LAZOS	Participant
DAVID MATOC	Participant
ALEXANDER DONALD	Participant
HECTOR E RIBEIRO	Participant
JOHN DENNIS MARSHALL	Participant
ESTER GOMEZ	Participant

INTRODUCTION

This is an appeal by Sandre Young MacDonald and the City of Toronto (City), both Appellants to the Committee of Adjustment (COA) decision for 74 Thirty Eighth Street, dated February 7, 2019. The COA approved a consent to sever the parcel and the related minor variances for proposed two storey dwellings on the resulting lots.

BACKGROUND

At the Toronto Local Appeal Board (TLAB) Hearing convened on Notice to consider the appeals, only the appellants, Sandre Young MacDonald, the City, and a participant, John MacDonald were in attendance. Neither the owner of the property nor a representative of the owner attended. The hearing was paused and TLAB staff were asked if the owner or if one of their representatives had contacted the TLAB about potential delay, but they had not. The hearing was resumed.

MATTERS IN ISSUE

At the beginning of the hearing two issues were raised. One was that the appeal should be disposed of since neither the owner nor their representative was in attendance. The other issue raised was that although the owner had submitted, on April 10, 2019 a Notice of Intention to be a Party (Form 4) and the Applicant's Disclosure (Form 3), no supporting documents were disclosed with these forms and were never submitted within the due date for document disclosure, April 23, 2019.

The City Solicitor, Marc Hardiejowski, argued that the appeal be allowed and that the consent to sever and the variances be denied since TLAB hearings are *de novo* in

nature and since the owner had not attended the hearing and there was no evidence provided upon which to determine whether the Applications met sections 3 Provincial Policy, the s. 45(1) Variance tests and the s.53 Consent considerations of the *Planning Act*. In support of this request Mr. Hardiejowski provided two decisions of the Local Planning Appeal Tribunal (LPAT): *Wannop v. Wannop*, O.M.B.D. 446 (2010) and *Ding v. Toronto (City)*, O.M.B.D. 451 (2015) and the November 21, 2018 TLAB decision by Member Makuch (18 152429 S53 06 TLAB, 18 152431 S45 06 TLAB and 18 152430 S45 06 TLAB.).

JURISDICTION

Provincial Policy – S. 3

A decision of the Toronto Local Appeal Body ('TLAB') must be consistent with the 2014 Provincial Policy Statement ('PPS') and conform to the Growth Plan for the Greater Golden Horseshoe for the subject area ('Growth Plan').

Consent – S. 53

TLAB must be satisfied that a plan of subdivision is not necessary for the orderly development of the municipality pursuant to s. 53(1) of the Act and that the application for consent to sever meets the criteria set out in s. 51(24) of the Act. These criteria require that " regard shall be had, among other matters, to the health, safety, convenience, accessibility for persons with disabilities and welfare of the present and future inhabitants of the municipality and to,

- (a) the effect of development of the proposed subdivision on matters of provincial interest as referred to in section 2 of the Planning Act;
- (b) whether the proposed subdivision is premature or in the public interest;
- (c) whether the plan conforms to the official plan and adjacent plans of subdivision, if any;
- (d) the suitability of the land for the purposes for which it is to be subdivided;
 - (d.1) if any affordable housing units are being proposed, the suitability of the proposed units for affordable housing;
- (e) the number, width, location and proposed grades and elevations of highways, and the adequacy of them, and the highways linking the highways in the proposed subdivision with the established highway system in the vicinity and the adequacy of them;
- (f) the dimensions and shapes of the proposed lots;

- (g) the restrictions or proposed restrictions, if any, on the land proposed to be subdivided or the buildings and structures proposed to be erected on it and the restrictions, if any, on adjoining land;
- (h) conservation of natural resources and flood control;
- (i) the adequacy of utilities and municipal services;
- (j) the adequacy of school sites;
- (k) the area of land, if any, within the proposed subdivision that, exclusive of highways, is to be conveyed or dedicated for public purposes;
- (l) the extent to which the plan's design optimizes the available supply, means of supplying, efficient use and conservation of energy; and
- (m) the interrelationship between the design of the proposed plan of subdivision and site plan control matters relating to any development on the land, if the land is also located within a site plan control area designated under subsection 41 (2) of this Act or subsection 114 (2) of the City of Toronto Act, 2006. 1994, c. 23, s. 30; 2001, c. 32, s. 31 (2); 2006, c. 23, s. 22 (3, 4); 2016, c. 25, Sched. 4, s. 8 (2).

Variance – S. 45(1)

In considering the applications for variances from the Zoning By-laws, the TLAB Panel must be satisfied that the applications meet all of the four tests under s. 45(1) of the Act. The tests are whether the variances:

- maintain the general intent and purpose of the Official Plan;
- maintain the general intent and purpose of the Zoning By-laws;
- are desirable for the appropriate development or use of the land; and
- are minor.

EVIDENCE

Given the absence of the owner, or any representative, from this hearing and that it was *de novo*, there was no evidence presented to allow the panel to conclude that the application for consent and variances met the requirements of sections 3, 45(1) and 53 of the *Planning Act*.

While the Appellants were prepared to proceed, there was nothing before the TLAB to be addressed. An Applicant has the onus to attempt, in the first instance, to present a *prima facie* entitlement to the statutory relief requested. The TLAB had nothing in writing or by oral submission, before it, in support of the requested permissions required by statute to be addressed.

ANALYSIS, FINDINGS, REASONS

In the absence of the owner or anyone representing them in attendance to provide evidence in support of the application in this hearing *de novo*, I cannot determine if the application and its requested severance and variances meet the requirements of sections 3, 45(1) and 53 of the *Planning Act*. I refer to the following LPAT decisions with respect to the need to present evidence in support of an application: *Wannop v. Wannop*, O.M.B.D. 446 (2010) and *Ding v. Toronto (City)*, O.M.B.D. 451 (2015). I have also considered the November 21, 2018 TLAB decision by Member Makuch.

I adopt the rationale for the decision in these cases and although not bound by them as parallel tribunals, I find the approach instructive and consistent for the circumstances.

DECISION AND ORDER

The appeal is allowed, the consent and variances are denied, and the file of the TLAB is closed.

This decision shall be provided to the Secretary-Treasurer of the Committee of Adjustment.

X

JOHN TASSIOPOULOS
Panel Chair, Toronto Local Appeal Body