**Toronto Local Appeal Body**

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# DECISION AND ORDER

**Decision Issue Date** Friday, February 28, 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): Carmen Pantalone

Applicant: Ida Evangelista

Property Address/Description: 282 McRoberts Ave

Committee of Adjustment Case File: 19 187619 STE 09 MV (A0755/19TEY)

**TLAB Case File Number: 19 239335 S45 09 TLAB**

**Hearing date:** Friday, February 14, 2020

**DECISION DELIVERED BY Justin Leung**

## REGISTERED PARTIES AND PARTICIPANTS

| | |
|---|---|
| Applicant | Ida Evangelista |
| Owner | Maria Vidinha |
| Appellant | Carmen Pantalone |
| Appellant's Legal Rep. | Alissa Winicki |
| Party | Virginio Vidinha |
| Party's Legal Rep. | Amber Stewart and Anthony Soscia |
| Expert Witness | Manuel Marcos |

## INTRODUCTION AND BACKGROUND

Carmen Pantalone had submitted an appeal to the Toronto Local Appeal Body (TLAB) in relation to a variance application decision (file NO A/0755/19TEY) as

rendered by the Toronto East York Committee of Adjustment (COA) for the municipally addressed 282 McRoberts Avenue.

The variance requests are outlined as follows:

**1. Chapter 10.5.60.20.(3)(C)(iii), By-law 569-2013**

The minimum required side yard setback for an ancillary building in a rear yard is 0.3 m. The rear two-car garage will be 0 m from the north side lot line.

**2. Chapter 10.5.60.50.(2)(B), By-law 569-2013**

The maximum permitted floor area of all ancillary buildings on a lot is 40 m2. In this case, the floor area of all ancillary buildings on the lot will be equal to 44.61 m2.

**3. Chapter 10.5.60.60.(1), By-law 569-2013**

The roof eaves of an ancillary building may encroach into a building setback a maximum of 0.3 m, provided the roof eaves are no closer to a lot line than 0.15 m. The roof eaves will encroach 0.3 m into the north side yard setback and will be located 0 m from the north lot line.

**4. Chapter 10.5.60.70.(1), By-law 569-2013**

The maximum permitted lot coverage by ancillary building is 10% of the lot area (28.33 m2). The rear two-car garage will have a coverage equal to 16% (44.61 m2) of the lot area.

**5. Chapter 10.5.50.10.(3)(A), By-law 569-2013**

A minimum 50% (81.3 m2) of the required rear yard landscaping must be soft landscaping. In this case, 35% (56.31 m2) of the required rear yard landscaping will be soft landscaping.

These variances were considered at the October 9, 2019 COA meeting where they were conditionally approved by the COA. An appeal was subsequently received by the TLAB on October 22, 2019 as submitted by Carmen Pantalone within the 20 day appeal period as stipulated by the *Planning Act*. The TLAB had scheduled a hearing for this matter on February 14, 2020.

The variance applicant/owner, Maria Vidinha, as represented by legal counsel Amber Stewart, subsequently submitted a motion to dismiss, dated January 30, 2020, as the applicant posits that the appeal is vexatious and frivolous and does not contain legitimate planning rationale. With this, I determined that an in-person motion hearing would be necessary to address these matters and suggested that the hearing date of February 14, 2020 be converted to a motion hearing. The appellant's legal counsel, Alissa Winicki of RV Law LLP, indicated she would be unable to attend this hearing date in email correspondence dated February 12, 2020. She further requested an adjournment of the matter. Ms. Stewart, in response, indicated that she would not be

amenable to this. As this request was made 2 days prior to the hearing date which did not provide sufficient time for the TLAB to respond it was decided to proceed with the February 14, 2020 hearing date where the adjournment and dismissal requests would be addressed concurrently.

## MATTERS IN ISSUE

The appellant contends that the proposed detached garage will contribute to prevailing stormwater and flooding issues of the area. In addition, due to what the appellant contends are site conditions due to the grading of the area, this garage could act to further disrupt his adjacent property. The applicant argues that this appeal is not posited within legitimate planning grounds. Moreover, this appeal has acted to hinder their ability to commence construction on their garage which, they opine, had been approved by the COA. The tribunal will need to determine if this appeal, as currently presented to the TLAB by the appellant, contains planning elements which should be adjudicated by the TLAB or if, as accentuated by the moving party, is an appeal which is not structured to legitimately address planning concerns and should be dismissed as such.

## JURISDICTION

This Motion requests an Order pursuant to Rule 9.1(b) of the TLAB's Rules of Practice and Procedures (Rules) which states:

> **9. ADJUDICATIVE SCREENING**
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> **Adjudicative Screening by Member**
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> 9.1 In the case of an Appeal under subsection 45(12) of the Planning Act the TLAB may propose to, or upon Motion, dismiss all or part of a Proceeding without a Hearing on the grounds that:
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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;
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> b) the Proceeding is frivolous, vexatious or not commenced in good faith;
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> c) the Appeal is made only for the purpose of delay;
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> d) the Appellant has persistently and without reasonable grounds commenced Proceedings that constitute an abuse of process;
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> e) the Appellant has not provided written reasons and grounds for the Appeal;
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> f) the Appellant has not paid the required fee;

g) the Appellant has not complied with the requirements provided pursuant to Rule 8.2 within the time period specified by Rule 8.3;

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

i) some aspect of the statutory requirements for bringing the Appeal has not been met; or

j) the submitted Form 1 could not be processed and the matter was referred, pursuant to Rule 8.4, for adjudicative screening.

## 23. ADJOURNMENTS

### Hearing Dates Fixed

23.1 Proceedings will take place on the date set by the TLAB and provided in the Notice of Hearing, unless the TLAB orders otherwise.

### Request for Adjournment must be on Motion

23.2 A Party shall bring a Motion to seek an adjournment, unless the adjournment is on consent in accordance with Rule 17.2.

### Considerations in Granting Adjournment

23.3 In deciding whether or not to grant a Motion for an adjournment the TLAB may, among other things, consider:

a) the reasons for an adjournment;

b) the interests of the Parties in having a full and fair Proceeding;

c) the integrity of the TLAB's process;

d) the timeliness of an adjournment;

e) the position of the other Parties on the request;

f) whether an adjournment will cause or contribute to any existing or potential harm or prejudice to others, including possible expense to other Parties;

g) the effect an adjournment may have on Parties, Participants or other Persons; and 33

h) the effect an adjournment may have on the ability of the TLAB to conduct a Proceeding in a just, timely and cost-effective manner.

**Powers of the TLAB upon Adjournment Motion**

23.4 On a Motion for adjournment the TLAB may:

a) grant the Motion;

b) grant the Motion and fix a new date, or where appropriate, the TLAB may schedule a prehearing on the status of the matter;

c) grant a shorter adjournment than requested;

d) deny the Motion;

e) direct that the Hearing commence or continue as scheduled, or proceed with a different witness, or evidence on another issue;

f) grant an indefinite adjournment if the request is made by a Party and is accepted by the TLAB as reasonable and the TLAB finds no substantial prejudice to the other Parties or to the TLAB. In this case the Moving Party must make a request that the Hearing be rescheduled or the TLAB may direct that the Moving Party provide a timeline for the commencement or continuance of the Proceeding;

g) convert the scheduled date to a Mediation or prehearing conference; or

h) make any other appropriate order including an order for costs.

## EVIDENCE

The hearing commenced with Ms. Amber Stewart addressing the request for adjournment as proposed by the appellant's legal counsel. Ms. Stewart argued that the request had not been done in accordance with *TLAB Rules*. As such, she contended that the request should not be considered by the tribunal and that the matter should proceed to hear the dismissal request at the onset.

I stated that the motion to dismiss was submitted to the tribunal in accordance with the *TLAB Rules.* However, the motion to adjourn, which was not done through the formal submission process as stipulated by the TLAB, did not appear to be appropriate to consider in this instance. Moreover, although the appellant's legal counsel was not in attendance, the appellant was and should have been prepared to be able to provide sufficient representation for the motion to dismiss. With this, I issued an oral decision to not permit the adjournment request. The hearing then proceeded to hear arguments in relation to the motion to dismiss.

Ms. Stewart's co-counsel, Anthony Soscia, proceeded to provide arguments in support of the motion to dismiss. Mr. Soscia contended that the appeal material as submitted by Mr. Pantalone does not contain the basis of an appropriate planning

rationale upon which the TLAB could grant relief following a Hearing on the merits. The issues as raised in the appeal in terms of potential water run off issues should be addressed by the City Building Department and not at the TLAB. Mr. Soscia further argued that Mr. Pantalone's property is not adjacent to the subject property so, as he contends, Mr. Pantalone's property may not be directly affected. He also stated that the adjacent property-owners had offered support to this proposal when it was initially presented to COA. Two witness statements, submitted by an engineer and architect, respectively, provided additional supporting materials to the proposal. In presenting their TLAB submitted materials, Mr. Soscia stated that, in his opinion, the majority of properties in the area have rear detached garages, similar to the proposal at hand. They also conducted variance research of previously approved applications in the area. With this data, he argued that the variances approved for detached garages in the past are consistent with this proposal. He cites the engineering report that they prepared which indicates that the proposal will not contribute to adverse impact of water run off for adjacent properties. Within this context, Mr. Soscia further argues that the appellant has not submitted any similar professional material to substantiate his contentions of water issues relating to this proposal, even assuming the issue is a relevant consideration.

Mr. Pantalone proceeded to provide his arguments to the tribunal. He stated that he believes there is an underground stream which runs through this area. He further opined that there are existing water and flooding related issues in the area and that this proposal would act to further negatively impact water flows. Water flow as part of this proposal would not be directed towards the front of the property, which he believes is not appropriate from an engineering perspective.

I asked Mr. Pantalone what his specific planning concerns with the proposal were. Mr. Pantalone responded that he believed variance #5 is unreasonable and that they should comply with zoning requirements pertaining to minimum soft landscaped area.

I inquired of the applicant about this variance request. Mr. Soscia responded that in fact the current soft landscaped area in the rear is below the zoning requirements. Their proposal would result in an increase of the landscape area which, they argue, will be a positive impact for the area.

I further asked if any comments had been received from City Engineering staff on this proposal. Mr. Soscia stated they had not provided formal comments.

## ANALYSIS, FINDINGS, REASONS

This section would initially address the adjournment request, which had been briefly accounted for in the previous 'Evidence' section. The tribunal found that as the adjournment request had not been made through appropriate processes as stipulated by *TLAB Rules*, it would not permit an adjournment at this juncture. Moreover, the tribunal found that the attendance of the appellant at the hearing should provide sufficient representation on the appeal matters from the perspective of the opposing party, despite no formal response to the Motion to Dismiss. This decision was issued

orally at the commencement of the hearing. With this, I then requested that the motion to dismiss be heard; a written decision would subsequently be issued.

To provide a context to this matter, it should be stated that the TLAB must exercise decisions in accordance with the *Planning Act* requirements and apply its Rules. As such, within this dynamic the tribunal must keep in focus the planning merits of a proposal to determine if it is consistent with requisite provincial and municipal planning documents in relation to the chosen grounds for a request for early dismissal. The motion hearing evidence and submissions focused principally on water and stormwater runoff issues which could be further impacted by allowing this proposed garage to be constructed at the subject property. A determination was needed to be made to ascertain if these issues as raised can be elevated to a planning level warranting appropriate analysis and consideration. This is succinctly interpreted by TLAB Member Burton in her Decision and Order for 92 Glenview Avenue, dated September 4, 2019, where she specifically outlined the provisions by which a motion to dismiss should be assessed:

> "As well, once a motion to dismiss is made, the onus shifts to the appellant to prove by planning evidence that the appeal has merit. It cannot "simply raise issues couched in land use planning terminology" ([Sheldrake and Springwater (Township), 2015 CanLII 66916 (ON LPAT), para 20], but must demonstrate legitimate planning grounds."[1]

Within this context, Member Burton also further stated that there must be cogent reasons provided, on the part of the appellant, as to how the proposal does not meet the provisions as prescribed in the *Planning Act* and other requisite planning documents. If this threshold is not met, then the motion to dismiss must be granted in accordance with the pertinent rules and regulations.

While the appellant has outlined in comprehensive detail water issues which he articulates has been a pervasive issue for the area, the appellant did not provide any evidentiary material of a professional nature which acted to demonstrate that this garage proposal would act to contribute to flooding and storm-water issues for the area. The applicant did submit materials as prepared by a professional architect and an engineer to demonstrate that, in their opinion, the proposal will not act to disrupt the existing water and grading conditions of the area in a negative manner. As these professionals have affixed their professional credentials to these related reports, and would be tendered to give evidence with no creditable challenge evidenced, the subject matter of the appeal, if relevant at all, would have no support. I find the appeal is supported only by mere apprehensions on a subject matter of the most tenuous kind as a genuine and legitimate land use planning matter.

[1] TLAB Decision and Order: 92 Glenview Avenue (2019, September 4) Retrieved from https://www.toronto.ca/wp-content/uploads/2019/09/964f-TLAB_19-185665-S45-08-TLAB_92-Glenview-Ave_Motion-Decision_Dismissed_GBurton.pdf

Mr. Pantalone inaccurately referenced that the provincial Ministry of Environment (MOE) is tasked to assess water issues for the area, when in fact this mandate would be carried out by City departments and the Toronto and Region Conservation Authority (TRCA). Upon cursory review of the TRCA mapping on regulated areas, or areas of significant environmental and floodwater concern, it is found that this property does not fall within such a regulated area. In assessing this mapping, it is further found that there are no streams or significant water flows traversing this area. It could thus be surmised that there is not a higher degree of floodwater risk which affects this area. Moreover, Mr. Pantalone, while indicating that variance #5 (A minimum 50% (81.3 m2) of the required rear yard landscaping must be soft landscaping. In this case, 35% (56.31 m2) of the required rear yard landscaping will be soft landscaping) was not appropriate, he did not appear to be able to succinctly describe how the other variance requests were not consistent for the area. His arguments as presented also did not provide commentary as to how and by what manner the four tests for variances would be addressed and how they would not be appropriate for with this proposal.

With the material and arguments as presented, the tribunal finds that the motion to dismiss to be reasonable and applicable in this instance. Although the tribunal understands that there may be potential local concerns regarding water runoff, it has not, through its cursory review of the matter, found that there are substantial water or flooding issues here sufficient to make the subject matter a legitimate land use planning concern.

The tribunal recognizes that there can be water issues afflicting a variety of City neighbourhoods which is not atypical in large urban centres. These issues can, and should be addressed by relevant City departments, and not by the TLAB. Residents should engage such departments or their elected officials to ensure the proper response is provided.

The TLAB can only assess matters as presented within a planning context. Within that dynamic, the tribunal finds that the proposed garage would meet the threshold as established through provincial policy, the four tests for a variance and will be compatible with the prevailing character of the neighbourhood. The proposal constitutes the typical reinvestment in individual properties by area owners which is indicative of development pattern in large urban centres.

Finally, as the appellant is not an adjacent property, the variances requested will not have a direct visual impact and will not be dis-similar to other detached rear garages which currently exist in the area.

## DECISION AND ORDER

The Motion to Adjourn the appeal is denied.

The Motion to Dismiss the appeal is granted. The decision of the Committee of Adjustment dated October 9, 2019 is confirmed and is final and binding.

The file of the TLAB on this matter is closed and the Secretary-Treasurer of the Committee of Adjustment is to be advised accordingly.

X 

J. Leung
Panel Chair, Toronto Local Appeal Body