

# DECISION AND ORDER

**Decision Issue Date**      **Tuesday, March 30, 2021**

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): MICHAEL RICHARD ZURAWSKI

Applicant(s): CHRISTOPHER MARCHESE

Property Address/Description: 30 WENDOVER RD

Committee of Adjustment File Number(s): 20 113269 WET 03 MV

**TLAB Case File Number(s): 20 227733 S45 03 TLAB**

**Last Submission date:**      **March 10, 2021**

**DECISION DELIVERED BY STANLEY MAKUCH**

## APPEARANCES

Name	Role	Representative
Christopher Marchese	Applicant	
Michael Richard Zurawski	Owner/Appellant	Adam Giel
Katrin Mai Altosaar	Primary Owner/Party	Adam Giel
Nick Pileggi	Expert Witness	

## INTRODUCTION

This is a motion to amend a minor variance application to be heard on appeal by TLAB. The appeal currently is respect to one variance to permit the widening of a driveway from 2.6 metres to 4.35 metres. That variance was refused. The amendment would add an additional variance to the application "to permit a parking space in the

front yard, where it does not lead to a parking space, whereas the by-law does not permit a parking space in the front yard.” (sic) The appellants seek permission to amend the application without providing additional notice.

## **BACKGROUND**

The purpose of the motion is to address the failure of the original application to include a variance to permit front yard parking. The application for a zoning bylaw review provided no notice with respect to front yard parking; only the widening of the driveway was included. As a result the zoning review notice and thus the Committee of Adjustment gave no notice of a variance to permit front yard parking and it was not considered by the Committee. The appellants now seek to add a variance to the appeal to permit front yard parking as a second zoning bylaw review notice, provided after the Committee of Adjustment hearing, included the need for this additional variance. They wish to add this additional amendment without providing any notice.

## **MATTERS IN ISSUE**

The only matter in issue is whether the application on appeal should be amended to permit the additional variance to be considered without notice.

## **JURISDICTION**

Jurisdiction for TLAB to amend the application is found under the following sections of the Planning Act:

(18.1) On an appeal, the Tribunal may make a decision on an application which has been amended from the original application if, before issuing its order, written notice is given to the persons and public bodies who received notice of the original application under subsection (5) and to other persons and agencies prescribed under that subsection.

18.1.1) The Tribunal is not required to give notice under subsection (18.1) if, in its opinion, the amendment to the original application is minor.

## **EVIDENCE**

The evidence presented demonstrated that a property across the street from the applicants' property obtained a variance for driveway widening which permitted front yard parking without the additional variance respecting the prohibition against front yard parking. The evidence also demonstrated that the Transportation Department had no objection to the original variance in spite of an original concern as to whether the parking would be partially on the City's property. It also appeared that the failure to include the required variance for front yard parking in the zoning review notice was an error.

## **ANALYSIS, FINDINGS, REASONS**

The question of whether notice should be required is a complex one. The appellants argue that the additional variance is technical only and thus new notice is not required. The original and new variance accomplish the same purpose, it could be argued, as the widened driveway would in fact permit parking in the front yard by virtue of the driveway widening.

However, the purpose of the original prohibition appears to be to prohibit wide driveways more generally while the proposed variance is to a bylaw, the purpose of which is to prohibit front yard parking. Therefore, the original variance, it could be argued, did not address front yard parking. More importantly no notice was given by the Committee to anyone that a front yard parking variance was being sought. Yet a number of letters were sent to the Committee objecting to the original variance on the basis that its purpose was to permit front yard parking.

The question remains: is the additional a minor amendment. I find it is not. The original application made no mention of front yard parking, no variance was included for front yard parking and standing alone, if granted, it will not permit front yard parking. The additional variance is a significant amendment to the application. If granted, it would permit a prohibited use. Moreover, front yard parking, given the letters of objection to the Committee, may be of significant concern on the street.

Nevertheless, I have some sympathy for the applicants. They relied on an examiner's notice that was deficient and had the example of a similar variance being granted for a property opposite theirs. However, it is important that the public receives proper notice of the variances being sought. New notice can be distributed, by the appellants, of the additional variance, without requiring a new application. A new TLAB hearing date can be set so that adequate notice can be provided in a timely manner. The hearing should not be unduly delayed.


## DECISION AND ORDER

The motion is refused. If the appellants wish to amend the application they will do so in accordance with the following:

The Applicant shall provide a new notice of the two variances being sought to all residential properties on Wendover Rd.

The hearing of this matter will be adjourned *sine die* to a new hearing date to be arranged by the appellants.

The new notice will provide 30 days notice of the new hearing date.

X 

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S. Makuch

Panel Chair, Toronto Local Appeal