

DECISION AND ORDER

Decision Issue Date Tuesday, March 16, 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): Charles Fremont Scott; Cynthia Ann Robertson; Lee Kenneth Ferrier

Applicant: Goodmans LLP

Property Address/Description: 22 Lewes Cres

Committee of Adjustment Case File Number: 19 248391 NNY 15 MV (A0700/19NY)

TLAB Case File Number: 20 112117 S45 15 TLAB

Hearing date: Monday, April 12, 2021

DECISION DELIVERED BY A. Bassios

APPEARANCES

Applicant	Goodmans LLP
Owner	John Gedeon
Appellant	Cynthia Ann Robertson
Appellant	Charles Fremont Scott
Appellant	Lee Kenneth Ferrier
Appellant's Legal Rep.	Mary Flynn-Guglietti
Party	City of Toronto
Party's Legal Rep.	Marc Hardiejowski
Party	John Gedeon
Party's Legal Rep.	David Bronskill

INTRODUCTION

This matter arises by way of an appeal from the North York panel of the Committee of Adjustment (COA) decision and approval, with conditions, of variances to construct a new dwelling at 22 Lewes Crescent (subject property). The matter was appealed to the Toronto Local Appeal Body (TLAB) on February 4, 2020.

The subject property is located in the Lawrence Park neighbourhood.

Having been previously adjourned at with the consent of all Parties, the Hearing for this matter is set for April 12, 15 and 19, 2021.

A request has been made to the TLAB for an early disposition of this matter, premised on a settlement agreement between the Parties.

BACKGROUND

On March 2, 2021, the TLAB received correspondence from Mr. David Bronskill, (Goodmans LLP) on behalf of the Owner. With the consent of all the Parties, Mr. Bronskill advised the TLAB that the Parties have reached a settlement. A copy of the settlement minutes was provided.

The settlement included a request that the TLAB allow the Appeal and dismiss the variances authorized in the COA decision. The TLAB is requested to authorize the Appeal without requiring an appearance before the Tribunal. A Decision of then TLAB Chair Ian Lord in respect of the property at 59 Thirty First Street was provided for the TLAB's reference in this regard.

The TLAB is requested to regard all of the materials filed on behalf of the Applicant as withdrawn and to remove them from the TLAB website.

MATTERS IN ISSUE

This is a somewhat unusual circumstance as the TLAB is being requested to employ its authority to grant an Appeal without a Hearing of the Appeal, or the filing of a Motion.

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 of the Greater Golden Horseshoe for the subject area ('Growth Plan').

Rule 2 – APPLICATION OF THE RULES

Interpretation of these Rules

- 2.1 The Local Appeal Body is committed to fixed and definite Hearing dates. These Rules shall be interpreted in a manner which facilitates that objective.
- 2.2 These Rules shall be liberally interpreted to secure the just, most expeditious and cost-effective determination of every Proceeding on its merits.
- 2.3 The Local Appeal Body may exercise any of its powers under these Rules or applicable law, on its own initiative or at the request of any Person.
- 2.4 Where any of these Rules or any order issued by the Local Appeal Body conflicts with any statute or regulation, the provisions of the statute or regulation prevail.

Matters Not Dealt With by the Rules

- 2.5 Where procedures are not provided for in these Rules the Local Appeal Body may do whatever is necessary and permitted by law to enable it to effectively and completely adjudicate matters before it in a just, expeditious and cost effective manner.

Compliance with the Rules

- 2.9 Substantial compliance with the requirements of these Rules is sufficient.

Relief and Exceptions to the Rules

- 2.10 The Local Appeal Body may grant all necessary exceptions to these rules, or grant other relief as it considers appropriate, to enable it to effectively and completely adjudicate matters before it in a just, expeditious and cost effective manner.

EVIDENCE

The Applicant's legal representative has provided Minutes of Settlement wherein the Parties acknowledge and agree that the Owner will abandon pursuit of the variances granted by the COA on January 16, 2020. The Owner has committed that evidence will not be called in support of the variances requested, the Appellants' witnesses will not be cross examined and no submissions will be made on his behalf other than to support the granting of the Appeals and the dismissal of the variances.

A request has been made by the Applicant's legal representative that the matter be decided by the TLAB without the need for a Hearing. In addition, the Owner wishes to withdraw all materials filed with the TLAB and the Tribunal is requested to remove the materials filed with the TLAB by the Owner/Applicant.

ANALYSIS, FINDINGS, REASONS

The proposal before the TLAB for the resolution of this matter would result in the rescinding of the approvals previously granted by the COA, resulting in no land use change on the subject property. Therefore, in this particular circumstance, Provincial Policy, the Official Plan and other planning instruments are not engaged. The question for the TLAB is a procedural one; should the Appeal be allowed without the hearing of evidence?

To go through the motions of holding a Hearing where the Applicant will not call evidence in support of the application and will not make the case to the TLAB that the application meets the four tests under s. 45(1) of the Planning Act, is somewhat pointless.

To my mind, to conduct a hearing for the purposes of confirming the status quo on the subject property fulfils no real purpose and would be an unnecessary expense for the Parties and an inefficient use of the TLAB's time and resources.

There is latitude under TLAB Rule 2 for me to exercise jurisdiction in these circumstances where there is no opposition to the Appeal and no land use change as a result of the request. In short, I do not see a land use purpose nor a procedural purpose for the conducting of a Hearing on this matter. I find that an evidentiary proceeding, whether in-person, electronically or in writing, to be unnecessary in these unique particular circumstances.

In this unusual circumstance where no evidence will be led on this matter and the Applicant is choosing to relinquish the approvals granted by the COA, I agree that the materials submitted in support of the application are no longer relevant and may be removed from the TLAB website.

DECISION AND ORDER

1. The Appeal is allowed, and the decision of the Committee of Adjustment issued January 16, 2020, for the Case File Number referenced above is set aside. No costs or refunds are claimed, applicable or allowed.
2. This Decision and Order is without prejudice to a subsequent application to the Committee of Adjustment on the subject property.

3. The Hearing scheduled for April 12, April 15 and April 19, 2021 is hereby vacated and no further submissions or attendance is required.
4. TLAB staff are directed to remove all materials submitted to the TLAB by the Applicant and Owner from the TLAB's website.

X 

A. Bassios
Panel Chair, Toronto Local Appeal Body