Toronto Local Appeal Body

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DECISION AND ORDER

Decision Re-issue Date Thursday, April 01, 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): George Labrakos

Applicant(s): RSI First Aid Ltd

Property Address/Description: 40 Ainsworth Rd Unit 1

Committee of Adjustment File

Number(s): 19 224412 STE 14 MV (A1011/19TEY)

TLAB Case File Number(s): 20 190745 S45 14 TLAB

Hearing date: Monday, February 08, 2021 and March 26, 201

DECISION DELIVERED BY S. Gopikrishna

REGISTERED PARTIES AND PARTICIPANTS

Appellant	George Labrakos
Applicant	RSI Aid Ltd
Owner	Betterdot Systems Inc
Participant	Lisa Pearson
Participant	Ashley Richards-Dixon

INTRODUCTION AND BACKGROUND

Fabien Tiburce is the owner of 40 Ainsworth Road, Unit 1, which is described as a condominium, located in Ward 14 (Toronto-Danforth) of the City of Toronto. He is also the owner of Betterdot Systems, which is listed as the “Owner” in the Application respecting the Subject site to the Committee of Adjustment (COA). He applied to the COA to construct a front third storey addition, above the existing two-storey residential building.

On August 19, 2020, the COA considered the application and the variances, and approved all the requested variances. On 8 September,2020, George Labrakos, who lives at 52 Ferrier Avenue (behind the Subject property), appealed the decision of the COA to the Toronto Local Appeal Body (TLAB).

The TLAB originally set a Hearing date for 6 February, 2021- no Decision could be reached at this Hearing for reasons set out in my Interim Decision dated 23 February, 2021. As a result of my allowing other community members to submit paperwork to the TLAB, electing for Participant or Party status, Lisa Pearson and Ashley Richards-Dixon, who live at 60 Ferrier Avenue and 62 Ferrier Avenue respectively, elected for Participant status, and submitted Witness Statements, prior to the rescheduled Hearing of 26 March, 2021.

MATTERS IN ISSUE

1. **Chapter 10.10.40.10.(1), By-law 569-2013**
The maximum permitted building height of the front exterior main walls is 7.5 m.
The altered building will have a front main wall height of 10.56 m.
2. Exception 900.2.10.(312), By-law 323-85
A minimum 64.0 m2 of personal recreation space in the form of private roof decks is required.
There will be 56.7 m2 of personal recreation space in the form of a private roof deck.
3. Exception 900.2.10.(312), by-law 323-85
The maximum permitted gross floor area is 606 m2.
There will be 620.12 m2 of gross floor area.

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').

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

The Hearing held on the morning of 26 March, 2021, was attended by Parties Tiburce (representing Betterdot Systems Inc.), and Labrakos, as well as Participants Pearson, and Richard-Dixon.

I explained the order in which the Parties and Participants could present their evidence, as well as their rights to ask questions of others, under the aforementioned categories. I specifically stated that the Hearing was *de novo*, which meant that the TLAB would look at the entire application afresh, without reference to the proceeding before the COA. I also added that the onus was on the Applicant to prove their case.

Mr. Tiburce explained the circumstances under which he had bought the Subject property, and how the proposal was the consequence of his wanting to build an extra bedroom for one of his sons. He spoke to how the building dated back to 1923, had been originally designed as a warehouse, and how it had been converted to condominiums in the 1986. He then talked about his family and how they had moved in a few years ago into the condominium, and how the family needed more space as a result of his children becoming teenagers. He talked about how the roof had started leaking at the Subject property in the recent past, and that he had to "move out with his family" from the condominium. He stated that he had no idea that there was opposition to his Application till "they showed up at the COA meeting", and expressed his disappointment about "one of the community members", who had "been knocking doors getting signatures from the neighbours to stop the project". He lamented how the entire project had been put on hold as a result of the Appeal to the TLAB, how much money had been wasted, before declaring he couldn't understand the how, why and what of the opposition to the project.

When I asked Mr. Tiburce to discuss the variances specifically, he said that the "variance was to build an extra bedroom". When asked if he had consulted anybody before embarking on the project, he said that he had spoken to his contractor, who had helped him at the COA proceeding. Mr. Tiburce added that he didn't know any other details about the project, and that he relied on the "expertise of the Panel Members of the COA", who according to him, had congratulated him after they had approved his application, and told him " You got what you wanted!". In response to a question from me to identify the individual who made this comment, Mr. Tiburce demurred, and said that he couldn't remember. I asked Mr. Tiburce to comment on the four tests under Section 45.1, and he said that he didn't know the answer, nor what the tests addressed.

Mr. Labrakos asked a few questions of clarification- when he asked Mr. Tiburce about the height of the wall facing the fence, the latter's response was "Wouldn't I need that much to be able to breathe?". When asked about the dimensions of the room, and if it overlooked the yards of the houses on Ferrier Avenue, Mr. Tiburce denied that there was any overlook, and added that the neighbours had "gone ahead and built extensions to their houses", while not allowing him to have extra space for his children.

Mr. Labrakos was the next Witness to speak. He spoke of the neighbourhood as consisting of houses which were no more than 6 feet wide, but “were really long; up to 80 feet”, and that much of the amenity space enjoyed by the community members was in the backyards, behind their houses. He expressed concerns about “shading” caused by the proposal on the backs of the houses, and how they would see a “concrete wall”, where they saw a fence at present. He also expressed concerns about the “boxy” look of the proposal, if constructed, and said that this was out of character in the community. He also drew my attention to an Agreement between Knighthall Holdings Inc., the ”Owner” of the “lands at 40 Ainsworth Ave.” and the “Corporation of the City of Toronto” , which specified that “pursuant to Section 40 of the Planning Act” **By-Law 324-85** (my emphasis) of the City of Toronto was being amended such that the buildings to be developed “would be in substantial accordance with the Plans and Drawing Nos 1, 2, 3 and 4, dated December 21, 1984, provided by M.J. Design Consultants” and that the owner would maintain a 1.5 metre high closed board privacy screens bordering all roof decks “as shown in the plans and drawings” and that “a 1.67 metre high closed board fence along the length of the west boundary line” would be maintained. The agreement also stipulated that the “Owner shall provide and maintain within the development a walkway along the property line” as shown in the aforementioned drawings, followed by specifications for the intensity of the lighting on the walkway. Lastly, the Agreement specified that the “Agreement shall be provided and maintained by the Owner at its sole risk, and expense to the satisfaction of the City, and in default thereof the provisions of Section 325 oif the Municipal Act, R.SO. 1980, Chapter 302,as amended shall apply”.

Mr. Labrakos expressed concerns that the proposal contradicted what had been agreed upon in the Agreement (henceforth referred to as “The 1985 Agreement”.)

Lastly, Mr. Labrakos emphasized that the Applicant had not provided any evidence whatsoever about the planning merits of the proposal, and that this was the primary reason why the Application should be refused.

Ms. Richards- Dixon next gave evidence about her concerns. After I ascertained that she worked as a lawyer, she spoke about regarding her concerns about the proposal not being maintaining the conditions set forth in the 1985 Agreement . She asked about the impact of the proposal on the “narrow by-lane between the houses” that had to be used to access her garage, and how narrow the by-lane was to begin with- “only one car can pass at any point in time”. Ms. Pearson, who spoke next, echoed many of the concerns raised by Mr. Labrakos, and Ms. Richards- Dixon. She added that in her house, the windows of the bedrooms, facing the fence, were presently occupied by her daughters , and that they would face a “brick wall” if the proposal was allowed, and questioned the impact of the proposal on the privacy of her daughters.

In Reply, Mr. Tiburce stated that there would be no “concrete wall” (it would be built of stucco, he said) , and that there would be no windows on the wall facing the bedrooms occupied by Ms. Pearson’s daughters. On the matter of the 1985 Agreement, he exclaimed ”1985! 35 years ago!”, before discussing how much Toronto, and the surrounding community had changed over these 35 years. As for the alleged “boxy”

look of the proposal, he retorted that everybody present at the Hearing had houses with a look “more boxy” than what he was proposing to construct.

Mr. Tiburce added that he also owned Unit 4 at 40 Ainsworth Road, in addition to the Subject Property at Unit 1, and that he had been advised by the former owner of Unit 4, that the contract referred to by the Opposition had no significance. When asked who the former owner was, and how they had established that the Agreement had no significance, Mr. Tiburce took a few minutes to search through his records to give me the name of the former owner, and said that “somebody at the City” had told the former owner about how the contract did not have to be honoured by the new owners.

I thanked the Parties and Participants, and advised them that I would reserve my Decision

ANALYSIS, FINDINGS, REASONS

It is important to reiterate that at any Hearing before the Toronto Local Appeal Body, the onus to prove one’s case rests with the Applicant. It is expected that the Applicant would provide cogent evidence about the character of the neighbourhood, and how their proposal reinforces the character, before describing how the proposal does not offend the Official Plan, or the Zoning By-Laws which govern the Site. Lastly, it is expected that the Applicant will demonstrate that their proposal would not have any adverse, unacceptable impacts on the neighbours. These concerns become acute, and are crucial to address, when new construction in a tightly packed neighbourhood,(such as the one in which the Subject property is located) is contemplated.

The Applicant did not provide any meaningful evidence about any of these questions, despite my seeking specific clarification on these matters- there was no evidence regarding the OP, or the Zoning By-Laws. Any answer pertaining to the test of minor was in response to questions raised by the Opposition, and was merely asserted, as opposed to being demonstrated, or proven.

What I understood of the Applicant’s evidence was that he was deeply unhappy with the opposition from the neighbours. The response to many of the objections raised by the neighbours mirrored the wisdom of “Those who live in glass houses should not be throwing stones at others.” While this perspective may be a profound commentary on how the world works, it does not have even an iota of importance as far as the Appeal before the TLAB is concerned, because there is no nexus whatsoever between the saying with planning principles. I find that the Applicant’s evidence, while rich in rhetoric, suffers from a paucity of planning evidence.

As a result of my finding that there is no relevant evidence being proffered with respect to the four tests provided under Section 45.1 of the Planning Act, I have to allow the Appeal, and refuse the variances in their entirety.

I acknowledge the arguments made by the opposition members, including the 1985 Agreement between the City, and Knighthall Holdings Inc, concerning development at

the Subject site. I note that the Agreement refers to By-Law 324-85 of the City of Toronto, when the relief that is sought by the Applicant is from By-Law 325-85 of the City of Toronto. The nexus between By-Laws 324-85, and 325-85, was not explained by the Opposition.

There was no evidence presented about how the updates and changes to the Official Plan, Zoning By-laws, and the Planning Act itself, impact the original Agreement- consequently, no finding is made on the relevance of the evidence of what seems to the bulwark of the neighbours' opposition to the proposal. However, given my finding that the proposal and variances are to be refused due to the paucity of planning evidence presented by the Applicant, it would not be necessary to further analyze the evidence presented by the Opposition.

The Appeal is therefore allowed, and the requested variances are refused.

DECISION AND ORDER

. 1. The Appeal respecting 40 Ainsworth Road, Unit 1 is allowed, and the decision of the Committee of Adjustment , respecting the same property, dated August 19, 2020, is set aside.

2. All of the requested variances, as recited in the "Matters in Issue " Section are refused.

So orders the Toronto Local Appeal Body.

X 

S. Gopikrishna
Panel Chair, Toronto Local Appeal Body