

# DECISION AND ORDER

**Decision Issue Date**      Friday, May 14, 2021

PROCEEDINGS COMMENCED UNDER section 45(12), subsection 45(1) of the Planning Act, R.S.O. 1990, c. P.13, as amended

Appellant(s):                      2624237 ONTARIO CORP

Applicant(s):                      MGL & CO INC

Property Address/Description: 1571 SANDHURST CRCL

Committee of Adjustment File

Number(s):                        20 123889 ESC 23 MV

**TLAB Case File Number(s): 20 169974 S45 23 TLAB**

**Hearing date: Friday April 23<sup>rd</sup>, 2021**

**Deadline Date for Closing Submissions/Undertakings:**

**DECISION DELIVERED BY D. Lombardi**

## REGISTERED PARTIES AND PARTICIPANTS

Applicant                            MGL & CO INC

Owner                                2624237 Ontario Corp

Appellant                          2624237 Ontario Corp

Appellant's Legal Rep.        MGL & CO INC

## INTRODUCTION AND BACKGROUND

This is an appeal by 2624237 Ontario Corp. (Appellant) from a decision of the Scarborough District Panel of the City of Toronto (City) Committee of Adjustment (COA)

refusing a single variance to permit an indoor zoo (Application) in Unit 155 of the Woodside Square Shopping Mall (Mall) located at 1571 Sandhurst Circle (subject property). The proposed use would be located in the lower level of the Mall with access from the main floor of the Mall.

The subject property is located at the northwest corner of McCowan Road and Finch Avenue East in the Agincourt North Community of the former City of Scarborough. The property is designated '*Mixed Uses Areas*' in the City Official Plan (OP) and is zoned CC - Community Commercial, in Zoning By-law No. 12797. Under the CC Zoning category, an indoor zoo is not a permitted use.

The Toronto Local Appeal Body (TLAB) convened a 'virtual' Hearing in respect of the appeal on April 23, 2021 by way of the City's WEBEX meeting platform. In attendance, remotely, at the Hearing were Maggie Low, MGL & Co. Inc., the Applicant and the Appellant's representative, and Robert Guo, who attended as an observer on behalf of the Appellant.

Mr. Guo informed me that he is the son of one of the Owners of the subject property but attended to provide assistance to Ms. Low.

At the outset, I advised that pursuant to Council's direction, I had attended the site, walked the surrounding neighbourhood, and had reviewed the file although it is the evidence to be heard that is of importance.

At the commencement of the Hearing, it was established that the Applicant had not provided any Disclosure Documents to support the Application, apart from her Witness Statement (Form 12), which was filed with the Tribunal on March 21, 2021. The Applicant also confirmed that the Appellant had not retained Legal Counsel or an Expert Witness to provide evidence on their behalf.

Ms. Low stated her intention to rely solely on her Witness Statement to provide evidence to support the Appellant's position that the variance sought meets the four statutory tests under s. 45(1) of the *Planning Act (Act)*.

## **MATTERS IN ISSUE**

The matters in issue in this proceeding are: whether the change in use sought by the Application is justified on the merits, with or without conditions; whether the Application meets the four tests under the *Planning Act*; and whether the Applicant has provided the necessary evidentiary basis for the TLAB to approve the single variance requested?

## **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 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.

### ***Uses Defined Generally by the By-Law – S. 45(2)(b)***

Where the uses of land, buildings or structures permitted in the by-law are defined in general terms, may permit the use of any land, building or structure for any purpose that, in the opinion of the Panel, conforms with the uses permitted in the by-law. R.S.O. 1990, c. P.13, s. 45 (2).

## **EVIDENCE**

Ms. Low, an architectural technologist practicing in Ontario, provided an opening statement. Her expertise is in obtaining building permits for her clients.

She acknowledged having been retained by the Appellant/Owners to process the Application through the approvals process and confirmed that she had appeared before the COA at the hearing on July 10, 2020 on behalf of the Appellant.

She was affirmed and reiterated that she would be relying principally on her Witness Statement. She agreed that the Appellant had filed no other documents in support of the subject Application.

Ms. Low described the proposal as an innovative and interactive, indoor petting zoo to be situated in Unit 155 in the lower level of the Woodside Square Shopping Mall. The zoo is to be comprised of a series of 'stations' at which different animals would be displayed and showcased and where visitors could learn, interactively, about each variety of species. A small retail component is also anticipated although she did not elaborate as to this aspect of the use other than to suggest it may be to sell ancillary souvenirs.

She referenced the site plan of the Mall (Drawing SP1) and the proposed floor space layout of Unit 155 (Drawing A100) both of which were entered into the record as Exhibit 1.

Ms. Low asserted that the zoo would feature only 'small-sized' (her term) species and that the proposal would also include a Nursery/observation room where medical attention would be provided to the animals. She also submitted that the space in which the zoo is to be located, which was formally a cinema at one point, is an appropriate size for the proposed use and that the anticipated room capacity would meet Building Code standards.

On being prompted to address the statutory tests of the *Act*, she cited from her Witness Statement in which reference is made to OP Policy 4.5, *Mixed Use Areas*; she submitted that "*the proposed project does not deviate from the Land Use Plan but enriches it.*" (p. 4, Party Witness Statement of Ms. Low) She then alluded to Development Criteria a) and b) in Policy 4.5.1.2 and submitted that the indoor zoo would augment the range of amenities as well as job opportunities in the local community in addition to providing learning activities related animals and nature.

The only other point that Ms. Low attempted to make was that the variance sought to permit an indoor zoo was desirable for the appropriate development of the subject lands. In referencing her Witness Statement, she asserted that the City had already adopted the premise of an indoor zoo in other locations in Toronto and offered the somewhat extraneous comparative example of the Ripley's Aquarium. She also highlighted other examples of indoor zoological establishments, specifically the 'Reptilia Zoo', located in the City of Vaughan and the Town of Whitby.

Upon being queried as to whether these examples were located in shopping centres similar to the subject site, she conceded they were not but that they were, in fact, situated within what are employment or industrially zoned areas.

In conclusion, Ms. Low stated that the Application to permit an indoor zoo at this location is "*a simple proposal*" (her words) and that in her opinion the proposal is not a "*huge deviation*" from what is permitted within Zoning By-law 12797. She submitted that the indoor zoo would benefit the community through the provision of educational and entertainment opportunities within an innovative petting zoo format that she characterized as being unique to the Canadian marketplace.

I, then, asked Mr. Guo if he wished to make a statement regarding the Application; he declined the invitation.

## **ANALYSIS, FINDINGS, REASONS**

The TLAB is committed to sustaining an accessible forum for the resolution of land use disputes within its mandate. On occasion, this means that latitude will be granted to those who are self-represented and those who are not familiar with the TLAB appeal process. This, however, does not mean that a Party involved in a Hearing before

the Tribunal, and in this case the Applicant and the Owner's representative, is excused the basic responsibilities and respect that must be accorded to the TLAB process.

There are numerous resources, on the TLAB website and elsewhere, that are available to assist the public and stakeholders that engage in the appeal process in understanding what a Hearing before the Tribunal entails and the duties and obligations of Parties, Participants and Representatives in the TLAB appeal.

In this matter, it is the Applicant that is requesting that the TLAB grant a variance to the use of the *land, building or structure* as is vested in the jurisdiction of the Tribunal as expressed in s.45(1) of the *Planning Act*. But that entitlement is required to survive an assessment of all relevant considerations and be reasonable, including the consideration of the four tests in the *Act*.

In the subject matter before this Tribunal, however, the Owners have chosen to spare themselves the expense of retaining an Expert Witness or legal counsel to guide them through the process of the hearing of the appeal. Instead, they chosen to retain Ms. Low who was not completely alert to the requirements of the TLAB process and who, except for her own Witness Statement, failed to file any relevant, supporting documents or evidence in the matter.

This is a choice, perhaps ill-advised, that Parties are free to make. They are not, however, excused from the obligations required by the TLAB.

While some participants might be unacquainted with the principles of administrative law, or those of good community planning, even the most cursory of research would identify that the basis for granting of variances to a Zoning By-law in Ontario, whether at the Committee of Adjustment or via appeal at a tribunal, rests on the applicant satisfying the four tests outlined in s.45(1) of the *Act*. In other words: do the variances maintain the general intent and purpose of the Official Plan; do they maintain the general intent and purpose of the Zoning By-laws; are they desirable for the appropriate development or use of the land; and are they minor.

An appeal against a decision of the COA is a hearing 'de novo' meaning that the entire application must be considered anew. The burden rests squarely on the Applicant to prove its case, even where the COA has previously authorized the requested variances. As has been established in various case law, 'variances are a privilege and not a right'.

It is the Applicant's responsibility to put before the Tribunal the evidence necessary to enable the TLAB to make findings required by the *Act*. In this matter, the Applicant has failed to address these four tests in any substantive way. Although Ms. Low very briefly alluded to the Official Plan and the Zoning By-law, it was only on the prompting of the presiding Member, and only superficially. She provided no substantive evidence to support the assertion that the requested variance maintains the general intent and purpose of the OP or, for that matter, the Zoning By-law.

This was also the case for her position that the requested variance to permit an indoor zoo is desirable for the appropriate development of the land. Simply stating that the proposal is premised on similar examples of other zoological establishment in Toronto or elsewhere in the Greater Toronto Area such as Ripley's Aquarium and Reptilia Zoo, which were "*previously approved and have integrated within the respective communities*" (her words) is facile and unconvincing.

The evidence presented does not rise to the threshold of convincing me that the four statutory tests have been met. Therefore, absent any professional opinion evidence, I have no basis to find that the variance satisfies any of the four tests outlined in the *Act* and find that the Applicant has failed to provide the evidentiary basis for a finding in their favour. Furthermore, the Applicant has not satisfied the burden upon which the TLAB could authorize the requested variance in any respect.

## **DECISION AND ORDER**

The appeal is dismissed; the decision of the Committee of Adjustment for the above-referenced file mailed on July 15, 2020 is confirmed.

2021-05-14

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Dino Lombardi  
Chair, Toronto Local Appeal Body  
Signed by: dlombar