

MEDIATION SUMMARY

Mediation Summary Date: Monday, June 21, 2021

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

Appellant(s): FERNANDA DAMIANA PISANI
Applicant(s): CLEED

Property Address/Description: 430 EUCLID AVE
Committee of Adjustment File
Number(s): 20 171214 STE 11 MV

TLAB Case File Number(s): 21 119223 S45 11 TLAB

Mediation Date: Thursday, June 17, 2021

MEDIATION SUMMARY DELIVERED BY DINO LOMBARDI

APPEARANCES

Applicant	CLEED
Appellant	FERNANDA PISANI
Owner/Participant	BITA GHAFARI
Participant	TIM DAVIN
Participant	DAVID PULLEYBLANK

INTRODUCTION AND BACKGROUND

On February 4, 2021, the Toronto and East York Panel of the City of Toronto (City) Committee of Adjustment (COA) approved the application submitted by CLEED Inc. (Applicant) submitted on behalf of Bitra Ghaffari (Owner) requesting approval of five (5) variances to permit the alteration of the existing 2 ½ -storey semi-detached dwelling at 430 Euclid Avenue (subject

property). The Owner is proposing to construct a rear basement walkout, a rear ground floor deck, a rear second storey addition and a third storey addition with a rear balcony (Application).

Ms. Fernanda Pisani (Appellant), the owner of the semi-detached dwelling to the north (432 Euclid) appealed the COA decision to the Toronto Local Appeal Body (TLAB) and the Tribunal issued a Notice of Hearing (Form 2) pursuant to the TLAB's Rules of Practice and Procedure (Rules) setting a return Hearing date for June 29, 2021.

A Pre-Hearing Conference (PHC) was convened on June 17, 2021, by the TLAB on the direction of the presiding Member to bring the Parties and Participants together to determine whether there was any appetite to engage in TLAB-led voluntary, confidential Mediation.

In attendance at the 'virtual' PHC were Ms. Pisani, as well as both David Pulleyblank and Tim Davin, residents who elected Participant status in opposition to the Application. I note for the record that Mr. Davin is also Ms. Pisani's spouse and lives in semi-detached home to the north of the subject property.

Ms. Ghaffari attended by cell phone, an attendance option that is provided by the TLAB for attendance by members of the public who may not have the technology to attend such proceedings virtually using the WebEx platform. Although permissible, I advised Ms. Ghaffari that I was disappointed in her attendance using her phone as this was not an optimal engagement method for Mediation sessions since productive participation would be somewhat difficult to facilitate.

At the outset, I advised that Mediation is encouraged by the TLAB Rules, specifically Rules 19 (Settlement) and 20 (Mediation) and is undertaken where the Tribunal is satisfied that there is good reason to believe that one or more of the issues in dispute may be resolved through a Mediation session. I explained that if interest is expressed by the Parties, then the proceeding can be converted into a Mediation session as permitted under Rule 20. I also briefly outlined how the process of Mediation would unfold if this was agreed to.

I heard first from Ms. Ghaffari. She advised that she was interested in participating in the proposed Mediation session; however, she also offered some historical context for the consideration of the presiding Member. She noted that she had purchased the property approximately 1 ½ years ago and that the home need significant upgrades and improvements due to its age.

She submitted that she had made the neighbours aware of the proposed renovations and modifications to the subject dwelling prior to the COA meeting.

I then heard from Ms. Pisani, who insisted that extraordinarily little proactive discussion had occurred with Ms. Ghaffari regarding the proposed renovations, which she characterized as 'significant' and more like a 'new build'. Nevertheless, she stated that while many significant issues were still in dispute, she was also willing to participating in TLAB-led Mediation.

Given that there appeared to be interest from the Parties to engage in meaningful and constructive dialogue in an effort to narrow the outstanding issues in the hope of arriving at a settlement, the Hearing was converted into a Mediation session under the guidance of the presiding Member.

At this juncture, I advised that pursuant to TLAB Rules 13.7 and 13.8 which outlines the roles of those who elect Participant status in a proceeding, a Participant is not permitted to

participate in TLB-led Mediation unless allowed to do so by the Tribunal. I then queried Ms. Ghaffari and Ms. Pisani as to whether they would support Mr. Pulleyblank and Mr. Davin being part of the Mediation session. While Ms. Pisani expressed no objection to this option and, in fact, noted that Mr. Davin should be included because he will be directly impacted by the proposal, Ms. Ghaffari was adamantly opposed. She submitted that only her and the Appellant should participate in the Mediation session.

After considering the matter and listening both to the Owner and the Appellant, I agreed with Ms. Ghaffari that the approach that offered the best opportunity to achieve a resolution of some or all the issues in dispute was to restrict the Mediation to those two Parties. However, I also advised Mr. Pulleyblank and Mr. Davin that they should continue to monitor the matter and could re-attend the proceedings following completion of the confidential Mediation session.

CONFIDENTIALITY

The Parties were advised that their respective interest and positions on matters to be discussed in the Mediation session would remain confidential as per Rule 20.2 and 20.6.

Specifically, under Rule 20.6, “any information or documents provided or exchanged during a mediation and any discussion or exchange relating to the resolution of issues or offer to settle are and shall remain confidential and shall not be disclosed or entered into evidence in the same or any other proceedings. Any notes of a Mediation made by a Member shall remain confidential and shall not be released to any Person or admitted into in any proceeding.”

Furthermore, the two Parties were advised that whether the Mediation was successful, the Applicant remains responsible at the hearing of the appeal to carry the burden of demonstrating that all the variances sought meet the statutory tests, due to the obligations of the TLAB.

The Parties acknowledged this duty to confidentiality but acquiesced to allow some general information to be noted in the Mediation Summary (Summary), herein, prepared by the presiding Member. A Summary is required by the TLAB’s Rules in the event that a Mediation is unsuccessful.

As a result, the DAR recording was paused to meet the TLAB confidentiality commitment. The Parties were advised that the recording would start post Mediation only to report the outcome of the Mediation session and to address an adjournment if required.

At this juncture, Ms. Ghaffari was still utilizing her cell phone to connect to the proceedings. I noted that this was problematic to the potential success of any Mediation session as it made conducting and accommodating further discussions difficult. Consequently, with the consent of both Parties, I recessed the proceedings to allow Ms. Ghaffari sufficient time to relocate to her office and to access a computer in order to continue the Mediation session in earnest.

She requested a return time of 1:00 pm which I agreed to and, therefore, directed the Parties to reconvene at that time.

STATUS OF MATTERS DURING THE MEDIATION

Rule 19.1 of the TLAB's Rules underscores that the Tribunal is committed to encouraging Parties before it to settle some or all the issues in dispute by way of informal discussion, exchange, and Mediation. Under Rule 19.2, Parties who arrive at a settlement are required to serve the terms of that proposed settlement on all Parties and Participants and to file same with the TLAB at the earliest possible date.

The Mediation session engaged much of the day. The Parties in the subject matter participated in productive and civil, but sometimes antagonistic, discourse conducted through multiple 'in-camera, breakout' sessions.

It became apparent early in the Mediation session that there were three main issues in dispute, namely: the massing of the proposed dwelling resulting from the proposed rear additions; the characterization of the proposal as a 'simple' renovation'; and the impacts of the proposed 2nd storey rear balcony. In my view, these did not appear to be concerns that were insurmountable or unprecedented.

Several 'in-camera' caucusing sessions were undertaken in the ensuing time period that included discussions with the respective owners of the subject property and attached dwelling. These sessions included generally investigating possible alternative design options for the existing dwelling to achieve the renovation objectives of the Owner. Both Ms. Pisani and Ms. Ghaffari established positions regarding what they could and could not accept in terms of modifications to the proposal.

There was positive discourse which engaged much of the day and while numerous design options were explored, it was evident that more specific design details were not possible without the participation and direct input of Ms. Ghaffari's architect. Consequently, I recommended that the current Mediation session be adjourned and that the Parties continue private discussions going forward with input from their respective legal counsels and Ms. Ghaffari's architect. I also suggested that the scheduled return Hearing date for June 29, 2021, be retained and that the Parties return on that date to either participate in a full disputed hearing of the Application if a settlement is not reached, or to request a conversion of that proceeding to an expedited Settlement Hearing in the event of a settlement.

I also advised the Parties that if there was consensus to pursue additional TLAB-led Mediation, then the June 29th date could be undertaken for that purpose and the Parties and Participants canvassed for a new, re-scheduled Hearing date to hear the outcome.

The Parties agreed to continue discussions privately in the hopes of a possible resolution of some or all the issues in dispute. In the event of an agreement prior to June 29th, Ms. Ghaffari agreed to direct her architect to prepare a set of revised drawings to reflect modifications to the proposed dwelling and circulate those drawings to Ms. Pisani for review and confirmation. I also directed that those drawings be served on the Parties and Participants and filed with the TLAB as soon as available.

Ms. Ghaffari was also directed to obtain a new Zoning Examiner's Review of any revised drawings to confirm the accuracy of the variances being sought as well as to determine the variances required. Due to the timing of this recirculation, I advised Ms. Ghaffari that any request to adjourn the June 29th Hearing date would necessitate filing a request with the TLAB for a written Motion.

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I would like to thank the Parties for their willingness to engage in TLAB-led Mediation in the hopes of resolving the issues that had arisen and were in dispute in this matter. I also would like to thank the Participants, Mr. Pulleyblank and Mr. Davin, who attended the virtual Hearing and who agreed to allow the Parties the unfettered ability to engage in confidential Mediation without their participation.

Upon consent, the Parties agreed orally and for the record on the DAR recording prior to the commencement of the Mediation session that I would continue to be the presiding Member in the Settlement Hearing. I agreed and, therefore, I am seized on the matter.

2021-06-21

X 

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